Additional News Round Up 3 October – 1 November 2024[1]

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: legal market developments, the Post Office scandal, litigation funding, innovation and technology, and education and training.

Legal Market Developments

Maintaining an awareness of developments in the legal market is key to identifying potential risks to the sector and consumers, as well as opportunities for regulation to support growth and innovation.

Clinical negligence revenues set to slow as number of firms falls. In 2023-24, total gross legal revenue from clinical negligence is estimated at £1.58 billion, marking a 7.6% increase from the previous year. However, a predicted slowdown in NHS claims settled is expected due to a drop in claims registered two years ago, though claims are anticipated to rise again in the medium term. The implementation of Fixed Recoverable Costs (FRC) for low-value clinical negligence cases worth up to £25,000 remains uncertain as under the previous government it was meant to be implemented in October 2024, but the new government has not made a statement regarding its plans in this area.

Accountancy giant PwC's 33rd annual survey of the **top 100 law firms recorded yet another 12 months of strong financial performance, with almost all of them recording fee income growth in 2024** and 84% increasing profit. PwC said this year has witnessed "a significant rise in external investment within the legal services sector" due to the increasing prevalence of alternative and disruptive business models capturing the attention of private equity firms. The report noted that external investors have also contributed management expertise and facilitated operational enhancements, "leading to substantial improvement in efficiency and profitability for law firms". External investment in the sector is anticipated to increase significantly over the next couple of years.

Post Office

The ongoing public inquiry into the Post Office Scandal exposes fundamental policy and regulatory failings, as well as provide opportunities for accountability, transparency,

[1] Microsoft Co-Pilot AI has been used to assist the drafting of this report. All summaries of articles have been reviewed for accuracy and revised as necessary prior to the report's submission to the Board.

learning and improvement to prevent future issues and ensure public confidence and access to justice.

The Government will set aside £1.8 billion to compensate victims of the Post Office Horizon scandal and £11.8 billion to compensate those affected by the infected blood scandal, the Chancellor has announced.

The Institute of Directors (IoD) says Post Office scandal shows company boards need to have "responsible oversight of legal risk". A working group put together by the IoD recommended that UK Corporate Governance Code be amended to define an explicit legal risk responsibility for a designated board committee, which would report to the board. The IoD published the policy paper 'The Post Office Scandal: a failure of governance' earlier this month which details key lessons to be learnt from the scandal.

Post Office lawyers discussed charging victims of the Horizon scandal a fee just to access the compensation schemes, the inquiry has heard. Portfolio manager Mark Underwood emailed general counsel Ben Foat and in-house solicitor Rodric Williams in January 2020 to say that the Post Office could not seek payment from applicants but that the same desired outcome could be achieved through a 'very tight and clearly communicated set of eligibility criteria and requirements in terms of the documentation applicants have to provide in order to be accepted into the scheme'.

Postmasters previously offered derisory compensation by the Post Office are being given a new opportunity to claim under an independent appeals process. The Post Office has written to postmasters offering the choice of appealing or accepting a £75k flat payment, which in some cases is much less than the amount that should be received. Although postmasters should receive legal advice for the decision, they're being offered no help with legal costs, and few postmasters will be able to afford a lawyer.

Litigation funding

The Post Office Inquiry has highlighted the importance of class actions and 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.

European Law Institute (ELI) report says third-party litigation funding should only be regulated to address identifiable problems or market failures. The report comes ahead of the UK Government commissioned Civil Justice Council review of litigation funding. Instead of prescriptive regulation, the ELI proposes a set of 12 principles to govern the conduct of funders and funded parties. These cover issues like transparency of funding, funders' fees and control over proceedings.

Court orders parties to engage in ADR over costs. King's Bench Master Victoria McCloud said that if either former Conservative MP Charlie Elphicke or Times

Newspapers failed to engage in ADR, they would have to justify this to the court and could face a sanction if their explanation is found wanting. Master McCloud said she fully expected such orders to become the norm when a judge directs detailed assessment unless costs are agreed. The Association of Costs Lawyers said the ruling could set a new standard for costs disputes, which are often amenable to ADR and mediation, but which parties have been reticent to try. McCloud's judgement follows last year's ruling in Churchill v Merthyr Tydfil which established the ability of courts to order parties to ADR, reinforced by this month's new Civil Procedure Rules.

Innovation and Technology

Artificial intelligence (AI) is a growing area of our Innovation and Technology workstream. Examples include our Technology and Innovation Guidance, which also highlights the importance of balancing the risks and benefits of technology and innovation in providing legal services to consumers.

Microsoft, Google and Amazon turn to nuclear energy to fuel the AI boom as traditional sources expected to be inadequate. Google and Amazon have bought small modular reactors from nuclear startups, which are considered safer than traditional nuclear power plants because of their smaller size and power output as well as being cheaper and faster to build. Google expects to be using renewable energy as early as 2030, however critics warn that nuclear power should be adopted with more caution.

Master of the Rolls Sir Geoffrey Vos warns regulation could stifle AI development in Europe. He said two aspects of regulation could hinder AI's development (1) that individuals would not be subject to automated decision-making and (2) the existence of residual rights in data used to train AI. Sir Geoffrey's comments come as the UK Government considers how to regulate AI following the introduction of the EU's AI Act and the Council of Europe's Treaty on AI and human rights, democracy and the rule of law. Sir Geoffrey said AI would rapidly outpace legislation such as the EU's AI Act and that while lawyers and judges would want to retain complete human oversight of the use of these technologies, it was unlikely that they would be able to, without spending significant time and money to check the AI's work, and so they would be forced to accept the AI's output.

PwC survey of top 100 law firms finds the majority outside the top 10 have negative views about the impact of GenAI on their finances. They see GenAI as a threat to their current business model because of its potential to reduce client demand and add to pressure on pricing. Most firms expect a significant proportion of fee-earning work could be automated through AI, and this would likely affect pricing and/or team structures. 80 out of the top 100 firms believe 6% of existing chargeable work could be automated, and a third believe at least 16% of work could be, which would cause significant disruption to the sector. The top 10 firms saw benefits from GenAI and believed they would become more productive for their existing clients. Law firms were investing heavily in GenAI tools, with almost 90 having implemented or trialled them, compared to 55 in 2023. Microsoft Copliot was the most widely implemented tool, with 30 firms having done so, and 45 trialling it. However, only 19 firms said they had seen productivity gains from using GenAI.

The Law Society of England and Wales has announced its new artificial intelligence (AI) strategy based on three pillars: innovation, impact and integrity. The strategy's foundational goal is to protect solicitors and the public by helping them get the best out of this new technology and ultimately, support the rule of law and promote equal and fair access to justice for all.

Education and Training

Our work is underpinned by a regulatory objective to encourage an independent, strong, diverse and effective legal profession, and our 10-year sector-wide strategy to reshape legal services includes addressing issues of retention and progression as well as entry to achieve a diverse and inclusive profession from entry.

Less than half of students passed the most recent sitting of part one of the Solicitors Qualifying Exam (SQE). The latest report from the SRA shows that, of the 5,006 candidates who attempted both parts of SQE1 in July 2024, only 44% passed. This is the lowest success rate to date and represents a drop from the 56% pass rate for the January sitting. The report also shows that the pass rate was slightly higher among those sitting the exam for the first time, at 48%.

Nearly a year after committing to publish SQE pass rates by provider, the SRA cannot confirm when this information will be released. The regulator previously committed to publishing candidate performance data including pass rates by training provider from "late 2023", but revealed in December 2023 that it would not meet this deadline due to a lack of "sufficient data". The aim of publishing these statistics is to help aspiring solicitors make more informed choices when selecting a preparation provider. A spokesperson for the SRA said that they remain committed to publishing the data in a report soon and are working with a third party to explore the development of an interactive tool to enable candidates to search the data.