# News Round Up (15 April-24 May 2024)

## Top stories

**Prime Minister says ministers will investigate SSB Law's collapse.** SSB Law went into administration in January with debts of £205m, which have since risen to £221m. The firm was involved in bulk litigation, including cavity wall insulation, noise-induced hearing loss, and personal injury. SSB's after-the-event insurance it arranged for its cavity wall insulation claim clients was repudiated, leaving clients exposed to costs awards from successful defendants and their insurers.

**The SSB Victims Support Group expressed doubt** about the SRA's response to the collapse of the Sheffield law firm and the LSB's independence due to its being partly funded by the SRA. The Group said many former SSB clients have suffered because of its failure and the way the SRA was contacting some SSB victims for interviews was adding to their distress. Other victims who have filed complaints had not been contacted by the SRA, which was frustrating for them. The SRA said it continued to investigate SSB and explore possible avenues for redress for its clients.

**Society of Media Lawyers (SML) criticises the Strategic Litigation Against Public Participation (SLAPP) Bill** as being one-sided, unjust, and ineffective. The bill prevents wealthy and powerful claimants from using litigation to silence or intimidate critics, journalists, and activists. It would allow the court to designate a claim as a SLAPP if the claimant intended to cause the defendant distress or inconvenience beyond that caused by normal litigation. The claimant would have to show they were more likely than not to win and would face qualified one-way costs shifting in favour of the defendant. The SML said the bill would unfairly target unsophisticated and unrepresented claimants, while allowing experienced practitioners to avoid cases being designated as SLAPPs. They also said it would ignore the defendant's misconduct, create satellite litigation, and hinder access to justice. The SML claimed that neither the supporters of SLAPP reform nor the government have identified a single case where the bill would have applied. Liam Byrne MP said if the bill successfully restricted SLAPPs, lawyers may start using 'pre-litigation chilling action'.

## Political developments

**MoJ trials requirement for parties to attend a free, one-hour telephone mediation arranged through the Small Claims Mediation Service** before a claim can proceed to court. This applies to money claims worth less than £10,000 filed on or after 22 May. It has not ruled out introducing mandatory referral to mediation for higher-value claims in the county courts. It is interested in the Ontario model, where all cases that go to the court, including personal injury and money cases, must go through mediation. The MoJ estimates mandatory mediation for low-value claims would free up between 1,400 and 5,200 sitting days: between 9% and 32% of all county court sitting days. It also hopes to increase the settlement rate, which currently stands at around 52% for voluntary mediation. It praised the Court of Appeal's ruling in Churchill v Merthyr Tydfil Council, which affirmed that a court can lawfully stay proceedings and order parties to engage in non-court dispute resolution. TLS said it opposed blanket mandatory mediation in principle but had more sympathy for the concept in small claims, as unrepresented litigants may need guidance on avoiding a full hearing. For represented parties, however, he said mandatory mediation would risk duplicating effort and wasting costs. **Civil Mediation Council (CMC) sets up independent Mediation Standards Board and applies for Royal charter** to set and enforce standards for mediators, mediation trainers and organisations. Mediation is not a reserved legal activity and there is low awareness and uptake among litigants. **The Civil Procedure Rule Committee launched a consultation on rule changes to codify the Court of Appeal's ruling in Churchill v Merthyr Tydfil BC**, which said judges could order parties to engage in alternative dispute resolution so long as it does not restrict their ability to proceed to a judicial hearing. The proposed changes include enhancing the overriding principle that using ADR methods is part of dealing with a case justly and at proportionate cost. They would also specify that failing to comply with an order for ADR or unreasonably refusing to participate in ADR could be considered in costs decisions.

**MoJ commissions research on using client account interest to support free legal advice.** Interest on Lawyers' Trust Account (IOLTA) schemes are used in the US, Australia, and Canada to raise money for charitable purposes, mainly civil legal aid. They apply to client money that is too small or too short-term to earn interest for the client, and instead transfer the interest to a fund for good causes. Since their introduction in the US in 1981, IOLTA schemes have generated over $4 billion in revenue for legal services and other charitable activities. The MoJ wants to understand how reliant law firms are on the interest from client accounts and what steps they are taking to use it for social benefit. The MoJ previously rejected introducing IOLTA schemes in the UK in 2011 and 2014. The MoJ says it does not have a settled view about IOLTA schemes and that it wants to explore different policy options. The rise in interest rates since the mini-Budget in 2022 has made client account interest a significant source of income for law firms, especially smaller ones. The Solicitors Regulation Authority has reminded law firms of the rule that they must account to clients for a fair sum of interest, but 'fair' is not defined. In France, lawyers are not allowed to hold client money and must use a centralised system run by their local bar association, called CARPA, which aims to reduce the risk of money laundering and also forwards the interest to good causes. An argument against IOLTA schemes and levies on City law firms are that they would enable the Government to escape its obligation to properly fund legal aid.

**SRA webinar discusses whether solicitors should continue to hold client money.** The SRA is considering various changes to its regulatory framework as part of its consumer protection review. Paul Philip, the SRA's chief executive, argued that the cost of regulation, PII, AML issues, and the risk of fraud would all decrease significantly if, as in some other countries, solicitors were not allowed to hold client money. The webinar featured firms that use escrow agents, third-party managed accounts, or other methods of transferring money, and how they benefited from reduced operational costs and increased client trust. Some of the issues that were raised by the participants included the need for a robust and practical market for alternative services, the expectations and preferences of clients, the treatment of client account interest, and the impact on property transactions. The SRA stressed it would consult with the profession before making any decisions, but it noted that moving away from client accounts could benefit clients and the profession.

**TLS urges government to act on criminal legal aid fees**. Three months on from its successful challenge of the Government's decision not to raise criminal legal aid fees by the minimum 15% recommended by the Bellamy review, TLS said the Government was dragging its feet despite the situation in the criminal justice system. TLS wants the Government to inject immediate funding into criminal legal aid. The MoJ said it had announced proposals that would increase spending on criminal legal aid lawyers by £21m each year and that its existing reforms would boost spending on criminal legal aid by up to £141m a year. **The Legal Aid Agency (LAA) announced that new contracts for criminal legal aid providers will run from 2022 to 2032**, giving them more certainty and flexibility. TLS welcomed the change but raised concerns about the LAA's proposals to allow CILEX practitioners to become duty solicitors without 12 months experience or training. The new contracts will stipulate that duty solicitors must be accredited under TLS's criminal litigators accreditation scheme or be a CILEX practitioner holding a criminal litigation and advocacy certificate with rights to conduct criminal litigation and advocacy in the magistrates' court and the police station qualification. CILEX said allowing its practitioners to become duty solicitors would recognise their skills and experience and help address the shortage of criminal lawyers in some areas.

**Frontier Economics study commissioned by TLS finds civil legal aid work is loss making for most providers.** The study looked at a sample of not-for-profit organisations and private solicitor practices providing housing and family legal aid. All housing and 47% of family legal aid providers were losing money. TLS said legal aid fee levels set by the Government were too low, so providers had to cross-subsidise from other work areas or rely on staff overtime. TLS said the study provided a model for analysing and setting fee rates at a realistic and sustainable level. TLS was concerned about the increased number of litigants in person in private family law cases since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force. It said the Government should uprate civil legal means test eligibility so more individuals on lower incomes can access justice. In 2023, 39% of private law cases had neither the applicant nor the respondent represented. TLS said the removal of legal aid under LASPO had led to many more people going straight to court instead of seeking legal advice and resolving family law disputes through mediation.

## Regulatory developments

**CMA warns unregulated providers of will-writing and online divorce services** about making misleading comparisons with solicitors in their marketing, including omitting differences in the quality and scope of services. It is now consulting on guidance to help unregulated will writers, online divorce, and pre-paid probate plan providers to comply with consumer protection law. The CMA said pre-paid probate plans were difficult to provide without breaching consumer protection law and consumers with small estates may be buying plans they do not need. There were also significant risks posed by providers who ceased to trade and did not protect consumers' funds. The Society of Will Writers and the Best Foundation ban their members from offering pre-paid probate plans, and the Society of Trust and Estate Practitioners says the plans' advantages are outweighed by their risks. The FCA published a consumer warning about pre-paid probate plans in January 2023.

**Financial Ombudsman Service (FOS) consults on charging lawyers and CMCs making volume complaints to the FOS on behalf of clients £250 per case.** Representatives will be refunded £175 if a complaint succeeds, and the first three complaints brought each year will be free. The proposed fee is a response to a Treasury consultation that highlighted concerns that CMCs and lawyers were able to pressure firms into settling claims before they formally become part of the FOS process. FOS reported that around 20% of the 400,000 cases referred to the service in the past two years were brought by CMCs and lawyers, but only 22% were upheld, compared to a service-wide average of 32%. FOS said CMCs and lawyers often increase its costs by referring cases without merit, failing to provide full case details, or making unnecessary escalations to an ombudsman. FOS currently only charges respondents a fee of £650, which it says provides little incentive for lawyers and CMCs to sift cases properly. The FOS is working with the SRA to ensure the case fee is included in the cap that the SRA has proposed on the amount solicitors can charge clients for financial mis-selling claims.

**1.8 million claimants participating in the class action lawsuit against car manufacturers** have been told by law firm Pogust Goodhead that its fees will increase from 35% to 50% of their settlements. The firm blamed the change to its terms on a 'typographical error' in its original agreements with clients. Pogust Goodhead said it had informed its clients of the error in the small print of its conditional fee agreements in June 2023 and had satisfied the SRA and LeO in relation to the matter. LeO had not upheld any complaints against it relating to the change of terms. The increase in fees has led to a backlash from claimants, many of whom had signed up to Pogust Goodhead via My Diesel Claim in 2021 and 2022. The firm offered drivers the chance of receiving up to £10,000 compensation via diesel emissions fraud claims. MoneySavingExpert highlights that most diesel emission claimants have signed up with Pogust Goodhead.

**CILEX President Emma Davies tells meeting on changes to its charter that CILEX is not a representative body.** Instead, it is 'a body with a public interest duty…an approved regulator and qualification-awarding body.' She went on to say that when CILEX carries out representative activities, 'it does so in the public interest.' Members were told that after changes to CILEX's governance arrangements in 2018, they no longer had control or authority to make decisions about how it is run, and this was why resolutions, like one giving members a vote on the transfer of legal executives' regulation from CRL to the SRA, were not permitted.

**CRL raises concerns about SRA proposals to regulate non-authorised CILEX members**, like students, affiliates, and paralegals**.** In response to the SRA's latest consultation on the proposed redelegation, CRL argues that the SRA's proposals do not address the lawfulness of CILEX's redelegation of regulatory responsibility, the regulation of non-authorised members who work outside SRA-regulated firms, the cost of regulation for those who benefit from it, and the oversight of ongoing competence and professional development of non-authorised members. CRL claims that its independent regulation of all CILEX practitioners, including non-authorised lawyers, provides better protection for consumers and the profession than the SRA's proposals would. It says the SRA's proposals could result in a dilution of the existing standards and public confusion. CRL maintains that the question of whether CILEX can lawfully hand over its regulatory powers to the SRA is unanswered and invites the LSB and CILEX to clarify the matter in the courts. **TLS disagrees with SRA proposals to regulate CILEX members**. It said the SRA should focus on its core responsibility of regulating solicitors and should withdraw its proposals on regulating legal executives. He also said the SRA's proposed regulation of legal executives would interfere with the solicitor profession's independence, and that TLS's approval of the necessary changes to the SRA's corporate objects cannot be assumed. TLS said it was unnecessary for the SRA to be able regulate non-authorised CILEX members since CILEX can deal with them. It also said the proposals could increase consumer confusion.

**Kirsty Brimelow KC elected to first all-women Bar Council leadership team.** Ms Brimelow, a former Criminal Bar Association chair, will be the BC's vice-chair in 2025, joining Barbara Mills KC and Lucinda Orr as chair and treasurer respectively.

**BSB implements new powers after LSB approval.** It can now impose interim restrictions on a barrister's practising certificate, or withdraw practising rights, where a finding of misconduct has been made but a decision on sanctions has been deferred. The BSB also added a new ground of 'necessary to protect the public or is otherwise in the public interest' for referral to an interim suspension panel.

**SRA refers SLAPP cases to SDT.** SRA CEO, Paul Philip, told the House of Lords Communications and Digital Committee that two cases of alleged SLAPPs have been referred to the SDT and two to three more are expected to follow in the next few weeks. The first few referrals would be test cases, and the SRA wanted to get its processes for handling them right. He said the SRA did not include firms looked at by its thematic review to avoid prejudicing its investigations. One of the two firms referred by the SRA is Osborne Clarke, which is accused of using a SLAPP to silence former Clifford Chance partner, Dan Neidle, who investigated the tax affairs of its client Nadhim Zahawi, the former Chancellor of the Exchequer. **To help it deal with SLAPPs, the Committee said the SRA should have increased fining powers** as well as the ability to conduct spot checks of firms and request and investigate third parties commissioned by law firms, like public relations agencies and private investigators. **SRA's follow-up thematic review of SLAPPs finds improvements and areas of concern.** The SRA's review looked at 20 law firms handling reputation management matters. It found one potential SLAPP in the 40 files it reviewed and is investigating the matter. It is also investigating a firm which previously acted for a client who had received judicial criticism for deliberate dishonesty. It also heard from defendant firms and in-house media lawyers that some claimant firms behaved aggressively, but none of them had reported the firms' behaviour to the SRA. The SRA said firms reporting potential breaches remained a concern, as three firms did not file a report to the SRA when they now consider they should have done. The SRA is investigating these cases. The SRA is also investigating two potential instances of inappropriate conduct of litigation. The SRA found most lawyers had changed their working practices on the use of labels on correspondence, and none of the labels used in the files the SRA reviewed were used inappropriately. It found a good standard of training on SLAPPs among the firms it visited, even if most firms did not have formal policies on identifying and dealing with them. The SRA also noted concerns around firms' lack of controls on the use of public relations companies and private investigators. It will publish an updated SLAPPs warning notice shortly.

**175 SQE1 candidates wrongly told they failed the exam.** The SRA and Kaplan said the mistake was due to incorrect rounding of scores. The mistake only affected the January 2024 exam and was discovered after some candidates appealed their results. All results from the January sitting of SQE1 have been reissued. There were no instances of candidates wrongly being told they had passed. The SRA and Kaplan are reviewing the incident to prevent such an error from happening again. SRA CEO Paul Philip rejected the suggestion that Kaplan should immediately lose the contract to run SQE assessments but did not comment on whether its contract would be reviewed earlier than planned or if contractual penalties would be imposed. A goodwill payment of £250, which is not in lieu of compensation, is being offered to candidates who were incorrectly told they had failed. Kaplan also said it recognised that candidates who received incorrect marks may have incurred losses as a result, and it would review such instances on a case-by-case basis and do what it could to put candidates in the position they would have been if the mistake had not occurred. SQE2 bookings will be prioritised for successful candidates that were told they had failed. The SRA said some of the 22 candidates initially registered to sit SQE2 in April have decided to sit the exam on the dates originally advertised. Their exam fee has been waived and if they fail this attempt will not be counted as one of the three permitted under SQE regulations. Candidates not wishing to take the exam in April will have their first attempt fee waived until April 2025.

**High Court rejects SRA appeal against £75,000 costs order in lost SDT prosecution.** The SRA argued that in making its costs decision in the case of Hon-ying Amie Tsang, the SDT should have followed the precedent in Baxendale-Walker v The Law Society which says there is no assumption of an order of costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct unless the complaint is improperly brought or 'a shambles from start to finish'. The SRA also argued that since all cases referred to the SDT have to be certified by it, the SDT has accepted that there is a case to answer. Mr Justice Eyre rejected the SRA's contention that the SDT can only make a costs order against it where proceedings have been brought improperly.

## Market developments, intelligence, and research

**LexisNexis research finds smaller law firms prioritising spending on recruitment and AI.** 63% of smaller firms intend to grow organically in the next five years, a sharp rise from 40% in 2023, indicating a recovery of confidence after the economic crisis. The report showed that 56% of small law firms plan to invest more in technology and hire more lawyers in the next 12-18 months, driven by the potential of AI and increasing client expectations for faster communication and response times. Only 10% of small law firms were considering growth through merger and acquisition, down from 13% in 2023. The report said the most common challenges small law firms expected to face in the next 12 months, were keeping up to date with changes in the legal industry and the law, meeting compliance regulations, attracting new business, cybersecurity, and the cost of indemnity insurance. The report also found most lawyers at small firms are happy with their current roles and plan to stay at their firms for the next five years.

**IRN Legal says the family law market is worth £2bn a year and that it grew by 4.5% in 2023.** It expects the market's value to grow at a similar rate over the next few years. While the number of divorces fell in 2023, increased demand for advice on financial issues helped the market grow. IRN also expected the use of ADR to increase, in part because of delays in family courts. The number of family law firms fell from 5,700 in 2018 to fewer than 4,800 in 2024. Larger consumer law firms and specialist family providers are taking more of the market via mergers and expansion.

**Justice Committee hears delays to probate grants are leaving bereaved relatives without funds** they need to live on or pay inheritance tax and other costs. The problems were blamed on a new online application process, the replacement of regional offices with a central one, and the loss of experienced staff. The CLC, ICAEW and other witnesses said the Probate Service should use outsourcing to reduce the delays. Applications taking six months to be approved rose by 112% between 2020 and 2023 and those taking more than nine months increased by 94%.

**IRN's UK Wills & Probate Consumer Research Report 2024 finds only 50% of people** who made a will used a solicitor, down from 55% in 2019. However more clients who used a solicitor for their will also bought related services, such as powers of attorney, will storage and funeral plans. The proportion of cross-selling increased from 33% in 2019 to 44%. The percentage of adults who have a will has remained stable at around 38%, but the market has grown in absolute terms as the adult population has increased. 11% of will-makers wrote their own wills, and another 7% started one but then sought help. Around one in five used unregulated advisers, such as will-writing companies or online services. Over a quarter of consumers surveyed mistakenly believed that all will-writing services were regulated.

**TLS publishes interim report on its 21st Century Justice Project**, which aims to improve access to justice for individuals and small businesses. It proposes the creation of a publicly funded online tool called Solutions Explorer, which would provide information, guidance, and triage for legal disputes. The report also calls for action on AI to ensure consumers are not harmed by unlicensed and inaccurate online legal advice and that AI tools do not compromise access to justice. The report also examines how civil legal aid models in other countries could work in England and Wales. It says legal expenses insurance could be a way to improve access to justice and proposes the convening of a cross-industry group to improve its availability and effectiveness. It also recommends reforms to ombudsmen schemes.