



The Bar Council

# Short-term business travel needs of the Bar of England and Wales

February 2024

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## 1. Executive summary

In this report we intend to capture the short-term business travel needs of the Bar of England and Wales. This is in follow up to a response that the Bar Council of England and Wales (BCEW) produced with Combar (the specialist association for commercial barristers advising the international business community) in 2022 for the UK Government’s stakeholder engagement exercise around the effectiveness of the UK’s current mobility options for facilitating short-term, productive business assignments (i.e. around 90 days or less in length). During the drafting of this response, it emerged that the BCEW lacks quantitative data on this issue – prompting this report. Further discussion on the future trajectory for this stream of work is in later sections.

Findings are drawn from 43 responses to a questionnaire that was shared with international practitioners, those with an interest in international work and chambers professionals, in order to identify the Bar’s experiences of and barriers to incoming and outgoing travel.

Outgoing short term business mobility is defined as barristers and other members of staff/chambers from England and Wales travelling for work to third countries.

Inbound short term business mobility is defined as the movement of foreign barristers/lawyers and professionals travelling to the UK to work on matters where UK (England and Wales) barristers are also instructed.

Key findings are summarised below:

### Outgoing Travel

- 97.7 per cent of barristers and/or their sets responding to this questionnaire have regular outgoing short-term business travel needs, occurring at least once per month.
- Barristers acting as advocates (46.2 per cent), arbitrators and mediators (23.1), and clients (9.9 per cent) are those most likely to have outgoing business travel needs.
- Barriers to travel are experienced often (53.4 per cent of the time) by those undertaking outgoing short-term business travel. Applying for a work permit (identified by 27.9 per cent of respondents), problems with obtaining visa (25.6 per cent) and visa delays affecting case instructions (23.3 per cent) are the most prevalent barriers.
- 34.9 per cent of chambers and/or barristers who responded have been in a position where they could not deliver work because of travel barriers.
- Australasia and the EU are the easiest regions to conduct outgoing travel to.
- 87.9 per cent of respondents, in their experience, find existing outgoing travel arrangements to be manageable, scoring a three or above on our scale.

### Incoming Travel

- A third (33.3 per cent) of participating barristers and/or chambers require foreign nationals to visit for work on which UK barristers are also instructed.
- Foreign lawyers are the professionals most frequently using incoming short term business mobility routes (20 per cent of the time).
- 44.1 per cent have experienced barriers to incoming short-term business travel. Problems obtaining visas are the most prevalent (experienced by 20.9 per cent of respondents).
- 18.5 per cent of barristers and/or their sets had been in a position where they could not deliver work because of barriers to incoming travel for foreign nationals.
- The easiest region to travel to the UK from is the EU.
- While barriers exist, 76.9 per cent still consider the incoming procedure manageable, scoring a three or above on our scale, but improvements could be made.

## 2. Introduction

The Bar Council represents practising barristers in England and Wales and promotes the values they share.<sup>1</sup> A strong and independent Bar exists to serve the public and is crucial to

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<sup>1</sup> On 07.03.2023, the number of practising barristers in England and Wales stood at 17,556.

the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights, often acting on behalf of the most vulnerable members of society.

The Bar Council, the Approved Regulator for the Bar of England, and Wales, discharges its regulatory functions through the operationally independent Bar Standards Board (BSB).

The English and Welsh Bar makes a vital contribution to the efficient and effective operation of domestic and international criminal, civil and commercial courts, and makes a substantial contribution to the UK economy. For instance, more than 2,300 members of the Bar receive instructions from abroad (with 16 per cent of these being from the self-employed Bar as of December 2023) – earning more than £440m.<sup>2</sup>

For this report, the Bar Council of England and Wales gathered data on barristers' views and experiences of short-term business travel (both incoming and outgoing) and this report analyses our findings.

The data gathered will be used to inform the UK Government on the current reality of short-term business mobility for the Bar, with the objective of reducing barriers in the future. The report will be shared with the Ministry of Justice (MoJ) to distribute to other Government departments, published online, and presented to relevant Committees and Working Groups. Additionally, this report will be used to inform and provide an evidence base for any future Government consultations the BCEW engages with. We anticipate this report and future ones of this kind will allow the Bar to more easily secure work overseas, while also bringing more work to the UK.

### 3. Methodology

The questionnaire captured both qualitative and quantitative data and was sent to members of the Bar between November 2022 – January 2023.

The questionnaire was focused on two areas:

- 1) Barristers and other members of staff/chambers travelling for work to third countries (outgoing travel); and
- 2) Foreign barristers/lawyers and professionals travelling to the UK to work on matters where UK (England and Wales) barristers are also instructed (incoming travel).

It was sent to subscribers of the Bar Council's international newsletter (6,037) and to subscribers of the Chambers Professionals newsletter (over 200). The questionnaire was also sent to members of the Bar Council's International Trade Working Group, the Bar Council's International Committee, three Specialist Bar Associations (Combar, TECBAR, Chancery Bar) and all the Circuits in England and Wales (European, Northern, North Eastern, Midland, Wales and Chester, Western, and South Eastern). The intention was for the report to capture

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<sup>2</sup> The City UK (December 2022) 'Legal excellence, internationally renowned: UK legal services 2022' <https://www.thecityuk.com/media/5url4ni1/legal-excellence-internationally-renowned-uk-legal-services-2022.pdf>

practitioners carrying out international work, as well as chambers professionals who understand the travel needs of their practitioners.

The questionnaire received responses from a total of 43 people. It should be noted that this is a small sample and therefore, this report is limited in the conclusions that can be drawn. While actions were taken to ensure this questionnaire was sent to the widest scope possible, a larger sample size would be more representative; though, the findings still provide useful insight into the Bar's experiences of short-term business travel. It is also unknown whether in the answering of this questionnaire, respondents replied in an individual capacity or as a representative of their chambers – this is a distinction we will seek to clarify in future research. For the purposes of this current report, it is assumed that respondents are answering in an individual capacity with some consideration for answers occasionally capturing the experiences of chambers.

The questionnaire did not collect personal data. All data has been retained anonymously in accordance with the Bar Council's Privacy Statement, [available to view here](#).

## 4. Results

### 4.1 Outward travel to third countries for barristers and other members/staff of chambers

#### **Short-term business travel needs arise at least once a month for most**

97.7 per cent of respondents said that their set or those associated with it had outgoing short-term business travel needs. Of this percentage:

- 67.4 per cent said these needs arise one to two times per month.
- 7 per cent said three to four times per month.
- 23.3 per cent had short-term, outgoing business travel needs five times per month or more.
- For 2.3 per cent of respondents, short-term travel needs never arise.

#### **Outgoing short-term business travel is almost always used by lawyers**

Outgoing short-term business travel arrangements apply to barristers acting as advocates 46.2 per cent of the time. This is followed by barristers acting as arbitrators and mediators (23.1 per cent of the time) and clients (9.9 per cent of the time). Outgoing short-term business travel is required less often for lay witnesses (6.6 per cent of the time), other service providers (6.6 per cent of the time), expert witnesses (5.5 per cent of the time) and interpreters (2.2 per cent of the time). For contractors, these travel needs never occurred – though, that does not mean this is the case for all practitioners and sets.

#### **Short-term outgoing business travel has challenges more often than not, with work permits, visa issues and entry conditions being the most frequent**

53.4 per cent of respondents reported issues with business travel. When respondents did encounter barriers to outgoing travel, this was most often due to the necessity of applying for a work permit (identified by 27.9 per cent of respondents), followed closely by problems with

obtaining a visa (25.6 per cent), visa delays affecting case instructions (23.3 per cent) and conditions that have been imposed upon entry to the country (16.3 per cent). To a lesser extent, other barriers included excessive fees charged for visas/work permits/residency permits (9.3 per cent) and having to instruct immigration advisers (2.3 per cent).

These issues were not applicable to 9.3 per cent of respondents.

37.2 per cent of respondents reported that they had no issues with outgoing short-term business travel.

One barrister identified that getting appointments for visas was also challenging.

### **Chambers have been unable to deliver work because of barriers to outgoing business travel**

Over a third of (37.2 per cent) of individual respondents and/or sets had not been in a position where they could not deliver work because of barriers to short-term business mobility. 25.6 per cent did not know and for 2.3 per cent, this question was not applicable.

This is compared with 34.9 per cent who had either themselves or their set had been in a position where it could not deliver work because of barriers on short-term mobility.

Of the 34.9 per cent who had been in this position, 93.3 per cent (32.6 per cent of total respondents) said this occurred 'sometimes' and 6.6 per cent (2.3 per cent of total respondents) said this occurred 'often.'

### **Outgoing travel is easiest to Australasia and the EU, but experiences vary for other regions**

Australasia offers the easiest outgoing short-term business travel arrangements, with 71.4 per cent of respondents scoring this a five – indicating the existing procedure is excellent. This was closely followed by EU countries (68.8 per cent scored this a five), Hong Kong (62.5 per cent scored this a five), and Singapore (53.3 per cent scored this a five).

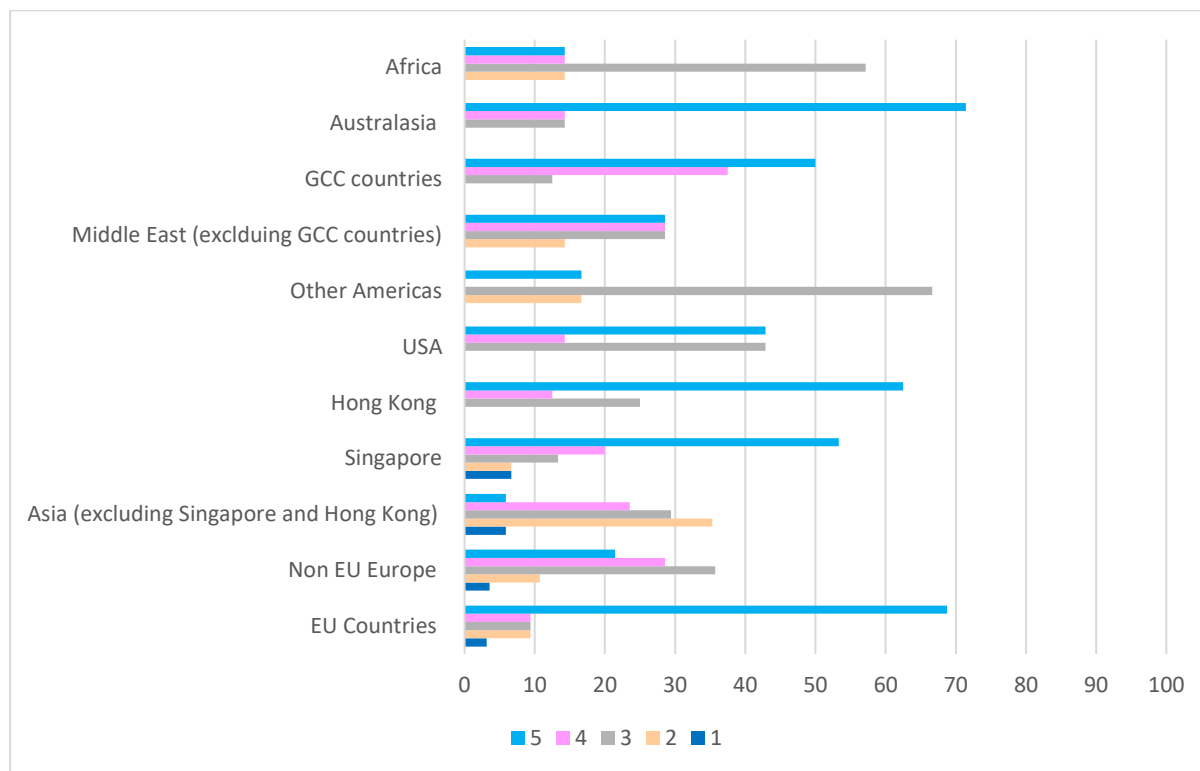
Though the EU is regarded as one of the best for outgoing travel, it was noted that a "complicated [...] minefield" of regulation across EU countries had prevented one barrister from doing work in EU countries due to fear of doing something wrong and/or not being permitted. No clear source of information on where to find the answers to navigating the regulations is an additional barrier.

While Singapore had a high proportion of the top score, 13.4 per cent of respondents also scored this a one or two – suggesting that experiences of travel to the jurisdiction vary broadly.

Other low scoring regions include wider Asia (excluding Singapore and Hong Kong) with 41.2 per cent of respondents scoring this between one and two. Though, no particular jurisdiction was identified as being *severely* difficult for outgoing travel. Many regions like Africa, the Middle East, non-EU European countries showed variable but consistent scores, rating between one and five.

In relation to the Middle East, one respondent noted several barriers connected to the Dubai International Financial Centre (DIFC). These included: 1) the requirement of a [Work Permit](#) for in-person hearings at the DIFC; 2) the cost and turnaround time for these Work Permits; and, 3) a high [renewal cost for Part II](#) registrations (individuals with rights of audience before the DIFC Courts), currently sitting at USD 1450.

**Figure 1: Ratings (1-5) of ease of the current outgoing travel procedure to each region**



### **The large majority find outgoing short-term business travel arrangements manageable**

When respondents were asked how they would rate current outgoing short-term business travel arrangements from one (poor) to five (excellent):

- 87.9 per cent gave a score of three or higher, indicating that experiences mostly ranged between these being manageable to excellent.
- 36.4 per cent rated arrangements a level three.
- A third rated outgoing arrangements a level four.
- 18.2 per cent rated these at a level five, demonstrating that they regard these to be excellent.

Contrastingly, 12.1 per cent of respondents rated existing outgoing arrangements a level two or one – indicating that these are poor.

## **4.2 Incoming arrangements for barristers/advocates travelling to the UK**

### **A third of respondents and/or their chambers require incoming business travel for foreign nationals at least 1-2 times per month**

Two thirds of respondents' chambers never require foreign nationals to visit for work on which UK barristers are also instructed.

For a third, such an arrangement was required. Of that third, 91.6 per cent had incoming foreign nationals visiting one to two times per month and 8.3 per cent had incoming visitors five or more times per month.

### **Foreign lawyers and clients are most likely to have incoming business travel needs**

When respondents were asked about who incoming short-term travel arrangements most often applied to, this was not relevant for 21.8 per cent of respondents.

Despite this, incoming short-term business travel needs applied to incoming lawyers 20 per cent of the time, to clients 16.4 per cent of the time, to expert witnesses 14.6 per cent of the time, to arbitrators and mediators 12.7 per cent of the time, to lay witnesses 10.9 per cent of the time, to service providers 1.8 per cent of the time and to interpreters 1.8 per cent of the time. These needs never applied to contractors – though, it does not mean this is the case for all practitioners and across all sets.

### **Foreign nationals face problems obtaining visas for the UK**

44.1 per cent of respondents identified an issue with incoming short-term business travel. The biggest barrier for incoming foreign visitors was problems with obtaining visas, which was identified by 20.9 per cent of respondents. One respondent identified this is a particular issue for arbitrators, who often are unable to clarify whether a work visa is needed for arbitrations that exceed 30 days. Other barriers included the necessity of applying for a work permit (11.6 per cent), visa delays affecting case instructions (9.3 per cent) and conditions that have been imposed upon entry to the country (2.3 per cent).

For 30.2 per cent of respondents, this question was not applicable.

2.3 per cent identified no issues with the incoming procedure.

One barrister identified that getting appointments for visas was also challenging.

### **Chambers have been unable to deliver work because of barriers to foreign nationals entering the UK**

A third of respondents did not know whether their set had ever been in a position where it could not deliver work because of barriers to incoming business travel for foreign nationals entering the country.

29.6 per cent identified that their set had never been in a position where it could not deliver work due to barriers on incoming travel for foreign nationals. 18.5 per cent said this did not apply to them or their chambers.

Conversely, 18.5 per cent of respondents identified that they or their chambers had been in a position where it could not deliver work due to incoming travel barriers. Of this 18.5 per cent, 80 per cent (14.8 per cent of all respondents to this question) said this occurred 'sometimes' and 20 per cent (3.7 per cent of total respondents to this question) said this occurred often.

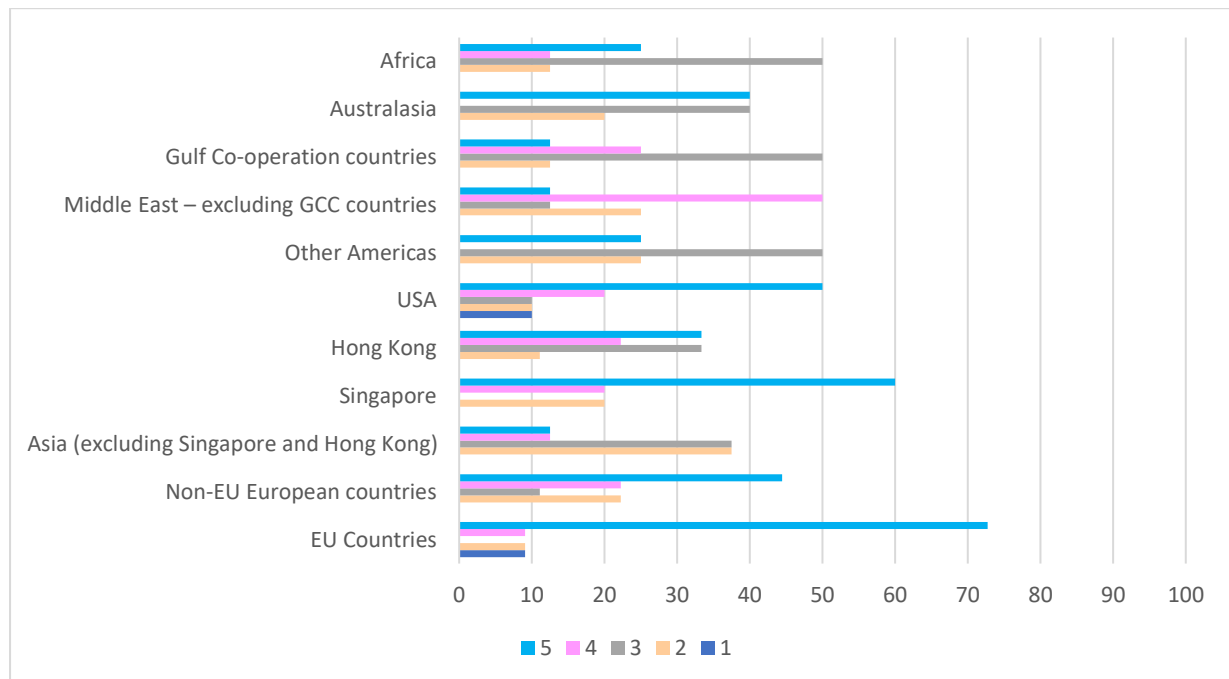
### **The EU and Singapore are the easiest regions for incoming business travel, but the EU and the USA can also be the most difficult**

The easiest region to negotiate incoming short-term business travel for is the EU, with 72.8 per cent of respondents scoring this a five, indicating excellence. This was followed by Singapore (60 per cent scored this a five), the USA (50 per cent scored this a five) and Australasia (40 per cent scored this a five).

While the EU scored the highest for ease, this was one of only two regions whereby respondents identified that the incoming procedure is difficult, as 18.2 per cent scored this between one (poor) and two. The USA exhibited consistent scores for all ratings below five (between 10 and 20 per cent), but notably, 20 per cent of respondents scored the jurisdiction between one (poor) and two.

Other regions like non-EU European countries, Hong Kong, the Americas (excluding the USA), Middle East and GCC countries, and Africa all exhibited variable scores.

**Figure 2: Ratings (1-5) of ease of the current incoming travel procedure from each region**



### **The incoming procedure is manageable, but improvements could be made**

When rating the ease of the overall incoming procedure, 76.9 per cent rated this a three or higher. As for exact ratings, 38.4 per cent of respondents rated this a four, 30.8 per cent rated this a three and 7.7 per cent rated this as a five – indicating the procedure is excellent.

Contrastingly, 23.1 per cent rated this a two or one (poor) – indicating that it was either difficult or very difficult to manage.

## **5. Discussion**

### **Methodology**

The Bar Council intend to collate evidence on this on a more regular basis, which will provide longitudinal data on the experiences of the Bar regarding short term business travel arrangements (both incoming and outgoing). Future surveys will look to examine the needs of individual practitioners and sets/chambers separately and could approach larger surveyed regions in more granular detail, looking at experiences of short-term business travel in relation to individual jurisdictions.



An additional challenge of this research has been that the Bar was surveyed in November 2022 to January 2023. The impact of the Covid-19 pandemic on business travel has been extensive, and while business travel seems to be now 'returning to normal', it is not clear whether that truly is the case. A longitudinal study would allow the Bar Council to accurately monitor business travel and its barriers as it recovers to 'pre-pandemic levels.'

The study is also limited by its response rate. While actions were taken to ensure this questionnaire was sent to the widest scope of the Bar possible, a larger sample size would be more representative of the profession.

## Recommendations

Recommendations are affected by the design of our questions and in turn, how these have been answered. We acknowledge that the clarity of the particular immigration route (inbound or outbound) and categories causing problems are not always easy to ascertain.

Further, each state – differential from the regions we have grouped data into – will have their own GATS Mode 4 commitments and local rules, that may be more generous. As highlighted above, future surveys will aim to secure more granular detail on the experiences of short-term business travel to and from individual jurisdictions within these regions, in order to reflect the experiences of the Bar most accurately and inform future recommendations.

Our recommendations on mobility for short-term service provision are as follows:

### **All routes:**

We acknowledge that for all routes regulatory requirements to practice and legal professional privilege issues may need to be agreed in tandem with immigration rules. However, as these do not pertain directly to immigration routes – the specific focus of this research paper – we have not made recommendations on these matters. This is something future research of this kind could consider.

### **Outbound:**

Regarding business visitor rules (whether or not a visitor visa is required prior to travel to the country concerned), the Bar Council would seek the below as ideal arrangements for the Bar for this kind of outbound travel:

- i) Entry for six months;
- ii) The scope of activities to cover legal advice, advocacy and all other legal services;
- iii) The areas of law to include International Law, UK Law and any relevant multilateral and/or bilateral law governing the dispute resolution advice of which entry is sought; and
- iv) For business visitor entry to also include permission to take a fee from a client in the host state.

Regarding Mode 4-style/independent professional (IP) travel routes (where a visa is likely to be required), the Bar Council would seek the below as ideal arrangements for the Bar for this kind of outbound travel:

- i) Entry for a minimum of 12 months with the possibility of an extension to 24 months (as travel to and from the region/jurisdiction may be required);
- ii) The scope of activities to cover legal advice, advocacy and all other legal services;
- iii) The areas of law to include International Law, UK law, and any relevant multilateral/bilateral law governing the dispute resolution/advice in respect of which entry is sought; and
- iv) For entry to also include permission to take a fee from a client in the host state.

We note that the above asks for the business visitor and the IP route may look similar, however the business visitor route is more likely to include visa-free travel. States may also resist taking a fee from the client resident in that state under the business visitor route, but may be more willing to grant it on the IP route. However, the business visitor route may be more flexible overall.

Regarding outbound travel pertaining to the EU in particular and the UK-EU Trade and Cooperation Agreement (TCA) covering this, a revisiting of the mobility provisions in 2024-2025 will be inputted on by the Bar Council in conjunction with the MoJ. It is, however, important to note that individual EU Member States can always be more generous in their provision; there is no exclusive competence as regards economic migration at EU level. This further adds to the need for future research of this kind to be conducted by the Bar Council to closely examine the experiences of barristers with individual EU states, rather than the bloc as a whole.

For all routes of outbound travel, the Bar Council would also recommend that fees be set not above the level of the cost of processing the application. Additionally, that any residual grounds of discretion to refuse an application on grounds of public policy/suitability/conduct are kept to a minimum. Though, the Bar Council acknowledge the challenges of this as it relates to state sovereignty.

### **Inbound:**

Regarding business visitor/permitted paid engagement (PPE) rules (whether or not a visitor visa is required prior to travel to the UK) under the Immigration Rules, the Bar Council would seek the below as ideal arrangements for this kind inbound travel:

- i) Entry for 6 months (or 3 months if that suffices for our needs);
- ii) The scope of activities to cover legal advice, advocacy, and all other legal services;
- iii) The areas of law to include international law, UK law, and any relevant multilateral/bilateral law governing the dispute resolution/advice in respect of which entry is sought; and
- iv) For the whole period to include permission to take a fee from a client in the UK.

Regarding the general business visitor route, the Bar Council would seek as ideal arrangements for this kind of inbound travel, that it includes all expert witnesses, witnesses of fact, interpreters and all others needed for the dispute resolution, advice and provision of the legal services in question.

Regarding Mode 4-style/independent professional (IP) route (where a visa is required), the Bar Council would seek as ideal arrangements for this kind of inbound travel:

- i) The possibility of an extension of the 12 months leave (being the current maximum for some states of origin, like EU states) to 24 months (as travel back and forth over a period of time may be needed);
- ii) The scope of activities to cover legal advice, advocacy, and all other legal services;
- iii) The areas of law to include international law, UK law, and any relevant multilateral/bilateral law governing the dispute resolution/advice in respect of which entry is sought; and
- iv) As is the case now, for entry to include permission to take a fee from a client in the host state.

Regarding the existing IP route in the Immigration Rules, we would need to collate data on the number of applications, grants and refusals there have been to make useful recommendations. This is an ambition for future surveys.

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and

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February 2024