News Round-up (5 January to 7 March 2024)

Top stories

The Government's budget represents a 4.8% reduction in operational spending on justice in 2024/25. Capital spending will rise 20% to £1.8bn in 2024/25. TLS and the Bar Council (BC) said the budget failed to address the legal system's issues. TLS President Nick Emmerson said while 'small amounts of money to the family court system for early advice are welcome …only through investment in staff, judges, legal professionals, and our court buildings can the Government begin to address' the challenges facing the system. BC Chair Sam Townend KC agreed saying while money for family courts and criminal justice was welcome, it was 'a drop in the ocean…after years of underinvestment.'

High Court rules former Lord Chancellor Dominic Raab's decision not to implement a 15% pay increase for criminal law solicitors was 'irrational'. Ruling on TLS's judicial review application following the Government's decision to award an 11% pay rise, the Court said evidence from criminal solicitors presented a picture of a system that would collapse at some point if the Government did not provide more funding soon. TLS called on the Government to implement the 15% increase as soon as possible to show it was serious about maintaining the quality of the criminal justice system. The MoJ has decided not to appeal the decision and is considering how to respond. **MoJ announces pay increase for criminal legal aid solicitors working in police stations and youth courts.** £16m will be allocated to increase fees for police station solicitors, with £5.1m to be used to increase youth court solicitors' pay. The increases will apply to new work from summer 2024.

Criminal Bar Association (CBA) survey highlights potential mass exodus of rape and serious sexual offence barristers. It found 64% of barristers who prosecute these cases do not intend to reapply for accreditation by the CPS due to complaints over pay. The CBA has told ministers that doing nothing to increase fees will result in continued lengthy delays for rape and serious sexual offence cases. Of the 64% of barristers who said they would not reapply, 62% cited poor pay and 50% cited wellbeing. 78% of barristers with less than 5 years' experience said they would not consider working on rape and sexual offence cases. In response, the Government cited its increase to funding for criminal legal aid fees and the increase in the number of rape prosecutions in the latest year. **Victims' Commissioner Baroness Newlove warned the justice system was on its knees** and said while legislation enshrining victims' rights was welcome, little would change without tackling backlogs. Delays were at an all-time high with 66,547 cases waiting to be heard in England in the year to September 2023, 28% of which had been in the system for over a year.

Ministers to back the Strategic Litigation Against Public Participation (SLAPPs) Private Members' Bill. TLS welcomed the Bill's aim of addressing SLAPPs cases not covered by the Economic Crime and Transparency Act 2023 but raised concerns about ambiguity, satellite litigation and costs. It wanted an objective test for defining SLAPP cases and a redrafting of the Bill's definition of 'the public interest.' It asked whether the bill strikes the right balance between rights to private and family life and freedom of expression. Some media lawyers said the bill would not protect journalism and might prevent legitimate cases. Some anti-SLAPP campaigners said the bill was too weak.

Political developments/Wales

The National Audit Office published its report on the Government's management of Legal Aid on 9th February 2024. The report said the MoJ "must take a more proactive approach and routinely seek early identification of emerging market sustainability issues, to ensure legal aid is available to all those who are eligible. Until then, it cannot demonstrate that it is meeting its core objectives and so securing value for money." The report also said real terms funding on legal aid fell by £728m (28%) over the past 10 years. The MoJ defended its priorities and said it would consider the findings "closely."

Government publishes civil legal aid provider survey report looking at providers' experiences, challenges, and the incentives for them to provide civil legal aid. Respondents were concerned about the long-term sustainability of the civil legal aid sector. The Government will consider its results along with all the evidence gathered by the review. **Government civil legal aid review received evidence** from TLS, the BC, the Legal Aid Practitioners Group, and the Public Law Project. They raised concerns about the level of legal aid fees, limits on remote working, unbillable time involving in running cases and meeting contractual requirements, and technical limits preventing matters which should be in scope, such as child abuse, being covered. The BC said the civil legal aid system is not sustainable in its current form and called for a reversal of the 2013 LASPO cuts. The review was due to have concluded by the end of March with final policy decisions appearing later this year. **Subsequently, the Government's review team said in early March that it would publish the review's findings in phases and a 'green paper' would be published this summer.** TLS said the Government should make an emergency investment of £11.3m for providers of early legal advice and the delay to the review made this more urgent.

SRA hires seven people to help it manage Axiom Ince compensation claims at a cost of £310,000. SRA staff were already under pressure from increased claims from interventions before Axiom Ince. The cost of the intervention into Axiom Ince was set to be less than the £10m figure the SRA cited previously. CILEX sought assurance from the SRA that its members will not have to pay any of the compensation bill on Axiom Ince.

Fees paid by the Post Office (PO) to lawyers to defend Horizon are double that paid in compensation so far. The PO spent £298m between 2017 and March 2023 on fees. At the current rate of spending, by the end of March 2024, the amount of fees paid will be around £390m, over twice the £169m paid by the PO and Government in compensation. Half of the scandal's 4,300 victims have received compensation, but more than 1,900 are still waiting. Victims' lawyers said it could take up to two years to ensure their clients receive full and fair redress. The Government has accepted that it and the PO have been too slow in providing compensation to victims.

Government says legislation to quash Horizon PO scandal convictions 'does not set a precedent' for the relationship between the judiciary, executive and Parliament. The legislation will quash all convictions as defined by a set of ‘clear and objective criteria’ which will not require the application of any ‘element of discretion or subjective analysis.’ The Government aims to achieve Royal Assent for the legislation by the summer recess. To lessen the risk of those rightly convicted receiving financial compensation, individuals will have to sign a statement stating they did not commit the crime of which they were convicted. Anyone who signs such a statement falsely to gain compensation may be guilty of fraud.

The BSB said while it had already referred some PO matters for investigation, it was unlikely that it would take regulatory action until the Inquiry had heard all relevant evidence. The BSB said the evidence presented to the Inquiry so far indicated no barristers present an ongoing risk to the public requiring immediate regulatory action by the BSB. **The SRA said it wanted to wait until the Inquiry was completed before acting**, but it could do so if there was evidence a solicitor posed an ongoing risk to the public. Like the BSB, the SRA said it had not seen any such evidence but was keeping the position under review.

SRA probes PO lawyers over ‘intimidating’ offer letters to sub-postmasters following complaints from the independent board overseeing compensation payments. The board wrote to the PO last month saying victims continued to be ‘confused, intimidated and hurt’ by it and its lawyers’ behaviour in negotiating settlements. It is understood the SRA has sought clarification from the PO on whether compensation letters are appropriately labelled. The board also raised concerns about the PO’s use of NDAs in compensation settlements.

The Advisory Committee on Business Appointments (ACOBA) found that former Director of Public Prosecutions Sir Max Hill KC failed to follow Government rules when he joined US law firm King & Spalding before ACOBA provided its advice about the appointment**.** ACOBA has written to the Deputy Prime Minister saying that Sir Max ‘chose to blatantly disregard’ ACOBA’s processes and had committed an ‘unambiguous breach of the rules.’ It is up to the Government to decide what action to take.

Wales launches consultation on ‘Reimagining Justice in Wales 2030’. The consultation will inform a vision for the justice system and legal sector in Wales. It will identify opportunities and challenges along with solutions to the issues the sector faces, given the possibility of justice being devolved to Wales. **Welsh Government publishes report on progress of improvements to the justice system in Wales.** The report says to address the issues facing the system in Wales, justice should be devolved so that the Welsh Government can make decisions complementing those it already takes in other devolved areas. The UK Government opposes devolving justice to Wales. It said Wales currently benefits from membership of a larger, world-renowned, justice system.

Regulatory developments

LSCP calls on Competition and Markets Authority (CMA) to act on lack of progress on legal services quality indicators. The LSCP said while some progress had been made on price and service information since 2016, little had been done on quality indicators, despite its insistence that price information needed to be complemented by them, as in their absence, consumers could assume higher-priced services were naturally better. The LSB's policy statement on consumer empowerment requires legal services regulators to act on quality indicators by September 2024. The LSCP said it was 'highly unlikely' that regulators would meet the policy statement's requirements by then. **SRA fines eight firms for failure to comply with transparency requirements on costs and services.** 12 firms have now been fined without going through the full disciplinary process via the SRA's fixed penalty regime. The SRA has also issued the first fixed penalty for a firm for not publishing required diversity data and the first for not updating the SRA on information about a compliance officer.

LSB CEO Matthew Hill said regulators had shown a lack of energy in dealing with strategic failures of regulation like the PO scandal, and questioned whether codes of conduct could drive ethical behaviour. At the Westminster Legal Policy Forum conference on legal ethics, Mr Hill said some of the failures in the PO scandal were reflected in other issues, such as NDAs and SLAPPs. The event heard from Can't Buy My Silence and Professor Richard Moorhead that ethical breaches continued despite regulators' warnings. Mr Hill said there was likely a strategic failing with current regulatory approaches, asked why ethical failures continued to occur despite regulation, and said regulators needed to act on complaints brought to them about ethical issues. **Professor Moorhead** has also said the PO scandal showed that law students needed to be taught about ethics. He said undergraduate law schools were often not good at teaching ethics and students often entered the profession without thinking about the type of lawyer they wanted to be.

SDT fines Clyde & Co £500k for AML breaches occurring between 2014 and 2018 when the firm failed to maintain sufficient due diligence on funds it moved for a client. While there was no evidence of money laundering, the possibility it had occurred could not be discounted. The SDT said large firms like Clyde & Co had a greater responsibility to uphold the reputation of the profession, so the harm caused by their misconduct is also greater**.** The fine is the joint largest handed down by the SDT.

The SRA issued turnover-based fines ranging from £3,203 to over £23,216 to several smaller firms for AML compliance breaches. The SRA is providing guidance to firms outside the scope of the Money Laundering Regulations but that do not have sanctions risk controls in place. The guidance follows a survey of 3,000 firms that found nearly 1,700 did not, or were unsure if they did, comply with sanctions requirements. The SRA will review a sample of the firms it contacted to assess their controls later this year.

Consumer claims firm SSB Law entered administration in January owing six litigation funders a total of £200m. Its administrators said the firm had 43,000 cases on its books, but these were not enough to cover its costs. The administrators said SSB had faced challenges with its portfolio of cavity wall insulation claims, which led to issues with case progression, settlements, and adverse costs orders, not all of which could be recovered from insurance. Most of the firm's active cases were PPI claims, whose progress had slowed due to Court of Appeal decisions. Around 1,400 SSB clients with conditional fee arrangements were being pursued for costs by the other parties to their claims. 'After-the-event' (ATE) insurance should have covered these costs. It is understood there is a dispute between SSB and its insurers as to whether such insurance was in place for its cavity wall claims. The SRA is investigating SSB and whether there are any wider issues about ATE insurance**.**

The SRA sets out the scope of its consumer protection review. It plans to consult on proposals by the end of 2024. The SRA will look at firms' corporate structures, how it supervises firms, alternative ways for firms to manage client money and potential changes to the Compensation Fund. The LSCP welcomed the SRA's review but emphasised that the Compensation Fund must be able to protect consumers from large losses and such a fund is 'the cost of doing regulated business and the assurance consumers pay for.' The SRA is also conducting a thematic review of accumulator firms and acquisitions.

CILEX said over 60% of the 1,200 responses to its consultation on redelegating legal executive regulation supported the proposed switch. However, TLS and hundreds of CILEX members opposed it. CILEX is currently seeking assurances from the SRA on the cost of regulation and the principle of no cross-subsidisation. CILEX's consultation also covered proposals on changes to chartered legal executives' titles, a new paralegal standards framework and extending CILEX members' voting rights. The latter two proposals received strong support. CILEX has taken on suggestions about its proposals on titles. **SRA to consult on the regulation of CILEX paralegals and students** who are not authorised persons. The SRA's previous consultation and survey found consumers were largely in favour of redelegation. Some respondents worried about an increase in regulatory burdens if the SRA was not sufficiently resourced. Solicitors' representatives were concerned it would dilute their 'brand' and would not reduce consumer confusion. TLS CEO Ian Jeffrey wrote to the SRA to say TLS considered the survey results did not support the SRA's decision to continue work on the redelegation. He also said he expected that TLS Council, if required to decide, would refuse to allow the redelegation to proceed.

Market developments, intelligence, and research

IRN Legal says the UK legal services market grew by 8.3% in 2023 and had a turnover of £47.5bn. It expects the market's turnover to reach £50.3bn this year and £61bn by 2027. Commercial legal advice accounted for almost 50% of the market (£23.4bn) in 2023 with the consumer market estimated at over £18bn. M&A activity in the consumer market was expected to continue at the same level in 2024, with private equity investors still interested in the sector. There was also expected to be continued interest in employee ownership trusts as a model for legal businesses and for firms to obtain B Corp status.

Travelers Insurance says large loss claims (over £250k) at law firms have increased in the last three years. Commercial work was the main source of the losses. There had been an increase in dishonesty-related claims since 2020. These often involved poor cyber-security and could occur when high-pressure work environments combined with a lack of supervision. The insurer said firms should look at their cultures to address errors caused by stress, pressure, or fatigue.

Solicitors turning down leasehold instructions due to risks. Some of the requirements of the Building Safety Act 2022, which allocates responsibility for making tall buildings safe (i.e. removing cladding), are unclear and create risks for solicitors doing leasehold work. The Government has amended the Act and is due to amend it further to address the problem, but for now some insurers are advising lawyers not to take on leasehold work that may be covered by it. TLS has published guidance to help solicitors decide about accepting instructions where the Act applies.

Claims over mis-sold car finance may be new growth area for consumer litigation. The FCA is assessing the extent of the problem of mis-sold car finance. The Financial Ombudsman recently issued two decisions on motor finance commissions which found in favour of the borrowers. Martin Lewis predicted the FCA would set up a redress scheme or set out rules for managing the claims.

BBC investigation alleges unregulated legal service firms run by Craig Johnson and Julie Blackmer cost vulnerable family law clients thousands. In November 2023, CILEx Regulation barred Mr Johnson from being a member of CILEX for 15 years, but he can still sell unreserved legal services. The Chair of TLS's Family Law Committee says existing regulations do not sufficiently cover the legal services Mr Johnson and Ms Blackmer claimed to provide.

Court of Appeal allows group claim against IP law firm Marks & Clerk. The firm is alleged to have overcharged thousands of small businesses by operating a 'secret commissions' scheme with IP business CPA Global. Under the scheme CPA Global allegedly paid secret commissions to Marks & Clerk in return for referrals.

Metamorph was ordered to pay £570,000 by the Employment Tribunal, who awarded a Protective Award to 70 claimants on the basis that the correct redundancy procedures were not followed. This is in addition to the **Metamorph Group's unrecoverable losses amounting to over £20 million**, with more firms in the network still to reveal their debts. Liquidators' reports suggest creditors are unlikely to receive anything. The liquidators also identified 'further matters to be investigated' but provided no details 'so as not to prejudice any potential future legal action.'

CEO of insurance company ARAG highlighted that the LSB And Government had identified how legal expenses insurance (LEI) can aid access to justice. Tony Buss said awareness of LEI in the UK was increasing but was far behind some

European countries. The Association of Consumer Support Organisations has said Government should educate the public about LEI's benefits.

BSB consults on removing degree requirement for prospective barristers to enter a vocational course. All applicants would still be assessed against the same criteria in respect of academic legal training. The BSB said the current regime did not account for qualifications that can be regarded as equivalent to a UK law degree or non-law degree. The consultation also proposes removing time limits for completing a law degree and starting vocational training after graduating to help to remove barriers for women, carers, and persons with medical conditions.

Portsmouth University research finds half of barristers are "generally content" with their working lives and that their overall wellbeing was better in 2023 than 2021. However, women, ethnic minorities, disabled persons, LGBTQ, those who attended state schools and barristers with childcare responsibilities reported lower wellbeing levels. Barristers aged 65 and over had better wellbeing levels than all younger age groups. Criminal and family law barristers had the lowest wellbeing while commercial practitioners had the highest. Employed barristers were happier than those in chambers. The Bar Council said it would focus on improving younger, female, and ethnic minority barristers' wellbeing.

Neurodiversikey is running a survey to find out how many neurodiverse people, who are often wary of disclosing their status, are working in law, how well their needs are met and how they can be supported. The SRA's diversity survey asks if respondents are disabled but does not ask what type of disability they have.

Government publishes response to AI White Paper consultation. It said it will provide regulators with the skills and tools they need to address AI's risks and opportunities and provide a £10m fund to help them do so**.** The Government has asked 13 major regulators, including Ofcom, the CMA and the LSB to publish their approaches to AI by 30 April. **BC issues guidance to barristers on generative AI (GenAI).** Barristers can use AI tools, but they must understand them and use them responsibly. They should independently verify AI outputs, not input any privileged or confidential information, and not use AI as a substitute for their own judgment. They should also be aware of AI's risks, including its ability to hallucinate and generate misinformation.

LexisNexis poll finds lawyers use of GenAI is 'accelerating quickly.' 39% of respondents, and 62% at law firms, said they had made a change to routine operations because of GenAI. 26% were currently using GenAI at least once a month. A further 35% planned to use the technology. LexisNexis said while the figures for GenAI usage were not staggeringly high, they represented a huge shift for the typically risk-averse legal profession.

Cyber breaches at law firms up by 36% in 2022/23. The Information Commissioner's Office (ICO) said there were 226 breaches in the year to 30 September 2023, up from 166 the year before. In 2023 the National Cyber Security Centre suggested nearly three-quarters of the UK's top 100 law firms had suffered cyber-attacks. The ICO has approved a certification scheme for law firms and chambers. Compliance with the scheme will provide them with increased protection and ability to manage a data breach. It would also be a mitigating factor in the event of a breach and investigation. Firms would be recertified every three years and would have to do annual training and auditing.