

125th Anniversary of the Establishment of the Bar Council

**Address given by The Rt Hon Lady Justice Hallett, DBE
Vice President of the Court of Appeal**

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It was one of the proudest moments of my professional life when I became Chairman of the Bar of England and Wales in 1998 and I was therefore delighted to be invited to speak at this celebration of 125 years of the Bar Council's existence.

I understand that 125 years may not seem a lot here in the Guildhall, but they have been important years for the survival of the Bar and the legal system as we know it: a system respected throughout the world (if not at home) for its integrity and excellence.

I do not need to remind this audience of the central role that the legal system plays not only in promoting the Rule of Law and social justice but also in the health of UK plc. The Bar Council has played a prominent role in representing the interests of its members and, *most importantly*, the public interest to politicians, the media and the public both at home and abroad.

It can claim some of the credit for the results of the City UK report of 2018 from which I give three short quotations:

“The UK’s legal services sector is one of the country’s great success stories

It is an enabling sector that provides a framework of law and certainty that supports all industries throughout the country and the financial services industry in particular.....

Legal services are an integral part of the financial and related professional services ecosystem that makes the UK the world’s leading international financial centre.”

I emphasise the words: *“framework of law and certainty”* because it is that framework that makes the UK the premier destination for businesses to resolve international commercial disputes and encourages foreign investors and business men and women to invest and do business here in the UK.

Thus, the interests of the UK, the interests of the City and the interests of the Bar go hand in hand.

That is one of the reasons that when we were faced with the possibility of the abolition of the QC system in 2003/4, we enlisted the support of the City in persuading the then Lord Chancellor, that the QC system was worth preserving – not just because of its importance to the domestic market but in bringing international legal business to the UK.

Keeping the QC system is just one of the many battles the Bar Council has faced over the years. I use the word battles advisedly because despite the

importance of the Justice system to the country and a healthy democracy, the Ministry of Justice is not a protected department. It has been targeted for swingeing cuts in its budget over the years, cuts that some argue threaten the Rule of Law.

The Rule of Law is oft mentioned but, I suspect, little understood. It is most definitely taken for granted here in the UK. When the Bar Council has voiced its concerns about possible threats, many respond with the cry- *“oh that’s just the fat cat lawyers trying to protect their own”* as opposed to analysing the issues and reaching a considered opinion.

I shall name but a few of the battles the Bar Council has fought and I accept at the outset not always successfully. But, at least it has presented a comprehensive and well argued analysis of the issues and, if their analysis proves correct, it maintains pressure on those in power to make further changes:

First: the fight to defend the practice of law as a profession.

Providing legal services is not as simple as selling baked beans -as one politician once remarked. It is about providing a service to the consumer (or client as I prefer to call them) but it is also about providing a service to the public. Lawyers owe a duty to the court over as well as their duty to their client. The two may not always go hand in hand. If lawyers forget their primary duty to the court, it is the public ultimately who will suffer.

The Bar Council has done its best to promote the professionalism of the Bar over the years. In 1997, when I was Vice Chairman of the Bar, for example, with others, we tried to persuade the then Government that introducing conditional fees – no win no fee agreements- was unnecessary, unwise, risked undermining the professionalism of the lawyer and would create a compensation culture. Some barristers may have believed we were not acting in their best financial interests but we felt we were acting in the best interests of the profession and the public as a whole. In my view, lawyers should be independent objective advisers and advocates. They should not have a financial interest in the outcome of litigation. We may have lost that battle but I still believe we were right. At least the Bar Council expressed its legitimate concerns forcefully and in the right quarters and continues to explore ways in which the system can be improved and make recommendations. It is vital therefore that when issues like this arise the profession is represented **and** regulated by a professional body that understands and promotes the ethics of a profession and can warn of the dangers.

Second: the fight to preserve access to justice.

Access to justice means so much more than providing courts that are open for business and staffed by independent judges. It means ensuring that alleged crimes are prosecuted and defended, and family and civil disputes resolved in an effective, fair and efficient manner. The judges can not do that alone. They

depend on an independent legal profession to present cases. Yet the role of the legal profession has been consistently undermined.

It is not for me as a judge to try to dictate to the government how it should prioritise spending. But, some commentators give as an example of the undermining and underestimating of the role of the lawyer the decision of the Conservative Lib Dem coalition government to try to save £350 million by drastically cutting the availability of public funding for litigation and effectively removing lawyers from large swathes of litigation. The Bar Council warned of the impact on access to justice in considerable detail. Yet the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was enacted. Unfortunately, most of the consequences foreshadowed by the Bar Council have arisen. The impact has been dramatic and there is every reason to question just how much money has been saved and at what cost.

In the courts, for example, we have seen a significant increase in litigants in person. These are individuals, often the most vulnerable in society and at their lowest ebb who may have a legitimate claim but do not know how to advance it in a court of law. Judges do their best to assist litigants in person but there is only so much they can do if the judge is to remain an independent referee and to do justice to both parties.

Many agree with Lord Falconer (former Lord Chancellor) that the real victims of the cuts imposed were not so much the lawyers as the vulnerable people they represent.

Third: promoting understanding of the role of the legal system, its importance to a healthy democracy and the importance of its independence.

The Bar Council has supported many initiatives designed to promote the legal system and the public interest. They include:

- i. Providing pro bono services in courts and tribunals for those who cannot get legal aid,
- ii. Working with schools, universities, communities and in particular those from disadvantaged backgrounds in the hope this will encourage people whatever their race, gender or background to consider a career in the law and to understand better the legal system.
- iii. Working with politicians and legal commentators alerting them to and briefing them on issues relating to Justice.
- iv. Providing advice, speakers and trainers at events designed to assist other countries in developing their own legal systems.
- v. Promoting Law Reform.

Fourth: the Legal Services Act 2007

In 2006 the Government decided to introduce the Legal Services Bill to reform the regulation of the legal profession. The Bill had many critics but many of the concerns voiced by the Bar Council and other professional bodies were reflected in amendments made to it. Since the enactment of the Legal Services Act 2007, the professional bodies have done their best to make it work so that the public interest is best served. For those unfamiliar with the LSA, it established a new system of regulation for the legal profession, the Legal Services Board was appointed to oversee the front line regulators such as the Bar Council. It was intended to be a light touch system of regulation and may not seem a very significant development to some present today – but any encroachment by government on the regulation of the legal profession is significant, even if well intentioned. If the process is taken too far and in the view of the Bar Council, there have been proposals that would be a major step too far, it may well impact upon the status of the legal profession here and worldwide.

Fifth: highlighting threats to the independent judiciary and legal professions here and abroad

The Bar Council has frequently highlighted the plight of lawyers and judges abroad who are subjected to improper pressure from their governments and have provided assistance when requested. In this country, it was the Bar Council who were most vocal in the support of the judiciary when, after the judgment in the Brexit appeal was published the headline appeared calling the judges “enemies of the people”. Judges are not delicate flowers who need protecting from legitimate criticism but, when judges simply do their job and apply the law, they should not be subjected to that kind of abuse. If sustained, it will erode public confidence in the legal system and ultimately impact on the independence of the judiciary.

I am not sure where, on the scale of abuse to put the description given of the judiciary by Giles Coren recently in the Times:

I quote:

“Can’t mock the legal system? Of course we can. It’s a medieval closed shop of boss-eyed virgins from Oxford and Cambridge without the wit or imagination to make a proper contribution, who go into the law because it is the closest thing they can find to staying at school and doing more exams, and are now twisting themselves into knots, trying to get more black people and women involved because they know if they don’t, they are going to be shut down altogether and have to go and work in Foxtons.”

Boss eyed virgins? There are a number of factual inaccuracies in that statement but that gives you some idea of the battle we face in improving our image and why the judiciary needs the support of bodies such as the Bar Council which understand the culminative effect of misplaced criticism.

I conclude by identifying a few of the challenges for the Bar Council ahead:

1. Ensuring access to justice and a fully functioning justice system.

If the Act that dramatically reduced the availability of public funding for litigation (LASPO) is not going to be repealed, we should be exploring new ways to provide representation for the most vulnerable in their civil and family claims and persuading government that the criminal justice system should not be allowed to perish. The amount of money it would take to improve the publicly funded justice system is tiny in comparison to government spending overall.

I have long promoted the advantages of a Contingency Legal Aid Fund as one possible way of providing funding for meritorious civil cases but so far the project has stalled – probably for lack of capital to establish it.

Having seen that the funding of litigation can be profitable, maybe the City of London could consider what support it could give to the establishment of such a fund?

The City has a legitimate interest because one cannot assume that cuts to public funding of litigation will only affect the vulnerable individuals and the lawyers who represent them – ultimately the undermining of any part of the justice system will undermine the whole of the justice system. With it there will be an undermining of the promotion of the UK as a place of stability and where the Rule of Law flourishes. If you read the Secret Barrister and think – *“goodness the criminal justice system sounds in a parlous state but that won’t affect me or my business”* my advice is think again.

2. Continuing to promote the Rule of Law here and abroad and improving the image of the legal profession.

The Bar Council has always had a major job on its hands to reform its image. In 1998 fed up with the fat cats slur, I offered the editor of a national newspaper the chance to look at my accounts to see what I earned as a publicly funded barrister. He declined.

Yet, the image of fat cat lawyers out to serve their own interests prevails. I have never understood why a British success story comes in for so much criticism and abuse. The privately paid lawyers contribute to the commercial success of the country and the publicly funded lawyers contribute to the maintenance of law and order and the resolution of disputes between individuals of very limited means. Our judges are

known for their integrity and quality. At least, Lord Falconer has now admitted that the New Labour Government's attack on fat cat lawyers was misplaced.

A refusal to listen to the justified concerns of the professional bodies on the false basis they are self interested may lead to further so called 'reform' that in fact undermines the Rule of Law and or a failure to enact proposals from the Bar Council *for* law reform that would support the Rule of Law.

3. Continuing to promote the legal services market abroad.

The Bar Council has always been at the forefront of promoting the British legal services market and is working closely with other interested parties to promote English law as the favoured currency of international contracts. Given our withdrawal from the European Union, that work has become increasingly important.

4. Maintaining professionalism and high standards amongst barristers.

As I have indicated, there are those who see the practice of law as a trade and not a profession and do not see the value of having professional bodies to represent and regulate them. They are mistaken. Without a powerful professional body, it is all too easy for standards to slip. The LSB has proposed changes to the internal governance rules of the

professional bodies, - IGR may not sound a very sexy topic but the Bar Council believes the implications could be serious. I make no judgment here on whether they are correct. But, the Bar Council and the Law Society must fight to ensure that any changes made do not undermine their role as strong professional bodies.

5. Improving diversity

I have a particular interest in promoting diversity as Chair of the Diversity Committee of the Judges' Council. We will not have a more diverse judiciary if the profession itself from which we select the judges is not diverse. The Bar Council has done a huge amount of work on improving diversity in the hundred years since the enactment of the Sex Disqualification (Removal Act) 1919. It was the first professional body or among the first professional bodies to have an Equality and Diversity Code. But there is still work to be done:

- i. In developing a proper work/family life balance throughout society so that we retain those with caring responsibilities in the profession,
- ii. in eradicating sexual harassment and discrimination and
- iii. in promoting equal opportunity amongst women, BAME lawyers and those from a non traditional background. We now have a

system whereby all but the privileged few qualify as a lawyer with a huge amount of debt. We must find ways of reducing that debt and encouraging the social mobility of my generation.

In summary, therefore, there has never been a more important time to have an overarching professional body such as the Bar Council. A body that fights to maintain standards and integrity both here and abroad and that has a voice that can be heard. In my view and I hope in yours not only must we cherish the legal system but we must cherish the Bar Council too, if it is to continue the excellent work of the last 125 years. It needs your support. Occasions such as this show the commitment of the City to the profession of law in this country.

Thank you.