News Round Up (8 March to 12 April 2024)

Top stories

House of Commons Justice Committee says Legal Services Act 2007 'does not appear to provide a stable long-term framework'. The Committee said it would be wrong for the Government to ignore Professor Mayson's conclusion that many of the issues relating to regulation were evidence of flaws in the Act. It was also concerned about the amount of discord amongst approved regulators, regulatory bodies and the LSB and said there was a growing case for reviewing the legislative framework underpinning legal regulation. The Committee also noted concerns about the extent of the LSB's remit and its ability, either alone or with frontline regulators, to tackle sector-wide challenges like 'reforming the justice system' or 'redrawing the regulatory landscape.' The Committee recommended the Government review the LSB and that its Chair be subject to pre-appointment scrutiny by the Committee about his or her independence from Government. It also said it was sceptical about CILEX's proposals to redelegate the regulation of legal executives to the SRA. The LSCP agreed with the Committee that a review of legal services regulation was required but believed the regulatory framework was the key issue, not the LSB. TLS said the regulatory framework was stable and regulators and professional bodies should focus on making it work.

Government asks SRA to accelerate its investigation into SSB. During a Westminster Hall debate, MPs called on the SRA to swiftly investigate the case as constituents were facing the threat of unexpected costs orders being enforced against them. Other MPs called on the Government to intervene to cover clients' losses and called SSB's business model 'parasitic.' Energy minister Amanda Solloway MP said the MoJ would closely engage with the SRA and LSB about the SRA's investigation. The MoJ said it would ask the SRA how SSB targeted potential clients and to accelerate its investigation. **SRA investigates why after-the-event (ATE) insurers did not pay out following the SSB collapse**, and whether wider issues relating to ATE insurance have been exposed by SSB's failure. It is liaising with the FCA, FOS, RICS and MoJ on this issue. The SRA has issued a statement saying that it is looking at whether SSB met its professional obligations, including assessing the merits of claims and providing its clients with correct information about the ATE policies, as well as what assessments SSB made of the cover provided to clients and whether risks were properly managed on claims. The SRA has said it is committed to progressing its investigation as swiftly as possible but dampened expectations that the profession may provide redress through the Compensation Fund as it would only become relevant if the SRA finds that SSB has been dishonest or has failed to account for clients' money. Manchester firm JMR solicitors has taken on SSB's live cases and says it is 'confident' of pursuing professional negligence claims against either SSB or its professional indemnity insurer. Several other firms have been advertising their willingness to pursue such claims.

Political developments/Wales

The men-only Garrick Club's membership includes senior members of the legal profession, including Supreme Court, Court of Appeal and High Court judges, around 150 leading barristers, several senior solicitors and current and former MoJ ministers. Lady Helena Kennedy argued for a rule like that for US federal judges which would bar UK judges from membership in any organisation that invidiously discriminates based on race, sex, religion, or national origin, as such membership gives rise to perceptions that judges are not impartial. A group of 65 lawyers, including 12 KCs and two solicitor honorary KCs has called on judges who are members of the club to resign from it. The lawyers argue membership of the Garrick Club is 'incompatible' with 'core principles of justice, equality and fairness' as the club and its ethos embodies an ideology which may perpetuate discrimination against women at the highest levels of societal influence. Since recent articles about the club's membership were published, at least four judges have resigned. Others may have resigned but not yet told the Judicial Office. The Garrick has since accepted legal advice that women may be elected as members without changes to its rules. A vote on the change will be held in May. A simple majority will be required to enable the club to admit women, but there will no fast-tracking of female members as the club already has a lengthy waiting list.

Probate delays putting law firms in clients' firing line. TLS says firms are suffering a backlash from clients and increased unbillable time due to delays at the Probate Service. It called for a minimum service level to be introduced and for users to be 'reimbursed appropriately' when the Service failed to meet it. Previously, probate applications took seven to ten working days for the service to process. Delays were now regularly at 30 weeks with some grants taking up to a year. Nick Goodwin, the head of the Courts Service, said its performance had not been good enough but the backlog was now reducing. Remember A Charity estimates around £800m in charitable legacy income is locked up in wills awaiting probate.

Alan Bates accuses the Post Office's (PO) external lawyers of failing in their disclosure obligations during litigation brought by the Justice for Subpostmasters Alliance (JFSA). In evidence to the PO Inquiry, Mr Bates said Womble Bond Dickinson (WBD) had been 'disingenuous at best' when it said it was unsure whether Horizon system error logs existed when the JFSA knew they did. He also said the PO had attempted to drown the JFSA in documents ahead of the trial and then delayed disclosure of others until during it. Andrew Parsons, a partner at WBD at the time, is due to give evidence to the inquiry in May. The inquiry saw 2013 correspondence between Mr Parsons and then PO General Council Susan Crichton and Head of Corporate Finance Charles Colquhoun in which Mr Parsons advised the PO not to leave a 'paper trail' relating to reports that Horizon was faulty and that it should 'hold fire' on notifying insurers there may be issues with the system. He said the PO should speak to its insurers about the Horizon issues and not write to them.

PO to stop labelling Horizon Compensation Scheme letters 'without prejudice.' Correspondence released by the Department for Business and Trade revealed The PO's external lawyers had previously advised it to keep the labelling unless zero compensation was being offered. The change in approach follows a complaint to the SRA in May 2023 by campaigning lawyer Dan Neidle, the Horizon Compensation Advisory Board's raising of the issue with the PO in December, and SRA correspondence with the PO reminding it to ensure labels on correspondence are correct and not misleading. The SRA also highlighted its 2022 warning notice which says there is usually no need to label correspondence ‘without prejudice’ when it only seeks concessions from the other side.

Lord Chancellor acknowledges lawyers’ concerns about PO exoneration bill. Alex Chalk MP said the ‘extraordinary’ scale of the miscarriage of justice in the PO case and the length of time the judiciary would take to overturn the over 900 convictions required the Government to intervene. Mr Chalk said the scandal had been a failure of the state, not the judiciary, and the state should fix it. He recognised the issues Government intervention posed for the judicial system and said it would ‘seek to tread carefully.’ The bill, which the Government hopes will be a law by the end of July, will exonerate hundreds of sub-postmasters who were wrongly prosecuted using flawed evidence from the PO’s Horizon IT system. It will cover alleged offences between 1996 and 2018 involving sub-postmasters, their employees, family members and PO employees. The PO privately told ministers it would have opposed appeals by nearly half of the 700 sub-postmasters convicted, on the basis that non-Horizon evidence supported their convictions. The bill would also provide affected sub-postmasters with interim compensation and the option of immediately taking a fixed and final offer of £600k in compensation instead of pursuing unlimited claims under existing processes.

Exeter University Justice Lab working paper highlights ‘misalignment’ in PO cases of lawyers’ desire to win and just outcomes. The paper, which focused on the PO’s case against Lee Castleton, looks at how the PO was able to shift the burden of proof onto postmasters and so avoid the need for the PO to produce evidence of Horizon’s reliability. The academics said the Castleton case raised further questions about whether advocates’ duties to their clients were compatible with their duties to the court and the overall concept of justice.

UK Anti-SLAPPs Coalition argues SLAPPs bill falls short of its goal of protecting public interest speech from being silenced. It calls for an objective test, rather than a subjective one, to identify SLAPPs and says such a test would allow courts to decide if a case is a SLAPP before costs accrue. The Coalition also said the bill’s definition of the public interest should be refined.

Regulatory developments

TLS consults on a £4.20 (5%) increase in its share of the annual practising certificate fee. This would amount to a £1.76m increase in fees paid by solicitors to TLS, taking the profession’s overall contribution to nearly £37m. TLS said the increase would help it better support the profession, deliver the services and activities its members have said are important and support its strategic aims for the justice system, the profession, and the rule of law. The final amount of the individual fee for 2024/25 will not be known until the SRA sets out its plans. **Outgoing LSB CEO Matthew Hill questioned why ‘trade associations’ like TLS and the Bar Council receive statutory funding from regulatory fees** paid by lawyers. Mr Hill also said the current regulatory structure required ‘expensive architecture' to preserve the role of the professional bodies as regulators and that ‘removing some of that expense and effort’ might benefit the public and lawyers. He had never encountered another sector where regulated persons had to pay for their trade association and wondered if the guarantee of income had led to some professional bodies being less accountable to their members.

BSB accepts Fieldfisher's recommendations on improving its enforcement processes. While Fieldfisher said the BSB's enforcement procedure was appropriate overall, it identified that improvements were needed throughout the entire process. Fieldfisher said the BSB could successfully address the issues it had identified. To successfully address the issues it had identified, Fieldfisher said the BSB should appoint a director to head its enforcement function, take steps to ensure its staff had the right knowledge and know-how, and improve its case management systems. The BSB also needed to address low satisfaction levels amongst those reporting concerns about barristers to it. The BSB would seek to implement most of the recommendations by 31 March 2025, with the rest being implemented the following year. BC Chair Sam Townend said the BSB should "dial back on…[its] ambitions [on] 'before the event' compliance" and focus on enforcement activities.

BSB publishes its 2024/25 Business Plan. In the final year of its current three-year strategy, the BSB will continue to work on its regulatory capability while also completing work programmes on professional and ethical standards at the Bar and diversity and access. It will use the outputs of reviews of its authorisation and enforcement work to improve the productivity and timeliness of its decision making. The BSB also continues to monitor evidence provided to the Post Office Inquiry and states that it will take regulatory action where the evidence warrants it.

BSB considers requiring foreign lawyers seeking to be called in England and Wales to prove they intend to practice here. It said the rise in applications from foreign lawyers was driven by their desire to be able to say they have been called in England and Wales, rather than an intention to practice here. The increase in applications has put pressure on the BSB's authorisation team, and in December, the BSB said the rise in applications was its main operational performance concern.

Bar Council attacks BSB plans to scrap the requirement for Bar students to have at least a lower second-class degree. BC Chair Sam Townend KC said the proposed change would lower standards and increase the number of Bar students failing to find a pupillage. He also warned the move would encourage training providers to maximise the number of students training for the Bar. The BSB said it was not proposing a change in the threshold of competence for training to be a barrister, and so, it did not expect a significant change in the number of Bar students. The BSB said the current regime did not accept qualifications that could be seen as equivalent to a UK law degree or non-law degree and GDL, such as SQE1.

TLS issues guidance for its members about the SRA's new fining powers to help them understand what to expect from investigations and what support is available to them. TLS President Nick Emmerson said TLS remained seriously concerned about the SRA 'acting as investigator, prosecutor and judge' and that the SDT remained the most suitable jurisdiction for serious and complex matters as it guarantees transparency and objectivity. TLS said it was continuing to engage with the LSB on its review of regulators' enforcement and disciplinary powers.

SRA investigating Essex law firm Pellys in connection with alleged multimillion pound fraud involving its accountants, Croucher Needham. Croucher Needham was wound up unexpectedly in Summer 2023 following the death of its director, Simon Needham. Firm's accountants probed in suspected £25m fraud. Individuals and businesses who used Croucher Needham then apparently found large sums missing from their bank accounts. At the time of Croucher Needham's closure, it apparently owed its clients £24.7m. Pellys is apparently the largest creditor, and its client account may be short £8.9m. The SRA confirmed it is investigating the case.

SRA says SQE "working well" as firms get to grips with qualifying work experience. The SRA's second annual SQE report says around 2,570 students who have taken one or both parts of the SQE have now qualified. SRA research found most students obtained more than the minimum two years of qualifying work experience (QWE). By the end of February 2024, 710 solicitors had qualified via the standard SQE route, 130 had qualified through solicitor apprenticeships and a further 1,900 who were already qualified as lawyers in England & Wales or other jurisdictions were admitted. The report noted that candidates who are not qualified lawyers performed better than those who were, those with higher university degree classifications outperformed those with lower ones, and solicitor apprentices did better than average. 41% of candidates said it was easy or very easy to secure QWE, up from 31% in 2022, although 20% said it was difficult or very difficult to do so. Employers said QWE helped to develop existing employees, including paralegals, was simpler to provide than a training contract and let them provide work experience to aspiring solicitors. SQE fees will rise 5% from September 2024 to £1,888 for SQE1 and £2,902 for SQE2. The SRA's contract with Kaplan includes an annual inflation-linked increase in fees. The new fee also includes an additional charge covering the costs of candidates sitting the SQE in Welsh.

SRA warns solicitors over 'deepfake' clients and vendor fraud. It says lawyers who rely on video calls to identify clients should be aware of the risks of deepfake technology. In its updated sectoral risk assessment for AML and terrorist financing, the SRA said solicitors should be wary of clients who were unnecessarily reluctant or evasive about meeting in person. Solicitors who only meet clients remotely should ensure their electronic due diligence is sufficient and/or explore deepfake detection software. The SRA also highlighted the problem of vendor fraud, where properties are targeted by fraudsters and sold without the owners' consent or knowledge.

SRA seeks comment on draft guidance that aims to establish understanding between in-house solicitors and their employers about what in-house solicitors can and cannot do. Employers should not create incentives for in-house lawyers that lead to conflicts between their work and their regulatory and legal obligations.

SRA consults on plans to regulate CILEX paralegals and students. Despite the SRA planning to initially only regulate chartered legal executives if a redelegation from CILEX occurred, it is now consulting on taking on the regulation of all CILEX members at once. 47% of CILEX's 17,500 members are paralegals or students. The SRA's consultation says 75% of all CILEX members already work in SRA-regulated firms and 87% of non-authorised CILEX members either work in those firms or ones regulated by CILEX. The SRA said regulating all CILEX members would simplify the regulatory landscape, provide clarity for the public, and ensure consistent standards.

More than a third of lawyers responding to an anonymous online poll admitted to padding time sheets, with 13% saying they did so regularly. The poll for RollonFriday received nearly 900 responses, with 35% of respondents admitting to adding time to clients' bills that had not actually been incurred. Solicitors in City law firms blamed time dumping on billing in six-minute units and pressure on junior lawyers at leading firms to bill as much as possible. US-based firms have annual billing targets of 2,000 hours. The Magic Circle firms' targets are thought to be around 1,800 hours a year. **SDT strikes off solicitor falsifying time records.** It said the solicitor, admitted in July 2021, acted dishonestly, and that all solicitors knew it was improper to record time for work that had not been done.

LeO says firms' failure to deal with complaints is hampering its attempts to improve its performance. The OLC said data for 2022/23 showed that providers' first-tier complaints handling was inadequate in 45% of cases. This was a factor in a sustained increase in demand for LeO's assistance. From April to December 2023 LeO received 93,009 contacts, 13% up from the same period in 2022. Just because a provider's service had fallen short, a referral to LeO was not inevitable if the provider handled the complaint correctly. LeO says by the end of March 2025 it expects to reduce the number of people waiting for an investigation by 30%, but it would miss its target for the length of investigations.

Market developments, intelligence, and research

Law firm closures fall as professional indemnity insurance challenges ease. Research by accounting firm Hazelwoods shows the number of closures due to firms' inability to secure PII at its lowest level since 2018/19. In the period to October 2023, only 34 firms closed due to PII issues, down from a high of 65 in 2019/20. Two-thirds of Hazelwoods' law firm clients who renewed their insurance in October 2023 saw their premiums reduce. The market was softer for both compulsory and additional insurance. Hazelwoods attributed the fall in PII costs to market entry by and more willingness from law firms to switch insurers. **TLS research finds interest income at SME law firms increased by 1,000% in 2023.** The increase in client account interest masked a significant fall in firms' profits. Accountants Hazelwoods warned increased interest income was likely to be temporary. If interest income were removed from 2022 and 2023 profit per equity partner figures, they would have fallen by 7.85% in 2023 rather than by only 0.7%. The report said some banks had suffered from law firms going into administration, and confidence in the sector was lower than usual. This trend was likely to continue in the wake of the failure of Axiom Ince.

More than 1 million complaint letters about mis-sold car finance sent via consumer website MoneySavingExpert.com (MSE) in little over a month. MSE said car finance cases would be the next major growth area for consumer litigation, but consumers do not need to use lawyers or claims firms. MSE has published a car finance hidden commission reclaiming guide and free complaint tool. It said the million plus claims received so far had a value of around £480m. Law firms are getting involved, with Pogust Goodhead launching 'myfinanceclaim.com' and Bott & Co entering a collaboration with claims management company ClaimsLine. Lloyds Banking Group, which owns Black Horse Finance, one of the most complained about lenders, has set aside £450m for costs and payouts. The FCA is expected to report on car financing issues in September.

BC survey finds pupil barristers receiving increased rewards for their work, but their debt levels are rising. Pupils received median awards between £30,000 and £39,999 in 2024, up from £20,000-£29,999 in 2022. Half of pupils not doing publicly funded work were awarded £60,000 or more, compared to only 7% of those handling legal aid matters. Pupils' median debt levels increased from £40,000-£49,999 in 2022 to £50,000-£59,999 in 2024 with 39% saying they were experiencing some financial hardship (down 3% from 2022). Half of female barristers reported financial hardship, compared to less than a quarter of men. Two-thirds of pupils said a career at the Bar was 'viable' with female barristers and those doing criminal work less likely to say so. Most disabled barristers said a career at the Bar was only 'somewhat viable' or not viable at all.

LexisNexis research says 7 out of 10 law firm leaders believe associates are 'less loyal than [in] previous generations'. It found a quarter of associates aimed to become a partner at their current law firm in the next five years. Half of the 588 law firm leaders, and 63% of those at large firms, surveyed had noticed a decline in associates aspiring to partnership. The top reasons given for the lack of interest in becoming partners were better work-life balance (71%), financial risks (42%) and avoiding stress (39%). However, 58% of associates said they planned to be with their current firm in five years' time.

TLS urges the profession to support women to progress to senior levels. While 53% of lawyers in firms are women, they account for only 32% of full-equity partners. TLS highlighted persistent issues affecting women solicitors' careers such as pay, retention and promotion, allocation of work, and lack of employer support for work/life balance. Firms were losing solicitors on the cusp of senior leadership and not benefitting from the diversity of thought women in senior positions could bring.
ICAEW highlights Equality and Human Rights Commission guidance on employers' legal obligations to workers going through the menopause. Failure to comply can amount to disability discrimination under the Equality Act 2010 if menopausal symptoms have a 'long-term and substantial impact' on a woman's ability to carry out day-to-day activities. The Chartered Institute of Personnel and Development said two-thirds of women between the ages of 40 and 60 with menopausal symptoms say they have negatively impacted them at work.

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