News Round Up

(covers 25 August to 28 September 2023)

Top stories

SRA says it cannot confirm when it became aware of a shortage in Axiom Ince's client account as its investigation is ongoing. The shortage, which was at least £57m on 30 June, preceded Axiom Ince's acquisition of Plexus. In August, the SRA suspended the firm's managing partner, Pragnesh Modhwadia. Axiom Ince has been allowed to continue trading (and is not linked to any other firm with Axiom in its name). The SRA is not required to approve firm acquisitions but must be notified about a firm closing and should ask for details including information about residual balances and outstanding undertakings. Mr Modhawia has admitted that £64m from the client account was used to acquire Ince and Plexus and to purchase and improve several properties. The High Court issued a freezing order against Mr Modhawia for the amount taken from the client account. The Court heard that Axiom Ince should have sufficient assets to meet claims for the missing money. The SRA has confirmed that it is monitoring the situation and that the firm will likely be unable to continue in its current format. The SRA's priority was ensuring the public and clients were protected. It said its staff had done well to spot the issues as quickly as they did, but it would review its internal processes. Its Board had since discussed the case's implications for the SRA's Compensation Fund and the wider issue of fast-growing accumulator firms running into financial difficulties.

TLS raises concerns as SRA consults on changes it would need to make to regulate legal executives. TLS said the SRA regulating legal executives could confuse consumers trying to choose legal services. It added that while many solicitors employ CILEX lawyers, many did not. TLS encouraged solicitors to let it know their views for its response to the SRA's consultation. The SRA did not expect that becoming the regulator for CILEX lawyers would affect the identity of the solicitors' profession or its regulation. The SRA emphasised that if it and CILEX agreed to proceed with re-delegation following their respective consultations, the LSB would still need to approve changes to the two bodies' regulatory arrangements. CILEX and the SRA's consultation run until the 5 and 22 November, respectively.

Government launches SLAPPs taskforce made up of legal professional bodies and media representatives. The taskforce is intended to 'drive forward measures to protect public interest journalism from SLAPPs, including those linked to non-economic crime'. The Government's previously announced measures only address SLAPPs relating to economic crime. The taskforce is expected to look at the prevalence of SLAPPs, how legal regulation can address them and develop training for judges and lawyers on identifying them and guidance for journalists, publications and lawyers. The taskforce's members will include TLS, the SRA, the BC and BSB, the NUJ and other media and press bodies.

Post Office denies 'laissez faire' approach to disclosure to public inquiry. The Post Office said it had given its legal advisers a broad authority on disclosure and that it was entitled to rely on experienced lawyers to carry out the process. It confirmed its new legal advisers would have a specialist disclosure lawyer. The inquiry heard that Herbert Smith Freehills, the Post Office's previous legal adviser, had used teams of law graduates without professional qualifications based in Belfast, South Africa and Australia to perform the first review of potentially relevant documents for the discovery process. Further checks were carried out by more senior staff before selected documents were reviewed in London. The inquiry has since heard from the Post Office's lawyers about their role in the prosecutions of sub-postmasters. Stephen Dilley, of Womble Bond Dickinson, defended the decision to not disclose details of the 12,000-15,000 calls being made by sub-postmasters every month about the Horizon system to lawyers for Lee Castleton, a sub-postmaster whose prosecution Dilley was handling. Dilley also denied telling Castleton that the Post Office would ruin him if he opposed the Post Office's claim. Dilley said he considered the tactics used by the Post Office in the litigation were appropriate. Richard Morgan KC who handled the case against Lee Castleton said he had not considered it as being a test case to show Horizon had a clean bill of health and that he would have ceased acting for the Post Office if it had been known the Post Office's 'losses' were not genuine. **The Government announced a take-it-or-leave-it offer of £600k for every postmaster** (currently 86) **wrongfully convicted** based on Horizon evidence whose conviction has been overturned.

Political developments/Wales

Ukraine sanctions regime facing up to nine court challenges. The challenges, some of which are expected to reach court in 2023, have prompted the Government to set up a dedicated sanctions litigation unit. Separately, City lawyers have warned that 'unintended consequences' of tougher controls on legal professionals acting for sanctioned Russians 'criminalise a whole range of legal advice' including banning in-house lawyers providing legal advice to multinational companies about adherence with other jurisdictions' sanctions. TLS said it was working with Government and sanctions experts and called for amendments to the regulations. Senior solicitors have voiced concerns that a lack of sanctions expertise in businesses vulnerable to breaching them and at OFSI has increased the risk of law firms breaching sanctions. The Department of Business and Trade said it had imposed around £900,000 in penalties for non-registration under sanctions legislation, but none of these had yet been paid. Unpaid penalties would be registered as charges on these entities. **Institute of Business Ethics launches taskforce to examine the provision of legal services to oligarchs and kleptocrats**. The taskforce of City lawyers, academics and civil society representatives will look at reconciling the reputational and ethical risks of providing services with clients' right to representation.

Bar Council (BC) to meet NDA campaign group Can't Buy My Silence. The meeting follows criticism from the group's founders, Zelda Perkins and Dr Julie Macfarlane, of the BC's position and its assertion there was relatively little evidence of NDA misuse. In response, the BC said it agreed the law on NDAs should be reviewed but that it should be up to Parliament, not lawyers, to determine what types of NDAs should be allowed. Can't Buy My Silence said it would be happy to work with the BC on NDA legislation. In the meantime, the Government indicated it would resist calls for a statutory ban on NDAs in the workplace. In a Westminster Hall debate, Business Minister Kevin Hollinrake MP said a 2019 Government consultation ‘found some support for NDAs’ in helping victims make a clean break. He said a total ban on NDAs in the workplace could have unintended consequences for employees.

Latest civil justice statistics for April to June 2023 show increasing delays in civil courts. Multi or fast track claims are now taking an average of 78.2 weeks to come to trial, 2.8 weeks longer than the same period in 2022. Small claims were taking 52.3 weeks between being issued to going to trial, a week longer than in 2022. The Association of Consumer Support Organisations said the Government should invest in the courts reform programme, set targets for reducing delays and speed up the use of new dispute resolution models.

Centre for Public Data analysis shows that in the first six months of 2023, 48% of defendants (9,240) in the magistrates’ courts charged with summary-only, imprisonable, non-motoring offences did not have legal representation.

Association of Personal Injury Lawyers (APIL) issues judicial review proceedings against the Government over plans to extend fixed recoverable costs (FRCs) in personal injury cases. Under the new rules, FRCs would be extended to cover most civil claims up to £100k. The Association of Costs Lawyers said the new regime should be delayed as the ‘piecemeal and unreasonable’ reforms have not yet been finalised. The BC called aspects of the reforms were ‘unreasonable and… irrational’. Even if the new regime comes into force on 1 October, the results of the Government’s consultation may result in further changes being introduced in April 2024. APIL reacted angrily to the results of the Government’s consultation, which confirmed it would proceed with FRCs in clinical negligence cases that settle pre-issue for less than £25k. The Government’s impact assessment of the changes noted that they could make small legal firms less able to complete with those that have greater economies of scale.

Legal thinktank Justice says UK rule of law at ‘tipping point’. In a report on the Government’s approach to the rule of law, it said reasons for the decline of the rule of law in the UK included the failure to conduct equality impact assessments, legal aid cuts creating ‘advice deserts’, and the use of Henry VIII powers to amend or repeal laws. The report said the Government should protect judicial independence and stop using inflammatory language about lawyers.

Government decides not to create a single regulator for insolvency practitioners but reserves right to do so. It will extend insolvency regulation to firms as well as individuals, bringing it into line with the legal profession and others. The Government decided not to proceed with a single regulator because of concerns about its financial viability, possible loss of expertise while it is being set up, and its independence. It will consult on a compensation scheme for people affected by insolvency professionals’ mistakes or misconduct, similar to the SRA’s Compensation Fund.

President of Lawyers in Local Government encourages local government lawyers to speak up on decisions about local council finances. Following the financial crisis at Birmingham City Council, Rachel McKoy said in-house lawyers should be present at important conversations on spending and speak out if proposals do not appear to be value for money or are unorthodox in nature.

MPs urge Government to deal with Official Claim Injury (OIC) portal problems. The Justice Select Committee said the Government needed to investigate the increase in the number of unresolved cases and set out how it planned to resolve the technical problems that have been present since the system's launch in May 2021. Latest data showed the average length of time for claims to reach settlement continued to rise. APIL said the policy of making injured people represent themselves against well-resourced insurers via the portal was flawed from the start.

Lord Chief Justice says more broadcasting of court proceedings could make justice more open and accessible. Lord Burnett, who retires on 30 September, said the use of broadcasting in cases where there is a genuine public interest had so far been successful, particularly in relation to Crown Court sentencing remarks. Lord Burnett said it had helped increase public understanding and change public perceptions of the senior judiciary. He also backed calls for documents used in court proceedings to be made available to the public and press.

Senior Scottish judges oppose SNP reforms giving more power to ministers. The judges said it was of 'critical constitutional importance' that an independent legal profession could protect the public from 'the arbitrary of abuse of power by the state' and that lawyers must be able to represent people without fear of reprisal. They said the Regulation of Legal Services (Scotland) Bill, as drafted, would allow ministers to intervene and direct regulators and so undermine the legal system's independence as well as power 'to control the activities of lawyers who might be acting in cases for and against them'. Ministers say the Bill, which would allow them to review the regulatory performance of these bodies and allow new bodies to become regulators, is intended to provide 'a modern… regulatory framework' to promote competition, innovation, and the public and consumer interest in an efficient, effective and efficient legal sector'. **Separately, the Law Society of Scotland told the CMA that measures in the Bill to protect consumers do not go far enough,** particularly in respect of unregulated legal services like will writing and online divorces.

Regulatory developments

BSB publishes new guidance on barristers' non-professional conduct and social media. The guidance clarifies the regulatory boundaries for conduct that occurs outside the scope of a barrister's professional practice but may impact public confidence in the barrister or the profession. The social media guidance is intended to make clear that while the substance of a barrister's views may raise regulatory issues, the tone in which barristers express them that is more likely to concern the BSB. The BSB said it had sought to balance barristers' human rights and their professional obligations. The BC said the guidance struck the right balance.

BSB rejoins Legal Choices. The BSB said its decision to rejoin four years after withdrawing reflected its view that the website now offers better value for money. The BSB has not yet agreed how much funding it will provide to Legal Choices.

BSB suspends University of Hertfordshire's Bar training course. In response to low pass rates, the BSB varied the University's authorisation to deliver the course, so it cannot take on more students until January 2024. The BSB said the University had cooperated with the BSB and put a plan in place to strengthen its course to ensure compliance with the BSB's authorisation framework.

SRA issues immigration warning notice which says solicitors should ensure that immigration clients provide honest and accurate information and that solicitors should not be complicit in false, fabricated or meritless applications and should provide their clients with realistic assessments of their claims. The SRA plans to publish further guidance and conduct a thematic review focusing on asylum services.

SRA CEO Paul Philip says law firms need to be held accountable on efforts to improve the profession's EDI performance. At a Westminster Legal Policy Forum event, he said lawyers needed an obvious incentive to engage with diversity.

TLS launches 'Changing Ethical Landscapes' programme to cultivate personal virtues and behaviours that encourage, rather than discourage, ethical behaviour. The programme is intended to go beyond training and education and support senior leaders and supervisors in creating cultures where adherence to professional ethics is encouraged, and ethical issues posed by new technologies and ways of practising can be addressed.

LSB approves TLS and SRA applications for £21 (7%) increase in individual practising fees. Of the estimated £127.9m (up from £114.7m) to be collected, 53% will go to the SRA and 27% to TLS. Fees charged to firms will range from £100 for the smallest to a minimum of £313,379 for firms with turnovers over £150m. The SRA expects staff costs to increase by £5m in the next year due to increases in overall pay and the size of its various investigation and enforcement teams. **SRA non-executive Board members get their first pay rise since 2014.** The Chair's pay will increase by £15,000 to £105,000, while the other nine members will see theirs rise from £12,500 to between £18,000 and £20,000. The SRA said its Board's role had grown significantly, and it had fallen behind other bodies on non-executives' pay.

SRA survey of 158 solicitor-advocates finds thirteen percent failed to provide evidence of keeping their knowledge and skills up to date and 45% did not explain in their training records why the training activities they had selected would help their competence. The SRA has previously warned that it will increase its efforts to ensure adherence to continuing competence requirements. Over the next six months this will include increasing its advocacy resources and working with stakeholders to increase awareness of competence requirements. It will also act in respect of those solicitors who did not respond to its request for information or provided inadequate information about how they were maintaining their competence.

SRA told to pay solicitor £75k in costs for the failure of a prosecution due to an 'essential mistake of law'. The SDT cleared Amie Tsang of allegations that she had failed to advise clients about the high risks involved in investing in property development schemes. The SDT said the SRA's case was based on extracts from Thomson Reuters Law website, an SRA warning notice on investment schemes which post-dated the events in the case and unsubstantiated suppositions about foreign clients needing more protection than UK ones. The SDT said the stress caused to Ms Tsang and the harm to her practice and reputation by the SRA's prosecution were highly relevant to the issue of costs.

SRA reappoints Capsticks and also appoints Blake Morgan to support its enforcement litigation work. Capsticks will continue to provide support on investigations, enforcement and litigation while Blake Morgan, which has previously worked with the SRA, will manage and present SDT cases. **The SRA has appointed insurance services provider Polo to manage SIF claims.**

Fifty-three percent of students pass July 2023 SQE1. This is a slight increase on the pass rate from January (51%). **Following the announcement of the results, Kaplan apologised after it found a marking error in a small number of SQE2 exams sat in April**. Kaplan said the papers would be re-marked and students would be notified about their revised marks by 13 October. It has contacted candidates who may have been affected. Kaplan said changes in marks were likely to be positive rather than negative and very few would be changed. Kaplan will also conduct a review of the scripts containing the error to check there was no wider impact. The SRA said the error was disappointing and its priority was to make sure the issue was addressed, and candidates were reassured about their results.

Financial Reporting Council's planned revisions for UK corporate governance code criticised by top general counsels (GCs). The response, led by Jenifer Swallow, recommends including a requirement in the code for organisations above a certain size and risk profile to show how they manage legal and related risks. The GCs said this omission was surprising in the face of increasing demands for corporate responsibility and transparency and when GCs' professional duties aligned with the Council's and the code's objectives.

Market developments, intelligence and research

Citizens' Advice says one in four people behind on at least one bill and overall UK households are at least £22bn behind on their bills. The number of people with negative budgets, where income does not cover essential costs, is increasing.

Law Centres Network (LCN) develops digital tool to help law centres cope with increase in demand caused by cost-of-living crisis. The tool helps manage requests for help and determine whether a lawyer is needed. The system will also provide better data about clients' problems, which can be used to advise policy makers. Data from the Greater Manchester centre showed clients' main issues were welfare and housing followed by family law, immigration and civil litigation.

Nationwide figures show house prices fell 5.3% in year since August 2022 in the biggest annual drop since 2009. This represented a fall of £14,600 on the price of a typical home since prices peaked in August 2022. Prices in August 2023 fell

1.9% from July, the largest monthly fall since November 2022. Prices were down in every region but were declining fastest in Southern England and Wales.

NatWest 2023 legal report finds 87% of SME law firms are optimistic about their financial performance despite staffing costs rising faster than fee rates. Forty-six percent saw recruiting and retaining lawyers as their key challenge in 2023. While 2021 had been the best financial year for firms in 25 years, 2022 had seen increases in staff costs and inflation. Nine in ten firms expect to increase fee income this year. Firms also expected headcounts and payroll to increase, so a squeeze on margins and profits was likely. A third of firms were likely to seek a merger or acquisition in the short term. Over a fifth had been approached by a consolidator in the last year. Private client and conveyancing work were the most buoyant sectors.

Macfarlanes joins Allen & Overy and PwC in using HarveyAI. Macfarlanes said all ‘Harvey’s’ outputs would be monitored and reviewed by lawyers.

BC Chair Nick Vineall calls on barristers to lead on innovation to avoid sharing profits with external investors. Mr Vineall said while alternatives to traditional chambers, such as Clerksroom, may benefit clients and investors, he was unclear how barristers benefited.

Launch event for Digital Property Market Steering Group hears calls for Government to mandate conveyancers and the property sector to adopt new ways of working, like providing more ‘upfront information’ from sellers. Rules on information required in properly listings are to be extended in October. Despite Housing Minister Rachel Maclean calling for a total overhaul of the system, Jonathan Clifton, Deputy Director at DLUH&C said mandating changes was not ministers’ first option as they preferred to work with industry on standards, and with around a year to an election, little legislative time was available. The meeting also heard calls to relax regulations on conveyancers sharing data.

ICAEW analysis of probate firms’ diversity shows improvements in representation across protected characteristics and socio-economic status. The proportion of LGB staff in these firms has increased from 2% to 4% and was now line with national and SRA figures. People from ethnic backgrounds made up 13%, up from 11% in 2021, with the increase mainly coming from people of Asian/Asian British background. The report did find that people from Black backgrounds, Muslims and those with disabilities were still under-represented in comparison with the overall population of England and Wales. The socio-economic data collected suggested good accessibility to probate firms.

STEP argues for regulation of will-writing in response to the CMA’s consultation on unregulated legal services. A survey by STEP found nearly half of consumers who have a will either wrote their own or obtained it online without checking the provider’s credentials. A separate survey of its members found just over half had encountered firms making false claims about the wills they were providing to clients including that they could avoid care home fees by putting their assets into a trust during their lifetime. A similar number had seen incompetence in the drafting of trusts, which could lead to significant tax bills for clients.

T-Level law courses to start. The qualification for 16-to-19-year-olds is equivalent to A-Levels and combines classroom training (80%) with work placements (20%). Linda Ford of CILEX hoped T-Levels would attract diverse candidates who might otherwise rule themselves out of a legal career. The qualification can be used to obtain UCAS points for university or exemptions from aspects of legal training. Thirty schools and colleges are due to teach it from September 2024.

Slaughter & May (Slaughters) becomes first magic circle firm to meet Lawyers are Responsible (LAR), a campaign group urging large practices to stop work on fossil fuel projects. LAR says Slaughters was responsible for £8.1bn in fossil fuel transactions between 2018 and 2022 and that the firm’s own action plan on climate change only relates to its own business. LAR considers this ‘greenwashing’ as Slaughters’ own carbon footprint is very small compared to that of the fossil fuel businesses it advises. Slaughters said it ‘values engaging with a range of perspectives on …complex issues’. Other major firms have not yet replied to LAR.