

Funding to tackle court backlog

Spending by the Ministry of Justice (MoJ) in England and Wales in 2021/22 will increase by 3.3% to help tackle the rising backlog in courts and tribunals as a result of Covid-19 restrictions. The UK Government has also confirmed that courts in England and Wales will remain open during the lockdown announced in January 2021.

According to HM Courts & Tribunals Service, at the end of October 2020 there were around 490,000 magistrates' court cases outstanding in England and Wales, 20% more than before the pandemic. Around 51,590 cases were still to be heard in the Crown Court, 31% more than in March 2020.

The funding increase announced by the Chancellor in the November 2020 Spending Review means that the total MoJ budget will rise to £10.1 billion in 2021/22 up from £8.1 billion in 2019/20.

The MoJ's core resource funding will increase by £145 million and its

capital budget by £237 million in 2021/22. A further £76 million will enable the expansion of family court and tribunal capacity so that backlogs can be reduced, while an additional £43 million will be available to ensure prisons and courts remain Covid-secure. An extra £337 million was also announced for the criminal justice system to support victims and ensure offenders are quickly brought to justice. While the funding for criminal justice includes £275 million to tackle backlogs in the Crown courts, there will be no additional spending on legal aid.

In January 2021 the MoJ announced that 18 Nightingale Courts are in operation to help to reduce the backlog. The Nightingale Courts have been set up in town halls, theatres, hotels and libraries across England and Wales. An additional £110 million has also been spent on emergency measures that include building Portakabin units, installing plexiglass and recruiting more staff.

However, the MoJ has not provided an update on the court modernisation programme, which had already been delayed and is expected to end in 2023. The programme includes plans to make county courts paperless.

In Scotland, pre-intermediate diet meetings (PIDM) were introduced on 1 December 2020 to free up court time. PIDMs are physically distanced meetings held between the prosecution and the defence outside of the courtroom before a trial date is confirmed. PIDMs help ensure that only cases that cannot be resolved by agreement, and which are ready for trial, are given a date at the sheriff court.

Read more about the funding at: <http://bit.ly/35i3eHG>

Read more about PIDMs in Scotland at: <http://bit.ly/2MKsKz3>



SRA strengthens NDA guidance

The Solicitors Regulation Authority (SRA) has published revised guidance on the use of Non-Disclosure Agreements (NDAs) following concerns about the professional conduct of some solicitors. The guidance, or 'warning notice', stresses that solicitors' duty to act in the best interest of their clients does not override their professional obligation to uphold the proper administration of justice and behave with integrity towards the opposing party.

The SRA warns that solicitors who negotiate, draft, advise on or enforce NDAs have a duty not to take advantage of the opposing party by exploiting their lack of legal knowledge or their limited

access to legal advice. In addition, they must not apply undue pressure or use inappropriate aggressive or oppressive tactics, particularly towards anyone who may be considered vulnerable. For example, they must not impose artificial limits on the amount of time available to agree to the terms of the NDA.

If a client's instructions to a solicitor threaten to undermine these professional obligations, the solicitor should consider refusing to act for that client.

The guidance also emphasises that NDAs must be written in standard plain English and must include clear information about which types of disclosure can and cannot be made.

The terms of an NDA must not prevent 'proper disclosure' to legal advisers, tax advisers, medical professionals, counsellors and other professional advisers who are bound by a duty of confidentiality. In addition, solicitors should not use warranties, indemnities and clawback clauses in a way that has the effect of preventing or inhibiting such disclosures.

The SRA has also clarified that the guidance applies to all NDAs, regardless of whether or not the opposing party has legal representation.

Read more about the guidance at: <http://bit.ly/2XfXSZ9>

3,000 law firms at risk of closure or merger

As many as 3,000 of the 10,000 law firms currently practising in the UK are at risk of closure or merger over the next few years as the conveyancing bubble bursts and a post-pandemic recession sets in. This is according to research carried out by Viv Williams Consulting, which surveyed 210 law firms and found that 35% were considering closing or disposing of their firm. Almost half (45%) were looking at options to restructure or redevelop their business, and only 20% expected to remain unchanged by the pandemic.

Three quarters of the firms surveyed carried out conveyancing work, so are likely to suffer a loss of income when the stamp duty holiday ends in March 2021. Repayments are also due on coronavirus business support loans in Q2 2021. Many firms used these loans to pay for their professional indemnity insurance, which increased by between 30% and 50% in 2020.

The survey also found that more than 60% of firms had furloughed staff and 45% had permanently laid off back office staff. The loss of staff and the difficulties of remote working during the pandemic have meant that firms are struggling to keep their businesses functioning normally. Cash flow has become a significant problem as staff shortages prevent firms from ensuring that bills are paid promptly. Resources are entirely taken up with

day to day management and firms have not been able to take long term strategic decisions.

The existing problems faced by law firms are likely to be worsened by the whiplash reforms in April 2021 and a further sharp increase in professional indemnity insurance premiums.

Read more about the survey at: <http://bit.ly/39dsm3D>



In brief...

Covid-19 leads to delay in small claims trials

Small claims are taking almost three months longer to go to trial compared with a year ago due to the impact of the Covid-19 pandemic. This is according to figures from the Ministry of Justice that revealed it took an average of 48.8 weeks between a small claim being issued and going to trial in Q3 2020, which is 10.7 weeks longer than in Q3 2019. This is mainly because the pandemic has intensified the challenges already facing the civil justice system, such as outdated IT systems and an increase in permanent court closures since 2010. Overall, 11,000 trials took place in Q3 2020, down 37% compared with the same period in 2019. Read more about the figures at: <http://bit.ly/38ngTPA>

Funding for free legal aid during Covid-19

A fund set up to ensure local communities have access to free legal aid during the Covid-19 pandemic has awarded more than £11.5 million to free legal advice agencies across the UK. The Community Justice Fund was set up by a range of legal and advice organisations to ensure the free legal advice sector remains sustainable and able to respond to a significant increase in demand from local communities. Grants were awarded to 178 agencies between May and September 2020, including law centres, charities, independent agencies and local Citizens Advice teams. A further round of funding is planned in 2021. Read more about the fund at: <http://bit.ly/2XkMkDL>

Cybercriminals target law firms during lockdown

The Solicitors Regulation Authority (SRA) has warned the legal industry that it is a growing target for cybercriminals. Overall, law firms reported that almost £2.5 million was stolen by cybercriminals in the first half of 2020, up more than 300% compared with the same period in 2019. The number of phishing scams targeting lawyers also increased by 300% in the first two months of the national lockdown. According to the SRA, the rise in cyberattacks is due to staff working from home on less secure devices and being unable to keep information confidential without access to dedicated office space. Read more about the rise in cybercrime at: <http://bit.ly/38k7oAE>

Law firms urged to prepare for negative interest rates

Industry experts have urged law firms to prepare for the potential introduction of negative interest rates. In particular, firms have been encouraged to update their retainers so they are able to charge clients for holding their money in the event of negative interest rates, as banks may choose to pass the cost of holding money on to their customers. Currently, law firms often hold their clients' money and pay them a fair amount of interest. Industry experts have suggested law firms may adopt new policies and retainers covering client money that allows them to share the cost with clients, and that more firms may become reluctant to hold client money in future. Read more about the impact of negative interest rates at: <http://bit.ly/3sc9Dhw>

Consumers' legal needs remain unmet

A report from the Legal Services Board has indicated that consumers' basic legal needs are still not being met, despite significant improvements in the legal advice market over the last ten years. Around 3.6 million consumers in England and Wales deal with a legal issue without representation or aid every year, while half of small businesses handle their legal issues alone. The report has also revealed that consumers struggle to access the best deal, as only 30% shop around before choosing a law firm and just 2% use a comparison website. This is despite client satisfaction, innovation and choice in the legal advice market increasing over the last decade. Read more about the report at: <http://bit.ly/3bib5DE>

Consumers turn to 'DIY wills' during lockdown

Research has revealed that demand for 'DIY wills' increased significantly before the introduction of the lockdown in England in November 2020. Overall, the number of internet searches for 'DIY will' increased by over 1,500% in the week ending 7 November 2020, while searches for 'make a free online will', 'free will template' and 'online will' also increased significantly. The rise in consumers turning to DIY wills has been driven by capacity challenges in the legal sector during Covid-19. Almost three quarters of lawyers said lockdown had impacted their work, such as delays obtaining a grant of probate to process wills. Read more about the research at: <http://bit.ly/35ie14N>



Covid-19 puts legal aid lawyers under severe pressure

A survey by the Legal Aid Practitioners' Group (LAPG) has revealed that 79% of legal aid lawyers have experienced stress as a result of the Covid-19 pandemic. More than half (55%) blamed longer working hours, two thirds said that they struggled to switch off from work and almost 60% had disrupted sleeping patterns or difficulty in sleeping altogether.

Although only 5% of lawyers who responded to the survey said they

had suffered no adverse impact, just 10% of legal aid lawyers were furloughed. However, 60% said their working hours or patterns had changed and 30% said they had suffered a reduction in income. The survey also revealed that 41% of respondents had financial concerns and 35% expressed management concerns. Fears of job or organisational insecurity were raised by 49% of survey respondents and 43% said they had more work to do because there were fewer staff available to do it.

The LAPG also warned that the inability of legal firms to recruit and retain staff and falling numbers of legal aid providers are also impacting negatively on the sector and are challenges that are likely to increase and accelerate as a result of Covid-19.



A separate survey carried out by the LAPG revealed that 86% of legal aid lawyers have been incorrectly refused funding. A further 61% said they had been forced to issue a claim or make an application without knowing if legal aid would be granted. The LAPG concluded that the system needs additional investment and current government plans would not solve the problems.

Read more about the surveys at: <http://bit.ly/3hOgitr>



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CMA calls for further reform in the legal services sector

In a review of progress made since its 2016 market study of the legal services sector in England and Wales, the Competition & Markets Authority (CMA) has called for further reforms to improve the transparency of legal firms and strengthen consumer protections.

The review found that despite 'clear signs of progress', requiring firms to publish pricing information has made little impact on competition in the sector. The CMA now recommends that the Legal Services Board (LSB) should address some aspects of the market study that still require action, such as firms providing more information about the quality of their services.

The CMA also recommends that the Ministry of Justice (MoJ) should establish a mandatory public register of unregulated service providers and require them to

provide 'appropriate redress' in the event of poor or negligent services. In addition, the LSB should review the activities of certain legal services providers to ensure that any restrictions are necessary and proportionate.

The review notes that the Government has not acted on the CMA's call for a review of the Legal Services Act 2007, and stresses that wholesale reform of the Act is needed, particularly as there are signs of growth in the unregulated sector.

The CMA is encouraging the MoJ, the LSB and other legal services regulators to continue to work towards reform and to make sure the sector works well for consumers long into the future.

Read more about the review at: <http://bit.ly/3s4Rult>