The Bar Council

Sam Townend KC, Chair of the Bar
Inaugural address
Tuesday 9 January 2024, Lincoln's Inn

CHECK AGAINST DELIVERY

1. Welcome to the Great Hall of Lincoln's Inn on this cold evening. My thanks go to the Treasurer and Benchers for the use of the Hall and, indeed, the Bench rooms behind me where I hope that you will join the brilliant Barbara Mills KC, who I am delighted to say joins me as Vice-Chair for 2024, Amrit Dhanoa, Chair of the Young Bar Committee, Lorinda Long, the Bar Council Treasurer, and me for the reception following my address. My thanks go to them, to Malcolm, and all of the excellent staff of the Bar Council for their unstinting support and work for the Bar, as well as my family, many of whom are here tonight.

2. Before I address you as to my priorities for the year, the 130th in the Bar Council's history, I thought it useful to provide a brief introduction to my background as it informs my perspective on some of the issues currently facing the justice system and the Bar specifically.

3. I was brought up in Stamford Hill in Hackney. I was wholly state-school educated and fortunate to study at Cambridge University, where I was one of the last beneficiaries of a local authority grant. My father was an architectural salvage dealer and my mother, a stained-glass painter. There were no lawyers in my family or among family friends. A career at the Bar was something I read about and saw fictionalised, in John Mortimer's "Rumpole" and the rather more racy mid-90s Granada television legal drama "This Life".

4. Lincoln's Inn helped me with scholarships and a room in a flat in Chancery Lane during Bar School. While I worked as an estate agent alongside attending the Inns of

Court School of Law, the support the Inn gave me, as all the Inns continue to give, was absolutely critical to me in having the wherewithal to push on to pupillage applications.

5. I succeeded in obtaining a pupillage and then tenancy at Keating Chambers in the construction and engineering field where I have had a very happy 25 years of professional working life.

6. As colleagues in Chambers will testify, however, I have always been restless, dissatisfied with just doing 'the day job'. One consistent interest has been in public policy particularly in relation to law and the justice system. I was an early joiner of the Bar Council's Young Bar Committee from 2002 serving alongside the likes of Tom Little, now KC and Senior Treasury Counsel, and Suella Braverman- you may have heard of her... Later, in the Noughties, I served on the Executive Committee of the London Common Law and Commercial Bar Association assisting Margaret Bowron KC with the establishment of the Bar's first maternity leave mentoring scheme.

7. Like a number of my predecessors, I have a political past and personal political views. As many of you know I dabbled in party politics including being an elected local councillor from 2006. In 2016 I came back to the Bar Council to serve on the Legal Services Committee, a committee I later chaired and from which position I successfully stood for election to the position of Vice-Chair in 2022.

Politics and the Rule of Law

8. Why do I raise the point about my party-political experience? In what is most likely to be a General Election year it is important to stress that the Bar Council and my role in it is firmly non-partisan. I am a lawyer first and I leave those party-political views at the door of this job. The Bar Council represents a group of nearly 18,000 barristers, with the widest variety of political views, and we have a role in speaking for them collectively and in the public interest on issues such as access to justice, resources and the efficient working of the justice system, the quality and effectiveness of legislation, adherence to the Rule of Law and to our international legal obligations. Where I

criticise particular Government action or proposed legislation, I do so just as my predecessors have done, because relevant issues are engaged.

9. We do comment on matters within the Bar Council's remit that have been politicised. While it is, of course, the case that there should be no swooning adulation of lawyers, and barristers should be held to account for their conduct and professionalism, that is an entirely different matter to blaming barristers for the sins of their clients and their causes. It is not appropriate to trawl through a barrister's case history to pick out unsympathetic clients or causes that they have acted for and to hold them responsible for the outcome of a given case. That is wholly to misunderstand and misrepresent the role of a barrister in our system and is contrary to not just the 'cab rank' rule, of which we have heard much over the last year, but the understanding of the role of a lawyer wherever in the world there is adherence to the Rule of Law as encapsulated in the UN Basic Principles on the Role of Lawyers.

10. The Lord Chancellor, [who I am very grateful is attending this evening], has already done a great service on rule of law issues and is deserving of our thanks in, for example, reminding his colleagues and the public of the importance of the independence of the judiciary in his public reaction to the Supreme Court's decision on the Rwanda case, and, indeed, on other topics such as reform of indeterminate sentences, something he has rightly called a stain on our justice system. I have no doubt that he and the Attorney-General, [who I am also grateful is present this evening], remind their colleagues and CCHQ privately about the proper role of lawyers and the inappropriateness of attacks on lawyers such as Jacqueline McKenzie of Leigh Day Solicitors who was simply doing her job and, more recently, the Leader of the Opposition by reason of the causes of his clients when a practising barrister 20 years or so ago. However, in circumstances where the level of public legal education and understanding in this country remains so poor, some public words by leading Conservative and Labour lawyer politicians to deprecate such attacks and to help to explain the role of lawyers would be extremely welcome.

11. The Bar Council will continue to play its part, but the misapprehension about the role of lawyers reflected in some parts of the media, if left unchallenged, is corrosive of public perceptions of lawyers, the administration of justice and ultimately the Rule of Law.

12. It is appropriate at this point to draw attention to the work on this topic of my immediate predecessor as Chair, Nick Vineall KC. Nick was indefatigable on Rule of Law issues, as on everything he tended to as Chair, and the Bar owes him a great debt.

13. Further on the topic of the Rule of Law, we are also grateful for the Lord Chancellor's careful attention to the issues that arise in connection with the truly appalling Post Office Horizon miscarriages of justice. For our part we think there is a case for Parliament to review wholesale the role of corporates in bringing private prosecutions. So far as the immediate circumstances of the victims are concerned, it is important that any proposals are consistent with due process and the separation of powers, in particular, to give them the proper exoneration to which they are surely entitled.

The case for investment in justice: criminal law

14. Turning to the state of the justice system where the central issue is a lack of Government investment. I put it bluntly: The criminal and family justice systems are at the point of structural failure. The need for significant investment is great and it is urgent.

15. From front to end of the criminal justice system the picture is bleak. Police back-office staff, who traditionally processed statements and evidence for trial purposes, have been decimated. According to the Law Society, in the first six months of 2023 over 50% of Magistrates' Court trials conducted on the Common Platform involved unrepresented defendants. The CPS itself remains under-resourced following the 30% cuts of a decade ago. The court estate is dilapidated, and prisons are full.

16. The Bar is particularly concerned with the Crown Court system. Here:

16.1 The outstanding caseload in the Crown Court is the largest it has ever been at 66,547 outstanding cases at the end of September.[1] Disposals continue to fall behind case receipts - so the caseload continues to get bigger.

16.2 The time between receipt and disposal has got ever-longer. The average outstanding duration of criminal cases has stuck stubbornly above 290 days for the last year, the highest ever.[2] Only a minority of cases achieve the Government's Better Case Management stipulation of six months from receipt to the start of trial. Ten per cent of criminal cases in the Crown Court are now outstanding for two years or more.[3]

16.3 Even if the first day of trial is reached, more than one in six trials are ineffective.[4] One of the major reasons for this is the unavailability of any barrister to act as prosecution or defence counsel.

17. If it were not for the excellence and commitment of the Judges, staff, solicitors and barristers who work in the system it would already be wholly discredited in the eyes of the public.

18. Why has this happened? As set out in the detailed and careful Bellamy Review of November 2021, there are several factors: increased complexity, increased demands with the introduction of ever more offences coupled with longer sentences, declining rates of what HMCTS calls productivity, underpinned by a lack of resourcing of the entire system for a decade and more, and then the heavy blow of complete closure over many months during the COVID pandemic. Essential work goes on to tackle the myriad operational issues by the Crown Court Improvement Group. The Criminal Legal Aid Review Board, under the leadership of HHJ Deborah Taylor, is doing useful

[1] Criminal court statistics quarterly: July to September 2023
[2] Criminal Court Statistics publication: Pivot Table Analytical Tool for England and Wales, Experimental statistics: Estimates of outstanding time in the Crown Court, Q1 (Jan-Mar) 2014 to Q3 (Jul-Sep) 2023 via GOV.UK
[3] Criminal court statistics quarterly: July to September 2023
[4] 18.6% according to the Institute for Government 'Performance Tracker 2023'

work in seeking to align remuneration with the principles of Better Case Management. The Bar Council engages fully and positively with both these important bodies.

19. However, this work, important though it is, is not succeeding in preventing the increase in the backlog or improving overall timeliness. Despite substantial - though, so far as legal aid solicitors are concerned, incomplete - implementation of Lord Bellamy's minimum financial recommendations, the financial settlement is utterly inadequate to meet the present needs. The backlogs are now 10% higher than when Lord Bellamy published his review and timeliness is 25% worse. On recent figures, the legal aid spend on the Criminal Bar in real terms remains a touch below 40% of what it was ten years ago[5] and spending on the Judges and Courts[6] is down by 13.5% compared to 2010/11, and set to fall another 2% in real terms over the coming two years.

20. The present financial settlement for the criminal justice system is like being asked to make two loaves of bread but having the ingredients for less than one. Publicly funded lawyers are good, but they are not miracle workers.

21. More, much more, is required for the courts system, for the CPS, and in criminal legal aid to halt the worsening position and to seek to return, at least, to the position pre-COVID.

22. This need is now urgent. I say this because we are now seeing two types of serious and systemic behavioural change which threaten to accelerate the failure:

Collapse in early guilty pleas

23. The first behavioural change lies in the number and pattern of guilty pleas:

[5] Policy Exchange, The 'Wicked and the Redeemable', 4 November 2023
[6] Institute for Government 'Performance Tracker 2023'

23.1 Government data shows a marked decline in overall guilty pleas now ticking below 60%.[7]

23.2 More disturbing still is that this is combined with what can only be characterised as a collapse in the percentage of guilty pleas being entered at first hearing. At the first opportunity for a defendant to plead guilty in the Crown Court, we've seen a drop in guilty pleas from 84% in 2014 to 36% in the first half of last year.[8]

24. If these trends continue what we are witnessing is a breakdown in the compact essential to any effective criminal justice system governed by the Rule of Law: that perpetrators plead guilty early for a discounted sentence and start the process of rehabilitation. This saves the state the cost of trial and, most importantly, save victims and witnesses from the harrowing experience of re-living the crime when giving evidence at trial. If the compact is broken, it will put the criminal courts system, already running at close to boiling point, under unbearable pressure, accelerating the rate of increase in the backlog and pushing out further the time within which cases are dealt with.

25. This is what the Institute for Government has called a 'performance doom loop' as it becomes more and more apparent that the system cannot cope and as young criminal men, who should be pleading guilty at an early stage, become more aware, as they are bound to, that their day of reckoning is getting pushed back further and further and perhaps may never come at all. This is not tough on crime, but the very opposite.

26. Conversely for the innocent who have been wrongly accused they are left, apparently indefinitely, languishing with the pending prosecution hanging over them if they are not already pushing custody limits on remand. My concern then is of a complete

[7] 64% in 2014 to 59% in the third quarter of last year - 10,701 of 18,239 total numbers being dealt with in trial via Criminal Court Statistics publication: Pivot Table Analytical Tool for England and Wales, Defendants dealt with in 'for trial' cases by plea in the Crown Court, Q1 (Jan-Mar) 2014 to Q3 (Jul-Sep) 2023 via GOV.UK cc_plea_tool.xlsx (live.com)

[8] Criminal court statistics quarterly: July to September 2023 via ccsq_accessible_publication_tables_2023Q3.xlsx (live.com)

collapse in public confidence in the system. One where victims and witnesses become ever more disillusioned or simply give up. Justice neither done, nor seen to be done.

Shortage of criminal barristers

27. A second form of behavioural change is also taking place. This change is more parochial, but also fundamental to the proper and efficient administration of criminal justice: This is that there are no signs of improvement in the numbers of junior barristers staying to work in crime. Despite the welcome injection of funding in September 2022, barristers are continuing to leave criminal practice; are not returning to criminal practice after periods of long leave; and insufficient numbers are willing to train and take up prosecution tickets, in particular for Rape and Serious Sexual Offences, which are both inadequately paid and have, shamefully, historically been given lower status.

28. As the late, great former Lord Chief Justice, Lord Judge, whose life we commemorate later this month at Temple Church, put so presciently in response to the legal aid consultation back in 2013:

> "Many lawyers have already ceased to act in legal aid cases…Many of those entering either branch of the legal profession seek to avoid publicly funded areas if their ability and promise permit them the choice.
>
> "Some of the proposed changes are likely to transfer rather than save costs. It cannot be emphasised too strongly that good advocacy reduces cost … Poor advocacy is wasteful of resources; cases are less well prepared and they occupy more court time and take longer to come to a conclusion, while simultaneously increasing the risk of mistakes and miscarriages of justice."

29. The proverbial chickens have come home to roost. The reasons are not, of course, just remuneration, but working conditions, the decline in support available from legal aid solicitors and the CPS, and the unremitting emotional challenge these cases present.

30. It is unfortunate then that in the recent mini-budget this most fundamental of public services was given no protection and real terms cuts are certain across the piece.

31. While we have very good personal and working relationships with the justice teams on the front benches of both main political parties, I have to say it is utterly disappointing that neither has yet committed itself to applying the resources needed and yet each keeps identifying more new offences and proposing greater demands on the criminal justice system. I have to say, frankly, if you wish the ends you have to provide the means.

32. What is needed? So far as the Bar is concerned, I urge both parties to take the approach Margaret Thatcher did prior to the 1979 election in relation to police remuneration. Mrs Thatcher recognised, when she increased police officer salaries by around 45%,[9] that an effective justice system relies on appropriately renumerating those responsible for its operation. The Bar Council endorses the Policy Exchange think tank's recent recommendation[10] to the effect that in addition to the 15% increase in publicly funded fees already secured for advocates working in the Crown Courts, the Government should immediately apply a further increase of 10%, and that further increases in line with inflation should be made each year for the next five years.

33. At an overall cost of about £46 million, that is, to take the words of the last Lord Chief Justice, Lord Burnett of Maldon, "little more than a rounding error in many departments." While that will still leave overall criminal barristers' earnings around 15-20% short, in real terms, than ten years ago, I am hopeful that with other resource improvements it will improve professional life at the criminal Bar sufficient to both attract new, and retain experienced, counsel, reduce significantly the number of ineffective trials that are so detrimental to the system, bear down on the backlog and bring the criminal courts system back from the brink. Not to mention saving costs in other departments such as health and social services.

[9] Following the Edmund-Davies Committee Report of 1977-1979.
[10] Policy Exchange, The 'Wicked and the Redeemable', 4 November 2023, page 42, 4 November 2023

34. In the meantime, the Bar can and should do what it can to alleviate the position at no or modest cost to the Government:

34.1 At the point of entry I would like to see an expansion of the programme of match-funding of additional pupillages in publicly funded work:

34.1.1 The profession presently, through generous support of the Inns of Court, supports 33 match-funded additional pupillages. The Government could help with this. May I take the opportunity to suggest an eye-catching manifesto commitment to match-funding 100 additional criminal pupillages, perhaps badged as up to 500 new prosecutors in five years, at a cost of no more than £1.5 million per year.

34.1.2 We as a profession must do whatever is necessary to match demand with supply and fill all pupillage vacancies that are made available. I welcome the initiatives of the Circuit Leaders to encourage access to the profession outside of London. I will continue to work with them over the coming year to ensure that, where we have the capacity to do so, they receive the full support of the Bar Council in relation to their respective endeavours.

Retention

34.2 On the issue of retention, Middle Temple runs a superb 'Returners scheme' targeted at barristers who have taken long periods away from practice, to engage and encourage them back to work at the Bar. It starts with coffee mornings and evening drinks; and moves on to guidance for individuals and Chambers, individual coaching and advocacy refresher courses. I will work to see such a scheme made available to all barristers.

34.3 As a profession we should be open to greater transference between the employed and self-employed sectors. Historically when a member of the Bar has started their career in employment, or has departed from self-employed practice into the CPS, the Serious Fraud Office and the Government Legal Service, they have found it challenging to join,

or return to, a chambers. Employed practice, however, involves the development and application of quite different skills to self-employed practice in particular the management of large teams, and of course has the benefits that come with employment, and can be equally professionally fulfilling.

Family law

35. I turn then to the family court system. Unfortunately, it is not faring much better than crime with private law cases, including child custody cases, taking on average 47 weeks to reach a final order, continuing an upward trend since the middle of 2016. Legally-aided access to advice and representation is in most cases non-existent, often leaving the party who has the power and the money at a significant advantage over the other party in relation to the litigation.

36. Public law family matters, care cases, too are suffering from significant delays. Here case progression suffers from poorly resourced state authorities, including the Children and Family Court Advisory and Support Service, and the mis-match in public funding of representation, with families often not catered for.

37. The problem in family matters is a structural one. Cases are taking longer to dispose of and require more hearings. More expert reports are commissioned than used to be required. There has been very significant work by the Judges and professions including a 25% increase in sitting days, but still the backlogs grow. Demand is down by 10% compared to the period before COVID, but productivity, the throughput of cases, is down by 20%. It is hard to resist the conclusion that what we are witnessing is a chronic decline in the effectiveness of the family justice system following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which extinguished the availability of legal aid for most family law litigants who previously qualified.

38. We at the Bar Council consider that Government has a primary duty to ensure that children already suffering from family breakdown are not further punished by overly extended divorce or care proceedings that are so corrosive to their life chances.

However, it is difficult to discern any political will, at present, to provide the resources to make sure that happens.

39. One current step is movement towards compulsory mediation in private family law cases. While I have doubts about the effectiveness of mediation that is compulsory, regarding it as something of an oxymoron, mediation can be appropriate where parties are properly informed and the mediator is relevantly trained. The offer to litigants, however, needs to go beyond the £500 voucher to pay a mediator currently provided. Parties need legal advice. They need to understand the nature of the differences between them; the merits of their legal position; and how to make the most of the mediation. My further retail political offer suggestion is that, at a minimum, Government matches the value of the mediation voucher with funding for legal advice for each party in advance of mediation. This should somewhat redress the imbalance that power and money gives one party over the other, improve the success rates of the mediations and start to bear down on the backlogs.

Civil, delays and access to justice

40. In relation to civil justice the position is mixed:

40.1 On the one hand the digitalisation of the front end of the justice system in relation to civil disputes, led by the Master of the Rolls, is bearing fruit with those with technical ability enabled to commence and then conclude formal disputes online easily and quickly.

40.2 The Lord Chancellor is to be congratulated for listening to the profession as to the level of the Advocate's fixed fee in Fast Track and the new Intermediate Track cases. In relation to Fast Track cases by April 2024 there will have been an increase of around 23% in the fees that may be recovered for the work at trial of counsel compared to the position prior to October 2023. The first increase in a decade. This will be a real fillip for the junior Bar rendering a career sustainable that was becoming untenable. I hope that a similarly positive approach will be taken to our proposals for part recovery of brief fee where the case is vacated shortly before trial

by reason of settlement or court unavailability. The principle must be that reasonable payment should be made for work done.

40.3 On the other hand, the country suffers from serious and wide-ranging legal advice deserts. A tragic consequence of the 2012 LASPO Act was the evisceration of the mostly unregulated and charitable legal advice sector with the law centres movement being dealt a near fatal blow. Reliable trusted online advice can play a role here, but many who need such advice will never be able to make use of such a facility. The mixed results of the Government's Early Legal Advice Pilot shows how difficult it will be to recreate what we previously had. In the public interest some re-creation of 'green form' advice or an equivalent would pay enormous dividends in relation to access to justice, to combatting social exclusion and despair and would be at modest cost compared to the savings made across other departments as citizens are able to identify the nature of their problems and a way in which to resolve them.

The barrister profession: Race at the Bar, earnings, bullying and harassment

41. Turning to the profession itself, there are areas where the Bar must get its own house in order.

42. Work continues in relation to the recommendations of the Race at the Bar Report 2021. I have enjoyed being involved with, and am proud of, the Bar's internship scheme in conjunction with the 10,000 Black Interns Programme. Some progress is being made especially on access to the profession, but issues of retention, progression, income inequality and allocation of work are neglected by many chambers. We expect to report further on progress later this year.

43. The Bar Council's November 2023 earnings report laid bare the continuing substantial earnings discrepancy between men and women barristers. This year we will focus on the cohort where the problem should be easiest to address - the Call band of 0-3 years – which has a 17% disparity in earnings between men and women. While part-time working and time out of the profession may go some way to explaining difference in earnings between the genders from the middle stages of a career onwards, it is difficult

to believe that these reasons can be a substantial cause of difference in earnings at the beginning of a career.

44. On conduct and professional behaviour: Last month we published data from the Barristers' Working Lives survey which showed a dismal picture of 1,344 of the 3,030 barristers who responded on the topic saying they had experienced or observed bullying, harassment or discrimination in the last two years, marking an increasing trend from previous surveys. While it may well be that greater awareness and coverage of these issues across a number of sectors has resulted in barristers being more willing to identify and report experiences of bullying, harassment and discrimination, it may well also be that the prevalence is increasing. Either way the number of reports identifies an unacceptable, systemic problem that requires a significant response. The Bar Council, therefore, is commissioning a review to consider and identify solutions. We want to give everyone an opportunity to shape the terms of reference, so please submit your thoughts and also help us identify good examples of existing initiatives.

45. Stresses of modern professional life at the Bar are as significant as they have ever been and everyone can have a 'bad day at the office'. However, repeat offenders, committing acts of harassment and discrimination, those who repeatedly target women or people of colour, need to be formally disciplined.

45.1 Other unprofessional and bullying behaviour, not reaching the threshold of actionable misconduct for reference to the BSB, needs different treatment. Today I make a simple initial point pending the investigation by the Review- that those who observe such behaviours being experienced by others should not think it enough to leave it to the victim. All of us, opponents, bystanders, need to take advantage of the informal means of addressing this behaviour that are available, whether through simply recognising the behaviour for what it is and acknowledging it to the person who has suffered it, and through raising matters informally through Heads of Chambers, Circuit Leaders, Resident Judges, the Inns, and the Bar Council's own anonymous reporting tool, Talk to Spot. This would all contribute to the change in culture that is needed.

46. Our wide range of work to support the Bar is only possible thanks to the funding we receive including through members subscribing to the Bar Representation Fee. You will have the opportunity to pay this voluntary contribution during the authorisation to practise process next month. I hope you agree that we put your money to good use, whether we are championing the rule of law, making the case for fair remuneration or pushing back on over regulation.

Regulation, value for money, the role of the regulators and timing of Call

47. It is to regulation that I now turn.

48. It is important to remember that the regulatory framework contained in the Legal Services Act 2007 amounted to a compromise between self-regulation of the legal professions, which had been the position over centuries, and wholly independent regulation.

49. This compromise is reflected in the structures. The Bar Council is the approved regulator under the Act, but is required to delegate the regulatory functions, which we choose to delegate to the Bar Standards Board. The key stipulation is that decisions relating to the exercise of the regulatory functions are, so far as may be practicable, taken independently from the decisions of the Bar Council in its representative capacity. The BSB therefore independently sets and polices minimum standards in professional conduct, training and authorisation.

50. The Act also made provision for a regulatory performance oversight regulator, the Legal Services Board. The LSB's functions are stipulated by the 2007 Act. Consistent with the compromise embedded into the Act, the LSB is not, of course, a sector regulator nor a market regulator. Indeed, it carries out no direct regulation of the legal professions at all. However, it does set the rules relating to the relationship between the approved regulator and those to whom the regulatory functions are delegated, the internal governance rules. Those rules are under review this year.

51. Taking the BSB first, I would like to welcome the improvement in performance of the BSB, under the effective stewardship of its Chair, Kathryn Stone OBE, over the past year or so, particularly in relation to the timeliness of the processing of conduct complaints. There remains further to go, but most trends are in the right direction and the staff of the BSB are to be congratulated for their efforts.

52. There are two areas of a more critical nature that I would like to comment upon:

52.1 First, value for money. The BSB's spend has increased by 64% over the last six years, at a rate more than double that of inflation in what, for parts of the Bar, have been very difficult times indeed.[11] Now more than 70% of Practising Certificate Fee goes to the regulators. It is disappointing that only last year, some years into its recovery strategy, did the BSB commission an end-to-end process and productivity review and we look forward to reviewing draft proposals for change before final decisions are made.

52.2 Now the BSB appears to have turned the corner on performance, it must also look to bear down in its costs to the profession, ultimately, of course passed on to clients. The BSB is now an outlier in terms of regulatory cost charging per barrister £684 compared to the per solicitor cost of £436. While I accept that there are economies of scale that solicitors benefit from compared to the Bar, this is at least significantly mitigated by the Bar being a significantly lower regulatory risk. As performance continues to improve, coupled with increased productivity that should arise from the current review, I hope we can look to reductions in the regulatory cost to the Bar similar in pace to the rate at which it went up.

53. Secondly, I refer to the BSB's current consultation on the regulation of barristers in chambers. We welcome the proposal that the BSB should draw together on its website in one place all the minimum practice management requirements and standards imposed on self-employed barristers that, for most barristers, are fulfilled through

[11] £8.3m-£13.6m over the last six years (a 64% increase) whilst the Bar Council's has increased from £5m to £6.5m (30%). The Bar Council kept its costs at inflation over six years; BSB has put up its spend above inflation by 34%.

chambers. We at the Bar Council are carrying out a parallel exercise drawing together all of the best practice guidance and toolkits for chambers management into a single place. This is an example of helpful and mutually supportive working together that the BSB and the Bar Council can do.

54. One aspect of the consultation does, however, cause me some concern. That is where the consultation starts to promote the voluntary merger of chambers simply for the purposes of making regulatory compliance more comprehensive and easier. That is, respectfully, 'putting the cart before the horse'. There remain many barrister sole-practitioners and 140 or so Chambers of fewer than 25 members. While the paper rightly identifies that it would not be appropriate to graduate regulatory obligations on chambers according to size, the very suggestion of mergers of Chambers for regulatory compliance reasons indicates that the BSB's expectations of the necessary level of regulatory compliance activity is pitched too high. It must not be forgotten that under the 2007 Act individual barristers are the regulated person, not sets of chambers. I would urge the BSB not to pile on yet more 'before the event' compliance obligations upon all, but to concentrate on minimum standards setting and policing actual misconduct.

55. I turn to the Legal Services Board. The Bar Council has open cordial relations with the LSB, in particular with its new Chair, Alan Kershaw, even where there are sometimes significant differences of view. My focus this year will be on the review of the Internal Governance Rules to be undertaken by the LSB. The current 2019 version of the Rules does not properly reflect the compromise of semi-independent regulation of the legal professions found in the 2007 Act, but imposes complete independence not only of regulatory decision-making, but in practise on a host of operational matters, including complete autonomy on budget-setting, denuding the approved regulators of any effective role. This is inconsistent with the scheme of the 2007 Act where responsibility for regulatory performance, including all statutory sanctions, lies exclusively with the approved regulators.

56. The current Rules render the semi-independence settlement built into the statutory scheme unworkable. The Bar Council would, therefore, like to see the Rules restored to the more balanced and practicable position contained in earlier iterations.

Timing of Call

57. I turn to the timing of Call. That is the point in a person's education and training at which they are entitled to be called to the Bar, and to be called a barrister thereafter. As matters stand, unlike other professions, in particular, solicitors, a person may call themselves a barrister having completed only the academic and vocational training, not the 'on-the-job' traineeship or pupillage necessary to be able to practise as a barrister.

58. This has been the subject of much detailed argument last year and is currently under consideration by Benchers of the Inns. The Bar Council is clear that change is needed. I will not rehearse in detail arguments already fully articulated, but in summary:

58.1 First, there is consumer detriment associated with clear confusion as to who is entitled to call themselves barrister and who is not. It is difficult enough to explain to the public what a barrister is and does without having to explain that there are two categories of barrister.

58.2 Secondly, the unfair cost burden of regulation of all 70,000 or so barristers is placed on the nearly 18,000 practising barristers. The BSB has to date failed to identify what that cost is, but it is clear it is significant.

58.3 Thirdly, the availability of Call to the Bar gives false encouragement to those who have little prospect of obtaining a pupillage and, therefore, of practising at the Bar.

58.4 Conversely, the thousands being called each year are likely to discourage those, without the benefit of a bank of Mum and Dad, who might otherwise take the risk of incurring the costs of training and to seek pupillage.

58.5 Finally, there is the argument of principle - there should be a connection between the title and what you do.

59. I have not heard serious challenge to these positive arguments for change. Three points against have been made:

59.1 The first is that a change to link call to the Bar to the successful completion of pupillage 'hands the keys' to the profession to Chambers and employers, who, the argument must be, cannot be trusted to consider the sustainability of the profession as they will be focussed on their own narrow business needs. This argument might have had traction in the time when the Inns held the responsibility for who might be called to the Bar, but since the 2007 Act the keys are, in fact, held by the 20 or so educational institutions who provide the Bar vocational course and whose sole business interest is to maximise the numbers who take the course. Thus, we end up with the 1000s being called each year.

59.2 Secondly, that a wide Call enhances the soft power of the Bar internationally, particularly amongst Commonwealth countries from where large numbers of students come. That encourages links between the jurisdictions, even encourages adherence to the Rule of Law in those countries and is good for legal exports. I cannot argue that this point is without merit in relation to some jurisdictions. However, on my recent trip to India, seeking liberalisation of that legal market, I saw no signs of such sentimental effects. Of far greater significance in the soft power of the English and Welsh justice system is the excellence of our judiciary- many more of whom now take up posts following retirement in international commercial and other courts and arbitration than before; the jurisprudence and procedures of the Commercial, TCC, Chancery and other specialist courts; the internationally recognised and easily marketed kite-mark of Silk; and the international work of the Inns, Specialist Bar Associations and others in promoting the English Common Law and our system of justice. In any event, if there is a soft power benefit there is nothing preventing the Inns from introducing an alternative form of membership for those who have no

intention of practice at the Bar of England and Wales, and one not freighted with regulatory requirements and cost to the rest of us.

59.3 Finally, some of those who argue against change contend that limiting Call will harm diversity. I simply disagree with this. The starting point is that at entry to the Bar, both at pupillage and tenancy, there is diversity in that the Bar is representative of that cohort of the general population both in terms of gender and race. In terms of social mobility this is more difficult to track, but there is clearly more work to be done: about 35% of the current intake to the practising Bar is privately educated as against 18% of the A-level cohort.

59.4 Changing of the timing of call will help to improve diversity as it will allow the Inns and others to concentrate their educational, scholarships and other resources on those who have both real intentions and real prospects of succeeding at the Bar, focussed and sustained support to those of merit, but perhaps not means, instead of spreading around those resources far more thinly. It will also remove the current apparently poor point of comparison between those who successfully complete the vocational course and those who obtain pupillage. That may encourage those from less privileged backgrounds of real merit to take the risk and cost of the vocational course, improving diversity further.

60. Much heat has been caused on this debate over decades. However, stepping back plainly you would not start here. In my view, and I believe it reflects the mainstream view of the practising Bar, in this respect the Bar should be in line with other professions. I have, for example, yet to meet a junior barrister who considers the present arrangements sensible. I hope that we can finally make progress on this long-standing question this year.

Other matters: diversification, international, pro bono

61. There is much else on the agenda of the Bar Council that I could address, but I am conscious that drinks are calling, so will limit them to a few short points more.

62. First, if the Bar is to survive it needs to diversify and needs to look beyond just the English and Welsh courtrooms:

62.1 This may be in non-court-based dispute resolution in the domestic market, including with the expansion of mediation, offering a variety of opportunities for barristers as mediators and mediation advocates, or in family law arbitration.

62.2 It may also be internationally. Last year some 2,400 or so barristers exported their services bringing in £420M in revenue. I will continue to work on expanding the range and depth of international markets for our specialist services abroad.

63. Linked with this is that practitioners are rightly concerned about the climate impact of their work. I am pleased that as part of the host of work being carried out by the Bar Council's Climate Crisis working group we will, this year, offer an offsetting scheme for any barrister to take up that is in line with the Oxford Principles for Net Zero Aligned Carbon Offsetting, and that is transparent, verified and contributes to sustainable development.

64. I also want to take this opportunity to celebrate the pro bono work of the Bar, in particular by and through the Bar's two charities: Advocate and the Free Representation Unit. This year is the 20th year of the London Legal Walk. The former Lord Chief Justice, Lord Phillips of Worth Matravers, in his 19th year of walking last year joined 16,000 participants, the largest field in history, who collectively raised a record £950,000 in aid of the London Legal Support Trust. This is a good sum but I can't help but notice that it amounts to less than £60 per participant. Nick Emmerson, the President of the Law Society, and I agree that the professions, particularly large commercial law firms and Chambers, must in general do better as we push to get the sum raised above £1 Million for the first time in this anniversary year.

65. Finally, as a tonic to the rather bleak picture presented by the current state of the justice system I wanted to say a few words in recognition of what a wonderful profession we are fortunate enough to be a part of. Work as a barrister, even in a specialist area such

as construction, is marvellous in its range, the intellectual challenges presented, the reliance placed upon wits and the adrenaline charges associated with advocacy in the courts.

66. Tom Grant KC, in his book "The Mandela Brief" on the apartheid South Africa cases of Sir Sydney Kentridge KC, who has just celebrated his 102nd birthday and has fair cause to be called our greatest living advocate, describes how Sir Sydney managed to persuade Courts operating under that twisted version of the Rule of Law of the merits of his clients' cases by an absolute mastery of the factual case, understanding of the law as it applied to those facts, and an ability to distil the complexities to their simplest form underpinned by a "moral authority". This concept describes the apotheosis of the barrister and is a real contrast to the false characterisations of our role which infest parts of public discourse and media. Moral authority, not because the advocate is articulating his or her personal views, but the very opposite, because of the cold professional distance maintained between the advocate and the cause of the client, whatever their private thoughts may be.

67. Thank you for listening.

ENDS

Sam Townend KC is Chair of the Bar 2024. Sam is a silk at Keating Chambers and practises in domestic and international construction, energy and professional negligence work. He is also a mediator and adjudicator, and a Bencher at Lincoln's Inn. Sam was the co-chair of the Bar Council Legal Services Committee in 2022 and has chaired the Bar's Regulatory Review Working Group. He is a former member of the Young Barristers' Committee and Treasurer of the Free Representation Unit.

For more information please contact the Bar Council communications team via press@barcouncil.org.uk