

NEW REGIME, NEW OPTIONS

*Nicholas Green QC
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There is a real possibility that new areas of work can now flow directly into the Bar, believes Nick Green QC

With an election upon us and political announcements pouring forth by the minute it is difficult to tell what is political posturing and what is tangible and real. We have been discussing with all the main parties the issues of the day. But the reality of the matter is that until the result is known and the new administration settled in a great deal will remain uncertain.

ProcureCo

The Bar Council has now launched its model ProcureCo. This is designed to provide a toolkit which can be used by chambers to devise their own corporate or commercial vehicles. Many of you will be familiar with the ideas due to the road shows and seminars that have been run, which over 2,000 members of the Bar have attended.

New areas of business

I am continuing to visit chambers around England and Wales to discuss developments but we are now also embarking upon a campaign to educate purchasers of legal services about the increased options open to them when instructing the Bar. We are speaking to local authorities, to the LSC and to others. We are receiving a positive reaction to the changes occurring at the Bar. There is a real possibility that work that historically has not come to the Bar, because we have been seen as not an easy profession to contract with, can now flow directly into the Bar. Increasingly, numbers of chambers are sharing with me their plans for using ProcureCo type vehicles and the ingenuity of the Bar (ie clerks and practice managers) is extremely encouraging.

New consultations on entity regulation and direct access

As part of the ongoing modernisation process the BSB recently asked the Bar to complete a questionnaire. The BSB will also be consulting on entity regulation and further direct access in the summer. Entity regulation concerns whether the BSB should regulate corporate bodies. At present it regulates humans only. But ProcureCos, and other commercial vehicles which the Bar might use in the future, are "entities" and they will become much more useful to the Bar if they can fall under a proper regulatory regime. At that point in time they might be able to employ barristers and other legal professionals. They will be fully functioning vehicles providing maximum flexibility for chambers. Although the expression "entity regulation" sounds technical it is in fact of the greatest importance. The consultation will include the prospect of wider direct access. The criminal Bar says this is essential. For the rest of the Bar it is not quite as imperative. For some it is desirable since they already do a good deal of direct access work; for others it represents the chance to penetrate new areas of work. For yet others there is no pressing need to move away from the exclusively referral model. Please respond to these consultations. They describe a future for the Bar and the BSB needs your views.

Restructuring of criminal defence

Publicly funded practitioners will have seen the MoJ's announcement heralding a fundamental review of criminal defence funding. Whether this goes ahead will be affected by the election. But whatever the identity of the next government the pressure upon the public purse is so inexorable that initiatives of this sort may be with us for some years to come. Under the present proposals the MoJ would funnel increasingly large portions of legal aid funds to a smaller number of ever larger legal service providers. Big will be beautiful. The government will seek to extract maximum economies of scale from ever reduced resources. What does this mean for the Bar? It reinforces the current thinking that the criminal Bar will have to take steps to adjust its working practices. As to timeframes, sets should be looking at reviewing their positions and devising solutions so that they are ready to participate in new LSC contracting processes which might only be 12–18 months away.

Bar Schools mock trial finals

On a Saturday at the end of March I had the pleasure of being one of the judges in the national schools mock trial finals in Edinburgh. This was organised by the Bar Council in conjunction with the Citizenship Foundation and the Bars of Scotland, Ireland and Northern Ireland. 16 school teams from around these Isles met to contest the final. The pupils acted as counsel, witnesses, juries, court ushers and court clerks. They appeared in cases concerning "malicious mischief" (demonstrator throwing a pot of paint at McBurgers) and possession of cannabis with intent to supply by a school pupil (the defence was that the dealer's "tick list" was in fact a pupil's "fit list"). The pupils were fantastic. They rose to the occasion magnificently. It gave the pupils the chance to feel the adrenalin rush that is advocacy and to do so in the dramatic environment of the Court of Session in Edinburgh.