

Non Covid-19 related news round-up

(Covers the period 3 September to 9 October 2020)

The top five

The government has received widespread criticism for proposing clauses in the UK Internal Market Bill, which ministers accept would break international law as agreed between the UK and EU. Lord Keen resigned saying that he 'found it increasingly difficult to reconcile' his obligations as a lawyer with provisions in the Internal Market Bill. Sir Jonathan Jones, treasury solicitor and permanent secretary at the GLD, also resigned in protest. Public debate has centred on implications for the rule of law including the UK's international standing as a beacon for the rule of law.

The CMA has started a review of the progress in the legal services sector in England and Wales since its 2016 market study into that sector. Its short, focused 3-month review will assess the extent to which the market study recommendations have been taken forward and the impact that these changes have had on competition. The review will look at existing evidence from regulatory monitoring and other available research, as well as submissions from interested parties. Meanwhile, the SRA reported that compliance with the rules on price and service transparency is improving but a stubborn minority are facing disciplinary action. The CLC reported that the transparency measures may have led to more shopping around but this had not translated into a reduction in prices among licensed conveyancers. The OLC said the time has come to allow complaints from clients of unregulated providers.

The Judicial Diversity Forum has published a report which for the first time combines the diversity data of the legal professions, judicial appointments and the judiciary. The report highlighted an opportunity to push for lawyers to apply for judicial appointments earlier in their careers since current applicants have considerably more legal experience than the minimum five years required by statute. While diversity has improved, women and individuals from BAME backgrounds continue to be underrepresented. The figures show diversity is weaker in more senior roles and better in tribunals. The JDF has drawn up an action plan containing a series of measures designed to encourage more women and people from BAME backgrounds, or with a disability to apply for judicial roles. These include more flexible working hours, targeted guidance on applications, as well as a review of the eligibility criteria to ensure no one group is being unintentionally deterred from applying.

The Ministry of Justice has said publicly that is considering whether to **create a register of unregulated providers of legal services and give their clients access to redress.** This follows the short-term proposals in Professor Mayson's report. However, speaking at a conference, an official said that a radical rewrite of the Legal Services Act was "not something to be contemplating right now... In current circumstances, we need to avoid further substantial disruption of the structure of regulated legal services."

The Justice Committee has launched a new inquiry into civil and criminal legal aid. The committee wants evidence on the role of the Legal Aid Agency, recruitment and retention problems, the impact of the court reform programme as well as Covid-19 on delivering legal aid services, the challenges for legal aid over the next decade, what reforms are needed, and what lessons can be learned from elsewhere.

Political developments affecting the justice sector

The Independent Review of Administrative Law has published a call for evidence. It asks questions on codification and clarity, and process and procedure, such as whether certain decisions should be excluded from judicial review. The panel is particularly interested in notable judicial review trends over the last 30-40 years and seeks evidence on how effective court rulings are in resolving issues raised by judicial review.

The Lord Chancellor has confirmed that the government is to commission an independent review of the Human Rights Act. He was responding to a letter from solicitor Harriet Harman MP, chair of the joint committee on human rights, about media reports that the government was planning to opt out of major parts of European human rights law.

Speaking at the Conservative Party conference, the Home Secretary promised the 'biggest overhaul of our asylum system in decades' and said she would **bring in legislation next year to stop 'endless legal claims' from people who are refused asylum.** Priti Patel criticised 'lefty lawyer' and 'do-gooders' for defending a 'broken asylum system'. These phrases drew criticism from the legal profession with the Law Society President warning that lawyers are at risk of physical attack if politicians continue to 'sling insults' at them. However, the prime minister echoed the Home Secretary's comments in his conference address.

The Ministry of Justice is to make it mandatory for solicitors and other professional users to apply for the vast majority of grants of probate online, although grants of letters of administration will not be mandated at this stage. There will be limited exemptions for "unusual and often complex" applications, such as to prove a copy of a will when the original has been lost. The MoJ has asked the president of the Family Division to amend the Non-Contentious Probate Rules and they are due to come into force on 2 November.

As part of the Global Britain agenda, BEIS is consulting on a cross-government strategy to take forward OECD recommendations for more systematic consideration of **international regulatory cooperation** across government and regulatory bodies.

DCMS is consulting on a **National Data Strategy**. The strategy is built around five missions: unlocking the value of data across the economy; maintaining a pro-growth and trusted data regime; transforming government's use of data to drive efficiency and improve public services; ensuring the security and resilience of the infrastructure on which data relies; and championing the international flow of data.

Regulatory and wider policy developments

The SRA published its 2020/21 business plan. Key areas of work identified include: preparing for the introduction of the SQE; supporting greater adoption of innovation and technology in the legal sector; increasing activity to ensure compliance with anti-money laundering regulations; supporting the legal sector during the UK EU exit transition; and undertaking research on equality, diversity and inclusion.

The SRA has published a thematic review of cybercrime. It sampled 40 firms selected because the SRA had received a substantive cybercrime report about them. Most incidents were due to individual errors and misunderstanding rather than systems being hacked. Twenty-three saw more than £4m stolen – while most of it was repaid by insurers, 18 firms still had to use their own money to cover the losses. The review said the figure of how much

money was taken did not take account of the wider cost of such incidents to firms, such as higher insurance premiums, lost time and damage to client relationships.

The OLC has published the outcome of its consultation on transparency measures.

This includes pressing ahead with plans to publish its full decisions, although this will be subject to further consultation. It also plans a pilot to publish annual reviews of the most complained-about firms. As a more immediate step it will create more filters to sort its existing published decision data so that it can be better used by platforms such as comparison sites. However, it said the impact of both Covid-19 and its standstill budget for this year – and the need to focus on improving poor levels of performance – mean that some of the work on improving transparency will be pushed into its 2021/22 business plan.

The Legal Ombudsman reported an emerging trend of holiday sickness complaints.

LeO warned law firms against making holiday sickness claims without “verifying the version of events” obtained by claims management companies. It said this was leading to allegations that claims were fraudulent and law firms would usually be held responsible for “any poor service by the CMC”.

The head of HMCTS has apologised to a black barrister after she was stopped and mistaken for a defendant three times in one day at court. Alexandra Wilson, who specialises in criminal and family cases, was mistaken for a defendant initially by a security guard, then a member of the public and finally by the court clerk. Her tweets renewed debate about racism in the courts. HMCTS has promised to investigate what happened.

Lord Reed, the new Supreme Court president, has made diversity a priority. He hopes a justice from an ethnic minority background will be appointed before his retirement in six years' time. Lord Reed said the lack of diversity among the 12 Supreme Court justices was a situation "which cannot be allowed to become shameful if it persists". Only 4% of senior judges appointed to the High Court or above are from ethnic minority backgrounds.

The Solicitors Disciplinary Tribunal has published a three-year Equality, Diversity and Inclusion strategy. It is to look specifically at whether minorities or certain practitioners are treated more harshly when they come to be punished for misconduct. Meanwhile, the SRA is preparing to publish statistics on the racial profile of those it prosecutes.

The BSB has launched a pilot reverse mentoring scheme, in which Bar students and junior barristers from BAME backgrounds mentor senior White barristers. The BSB said it recognised that the scheme would involve “difficult and potentially uncomfortable conversations”, but to achieve race equality in the profession “the onus of change needs to be on the White majority and senior ranks of the profession”.

Nine City law firms have been named as top employers by LGBT rights charity Stonewall – more than half of the total shortlist. The annual list – which named 17 organisations in total - is compiled from submissions to the global workplace equality index, a benchmarking tool used by employers to create inclusive workplaces. Firms are marked across nine areas, including training, leadership and employee policy.

The first woman to lead a magic circle firm has been appointed. Freshfields Bruckhaus Deringer appointed managing partner Georgia Dawson as its next senior partner.

In Australia, the Victorian Legal Services Board and Commissioner has launched **a review into sexual harassment in the legal profession** following a survey that found most women had faced it. Fiona McLeay said there was a need to “destabilise the structures that support

serial harassers... We need to build a legal culture in which sexual harassment is not tolerated and where those who experience, witness and hear about it are able to speak up.”

The Bar Council has claimed some criminal barristers are earning less than the National Minimum Wage (NMW). In a spending review submitted to the Treasury, the Bar Council says some publicly funded juniors in the first two years of practice were, in 2019/20, earning less than £13,000 a year pre-tax and after overheads. This, it says, equates to £6.25 an hour based on a 40-hour week — 20p short of the £6.45 NMW starting rate for over 18s.

The Law Commission has launched new projects to ensure that English law can accommodate smart contracts and digital assets. It will look for any gaps in the law that could hinder growth in the use of smart contracts, while ensuring that the law can accommodate digital assets, such as electronic documents and cryptoassets.

A review by HM Crown Prosecution Service Inspectorate found that the public can be confident that the CPS is making correct charging decisions - but less so on whether those decisions are being adequately thought through and promptly. HMCPsi decided to examine the quality and timeliness of charging decisions after responsibility for the majority of charging decisions was transferred to 14 CPS regional areas. The intention was to address a backlog of cases that was causing tension between CPS Direct and the police. 45% of CPS charging decisions fully met expectations for case analysis. Another 39.5% partially met the standard while 15.6% did not meet the standard at all.

Market developments

An association has been set up that seeks to be the ‘global voice of the litigation funding industry’. The International Legal Finance Association (ILFA) is intended to provide a counterweight to influential lobby groups such as the US Chamber, which oppose the use of litigation funding. Unlike the Association of Litigation Funders, which provides self-regulation of the funding industry in the UK, the ILFA has no regulatory function and is a purely representative body; although all members must sign up to its best practice principles. ILFA intends to establish a trade association in England and Wales and other jurisdictions.

IRN Research has predicted some of the larger players in the personal injury market are set to merge while others will have to restructure. It warned that the value of the personal injury market would shrink by 1.5% this year and remain static in 2021 before recovering over the following two years. Researchers said the market had reached a “watershed moment”, with the increase in the small claims limit for road traffic accident cases to £5,000 now scheduled for implementation in April 2021.

Market intelligence and research

A study by the Bridge Group found **solicitors from lower socio-economic backgrounds take around 18 months longer to reach partner at major City law firms than those from higher ones.** Being female and/or from a non-white background “amplify the inequalities in rates of progression”. Commissioned by and analysing 10 leading law firms, the study found them “deeply lacking in diversity”, most acutely on the basis of socio-economic background. It challenged the view that the problem would reduce over time as initiatives to improve access to the profession take hold, highlighting the ingrained cultural issues of big firms.

Market intelligence and research

CHANGES SINCE LAST BOARD MEETING IN BLUE ITALICS

Indicator of success	Source	2013	2014	2015	2016	2017	2018	2019	2020
<i>Promoting the public interest through ensuring independent, effective and proportionate regulation</i>									
LSB expenditure	LSB	£4,264k	£4,266k	£3,921k	£3,587k	£3,525k	£3,470k	£3,725k	£3,788k
LSB levy per authorised person	LSB	£27.97	£25.36	£24.71	£21.55	£18.83	£19.00	£20.01	£21.27
Public trust lawyers to tell the truth [○]	LSCP	42%	43%	47% ^A	42% ^A	45%	45%		
Public confident consumer rights protected [○]	LSCP	46%	46%	50% ^A	46% ^A	48%	49%		
<i>Making it easier for all consumers to access the services they need and get redress</i>									
Levels of shopping around: Individuals [○]	LSCP	22%	24%	25%	25%	27%	27%	28%	30%
Use of comparison/feedback sites: Individuals [○]	LSCP	1%	1%	2%	2%	2%	2%	2%	2%
Ease of shopping around: Individuals [○]	LSCP	55%	54%	57%	57%	48%	54%	56%	56%
Overall service satisfaction: Individuals [○]	LSCP	80%	79%	78%	80%	80%	84%	84%	84%
Consumers who do nothing when dissatisfied [○]	LSCP	44%	44%	42%	35%	49%	35%	37%	36%
Public confidence in complaining about lawyers [○]	LSCP	44%	45%	48%	43%	44%	45% B		
No action when have legal issue: SMEs [○]	LSB	8%		9%		10%			
Levels of shopping around: SMEs [○]	LSB					22%			
Ease of finding provider: SMEs [○]	LSB			25%		50%			
Lawyers perceived as cost-effective: SMEs [○]	LSB	12%		14%		11%			
<i>Increasing innovation, growth and the diversity of services and providers</i>									
UK wide legal services turnover (uninflated)	ONS	£30.4bn	£30.8bn	£31.6bn	£32.4bn	£33.3bn	£35.4bn	£37.2bn	£35.6bn
Number of active ABS	LAs	236	373	618	837	1,091	1,244	1,389	1,413
Level of service innovation (over 3yrs) [○]	LSB			28%			26%		
Regulation seen as barrier to service innovation [○]	LSB			50%			40% A,B		
Net exports of UK legal services	ONS	£3.7bn	£4.1bn	£4.2bn	£4.7bn	£5.2bn	£6.6bn		
Non-UK litigants using Commercial Court	Portland	71%	77%	63%	66%	72%	59%	60%	55%

KEY: [○] = Survey source, ^A = Significant differences to previous figure, ^B = Significant differences between oldest and newest figure