



The Bar Council

**Nick Vineall KC, Chair of the Bar**

**Inaugural speech**

**Tuesday 10 January 2023, Middle Temple**

**\*CHECK AGAINST DELIVERY\***

1. Tony Benn used to say that whenever you came across someone in a position of influence you should ask them three things. (1) Who put you there? (2) Who pays you? And (3) How do we get rid of you? They are excellent questions. But it can sometimes be embarrassing – a little forward – to ask those questions directly. I confess I have never dared ask the third question of any judge. But since they are good questions, and since I am newly appointed as Chair of the Bar, and in order to spare you the embarrassment of having to ask the questions, I thought I would begin by answering them.
2. Who put you there? I was elected by the Bar Council members to be Vice Chair last year and then to be Chair this year. I have always been a directly elected member of the Bar Council. I was elected twice as a junior junior and was Chair of the Young Bar in 1994 – the year when the first pupillage clearing house was introduced. I then had some time off for good behaviour, but was elected to the Bar Council again in 2016 and 2019. And I was Chair of the Education and Training Committee before being elected Vice Chair. So that's how I got here. In terms of practice, I was called in 1988 and did pupillage at 1 Essex Court and at 4-5 Gray's Inn Square. Neither of those sets wanted me as a tenant. I was lucky to find a tenancy at a friendly – and tiny set of 10 barristers – all men, and no silks – at 12 KBW. I had a mixed – really mixed – common law practice, in a

different County Court every day. I loved it. After 2 or 3 years my little set merged with the bigger set also at 12KBW. I was very happy there but 12 KBW began increasingly to specialise in Personal Injury work, and I wanted to do more commercial and construction work and in 1998 I moved to my present set, 4 Pump Court. I took silk in 2006 and I have been joint head of chambers for the last 5 years. So I have been lucky but I have not always succeeded first time round.

3. Second question – Who pays you? That’s easy – the Bar Council. And the Bar Council is funded by the compulsory Practising Certificate Fee which is levied on the 17,000 or so practising barristers, topped up by the Bar Representation Fee. There are of course 70,000 or so barristers altogether, but most of them are unregistered, and although they have to be regulated by the BSB (at the expense of the 17,000), they don’t contribute to the cost of regulation; they don’t pay me, and I don’t represent them.
4. Third question – how do we get rid of you? Well, you only have to be patient. My term of office is only a year. And if you want to get rid of me before that you’ll have to look at the Bar Council Constitution.
5. I suppose a fourth question might be – why do you want to do it?
6. That’s easy too. Ours is a small but wonderful profession with a profoundly important constitutional role to play, an importance which becomes obvious if you look at how lawyers are treated in those countries which do not respect the rule of law. As Chair of the Bar I want to articulate clearly the core principles which I believe we all share: that it is critical for the rule of law to maintain a strong and diverse profession of truly independent advocates. Our professional role as advocates is, and is only, to advise and represent our clients with integrity and determination as fully as the law permits. We are not a branch of law enforcement. We do not – we are not permitted to – choose our clients on the basis of their causes or what we think of them. As an obvious corollary of

that cab rank obligation we are not to be associated with our client's causes simply by virtue of fulfilling our professional obligation to represent and advise without fear or favour.

7. These things will seem to many of us in this room to be self-evident, but they bear repetition and I intend to keep repeating them. They explain why it is absolutely and fundamentally wrong to criticise a barrister for representing asylum seekers, or criticise a barrister for representing a socially conservative Caribbean government, or to criticise any barrister for representing whatever other person or group you may happen to disapprove of. These principles also explain why current proposal before parliament to add to the Legal Services Act a new regulatory objective of "promoting the prevention and detection of economic crime" – an obviously laudable aim in itself – has no place in the regulatory objectives. It does not belong there because it muddles the role of lawyers with the role of law enforcers.
8. So I am immensely looking forward to chairing the Bar Council. It is a great honour and a great privilege. I am extremely lucky to have Sam Townend KC as my Vice Chair.
9. So what challenges (perhaps what other challenges) lie in the year ahead?
10. First there is important unfinished business from last year, in relation to remuneration for publicly funded criminal work. During the brief Lord Chancellorship of Brandon Lewis the government eventually agreed to implement the minimum recommendation of the Bellamy review into criminal legal aid. It agreed to an increase of 15% on all work to be done on AGFS – Advocates' Graduated Fee Scheme - cases. This was long overdue. It followed years of underinvestment. That underinvestment led to severe strain on the criminal Bar – especially the most junior – led to barristers moving away from criminal work, and led eventually to the action by the criminal Bar. With the deal now done the temptation is to heave a sigh of relief and think about other

things. But we must remember that the work of the Criminal Legal Aid Advisory Board is only just beginning. There is work still to do on remuneration for section 28 hearings and written work. The long-term aim is surely to recognise that a system of regular reviews is needed to give a mechanism by which remuneration for publicly funded criminal fees can – at least more or less – maintain its value in real terms. Unless some such system is put in place we will lurch from crisis to crisis, and every few years the Lord Chancellor will be faced by the disruption which inevitably takes place when the government's approach is to starve the system of resources until that crisis point is reached. Nobody runs a business like that, and almost all of those whose pay comes from the state – nurses, doctors, teachers, judges – have pay review boards that make annual recommendations to government. A more realistic and long-term approach is needed to remunerating all lawyers – not just barristers but also solicitors and legal executives – who do publicly funded work in the criminal justice system.

11. On the prosecution side there is an urgent need to ensure that CPS fees keep in step with defence fees – for obvious reasons. The Director of Public Prosecutions Max Hill KC told parliament last year, "We don't ask that prosecutors are paid a penny more than those who defend, but we do say that they must be paid the same." I agree.
12. There are other pressing issues in the criminal courts beyond remuneration. The most pressing and the most obvious is how to reduce the number of cases in the system to an appropriate level. In 2018 there were about 35,000 pending cases in the Crown Court. Today there are about 60,000. Important work has been done over the last 12 months by the Crown Court Improvement Group, set up by the Lord Chief Justice and led by Lord Justice Edis. The CCIG has brought together all the agencies whose cooperation is vital to the efficient running of the Crown Court. The CCIG has the support and involvement of the Bar Council and of the CBA. The single biggest difference to Crown Court

backlogs would be achieved if more of the guilty pleas which are currently made at late stages were made at the PTPH, the plea and trial preparation hearing. This is a key aim of the recently updated Better Case Management Guide. We must as a profession support it.

13. There are similar challenges with backlogs in civil and family work and in the Employment Tribunals and we will continue to work with HMCTS and the MOJ, and the judiciary to explore how improved working practices and procedures can lead to more efficient disposal of business, but without compromising the features of our system that litigants, especially litigants in person, most value, in particular an oral hearing for trials and other dispositive applications.
14. One of the things that has most struck me in my year as Vice Chair has been how rich and complex is what I think of as the eco system of the Bar. Almost all of us practise either from Chambers or from an employment setting. But on top of those structures and supports we are all members of one of the 4 Inns. Many of us are members of one of the 6 circuits. Most of us are members of at least one of the 24 specialist Bar Associations. Each of the Inns, each of the Circuits, and every SBA, provides ongoing education, and professional support of various types, and many of those organisations play an active role in the Bar's work to make the profession an inclusive and welcoming meritocracy. If you were designing the system from scratch you probably wouldn't design it this way. But that is a great point in its favour – it is not there because it was designed from on high with a top-down strategy, but because it has evolved to meet the needs of the profession in the most efficient way. Is it a coincidence that the Inns concentrate their education on the most junior, or that the SBAs provide expert and often highly specialised topic-specific lectures, or that the Bar Council training is focused on management of chambers and good E and D practice? No of course not. It reflects what those organisations can do best because of their membership demographic and reach. None of these good

things happen because a regulator somewhere has decreed they must be done. And almost all of those activities are done by volunteers in the interests both of the profession and the clients we serve. So I am acutely conscious that in my year as Chair of the Bar an important part of my role is to ensure that we all know what everyone else is doing, and we pull together towards the common goals of the profession.

15. And that brings me to the second topic I wanted to touch on which is the regulation of our profession under the framework set down by parliament in the Legal Services Act 2007.
16. As we all know you don't have to be authorised to give legal advice. Just as well because otherwise the critical frontline legal advisory work done by housing and welfare charities, and legal advice provided on a daily basis by Citizens Advice, would be restricted to authorised persons and subject to the cost and complexities of being regulated. But some aspects of legal services – conveyancing, conducting litigation, exercising rights of audience (the most important one for us) – and various others, are regulated activities and you need to be authorised to do them.
17. The 2007 Act struck a careful balance between the continuation of separate self-regulating professions, and the need for independence in the performance of certain key regulatory functions. The Bar Council supports the 2007 Act and agrees that the architecture which it created is appropriate. But it is obviously important that the bodies who regulate under that Act perform the tasks, but only the tasks, that parliament intended them to have. And as with all regulation, there are costs – both the direct costs of the regulators themselves, but more significantly the indirect costs of complying with, and demonstrating compliance with, regulatory rules. And those costs are all borne, ultimately, by our clients – by the consumers of legal services. There is no one else on whom

those costs can fall - there is no free-standing money-tree which can be used to meet the direct and indirect costs of regulation.

18. So it is important that the regulatory burden of direct and indirect costs is not increased by unnecessary duplication of functions, and that the regulators focus on problems that exist rather than those that are imagined.
19. You will find no mention of the Bar Standards Board (nor of the Solicitors Regulation Authority) in the Legal Services Act. That is because the Approved Regulators under the Act are the Bar Council and the Law Society. The Law Society delegates its regulatory functions to its incorporated subsidiary, the SRA, as its way of meeting the statutory requirement that decisions relating to the exercise of the Law Society's regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.
20. Similarly the Bar Council as the Approved Regulator delegates to the BSB its regulatory functions.
21. And similarly again the Chartered Institute of Legal Executives (CILEX) presently delegates its regulatory functions to a separate body called (perhaps somewhat unimaginatively) CILEX Regulation. But CILEX is so dissatisfied with way in which CILEX Regulation performs its regulatory functions that it is proposing to change that arrangement and instead delegate its regulatory functions to the SRA. The fact that this is possible underlines the fact that ultimate responsibility for regulatory functions lies with the Approved Regulators.
22. Let me say straight away that we have no present plan to follow the lead of CILEX and to look for a new body to whom to delegate our regulatory functions. And let me also acknowledge straight away that it is emphatically not for the Bar Council to interfere with individual regulatory decisions made

by the BSB. But I do believe that it is not only appropriate but incumbent on us as the Bar Council to take a close interest in the overall performance by the BSB of the regulatory functions which fall on us as Approved Regulator and which we delegate to the BSB.

23. The BSB reports against a series of key performance indicators. Its latest annual report shows that in the key area of Investigations and Enforcement the BSB, for the second year running, is failing to come close to meeting its targets for key performance indicators. There is a target of accepting new cases or referring them back within 2 weeks. The target is 80%. The actual figures achieved in the last reporting year was 54%. Then the next performance indicator is to reach “a decision on disposal” within 25 weeks. Again, the target is 80%. But the actual figure achieved was 34%. And note that a decision on disposal does not mean a final resolution – it might mean just that the case will go to disciplinary tribunal.
24. Of course there are partial explanations that can be given – that it is difficult to recruit staff, and that there has been an increase in the number of complaints. But these provide no comfort to complainants, nor to the barristers who are complained about, and who may feel their professional life is in limbo pending resolution of a complaint against them.
25. The Bar Council has been given assurances, which it accepts, by the new Chair of the BSB, Kathryn Stone OBE, that a review is in train and a recovery plan is in place. I am cautiously optimistic that steps are being put in place which will lead to an improvement in performance, and pleased that the Bar Council is being given good visibility over what is being done. We are, after all, emphatically all on the same side and there is a complete coincidence between the public interest, the interests of our clients, and the interests of the profession that disciplinary matters are dealt with both fairly and promptly. But improving performance will require concerted and focussed effort by the BSB

in conjunction with looking at ways to streamline the system, in particular to see if unmeritorious complaints can be weeded out at an earlier stage. And I think there is a shared understanding between the BSB and the Bar Council that present levels of performance are not acceptable.

26. The second area where we look forward to working closely with the BSB is in ensuring that there is no unnecessary overlap between what the BSB does and what the Bar Council does. The BSB's spend has increased from £8.3m to £11.2m over the last 5 years (a 35% increase) whilst the Bar Council's has increased from £5m to £5.4m (an 8% increase). Every now and again it is important that a deduplication exercise takes place to ensure that the profession is not paying for the same things to be done twice. This year is a good time for that to happen.
27. The BSB regulates barristers, not chambers, but has suggested that there might be better dissemination of chambers' best practice. This is a good suggestion and at the Bar Council we intend to try to develop better online signposting to best practice resources, especially for barristers who are HOCs or on management committees, and for clerks and chambers professionals who have chambers management responsibilities. At the moment the Code of Conduct sets down minimum requirements; and then there are resources available from the Bar Council, and sometimes too from the Inns, SBAs, the Institute of Barristers' Clerks and the LPMA giving guidance on how best to meet and exceed the minimum regulatory obligations. I think more could be done by us at the Bar Council to bring these materials together in an easy to access form so as to share best practice.
28. Another regulatory issue concerns Call to the Bar. But it is the Inns that Call people to the Bar, so this is first and foremost a question for the Inns. The question is, at what point in the three-stage process of qualification to achieve

the rights of audience which barristers enjoy, should the title of barrister be conferred?

29. Our colleagues in the solicitors' profession confer the title of solicitor when a person's training is complete, and indeed the title solicitor may only be used for so long as the individual remains on the Roll.
30. Is it right that the title of barrister is conferred – for life – before a person ever becomes entitled to practise as a barrister? Perhaps an analogy is useful. If we decided to regulate window cleaning, would it be sensible to have a large number of people who were entitled to call themselves window cleaners but who weren't entitled to clean windows? The present position with the title barrister is certainly confusing to the public, and the present arrangements are a major contributory factor to the fact that 17,000 practising barristers have to pay for the regulation of 70,000 barristers. I welcome the fact that the Inns are looking at the question of when in the process Call should take place, and we look forward with the greatest interest to their considered views.
31. The overseer of the Approved Regulators is the Legal Services Board. Its principal role is oversight of the Approved Regulators. I can say with confidence that that is, or at least ought to be, its principal role because section 49(3) of the Act says so in terms.
32. The LSB has been surprisingly explicit about its disapproval of the regulatory regime created by parliament, and under which it is supposed to operate, and equally explicit about its desire to be a sector-wide regulator.
33. The [consultation paper](#) which LSB provided for its draft strategy for regulation 2021-22 reveals that the LSB is treating its remit as wider than it in fact is.
  - a. The Foreword by the LSB's Chair said this: "As we reach the end of our 2018-21 strategic period, we decided not just to create another corporate strategy for the LSB, but rather to develop a strategy for sector".

b. The Executive Summary explained that “[The LSB’s] vision was to develop a strategy for the entire sector and not just for the Legal Services Board.”

34. And that is what the LSB has gone on to do.

35. The LSB’s campaigning ambition to become the sector-wide regulator is also evident from the “[Frequently Asked Questions](#)” that went to public consultees to the Ongoing Competence in Legal Services consultation:

“The LSB could not establish a single regulator for legal services as the law would need to be changed in parliament to do this. While it is the LSB’s view that ultimately moving to a single regulator would have significant benefits for consumers, for now it promotes achieving benefits for consumers in other ways, such as cross-sector collaboration between the regulators.”

36. We believe there is a serious and important debate to be had about whether or not it is the job of the LSB to develop a strategy for the entire legal services sector, especially given that – firstly – the LSB’s principal role is oversight of the frontline regulators, and – secondly – that the legal services sector extends well beyond authorised persons.

37. The Legal Services Board is a non-departmental public body. It used to be subject to triennial reviews by the Ministry of Justice as its sponsoring department; these gave way to “tailored reviews” but the last tailored review was in July 2017. That was before the LSB decided that its role was to develop an overarching strategy for the entire legal services sector, both regulated and unregulated. Nothing in the last review suggested it ought to be doing that.

38. So we invite the MOJ to carry out a further review of the LSB. This would be particularly timely as we await the announcement of the identity of the incoming Chair of the LSB and it would allow the LSB under its new leadership to be confident that it was setting off in the right direction.

39. We also very much looking forward to working with the LSB this year in its promised review of the internal governance rules. These are the rules that set out the framework to ensure that the Approved Regulators like the Bar Council meet the statutory requirement in section 30 to ensure that, so far as practicable, regulatory functions are carried out independently of representative functions.
40. That's enough – for now – on regulation.
41. I want to say something about equality and diversity at the Bar. On *some* metrics where we now are is good. For those obtaining pupillage through the Gateway last year the figures, for those who chose to declare their ethnicity or gender, were like this:
- As to gender: 61% women vs 39% men
- As to ethnicity:
- 78% white as against a UK population of 82%
- 12% Asian or Asian British as against a UK population percentage of 9%
- 3% Black, Black British, Caribbean or African as against a UK population percentage of 4%
- 4% mixed ethnicity as against 3%
- 4% other ethnicity as against 2%
42. The demographic of those obtaining pupillage is overwhelmingly the biggest determinant of the future diversity of our profession and, if the present pattern continues, we will continue to have a Bar that broadly reflects the ethnic mix of the population, and we are likely to move eventually from a Bar that is predominantly male to one that is predominantly female.
43. But even at the intake stage there is more to do. Ethnic minority candidates seem to do worse in obtaining pupillage than white candidates even after

controlling for degree class and university attended. And the intake to commercial chancery and construction sets is markedly less diverse than elsewhere. I welcome the important work done by COMBAR and TECBAR and the Chancery Bar Association. The report of their Black Inclusion Group identifies 17 recommendations to help improve outreach, recruitment, retention, progression, and culture.

44. Let's take two candidates for pupillage. They both have firsts from the same university (nowadays 38% of all students get a first and 56% of all applicants for pupillage have a first). The first of our two first-class candidates has A star AA at A-level. The second is a bit better on paper and has A star A star A. But perhaps the first candidate, with the slightly weaker grades, comes from a home background where academic excellence is not highly regarded and went to an under-resourced and overstretched school, and perhaps the second went to a well-resourced and highly academic school and comes from a family where academic excellence is celebrated. Then the position might well be that the first candidate is more likely to thrive in your chambers than the second. Contextual recruitment tools can help that type of judgment to be made. But such tools tend to be expensive. The Bar Council is actively exploring the possibility of allowing access to such tools as an add-on to the Pupillage Gateway system, which would enable this sort of analysis to be made available to chambers who wished to use it at a more manageable cost. I really hope we can make that work so that this time next year it is available to chambers as part of the Pupillage Gateway.
45. But I suggest that the most pressing E&D challenges for our profession now lie not in recruitment but in retention and progression. This was a key message from the Bar Council's Race at the Bar Report in 2021, chaired by Barbara Mills KC and Simon Regis. That report made 23 recommendations for action. But can I remind you of the overarching recommendations of that report.

46. There were three (and I will condense them slightly)
- a. First, target setting. SBAs and chambers should set targets – with timeframes – for improving diversity. Targets should be based on a principle of meet the target or explain why a target has not been met. I observe that we are talking here about targets, not quotas.
  - b. Second, data transparency and monitoring. There should be a concerted effort to encourage data analysis and sharing by all organisations across the Bar to enable progress to be tracked with ethnic minority data split by ethnic groups. The impact of intersectionality should be properly analysed.
  - c. Third, have a plan for implementation of (at least) these first two recommendations.
47. Our professional stock-in-trade is argument based on evidence. We should never be afraid of collecting and analysing data about progression and earnings in chambers or in our practice areas. We need to realise that there may be complex reasons for the differences and patterns we see, so for instance we would need to know how *much* people work as well as how much they earn before proper comparisons can be made. But none of this should deter us from collecting and analysing the evidence. Good sets are already doing this, learning about who is thriving and who needs support. Sets that do this ensure that everyone has the same opportunities to advance their career.
48. Much useful evidence comes from the Bar Council's working lives survey which we do every other year. But it would be more useful if more people responded. I know – at least I certainly hope – that when it comes out in the spring, all the barristers who are here will complete it. But can I ask you to do something else? Just send an email around chambers urging your colleagues to do the same. That will be far more effective than exhortations from me.

49. Let me touch very briefly on some other ongoing issues without attempting to cover everything that the Bar Council will be doing this year.
50. On the legislative horizon there is the Retained EU Law Bill. The Bar Council will be joining the large chorus of voices urging the Lords to address serious concerns over timeframes and parliamentary scrutiny. And perhaps there will be a Bill of Rights Bill (I rather hope not). And there is the question I touched on earlier of a proposed new regulatory objective.
51. On the international front there is important work to be done on post-Brexit bilateral trade agreements for legal services.
52. The Young Bar Committee chaired by Michael Harwood, and the EDSM committee will (amongst other things) be focussing on harassment and bullying of junior barristers. On that important topic can I remind everyone about the Bar Council's "Talk to Spot", an online tool that allows barristers, and others, confidentially and anonymously to report inappropriate behaviour, whether it happens to you or you see it happening to someone else.
53. And in a post-pandemic world we all need to think about, and balance, the benefits and the disadvantages of remote working. The immediate benefits of an extra hour in bed and no train fare are obvious, and are often personal, perhaps one might even say self-centred or at least self-focussed. But the disadvantages are equally real, though perhaps less immediate, and tend to be shared rather than individual. A shared culture in chambers, a common culture in our profession, the ability for pupils to assimilate the best standards of the Bar: all of these are profoundly degraded by a working life carried out predominantly through a screen.
54. On pro bono we will continue to support the invaluable work of the Free Representation Unit, and to champion the work of the Bar's pro bono charity Advocate. Pro bono is a badge of the Bar's integrity and the Bar's commitment

to the public interest. As lawyers, we *know* where and how the law can help. That puts us in a unique position to serve those struggling to access justice, not just those that can afford our services or obtain legal aid. Even an hour or two of advice can make a difference – the law is a complex maze for litigants in person. Please consider making pro bono a part of your practice in 2023.

55. Lastly some thank yous.
56. First to my Inn, Middle Temple, for generously hosting this evening and to Jamie, Isi and Yvonne for organising it. And to all four Inns for your support of the Bar Council, both financially and in so many other ways.
57. Secondly to all those individuals who contribute directly and indirectly to the work of the Bar Council and the BSB and to the integrity and public spiritedness of our profession. The staff at the Bar Council and BSB. Benchers and staff of the Inns and those who serve on Inn committees; the barristers and others who serve on Bar Council committees, particularly those who have agreed to chair committees this year; SBA Chairs and Officers; and the circuit leaders. You are all key parts of our complex ecosystem and we will achieve most when we pull together.
58. Thirdly and finally one specific thank you. Mark Fenhalls has led our profession with great distinction over the last 12 months. Mark, your style is one of gentle but persistent persuasion, and you have built strong relationships with our colleagues and friends in the MOJ and HMCTS and in parliament. Many people contributed to the eventual deal which brought to an end the CBA action, but I can say with complete confidence that it would not have been achieved as and when it was without your quiet but determined work in building strong relationships even with those with whom we do not always agree. You are more interested in achieving solutions than with being recognised as the architect of solutions. Thank you on behalf of the Bar for all you have done and the very best of luck as you return to practice.

59. That concludes the formal part of the evening but I very much hope you will stay and mingle and might have a drink.

ENDS

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