



Bar Council of England and Wales

## Country Report: England & Wales for the Vienna Bar Presidents' Conference 2021

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.

### Social Responsibility

#### Equitable Briefing

The Bar Council is now in the second year of delivery of the Accelerator Programme (this sits under our [Modernising the Bar](#) work). The first four projects focus on work distribution (allocation of work in the widest sense). Outputs of note are highlighted below:

1. First Seven Years (Better support for the Young Bar, particularly in practice development). Our first output for this project is the [Inside Guide to Life at the Bar](#). Written by young barristers for young barristers, this Guide provides answers to the key questions that arise when a barrister joins the Bar and signposts resources available in the first seven years of practice. The ambition is to set new practitioners up with the information they need to succeed.
2. Practice Management Guidelines and Standards (improving practice management including allocation of work, fees and marketing). We are working closely with the Institute of Barristers' Clerks, looking at ways to support improvements in practice management.
3. Legal Directories. Our work here is focussed on ensuring that commercial directories accurately reflect the breadth of talent across the Bar and we have undertaken initial work analysing and publicising examples of gendered language used to describe counsel.
4. Client Briefing Practices. We have done a great deal of analysis of income differentials based on gender (and race) and have recently published a [Monitoring Work Distribution Toolkit \(Part 1: Sex\)](#) to support chambers in analysis of fees earned by sex. Work is now focussed on encouraging chambers to adopt monitoring techniques proposed.

5. Mentoring. We continue to update and deliver mentoring guidance and training with resources to support mentoring due for publication later in 2021.
6. Tackling Sexual Harassment & Bullying. We have continued to promote use of our anonymous reporting tool [Talk to Spot](#).
7. Women in Law Pledge. A number of chambers have now signed up and pledged to take action to support women. Details can be found [here](#)
8. Flexible Working. We have established a 'Flexible Working' Working Group to start work this Spring to explore and model options for more innovative flexible working across the Bar.
9. Culture Change. We continue our work to tackle perceptions of the Bar and behaviours that do not support inclusion and inclusive practices.

### Race

In response to the Black Lives Matter movement, and in acknowledgment of our need to do more to support barristers from ethnic minority backgrounds, we have established a Race Working Group to review our existing Diversity & Inclusion work programme and to identify gaps/opportunities for additional race related support. We have already put together a [Race Framework](#) document to support chambers in developing a race strategy, and have developed a [Race Awareness Discussion Guide](#) to supplement existing E&D awareness training. We have also published a comprehensive [Positive Action guide](#) to encourage chambers to do more in this space and are actively encouraging chambers on positive action initiatives, including through the provision of data.

### Bar Council Leadership Programme

We have established a new [Leadership Programme](#) to provide a unique opportunity for barristers to consider the role they can play within their practice areas, chambers, the Bar and wider legal profession, as well as in society in general to create a positive and inclusive culture.

### COVID-19

We have spent much of the last year and continue to track the impact of the current pandemic on different groups of barristers including differential impact based on protected characteristics and [wellbeing](#), recognising the impacts of too much work, too little work, isolation, child-care etc. We have endeavoured to provide whatever support we can to those in need.

### Sustainability Network

We are in the process of establishing a Sustainability Network to support chambers in tackling the climate emergency and *building back better* from the Covid-19 pandemic. Priorities will be measuring and reducing the profession's carbon footprint.

## **Anti-Money Laundering (AML)**

The AML Working Group have been working on the guidance with a view to having our own bespoke barrister guidance included as a separate document within the UK legal sector AML guidance. We hope this will be approved by the Treasury which gives it some force if barristers run into difficulty with regulator or the criminal courts. The National Crime Agency recently completed their biennial national risk assessment and concluded that they are satisfied that barristers continue to be low risk. This is largely due to the fact that they do not handle client money.

## **Regulation**

### Competition and Markets Authority Review

The Competition and Markets Authority undertook a review of progress of the legal sector in implementing the recommendations it made in 2016, most of which were focussed on enabling consumers to make informed choices as to their legal service provider by improved transparency of information on price, quality and redress mechanisms. Progress was found to be slower than expected and they have recommended the development of quality indicators as well as a review of the reserved legal activities and the development of a mandatory public register of unregulated providers with appropriate redress mechanisms in place. The last recommendation is significant because it expands the scope of regulation to encompass the parts of the sector currently unregulated.

### Code of Conduct Simplification

At the end of 2019, the BSB issued a Call for Evidence on its Handbook (Code of Conduct) to simplify the Code of Conduct. We consider a more principles-based (rather than a rule-based) approach to be more likely. This work is ongoing and we expect a consultation to be issued by the regulator later in the year, that we will respond to.

## **Law Reform**

We continued our successful and popular law reform essay competition, which received almost 80 entries. We also moved our Law Reform lecture online and attendance doubled to over 250 participants, keen to hear former Supreme Court justice, Lord Carnwath, talk about his view on the contemporaneous Independent review of Administrative Law.

Our Law Reform Committee responds to c. 20 consultations a year, mostly issued by the Law Commission and government departments. It was a busy and at times pressured year with Covid related consultations requiring quick responses. Topics in 2020 included judicial review, hate crime and harmful online communications,

confiscation under the Proceeds of Crime Act 2002, and employment rights. All responses to external consultations are available on the Bar Council [website](#).

## Ethics

The Ethical Enquiries Service continues to provide a valuable service to hundreds of barristers a month. A team of nine ethical advisers respond to daily telephone and written queries from members of the Bar. There was a doubling in the number of emails received in March, as court work was disrupted by Covid and barristers' work was affected by the emergency legislation. The barrister members of the Ethics Committee deal with a handful of complex queries every week and also make representations to the regulator when it thinks their rules of guidance are problematic. In 2020 we raised concerns over their social media guidance note which the committee considered to be too disproportionately restrictive on barristers' right to a private life.

## The Courts

The impact of Covid-19 has dominated the agenda regarding the Courts. Before the pandemic, the Bar Council had been making representations that the backlog of cases was too large and that the Government needed to release funds to enable more 'sitting days' for judges, and should reverse its programme of Court closures. The pandemic then came and has made these problems far worse.

Her Majesty's Courts and Tribunals Service (HMCTS) responded quickly in accelerating its IT programme to allow more hearings to take place via video link. And towards the end of the year physical changes were made to the Court buildings such as installing screens between jury members, and hiring some additional buildings to increase court capacity. All these measures have helped, but the backlog remains a major problem because "justice delayed is justice denied".

In the Magistrates' Courts, the backlog at 27 December 2020 stood at **468,035** cases – a reduction of **11%** from the peak seen on 26 July, but still **15%** up on the pre-Covid baseline.<sup>1</sup> The Crown Court backlog at 27 December 2020 has started to come down a small amount, but is still at **54, 115** cases.<sup>2</sup> This is **38%** higher than the pre-Covid baseline (which was even then at record levels), and is the highest for at least twenty

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<sup>1</sup> HMCTS (14 January 2021) "HMCTS weekly management information during coronavirus - March to December 2020" <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-to-december-2020>

<sup>2</sup> HMCTS (14 January 2021) "HMCTS weekly management information during coronavirus - March to December 2020" <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-to-december-2020>

years, with the backlog disproportionately composed of complex and lengthy cases needing jury trials.

## **Legal Aid**

### Means Testing

There has been a problem for many years of individuals who fail the financial means test for legal aid because they have an income above the means test threshold and so are not granted a lawyer on legal aid. Since the income threshold is so low and has not changed for many years, they cannot afford to pay privately for a lawyer. The Bar Council and the Law Society have been making this point to Government for many years and the Government acknowledges it but continues to be very slow to act. The latest information is that the Ministry of Justice are expected in the next few months to publish a consultation with some proposals to change the thresholds.

### Criminal Legal Aid

In December 2018 the Government announced a Criminal Legal Aid Review (CLAR) which would:

“(1) To reform the criminal legal aid fee schemes so that they:

- fairly reflect, and pay for, work done
- support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce
- support just, efficient, and effective case progression, limit perverse incentives, and ensure value for money for the taxpayer
- are consistent with and, where appropriate enable, wider reforms
- are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies
- ensure cases are dealt with by practitioners with the right skills and experience

(2) To reform the wider criminal legal aid market to ensure that the provider market:

- responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer
- operates to ensure that legal aid services are delivered by practitioners with the right skills and experience
- operates to ensure the right level of legal aid provision and to encourage a diverse workforce

[...] we are committed to delivering a final report, including any recommendations, towards the end of the summer 2020”

The Government missed this timetable. Not only did it fail to complete the review by summer 2020, it had not even set up the review by that date, and only announced in January 2021 who would be on the expert panel.<sup>3</sup>

## **International**

The Bar Council continued its support for the international rule of law and the development of international practice for our profession despite the disruptions caused by the pandemic in 2020.

We also contributed fully to the international organisations of which we are members. We were particularly pleased that the UK legal professions reached a new membership agreement with the CCBE before the end of year under which we will remain very strongly involved in the work of the organisation. We also continued our work with fellow bar associations to advocate strategic and governance reforms in the IBA

### ***Rule of Law***

- We continued to support legal professions under threat through intervention letters in relation to many jurisdictions, including [Hong Kong, Turkey and Poland](#)
- International Criminal Court Judge Kim Prost gave our 14<sup>th</sup> International Rule of Law Lecture.
- We held three online seminars for Commonwealth Bar leaders in conjunction with the Commonwealth Lawyers Association to discuss the impact of COVID-19 on the administration of Justice
- We published articles about the impact of COVID-19 on the rule of law in Ghana, Taiwan, India, Brazil, Colombia and Ecuador.
- We welcomed over 60 bar representatives to two online events for the Opening of our Legal Year, discussing (i) the impact of COVID on the rule of law worldwide and (ii) the progress and future of online dispute resolution and cost reduction in commercial cases.

### ***International Business Development***

- We supported our members in building professional links through online events with partners in Mexico, Colombia, Russia and China.
- We held an online seminar with over 300 participants from around the world, discussing the online conduct of commercial trials and hearings.

## **Bar Council of England and Wales February 2021**

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<sup>3</sup> <https://www.gov.uk/government/news/expert-and-advisory-panel-appointed-for-the-independent-review-of-criminal-legal-aid>