



## INAUGURAL SPEECH TO THE BAR COUNCIL 3 DECEMBER 2018

### RICHARD ATKINS QC, CHAIR-ELECT OF THE BAR

#### INTRODUCTION

May I welcome everybody to this, the inaugural meeting of the Bar Council for 2019. Congratulations to all of you who have been elected or nominated to the Bar Council. I recognise many of you, welcome back, but I am also delighted to see some new faces here. Welcome to your first meeting.

Those of you I do not know, I will endeavour to speak with tonight, but if I do not manage to, please do come and talk with me at any Bar Council meeting or any other function where we may bump into each other. My door will also always be open at the Bar Council offices.

I hope that you will all get fully involved with the Bar Council, not just attending the Saturday morning meetings, but by taking a full part in the work of the Committees.

I make it plain here and now that I intend to be visible and accessible during my year as Chair, not just to the Bar Council, but to the Bar as a whole and to all those who have links to or interaction with the Bar Council. I intend to visit the Circuits and also to get out to visit the parts of the South Eastern Circuit that might

otherwise feel that they have been left out. The executive office will be in touch shortly with Circuit administrators, if they have not been already.

I am also intending to set aside some time approximately once a month at the Bar Council when members of the Bar can drop in or call in to speak to the Chair and Bar Council staff, to raise any issues or concerns they have. I do not know how this will work out but am keen to give it a go and will provide more details in early January.

May I also welcome the large number of guests who have joined us this evening. Some of you have previously served with distinction on the Bar Council, welcome back, and some of you are here because of the prominent positions that you hold in the Justice system.

I would particularly like to welcome my family, Nicky my wife, my children Harry and Lucy, and my mother Margaret without whose support I would not be able to do this job.

I would also like to welcome the members of staff at the Bar Council who are here. They in my opinion are the unsung heroes. They work tirelessly on behalf of the Bar. Their dedication to their jobs is phenomenal. I have been involved with the Bar Council since 2003 and I have seen at first hand the hours they put in and the lengths they go to in order to ensure that the Bar is well looked after and promoted. I have no doubt that they rarely get the recognition that they deserve and so I wish publicly to acknowledge all they do.

Before setting out my stall, may I say, it is an honour and a privilege to have been elected as Chair of the Bar Council for 2019. I do not come from a legal background. As some of you will have heard me say before, my Mother was a teacher and my

late father ran a business that repaired domestic appliances. So, to be leading this profession now is probably as much a surprise to me as it is to you. But I shall do all in my power over the coming year to ensure that the Bar not only survives but thrives.

There is always a lot to do, much of which we are aware of, but as I know every former Chair of the Bar will tell you, it is the issues that we currently do not know about which are apt to cause the biggest problems.

As Disraeli said: "What we anticipate seldom occurs, what we least expect generally happens!"

I have little doubt, for example, that my immediate predecessor Andrew Walker QC had no idea just how much of his time criminal legal aid fees would take up when he gave his address this time last year.

Many of you were present when I sang Andrew's praises here at the final meeting of the 2018 Bar Council, only a couple of weeks ago. I am not going to repeat what I said about what a fantastic job he has done over the past 11 months and before and how tirelessly he has worked for the Bar. But he will be a very hard act to follow. Andrew you have been a terrific Chair of the Bar at a very difficult time, but you have led us with courage, excellent judgement, flair and determination and you will be sorely missed.

Now let me try to deal with what I know is already on my radar and then let me tell you about what I hope will be the benchmark of my year.

It seems to me that currently the main issues the Bar Council needs to grapple with over the coming year are: the state of the Justice system, Brexit, Regulation, Court

reform, Equality and Diversity, the Perception of the Bar Council across the Bar, and lastly practising as a Barrister. I can assure you all that the Bar Council will continue to fight hard to tackle these key priorities.

I remind myself, and you all, of our mission as set out in the Bar Council's Strategic plan:

To champion:

- the rule of law and access to justice for all in England and Wales;
- the Bar's high-quality specialist advocacy and advisory services;
- the highest standards of conduct, skills, and ethics;
- equality and diversity across the profession;
- the development of business opportunities for barristers at home and abroad.

The independent Bar plays a crucial role in upholding and realising the constitutional principles of government accountability under law and vindication of legal rights through the courts. As the Bar's professional body, we draw on barristers' expertise and dedication to lead on these issues, in the public interest.

We act as a powerful influence on the development and implementation of government policy, aiming to secure the highest standards of justice, equity, integrity, access and efficiency in our justice system.

We campaign for a justice system which enables everyone to benefit from the rule of law and ensures their legal rights and liberties are upheld.

And we champion the rule of law in England and Wales, and around the world, at every opportunity.

I am obviously not going to deal with every issue that we have to confront over the coming year, so if any member of the Bar Council is concerned with any issue and wishes to raise it they can do so at Bar Council meetings or with me.

## JUSTICE

October saw the launch of the very well-received Justice Week and our long-term drive to move justice up the policy agenda in Whitehall and Westminster. The principal aim of the campaign is to persuade the Government and, in particular HM Treasury to fund the Justice system properly and thereby to address the consequences of the neglect and under- investment of past decades.

This is something that I shall drive forward throughout the coming year and we will be making submissions to the Government ahead of the spending review which we anticipate is likely to take place this Spring.

There are too many issues to deal with them all now, but they include pressing for reform of LASPO (Legal Aid, Sentencing and Punishment of Offenders Act) to restore access to justice to those who have lost out and we eagerly await the outcome of the Government's review; we will press for an increase in the legal aid budget in all areas; we will attempt to tackle the issue of perpetrators of domestic abuse being able to cross-examine victims in family cases; we will continue to make representations in relation to the problem of unregulated remunerated McKenzie friends; and we will seek reform of the system now operating for the instruction of Court interpreters.

The recent "I am the Bar" campaign was a huge success, so much so that there is now a spin-off campaign entitled "I am the Bench", although I hope that I will not be seeing too many of you appearing in that campaign. We need quality people to stay at the Bar, but that having been said it is of course vital that the high quality of our Judiciary remains so. I am alive to issues having been raised about various Judicial competitions and I shall be seeking early contact with the Judicial Appointments Commission to address those which have been drawn to my attention.

I shall also be raising with Government the need to ensure that recruitment of people of the highest quality to the Judiciary remains a priority.

## BREXIT

Let me deal next with the elephant in the room, Brexit.

The lack of detail in the recently published withdrawal agreement on the future position of legal services as between the UK and the EU only serves to perpetuate the uncertainty in the profession and elsewhere over the post-Brexit world. We have though some of the best minds at the Bar looking at all of the various options and considering how we deal with whatever eventuality we are ultimately presented with. The problem of course is that if those in charge of Brexit do not know what is going on, how on earth can we?

The Bar Council Brexit Papers have been tremendously well received and we continue to make representations to parliamentarians at all levels as well as to the Government to try to persuade them of the importance of securing civil justice cooperation, and market access. I read with interest what the Chairman of the Justice Select Committee, Bob Neill MP, said in the committee's representations to the Government about this only last week.

If we leave the EU on the 29 March 2019, we may well then enter a transition period taking us through to the end of 2020. But as the Political Declaration on the Future Relationship only appears currently to give comfort in respect of future judicial cooperation in the fields of family and criminal law, we will no doubt have to continue the battle to ensure that we obtain certainty for our clients in other areas of law, as well as securing the best possible market access for our practitioners in the EU. We must fight to preserve: legal professional privilege and rights of audience where possible; access to justice through a comprehensive system of civil judicial cooperation, in line with that proposed in our Position paper published in July on Future Judicial Cooperation; a flexible regime for the movement of persons which amongst other things ensures effective access for our members to EU jurisdictions (as they often have to travel at very short notice); and we will also remain fully engaged in the defence of individual rights and on all aspects of dispute resolution and enforcement.

I am tremendously grateful to Rhodri Thompson QC for agreeing to continue to Chair the EU Committee at this difficult time.

Obviously, Brexit is dominating many peoples' thoughts at the moment, but we must also not forget that there is a wider world as well and the work of the International Committee will continue to ensure that we remain a major figure globally, whatever the final outcome of Brexit is. And in that regard may I thank Steven Thompson QC who has agreed to take over as Chair of this Committee from Amanda Pinto QC and thank Amanda for all the hard work she has put in to the committee over the past few years.

Of course, as you all know Amanda is not disappearing, but will be the Vice-Chair of the Bar Council for 2019 and I look forward to continuing to work closely with

her. I have no doubt that her huge knowledge of matters international will be of great assistance as we continue our successful work in developing our opportunities around the globe post Brexit.

I am also delighted to see that the latest figures from the Bar Mutual show that the international income of the Bar has grown continuously since 2004 from £90 million to £322 million per annum and more importantly that the number of members of the Bar with international clients in other jurisdictions has nearly doubled in that time to just under 1,800.

### REGULATION

Regulation looms large on the horizon. The Legal Services Board's (LSB) current consultation on Internal Governance Rules raises the possibility of the Bar's independent regulator, the Bar Standards Board, becoming more and more remote from the Bar Council. There is the possibility for example that the Bar Council will have absolutely no involvement in the future appointment of members of the BSB's Board. There is also the possibility that unless the BSB decides to consult the Bar Council on its budget plans the Bar Council will have no input into this process either. And this of course decides the level of the Practising Certificate fee. These, and other proposals would in my opinion be unhelpful both to regulator and regulated if brought into being.

Whilst the BSB's mission is to protect the public and consumer interest, we do rely on them having an understanding of the profession and the challenges it faces. My belief is that this is the current position. If, however, the LSB's proposals are implemented this risks being undermined.

If the LSB's consultation leads to any of the outcomes I have just touched on, or others, this could lead to disputes that simply do not exist at the moment and lead to an increase in the costs to the Bar.

I do wonder why the LSB appears to be so keen on pressing ahead with these proposals? Where is the evidence of the need for them? The Executive Summary to the consultation states "We want the new Internal Governance Rules to enhance regulatory independence within the framework provided by the Legal Services Act 2007. Consumers and the public as a whole are more likely to have confidence in legal services if regulation is, and is seen to be, independent. Regulatory independence also gives the providers of legal services the certainty to grow and innovate."

Where is the evidence for the implication that the public does not have confidence in legal services provided by the Bar? Where is the understanding of what the Bar does and how well it is already regulated by the Bar Standards Board?

As Andrew Walker QC said in his address to this inaugural meeting last year, he wished to see regulation that is wise, mature, sophisticated and effective, which involved a proper understanding of the Bar and which was without unnecessary and resource-sapping distractions.

In my opinion there is a need for those who constantly peddle the dogma of regulatory independence to understand what the Bar is and does and how we pride ourselves on our professionalism.

The Bar has never been against the high-quality regulation of legal services, but we are unshakeably firm in our view that over-regulation is not a good thing. We

must fight hard to make the case that we do not need further regulation, further red tape or a super regulator.

That is why we will be asking the LSB to evidence their assertion that their proposals will lead to cost savings. We have seen no evidence for this.

All members of the Bar need to participate in responding to the current consultation. It will be no use complaining if you do not respond and you find that we have sleep walked into a nightmare scenario.

The Inns too I believe have an important role to play here, not least because of their involvement with the future education and training of those coming to the Bar. The proposed Inns of Court College of Advocacy Bar Professional Training Course is I believe a marvellous development in this market. I hope very much to see it up and running in the not too distant future.

As education and training is such an important issue for the future of the Inns and is a regulated area, it is important that the Inns respond to the LSB consultation.

And whilst dealing with education and training, may I thank Guy Fetherstonhaugh QC, who I know cannot be here until later, for agreeing to remain as Chair of the Education and Training Committee for 2019. This despite the fact that not only does he have a very busy practice, as do all Chairs and members of committees, but will also be Reader of the Inner Temple in 2019 and Treasurer in 2020. He is a glutton for punishment, but I am very glad that he is.

### COURT REFORM

The Government's plans for court reform will feature prominently, not least Flexible Operating Hours. We have though already shown how representations and reasoned arguments can win the day with the Government having listened to

the submissions made in relation to criminal courts and deciding not to press on with that pilot.

For my part I find it difficult to understand how if the arguments were successful in relation to criminal courts, they did not also win the day with regard to family courts, but the pilot is going ahead and so we must make the arguments again, backed up by evidence.

The civil pilot may be different. I am aware that not everybody is necessarily automatically against it, so again we must encourage members of the Bar to respond to the consultation.

Members of the Bar involved in the pilots must let their Circuits, Specialist Bar Associations (SBA) and Bar Council representatives know their views, as must those who decline to participate.

I have no doubt that the Bar Council's Legal Services Committee will continue to have a prominent role in developing the Bar's policy in relation to this and other issues and I am delighted that Derek Sweeting QC is continuing in the role of Chair of this committee.

Let me deal briefly with some of the other topics that I know we will have to grapple with.

The use of video or telephone hearings excites strong emotions, but I personally am not automatically against them. They need evaluating, but I have used them both to my advantage, arguing a bad character application over the telephone in one case I dealt with in the Magistrates Court. And I have dealt with a number of preliminary hearings at the Old Bailey by remote link from Birmingham Crown

Court in a terrorism case I defended and also in a case I defended at Swindon Crown Court.

The technology can be used to the Bar's advantage, but I appreciate that concerns have been raised about its use when sentencing people and further research must be undertaken in that area. We must also ensure that however technology is used it is not contrary to the interests of those we represent.

That brings me on to the Bar's "Sitting Hours Protocol". It is something that has been in existence for some time but has not as yet gained a great deal of traction. That though is something that I hope will change during my tenure, as will the culture of 24-hour emailing which I know is also being looked at by the South Eastern Circuit and the CBA.

We have a new President of the Family Division who has already voiced his support for Wellbeing at the Bar and Bench and I look forward to building on this over the coming year. It is an important matter and affects retention and diversity at the Bar, something else that I will be doing my utmost to champion.

Criminal listing is also a matter that I will continue to press for reform of. We have been arguing for a long time now for the abolition of the warned list. This is still high on our list of priorities.

The Court estate is also another hot topic. Court closures and the loss of local courts is a concern as is the transfer of cases from one court to a court many miles away. But the most pressing issue which is already filling up a large proportion of my inbox, is the terrible state of many courts that members of the Bar and Solicitors have to operate in and members of the public have to attend. This was acknowledged by the Lord Chief Justice very recently when giving evidence to the

Commons Justice Committee. The Government has promised to invest in the Courts and it was good to hear Susan Acland-Hood, Chief Executive of Her Majesty's Courts and Tribunals Service, tell the Bar Conference that she was prioritising the repair of the courts. Neither our clients, other users of the courts, nor we as professionals, should have to put up with out of action or leaking lavatories, a lack of conference facilities, broken air conditioning, no canteen facilities, I could go on, but you all know only too well what is on the list.

I am of course referring to the Bar throughout this speech, but many of the issues that are of concern to us are also of concern to the Solicitors' profession and I am delighted to see a number of senior representatives of The Law Society here this evening. I look forward to working closely with them in respect of the many issues with which we have common cause.

Before I move on, let me also record my thanks to Fergus Randolph QC who is standing down as Chair of the Law Reform Committee and thank Iain MacDonald for agreeing to take over. I anticipate that you too will have a busy year.

### EQUALITY AND DIVERSITY

I have already dealt with some of the issues affecting equality and diversity, but there are many others.

As you will all be aware, 2019 is the 100<sup>th</sup> anniversary of the enactment of the Sex Disqualification (Removal) Act 1919 which enabled women to qualify and practise as members of the Bar.

The Bar Council will continue its efforts to ensure that discrimination at the Bar on all grounds is eradicated and we will be playing our part in the centenary

celebrations to come, recognising that there will be more work to be done across the field of protected characteristics.

I am delighted that Robin Allen QC has agreed to continue to Chair the Equality & Diversity Committee which makes such an important contribution to this area of the Bar's life.

### BAR COUNCIL

Having already told you how much I rate and value the staff at the Bar Council, one of my main aims this year is to try to raise the level of understanding across the Bar as to what exactly the Bar Council is and does. That may come as a surprise to many of you here who are insiders and know exactly what the Council is and does having been involved with it for many years. But I am afraid to say that there is in my experience still a large proportion of the Bar who if pressed would have difficulty explaining: what the Bar Council does; explaining who the Bar Council is; and explaining the difference between the Bar Council and the Bar Standards Board and the relationship between the two.

That is a source of sadness to me because I know, having been so intimately involved for so many years with the Bar Council, what it is and who it is. And how hard all of those who are engaged with it work.

The Bar Council is not a bogey man that simply seeks to charge members of the Bar more and more to allow them to practise. It is not some foreign body that is there to make life difficult for practising Barristers. We are here to support the Bar and we will continue to do precisely that during my tenure.

And I would like to thank and pay tribute to the following committees, all of which make Barristers' lives better: The Ethics Committee chaired by Rachel Langdale QC; the Bar Representation Committee chaired by Fiona Jackson; and the

Remuneration Committee chaired by Nicholas Bacon QC and Neil Hawes QC. They and their committees work tirelessly on behalf of the Bar, and as with the other committees, we should all be grateful for the work that they do.

As I have already said, I intend to be visible in 2019 and I will be travelling across the country trying to raise the profile of the Bar Council. I will be explaining why, in my opinion, the Bar would be in a much worse position if the Bar Council did not do the huge amount of work, much unsung, to promote the Bar and to try to make the lives of those practising at the Bar better. Without an effective representative body, the voice of the Profession would undoubtedly disappear from important political debates on such matters as defending and promoting the rule of law and justice system.

I am grateful to Leanne Targett-Parker who has agreed to take over as Chair of the Pro Bono Committee from Alison Padfield QC, who I would also like to thank for the sterling work she has done with that committee.

I am also looking forward to working with Athena Markides Chair of the Young Barristers' Committee who takes over from Richard Hoyle after his very successful year, and with Lucinda Orr and James Kitching who will co-Chair the Employed Barristers' Committee in 2019.

### AIMS

Now let me turn finally to my aim for the year ahead.

Quite simply my overarching aim is to see a happier Bar. I appreciate that some may see that statement as being naïve and some might claim that it is offensive given the problems that the Bar and, in particular, the publicly funded Bar face.

But I am not naïve, and I am not seeking to cause offence. This year will be 30 years since I was called to the Bar. I have not lived in an ivory tower and I am not blind to the numerous problems that the Bar has faced recently and will continue to face. But, if we are successful in tackling the matters I have already outlined above, this will in my opinion go some way to achieving a happier Bar.

I believe that there is reason for cautious optimism on a number of fronts.

First the news from the Lord Chancellor at the Bar Conference last week that the Government has increased the amount of money to be put into the revised Advocates Graduated Fee Scheme was very welcome. There is also an undertaking to review the system and I was particularly heartened by the Lord Chancellor's comments that "there is scope to further improve the way criminal advocates are paid so that we better reflect work done in an evolving and modernising justice system."

The Bar Council, working closely in collaboration with the Criminal Bar Association and the Circuits, will be commencing data collection immediately so that we can have evidence-based input into the review.

The Lord Chancellor and the Ministry of Justice know that we will be seeking an increase in the rates not only for criminal work, but all publicly funded work and we will be making a strong case for such increases.

I would though like to thank the Lord Chancellor and the Justice Minister Lucy Frazer QC MP and their teams for their engagement with the Bar Council. It has not always been an easy path, but I remember how relations used to be between us and the Ministry of Justice only a few years ago. I believe that there has been a major transformation in the relationship between the Ministry of Justice and the

Bar Council on which I aim to build, and I look forward to working with them and their teams throughout the coming year.

I am conscious of the fact that the Bar Council appears to have been dealing with a lot of criminal matters over the last year, but I can assure you that we do do a huge amount of work for other practice areas and will continue to do so.

Another reason for optimism is the relationship we have been developing with HMCTS. The pilot of the Bar's identity card scheme for access to court buildings seems to be going well and has recently been rolled out to five more criminal courts. I shall however be pressing not only for this pilot to be expanded rapidly across the criminal courts in England and Wales but also for an expansion into the civil courts and tribunals as well. Again, in my opinion there is real evidence of a desire on the part of HMCTS to work with the Bar Council to try to sort out issues. Another reason for optimism, I believe, is the high quality of a number of recent senior appointments. They don't come much better than our new Attorney-General Geoffrey Cox QC MP, and Max Hill QC the DPP. These are people who have done the "day job" and who we know will understand the issues facing the Bar. I look forward to working with them both.

I am also optimistic that we are making headway with the public's perception of the Bar. It has always been my opinion that the public likes the Bar. There will of course be quips about fat cat lawyers, but my experience has always been that when somebody finds out that I am a barrister they are always interested to find out more. We should not forget this.

The recent Justice Week that I have already mentioned received a lot of attention, and publications such as the "Secret Barrister's" book which, whilst of course dealing with criminal matters, have actually raised the profile of the Bar as a whole.

The public is, I am sure, aware that the Bar provides the highest quality advice and advocacy, and if it isn't, then I will do my level best to ensure that it does by the end of 2019.

I spoke earlier in the year at a Young Bar event where one of the pleas I made was for members of the Bar to ensure that they do go into Chambers. In this digital day and age, where many people work remotely, it is easy to forget that one of the reasons why the Bar has survived and thrived over the years is that the Chambers system works so well. It provides support and friendship and a wealth of experience, all of which can be found by just knocking on the door of a colleague, whether they be extremely senior or relatively junior. I worry that if we all pick up our work electronically and rarely venture into chambers that we risk losing what makes the Bar unique. Something that may be a major worry may not seem so bad when shared or discussed with a colleague.

As a former Circuit Leader, I would also encourage all members of the Bar, whatever your practice area, to engage with their Circuit. The Circuits are not simply there to support the Criminal Bar, as I once heard expressed. Attend events, assist in training, get engaged. I can assure you that you will benefit greatly.

Similarly engage with your SBAs. You will get far more out than you put in.

And may I make a plea to those at the Bar who tweet. I do not wish to curb comment in any way, but before you are tempted maybe to make a sweeping statement criticising other members of the profession including those in positions of leadership, may I ask you to pause for a moment before hitting the tweet button and reflect.

I do not know of any Circuit Leader or any leaders of the profession in the years I have been engaged with the Bar Council and the Circuits who has not given their

all to try to make this wonderful profession of ours a better place. We may not always get it right, but it is not for want of trying. If you have a gripe, raise it with us and get involved. Join with us to try to make things better. I am not asking for censorship, far from it. Just a reflection and some thought about the hours that people put in, and efforts they make to improve the profession, before having a pop at them.

As I hope you have by now gathered, I love the Bar. I assure you that I will do all that I can to ensure that those currently at the Bar and those of future generations can join this wonderful profession and enjoy a career, as I have.

And lastly, what gives me the most hope and optimism for the future of this Profession? You, the members of the Bar Council and its numerous committees. I never cease to be amazed by the quality and dedication of the members of the Bar who give so much of their time to serve the Bar by serving on the Bar Council.

There is much to do, we cannot rest on our laurels, but with the support of the staff at the Bar Council I have no doubt that we will lead our profession well and make it better. We just need to ensure that we get the message out as to what the Bar Council does for the Bar so that should the question ever again be asked as to what the Bar Council does for me, we can tell them in no uncertain terms.

**RICHARD ATKINS QC, CHAIR-ELECT OF THE BAR**

**3 December 2018**