



Sam Townend KC, Chair of the Bar
IBC Conference: The future of clerking – embracing development together
Saturday 9 November 2024

1. My name is Sam Townend KC. I am the Chairman of the Bar Council of England and Wales for 2024. Can I thank Geoff Carr, the Chair of the IBC over the last three years.

2. The theme of this Conference is ‘The Future of clerking - embracing development together’ - in your case, of course, that is in sets of Chambers, servicing groups of barristers in self-employed practice.

3. In overview, generally speaking the future is bright for the Bar and for the clerks that look after them. However, there is a stark contrast between the private sector Bar and the publicly funded Bar- those who work in family law practices will see the contrasts most acutely, but it is of course criminal practitioners who feel the downside of the existing circumstances the most.

4. First, I want to talk in relation to some positives. Legal services are the foundation for economic growth. International business is attracted by predictable legal frameworks, respect for the rule of law and our excellent judges and advocates. The confidence of many sectors (including financial services) is based on a strong and properly functioning legal system. Of course, as I shall come on to explain, to

maintain this trust and confidence, the system requires adequate funding.

5. Internationally we are brilliantly placed for further growth of the Bar and success for our Chambers. The Bar alone itself contributes £0.5 billion in export revenue and represents a hallmark of excellence for UK plc which provides international reassurance and underpins confidence resulting in investment more generally. Over 3000 of your barristers already provide their specialist advice and advocacy services internationally. We at the Bar Council are pushing for that to increase including opportunities for criminal and family practitioners- tomorrow Barbara Mills KC and I are leading a delegation of mostly family law practitioners exploring the prospects of additional work for the Bar in UAE.
6. To capitalise on the growth potential as the second largest legal market in the world – and to provide a domestic justice system that protects the public – adequate funding is needed to maintain the internationally renowned reputation of English and Welsh law, judges, courts and legal professionals.
7. Where have we got to this year on fees and fee structures:
 - 7.1 Civil side- I think there is progress. Uplifts on Fast Track rates and an introduction of recovery of briefs or parts of briefs when Fast Track cases are settled or vacated shortly before trial were longstanding deficiencies in the system. AG's panel counsel rates- have not changed since 1997. I

Things can only get better and I am pressing hard for uprating before the end of the year.

On the less positive side, guideline hourly rates for counsel for all civil cases other than those on fixed fees is firmly on the judicial agenda- the Bar Council, Specialist Bar Associations and the IBC will need to work closely to ensure that a scheme is produced which interferes minimally in the otherwise healthy market in barristers' fees.

- 7.2 Family- far less progress. Ten per cent increase in the fees for the work of Qualified Legal Representatives or QLRs, while welcome, is not likely to encourage the Bar to go into this work. Have yet to see how the Pathfinder scheme works through in terms of work for the Bar. I am advocating strongly with the new Government in relation to its ambitious pledge to halve violence against women and girls that it is coupled with equally ambitious initiatives in Family Law and that this requires investment.
8. In relation to Crime, we will have to see what last week's Budget has to say on this: Devil is in the detail
9. According to the Budget 'red book' the Ministry of Justice settlement provides total DEL (departmental expenditure limit) funding of £13.8 billion in 2025-26. This is equivalent to an annual real terms growth rate of 5.6% from 2023-24 to 2025-26.

10. Funding for the Law Officers' Department, which finances criminal prosecution services, provides total funding of £1.1 billion in 2025-26. This is equivalent to an annual real terms increase of 7.5% over this financial year and the next.
11. These are real terms increases for justice funding over this year and the next. It is welcome that the government has recognised justice as a key public service. I hope and expect, and certainly argue for, in the next few months:
 - 11.1 Prosecution brief fees to be put up to the level, at least, of Defence brief fees. Are a number of discrepancies- murder of a child is the most stark example- but so are most Rape and Serious Sexual Offences.
 - 11.2 Much more, of course, is needed, including an overall 15% increase in legal aid and CPS fees. There's still an enormously long way to go.
 - 11.3 Uprating of expenses- accommodation, travel and subsistence.
 - 11.4 Match-funded pupillage scheme- to generate funding for up to 100 additional pupillages in criminal work. Increase the pipeline of criminal barristers.
 - 11.5 Sitting days- go to the equivalent of uncapped sitting days in the Crown Court. Over 111,000 days is, I think, what is required.

12. Income and funding is not everything that builds a quality of life in practice, of course.
13. Your inaugural Workplace Culture Report, issued in December last year, done in conjunction and cooperation with the Legal Practice Management Association showed that although bullying, harassment and discrimination figures align closely with national average data across all sectors, you, rightly, commented that both employees and barristers face behaviours that have no place in the modern business environment. And that there are improvements that can be made to the working lives of clerks.
14. As you know your findings largely mirrored the survey responses arising from the Bar Council's own Working Lives survey. We have a persistent problem of bullying, harassment and discrimination in and around the profession. While we have a number of excellent Equalities and Employment practitioners including on our Equality Diversity and Social Mobility committee, who have brought forward schemes and initiatives to bear down on the problem, we considered some external assistance and new ideas to be useful. Earlier this year I was, therefore, pleased to appoint Baroness Harriet Harman as Chair of the Bullying and Harassment at the Bar Review- a solutions focussed review. Harriet has embraced the work of the Review with enthusiasm and I know that the IBC are contributing to the Review, including on the Reference group. I am very grateful for that endorsement and contribution.

15. Let me be clear, however: the Bar Council and I stand with the victims of bullying, harassment and discrimination. I am particularly concerned for victims of sexual harassment many of whom are vulnerable and exposed and who have been let down by the systems in place from start to finish: culture, how the problem is dealt with in chambers and across the Bar, and in regulation, particularly its speed and efficiency. We won't make a significant impact in reducing this problem until a Chambers ejects someone publicly for sexual harassment and until the Bar Standards Board makes an example through its disciplinary processes: jeopardy needs to replace impunity for perpetrators of bullying and harassment.

16. I turn then to questions of diversity. There is progress, where the profession working together with you and others has had real demonstrable success. These include an increase in the proportion of practising barristers who are women- now to 40.3% of the Bar and around 60% of those doing pupillage. An increase over each of the last three years in the proportion of barristers who are from a minority ethnic background; to 16.9 per cent of the Bar. That compares to an estimate of 16.7 per cent of the working age population in England and Wales as of April-June 2023. The year also saw a relatively large increase in individuals currently undertaking pupillage. The number in the practising or non-practising stage of pupillage as of December 2023 was 572, which is 84 higher than that seen in December 2022, and the highest number seen for at least a decade. As of December 2023, there was a 3.2 percentage point increase in the proportion of pupils with a declared disability compared to December 2022 (from 12.5% to 15.7%).

17. There are, however, a number of significant issues that remain. The proportion of women KCs has increased from 19.2 per cent in 2022 to 20.3 per cent in 2023. Women earn less than men of comparable experience in every practice area, including in the first three years of practice. In each Chambers we need to identify this and talk about it. It need not be uncomfortable. It is a common problem that we share- let's identify practical solutions.
18. While there has been a 45% increase in the number of ethnic minority Silks over the last three years, to over 130, the number of Black/Black British Silks, and in particular, Black women Silks remains disappointingly low at just seven in all. There are significant discrepancies in the success rates between different ethnic groups in the applicant pools for pupillage and for Silk, with applicants from ethnic minority backgrounds faring far less well than White applicants, although I am pleased to say that there appears to no discrepancy between the success rates of different ethnic groups in the conversion of pupillages to tenancy. All the evidence is, however, that the Black practitioner's experience of professional life remains poor, including in terms of earnings, wellbeing and culture.
19. So what we have is steady progress in a number of important respects, most significantly in overall diversity of the Bar, as a result of voluntary efforts by the Bar working with the IBC and others, but with much more work to do. A renewed focus on particular challenges is required, but we can prove the success of the voluntary approach. I shan't spend any significant time on the BSB's Equality Rules consultation, which is still to

conclude. Other than to say that what we do not need is a wholesale change of the EDI framework within which we all operate and its replacement with an untried and untested regulator-controlled scheme overriding the voluntary scheme that we are all used to and work under. The scheme proposed is completely unprecedented in a profession largely made up of self-employed individuals. Its ability to effect positive change is wholly unevidenced and just assumed in the consultation paper. The impact on existing positive work on EDI has not been assessed by the BSB. I urge all members of the IBC to respond to the consultation.

20. In relation to regulation more generally my hopes for the future are, in fact, for lighter touch regulation and that we have below inflation increases in the costs of regulation passed to members of the Bar and their clients after seven years of well above inflation increases, but I don't hold my breath.
21. Brass tacks- what the Bar Council is doing to help IBC members in your job now and in the coming years.
22. Following the launch of our three-year strategy for the development of the Bar Council's chambers management resources in late 2023, we have now published a new 'policies and procedures for chambers' webpage, implemented an email-based chambers management enquiry service, published five employee and pupil barristers' management policies, as well as holding related events.

23. We have had a greater focus on the services offered to newly qualified barristers and pupils, including on how to thrive, ethical dilemmas at the Young Bar, and starting pupillage- over 330 attended the relevant events this year and we intend to run them again next year.
24. In March, we launched a new on-demand training platform for the Bar. Two courses are initially provided: one on cyber security at the Bar training, and another a pupil supervisor training course. Both of which can be accessed anytime, anywhere.
25. We continue to provide the ID Card Scheme for court access, which is currently used by 9640 members, representing an increase of 2,450 users over the past 12 months, myself included. Following much lobbying we have persuaded HMCTS to, in effect, extend the operation of the scheme to higher security courts and to adapt the extent of searches that our members are subjected to following really concerning experiences of some women practitioners in certain courts in London.
26. Last month we held the tenth annual Pupillage Fair, which attracted 128 exhibitors and 418 barrister volunteers, together with over 925 in-person and 1,614 online attendees. Record high numbers in each respect. We look forward to the inaugural dedicated Northern and North Eastern Circuit pupillage fair later this month.
27. Over the coming year the Bar Council plans to publish a new inside guide to chambers management and to explore further options for training and events in chambers management, which we will surely do in

coordination with you. We will publish more template policies, covering areas such as information security and broader employee management. We will continue our work towards the establishment of a Mini-Pupillage Gateway and/or a Jobs Board for the Bar, and we will review and relaunch the Ethics and Practice Hub.

28. Thank you for what you do.