Additional News Round Up Material for April 2024 Board Meeting

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: environmental, social and governance issues (ESG), professional ethics, litigation funding, innovation, and the SRA's regulatory activities, all of which are either relevant to the LSB's work, recent events, or ongoing issues.

ESG

Environmental, social and governance issues are becoming increasingly important to law firms. Various initiatives are being developed to enable firms to demonstrate their adherence to best practice in these areas, such as the Law Society's 2021 Resolution and the B Corp Movement. These initiatives may complement the LSB's and others' work on professional ethics and the rule of law.

International Bar Association launches climate registry to help national and local bar associations highlight how they are combatting climate change while emphasising the broader contexts of business, human rights, environmental sustainability, and governance issues. **Legal marketing agency TBD reports on the carbon footprints of the top-200 law firms' websites.** It gave 41.3% of the firms below an 'F' rating for the energy used by their websites. Only 7% received an A grade. The report said websites contributed significantly to carbon emissions via their energy consumption and hosting infrastructure. Firms wanting to reduce their websites' carbon footprints could use offsetting in the short-term, but long-term, the best way was to build lower impact websites from the ground up. The report also found that more energy efficient websites, which transferred less data when pages were looked at, coincidentally performed better in Google searches. **Greener Litigation launches toolkit to help law firms adopt more sustainable practices throughout the civil litigation**. The toolkit provides practical guidance and examples about how firms can include sustainable practices and reduce their carbon footprint at every stage of litigation. The toolkit is aligned to existing procedural frameworks, so firms can seamlessly integrate changes to how they work.

Bellevue Law and Ignition are the two latest UK law firms to become B Corporations. The first UK law firm was Bates Wells in 2015**,** followed by contracts specialist Radiant Law in 2020. To become a B Corp ('B' for Benefit), a business must pass the B Impact Assessment, demonstrating "high social and environmental performance," and make a legal commitment by changing their corporate governance structure to be accountable to all stakeholders. The process can take up to a year to complete and must be renewed every three years, costing between £789 to £35,483, a fee relative to the company's annual revenue. There are currently only

20 B Corp rated UK law firms as of 10 April 2024, the largest of which is Freeths who have stated they will be working with the environmental company Planet Mark to help the firm to create a net-zero plan and to establish interim and long-term Science Based (SBTi) net-zero targets. There are also B Corp unregulated providers such as Obelisk Support. Alison Broadberry, managing partner of B Corp UK law firm Edwin Coe, has stated that becoming a B Corp was “not on the radar” of many large firms in London, and would expect smaller or regional law firms to lead the way despite the “huge amount of work” generated by the process. **However, concerns around the legitimacy of the certification have been raised after a formal investigation was launched into the B Corp status of Havas**, a media agency, following its controversial multi-million-dollar deal with fossil-fuel giant Shell in September 2023. In 2022, Brewdog’s certification was removed after an open letter from workers called out its “culture of fear”.

Professional ethics

Our programme of work on professional ethics and the rule of law includes a focus on the ethical conduct and practice of lawyers advising and facilitating on NDAs. As part of this, we continue to horizon scan and gather evidence on the overuse and misuse of NDAs, where the intention is to cover up misconduct, intimidate or silence people, to support this programme.

Ministers confirm legislation to reform NDAs to be introduced ‘as soon as Parliamentary time allows.’ Lord Chancellor Alex Chalk said the changes would clarify that NDAs cannot be legally enforced if they would prevent victims reporting a crime. The legislation would also ensure information relating to criminal conduct could be discussed without fear of legal action with police, other criminal investigation or prosecution bodies, lawyers and medical and support services which have clear confidentiality principles. NDAs that relate to commercially sensitive information or other obligations not relevant to criminal conduct will remain valid. BC Chair Sam Townend KC said legislative change should put the matter of what NDAs can and cannot do beyond doubt. The BC said it would be important to get the new legislation’s wording and definitions right and was looking forward to working with the Government.

CBI uses gagging clauses to prevent discussion of sexual misconduct claims. Up to 10 NDAs have been signed in the past year following allegations by more than a dozen staff of sexual harassment, assault, and rape. These NDAs have been accompanied by substantial financial settlements from the CBI. Advisers to the CBI, as well as current and former staff, said its use of NDAs was problematic for an organisation trying to overhaul its culture. Its Chief Executive, Rain Newton-Smith, defended its use of NDAs and said she did not believe the agreements would prevent staff from taking complaints to the police. **Law firms reported to the SRA over NDAs on actors.** Sophie Freeman, a lawyer who advises the Personal Managers Association, which represents film and theatrical agents, said it had been shocked by production companies’ use of NDAs. Ms Freeman said while NDAs could be properly used to protect commercially sensitive information and intellectual property, she was shocked by the practice of requiring actors to sign ‘pre-emptive’

NDAs (many not even legally enforceable) before auditioning for roles and signing contracts. Ms Freeman said she had considered it her duty to report the law firms responsible for drafting these NDAs to the SRA.

New build homeowners required to sign NDAs to see details of estate charges. The Homeowners Rights Network says some residents who want to know how money from estate charges is spent are being prevented from publicly challenging their bills. The Government said the use of NDAs in this way was completely inappropriate. The CMA said in February that estate charges 'are often high and unclear' and public amenities should be adopted by councils and managed using public funds. It recommended the Government implement common adoptable standards for public amenities on new estates.' **Government adds a measure to the Victims and Prisoners Bill** making NDAs banning victims from disclosing information to the police, authorities, or confidential support services legally inapplicable. Lawyers said the provision offered welcome clarification, particularly for persons signing NDAs, but NDAs preventing victims going to the police were already void and solicitors drafting them would be in breach their professional obligations.

Litigation Funding

The Post Office Inquiry has highlighted the increasing role of litigation funding 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 concerns about the size of shares investors take from compensation payouts and about the transparency of litigation funders. The LSB is currently undertaking research on litigation funding, to better understand the nature, scale, and scope of current funding in England and Wales.

MoJ publishes two-clause bill to reverse impact of PACCAR ruling. The Litigation Funding Agreements (Enforceability) Bill restores the position that LFAs are not damages-based agreements (DBAs) and as such do not have to comply with the 2013 DBA regulations. The Association of Litigation Funders and the Collective Redress Lawyers Association welcomed the bill. However, Tamar Halevy of City law firm Marriott Harrison said the bill would remove all regulation from the £2.2bn litigation funding industry and allow funders to offer onerous terms and take excessive proportions of recoveries.

Lords debate on Digital Markets, Competition and Consumer Bill discusses potential regulation of litigation funding. Former Lord Chief Justice, Lord Thomas of Cwmgiedd said the Civil Justice Council's Government-commissioned review of litigation funding should consider alternatives to regulating the sector. Conservative peer Lord Hodgson acknowledged the role litigation funding played in providing access to justice but noted that litigation funders are for-profit companies and their interests and those of plaintiffs may not always be aligned. There was also a need to ensure that funders' identities were known, highlighting the potential for a foreign government to fund an action against a UK company.

High Court rejects a challenge to an international tax transparency measure where the claimant has refused to identify her litigation funder. While Jennifer

Webster does not know who is backing her action, her solicitors, Mishcon de Reya, do and say the funder is acting ‘for entirely altruistic reasons.’ HMRC has questioned the funder’s motivation and made discovering its identity part of its efforts to defend the claim. The Court said the relevance of funder identity goes to the ‘true’ nature of the claimant’s claim, and whether it is a claim by an individual for vindication and compensation or a system-wide attack on an international tax transparency regime.

Innovation

This section highlights innovations in delivering legal services which may provide benefits to consumers and/or have implications for regulation.

AI law approved by the European Parliament. The act creates three tiers of AI regulation based on perceived risk. Applications banned outright include biometric categorisation systems based on sensitive characteristics, untargeted scraping of facial images, emotion recognition in the workplace or schools, social scoring, predictive policing (based on profiling people or their characteristics) and manipulating people’s behaviour or exploiting their vulnerabilities. High-risk systems like those in critical infrastructure, education, employment and essential public and private services, including law enforcement will be covered by a new regulatory regime. Citizens will be able to complain about such AI systems and receive explanations about their decisions. AI systems presenting less risk will face little or no regulation. The EU says most systems currently used present minimal risk. An EU AI Office will supervise the act’s implementation and enforcement. Some UK commentators have argued that AI operators should take steps to align with the EU law, while others have said it may quickly become outdated and/or hinder innovation.

As part of its inquiry on improving the home buying and selling process in England, the House of Commons Levelling Up, Housing and Communities Select Committee will investigate the transaction process, information available to buyers, and conveyancers and estate agents’ roles; whether consumers have sufficient information to choose a conveyancer, and how information on conveyancing could be improved; the impact of referral fees and the effects of standardisation of practice or ban on transactions and consumers; whether sellers should have to provide set information about a property when it is marketed; how to accelerate the digitisation of property data. The Committee has issued a call for evidence and will hold hearings in late April. **TLS has published a new property information form** setting out the upfront information that estate agents should include in property listings. TLS hopes the information included in the new form will lead to better informed buyers and reductions in the length of the conveyancing process and the number of sales that fall through. However, **the Property Lawyers Action Group (PLAG) have demanded TLS withdraw the form,** saying the changes fly in the face of TLS’s own conveyancing quality scheme. The **Digital Property Market Steering Group (DPMSG) is consulting on a draft protocol** setting out how estate agents and house builders can satisfy their obligations to provide information, how sellers’ conveyancers can act in their clients’ best interests and reduce risk by collating upfront property information, and what search information buyers’ solicitors will need to consider, to speed up the conveyancing process.

Motor trade legal advice service launches community interest company (CIC) to handle litigation. Lawgistics, a trade association which provides its members with monthly legal updates, a legal helpline, and a casework service for a monthly fee, said setting up a CIC instead of an ABS or charity for its members was a 'brilliant solution.' CICs are regulated by the Office of the Regulator of CICs, and any profits must be returned to the community. Under still active transitional provisions in the Legal Services Act 2007, CICs can provide reserved legal activities without needing to be regulated. Lawgistics said setting up an ABS would have been expensive, involve jumping through 'a lot of hoops' and employing regulatory specialists. The SRA recently investigated Lawgistics and its CIC following a report from a rival firm about it running a litigation service. The SRA cleared Lawgistics in January 2024 of any wrongdoing. A CIC is a limited company, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage.

Regulatory Developments – SRA

SRA fines firms for AML breaches. Between October 2022 and March 2023, the SRA has issued or agreed 19 fines totalling around £290,000 for AML misconduct. The largest (£100,000) was issued to national firm Ashford. All fines are paid to the Treasury. From March to October 2023, the SRA issued just six AML-related fines, the largest being £5,250. The SRA has recently issued fines ranging from £12,000-£23,000 to seven firms for failure to comply with various aspects of AML regulation.

SRA currently investigating 24 cases relating to lawyers' wellbeing. The cases are understood to involve allegations of bullying, harassment, and inappropriate pressure within law firms. Fifteen of the SRA's 24 investigations have been opened since it introduced new wellbeing rules in 2023 requiring partners to call out unfair treatment of staff. Senior leaders at law firms who repeatedly fail to address toxic behaviour could face enforcement action by the SRA and firms can be fined up to £25k for failing to protect their employees' wellbeing. **Concern over City lawyers' wellbeing.** A survey by LawCare found almost 70 respondents said they had experienced mental ill health in the previous 12 months, but only half had talked about it at work. LawCare said the survey provided 'compelling evidence' that the culture, accepted working practices and lack of effective people management [in some firms] were 'undermining mental health,' and that lawyers were at a 'high risk of burnout.' Women respondents to the survey, 80% of whom had caring responsibilities, were most affected by mental health issues.