

Non Covid-19 related news round-up

(Covers the period 20 November to 7 January 2021)

The top five

SRA analysis shows that men and solicitors from BAME backgrounds continue to feature disproportionately in its enforcement work. Around 70% of those who are reported to, and then investigated by, the SRA were men in 2018/19, rising to 85% of those who appeared before the SDT. Men make up 49% of the profession. While 18% of solicitors are from a BAME background, they were the subject of 26% of reports to the SRA, rising to 32% of cases that the SRA decided to investigate and then send to the SDT. The figures are similar to the last such analysis, from Professor Gus John in 2014. The SRA will commission independent research and review its decision-making processes. The LSB issued a statement welcoming the report.

The CMA published its progress review report of its 2016 market study. It identified some positive developments on market transparency but “there has been a limited impact on the intensity of competition between providers and on sector outcomes”. It recommends that LSB, working with other regulators in the sector, continues to build on existing reforms and make progress on quality indicators. The CMA concluded that, if anything, the case for wholesale reform of the Legal Services Act is stronger now than at the time of the market study. In the meantime, the CMA is advocating that the Ministry of Justice and the LSB take some shorter-term steps which will deliver regulatory reform in stages.

The UK/EU trade deal included a section on legal services designed to give additional certainty and clarity about the market access for lawyers. Lawyers will have the right to advise their clients across the EU on UK and public international law using their home professional titles, except where EU Member States have placed specific limits on this activity. Where EU Member States require UK lawyers to register in order to provide advice on UK and public international law, the Agreement makes clear this cannot mean requalification or admission to the local legal profession.

The Lord Chancellor appointed Sir Christopher Bellamy to chair a **review of the criminal legal aid in its entirety**; the service being provided, how it is procured and how it is paid for. The review will consider five themes: resilience, transparency, competition, efficiency; and diversity. The review will be supported by an expert panel including people with expertise in regulation and consumer affairs. The review is expected to report by the end of 2021.

The SRA published guidance on the SQE. The SRA warned it will discipline firms that take ‘unfair advantage’ of graduates during qualifying work experience. QWE must involve ‘varied and diverse work’ and exposure to ethical issues. Meanwhile, US legal education giant Barbri has partnered with the University of Sussex to offer graduates discounted fees for its SQE1 prep course. This is one of several deals that law schools have struck with universities to deliver SQE courses. The University of Law has partnered with the University of Southampton, the University of Surrey, the University of Leicester, and Birkbeck, University of London, guaranteeing students places on its SQE course after graduation.

Political developments affecting the justice sector

David Wolfson QC has been appointed as parliamentary under secretary of state at the Ministry of Justice. He is responsible for all departmental business in the Lords and his brief covers: civil law and justice; legal services worldwide; relationship with the legal profession; Global Britain; and Crown Dependencies. His background is a commercial silk.

Antonia Romeo has been appointed as permanent secretary at the Ministry of Justice. She has worked previously in the department, but most recently was permanent secretary at the Department for International Trade.

The Ministry of Justice received a 3.3% annual real terms increase in the **Comprehensive Spending Review**. The settlement makes provision for £119m additional funding to support the wider justice system's response to Covid-19: this includes £76m to further increase family court and employment tribunal capacity to reduce backlogs and more than £11.5m to free legal advice agencies to help them weather the pandemic and cope with a 'dramatic surge in demand' from local communities. There is £337m extra funding for the criminal justice system to ensure 'swift and effective justice' to convict offenders and support victims.

Retired Court of Appeal judge Sir Peter Gross will lead an **independent review of the Human Rights Act**. A panel of eight lawyers and academics, which includes Simon Davis, the immediate past president of the Law Society, will report by summer 2021. The Lord Chancellor said the review will consider whether the Act can result in judges being drawn, unduly, into matters of policy as well as law and whether they have struck the right balance between re-writing acts of a parliament and making a declaration of incompatibility.

Shadow justice secretary David Lammy MP stressed the need for **judicial diversity targets** – and said quotas could be necessary if progress remains slow.

The Law Commission unveiled proposals to reform what it calls a 'fragmented and complicated' tribunals system in Wales. Under the reformed system, the existing tribunals would be replaced with a unified first-tier tribunal, subdivided into chambers based around different areas of law, such as property, education and mental health.

Covid-19

Analysis by LexisNexis found that the legal market shrunk by 6.9% in Q2 2020 compared to the same time last year. Litigation, property and immigration lawyers were among the hardest hit by the pandemic. But, employment and tax advice saw growth.

Courts will remain open during the new Covid-19 restrictions. Guidelines state that reasonable excuses for leaving home during lockdown include fulfilment of legal obligations, such as attending court as a lawyer or jury member, or to carry out activities relating to buying, selling or letting a home. People are also allowed to leave home for meetings within prisons or immigration detention centres.

The lord chief justice said that additional government funding will be needed in years to come to tackle the accumulated backlog of crown court cases. His comments were made as criminal barristers threatened to take industrial action over plans to extend working hours in the courts. HMCTS written evidence to the Justice Committee said its modelling suggests the outstanding jury trial caseload may fall to pre-Covid levels by March 2023.

HMCTS estimated that private law family cases may not return to pre-Covid levels for another three years. The Family Justice Board issued a statement summarising priority

actions to alleviate 'immediate pressures' and begin longer-term reform. Backlogs in private law have increased by 18% since before the start of the March lockdown. For those cases being heard, the average time to conclude a case is now 29 weeks.

A report by Her Majesty's Inspectorate of Probation found the **temporary closure of youth courts due to Covid-19 has almost doubled the backlog of cases** in some areas. The closures have meant that some children have spent longer on remand than usual, with the proportion held in youth custody pre-conviction increasing from about a quarter to 38%.

The number of domestic abuse offences recorded by police in England and Wales increased during the pandemic. But the Office for National Statistics said such offences gradually rose in recent years so it cannot be determined if it was related to the pandemic. Police recorded 259,324 offences between March and June - 7% up on 2019's figures.

The Solicitors' Charity said it funded 42% more cases between January and October 2020 than last year. Meanwhile, the Barristers Benevolent Association predicted that it would have to make a fresh appeal for funds after handing out 154 grants.

Regulatory and wider policy developments

Andrew Mitchell QC has been appointed as new Vice Chair of the BSB. The announcement follows the appointment of Naomi Ellenbogen QC as a High Court Judge, which required her to relinquish the role of Vice Chair of the BSB.

Baroness Falkner of Margravine has been selected as the preferred candidate to be the new Chair of the Equality and Human Rights Commission.

The High Court overturned the SDT's findings against former Freshfields partner Ryan Beckwith. The **ruling is likely to have wider implications over the extent to which a regulator has a legitimate interest in a lawyer's conduct outside of practice.** Though Mr Beckwith's conduct was "inappropriate", the court identified as crucial the fact the tribunal did not find it to be an abuse of a position of seniority or authority. The court emphasised that disciplinary tribunals do not have carte blanche to decide what it means for a professional to act with integrity or behave in a way that maintains public trust in the profession and apply these concepts unfettered to a professional's private life. Instead, these obligations must be defined by reference to professional rules, which themselves must be limited to those necessary to regulate professional conduct and fitness to practise and maintain discipline within the profession. The SRA has decided not to appeal the judgment.

The BSB published an "Anti-Racist" Statement featuring four "anti-racist expectations" for chambers and BSB entities to fulfil in response to the issues of underrepresentation and adverse impacts facing barristers from BAME backgrounds. The four expectations are: to complete a race equality audit; design and implement positive action measures; undertake comprehensive anti-racist training for all barristers and staff; and produce and publish an anti-racist statement for members of chambers and the public.

116 new QCs were named. More women applied last year and the majority succeeded. There were 72 female applicants – 27% of all applicants – compared to 42 the previous year. Of those, 68% were interviewed, somewhat higher than the proportion of men, and 40 were recommended for appointment. There was a noticeable drop in the number of BAME applicants, from 42 in each of the last two years to 30. Of them, 17 were interviewed and 14 appointed – 47% of BAME applicants, compared with 41% of White applicants. Applications

from solicitor-advocates rose from nine to 15 – with six appointed – but QC Appointments said it remained concerned about the low level of applications from this group.

Five lawtech businesses are to join a ‘sandbox’ designed to “fast-track transformative ideas, products and services” with the help of legal and financial regulators (including LSB). They are Amplified Global, Clause, ClauseMatch, Deep Tech Dispute Resolution Lab and Legal Utopia. The Legal Utopia pilot in particular promises to enhance access to justice. It aims to make legal services “affordable and accessible”, particularly for SMEs, by “providing recommendations and information on legal services via an intelligent legal diagnostic process that can identify and assess a wide range of legal problems”.

The National Crime Agency said the quality of one type of **anti-money laundering report made by solicitors has got significantly worse**. 58% of the 1,546 defence against money laundering (DAML) requests sent by solicitors in the last financial year were not clear enough and required the NCA to send the law firm a letter.

The CMA issued a first-of-its-kind analysis examining how well competition is working across the UK economy. Taken together, the indicators examined suggest that competition across the economy as a whole may have declined over the last 20 years. Key findings include that: market concentration is up since the 1998 recession; among the most profitable companies profits and mark ups are increasing; and higher incidence of consumer problems satisfaction and poor complaint handling compared to EU states. The CMA also found that consumers are reporting shopping around less since the pandemic.

The government accepted, in principle, the findings of the CMA’s year-long study on online platforms and digital advertising, committing to introducing a **new pro-competition regulatory regime to tackle the market power of tech giants** like Google and Facebook. The government outlined that a Digital Markets Unit will be established within the CMA in 2021/22 to enable the CMA to begin work to put into operation key elements of the regime. A new statutory code of conduct will give consumers more choice and control over how their data is used, and small businesses will be able to better promote their products online.

A major review by the Centre for Data Ethics and Innovation proposed significant measures for government, regulators and industry to act on to **tackle the risks of algorithmic bias**. Key recommendations include that Government should place a mandatory transparency obligation on all public sector organisations using algorithms that have an impact on significant decisions affecting individuals. Second, organisations should be actively using data to identify and mitigate bias. They should make sure that they understand the capabilities and limitations of algorithmic tools, and carefully consider how they will ensure fair treatment of individuals. Third, Government should issue guidance that clarifies the application of the Equality Act to algorithmic decision-making.

Market developments

Lockton, a leader insurance broker, said **the market for professional indemnity insurance is likely to continue to worsen but future premium rises should not be at the average of 17% seen this autumn**. Lockton said co-insurance has emerged as a growing trend, with insurers looking to reduce the risks of an environment where the volume of claims against solicitors has not reduced but their size is increasing. There was also a negative reaction to the SRA’s refusal to change the minimum terms and conditions of insurance, under which policies cannot be cancelled for non-payment of premiums or excesses.

One law firm and five lawtech businesses have each received around £100,000 of government money to develop and accelerate commercialisation of their products and services during the pandemic. They were in the latest round of funding for projects through the Sustainable Innovation Fund, managed by Innovate UK, part of UK Research & Innovation. The initiatives focus on dispute resolution and contract review.

Knights was the only listed law firms to end 2020 with its share price higher than where it began, according to analysis by Legal Futures. The FTSE 100 fell 14% over the year, although the AIM 100 rose by 20%. All but one of the legal shares are listed on AIM.

Market intelligence and research

The Ministry of Justice has outlined its evidence needs over the next 3 to 5 years.

Areas of interest include competitiveness in the legal market, the impact of lawtech on access to justice, the scale, scope and function of the unregulated market, the effectiveness of complaints systems, cross-border trade and barriers (including regulatory barriers) to overseas trade, diversity in the profession and legal aid.

Law Society research found BAME solicitors are earning a third less than their white colleagues despite working longer hours. Full-time BAME solicitors work an average of 1.5 hours more per week than their white colleagues. They earn an average £27.01 per hour – a third less than the £36.13 per hour their white colleagues earn. A third of Black African and Caribbean solicitors said they experienced some form of discrimination or bullying at work – the highest of any ethnic group. The Law Society concluded that actions to improve race inclusion in the solicitors' profession are not delivering change quickly enough.

A LexisNexis bellwether survey found the move to more agile ways of working amidst the coronavirus pandemic has led **three quarters of solicitors to experience feelings of isolation and a lack of motivation.** This has risen sharply since the onset of the pandemic, and particularly among junior lawyers, with a lack of management direction and supervision increasing issues. The study cites three main coronavirus-related concerns: the impact on staff morale and wellbeing, especially for those firms with six or more fee-earners; maintaining a client base for the future; and the impact on efficiency.

A global study by Thomson Reuters and Acritas found some **measures used by law firms to tackle a lack of gender diversity in senior roles could be “ineffective or even counter-productive”.** Gender-blind work allocation schemes, reverse mentoring and women's networks were not “intrinsically wrong”, but law firms were advised to review them carefully. More positively, it found that gender diversity in law firms “positively impacts law firm success” and could lead to a “10% higher client spend”.

A report by CityUK says **the sector has enjoyed a ‘golden decade’** with revenue and net exports growing year-on-year – but issues around diversity and privilege remain unresolved. During the last twelve months, much of the revenue was generated by the UK's top 100 law firms, which netted nearly £28bn in 2019/20. Most large firms saw an increase in revenue, with only 10 firms in the top 100 recording decreases for the year 2019/20. Legal technology was also identified as a strong growth area. According to the study, investment in ‘lawtech’ has tripled over the past two years, with starts-ups and scale-ups now attracting a total of £290m in investment and employing nearly 4,500 people.

Law Society research has found that **7% of people made or updated their will during the pandemic** – but warned that the ‘overwhelming majority’ of people still do not have a will. Almost 60% of those surveyed said they did not have a will, and just 29% said they have an

up-to-date will which reflects their current intentions. 25% of those from a BAME background had a will, compared to 42% of white respondents. The main reasons respondents gave for not making a will were not having anything of value to leave to their loved ones (24%), not finding the time to make a will (20%) and thinking they were too young to make a will (18%).

Research by IRN found 59% of consumers would be happy to have an **online consultation with a lawyer or will writer** rather than going to see them. 36% believe that video witnessing of wills is “a good alternative” to being there in person. The survey found that 50% believed all will writers are regulated. The proportion of consumers handling probate themselves rose sharply in 2020, from 38% to 49%, which could be explained by the introduction of the Ministry of Justice online portal for straightforward probate applications.

A poll by Resolution found ‘**DIY divorces**’ – those seeking little or no professional or legal help and representing themselves – increased from 35% among those who divorced over 5 years ago, to 57% among those who got divorced within the last 5 years. The survey also found that 63% of all divorcees surveyed felt that having early access to professional advice, where legal rights and options are made clear from the outset, would have improved their personal experience. 41% of those who divorced within the last five years suffered mental health episodes, compared to 29% who divorced more than five years ago.

A study from Oxford University argued that the **challenge facing traditional law firms from artificial intelligence** is not a lack of finance to invest in technology but having the right “human capital”. It found that AI would “augment the capabilities of human lawyers” while “generating new roles for legal experts” in producing AI services. Those roles would be “clustered in multi-disciplinary teams” mixing legal with a range of “other disciplinary inputs”.

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	£32.5bn	£32.9bn	£35.0bn	£33.4bn	£34.9bn	£36.2bn	£36.8bn	
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	£7.0bn	
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