



Bar Council of England and Wales

Country Report: England & Wales for the Vienna Bar Presidents' Conference 2023

This Report is an overview of the work of the representative side of the Bar Council of England and Wales during the year 2020. This excludes the work of the independent regulator within the Bar Council, the Bar Standards Board.

Public discourse on the role of lawyers

The Bar Council is increasingly concerned that in public discourse in the UK there has been a growing and concerning tendency to associate lawyers with the causes of their clients. This regrettable trend has been seen in statements by politicians, in press reporting and comment, and in some proposed regulatory developments, which wrongly muddle up the role of lawyers – which is to advise and represent their clients as fully as the law allows – with the role of law enforcers, whose job it is to enforce the law.

International

Rule of Law work

- We continued our work under the government's "Homes for Ukraine" scheme placing over 30 Ukrainians lawyer families with some of the 200 barristers who have offered accommodation under the scheme.
- We have developed a pilot programme for Afghan refugee lawyers to provide advice, contacts, experience and support for those considering a future in law in England & Wales. This programme will be evaluated once the first cohort have completed placements in Spring 2023.
- We have continued – so far successfully - our advocacy to ensure that governmental Russia sanctions policy does not diminish access to justice given that a core principle of the rule of law is that against any adverse act of state access to an independent tribunal must be provided.
- Last year's International Programme for the Opening our Legal Year a saw record attendance of over 100 international bar leaders and guests allowing for an important strengthening of our international friendships post-COVID restrictions.
- In December we welcomed Salieu Taal, the President of the Bar Association of Gambia who delivered our [International Rule of Law lecture](#) on the topic of transitional justice in his country.

International Business Development

With COVID receding we were able to conduct once more important visits to strengthen the international practice of Bar:

- On 16/18 June we conducted the first ever conference for all the common law legal professions of Europe in Limassol, Cyprus in conjunction with the Cypriot Bar Association. Over 150 international practitioners attended with feedback encouraging us to run the event again this year.
- In November we visited Kenya and Tanzania with a strong delegation of our members, conducting well attended legal symposia, covering a wide range of topics from arbitration to cyber crime.
- At the IBA Conference in Miami in the same month, we held a successful international arbitration seminar with the Florida Bar and hosted our international friends at a well-attended networking reception.

International Trade Policy Work

Under a grant from our Ministry of Justice we conducted negotiations in a number of jurisdictions to develop greater reciprocal legal market access for the Bar. This saw us signing relevant MoUs with the Bar Associations of Sri Lanka, Ghana and Guyana as well as Kenya and Tanzania. We have also provided input into the government's negotiations of FTAs with India, Mexico and Canada.

Regulation

Last year saw us responding once more to many initiatives of the Legal Services Boards (LSB). Our view is the Legal Services Board is overstepping its role, which is principally the oversight regulator for the front-line Approved Regulators, and straying too much into policy areas which are for parliament to consider, not for a conduct regulator to consider. In early 2022 the Bar Council submitted a [response](#) to the LSB's draft statement of policy on ongoing competence. We highlighted how barristers' competence is already assured throughout their careers and expressed concern about additional regulation in this area based on incorrect assumptions. The Bar Council also [responded](#) to LSB proposals to change the way they assess the performance of the frontline regulators (for example, the Bar Standards Board), expressing concern about a widening of their remit, potentially detracting from the core areas of regulatory activity.

The Bar Council has supported the Legal Ombudsman by responding to a consultation on proposed changes to its scheme rules. Those adopted will come into effect in April 2023, making the rules more proportionate and the complaints resolution process more efficient, to the benefit of clients as well as lawyers. More recently, we [responded](#) to its draft business plan and strategy consultation.

Anti-Money Laundering (AML)

Guidance for the Bar, drafted by our Money Laundering Working Group, along with guidance for the whole UK legal sector, was approved by Her Majesty's Treasury (HMT) in June 2022.

HMT approval means courts are now required to consider compliance with the guidance in assessing whether an offence was committed.

HM Treasury will be consulting on changes to the UK's AML supervision regime in 2023. We have already given feedback on their proposals at the pre-consultation stage.

The Bar Council [voiced its strong opposition](#) to the introduction of a new regulatory objective to the Legal Services Act 2007 (LSA) as part of the Economic Crime and Corporate Transparency Bill. This regulatory objective would oblige legal sector regulators to promote the prevention and detection of economic crimes.

In September the Bar Council submitted a [joint response](#) together with the Bar of Northern Ireland and the Faculty of Advocates to the consultation on the update to the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) Sourcebook.

Law Reform

The Law Reform Committee responds to approximately 20 consultations and calls for evidence a year, mostly issued by the Law Commission and government departments. Last year the topics of the consultation paper included Human Rights Act Reform, fraud in the criminal justice system and a review of the make improvements to the successful Arbitration Act 1996. In spring 2022, the committee [responded](#) to the Ministry of Justice call for evidence in relation to Strategic Lawsuits Against Public Participation (SLAPPs), a matter on which we liaise closely with the CCBE and bars abroad. All consultation responses can be found on the Bar Council [website](#).

We continued with our annual law reform essay competition this year, receiving over 60 entries from law and Bar students and pupils. This year's competition was generously sponsored by the City Law School, University of London. Six prizes were awarded and all winning essays are available on the Bar Council [website](#).

Ethics

The Ethical Enquiries Service continues to provide a valuable service to many hundreds of barristers every month. In the period 1 December 2022 to 1 December 2023 over 4,000 ethics calls were answered. Over 600 emails asking ethical questions were also responded to.

The committee has been working on new guidance on issues such as clients recording a conference with their barrister, recording court proceedings without permission and employed barristers in whistleblowing situations with their employer.

The committee delivered a seminar for criminal practitioners on issues relating to absconding clients, client incapacity and returning instructions. The committee kept updating resources available on the Bar Council's [Ethics Hub](#) which contains over 60 guidance documents.

The committee also responded to a consultation from Bar Standards Board, proposing some changes to the way it regulates aspects of barristers behaviour outside profession practice that

nonetheless may breach the code of conduct. The regulator is notably grappling with a growth in barristers using social media platforms. The Committee's response is [here](#).

Equality, Diversity & Inclusion (EDI) & Social Responsibility

Race Equality Work

- Race Progress Report: Following publication of our 2021 [Race at the Bar Report](#), we encouraged the profession to take action on race inequality. In November 2022, having supported the profession with guidance over the last 12 months, we published a [progress report](#) which concluded that good progress has been made, but there is more to do.
- Race Training: We continued our Race Awareness training, delivering 55 courses and training 685 barristers. We are looking to adapt the course to meet overwhelming demand.
- “[10,000 Black Interns](#)” (extended internships): Following positive feedback from the 24 interns on our pilot programme we will run a new round of funded internships in the summer of 2023 with over 70 chambers.

Equitable Briefing (Accelerator Programme)

This programme is designed to address inequalities between male and female barristers, as well as those with other protected characteristics/under-represented groups at the Bar. We have continued to make steady progress across the nine projects of this programme, with a significant focus on distribution of work and [tackling harassment and bullying](#).

Social Mobility

We have agreed a strategy to support social mobility at the Bar to be implemented over 2023. Key is to set targets to support us in tracking progress.

Sustainability Network & Net Zero

Our [Sustainability Network](#) is growing and is key to providing practical support to chambers to help reduce their carbon emissions. Bar Council's Climate Crisis Working Group is focussing on climate ethics for the profession, training and establishing a standard for Chambers. We have also contributed to COP27 – monitoring how others are supporting their respective professions across the globe.

Pro Bono

We continue to support [Pro Bono Week](#) annually. This activity aims to celebrate pro bono achievements at the Bar and encourage more barristers to volunteer/take on pro bono work.

Young Bar

The Bar Council has built on [published research](#) on the Young Bar to identify policy priorities. These included re-establishing the International Professional and Legal Development Grant Programme and the Anglo-Dutch Exchange. We also ensured young barristers' input into the Criminal Legal Aid Independent Review (CLAIR). Support for the Young Bar is embedded into relevant wider Bar Council programmes such as sustainability, wellbeing, pro bono promotion and equitable briefing.

Employed Bar

Employed Barristers make up one fifth of all barristers in England & Wales, and the Bar Council's key focus remained on promoting 'One Bar' and strengthening links between the employed Bar and the self-employed Bar, the Inns of Court, and the Specialist Bar Associations (SBAs).

In October, the Bar Council celebrated the best of the employed Bar with the return of its [Employed Bar Awards](#).

The Courts

The backlog in the criminal courts continues to be high. Over 60,000 cases have been pending in the Crown Courts for most of 2022. There are also backlogs in the civil and family courts. There are concerns about some of the actions by the Government and His Majesty's Courts and Tribunals Service (HMCTS) to address the backlogs:

- **Video Hearings:** HMCTS are working on improved software for on-line hearings, called Video Hearing Service. The Bar Council welcomes the technology but only where appropriate. It should not be used for trials.
- **Small Claims Paper Determination Pilot:** under this scheme District Judges may, contrary to the wishes of parties, dispense with the need for a final evidential hearing and decide the matter on the papers only. The Bar Council is raising concerns about this proposal.
- **Staff undertaking judicial functions:** the Bar Council continues to raise concerns about non-legally qualified HMCTS staff carrying out judicial functions, for example in online civil money claims.
- **Scheduling and Listing:** in the Crown Court, in an attempt to reduce the backlog, many courts have been "over listing" cases. Lists have been lengthened in the expectation that there will be late guilty pleas and thus more cases can be squeezed in. This results in barristers having to be available for cases that have no prospect of being heard, resulting in loss of income to them and inconvenience to witnesses and others.

Probably the main reason why the Crown Court backlog is reducing too slowly is the shortage of barristers available to defend or prosecute due to the low fee rates.

Legal Aid

- **Criminal Legal Aid:** The Criminal Legal Aid (Independent) Review (CLAR), in 2021, recommended an immediate minimum increase of 15% increase in all criminal legal aid fees as a first step. In 2022, the Government initially proposed to only partially introduce that recommendation. This resulted in many criminal barristers declining to take on new criminal legal aid cases (described as a strike). After protracted negotiations the Government eventually agreed to fully implement the CLAR recommendations. A Criminal Legal Aid Advisory Board has now also been established by the Government, which will seek to address issues around the sustainability of the profession. The Bar Council is also awaiting news from the Government as to whether

the 15% increase for defence fees will be matched with an equivalent increase in prosecution fees in order to maintain an important parity.

- **Civil and Family Legal Aid:** in January 2023, the Ministry of Justice announced¹ that it would begin a Civil Legal Aid Review. The Bar Council responded² welcoming the review but said that interim fee increases are needed to prevent a system collapse.

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January 2023

¹ <https://www.gov.uk/government/news/government-review-to-explore-options-to-improve-civil-legal-aid-market>

² <https://www.barcouncil.org.uk/resource/civil-legal-aid-review-essential-but-interim-measures-needed-now-says-bar-council.html>