The Honourable Society of Lincoln's Inn

The Treasurer's Lecture

Delivered by The Hon. Sir Paul Morgan on 20 November 2025

THE BAR: THE PAST, THE PRESENT AND THE FUTURE

INTRODUCTION

The title of this talk refers to the past, the present and the future of the Bar. So, in one title, I have included three big subjects.

The history of the Bar goes back a long way. A full account of that history could fill many scholarly books. Such books have been written and we have them in the Inn's libary.

A description of the present operations of the Bar is also a big subject.

And then there is the future of the Bar. That could be a short subject. I could say that we cannot tell what the future will hold. But that would not be satisfactory. We all must plan for the future. We need to assess the likelihood of future risks and future opportunities and react accordingly.

THE PAST

I will begin with the past. I will give you a few key dates and then look at the way the Bar has changed in the last 50 years.

By the 12th century, there existed a system of courts and judges. Litigants before those courts needed help to understand the issues arising in their cases and to present their cases to best advantage.

By the early 13th century, there grew up a body of professional advocates and of attorneys who acted for private litigants in matters which came before the courts. By the 1280s at the latest, there was a group of highly skilled advocates, whom one could call a Bar.

In particular, there was an identifiable class of persons who pleaded in the Common Bench and during the 14th century that class was organised into a guild-like fraternity known as the order of Serjeants at Law.

The emergence of specialists acting as advocates in the 13th century necessitated a system of education to train new entrants. By the 1280s, the students in this new system were known as apprentices at law. Not every apprentice became a Serjeant and, if he did not, he could still continue to practise as an apprentice and appear in court as an advocate.

At some point, the word barrister was used to describe an advocate in court proceedings. The first use of the word “barrister” which has been found was in the Black Books of Lincoln’s Inn in 1466.

The barrister’s wig dates from the 1680s, in the reign of Charles II. That was a time when it was the fashion for men to wear wigs. So barristers, who were all men, wore wigs also. At that time, it was considered desirable for barristers to wear a simple, standard wig for court appearances so that all barristers would be dressed alike.

The offices of Attorney General and Solicitor General, the law officers of the Crown, date from the fifteenth century. There then grew up a body of 'His (or Her) Majesty's learned counsel', retained by the Crown to assist the law officers in their work. The first of these was Francis Bacon appointed by Queen Elizabeth I in 1594. These advocates became known as King's Counsel or Queen’s Counsel.

The Inns of Court

The societies which today constitute the Inns of Court have existed since the 14th century. In the 14th century the apprentices-at-law, whose work brought them to London when the courts were in session, lived in town houses (that is, inns) near the City of London. Of these, four inns came to predominate, which are the four Inns of Court that still exist today.

Three of the four Inns had come into existence by 1388 – they were the Inner Temple, the Middle Temple and Gray’s Inn.

Lincoln’s Inn came into existence a little later, possibly around 1417. The records of Lincoln’s Inn are the Black Books and the first of these dates from 1422. Although the Inns existed before 1422, the Black Books are the oldest available record of any of the four Inns.

CHANGES IN THE LAST 50 YEARS

So much for ancient history. It may now be instructive to look at how the Bar has changed in the last 50 years. There has been a great deal of change in that time. I was called in 1975 so I have watched that change take place. Most if not all of that change has been for the better.

But I want to stress that one thing has not changed and must not change. I refer to the essential requirement that barristers behave with complete integrity.

What was said about the Bar 50 years ago

The Council of Legal Education Calendar for 1974-1975 contained a note on the Inns of Court and the Bar of England and Wales. The note advised that no one should choose the Bar as a career if their main ambition was to gain security and a high income. The note explained that any one able enough to succeed at the Bar could probably earn as much money, with less effort and more security, in other fields. It added that the Bar was an arduous profession with long and irregular hours of work. It added that the Bar had always been a competitive world, in which the attainment of a professional qualification did not guarantee success in practice. But then the note went on to explain that no career offered such prospects of independence and personal opportunity, in which the successful barrister could earn rewards directly related to ability and hard work. A practising barrister was nobody's servant; he was responsible only to the law, his client and his conscience. The work was intellectually satisfying and constantly requiring fresh thought. Usually too, it was concerned with human problems in all their fascinating variety, and in dealing with them one's own personality would count as much as technical skill. A career at the Bar brought the satisfaction of belonging to an ancient and respected profession, with rigorous standards of integrity, which serves the law of England and the civilized human values that the law protects.

Numbers in practice

In 1974, the number of barristers in practice was 3,400. Nearly ¾ of them were based in London. The number of women in practice at the Bar was 250, that is, just over 7%. I do not have any figures for the number of practising barristers from ethnic minorities but the number would have been small.

Today, there are about 17,900 barristers with practising certificates. The position as at 1 December 2024 was as follows:

- as to the numbers of women in our profession, 21.1% of KCs were women, a higher percentage, 41.2%, of practising barristers were women and, importantly, for the future, the percentage of pupils who were women is a higher figure, 58.3%;
- as to ethnic mix, those with a white background predominate but things are changing; 89.2% of KCs have a White background but it is a lower figure for practising

barristers – the figure is 82.7% and, importantly for the future, the percentage of pupils from a White background is going down, it is 75.5%.

Training for the Bar

Compared with 1975, the Bar Training Course today is much more practical. You are taught about advocacy and ethics. When I did Bar Finals in 1974-1975, it was not thought necessary to teach those subjects to Bar students.

Call to the Bar

In 1975, a student had to eat a number of dinners in hall before being called to the Bar and then more dinners during pupillage. We now have compulsory Qualifying Sessions before call to the Bar. The Qualifying Sessions must be educational and collegiate and complement the Bar Training Course. This talk today is a Qualifying Session. Some Qualifying Sessions are accompanied by a dinner in hall.

The ceremony for Call to the Bar has not changed. After call, the student is entitled to use the title “barrister” but is not entitled to appear in court in their own right until after the completion of 6 months of pupillage.

Pupillage

In 1975, and still today, a barrister must complete 12 months of pupillage following call to the bar in order to obtain the right to practise as a barrister.

In 1975, there was no organised system for applying for pupillage. Instead, the aspiring barrister sought out some connection of his family or of some other acquaintance and asked if that connection would take the aspiring barrister as a pupil. The pupil was expected to pay 100 guineas to the pupil master (or mistress) as they were then called.

There is now a detailed system in relation to the award of, and conduct of, pupillage. In particular, all Chambers are required to advertise vacancies for pupillage on the Pupillage Gateway. A pupil must receive a minimum award during their pupillage. The minimum figures for 2025 are about £24,000 for pupillages in London and about £22,000 for pupillages outside London. These are minimum figures. Currently, two sets of chambers offer a pupillage award of £100,000. Many other sets offer awards just below that level.

In addition to completing a pupillage with a pupil supervisor, a pupil must also undertake compulsory courses and assessments.

Chambers

In 1975, chambers were very much smaller than today. The chambers where I became a tenant had 12 members and that was fairly typical.

Today, chambers are much larger. For example, one well known set of chambers in London has 56 KCs and 72 juniors. My own chambers, Wilberforce Chambers, has 35 KCs and 51 juniors. Today, barristers who join chambers move later, much more than previously.

A barrister held conferences with solicitors and clients in the barrister's room. There were no meeting rooms in chambers. In the barrister's room, the barrister had a desk which he sat behind. The solicitor and the clients would sit on dining room chairs without a table or a desk. They would balance their papers on their knees and make notes of the advice given by counsel. All very Dickensian.

Books

There were practitioners' textbooks but none were looseleaf. Some but not all chambers had libraries.

Chambers typically had communal law reports such as the official law reports, the Weekly Law Reports and the All England Law Reports. There were some but not many specialist law reports and some chambers had some of those. Usually, you had to go to the library to consult those series of reports. Judgments given by the Court of Appeal, Civil Division, which were not reported were transcribed and a single copy was held in a library in the Royal Courts of Justice. You could visit the library, read the judgment and if you wanted a copy you could order one from the transcriber and pay a fee.

Today, the format of the legal materials available to a barrister has completely changed. More and more textbooks are now looseleaf if they are in paper format. But more often still textbooks are consulted online through Westlaw or LexisNexis. Law reports still exist. The number of specialist law reports has proliferated. But many decided cases are not in any set of law reports but are available through Westlaw or LexisNexis or the National Archives or bailii.org. The number of decided cases which are available to the practitioner from one source or other has mushroomed. This comment does not only apply to cases decided in England and Wales. There is an equivalent of bailii.org which gives access to decisions from around the world, from Commonwealth jurisdictions and beyond. Authors of textbooks refer to many cases which are not reported but which can be found online.

I am currently the author of two legal textbooks. When I am preparing a new edition and I find a case which is not reported, I ask myself: if I put a reference to this case in a footnote, a practitioner will probably feel obliged to look it up; when they do so, will they thank me for drawing it to their attention or will they consider that the time spent looking up the case was a waste of their time as the case did not add anything of any real use?

Marketing

In 1975, it was forbidden to market your chambers or your services as a barrister. Today, marketing by Chambers is permitted by the Code of Conduct and has become a significant matter with substantial sums spent by chambers on marketing events of various kinds.

Areas of practice

Barristers have become much more specialised than before. There are areas of practice today that either did not exist 50 years ago or which have expanded enormously. 1975 was early days for European law in this jurisdiction. Of course, the UK has now left the EU but much of our law has been influenced by our former membership.

Today, there is a considerable difference between the fortunes of the criminal bar and other parts of the bar. The criminal bar is underfunded and it is suffering. It is in a state of crisis. The remuneration for criminal barristers is far too low. The position is different in other parts of the bar. Some specialised areas are very remunerative.

Technology

In 1975, chambers had telephones but not mobile phones. Around that time, chambers began to use fax machines. There were no computers, no wifi, no emails. Instructions came in bundles of paper beautifully tied with pink tape.

A barrister’s practice has now been transformed by technology. Today, instructions are received by email. Documents are sent electronically. The barrister returns their advice and pleadings by email. Conferences are often held remotely on Teams, or a similar platform. The widespread use of email means that the barrister is in a state of relentless connectivity. Solicitors expect a rapid response to an email request for advice. It could be said that advice given rapidly is likely to be more general and more guarded and therefore less useful.

The availability of technology has led to the possibility of a court hearing being held remotely. This did not happen very much before the Covid pandemic but then everything

changed. It is often said that necessity is the mother of invention and that certainly describes the enormous change in practice which occurred as a result of the lockdown restrictions as a result of Covid. Most people were agreeably surprised that the courts could continue to function and to function really rather well with remote hearings. Since the end of the pandemic, there has been selective use of remote hearings in some circumstances.

Dress and etiquette

Before 1975, there had been a fairly strict dress code for barristers. Some senior members of the legal profession attached enormous, undue, weight to the requirements as to dress. A judge might say to a barrister – "I cannot hear you" – if the judge thought that the barrister's dress did not conform to this very strict standard. Today, the rules are much less strict.

Barristers did not shake hands with each other. Why was that? Because it was taken for granted that every barrister could trust every other barrister so it was not necessary to shake hands to show trust.

The Code of Conduct in 1975

In 1975, what one was told about conduct and etiquette at the Bar was contained in a slim volume called, unsurprisingly, Conduct and Etiquette at the Bar of England and Wales, 6th ed., written by Sir William Boulton who had been Secretary to the Bar Council. The most important rules as to the duty of a barrister were:

(1) While acting with all due courtesy to the tribunal before which he is appearing, his duty is fearlessly to uphold the interests of his client without regard to any unpleasant consequences to himself or to any other person. He must, however, avoid any deception of the court.
(2) Subject to his availability and to agreement about remuneration, he is bound to accept any brief in the courts in which he professes to practise. (This is known as the "cab rank principle".) He may not refuse a brief on the grounds that he is not convinced of the merits of his client's case.
(3) He must not advertise or tout for business.

A more formal document called the Code of Conduct for the Bar of England and Wales was subsequently published by the Senate of the Inns of Court and the Bar in 1980 and took effect from 1 January 1981.

I will say more about Conduct later in this talk.

Appointments

Every year, the Lord Chancellor appointed a number of new silks. The Lord Chancellor's Department provided a short form to be completed by an applicant. The Lord Chancellor then announced the names of the successful applicants just before Maundy Thursday each year.

The Lord Chancellor also appointed the judges and, in particular, the High Court judges. There was no application process for a High Court appointment. A senior barrister would find him or herself summoned to meet the Lord Chancellor who might then state that he wished to appoint that barrister to be a High Court Judge. The general reaction was that it was one's public duty to accept such an appointment but there were some individuals who turned down the offer.

The process for the appointment of Silks has been transformed. There is a KC selection panel. An applicant for silk fills in a detailed application form. The applicant must identify 12 cases of significance, difficulty or importance. For each case, the applicant must identify a judge, a practitioner and a client (usually an instructing solicitor) as assessors. The panel seek assessments from amongst the assessors put forward. There is a paper sift of the applications and perhaps about half of the applicants are interviewed and then recommendations for appointment are made. The selection panel take enormous care to select the right candidates. Selection is by reference to specified and carefully considered criteria. The criteria include knowledge of the law and skill in advocacy, written and oral, but also include criteria relating to working with others and awareness and conduct in relation to diversity and inclusion. The downside for the practitioner is that the process involves a major time commitment on their part and they have to pay a substantial fee.

Appointment to the bench at all levels is now dealt with on the recommendation of the Judicial Appointments Commission, the JAC. The JAC deals with the appointment of High Court judges, circuit judges, district judges and tribunal judges. We must retain the JAC.

So, a great deal has changed in the last 50 years. The Bar is larger and more diverse. The selection processes for pupils, tenants, KCs and judges are now clearly based on merit. All of this is to be welcomed but, of course, there is more to do, particularly in relation to social mobility and the retention of women in practice.

THE PRESENT

I now wish to deal with some selected topics in relation to the present state of our legal system and the Bar in particular. I will confine myself to the following:

(1) An overall assessment;
(2) The Code of Conduct;
(3) The Harman report;
(4) Criminal justice;
(5) Access to civil justice;
(6) The state of our civil courts;
(7) The judiciary.

Overall

Later in this talk, I am going to refer to a number of areas where the criminal justice system and the civil justice system are failing. These are matters of real public concern and I do not in any sense minimise them. But even though a barrister today practises in systems of justice which are unsatisfactory for the public, a career as a barrister still retains benefits and attractions. I think it is right to make that clear before turning to more depressing comments about our criminal and civil justice systems.

You will remember that earlier in this talk, I read from the Council of Legal Education Calendar for 1974-1975. A lot of what was written then is still valid. I think that the benefits of being a barrister in practice today are:

- opportunity based on merit;
- intellectual stimulation;
- independence (in the case of the self-employed barrister);
- for a young barrister, gaining maturity;
- working with people;
- making a difference for clients;
- having impressive and interesting colleagues;
- belonging to a profession which believes in integrity;
- assisting in the administration of justice.

Standing back, as I can now do, after 50 years in the law, with 30 of those years as a practising barrister, I have no hesitation in saying to you that there is no other career which

would have suited me better or which I would have preferred to pursue. Most barristers you speak to will tell you exactly the same.

In the list of benefits which I have just give you, I have not mentioned remuneration. In some specialised areas of practice, the level of remuneration is high and very attractive. On the other hand, as I will explain, the criminal bar is massively under remunerated.

The Code of Conduct of the Bar of England and Wales

Earlier in this talk I referred to the code of conduct for the Bar. I now want to deal with the present situation in more detail. For many years the Bar Council, and now the Bar Standards Board, has published a code of conduct for barristers in England and Wales. The current code of conduct is contained in Part 2 of the Bar Standards Board Handbook. The Handbook focuses primarily on the regulation of advocacy, litigation and legal advisory services. In its introduction to the Code of Conduct, the BSB states that these legal services have a close relationship to access to justice and the rule of law. The Code says that our society is based on the rule of law. Everyone needs to be able to seek expert advice on their legal rights and obligations and to have access to skilled representation in the event of a dispute or litigation. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.

I want to emphasise that the integrity of members of the Bar is essential to the administration of justice and the preservation of the rule of law. It is as important as that.

Core duties

The Code of Conduct sets out a number of core duties for barristers. There are 10 core duties and they are:

(1) to observe his or her duty to the court in the administration of justice;

(2) to act in the best interests of each client;

(3) to act with honesty and integrity;

(4) to maintain his or her independence;

(5) not to behave in a way which is likely to diminish the trust and confidence which the public places in him or her or in the profession;

(6) to keep the affairs of each client confidential;

(7) to provide a competent standard of work and service to each client;

(8) not to discriminate unlawfully against any person;

(9) to be open and co-operative with the regulators;

(10) to take reasonable steps to manage his or her practice, or carry out his or her role within the practice, competently and in such a way as to achieve compliance with the legal and regulatory obligations.

The core duties are not presented in order of precedence, except that the duty set out in head (1) above overrides any other core duty, if and to the extent the two are inconsistent.

Part 2 of the Bar Standards Board Handbook then sets out in detail the conduct rules applying to barristers. The rules are grouped under the following broad headings:

(1) duty to the court;

(2) behaving ethically;

(3) duty to the client;

(4) duty to the regulator;

(5) practice rules;

(6) rules applying to particular groups of regulated persons8.

Duty to court

Under the conduct rules, a barrister owes a duty to the court to act with independence in the interests of justice. This duty overrides any inconsistent obligations which the barrister may have, other than obligations under the criminal law.[1]

Behaving ethically

[1] It includes the following specific obligations which apply whether the barrister is acting as an advocate or is otherwise involved in the conduct of litigation in whatever role:

(1) the barrister must not knowingly or recklessly mislead or attempt to mislead the court;

(2) the barrister must not abuse his role as an advocate;

(3) the barrister must take reasonable steps to avoid wasting the court's time;

(4) the barrister must take reasonable steps to ensure that the court has before it all relevant decisions and legislative provisions;

(5) the barrister must ensure that his ability to act independently is not compromised.

A barrister's duty to act in the best interests of each client is subject to his duty to the court but the duty to the court does not require the barrister to act in breach of his duty to keep the affairs of each client confidential.

As to the core duty to behave ethically, the conduct rules go on to provide that a barrister must not do anything which could reasonably be seen by the public to undermine his honesty, integrity and independence.[2]

Best interests of client

Under the conduct rules, a barrister has a duty to act in the best interests of each client, to provide a competent standard of work and service to each client and to keep the affairs of each client confidential.[3]

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[2] The duty to act with honesty and integrity includes the following requirements:

(1) not to knowingly or recklessly mislead or attempt to mislead anyone;

(2) not to draft any statement of case, witness statement, affidavit or other document containing:

(a) any statement of fact or contention which is not supported by the barrister's client or by instructions;

(b) any contention which the barrister does not consider to be properly arguable;

(c) any allegation of fraud, unless the barrister has clear instructions to allege fraud and reasonably credible material which establishes an arguable case of fraud;

(d) in the case of a witness statement or affidavit, any statement of fact other than the evidence which the barrister reasonably believes the witness would give if the witness were giving evidence orally;

(3) not to encourage a witness to give evidence which is misleading or untruthful;

(4) not to rehearse, practise with or coach a witness in respect of their evidence;

(5) unless permission has been granted by the representative for the opposing side or of the court, not to communicate with any witness about the case while the witness is giving evidence;

(6) not to make, or offer to make, payments to any witness which are contingent on his evidence or on the outcome of the case;

(7) only to propose, or accept, fee arrangements which are legal.

Any undertakings given in the course of conducting litigation must be complied with within an agreed timescale or within a reasonable period of time.

A barrister must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

[3] In order to comply with this duty a barrister must:

(1) promote fearlessly and by all proper and lawful means the client's best interests;

(2) act without regard to the barrister's own interests or to any consequences to him;

(3) act without regard to the consequences to any other person;

(4) not permit any person to limit the barrister's discretion as to how the interests of the client can best be served; and

The Cab Rank rule

I referred to what was said in 1975 about the Cab Rank principle, now commonly referred to as the Cab Rank Rule. The Code of Conduct still has a Cab Rank Rule. It is in rule C29 and is subject to rule C30. The rule is set out in detail but, in particular, it provides that if a self-employed barrister (and some others) receives instructions from a professional client (i.e. not by way of direct access) and the instructions are appropriate taking into account the experience, seniority and/or field of practice of the barrister they must, subject to rule C30, accept the instructions addressed specifically to them, irrespective of:

(a) the identity of the client;

(b) the nature of the case to which the instructions relate;

(c) whether the client is paying privately or is publicly funded; and

(d) any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the client.

This rule is subject to rule C30 which sets out a number of detailed safeguards for the protection of the barrister. So, the Cab Rank rule still applies, subject to these safeguards although it is fair to say that some barristers will tell you that it is not too difficult to turn down a brief on grounds that do not strictly come within rule C30.[4]

The codes of conduct in other jurisdictions

Many of you have come to Lincoln's Inn from overseas. The three countries which send us the largest number of students are Malaysia, Pakistan and Bangladesh. Some of you may wish to return to your countries rather than to practise in England and Wales. I have therefore looked to see what the relevant regulator in those three jurisdictions, in particular, has laid down as to a code of conduct to be followed by a barrister.

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(5) protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which the client gives informed consent.

A barrister must not mislead a client as to the nature and scope of the legal services which he is offering or agreeing to supply, the terms, who is responsible for the provision of services, whether he is entitled to supply those services or the extent of insurance cover for professional negligence.

A barrister must take personal responsibility for his own conduct and professional work.

[4] And see what Lord Steyn said on the subject in *Arthur J S Hall v Simons* [2002] 1 AC 615 at 678: " It is not likely that the rule often obliges barristers to undertake work which they would not otherwise accept."

Malaysia

The Code of Conduct for the Bar in Malaysia is primarily governed by the Legal Profession (Practice and Etiquette) Rules 1978, which outline ethical guidelines and standards for advocates and solicitors. This code ensures the integrity and independence of the legal profession, emphasizing ethical conduct and upholding justice.[5]

Pakistan

The Pakistan Bar Council (PBC) sets the professional conduct and etiquette standards for advocates through the Canons of Professional Conduct and Etiquette. This code focuses on an advocate's duty to the court, avoiding conflicts of interest, and maintaining a duty to clients. These rules also address a range of other conduct issues, including those related to junior and senior members, clients, and evidence.[6]

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[5] **Malaysia**

Lawyers must maintain independence in giving clients unbiased advice and representation, exercising independent judgment.

Lawyers are expected to maintain the highest standards of honesty, integrity, and fairness in all professional interactions.

Lawyers must avoid situations where a client's interests conflict with their own, those of other lawyers in the firm, or other clients, unless permitted by law or client consent.

Lawyers must protect the confidentiality of client affairs unless authorized or required by law.

Lawyers are obligated to act in the best interests of their clients and to uphold the dignity of the legal profession.

Lawyers must respect the court and conduct themselves with courtesy, fairness, and honesty.

Lawyers should contribute to the public's understanding of the legal system and its workings.

Lawyers should not deceive or mislead the court.

[6] **Pakistan**

Advocates have a duty to uphold the integrity of the court and the legal process. This includes adhering to court orders and not disrupting court proceedings.

Advocates must avoid accepting cases that could create a conflict with their current or former clients. They should disclose any potential conflicts of interest to the court and to their clients.

Advocates have a responsibility to represent their clients diligently and competently.

Advocates should not acquire an interest adverse to a client in a case.

Senior members are expected to be courteous and helpful to their junior colleagues.

Advocates must be honest and transparent with their clients, and avoid using unethical means to obtain evidence.

Bangladesh

The Bangladesh Bar Council sets the code of conduct for advocates, emphasizing upholding the dignity of the profession, avoiding illegal or dishonest behaviour, and maintaining client confidentiality. Advocates must also act in good faith and not deceive the court, while upholding the law and ensuring clients exercise their rights legally.[7]

It can be seen that the codes of conduct of these three countries are not the same as each other and are not the same as the Code of Conduct in England and Wales. Nonetheless, all of these codes of conduct lay down firm rules as to the barrister's duty to the court, their duty to the client and the requirement that they behave ethically. It can be seen that these three duties are fundamental to what it is to be a barrister practising in all of these jurisdictions.

Comments

The Code of Conduct, in whichever jurisdiction you practise, is your compulsory rule book. It is not optional. It should not be regarded as a tiresome restraint but as a valuable guide to enable you to behave as you should behave. You should want to behave in all respects in accordance with the Code of Conduct. Do not regard it as an irritating set of rules which a clever barrister might try to evade.

Advocates should avoid making extrajudicial statements that could prejudice the legal proceedings.

[7] **Bangladesh**

Advocates have a duty to uphold the law, counsel clients on their legal rights, and avoid advising or supporting illegal or dishonest behaviour.

Advocates must act with integrity and not engage in misleading or deceptive practices.

Advocates are expected to keep client information confidential and not share it with unlicensed individuals.

Advocates should avoid situations where their interests conflict with those of their clients or other parties involved in a case.

Advocates must ensure clients understand their rights and act in their best interests.

Advocates must uphold the reputation and integrity of the legal profession.

Advocates should maintain confidentiality, communicate clearly, and act in the best interests of their clients.

Advocates must be truthful and honest in their interactions with the court, avoiding misleading presentations or false statements.

Advocates cannot solicit professional employment through advertising.

Advocates should generally avoid engaging in other professions or businesses that could create conflicts of interest.

An independent and thriving bar is central to the vitality of the rule of law. The maintenance of high standards of probity and integrity is fundamental to the practice of a barrister. You must strive every day of your professional practice to achieve those high standards. If you fall below those standards, you deserve to lose the respect of your peers and your clients. Once you lose the respect of others, you will find it hard to regain it. You will also lose your self-respect.

The Harman Report

In 2024, the Bar Council asked Baroness Harman KC to carry out a review of the position in relation to bullying and harassment at the Bar. This Inn gave evidence to Baroness Harman. In September 2025, she published her report. She concluded that bullying and harassment at the Bar existed. The forms of harassment included sexual harassment. Her report examined the root causes of, and the impact of, such bullying and harassment. She referred to a culture of denial and a culture of excuses and she concluded that the present system was not sustainable. She concluded that decisive change was needed.

All is not well with the system

I mentioned earlier the defects in the criminal and civil justice system. These defects have a serious adverse effect on the administration of justice. The public are not being properly served. Of course, it may still be possible for a barrister to pursue a satisfactory career by trying to operate in the systems that actually exist. However, that is becoming increasingly difficult for the criminal bar by reason of the serious underfunding of the criminal justice system.

The criminal justice system

As I have said, there is a real distinction between the criminal bar and the rest of the bar. I do not have personal experience of life at the criminal bar or the workings of the criminal courts. However, I can read the evidence given by the Criminal Bar Association to the Treasury and to Parliament which provides a reliable but thoroughly depressing picture as to position of the criminal bar.

There are around 2,400 specialist criminal barristers conducting full time publicly funded criminal cases. The criminal bar has been described as being in crisis and it has been in crisis for a number of years, certainly before the Covid pandemic and also during and since that pandemic. The root cause of the crisis is underfunding. This causes problems for recruitment

of criminal barristers but more particularly problems for their retention. The cause has been explained to Government by the Criminal Bar Association and the previous Lord Chief Justice and the present Lady Chief Justice. The Government's response has been inadequate.

I can quote from the evidence given to Parliament by the Criminal Bar Association in September 2024 where it said:

> "65. The Government's recently repeated desire for "swift justice" can only be achieved if **the crisis of retention and recruitment for the Criminal Bar** is addressed in parallel and with the same degree of urgency. **At present the volume of work is beginning to exceed the capacity of the profession. Addressing the crisis requires an immediate increase in remuneration, an improvement in working conditions and a long-term strategy to secure the viability of criminal legal aid work, relative to other areas of legal practice.**
>
> 66. At present, the quality of justice delivered by the criminal courts is being impeded, as are efforts to reduce the backlog. Both impediments will continue unless there is investment in the human capacity of the criminal courts: the women and men criminal barristers who work within them.
>
> 67. **Criminal justice is inseparable from, and fundamental to, a safe and functioning democratic state. That is its' fundamental purpose: to uphold the rule of law and ensure that the state can deliver on its' core duty: the safety and security of its' citizens. That objective must not be diluted. Overburdening and under resourcing the women and men whose daily job it is to deliver justice risks not only the functioning of the system but the maintenance of law and order.**
>
> 68. …
>
> 69. …
>
> 70. In order to reduce the backlog of trials in the Crown Court we have worked tirelessly and collaboratively because those cases matter to us. They are vitally important for witnesses waiting to give evidence and accused persons waiting for their trial.
>
> 71. Further **delays in the time between offence and the date of trial cause misery and hardship for every participant. We are the ones who regularly have to look people in the eye and explain to them that they will have to wait another year or so for their case to be heard. We see the devastation and anguish that news causes and try to persuade people not to give up and walk away from the trial process.**
>
> 72. **We are saddened that some cases have not started because so many barristers have left our profession. We have warned of that danger for years. We were ignored. …**

73. We take issue with the long-term lack of engagement with our profession and the lack of respect for it which are two things that we have tried to foster by working with all court users.

74**. An effective independent justice system is the cornerstone of a healthy democracy. It must be rectified with immediate, substantive and ongoing long term investment back into the Criminal Bar as set out in this submission.**

75. We stand ready to collaborate with Government and all those who work to improve the Criminal Justice System but that can only work if there is respect and remuneration commensurate for all our professional work done."

This description of the crisis in the criminal justice system is entirely in line with what was later said by Sir Brian Leveson in Part I (the policy review) of his report "Independent Review of the Criminal Courts" commissioned by the Ministry of Justice and published on 9 July 2025. He wrote:

> "**Criminal justice is in crisis.** The open caseload in the Crown Court has now reached a record high. As of December 2024, there were over 75,000 outstanding cases in the Crown Court. That is more than double the numbers in 2019, and trials are being listed as far ahead as 2029. The aphorism 'justice delayed is justice denied' is entirely apt**. Delayed justice results in a host of problems: devastating impacts on the lives of victims and witnesses, a number of whom may withdraw from proceedings; defendants left in limbo for years; and knock on effects on the rest of the justice system, such as a rising remand population taking up scarce prison places.** The scale of the problem requires a solution of equal magnitude – and, indeed, whilst my primary focus is on the Crown Court, the problems spread much wider and touch every aspect of criminal justice: the solution must therefore do so too. **There are many causes for the problems that we are facing. The first is that long-term constraints and reductions in funding and investment in criminal justice over many years have resulted in fewer available courts, a considerable maintenance backlog in the court estate and a smaller and less experienced workforce.** This has been exacerbated by the disconnect between different agencies within the criminal justice system."

Sir Brian Leveson went on to explain that a second reason for the problem was the increasing complexity of criminal law, both its procedures and the advent of new forms of evidence (whether extracted from mobile phones, computers or in the form of DNA analysis). These developments have all been designed to improve the delivery of justice and the fairness of proceedings, but they have increased the time that jury trials in particular take, so that they are now twice as long as in 2000.

Access to civil justice

Last year, my predecessor, Lord Briggs gave the Treasurer's Lecture which he called Access to Civil Justice. Lord Briggs said:

1. **"Access to justice is a vital consideration for any process or court system designed to resolve civil disputes and enforce civil rights (even where they are not disputed), and therefore for any democratic society which prides itself as being built upon respect for the rule of law.**

2. One of the eight general principles of the rule of law suggested by Lord Bingham in his celebrated book of the same name … is that:

> '*Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide disputes which the parties themselves are unable to resolve.*'[8]

3. In essence … what is meant by 'access to justice' is the practical availability of the courts, as supplemented by various forms of alternative dispute resolution (ADR), for allowing people to vindicate their civil rights, obtain redress when those rights have been infringed, and resolve disputes about them.

4. As for why it matters, Lord Bingham's words explaining the necessity of access to justice for the rule of law are hard to improve upon, and I will not attempt to do so. He wrote:

> '*It would seem to be an obvious implication of the principle that everyone is bound by and entitled to the protection of the law that people should be able, in the last resort, to go to court to have their civil rights and claims determined. An unenforceable right or claim is a thing of little value to anyone.'*[9]

5. One way that access to justice can be conceptualised is as the necessary practical corollary of the fundamental right to a fair hearing that has long been recognised at common law and now also finds expression in Article 6 of the ECHR**. Quite simply, you cannot have a fair hearing if you do not have access to a court in reasonable time, or at affordable cost."**

Lord Briggs referred to "affordable cost". When I started at the Bar, there was a system of civil legal aid. Legal aid was introduced by the Legal Aid Act 1949 and there were subsequent Acts dealing with legal aid. Today, there is very little civil legal aid. Furthermore, litigation has become much more expensive. One matter which adds to the cost of litigation is

[8] T. Bingham, *The Rule of Law* (2010), 85.
[9] Bingham, 85.

the process of disclosure of documents, including of course, electronic documents. Attempts have been made over the years to limit the process of disclosure to try to control its costs. While some progress in that respect has been made, the process of disclosure remains burdensome and stubbornly expensive.

At present, therefore, in order to litigate in the civil courts, the litigant must be:

(1) wealthy, or
(2) be able to make some arrangement for the litigation to be financed by others, or
(3) represent themselves as a litigant in person; or
(4) find a lawyer who will act *pro bono*.

There are two models for litigation to be financed by others; these can be called contingency fee funding and third-party litigation funding. It should be noted that the legal basis for litigation financing has been transformed over the years. Going back some centuries, buying a share in the proceeds of litigation was a crime. Then it was a tort and contrary to public policy. The policy was that such conduct must be outlawed in order to protect the integrity of the justice system. Today, the position has been totally reversed. Now, public policy is positively in favour of litigation financing as it enables some people to litigate and thereby to have access to justice. Nonetheless, the different models for litigation financing do add stresses and conflicts to the relationship between a lawyer and their client.

For some time now, we have had contingency fees. There are two types of contingency fee. One is a Conditional Fee Agreement (CFA) and the other is a Damages Based Agreement (DBA).[10]

[10] With a CFA, the lay client could seek to agree with a solicitor and/or a barrister that they would conduct the case on the basis that if the claim failed, the client would not have to pay a fee to the solicitor or the barrister whereas if the claim succeeded the solicitor and the barrister could charge their fees. In addition, the solicitor or barrister could charge a success related fee involving a percentage increase on the basic fee. If the claim succeeded, the client could hope to obtain an order for costs against the other party but the recoverable costs would not include the success fee which would be for the client to cover. There is a limit on the amount of the success fee which can be agreed. With a DBA, if the claim failed the solicitor and/or the barrister would not be paid but if the claim succeeded it could be agreed that they would be paid a percentage of the damages or other sum recovered by the client and, again, there is a limit on the percentage which can be agreed.

Under these arrangements, if the claim failed, the client would still be exposed to an adverse order for costs in favour of the other side. In consequence, there grew up a market providing After the Event (ATE) insurance where the client could obtain insurance cover against the potential adverse costs liability. If the insured party is successful and obtains an order for costs against the other party, the insurance premium is not recoverable pursuant to that order.

But there can also be litigation funding provided by third parties who do not conduct the litigation or provide advocacy services. There is now a market in litigation funding where the funders take a share in the proceeds of the claim in return for funding the litigation. In a parallel development, group litigation has become more common. In that type of case, there are many, many claimants. The size of an individual claim may be modest so that the costs of litigation would in practice prevent the claim being pursued. But with many, many such litigants, the total sum which could be claimed might be very large and well worth pursuing. In the right circumstances, litigation funders can be persuaded to fund the group litigation in return for a sizeable slice of the proceeds. There is also scope for competition between rival firms of solicitors to capture the instruction to act for the group claimants and to earn the fees which will result.

In June 2025, the Civil Justice Council produced a 150-page report entitled Review of Litigation Funding which contained many detailed recommendations as to litigation funding and also considered contingency fee funding. There is no doubt that these types of funding of litigation will be a feature of the civil justice system for many years into the future.

Not all litigants can obtain litigation financing of these various kinds. I referred earlier to the very high standards of integrity expected from barrister. A barrister is not obliged to act on a *pro bono* basis. But many do. In England and Wales, there are a number of routes by which you can act *pro bono*. Please consider doing so. In your early years, in particular, it will help you gain experience. If you do act *pro bono*, you will do a lot of good. You will enable your *pro bono* clients to gain much needed access to justice. You will gain a reputation amongst your peers and with the judges as a person who recognises the need to give something back to the profession which is the source of your livelihood. You will also be able to think well of yourself.

The state of our civil courts

Civil cases are dealt with by the High Court and by the county courts. Increasingly, there are civil matters which are dealt with by a system of tribunals. There is not time in this talk to

describe the tribunal system. As between the High Court and the County Courts, the intention is that the High Court will be used for the most complex or substantial or sensitive cases and everything else will be dealt with by the County Courts. The intention is that the County Courts will do the bulk of the work handled by the court system.

For many years there has been dissatisfaction expressed about the workings of the County Courts. On 21 July 2025, the Justice Committee of the House of Commons published its report entitled The Work of the County Court. It is a thorough and detailed report. It makes depressing reading. The Committee summarised the report in this way:

> **"Our Report finds that the County Court is a dysfunctional operation that has failed to adequately deliver civil justice across England and Wales. It is the 'Cinderella service' of the justice system. …**
>
> **We found that the situation in the County Court is dire and requires urgent attention. The court estate is in a state of significant disrepair following years of "chronic underfunding," with regional variation remaining a perennial issue, and the operations of the court having been failed by a dysfunctional attempt at digital reform.** The Committee found that the problems would be all the greater without the commendable efforts of court staff to operate a system that fails to provide access to justice.
>
> **Therefore, we recommend that an urgent and comprehensive, root and branch review of the County Court is undertaken to establish a sustainable plan for reducing the systemic delays and inefficiencies entrenched across its operations.**
>
> **Our Report raises serious concerns over the current level of delays across the County Court. … The delays are driven by a range of well-known factors; factors that Ministers and officials have readily recognised. Such factors include increased demand, recruitment and retention issues, and increasing volumes of litigants-in-person.**
>
> We also consider the condition of the County Court estate, and its impact on staff and judicial morale. We have heard extensive examples of poor court maintenance including concerning instances of asbestos and rat infestations. We are concerned by the notable lack of action taken by HM Courts and Tribunal Services (HMCTS) to remedy these unacceptable working conditions. …
>
> We examine the accessibility of the County Court, both physically across the court estate, and in users' ability to contact the Court. There are currently 160 step free civil court buildings, leaving 35 which are not readily accessible, requiring users to go through back or staff entrances. This is unacceptable. We have also heard of extensive backlogs in corresponding with court centres and found this only exacerbates the delays across the system.

> **Given the notable increase in litigants-in-person, we also raise concerns over the accessibility of the County Court's complex and comprehensive procedural rules. Our evidence cites this as a recurring driver of increased delays, and we recommend the Ministry of Justice (MoJ) publishes guidance that uses clear and simple language to inform and assist claimants throughout their claim journey.**
>
> …
>
> **Looking to other opportunities, we finally explore how artificial intelligence, as well as any future roll-out of early mediation, could provide the County Court with viable solutions to the endemic level of delays across the County Court.**

In September 2025, the Government published its response to the report of the Justice Committee. The Government accepted in whole or in part most of the 25 recommendations made by the Committee. However, the Government did not accept the recommendation that there needed to be an urgent and comprehensive, root-and-branch review of the County Court with a view to fundamental reform of the system. The Government's response was that rather than focusing on a root and branch review of the County Court, the Government would focus on taking tangible and practical steps to improve the operation of the County Court – which will benefit everyday users – without further delay. It said that it was already seeing these measures bear fruit with improvements to the timeliness of claims that got to trial, improving call waiting times, growth in small claims mediation and further improvements to case management and file transfer systems.

A word about the judiciary

When I was called to the Bar, judges enjoyed widespread deference and respect from the public. Today, respect for the judiciary can no longer be taken for granted. I was a High Court judge for about 15 years. Based on my inside knowledge of the working of the higher judiciary, I can say that the quality of the higher judiciary is impressive and standards of professionalism and independence are very high. It is perfectly proper for there to be well-informed criticism of the substantive decisions made by judges. Some judgments are controversial whether they relate to matters of legal principle or of social policy (to the extent that judges can influence or change social policy). But there have been criticisms of judges which go well beyond what is proper. There is a readiness on the part of some newspapers and some politicians to direct badly informed criticisms at judges and, further, to suggest wrongly that judges have a political agenda. It is one of the duties of the Lord Chancellor to defend the judiciary against such attacks but unfortunately there have been occasions when

the Lord Chancellor of the day has failed to do so. These behaviours by newspapers and politicians are disturbing and serve to undermine respect for, and the efficacy of, the rule of law.

I referred earlier to the Harman Report. Chapter 10 of that report addressed the topic of bullying of barristers by judges. The report concluded that bullying by judges did take place and that the judiciary failed to understand the power dynamics involved. The report was also critical of the existing system for complaints against judges. The report concluded that the nature of judicial bullying was disturbing and needed to be addressed urgently. Baroness Harman hoped that the judiciary would respond positively to the report, acknowledge the problem and work collaboratively with the Bar to address it. The report made six specific recommendations in relation to bullying by judges.

THE FUTURE

None of us is able to foretell the future. It would be nice to know how the world will change, how the United Kingdom will change, how the courts will change and how the Bar will change.

As regards the world and the United Kingdom, we are living in uncertain and therefore unpredictable times. However, if we are to plan for the future in relation to the courts and the Bar, we can only make the working assumption that the world and this country will continue in a way which will not cause major upheavals to the continuation of our court system and the Bar.

Qualifying as a barrister

There are one or two immediate changes under way or under discussion that I will mention at the outset.

The first is the introduction in 2026 of an apprenticeship scheme which will allow someone with A-levels to do a 6-year apprenticeship which will include obtaining a law degree and the Bar Training Course leading to call to the Bar. The Government Legal Department and the CPS support the scheme. The Bar Council is less clear as to the suitability of the scheme for sets of Chambers.

There is also an ongoing discussion about the timing of call. At present, if you pass the Bar Training Course and attend the necessary number of Qualifying Sessions, then you can be called to the Bar. When you are called to the Bar, you have the title of “barrister”. The Bar

Council is in favour of deferring call to the Bar until after completion of a 12-month pupillage. The Inns are considering their response. If the Bar Council presses the matter, it will go to the Bar Standards Board which will decide what, if anything, to do about it. One thing is clear, any change is some years away.

The recommendations in the Harman report

I referred earlier to the Harman report. Baroness Harman concluded that decisive change was needed. She made 36 recommendations. Her recommendations require action on the part of the Bar Council, the Bar Standards Board, the Inns and the circuits, sets of chambers and course providers. She also proposed the appointment of a Commissioner for Conduct for the Bar. Her report also dealt with the subject of judicial bullying, to which I will later refer. This Inn has welcomed the report and is in the process of implementing the recommendations which directly affect it.

The criminal justice system

As regards the criminal courts, one will need to consider the potential effect of the Leveson report to which I earlier referred and, to a lesser extent, the effect of a report on sentencing in the criminal courts, to which I will later refer.

The report by Sir Brian Leveson made 45 recommendations. Amongst the recommendations are the following:

(1) **Increased use of out of court resolutions and greater use of rehabilitation programmes and health intervention programmes (recs. 1-10);**

(2) **Removing the right to elect to be tried in the Crown Court for offences that carry a maximum sentence of two years and reclassifying some either way offences as summary offences (recs. 14 and 18);**

(3) **A new division of the Crown Court (the 'Crown Court Bench Division') with a judge and two magistrates to hear either way offences allocated to it by a judge (recs. 30-42); the important point about this is that the court sits without a jury;**

(4) Allocation of sitting days in the Crown Court to be increased, when it is possible, to 130,000 per year (rec. 34);

(5) A Ministry of Justice match-funding scheme for criminal barrister pupillages (rec. 41);

(6) Measures to encourage those intent on pleading guilty to do so at the earliest opportunity including increasing the maximum reduction for entering a guilty plea at the first opportunity to 40% (recs. 23-29);

(7) Trial by judge alone for serious and complex fraud cases on election by the defendants and subject to the trial judge's consent (recs. 43-45).

In its initial response to this Report, the Bar Council has supported some of these recommendations but opposed others. The Bar Council has said:

> **Changing the fundamental structure of delivering criminal justice is not a principled response to a crisis which was not caused by that structure in the first place. It is the failure to invest properly in the justice system over decades that has led to the crisis we see in the criminal courts today.**
>
> We recognise the pressures facing the criminal justice system and the need for reform to tackle the backlogs. We very much welcome the report's focus on out of court disposals and greater investment in rehabilitation programmes to reduce the number of cases going into the Crown Court – suggestions that we put forward in our submission to the review. These proposals must be considered alongside the recommendations of the Gauke review on sentencing.
>
> However, **we continue to argue that there is no need to curtail the right to trial by jury – from both a principle and practical position. Juries represent society and are a fundamental part of our system. And on a practical level, it remains unclear how the current resources in the system – magistrates, judges, court staff and courtroom capacity – will be able to meet the demands of the proposed new Crown Court Bench Division.**
>
> The report rightly identifies the importance of considering and addressing disproportionality in the criminal justice system. If the Ministry of Justice chooses to adopt the proposals to remove jury trials, we agree with Sir Brian that it must undertake detailed modelling of the recommendations before consulting on changes, as well as impact assessments on both equality and justice. At the very least, it should be piloted with a clear end date for review.

The second part of the Leveson Review is the Efficiency Review which is expected at the end of 2025. In summary, the Efficiency Review will consider improvements to end-to-end case progression, incentivising more effective inter-agency collaboration and local leadership to improve performance outcomes, developing an experienced workforce, using the court estate more effectively and encouraging integration of new technologies, including artificial intelligence (AI). AI will be approached as the starting point for a long-term vision for

criminal justice beyond the immediate crisis. The pace of change in technology is such that, within ten years, the landscape within which any criminal justice system will operate is beyond our ability to visualise.

On 22 May 2025, that is shortly before the publication of the Leveson Report on 9 July 2025, a former Lord Chancellor, David Gauke published his final report entitled Independent Sentencing Review.

The key findings of the Gauke report were:

(1) The Prison and Probation Service has been operating under great stress due to capacity pressures. England and Wales has one of the highest per capita incarceration rates in Western Europe.

(2) Several factors have contributed to prison population growth. There has been an increase in the use and length of custodial sentences and recall. This has happened alongside a decline in the use of non-custodial sentences and suspended sentence orders. Legislative changes have also led to longer time spent in custody and created a complex sentencing framework for victims, offenders and the public.

(3) The "tough on crime" political narrative has had negative impacts on sentencing policy. This narrative focuses on longer incarceration and prioritisation of punitive measures over other considerations. Media narratives, often focusing on high-profile or atypical cases, have embedded misunderstanding about the system and hardened public attitudes toward crime.

(4) **There is an urgent need for change. Published expenditure on prisons was £4.2 billion in 2022-23. Expenditure will continue to rise if the prison population is not reduced.** Building our way out of crisis is costly, with future costs likely to increase with inflation. Current building plans still fall short of the projected increase.

The Gauke report made a large number of detailed recommendations, including the following:

(1) amend the statutory purposes of sentencing to emphasise the importance of protecting victims and reducing crime;

(2) various steps to provide for more sentencing in the community and out of prison;

(3) various steps to reduce reliance on custodial sentences and to ensure short custodial sentences were only used in exceptional circumstances;

(4) introduce an "earned progression" model to move to release from custody;

(5) various measures including the launch of a public awareness campaign on sentencing, improving transparency about the length of time an offender spends in custody, reviewing the support and services available to victims and witnesses;

(6) dealing more effectively with perpetrators of violence against women and girls;

(7) dealing with drug and alcohol dependency;

(8) expanded use of the Probation Service;

(9) greater use of technology, including AI.

The Bar Council has responded to the Gauke report by saying:

> "**The government must act on these proposed reforms. For years, the main parties have used sentencing as a political football in the hope of appearing 'tough on crime', fortifying the false narrative that the longer the sentence, the better justice is served.** Sentences have increased and we now have the highest incarceration rate in western Europe, yet crime and reoffending rates continue to go up. We deserve a system which makes society a better, safer place.
>
> …
>
> In light of these and the upcoming Leveson review recommendations, it's essential the justice system receives a substantial injection of investment in the spending review to bring about real change. That means funding throughout the process, from the police right through the courts to the prison and probation service. The current crisis facing the criminal justice system must come to an end."

The Government has now introduced the Sentencing Bill which implements many but not all of the Gauke recommendations.

The big question as to the future of the criminal justice system is: will the Government properly fund the criminal justice system? The Chancellor will present her budget on 26 November 2025. There is talk of cuts in public spending. The Ministry of Justice is not a protected department in relation to spending cuts. You can form your own opinion today as to what is likely to happen in relation to funding the criminal justice system.

The civil justice system

So, what then of the future of our civil court system?

As explained earlier, the county courts, in particular, are not functioning adequately. That is likely to continue for some time without much improvement and then maybe, just maybe, things might get better.

As regards funding of litigation, it is a pretty safe bet that civil legal aid will not be restored and contingency funding and third party litigation funding will continue to be available for some but certainly not all cases. For many, the cost of litigation will remain a barrier to effective access to civil justice.

There will continue to be litigants in person who struggle to pursue or defend claims in the civil courts. It is entirely possible that the numbers of such litigants will increase. I will mention these litigants again when I consider the use of AI in the courts in the future.

At present, arbitration is extensively used for certain types of case, predominantly commercial cases, particularly those with an international element. There is no reason to doubt that arbitration will continue to be extensively used for the types of dispute for which it is currently used. It is possible that if the civil courts become more and more unsatisfactory, then more parties may choose arbitration as an alternative option. But arbitration is not necessarily cheaper than litigation; indeed, it may be more expensive as the arbitrator, or arbitrators, will charge substantial fees.

It is likely that more cases will be the subject of a mediation. Increasingly, parties recognise the benefit of mediation. This is because there are some pretty major problems with litigation in very many cases. The problems are attributable to the cost involved, the delay in obtaining a decision, the uncertainty and therefore the unpredictability of the outcome and, not to be minimised, the personal stress involved in conducting litigation. It has always been recognised that a settlement of a dispute can avoid those problems. Settlement usually involves both parties to the dispute accepting something less than they would achieve from total success in litigation. But remember that even with a successful outcome to litigation, the existence of irrecoverable costs, the premium for ATE insurance, success fees and the sharing of the financial recovery with others can often produce a big discount in the nominal amount recovered.

It is now recognised that mediation with an experienced mediator can help parties reach a settlement of their dispute. Mediation also has an advantage that the parties can agree on outcomes which could not be produced by a court dealing with the dispute which is before it. These out of court outcomes can include matters such as an apology for the past and/or dealing with the future relationship of the parties.

I referred earlier to parties seeing the sense of agreeing to go to mediation. Recent decisions of the courts have held that the court can make a mandatory order requiring the parties to

mediate. There are examples of cases where a party has strongly argued in court that mediation would be pointless as there was no prospect of settlement but yet the cases have settled at a mediation.

A close relative of mediation is early neutral evaluation. Parties can have an early neutral evaluation before a judge in court but they can also agree to appoint an appropriate person, with the right experience, to give them an evaluation of what would happen if the case were fought in court. The evaluation is not binding on the parties but they can, and normally will want to, give it considerable if not conclusive weight when they approach the settlement of the dispute. Indeed, following an evaluation, the evaluator can be asked to continue to help the parties by acting as a mediator.

Artificial intelligence and technology

It is time to talk about artificial intelligence, AI. You will have noted the references to AI in relation to improvements to the County Courts and by Sir Brian Leveson and David Gauke.

How will AI affect our futures? That is an enormous question and I can’t answer it.

What exactly is AI? It can be defined as an ability to undertake tasks and activities which traditionally could only be done by humans.

What bought AI right to the forefront recently was the launch of Chat GPT by OpenAI.

Now there is worldwide competition between countries and between companies to get ahead on AI. Enormous sums of money are being invested in it. There are now several sources of open, rather than closed, GPT. The onward march of AI is unstoppable. The rate of advance is staggering, it is exponential. There is no finishing line for the advance. In the future, we will use technologies which have not yet been invented so we do not yet know what they will be. So, what is the future for the world with AI? It is not possible to predict but we must be aware of the possibilities. It should be remembered that there is a difference between a technical advance and the adoption by society of that advance. AI will bring benefits but it will also bring problems. The problems may slow the advance for commercial, cultural, regulatory, political or ethical reasons.

A narrower question is: how will AI affect the Bar, the judiciary and the court system?

In the written version of this lecture, I describe large language model software (LLMs) and open and closed LLMs. I expect you know about those things and I will not take time dealing with them orally.[11]

Use of AI by the Bar

In January 2024, the Bar Council issued new guidance for barristers navigating the growing use of ChatGPT and other generative AI LLMs. It concluded that there was nothing inherently improper about using reliable AI tools for augmenting legal services, but they must be properly understood by the individual practitioner and used responsibly. The guidance set out the key risks with LLMs: anthropomorphism; hallucinations; information disorder; bias in data training; and mistakes and confidential data training.

[11] What is large language model (LLM) software? I will start by saying: what it is not. It is not a conventional research tool, it does not analyse the content of data and it does not think for itself. It is, rather, a very sophisticated version of the sort of predictive text systems that people are familiar with from email and chat apps on smart phones, in which the algorithm predicts what the next word is likely to be. LLMs use machine learning algorithms, first to be 'trained' on text and, based on that 'training' (which involves the application of inter alia mathematical formulae), to generate sequential text. These programmes are now sufficiently sophisticated that the text often appears as if it was written by a human being, or at least by a machine which thinks for itself.

What is ChapGPT? ChatGPT is an advanced LLM AI technology developed by OpenAI. The latest iteration of ChatGPT is GPT-5. Transformer architecture uses mathematical matrices, supplemented by corrective procedures and technologies. The number of parameters used by GPT-5 is in the many billions. In common with other LLMs, ChatGPT is trained on huge amounts of data, which is processed through a neural network made up of multiple nodes and layers. These networks continually adjust the way they interpret and make sense of data based on a host of factors, including the results of previous trial and error. Certain consequences inevitably follow from the nature of the technological process that is being carried out. LLM AI systems are not concerned with concepts like 'truth' or accuracy.

Chat GPT is not the only open LLM now available. There are many other products available.

There is a difference between an open LLM and a closed LLM. ChatGPT and other open LLMs use data which it scraped from the internet at a date in the past. There are now closed LLM systems for lawyers provided by Thomson Reuters, LexisNexis and Vincent. These systems use their own data instead of all of the data on the internet.

The guidance identified the following considerations for practitioners when using LLM systems:

- Due to possible hallucinations and biases, it is important for barristers to verify the output of LLM software and maintain proper procedures for checking generative outputs.
- 'Black box syndrome' – LLMs should not be a substitute for the exercise of professional judgment, quality legal analysis and the expertise that clients, courts and society expect from barristers.
- Barristers should be extremely vigilant not to share with an LLM system any legally privileged or confidential information.
- Barristers should critically assess whether content generated by LLMs might violate intellectual property rights and be careful not to use words which may breach trademarks.
- It was important to keep abreast of relevant Civil Procedure Rules, which in the future may implement rules/practice directions on the use of LLMs, for example, requiring parties to disclose when they have used generative AI in the preparation of materials, as has been adopted by the Court of the King's Bench in Manitoba.

On 6 June 2025, the Divisional Court of the King's Bench Division decided the case of *R (Ayinde) v The London Borough of Haringey* [2025] EWHC 1383 (Admin). Although some of the facts as to what happened in that case are not totally clear, it seems likely that the barrister involved in that case had used an open AI system to research the relevant law and, in particular, the caselaw. The AI research produced hallucinations, it referred to cases that did not exist. The barrister quoted these hallucinations in her skeleton argument. The decision of the Divisional Court was an opportunity for the court to comment on the dangers of lawyers using open AI for research and the very serious consequences for a barrister (or a solicitor for that matter) of putting false statements of law and other hallucinations before a court as if they were genuine.

I think that *Ayinde* woke people up. It was a shock. People who had given no real thought to AI and who had not read the Bar Council guidance suddenly saw that this was serious. The inappropriate use of open AI could threaten their careers. People began, perhaps for the first time, to try to understand what they were dealing with. It is to be hoped that the Bar will not

in the future make the mistakes made in *Ayinde*, although there have been cases since which show a continuation of bad practice.

Before I turn to closed LLMs, I should point out that litigants in person have used and will continue to use open AI. They will probably not pay to subscribe to the closed systems, which I will describe in a moment. Given the often unaffordable cost of legal advice and assistance, litigants in person will gratefully turn to open AI for whatever help it will give them. So the exposure of the problem in *Ayinde* has not made the problem of hallucinations in legal research go away but it might have helped to confine the problem to use by litigants in person.

Now for closed LLMs. I have referred to some commercial providers. Thomson Reuters, LexisNexis and vLex provide, for a fee, access to enormous legal data bases containing case law, legislation, textbooks and journals. You can subscribe to the AI provided by these companies and use it to carry out research into all of that data. But, as the Bar Council has pointed out you must still be careful to verify the results provided. It is good to use these tools when you know quite a lot about the area already and can tell if something looks wrong. Conversely, there are dangers in using these tools where you are not familiar with the area and do not have an instinct or a gut feeling as to whether the information provided is accurate and complete. Being told half the story is very dangerous.

Use of AI by the judiciary

In December 2023, the judiciary published guidance on AI for judicial office holders. A new version of that guidance was published in October 2025. The new guidance is much more detailed than before. The guidance pointed out a number of limitations with open AI chatbots. In particular, judges were warned that the information provided by open AI might be inaccurate or misleading or reflect biases in the data used for training the chatbot. Judges were told not to enter confidential information into an open AI chatbot. Judges were advised of the dangers of litigants in person using an open AI chatbot for advice or assistance when the litigant would not be able to verify the answers provided to them. The guidance suggested that AI was potentially useful to judges in order to summarise large bodies of text, or to prepare a presentation or for various administrative tasks such as writing or summarising emails, minutes of meetings or the like. The guidance suggested that AI tools were a poor way of conducting research to find new information which the judge could not verify independently or to provide a legal analysis.

In July 2025, the Ministry of Justice published its AI action plan for justice. This plan deals with a range of topics including the work of the courts. The plan is in somewhat general terms and the detail remains to be worked out and implemented.

The future

So what are my predictions as to the use which will be made of AI by the Bar and the judiciary?

(1) The Bar will adopt AI, principally by using closed LLMs.
(2) The Bar will use AI for legal research but also for summarising text and some drafting.
(3) Litigants in person will use open AI to obtain advice and assist with drafting of pleadings and submissions, with all of the dangers that go with such use.
(4) Judges will use AI for some purposes such as summarising text and administrative tasks;
(5) Beyond the above, it is difficult to predict.

Technology and the courts

Technology is already being used extensively by the courts. Further, there are plans to use technology ever more extensively in the future. The Leveson review in relation to criminal justice and the report of the Justice Committee in relation to the county courts both referred to the future use of AI.

Technology is being used or could be used for things such as:

- commencing proceedings;
- filing documents;
- communications;
- giving standard directions;
- possibly, making decisions on matters in dispute.

What might happen in relation to the last topic, making decisions which bind the parties. Should that be confined to low value claims? Should it be optional or mandatory? Should there be an automatic right of appeal to a human being from a decision made by a machine?

The use of technology depends on litigants being able to use that technology. What should happen if a litigant is not able to do so for whatever reason? There are several possible

reasons why this might be the case – level of education, level of technical ability, language difficulties or simple poverty.

So, what is happening? In 2024, the Online Procedure Rule Committee (OPRC) was set up. In July 2025, it issued a consultation document entitled Inclusion Framework and Pre-Action Model for the Digital Justice System. The consultation document described what the new system was hoping to achieve, as follows:

> "Improving Access to Justice
>
> 1. The aim of the OPRC is to improve access to justice for all by harnessing the power of modern digital technology in the civil and family courts and in the tribunals.
> 2. The civil, family and tribunals justice system in England & Wales is well established and centred around bringing cases to court for resolution. While there is now a wide range of pre-action dispute resolution services available to help people resolve their problems, there are still many barriers for people to achieve access to justice.
> 3. People may struggle to achieve access to justice because they do not understand their rights, they are unaware of the support available, they have vulnerabilities or additional needs, or they are intimidated by an often lengthy and difficult process. This situation has significant impacts on peoples' lives, health, families, work and the country as a whole.
>
> Our vision for digital justice
>
> 4. The OPRC has been looking into the future of digital justice for Civil, Family and Tribunals, and we now share this vision with you for your feedback and input.
> 5. The OPRC's vision is that the new Digital Justice System should be:
>   • Accessible to everyone
>   • Easier for everyone to use
>   • Capable of delivering justice more quickly
>   • Transparent and trusted
> 6. This document focuses on the services people use before going to court. These services include the provision of legal information, advice, and dispute resolution. We refer to this as the "Pre-Action" space. "

There were 47 responses to the consultation. Overall, the responses showed broad support for the aims of the OPRC in improving access to justice, embedding early dispute resolution, and setting consistent digital and data standards. Most respondents welcomed the ambition to create a fair, accessible, and inclusive justice system, while urging that the framework remained proportionate, user-centred, and supportive of innovation rather than prescriptive or burdensome. Many of the consultees emphasised the need to make any such system accessible to as many as possible. The Framework and Model and the responses to the consultation were discussed at an online forum on 20 October 2025.

Will the crisis in the civil courts coupled with the availability of AI and technology lead to cases being decided on the papers without oral advocacy? Such a possibility could be very significant. For example, litigants in person could use AI, unfortunately probably open AI, to do legal research and draft submissions. Perhaps, there will be more litigants in person who will choose this route to court rather than paying for lawyers at all.

You are the future

That may be a good place to end this lecture. The future will be different from the present. The rate of change is likely to be faster than in the last 25 or 50 years. AI and technology will play a part. What that part will be and how the role of the barrister will change remains to be seen. The need for complete integrity must not change. The commitment to the rule of law must not change. But the students sitting here today are the future of the Bar. You will be part of, and you can influence, what the future will be.

So my closing words to you are: the future is up to you.