



Bar Council response to the BSB Consultation on a possible change to the parental leave rule

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board (BSB) consultation on a possible change to the parental leave rule.
2. The Bar Council represents over 15,000 barristers in England and Wales. It 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.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. The Bar Council welcomes the BSB consultation on making changes to parental leave regulations to accommodate Shared Parental Leave (SPL). Although the statutory scheme applies only to employees at present, the Bar Council takes a very keen interest in ensuring equality and diversity best practice for those who work at both the employed and self-employed Bar. Many self-employed barrister parents will share the main responsibility for the care of a child with an employed person who may want make use of SPL to give them more flexibility in how they care for their child in the first year after the child's birth, and to improve gender equality, choice and control in working life and the ability of both parents to spend time with their children. The Bar Council supports the concept of shared caring responsibilities, and SPL in particular underscores our equality objective around the retention of women barristers.
5. It is of critical importance for access to justice and the future of the legal profession and our judiciary that the best and brightest female and male barristers from all ethnic and socio-

economic backgrounds are able to maintain flourishing careers at the Bar in varying practice areas. The Bar Council, and in particular its Equality, Diversity & Social Mobility Committee and Retention Panel, undertakes regular research in this regard and receives feedback from barristers on their experiences of combining parenting responsibilities with managing their practices.

6. As of 2013, 57% of women at the Bar with children were primary carers compared to just 4% of fathers at the Bar¹. In 2015, in focus groups with self-employed female barristers of all levels of Call², the difficulties of balancing family life and a career at the Bar was discussed extensively. These issues were seen as hugely problematic and a real barrier for women in the profession: success was put down to practice area, luck and the availability of either a partner as the primary carer or other support. Some practice areas were seen as more flexible than others (i.e. less court based work), and some had the capacity to generate a higher income (which made childcare more affordable or enabled practitioners to not work during school holidays). Younger members of the self-employed Bar said they could not see how it was possible to have a career and family, and did not see that they had a long term future in self-employed practice.
7. Those focus groups also found that individual chambers' culture and policies had a huge impact on women's experience of bringing up children at the Bar, where supportive chambers made it possible and unsupportive chambers effectively forced women out of the profession or to a different chambers. A number of incidents of poor treatment of working mothers were identified, including the attitudes of some clerks and senior members towards those that chose to have a family. Some talked of the impact which being a working parent had within chambers, including their perception of membership of their chambers (not being seen as a full member of chambers if they were working flexibly), access to chambers services (online resources) and tapered rent/fee arrangements (which favour high earners).
8. The Bar Council has campaigned for some time for the BSB to support the stated objective of SPL provisions, giving parents more flexibility in considering how to best care for, and bond with, their child. In February 2016, Bar Council wrote to the BSB suggesting that the BSB might achieve this by introducing an exception to existing provisions which limit parental leave and rent breaks to the "main" carer in circumstances where shared parental leave is taken.
9. The Bar Council proposed that the profession adopt the same objective or principle as the SPL statutory provisions i.e. that the combined leave/rent relief arrangements taken by either parent should be less than or equal to parental leave or rent relief available to one ['the main']

¹ Barristers' Working Lives: A Second Biennial Survey of the Bar 2013

² [http://www.barcouncil.org.uk/media/379529/snapshot -
the_experience_of_self-employed_women_at_the_bar.pdf](http://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf)

carer. For example, taking the BSB minimum standards, rent relief would not exceed 6 months and leave could be up to one year.

10. We are mindful that any regulation change to accommodate SPL should not place any undue burden on chambers and should be as simple and flexible as possible whilst still enabling some financial certainty, which is reflected in our responses to the consultation paper questions below.

The proposed change to the current rule

Question 1: Do you agree with the proposed change to the wording of the parental leave rule above?

11. Yes. We agree with the BSB proposal to amend the definition to say “shared parental leave means leave taken by the joint carers of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex (Definition 150, BSB Handbook)...”

Question 2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers’ SPL policies?

12. We agree generally with these suggestions, save that in paragraph 16c. relating to demonstrating joint care, we propose that the first sentence should read “That a barrister taking SPL would show that they are a ‘joint’ carer by not submitting any bills **for work done** during their time on leave...”.

Question 3: What are your views on how the suggested rule change will affect these three scenarios?

13. We agree with the BSB’s views on how the suggested rule change will affect the three scenarios given. In each of these scenarios, each self-employed barrister carer would be entitled to their chambers’ parental leave allowance and the associated rent relief.

Question 4: Are there any additional scenarios we should consider?

14. A further scenario might be barristers who care for a child or children together with a person who is a “worker”, self-employed in a different field or who does not undertake paid work.

Potential benefits and challenges of the suggested rule change

Question 5: Are there any additional potential benefits or challenges to the proposed new rule?

15. We agree with the potential benefits and challenges outlined by the BSB and, on careful reflection, believe that the benefits of adopting the proposed rule change outweigh the drawbacks, therefore militating in favour of change.

16. It is accepted that in the short term there may be challenges for chambers, and it is clear that there may be some costs implications initially. However ultimately the Bar would be at the forefront of advocating full equality for all of its members in relation to parental leave, and this would probably act as a draw to recruitment of the best and most talented women who would otherwise not consider a career in what is still a male dominated profession, especially at the more senior levels. Cost is a matter for each chambers to consider itself and it may be that for some there will have to be a period of graduation on to the new scheme, but the BSB should not be put off putting into place changes that will ultimately benefit the profession as a whole. In terms of the possibility of the risk of abuse, members could be required to notify an appropriate person in chambers of the identity and occupation of their joint carer.

Sharing care where one partner is not in paid work

Question 6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB of chambers in their SPL policies and why?

17. Whilst our preference would be (c) access to 100% of chambers parental leave policy, we propose that the BSB should adopt option (b), namely that in the scenario where one carer is a self-employed barrister and the second carer is not in paid work and does not receive state benefits, the self-employed barrister should be entitled to 50% of their chambers' parental leave policy, which would mirror the position the barrister would be in if their partner was employed and they shared their SPL equally. This should be subject to review at a later date.

18. We do not agree that the barrister in this scenario would only be entitled to parental leave if they were the main carer, because the Bar Council is keen to promote shared caring of children even in families where only one carer is in paid work. We expect, for reasons dealt more fully in response to questions 7-9 below, that there would be a minimal impact on chambers, and also because if the self-employed barrister is the sole earner then it is highly unlikely that they will want to take a lengthy period of parental leave.

Giving full parental leave entitlements to both carers

Question 7: Would you support this alternative approach and why?

19. Current SPL legislation does not give true equality to male carers, and it is better to put in place provision so that all members of the Bar are treated equally: it will only be when male members of chambers are able to take full advantage of the benefits currently enjoyed by women, under chambers' maternity leave policies, that damaging stereotypical assumptions will begin to change

20. BSB's alternate approach therefore may be the most effective way of ensuring the greatest level of access to parental leave amongst all barristers and thus of improving gender diversity within the profession. It may assist in reducing the proportion of women who leave the Bar when they start a family, encouraging cultural change amongst male and female members of the Bar and improving well-being at the Bar by promoting better work-life balance. Its simplicity will also reduce costs associated with administrative complexity.

Question 8: Would the increased burden on chambers be justified in the light of any benefits?

21. We believe the current lack of data available on uptake of SPL amongst employed fathers makes it difficult for Chambers to calculate uptake and therefore any financial risks and may therefore have a chilling effect on current enhanced parental leave provisions designed to retain women at the Bar.

Question 9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?

22. We note that the proposed rule change prior to this section of the consultation paper seeks to set the minimum stands on chambers' parental leave policies, and not the upper limit. For obvious reasons, the Bar Council supports this approach. Although the proposed rule change is relatively complex, the Bar Council fears that the alternative approach (of giving all self-employed barristers who become the carer of a child full access to the chambers' parental leave policy regardless of the work position of their partner), may entail too great a potential financial burden for chambers to carry, particularly in mainly publicly-funded chambers and where it is difficult to predict how many parents would take up this option. We do however think this should be kept under review and revisited within a specified period.

23. The Bar Council believes that the general rule change proposed strikes the right balance in seeking improved work-life balance for both parents and emphasises the benefits of shared parenting across the profession and beyond.

24. As the representative body rather than a single set of Chambers, the Bar Council is unable to assess the financial cost of giving full parental leave entitlements to both carers.

Bar Council

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