



Country Report England & Wales for the Vienna Bar Presidents' Conference 2019 from the Bar Council of England and Wales

Court Reform

In 2018, the Bar Council has continued to scrutinise the Government's highly ambitious court reform programme, including plans to digitise almost all forms of proceedings in the civil and criminal courts, to introduce video hearings as potentially the default option except in criminal trials, and to reduce the size of the court estate and expenditure on both staff and judicial salaries. Many of the proposals under consideration could have profound consequences for justice and the Bar itself, from the use of split shifts or "Flexible Operating Hours" in court to greater powers for court staff authorised to exercise judicial functions

Since 2016, the Bar Council engaged critically and constructively with the reform programme as the representative body for barristers, being clear that this participation does not imply endorsement either by us or by our members. The Bar Council regularly attends strategic meetings to receive updates and ask questions about both the general progress of the programme and about the more than 50 specific projects. Staff and practitioners also ensure that the Bar's perspective is fed into one-off workshops, presentations and research interviews, and the Chair of the Bar escalates issues as necessary in his ongoing meetings with the CEO and senior staff of Her Majesty's Courts and Tribunals Service.

As a result of the Bar Council's engagement, various changes have been made to the plans; most recently, securing an amendment to the Courts and Tribunals (Judiciary and Functions of Staff) Act so that any judicial power delegated to a staff member may include a right of reconsideration by a judge, and that reasons must be given if such a right is not conferred. It was also announced in late 2018, following significant concerns raised by the criminal Bar, that the piloting of Flexible Operating Hours would not extend to the criminal courts. Various other initiatives, such as creating the ability for defendants in criminal cases to indicate their plea online, will be less ambitious than was previously intended, and primarily made available to those who already have access to legal advice and representation.

Further legislation concerning video hearings and online processes is expected in 2019; the Bar Council will monitor and respond to any such developments, and also continue to work with those publicly scrutinising the plans, including Parliament's Justice Select Committee, and the National Audit Office.

Legal Aid

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed legal aid from many areas of civil and family law. When the Act was introduced, the Government promised to review its implementation 'within five years'. The Government began that review in 2018. In October 2018 the Bar Council made a 42-page submission¹ to the review. The submission set out the damage that has been done by the legal aid cuts and put forward suggestions for the most urgent changes that are needed.

The Government has said that they will publish the outcome of their review early in 2019. This has not happened at the time of writing.

In December 2018, the Government amended² the legal aid fee scheme for Crown Court criminal defence cases, after a long period of discussions with the Bar Council and other stakeholders. The change sees a welcome increase of funding for the scheme of either £15 million or £23 million, depending upon which year's case load it is compared against. Barristers remain unhappy about the level of remuneration given that the roughly 10% fee increase it represents is against a background where criminal legal aid fees had been cut by 40% in real terms in the previous ten years.

Regulatory Issues

We recently submitted a second response to the Legal Services Board's consultation on their proposed Internal Governance Rules (which specify how the principle of regulatory independence under the Legal Services Act 2007 should be achieved in practice). The new rules are a radical departure from the existing rules and have the effect of separating the regulator further from the Bar Council (the Approved Regulator) and limiting the opportunity for the Bar Council to influence the regulator and share services with it, as it currently does. We are concerned that if the rules are implemented in their current form in April, there will be significant disruption to both organisations. We believe that the rules are inconsistent with the Legal Services Act 2007 and as such are *ultra vires*.

Anti-money laundering

Following the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, HM Treasury asked the legal sector to draft a single piece of anti-money laundering/counter-terrorist financing (AML/CTF) guidance, for their statutory approval. The Bar Council contributed to this guidance which was published in March 2018. A key achievement for our profession was the confirmation in this guidance that the provision of legal advice will not ordinarily fall within the scope of the Regulations. This significantly relieves the regulatory burden on the Bar as a very low risk profession (notably as barristers may not handle client funds). Subsequently, the Bar Council updated its own

¹ https://www.barcouncil.org.uk/media/687865/laspo_pir_submission_bar_council_final.pdf

² <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/>

[“Money Laundering and Terrorist Financing”](#) guidance with several case studies and practical tips, for compliance with Legal Sector AML Guidance and the new Regulations.

General Data Protection Regulation (GDPR)

Leading up to the advent of the GDPR, the Bar Council commissioned a “GDPR Toolkit” for the profession containing templates, policies and procedures as well as an online compliance tool. This Toolkit was made available to the profession at no cost, to assist them in ensuring GDPR readiness. Further to this, the Bar Council’s [GDPR Guide for Barristers and Chambers](#), was supplemented with three additional template [controller-processor agreements](#) between barristers and their chambers, pupils and visitors respectively. A [frequently asked questions](#) document was published at the end of the year, addressing practical issues arising from the GDPR. All of our [IT advice documents](#) are easily accessible online on our Ethics and Practice Hub.

An additional significant workstream in 2018 was our extensive lobbying of Parliament and Government through the development of what is now the Data Protection Act 2018, to ensure that LPP was sufficiently protected.

Law Reform

The law reform programme has continued with a successful and popular law reform essay competition, which received almost 100 entries, and an annual lecture given by Sir Brian Leveson. The Law Reform Committee responds on average to twenty consultations a year from both the Law Commission and various government departments on a wide range of issues. Topics of the last twelve months include marriage law, domestic abuse, employment rights and stop and search powers, to name but a few. All responses to external consultations are available on the Bar Council [website](#).

Roll-out of Advocacy and the Vulnerable Training

At the end of 2018, the Bar Council had almost completed a two-year project coordinating the roll-out of Advocacy and the Vulnerable training to the criminal Bar. Delivered by volunteer facilitators from across the country, this course embraces a new approach to the questioning of vulnerable witnesses, based on expertise both within the profession and from other related fields, such as child development. The willingness of the Bar to undertake the course on a voluntary basis demonstrates that it remains a forward-facing profession, dedicated to justice and quick to accept necessary change.

Equality & Diversity

Pre-Application Judicial Education

In order to increase judicial diversity, we held a ‘judgecraft’ course to encourage applications/improve success rates of under-protected groups for judicial appointment. In addition, online course content is being developed by the Judicial College and positive action working groups are run by the professions.

Social Mobility monitoring

The Bar Council worked with the LSB, BSB and the Inns of Court to introduce new and more impactful social mobility monitoring questions as well as working with Judicial Diversity Forum partners to ensure consistency across the legal profession in monitoring social mobility.

Wellbeing at the Bar

During 2018, the Bar Council intensified its work to support the profession's mental and physical health. This included, among other initiatives, Wellbeing at the Bar website updates (improved guidance on bullying, new blogs, news stories), conducting four rounds of applications for *Certificates of Recognition* (through which we acknowledge good wellbeing practice within chambers), delivering mental health awareness training for the Bar and holding *Introduction to Wellbeing* sessions around the country to raise awareness and tackle stigma.

Centenary of the Enactment of the Sex Disqualification (Removal) Act 1919 in 2019

In preparation for the 100th anniversary of the first women entering the Bar we developed a campaign/publicity programme to mark this significant event.

Pro Bono

Pro Bono Week (21-27 October '18)

The Bar Council supported the National Pro Bono Centre over Pro Bono Week 2018. Events promoting/celebrating pro bono across the profession included the Bar Pro Bono Awards on 24 October (<https://www.probonoweek.org/>). We updated the Pro Bono Guide (listing support available) and provided limited funding for activity on the Bar's Circuits.

Justice Week (29 October – 2 November '18)

This new initiative, coordinated by the three main legal professional bodies (The Law Society, The Bar Council, and the Chartered Institute of Legal Executives (CILEx)) was introduced to more effectively raise the alarm on the crisis in our publicly funded justice system, and most significantly the impact this crisis has had in denying the most vulnerable in society a fair hearing. A summary of activity (events, research, petitions etc.) can be found at <https://r1.dmtrk.net/t/4CGD-EMMJ-7941V9UUF7/cr.aspx>

CSR Reporting Guide

With assistance from members of the Chancery Bar Association, we have published a guide to good practice in chambers' Social Responsibility reporting <https://www.barcouncil.org.uk/supporting-the-bar/csr/>. This guide encourages chambers to promote and report on Pro Bono activity as a significant part of their work in the community.