



Country Report England & Wales
for the Vienna Bar Presidents' Conference 2016
from the
Bar Council of England and Wales

Introduction

The Bar Council represents and, through the independent Bar Standards Board (BSB), regulates over 15,500 barristers in self-employed and employed practice in England and Wales. The Bar Council promotes:

- The Bar's high quality specialist advocacy and advisory services
- Fair access to justice for all
- The highest standards of ethics, equality and diversity across the profession, and
- The development of business opportunities for barristers at home and abroad.

This report covers the key highlights and achievements of the Representation, Policy and Services work of the Bar Council over its Business Year 2014-15 which may be of interest to bar associations internationally.

Equality and diversity at the Bar

Health and Wellbeing

In October 2014, the Bar Council launched a survey to assess health and wellbeing at the Bar, and to identify risk factors which may impact on a barrister's performance. The survey forms part of a larger 'Wellbeing at the Bar' programme coordinated by the Bar Council, which aims to better understand levels of wellbeing across the Bar and to identify and deliver interventions and resources to support practising barristers. The programme also aims to encourage discussion on mental health and shift current attitudes towards a subject rarely spoken about within the legal profession.

Nearly 2,500 members responded anonymously to the Bar Council survey, indicating the significance of this topic. The survey found:

- 1 in 3 find it difficult to control/stop worrying
- 2 in 3 feel showing signs of stress equals weakness
- 1 in 6 feeling in low spirits most of the time
- 59% demonstrate unhealthy levels of perfectionism
- Psychological wellbeing within the profession is rarely spoken about

The survey also found that those who were mentored had significantly higher resilience. For a full copy of the report see:

http://www.barcouncil.org.uk/media/348371/wellbeing_at_the_bar_report_april_2015_final.pdf

In November 2015 the Bar Council put out a call for evidence on the experience of members of the profession which highlighted issues of:

- a) Too much work leading to stress (work-life balance)
- b) Financial pressures leading to stress
- c) Stigma associated with disclosing a wellbeing issue
- d) Secondary Stress (associated with dealing with distressing evidence such as sex crimes, child pornography and torture)
- e) Bullying behaviour from judges and solicitors

This information is now helping the Bar Council to develop practical tools and learning materials to help barristers and those who work closely with them to manage their wellbeing.

Interventions will include:

1. Extending the Bar Mentoring Service beyond its current focus on silk and judicial appointment to ensure suitable mentoring (social support) is available to barristers whatever their life stage or need
2. Producing practical support for chambers - chief executives, heads of chambers and clerks - to help them identify when stress is becoming a problem for a barrister and guidance on what to do (including liaison with the regulator)
3. Developing educational resources for new practitioners and pupil supervisors to help them identify and address their own wellbeing issues
4. Working with stakeholders such as LawCare to improve the quality of service and support provided to the profession.

To do this, we are working with representatives from the Bar Council, Inns of Court, Circuits, Institute of Barristers' Clerks and Specialist Bar Associations. The programme is supported by the Inns of Court, the Institute of Barristers' Clerks, the Charlie Waller Memorial Trust, and LawCare.

Social Mobility

The Bar Council is committed to improving access to the profession and encouraging greater equality and diversity at the Bar. To achieve this we have a comprehensive programme including:

1. Careers Advice, encouraging barristers to speak in state schools
2. Running Careers Days for school students on each circuit introducing the profession
3. Attending Law Fairs at universities where there is a high proportion of students from non-traditional backgrounds
4. Running work experience (mini pupillages) for students on social mobility programmes (with additional advocacy training) – known as Bar Placement Week
5. Delivering e-mentoring to students who meet social mobility criteria where students are partnered with volunteer barrister mentors who will help mentees navigate the path to becoming a barrister via a specialist online platform.

Corporate Social Responsibility and pro bono

The Bar Council continues to promote a range of Corporate Social Responsibility (CSR) activities and pro bono initiatives both as an organisation and on behalf of the profession.

Each November we support an annual National Pro Bono Week to celebrate the contribution lawyers make in providing pro bono work to the most vulnerable in society.

The Bar Council has also continued to support for the Annual Bar National Mock Trial Competition, organised by the Citizenship Foundation. The competition provides an opportunity for 2000 school students aged between 15 and 18 to gain a practical insight and understanding of the legal system. The 25th anniversary of the competition is being celebrated in 2015/16.

Many barristers continue to commit their time to support the commendable work of the Bar Pro Bono Unit (BPBU) and the Free Representation Unit. The Bar Council supports the work of these organisations financially, and looks into ways of helping the Bar's pro bono community to thrive on a more financially sustainable basis.

- Over 3,600 barristers - including one third of all QCs - sit on the BPBU volunteer panel
- In 2014, the BPBU gave legal assistance on various aspects of cases in over 1,120 instances to members of the public, and
- Nearly half of all barristers voluntarily contribute upwards of £30 a year to the BPBU to maintain the functioning of the unit

In 2016 the Bar Council Chairman is establishing a Pro Bono Panel to support the Bar Council and profession in telling its story around pro bono and other volunteering.

Representing the interests of barristers

A key aspect of the Bar Council's work is engaging with Parliament and the Government on legislation and other issues which impact on the administration of justice. During 2014-15, the Bar Council actively communicated its concerns on a number of areas affecting the profession, including (LPP), judicial review, court fees, and legal aid, and closely monitored the Serious Crime Bill and the debate around repealing the Human Rights Act.

Legal Professional Privilege

The Bar Council worked hard campaigning for the protection of LPP in primary legislation over the past year. Currently, the Regulation of Investigatory Powers Act (RIPA) 'codes of practice' offer little or no protection for LPP against government surveillance.

The recent *Belhadj* case, which revealed unlawful spying on privileged communications between client and lawyer, reinforces the Bar Council's message that LPP is fundamental to a fair trial. The Bar Council responded to two consultations highlighting the inadequacies of the codes and lobbied parliamentarians in the lead up to the release of David Anderson QC's investigatory powers review report.

In December 2014, the Bar Council and the Law Society joined forces with the Faculty of Advocates in Scotland in supporting the CCBE's European Lawyers' Day Declaration, which calls for a robust and transparent legislative framework that protects lawyer-client confidentiality.

We continued our efforts to make the case for statutory protection of LPP ahead of the Draft Investigatory Powers Bill, which was published in the autumn of 2015. We produced Parliamentary and legal briefings on legal privilege and gave written and oral evidence to the joint committee charged with pre-legislative scrutiny. We will be assisting Members of Parliament in developing suitable amendments to safeguard the right to LPP during its passage through the two Houses of Parliament.

Enhanced court fees

In January 2015, the Coalition Government announced it would be introducing 'enhanced court fees' for money claims, which include late payments, debt and compensation. This means a blanket 5% fee on businesses and individuals bringing claims worth between £10,000 and £200,000, with fees of up to £10,000 payable up-front.

Having participated in the initial consultation of December 2013, the Bar Council responded to the announcement by raising concerns about:

- Difficulties for small and medium enterprises in chasing late payments
- The threat to the attractiveness of the UK as a jurisdiction for litigation and dispute resolution, and
- Access to justice for people with personal injury and professional negligence claims.

- The Bar Council also expressed concerns about the consultation process, during which no proper evidence was produced to support the Ministry of Justice's assertion that enhanced court fees would not impact the competitiveness of UK courts.

The Government undertook a further consultation in July 2015 on further changes to fees and charges for courts and tribunals, including a proposal to increase the maximum fee for money claims to £20,000 or to remove the maximum fee entirely. The Bar Council once again reiterated its concerns about increasing fees and charges. On 17 December 2015 the Government announced it would implement the majority of the changes it proposed, but that it would not be increasing or removing the cap on court fees for money claims.

Judicial review

The Bar Council carried out a sustained campaign against restrictions on judicial review in the Criminal Justice and Court Bill. The Bill severely limited the ability of individuals or groups to challenge public authorities when they make unlawful decisions. The Bar Council worked tirelessly with other legal bodies in urging peers to vote in favour of the Lords' amendments to Part 4 of the Bill, which were intended to protect the legal process of judicial review. The Bill reached ping-pong stages in Parliament and after two defeats in the House of Lords, it was passed in 2015.

Legal aid

Discussions continue to be held with the Government on fees for advocates in criminal legal aid Crown Court defence work. These fees are calculated on a mathematical formula under the Advocates' Graduated Fee Scheme (AGFS). The formula means that payment is "graduated" such that it pays more for a case which is more serious or complex, based upon the following criteria: the category of the case, the category of the advocate, the number of days of trial, and the number of pages of served prosecution evidence.

In previous years the Government has cut the fees paid to advocates by reducing the rates in the formula, in order to save money. Further cuts were threatened for 2015 for advocates but were not introduced, following successful advocacy by the Bar Council, the Criminal Bar Association and other legal bodies where an agreement was reached to defer further cuts and to review the Scheme.

The current Graduated Scheme is in need of reform for two reasons:

1. Research jointly undertaken by the Bar Council and the Ministry of Justice¹, has shown that the scheme is actually less 'graduated' than had been thought, with the result that there is little career progression for advocates. The report found that for "most engaged barristers" average AGFS fee incomes increase with experience but the effect is small. Our estimate of fee progression suggests that AGFS fee income increases by around 2%

¹ <https://www.gov.uk/government/publications/composition-and-remuneration-of-junior-barristers-under-the-advocates-graduated-fee-scheme-in-criminal-legal-aid>

for each five years of experience, equating to around a 14% increase over a 35 year career.”

2. The current scheme is subject to increasing numbers of disputes over the correct calculation of the fee since the payment formula is partly based on the number pages of evidence served. Increasingly material is being served electronically, and there is often no agreement for example as to how many pages an Excel spreadsheet should be counted as.

In October 2015 the Bar Council proposed a new Graduated Fee Scheme which would greater graduation and would not rely on the numbers of pages served.² The Ministry of Justice is still in discussions with the Bar Council and the Law Society over the Bar Council’s proposed scheme.

Contracting

Following on from the support provided to the Bar on entities over the past year, the Bar Council has developed a new project to understand how the Bar is currently, or would like to, contract or bid for work, and what the Bar Council can do to better support the Bar in this area. The project focuses on contracts with businesses, local authorities and the Legal Aid Agency for family and civil work.

Criminal Justice Reform Group

The work of the Bar Council’s Criminal Justice Reform Group continued throughout the year. The Group was established in April 2014 to ensure that the Bar Council provides co-ordinated and consistent approaches to the multiplicity of reforms proposed for the criminal justice system and criminal legal aid. The Group also contributed to the Leveson Review of the criminal justice system and Sir Bill Jeffrey’s review of advocacy in late 2014 and early 2015. The work of the Group pre-empted the Ministry of Justice consultation on Preserving and Enhancing the Quality of Criminal Advocacy, which was published in October 2015. The Government’s response is expected in Spring 2016.

The Bar Council also commissioned a report by His Honour Geoffrey Rivlin QC, Chair of the Criminal Justice Reform Group, which is published on the Bar Council website and sets out ways of sustaining the criminal justice system in England and Wales.

In other work, the Bar Council responded to 51 external consultations from the Government, Law Commission and other bodies during 2015. With its responses the Bar Council seeks to improve access to justice and the functioning of the legal system. A good example the is the current Civil Courts Structure Review, which, among other things, proposes to create an Online Court for claims of up to £25,000 which is supposed to function without lawyers. The Bar Council will respond with a view to ensuring that clients are not left to fend for themselves, when this could result in a denial of justice. Coming on top of the recent severe restrictions on the availability legal aid in civil cases and the huge increases in court fees in such cases, these proposals could have a major impact on litigants and we shall be examining them carefully.

² <http://www.barcouncil.org.uk/media-centre/news-and-press-releases/2015/october/bar-council-working-group-re-designs-agfs-model/>

Ethics and Practice Assistance

The Bar Council provides an Ethical Enquiries Service for the benefit and assistance of barristers to help them identify, interpret and comply with their professional obligations in the BSB Handbook.

The Bar Council responded to over 500 email enquiries and 6,000 telephone enquiries made to the Ethical Enquiries Services in 2014-15. In addition to this, the Bar Council has published materials to assist barristers and chambers on matters of professional conduct and ethics. These documents are available on a dedicated A-Z section on the Bar Council's website and include guidance on ethical issues, equality and diversity, practice management, and the development and use of information technology.

International business development and promoting the rule of law overseas

International initiatives flourished during 2014-15 as the Bar Council continued to strengthen ties with international legal bodies and identify and promote opportunities for the Bar in overseas jurisdictions.

The inaugural Brazilian-British Lawyers Exchange Programme for young lawyers and a new mentorship programme for Omani lawyers were two important initiatives launched during the year, adding to the existing exchange programmes with China, South Korea and Russia.

The Brazilian-British Lawyers Exchange Programme is a joint initiative between the Law Society, BPP Law School, the Ordem dos Advogados do Brasil (OAB) and Lex Anglo-Brasil. The Bar Council welcomed the first wave of Brazilian lawyers to England in November 2014. The return leg of the programme saw a group of British junior barristers and solicitors visit Brazil in May 2015.

The Omani Mentorship Programme for Omani lawyers, in partnership with Beyond Borders, builds on the growing relationship between the Bar Council and the Omani legal profession. Participating lawyers were partnered with mentors in the UK to help them gain an understanding of the English legal system, enhance their legal skills, and enable them to develop valuable contacts.

This year, the Bar Council celebrated the 25th anniversary of its China Training Scheme, which provides a valuable opportunity for Chinese lawyers to experience practice at the English Bar, and we were delighted to agree a new cooperation with CIETAC, the leading Chinese arbitration body, which all much values to the Scheme.

We continued our successful series of International Rule of Law Lectures with an insightful presentation by the Chief Justice of Hong Kong on the rule of law in that unique jurisdiction.

Other highlights of the year included visits to Kazakhstan and Brazil to build closer relations with the local legal profession, as well as a seminar on the aftermath of the 2008 Financial Crisis with the German Bar Association.

EU law and policy development

Through the activities of its EU Law Committee and its Brussels office, the Bar Council actively monitors and seeks to influence the development of EU policy in the area of law and justice, upon which much UK law is based. The Bar Council is an established voice in Brussels. Our primary interest is the interaction between EU law and the Common Law, and to ensure the successful completion, in the public interest, of the EU acquis in several specific areas; notably consumer law, private international law and through mutual recognition instruments in the criminal justice field. Rule of law issues are increasingly prominent on the EU's agenda, with the emphasis on values and not just value for money, an approach the Bar is also actively supporting.

Over the past year the Bar Council has examined and provided input on the EU's changing priorities in diverse areas such as financial services, civil and criminal judicial cooperation and the Digital Single Market Strategy, recently raising concerns regarding possible EU-level contract law measures for online sales of both digital and tangible goods.

The Bar is supportive of the EU's ongoing review which will extend the scope of cross-border civil justice measures including the European Small Claims Procedure, making these simple, cost-effective procedures available to more potential claimants. The Bar continues to highlight the success of the EU's jurisdiction and private international law regime, centred on the Brussels I regulation, Rome I, the Judgments Project and interaction with the Hague Convention, and cautions against any EU action that would undermine that.

In advance of the planned in-our referendum on EU membership the Bar Council is available to policy makers and legislators as an objective source of information on the legal implications of the key reform options.

**Bar Council of England and Wales
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