

Annual Bar and Young Bar Conference

Duncan McCombe, Young Bar Opening Keynote

When I meet someone new, I am always extremely proud to say that I am a barrister. And, when I say that I am a barrister, they normally look interested and want to know more. That is, until I tell them that I am a Chancery barrister and what that means and then they look considerably less interested. But I think that the initial reaction tells us a great deal about the esteem in which our profession is generally held.

I therefore think that most people outside the profession, and frankly many inside it, would be shocked to discover that the Young Bar is shrinking at an alarming rate. The number of barristers under 5 years' call shrank 30% from 2005-2015. That is not what one would expect given population increase and the increasing complexity of modern society. For anyone who believes that a strong and healthy independent Bar is good for justice, these figures, which speak directly to its future, are alarming indeed. Clearly, the Young Bar faces some serious threats, as the title of this conference would suggest.

Chief among those is, of course, the unprincipled and unwarranted cuts to legal aid over the past twenty years. A symptom of that, is that according to the protocol for the payment of Magistrates' Court fees agreed between the Bar Council and the London Criminal Courts Solicitors' Association in 2008, and still in force, the going rate for a full day hearing in the Magistrates' Court is £150. That does not only cover the time in Court, but the hours of preparation beforehand and travel to and from court. The Young Barrister will not even receive all this, as there will be Chambers expenses of roughly 20%, insurance, and other expenses to pay.

Can anyone really think that defending or prosecuting a vulnerable teenager accused of sexual assault for a day in the Youth Court is only worth £150? When preparation is taken into account and expenses are factored in, that amounts to about £10 per hour. That is roughly what an Uber driver is estimated to earn, according to the company's evidence to a parliamentary select committee, and much has recently been made in the media about how poorly Uber drivers are paid. For certain hearings at least, young barristers are no better off.

Added to poor rates of remuneration, has been the removal of whole areas of work from public funding by the Legal Aid Sentencing and Punishment of Offenders Act ('LASPO'). The review of that sorry piece of legislation announced this week is long overdue.

Although we must continue to make our case loudly and clearly, the level of public funding of the justice system is not, of course, something which is directly within our ability to change as a profession. But some things are. At the end of last year, the Young Barristers' Committee did a survey of young barristers practicing in crime. An estimated 1 in 4 young barristers practicing in crime completed the survey. The findings were disturbing.

Half of respondents had done a Magistrates' Court hearing for which they understood that they would not be paid at all. Unpaid fees aside, on the occasions where a fee is paid, the situation is also bleak. 64% told us that Magistrates' Court fees are paid on average somewhere between 1-6 months after the hearing. 24% said the delay was 6-12 months. 10% described having to wait more than a year. For a young practitioner who has no aged debt to rely on, this can cause crippling cash flow difficulties.

Yet, for me, the most disturbing part of the survey was what was said by young barristers about the reaction in Chambers when they raised the issue. 60% of respondents had raised concerns in Chambers, despite the obvious professional risks of offending solicitors and clerks whom they rely upon for work. A very small minority had seen positive change, but most were given pretty short shrift: *"That's life at the Bar!"* and *"it's part of the job!"* were two replies which respondents had received from Chambers. Another was told not to rock the boat if he wanted to do Crown Court work; and others told a similar (and familiar) story of Chambers wanting to keep solicitors on-side so bigger juicier briefs could be brought in for more senior members of Chambers. Another, during pupillage, was even reprimanded for raising concerns.

The practice of farming out junior practitioners for heavily reduced rates or nothing at all, so that larger Crown Court briefs can be brought in for those higher up in Chambers is exploitative. It must stop. Here is an area in which the profession can do something itself to help those just starting out. To those senior barristers here, please ask the juniors in Chambers about their experiences and make sure it is not happening in your set.

Another threat to the Young Bar is what might generally be called the Court Reform Programme. This encapsulates a number of things from that great misnomer 'Flexible Operating Hours', to increased court fees, to fixed recoverable costs. Of course, none of these measures are designed to hurt the Young Bar, but that is often a side effect. This fact is pointed out every time the Bar Council responds to a consultation on the latest reform package. Yet, it is often dismissed merely as special pleading in our own self-interest.

It is, of course, in our own self-interest to say such things. However, I believe very firmly, it is also in the public interest. Without a thriving Young Bar, who do

government and the judiciary think is going to staff the justice system, now and in the future? Are unregulated, uninsured and untrained Mackenzie friends going to fill that gap adequately? Of course not. Would anyone dream of running the NHS without doctors? Of course they wouldn't. Yet it sometimes seems to be acceptable to suggest that a justice system can function without lawyers. No such justice system would be worthy of the name.

I would therefore implore those present from politics and the judiciary: When you get the chance, please emphasise the importance of a healthy Young Bar, because we need your help to ensure that our position will be considered with the seriousness it deserves.

The lack of public funding and unthinking court reform are the two major threats which I see to the Bar's long term survival, and they will come as no surprise to this audience. What may come as a surprise, is that I am still optimistic for the Young Bar's future. There are opportunities out there.

The first observation I would make is that, structurally, the way the legal services market, and the employment market generally, is changing, favours the Bar. One of the most interesting things about being Chair of the YBC is that you get attend numerous international events on behalf of the Bar. At those events, there are two things that everyone has been talking about: (1) the unbundling of legal services; and (2) the impact of technology on legal services.

Turning to unbundling, for those who are unaware what this is, this is the realisation that the full solicitor retainer, whereby a solicitor is retained to deal with every aspect of a dispute, from pre-action advice and correspondence to detailed assessment of costs, is extremely expensive and only really suitable for the most complex and high value cases. The idea is that the services provided by

lawyers can be “unbundled” and that the client can instruct lawyers to perform certain discreet tasks.

The Bar is the original and best unbundled legal service, whether this comes in the form of advice or specialist advocacy. I suggest, therefore, that the Bar is well placed to take advantage of this trend.

As far as technology is concerned, many have predicted (and are predicting) that tech advances may be the end of lawyers. Indeed, the Young Bar’s keynote speaker today, Professor Susskind, has written a book called “*The End of Lawyers*”, although to be fair to him, he did put a question mark at the end of the title. I would encourage anyone, young barrister or not, to come to hear him speak in this room after lunch. It is always extremely valuable to have one’s assumptions questioned.

Yet, I do not think that technology spells the end for the Bar. I think that people will always want human judges and juries, and as long as they want human judges and juries, they will want human advocates. However, this is not to say that technology will not change the Bar. It undoubtedly will. Yet, I think that the Bar is better placed than many to deal with the tech revolution.

One of the most important recent effects which technology has had on the world of work is the rise of the ‘gig economy’ with companies like Uber and Deliveroo. There was a time where the Chambers model of a group of self-employed people operating under a single name and single brand looked unusual and perhaps old-fashioned. Not anymore: that model would look familiar to users of Uber and Deliveroo. Although the comparison with Uber and Deliveroo should not be taken too far; those companies make profits themselves, where Chambers do not. Nevertheless, the similarities between the Chambers model and that of Uber and

Deliveroo mean that both are highly efficient and provide unparalleled service to the consumer. On that basis, the Bar has potentially much to gain from the Uberisation of legal services, if it is forward looking enough to embrace technology.

However, if the Bar is to make a success of the future, it must leverage its greatest asset: the barrister brand. That takes me back to the story at the beginning of my speech. People are interested to meet barristers because the title of 'barrister' stands for what it has always stood for. It stands for excellence. It stands for integrity. It stands for a strong sense of justice and fair play. We should all be extremely proud to call ourselves barristers.