

Additional Material for June 2024 Board Meeting

We have provided this additional material to update the Board on relevant issues that may not be regularly included 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 on a rotating basis. In this update, we have included summaries about the following issues: the Post Office Scandal, EDI, access to justice, technology and innovation, and litigation funding.

Post Office Scandal

The Post Office scandal has revealed systemic challenges around professional ethics and the rule of law that may undermine public confidence in the legal sector. The ongoing inquiry is of major interest to our PERL workstream.

The Post Office Offences Bill received royal assent on 24 May 2024. It will quash the convictions of hundreds of former sub-postmasters involved in the Horizon scandal. Relevant cautions will also be deleted from records. The legislation will apply in England, Wales and Northern Ireland. The Scottish Parliament will pass an equivalent law. Former sub-postmasters who have already had their convictions quashed will be eligible to receive compensation payments from the Horizon Convictions Redress Scheme, which will be set up once the legislation has passed. **A draft report uncovered by the BBC shows the Post Office spent £100 million fighting sub-postmasters in court despite knowing its defence was untrue.** The draft report reveals the Post Office was shown evidence by 2017 that losses could be due to errors in the Horizon IT system or remote tampering, however it kept arguing that theft or mistakes by sub-postmasters must be to blame. Tim Parker, the Post Office's Chairman at the time, said Post Office lawyers were responsible for handling, distributing and disclosing it. This raises questions as to whether Post Office lawyers met their responsibilities to not mislead the court.

Former Post Office senior director says lawyers withheld the full reasons for dropping an expert witness with compromised credibility, potentially preventing reconsideration of past convictions related to the Horizon scandal. Angela van den Bogerd explained that she had approached Head of Legal Rodric Williams after expert witness Gareth Jenkins, a Fujitsu employee, was dropped from giving evidence on Horizon-related cases in 2013. Williams and other Post Office lawyers had received advice from Cartwright King barrister Simon Clarke that Jenkins had failed to disclose material known to him which undermined his expert opinion, and that there were existing convictions that may be unsafe. Bogerd said Williams did not raise any of this information when she inquired about Jenkins' sudden removal. She further revealed that she never saw Clarke's advice until it was disclosed to her ahead of her appearance

before the inquiry. This failure of disclosure could be used by sub-postmasters to challenge their convictions in the Court of Appeal. In evidence to the inquiry, Simon Clarke explained he had learned Post Office Head of Security John Scott had advised that typed minutes of weekly meetings be scrapped and shredded. Clarke subsequently advised in writing that the duty to record and return material ‘cannot be abrogated’ and expected this advice to be escalated. When asked why he continued to advise the Post Office he said, “It is trite but [I stayed] in the hope I could do some good for them” and “barristers don’t walk away from their clients when life gets difficult”.

Equality, Diversity and Inclusion

Improving EDI in the legal profession is a major focus for the LSB and frontline regulators. The stories below highlight ongoing challenges at the Bar.

Bar Council research says gender earnings pay gap for barristers is a ‘serious cultural and structural problem’. It found male barristers earn more than female barristers across all levels of call and practice areas, regardless of caring responsibilities, legal aid work, or choice of practice. It said the earnings gap was influenced by factors like who was identified as a ‘star’ performer, how work was distributed and valued, and how barristers managed their work/life balance. It proposed ways to reduce the gap, such as collecting and analysing earnings data, offering practice reviews, monitoring work allocation, and having conversations from the start of barristers’ careers about their work preferences and expectations.

BSB research finds pupillage providers using blind recruitment have a higher proportion of male and White pupils. Blind recruitment practices are used by 42% of pupillage providers and over two-thirds of the largest ones. Other techniques to increase diversity, like contextual recruitment, which takes account of candidates’ personal circumstances, were less popular. 16% of providers are committed to using ‘diverse interview and/or recruitment panels.’ The finding that providers using blind or contextual recruitment had higher proportions of male and White pupils suggested that these practices have a limited impact on increasing the proportion of female or ethnic minority pupils. However, providers using blind recruitment did have a slightly higher proportion of pupils from state schools. **Separate BSB research** found it was hard to ‘ignore the polish’ of more advantaged candidates at final interview. ‘Polish’ was more likely to be displayed by applicants who had a ‘middle-class’ education, attended top universities and had been on mentoring schemes.

Access to Justice

The current state of the court system is relevant to our work around access to justice.

Justice minister Mike Freer admits to MPs that the Government “bit off more than we could chew” with its £1.3bn court modernisation programme and is now focusing on ensuring the programme supports core activities. Freer identified multiple challenges the programme faced, including “that it was far too much, too quickly... too

little early adoptive testing” and a lack of the skills required across the department. Freer stated that the current backlog of 69,000 probate cases is expected to have been cut to around 30,000 in September. Former adviser to the MoJ Dr Natalie Byrom said the county courts had “borne [the] brunt” of court reform failure, and even the 24 out of 44 projects marked as complete were questionable as there is not enough information from the courts service to know what complete means. She also said the remaining £120m in the budget is “not enough to do what is still needed”.

Bar Council (BC) report finds almost half of all barristers said remote hearings should be used more frequently, with 38% saying it was ‘about right at the moment’. The BC called for a “principled and consistently applied approach” to the use of remote hearings as well as noting they could contribute to reducing court backlogs.

MoJ research finds court delays deter clients and lawyers from bringing claims, especially in family and personal injury cases. Lawyers and clients were concerned about the impact of delays on costs and reputation. Probability of success was the most important factor in deciding to bring a case in the civil and family courts. Court fees were not a major factor, but there was dissatisfaction with paying for what was seen as a poor-quality service. No respondents said a modest rise in court fees would significantly impact the number of claims or applications. All types of respondents preferred alternative dispute resolution (ADR), such as mediation, to going to court.

Artificial Intelligence

Artificial intelligence (AI) is a growing area of our Innovation and Technology workstream. Examples include our Technology and Innovation Guidance, our response to the Ministry of Justice and the Department of Justice on our AI strategy (discussed below), and our recent meeting with a delegation from the Republic of Korea’s Ministry of Justice about the regulation of technology, including AI, in the legal sector.

The UK government co-hosted the AI Seoul Summit with the Republic of Korea on 21 and 22 May 2024. The first day had a virtual leaders’ session co-chaired by Prime Minister Rishi Sunak and Republic of Korea President Yoon Suk Yeol. A select group of global industry leaders were invited to update on how they are fulfilling the commitments made at Bletchley Park to ensure the safety of their models. On the second day, there was an [meeting of international Digital Ministers](#), which focused on safety, innovation, inclusivity, and the way forward. The meeting concluded that there is a need to advance the science of AI safety, including the collection of empirical data, and to translate this into empirical and proactive measures. It highlighted the importance of international collaboration and collaboration by the public and private sectors, society and academia.

LSB responds to Government request to regulators for information on how they are addressing AI. The LSB recognises both the important role technology, including AI, can play in delivering legal services and its potential for increasing risks to consumers. The Government said it will work with regulators to put its approach to AI regulation into practice and support them with funding to improve their own AI

capabilities, guidance on how they can implement the cross-sectoral AI principles, a proposed steering committee to oversee the development of regulation and assistance with supporting AI innovation.

Litigation Funding

The Post Office Inquiry has highlighted the increasing role of litigation funding in providing access to justice. The LSB has conducted research on litigation funding, to better understand its nature, scale, and scope in England and Wales.

Litigation funding bill falls by wayside as election called. The bill would have reversed the Supreme Court's ruling in PACCAR that litigation funding agreements are damages-based agreements. **CJC starts litigation funding review.** It will examine the effectiveness of third-party funding arrangements in ensuring access to justice and recommend reforms. The CJC plans to publish an interim report by summer 2024 and a final one by summer 2025. **LSB commissioned research finds that litigation funding supports the public interest and access to justice,** but it currently provides a limited source of assistance to consumers. The report also suggested the risk of litigation funding being used for economic crime, in cases where law firms struggle to know the ultimate source of funds used by their litigation funder, was currently more theoretical than real. The report identified many strengths and weaknesses, including that the ultimate economics of a case "may dictate a less-than-favourable outcome for the funded client" such as smaller than expected or even inadequate compensation, but that ultimately it was a niche that is an important part of the provision of legal services. Richard Orpin, interim LSB Chief Executive, described it as an important contribution that alone cannot address the access to justice gap. **The report was welcomed by the International Legal Finance Law Association and Asset Leasing and Finance leadership.**