



Country Report England & Wales for the Vienna Bar Presidents' Conference 2018 from the Bar Council of England and Wales

Introduction

The Bar Council represents and, through the independent Bar Standards Board (BSB), regulates over 16,000 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 a few highlights and achievements of the Representation, Policy and Services work of the Bar Council over its Business Year 2016-17 which may be of interest to bar associations internationally.

Court Reform

The Government's consultation, [Transforming our Justice System](#), published in September 2016, outlined an ambitious programme of court reform, including plans for more civil and criminal proceedings to take place online, and for increased use of telephone and video hearings.

The Bar Council engaged critically and constructively with the reform programme – largely through Her Majesty's Courts and Tribunals Service (HMCTS) Professional Engagement Groups (PEGs) - and has been clear that its participation in HMCTS' strategy does not imply endorsement of the programme overall or of any specific proposal. The Bar Council's work with the PEGs has provided a continuing opportunity to ask questions and raise concerns about a range of major policy initiatives as well as to monitor and influence this important and wide-ranging agenda.

Bar Council representatives, including the Chair and Vice-Chair of the Bar and the Chairs of the Legal Services Committee and Young Barristers' Committee, have also attended HMCTS

workshops and helped to find research participants to test systems such as the forthcoming online divorce and lower-value civil money claims services.

During the last Parliament, the Bar Council briefed parliamentarians on the Prisons and Courts Bill and the implications of online guilty pleas, as well as proposed amendments which were debated during the Commons committee stage of the Bill. The Bill did not complete its parliamentary passage owing to the General Election in June 2017 but a shortened version of the Bill is expected to be introduced during the current parliamentary session.

Brexit

Since the EU referendum result in June 2016, the Bar Council's Brexit Working Group has played a leading role in evaluating the legal and constitutional implications of Brexit and has produced a raft of much-needed guidance for Government, Parliament and the media on behalf of the profession and in the public interest.

Top of the working group's agenda has been securing movement for lawyers within Europe and other jurisdictions where barristers have benefitted from European trade agreements. It is vital for legal and associated professional services, as well as to businesses across a range of sectors, that legal professionals throughout the EU are able to continue to provide advice and legal representation to their clients.

In support of this objective, the Bar Council is represented on the Mutual Market Access Group (MMAG) which reports to the Professional and Business Services Council of the Department for Business, Enterprise, Innovation and Skills (BEIS). Included in the MMAG's terms of reference is the need to explore the development of Mutual Recognition of Qualification Agreements (MRAs) and to submit market access negotiation requests to the Government on behalf of the professional and business services sector.

The House of Commons Justice Select Committee report on [Implications of Brexit for the Justice System](#) highlighted the importance of mutual recognition and enforcement of judgments for businesses and commerce, as well as for families and the vulnerable individuals impacted by such judgments. The Bar Council has therefore urged both the UK Government and EU negotiators to put justice issues on a separate negotiation track to enable speedy progress to be made on such matters which are rule of law rather than trade issues.

The Brexit Papers

A key output of the Brexit Working Group is the collection of [Brexit Papers](#) which offer Government, parliamentarians, the media and the public a concise and informative assessment of the legal challenges posed by leaving the EU. Now 25 in number, the papers cover issues ranging from the importance of the EU market for legal services, the role of the CJEU and the enforcement of judgments, to fisheries, agriculture and consumer law. The Brexit Papers have been read at the highest levels of government.

International

Rule of law

As part of its work to promote the rule of law in 2016-17, the Bar Council:

- Organised the [10th Annual International Rule of Law lecture](#), delivered by Baroness Françoise Tulkens, former Vice-President of the European Court of Human Rights, and celebrated the anniversary of the lecture by publishing a collection of the first 10 lectures, and **International Rule of Law Lecture**
- Featured Dr Shirin Ebadi, who was awarded the 2003 Nobel Peace Prize for her efforts to promote human rights - in particular the rights of women, children, and political prisoners in Iran – for the 11th [International Rule of Law Lecture](#) on 9 November 2017
- Took part in a high level Foreign and Commonwealth Office sponsored event in Beijing on the theme: “Legal and Judicial Co-operation on the Belt and Road”. The visit by the Chair of the Bar included a one-day conference at Renmin University, a networking event with the Bar Council Training Scheme alumni and a side visit with the Chinese equivalent of the Justice Minister, which was televised.

Additionally, the Bar Council continued to speak out whenever and wherever rule of law crises occurred. In 2016-17 the Bar Council wrote [five letters](#) to highlight concern over:

- The arbitrary arrest and trial of lawyer, Nkongho Felix Agbor-Balla in the Republic of Cameroon
- Ongoing human rights violations and attacks on the legal profession in Turkey
- The abduction of Bangladeshi lawyer, Mir Ahmed Bin Quasem
- The killing of 70 people, mainly lawyers and journalists, in Pakistan, and
- The mass arrest of judges in Turkey.

International relationships and business development

To promote the Bar of England and Wales to new clients and to build relationships with members of legal professions in international jurisdictions, in 2016-17 the Bar Council:

- Undertook a business development mission to South Korea, China and Hong Kong to strengthen ties with Asia’s legal sector
- Held the fourth [Russian Law Week](#) in London. The conference, organised in partnership with the Law Society and Russian Bars, was attended by some 170 Russian, CIS and UK lawyers
- Held the first English-Cypriot Law Day in Nicosia, Cyprus, attended by over 100 Cypriot lawyers and around 20 barristers from England & Wales
- Hosted 12 Chinese lawyers from some of China’s leading law firms in Beijing, Shanghai, Guangzhou and Changzhou as part of the [26th Bar Council China Training Scheme](#) (BCTS)
- Delivered a three-week training scheme for young Russian and Ukrainian lawyers
- Jointly with Inner Temple and the Royal Commonwealth Society, the Bar Council hosted a half-day conference to brief around 30 High Commissioners on the legal system of England and Wales, showcasing the role of barristers and the international legal services they provide

- Awarded, via the [Bar Scholarship Trust](#), 24 grants to assist barristers of seven years' practice and under to participate in international legal events of their choice to contribute towards their professional development
- Conducted the Bar Council's third business development mission to Brazil, led by the Chair of the Bar. A group of four barristers and two solicitors joined the delegation for the events in Sao Paulo before spending two weeks in leading law firms in Sao Paulo and Rio de Janeiro as part of the British-Brazilian Exchange Programme, and
- Held the fourth [English Law Week](#) in November 2017 and, for the first time took place in St Petersburg as well as Moscow.

In September 2017, the Bar Council hosted over 60 international Bar leaders for the Opening of the Legal Year activities. The programme, hosted jointly with the Law Society featured roundtable discussions on technological innovation to increase access to justice, diversity in the legal profession and judiciary, and international trade in legal services and the rule of law.

Pro Bono

Many barristers devote their time to pro bono work, whether by providing legal advice or representation for free to those in need, or by volunteering their skills in another capacity, such as giving careers advice in schools, acting as a trustee, or even coaching a team of students for a mock trial competition.

To demonstrate the varied and important work barristers do on a pro bono basis, in 2016 the Bar Council developed the [Bar Pro Bono Hub](#) in conjunction with the Bar Pro Bono Board.

The Pro Bono Hub lists details of projects for barristers wishing to get involved.

Every year, the Bar Council sponsors the Bar Pro Bono Unit's [annual award](#), which is presented at the Annual Bar & Young Bar Conference.

Bar Council of England and Wales January 2018



Report on issues relating to the independence of the legal profession for the Vienna Bar Presidents' Conference 2018

Introduction

The 'Approved Regulator' of the Bar is the Bar Council. In accordance with the Legal Services Act 2007, the Bar Council is obliged by law to separate its regulatory and representative functions, which it does by delegating responsibility for regulating the Bar to the independent Bar Standards Board (BSB). The BSB has its own independent Board and staff, and regulates barristers called to the Bar in England and Wales.

Training and support

The Bar Council provides support through the Ethical Enquiries Service to barristers who need help to identify, interpret and comply with their professional obligations as set out in the BSB Handbook. Additionally, the Bar Council offers training sessions and publishes comprehensive [Practice & Ethics Guides](#).

Communications protocol

The Bar Council and the BSB comply with a communications protocol that supports regulatory independence and is reviewed at regular intervals. Guidance on the protocol is available for all staff, and new staff are instructed about the significance of the protocol and the guidance as part of their induction training.

In addition, the Chair's Committee, chaired alternately by the Chair of the Bar, and the Chair of the BSB, meets on a monthly basis. It is responsible for keeping under review all aspects of the relationship between the Bar Council and the BSB.

Consultation on Legal Services

2016-17 saw a number of consultations impacting the regulation of the profession. The largest of these was the Competition and Markets Authority Market (CMA) Study of the legal services sector. Launched in January 2016, the market study looked at the following three themes:

- Theme 1: Whether consumers can access and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services

- Theme 2: Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms, and
- Theme 3: Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

The Bar Council met with the CMA on a number of occasions to discuss the scope of the market study and to answer their questions about the Bar.

A Bar working group was established to assist the Bar Council in responding to the Statement of Scope and additional questions submitted by the CMA, some of which related to reserved legal activities. The working group also developed a response to the CMA interim report.

The Bar Council's responses to the CMA are available below:

- [Bar Council response to the Competition and Markets Authority Legal Services Market Study](#)
- [Bar Council response to the Competition and Markets Authority follow-up questions on the legal market study](#)
- [Bar Council response to the Competition and Markets Authority \(CMA\) Legal Services Market Study Interim Report](#)

As a result of the [final report](#), the CMA has asked the regulators to form a Working Group to explore how they individually put the CMA recommendations into practice in their part of the legal services sector. The BSB has issued a consultation on transparency standards towards the end of 2017 with a view to encouraging barristers (particularly in direct access matters) provide more information to clients on matters of fees and costs.

Legal Professional Privilege

Any encroachment of Legal Professional Privilege (LPP) undermines the independence of the legal profession which ultimately relies on the trust that the public can have that there is no interference by the state in the relationship between them and their legal representatives.

The Bar Council led a multi-stakeholder campaign targeting Government, Parliament and the media to amend provisions of the Investigatory Powers Bill in order to limit state surveillance of legally privileged communications.

The position presented by the Bar Council and other stakeholders was that legally privileged material should never deliberately be targeted and should be destroyed if obtained inadvertently.

Having engaged with the Government extensively during pre-legislative scrutiny, the Bar Council's Surveillance and Privacy Working Group worked with MPs and Peers from across

all the main parties to draft and support amendments to the Bill in both Commons and Lords committees.

Whilst the Government was not willing to accept the Bar's position that legally privileged material should never be targeted, the campaign resulted in a threshold test whereby such communications could be targeted only in exceptional and compelling circumstances, and where there is a threat to life, limb or national security.

In April 2017, after the Investigatory Powers Act had received Royal Assent, the Bar Council [responded](#) to the Government's consultation on codes of practice where, amongst other things, it recommended legal training for those who authorise surveillance warrants, and sought recognition that certain communications data can be subject to legal privilege.

The Government published its response in December 2017 which we are examining and will be following up with a view to ensuring LPP safeguards are as well designed as they reasonably can be.

Bar Council of England and Wales
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