Additional News Round Up Material (5 January to 7 March)

We have provided this additional material to update the Board on relevant issues that we may not regularly include in the News Round Up. For example, when compiling the Round Up, individual stories about a topic may not merit inclusion, but several over a period of months may indicate an important market trend or development. We also plan to include longer updates on various issues of interest on a rotating basis. In this update, we have included summaries about the following issues: potential changes to the oversight of regulators, law firm mergers and acquisitions, litigation funding, wellbeing, and diversity, all of which are either relevant to the LSB's work, recent events, or ongoing issues.

Regulation – House of Lords Industry and Regulators Committee report: 'Who Watches the Watchdogs?'

While legal services regulators were not the focus of this Inquiry, we included this story as it highlights increasing concern, particularly in the wake of perceived failures in other sectors, about regulators' effectiveness and the suggestion that a body be created to oversee their performance.

In February 2024, the Committee published its report "Who Watches the Watchdogs? Improving the performance, independence, and accountability of UK regulators." Its key conclusions centred on the inadequacies of the "three-way relationship between the regulators, the Government, and Parliament" that often impedes the independence, efficiency, and accountability of regulators. The report also noted the difficulty regulators face recruiting due to higher rates of pay in the private sector.

It concluded that a new approach to overseeing UK regulation is required and called for the creation of an 'Office for Regulatory Performance' to investigate and report on regulators' performance and support Parliament in holding regulators to account.

Maddy Bishop, a Researcher at the Institute of Government (IoG), noted that the report picks up the IoG's recommendation for government to publish a list of bodies with regulatory functions, their powers and oversight arrangements. However, Bishop highlights that the proposed 'Office for Regulatory Performance" should avoid duplicating the efforts of the National Audit Office. Upcoming IoG research will look at how parliamentarians can scrutinise regulators more effectively, including analysing institutional structures.

The government's response to "Who Watches the Watchdogs?" is due in April 2024.

Legal market trends

We included these stories about the drivers of and continued appetite for law firm mergers and acquisitions as they, and their regulation have come under greater scrutiny since the recent collapses of 'accumulator' or 'consolidator' firms, like Axiom Ince and Metamorph.

Accountancy firm Hazelwoods says the increase in the number of law firm mergers has been driven by: (1) a desire to become more competitive by assembling more expertise in a particular area of law and/or achieving economies of scale by reducing overheads for offices, IT etc, (2) US firms putting competitive pressure on large UK firms e.g. Allen & Overy with Shearman & Sterling, and (3) higher operating, insurance and finance costs encourage smaller firms to merge. The need for firms to invest in technology and AI is also likely to encourage mergers.

Acquira Professional Services predicts the scale and pace of legal M&A activity would increase in 2024. It said potential buyers were increasingly confident and private equity firms still saw law firms as good investments. The failures of Kingly, Metamorph and Axiom Ince had raised concerns about consolidator law firms and sellers were becoming more cautious as a result, particularly as the SRA was now looking more closely at consolidators' operations.

Hedge fund and PE-backed firms complete acquisitions. Solaris Law, backed by the Elliot Management hedge fund, is now one of the large consumer and commercial collection and legal debt recovery businesses in the UK following its acquisitions of the legal services division of Equivo and Shoosmiths' business to business recoveries division. Fletchers Group, owned by PE firm Sun European Partners, has purchased Serious Injury Law (SIL). SIL partner Tim Walters said consolidation in the serious injury market was gathering pace due to legal reforms and subsequent changes to business models.

The Right Legal Group, an ABS wills and probate specialist, secures PE funding to buy at least 'a dozen law firms a year'. The firm has received funding from Vespa Capital, which has a minority stake in the business. Right Legal has acquired 15 law firms over the last 9 years, including some in administration. It said there were many lawyers with goodwill who could not exit the market due to run-off cover or other issues, and the funding from Vespa meant Right Legal could seek to buy them.

Litigation funding

The Post Office Inquiry recently heard about the significant role litigation funding played in bringing the scandal to light. It is likely to play an increasing role in providing access to justice. However, the practice has recently faced challenges from the courts, which along with higher interest rates, may have led to a reduction in cases funded. There are also calls for litigation funding to be more tightly regulated due to concerns that investors take too large a share of compensation payouts. The LSB is currently undertaking research on litigation funding, to better understand the nature, scale and scope of current funding in England and Wales.

The Government announced it will introduce legislation that will overturn the Supreme Court's 2023 *PACCAR* ruling that found that litigation funding agreements (LFAs) which handed funders a share of damages would be 'damages-based agreements' and would need to comply with relevant regulations to be enforceable. The ruling barred LFAs' use in proceedings before the Competition Appeal Tribunal (the CAT) and challenged assumptions about their wider use, leading to a shift in the drafting of agreements and litigation against funds. In November, the Government amended the Digital Markets Competition and

Consumer Bill to allow LFAs in the CAT, but both ministers and peers expressed concern that the Digital Markets Bill was ineffective in adequately addressing all claims affected by the decision**.**

The Government says the legislation will make it easier for individuals to secure financial backing to launch claims against large businesses they otherwise could not afford. This follows comments last month from Lord Chancellor Alex Chalk that the **MoJ was considering commissioning the Civil Justice Council to engage in a wider review of the litigation funding market.** Chalk indicated that one area of interest was capping how much compensation investors could seek through funding agreements, a statement that has already received criticism from litigation funders.

Active discourse has occurred around litigation funding, with reflection on its role in the Post Office Scandal (explicitly mentioned by government in their statement on the upcoming Bill). **Former sub-postmaster Alan Bates expressed his support** of the new litigation funding legislation, stating the group claim of sub-postmasters was "only possible due to the backing of a litigation funder." **Law Society president Nick Emmerson also welcomed the Bill**, noting "it would be worth considering the risk of the funding arrangement rendering any victory hollow for the consumers affected." **Seema Kennedy, chief executive of Fair Civil Justice, called for improved transparency in litigation funding through regulation** including regulation of licensing funders by an independent authority, requiring funders to prove they have sufficient capital to cover their financial obligations, and courts reviewing funding agreements.

Wellbeing

In May 2022, the LSB and the regulatory bodies published a statement on tackling counter-inclusive misconduct. However, the statistics from LawCare below show increased numbers contacting the charity about workplace issues, including bullying, harassment, or discrimination. Separate research found that pressure from managers and colleagues was a major concern for junior lawyers.

LawCare handles twice as many reports of bullying. LawCare said 2023 was its second busiest year on record after 2020. The charity provided emotional support to 633 lawyers, up 14% on 2022. The proportion of callers contacting LawCare about workplace bullying, harassment or discrimination almost doubled to 14%. Stress remained the number one reason for contacting LawCare, with 22% of lawyers mentioning it. Anxiety was almost unchanged on 12% while those calling with concerns about their careers fell from 22% to 13%. Almost 75% of callers were female. Two-thirds were White, 24% were Asian and 5% were Black. 58% of LawCare's income was spent on providing direct mental health support, with the remainder going on education, training, and information. **Attorney General Victoria Prentis KC** was saddened by research that found 44% of barristers had experienced or witnessed bullying or harassment in the past two years.

Legal resourcing business Flex Legal finds increasing mismatch between hours employers expect and junior lawyers are prepared to work. It surveyed over 630 paralegals, trainee and young solicitors, apprentices, and legal technologists. 43% said their biggest concern was pressure from managers and other colleagues. Just under 40% were concerned about working hours and misalignment with firm values. There had been an increase, from 33% to 46%, in the number of young lawyers unwilling to work more than 30-40 hours a week. However, 52% thought they were expected to work 40-50 hours. The percentage of lawyers prepared to work over 50 hours a week fell from 18% to 9%.

Diversity

Improving EDI in the legal profession is a major focus for both the LSB and regulators. The statistics below show ongoing issues in relation to performance on qualifications and barriers to entry to and progress within the profession.

Fewer than half of the candidates (48%) who took the Legal Practice Course (LPC) in the academic year from September 2021 passed, compared to 54% the previous year. The gap between academic institutions was wide, with the two top providers having 100% success rates and the bottom two having rates of 25% and 21%. 32% of LPC students were male. 51% of male students passed, compared to 49% of female students. Pass rates varied depending on ethnicity. 58% of White candidates passed compared to 50% of mixed, just under 40% of Asian candidates and 29% of Black candidates. The ethnicity achievement gap was wider for the CPE. 40% of LPC students with a disability passed compared to 54% of non-disabled students. The gap for the CPE was smaller (53% disabled, 55% non-disabled).

Women make up 53% of all lawyers in the UK, and 62% of solicitors. In 2022, women were becoming solicitors at three times the rate of men. However, women only account for only 32% of full-time equity partners. **The BSB's annual diversity report found that just over 40% of barristers are women**, but just over 20% of KCs are female. However, women account for 60% of pupils. The proportion of barristers from ethnic minority backgrounds increased slightly to 16.9% (compared to 16.7% of workers in England and Wales). 10.7% of KCs were from an ethnic minority, and 24.9% of pupils. Overall, 8.2% of barristers were disabled (compared to 16.5% of UK workers) but 15.7% of pupils reported a disability. A third of barristers attended private school. 54% had parents who attended university.

SRA's first diversity profile of in-house solicitors finds public sector is more diverse. There are twice as many Black in-house solicitors in the public sector. 68% of solicitors working in the public sector are female. Nearly a third of female in-house solicitors work in the public sector compared to less than a quarter of male in-house solicitors. Two-thirds of all in-house solicitors work in the private sector, while 28% are in the public sector.

Market research agency Cybil polled students, graduates, and newly qualified solicitors at 112 universities and 62 firms about the challenges of pursuing a legal career. 31% of Black students and graduates aspired to work in law but only 15% did.14% of Indian heritage students wanted a legal career but only 6% had found a job. 65% of students said the profession did not give everyone the same opportunities, and 38% of them cited nepotism and connections as to why there were relatively few lower-socioeconomic status and Black heritage students in legal careers. A third of respondents had connections in the legal sector and 90% of them believed these had helped their career.