News Round Up

(Covers 29 September to 9 November 2023)

Top stories

The SRA's investigation of Axiom Ince continues. A police investigation has also been opened. Axiom Ince appointed insolvency firm Leonard Curtis as administrators. **SRA considering one-off levy on solicitors to cover potential £64m gap in the Compensation Fund caused by Axiom Ince failure.** While it was unlikely the Compensation Fund would have to reimburse the whole £64m as insurers may cover some losses, the SRA faces a short-term cash flow problem. The SRA could limit total payments from the fund on connected applications to £5m but said this would not cover expected claims and would raise doubts about the fund's client protections. The SRA estimates the administration costs of its intervention into Axiom Ince will be £15m. **TLS said the SRA should consult on any additional levy,** and it would need to be assured the SRA complied with its statutory duties and regulatory principles in imposing one.

CRL says it could seek a judicial review if CILEX decides to redelegate the regulation of legal executives to the SRA. CRL said there was a lack of information about the redelegation and how legal executives would be able to provide input about their regulation. TLS's response to CILEX's consultation said both the proposed redelegation and that the proposed description of 'chartered lawyer' for chartered legal executives would confuse consumers and negatively impact both solicitors and chartered legal executives. It said CILEX's longer-term aim to combine the SRA's proposed register of legal executives with the solicitors' register was unacceptable, and that CILEX's assertion that its proposals would benefit the public was unsupported by evidence.

Former head of criminal prosecutions at the Post Office, Rob Wilson, told the inquiry he believed until 2012 that Horizon was reliable, and, on that basis, it was right to prosecute. Challenges from sub-postmasters about Horizon data were expected as this was their only defence. Mr Wilson said his team's lawyers always remained independent. **Former Post Office lawyer Teresa Williamson said structural problems at the Post Office led the criminal legal team to be kept in the dark** about problems with the system known about by senior Post Office officials. Two witnesses due to give evidence in the week of 6 November had their appearances postponed after another disclosure failure. The Post Office said it was struggling to locate 363,000 e-mails that were moved to a different system in 2012. Lawyers for victims of the scandal say this latest failure suggests the Post Office is trying to manage the inquiry through the disclosure process.

Economic Crime and Corporate Transparency Act receives royal assent. It gives authorities new powers to target organised crime and others abusing the UK's economy and includes measures to deter SLAPP cases. Some commentators said the Act had too many loopholes and exempted too many firms, particularly small ones, while others said its requirements could make the UK less attractive for business. There was also criticism that the Act did not provide for limits on court fees incurred by enforcement agencies in lost prosecutions.

Prime Minister says AI's dangers are real but is positive about its benefits. The UK will establish an AI safety institute whose work would be available to the world. He said the UK would not rush to regulate AI, but states should not rely on self-regulation by companies as only governments can assess risks to national security.

Increased interest in G-AI in the legal sector. Thomson Reuters and LexisNexis are trialling G-AI legal research tools. Legal technology company iManage is testing a G-AI 'conversational' document search function. Luminance to launch automated contract negotiation tool trained on 150m legal documents, instead of public content like ChatGPT. ICLR has launched Case Genie which uses AI to analyse legal documents and suggest relevant cases from its database.

Political developments

King's speech includes legislation on criminal sentencing and leasehold reform. Other bills include criminal justice, data protection and digital information, investigatory powers, and arbitration. TLS said the Government's focus on sentencing would not solve the justice system's problems. Both TLS and the Bar Council (BC) called for more investment in the legal system.

The Society of Media Lawyers (TSML) says TLS's support for SLAPPs reform lacks 'a proper evidential basis'. TSML, whose members represent defamation and privacy solicitors and counsel, said the issue of SLAPPs had been exaggerated and abusive litigation was no more common in these areas than any others.

Court of Appeal says sanctioned banks can access courts. It also held that OFSI can license a sanctioned person to pay an adverse costs order as well as their own lawyers. The Court said the fundamental common law right of access to the courts was not limited by the Sanctions and Anti-Money Laundering Act 2018 or sanctions regulations. Anti-corruption campaigners said the decision raised questions about how much access sanctioned persons should have to courts.

The BC said the LSB has 'no role' in promoting the use of technology and there were dangers in using regulatory levers to do so. It said the LSB had not sufficiently analysed the risks and rewards of specific technologies, including AI. It also said recent guidance and statements of policy on ongoing competence and consumer empowerment had created a 'regulatory burden' for lawyers and frontline regulators, distracting them from 'core' regulatory activities and increasing the costs of regulation and legal services. **While supportive of the LSB's intention, TLS said there were better approaches**, including exploring the need for overarching principles or non-statutory guidance and sharing best practice.

The BC said it was 'hard to fathom' LSB criticism of the cab-rank rule, which it said promoted consumer choice by ensuring a wide range of counsel regardless of a client's ability to pay and protected barristers representing unpopular clients.

TLS President, Nick Emmerson, says legal sector is an 'economic powerhouse' which can benefit local communities and wider society. He said the Government should invest in legal services to boost the economy and provide more funding for legal aid, repair courts, help SME firms with technology and boost training**. TLS sets out proposals for reforming civil justice.** These include creating a single-entry point for dispute resolution options and reforming legal aid to provide more early legal advice and reduce unmet legal need. TLS also called for reform of ombudsman services, a bigger role for the Small Business Commissioner, implementation of the Jackson Review's reforms and a reformed Legal Aid Agency.

Government increases income and capital thresholds for 'Help with Fees' scheme which provides persons on low incomes and with few savings with help for court fees. Other changes include making it easier for the self-employed and those with variable working patterns to qualify and an increase in the scheme's age cap from 61 to 66. **Government confirms fees for Illegal Migration Act legal aid work to rise by 15%.** TLS said the pay rise was a positive step but would not be enough to support legal aid providers. Many asylum seekers were dispersed to areas without them. **Government announces fees for barristers helping vulnerable witnesses and victims pre-record cross examinations will rise to £1,000.** This is intended to increase barristers' availability for these hearings and reduce victim dropout.

Judge Deborah Taylor, head of the Criminal Legal Aid Advisory Board (CLAAB), said it would look at the possibility of using proceeds of crime to fund legal aid. Judge Taylor encouraged the Criminal Law Solicitors Association (CLSA) to continue to engage with Government on legal aid. CLSA and the London Criminal Courts Solicitors Association have urged their members to join Unite to enable them to bargain with Government more effectively for more legal aid funding and better working conditions.

In the light of concerns about the Scottish Government's Legal Services Bill, Sheila Webster, President of the Law Society of Scotland (LSoS), said a binding international legal instrument could be a way to protect lawyers' independence.

MoJ responds to TLS and local practitioners' concerns by restoring police station fees in Llanelli to their previous level. Twelve duty solicitors faced a 25% reduction in fees due to a change in the location of a police station.

Lord Chancellor appoints Professor Alison Young as the Law Commissioner for Public Law and the Law in Wales. She is a professor of public law at Cambridge and academic associate at 39 Essex Chambers.

Welsh Counsel General notes changes in perception of Welsh law, the Senedd and the legal profession in Wales. Speaking at the annual Legal Wales Conference, Mick Antoniw MS highlighted the SRA's presence in Wales and the commitment of the LSB and the Law Commission to their responsibilities to Wales. He also cited the increasing importance of Law Society Wales, the establishment of the Law Society's National Board for Wales and the creation of an inter-ministerial group on justice as evidence of the increasing recognition of a Welsh jurisdiction and the importance of devolved functions in delivering justice in Wales.

Regulatory developments

The BC and other UK Bars say there is 'no evidence' that barristers need a new AML regime. They said if a new regime had to be imposed, then additional powers should be given to OPBAS. The BSB, CLC and ICAEW also backed a strengthened version of OPBAS. TLS preferred the consolidation of regulators into one accountancy sector and one legal sector supervisor, but only for England & Wales. It said this would preserve the profession's independence from Government. TLS said giving OPBAS additional powers would not be effective but did not say which body should be the new legal AML regulator. The SRA said it should be the sole supervisor of all AML activity for either all UK lawyers or those in England & Wales, and the LSB should be the oversight regulator.

SRA issues warning notice about AML client risk assessments. It said 94% of firms it reviewed had processes to assess client risk, but 47% of the files it reviewed did not include a client/matter risk assessment (CMRA) as required under the 2017 Money Laundering Regulations. Of the 53% of files that had a CMRA only 77% were completed properly and 67% showed good evidence of ongoing monitoring. The SRA plans to consult in 2024 on fixed penalties for AML breaches. SRA CEO Paul Philip said a significant minority of firms were not taking AML sufficiently seriously.

SRA says firms must self-regulate to avoid misconduct fines. Partners must be aware they can face stiff penalties when solicitors they supervise commit misconduct. TLS said solicitors who commit misconduct should be dealt with swiftly, but the SRA had not made a compelling case for it having increased fining powers and that it having such powers could undermine the current SDT process.

SRA three-year evaluation of transparency rules finds firms are making more information available and consumers are using it more. Fifty-five percent of consumers and 61% of SMEs using solicitors found it easy to compare providers' costs and services, but around 20% of both consumers and SMEs found comparison difficult due to providers presenting information differently. The SRA found a majority of firms said they were providing some or all of the required price, service and complaints information. However, only 42% said they were publishing all required price and service information. The SRA will take further steps to enforce the rules and is considering changes to them.

SRA consumer segmentation research finds solicitors 'have more positive view of their services' than consumers. It found socio-economic status (SES) was more strongly linked to consumer vulnerability than ethnicity and looked at how low-SES consumers could be helped to get assistance with legal issues. Consumers and SMEs had concerns about legal services' costs and the time and energy involved in using them.

TLS invites members to share experiences of unbundling. TLS has previously raised concerns about the potential risks of unbundling to solicitors, including to their ability to obtain PII and increased premiums. TLS is asking for members' views by 17 November. It will hold a roundtable meeting in 2024.

BSB consults on chambers regulation. It suggests the idea of publishing assessments of individual chambers, and it may also encourage smaller chambers to merge to boost the professional support available to them. The BSB has met barristers as part of its development of a statement of good practice for chambers. Its proposed regulatory approach would focus on chambers which need to do more to demonstrate good practice.

BSB reports surge of lawyers from Indian sub-continent seeking call to the Bar despite many seeming to have no intention of practising in England and Wales. There had been 498 applications for admission to the Bar as a transferring qualified lawyer (TQL) in 2022/2023, up by more than 200 on 2021/22, and the trend was continuing. The BSB was unclear as to why almost half of TQL applications had been from the sub-continent. BSB CEO, Mark Neale said these barristers should be distinguished from those practicing in England & Wales. BC Chair Nick Vineall KC said only those who had completed pupillage should be able to call themselves barristers.

BSB to continue suspension of online exams. The decision follows discussions with stakeholders after the receipt of evidence of cheating which has been scrutinised by information security experts. Training providers were notified in April of concerns about online exams in Bangladesh and Pakistan.

BSB welcomes increased reporting of bullying and harassment at the Bar as indicating growing confidence in how it deals with such cases. In 2022/23, the BSB received 30 such reports up from 17 (6 about sexual harassment) in 2021/22. BSB Chair Kathryn Stone said the BSB would not tolerate this behaviour.

CLC consults on new code of conduct. It has simplified the code to make it clearer and reflect the major legal practice and societal changes since its last update in 2006. The new code reflects the outcome of the 2022 consultation on ethical principles for CLC lawyers.

CRL rejects BC and Criminal Bar Association warnings that giving chartered legal executives higher rights of audience would create a ‘deskilled’ advocacy profession. CRL said its proposed standards were based on those for solicitor-advocates. The LSB is currently considering CRL’s application on these proposals.

Alan Vallance to be new ICAEW CEO. He is expected to succeed Michael Izza in Spring 2024. He is currently the CEO of the Chartered Insurance Institute and previously held a post at TLS.

LeO consults on £1.2m budget increase to £18m. Rising demand means reducing its backlog of pre-assessment cases will take longer. Five percent of the proposed increase would pay for more staff to support its planned insight and impact work, in support of a new strategy. Full investigations were still taking months to complete, but their average time was falling. In 2023/24 LeO resolved 44% of cases in 90 days, while in 2021/22 80% took more than 180 days.

New LeO guidance says lawyers must update clients about cost increases for their services or face complaints against them being upheld by LeO. One in ten complaints LeO receives are about bills and costs feature in many more. LeO says clients should never be surprised by their bills, they should be told what they are being charged for and clear and accurate records of all costs should be kept. It also says litigators recovering substantial success fees not linked to individual risk from their clients must tell them other firms may charge less.

Market developments, intelligence and research

For the first time in nearly two years, wages rose faster than average inflation at an annual rate of 7.8% between June and August. However, inflation was at 6.7% for the year to August, over three times the Bank of England's 2% target. **One in four new UK homeowners choose 'marathon mortgages' to cut payments.** Buyers under 29 are choosing 35-year terms with lower monthly repayments because of the gap between living costs and house prices. **Institute of Fiscal Studies says UK households face a tax rise of £3,500 a year by the next election,** the biggest increase in a parliament since records began over 70 years ago.

PwC survey finds no top 100 law firm plans to seek alternative funding or ownership structures for the next three to five years. Firms were optimistic about increasing revenues and profits this year. Their growth will depend on having technology and data enabling them to fully use AI. Sixty-nine percent of firms surveyed believed AI would boost their revenues or margins, but only 9% were developing the technology with AI providers.

LexisNexis survey predicts legal sector growth to slow to 2% in 2024, down from 2023's 6%. It expects better than average growth in property (7%), immigration (7%) and insolvency (6%) but criminal law is expected to be down 3% and employment law 2%. The survey found 85% of firms had experienced pressure from clients to resource matters with diversity in mind. **LexisNexis predicts trends for 2024:** increased use of generative AI (G-AI), more alternative fee arrangements, declining revenues, UK firms looking at the US market, and smaller firms growing through marketing and business development.

Allen & Overy and Shearman & Sterling partners approve merger to create super-firm A&O Shearman with 3,950 lawyers and 800 partners in 48 offices, and combined annual revenues of around £2.9bn.

Association of Consumer Support Organisations' finds 'rump' of claim management companies (CMC) firms left in the PI market as CMCs focus on financial claims. Complaints to the FCA about PI CMCs are at 'all time lows'. Complaints to the Financial Ombudsman Service about CMCs are down 50% in two years.

A report for litigation funder Buford Capital on the diversity gap in commercial litigation found one in four general counsel have asked a law firm to put a woman or racially diverse lawyer on a litigation or arbitration team, but a lack of relationships with diverse external counsel limits the appointment of more representative teams.

BC research shows male and female barristers earnings diverge in every practice area from the start of their careers. At the start male barristers earn 17% more and the difference peaks at 30% at 11 to 15 years' call. Female KCs earn 29% less on average than male KCs. The BC is concerned that differences in earnings at the start of careers makes them more likely to persist.

Law firms make up over half of Social Mobility Foundation employer index. The highest-ranking firm was Browne Jacobson, which was second overall (behind PwC). Linklaters, Allen & Overy and Bryan Cave Leighton Paisner made the top ten. The only barristers' set was Radcliffe Chambers, placing 60th overall.

The City of London Law Society (CLLS) announces partnership with UCAS, Not Going to Uni and Young Professionals to boost the visibility of solicitor apprenticeships and widen access to the profession. The initiative includes more than 50 firms and is intended to address demand for more diverse routes into law.

Barrister apprenticeships to be considered by the Institute for Apprenticeships and Technical Education. Once approved, organisations could apply to the BSB for authorisation to deliver apprenticeships. The BSB said a 'great deal of work' needed to be done to get the apprenticeships ready for launch.

At the IBA Conference, Nick Vineall KC suggested those pursuing SLAPPs should be liable in damages for acting against the public interest**.** His proposal is based on injunctions, where clients seeking one have to give an undertaking to the defendant that if their injunction is ultimately unjustified, they will pay damages for any harm the defendant suffers. Mr Vineall said this was a deterrent for clients who were not sure they had a good claim. **Following bar leaders' criticisms, the IBA parked its proposal** to require lawyers to consider the social implications of acting for clients even when no law is broken.

Institute of Business Ethics' legal profession taskforce chair Guy Beringer (a former senior partner at Allen & Overy) said firms acting for controversial clients should be willing to admit doing so is a commercial decision and not one based on access to justice. He added that firms advising clients on environmental, social and governance (ESG) matters needed to ensure their own ESG compliance. **TLS conference hears law firms are increasingly screening clients against ESG values.** B Corporation law firm Bates Wells said the starting point for deciding on clients was having a defined set of values and purpose decided by the whole firm, not just management. **TLS has committed itself to being net zero by 2030**. **The Conveyancing Association expects its members to reduce their climate impact**, including by refusing instructions on climate grounds**.**

LSCP unmet legal need event hears proposal for levy for social welfare law. The levy on county court cases (£30 each) and on solicitors and barristers (£150 each) would raise around £85m to address legal aid deserts. An alternative suggestion was for a public-backed 'draw down' facility which would allow social welfare providers to borrow a sum equivalent to 70% of their legal aid work-in-progress at 0% to fund expansion.

National Pro Bono Centre and Pro Bono Connect launch Pro Bono Expert Support service to bring together lawyers and expert advisers to deliver access to justice.

IBA says challenges for the legal profession are AI; ESG; client and mandate acceptance; talent attraction and retention; the profession's image; delivering legal advice in multiple jurisdictions; and promoting the rule of law. AI was identified as the main challenge to the profession and wider society.

Centre for Data Ethics and Innovation to run AI bias and discrimination challenge to support the development of AI that takes account of UK social and cultural contexts.

Increase in legal cases about use of copyrighted material to train AI systems. Companies are concerned about copyright infringements and confidentiality issues when using AI. Some are urging their advisers, including law firms, not to input any of their information into AI systems for fear of leaks.

LawCare sees 24% increase in number of legal professionals seeking support in first eight months of 2023**.** The charity said employers needed to create mentally healthy workplaces and reduce risks caused by accepted working practices.