

# The General Council of the Bar: a Note on its History

**Abstract:** This article, written by Mark Hatcher, provides an overview of the background and achievements of the Bar Council, the professional body for barristers in England and Wales, since its formation in 1894. It traces the early years of the council and its expansion after the second world war, following the growth in legal aid and other post-war reconstruction measures. It describes changes in the structure and organisation of the Bar Council culminating in the implementation of reforms which followed the Legal Services Act 2007, which resulted in the separation of representation of the Bar from regulation of the profession which was delegated to the Bar Standards Board in 2006. It concludes with an overview of the key issues that are driving the Bar Council's activity to promote the Bar's high quality specialist advocacy and advisory services, and to promote access to justice for all.

**Keywords:** legal profession; barristers; Bar; General Council of the Bar

## INTRODUCTION

From the late 13<sup>th</sup> century onwards, the judges had responsibility for providing and authorising lawyers, later to become known as barristers, to practise in the Royal Courts. With the passage of time, the duty to select and exercise disciplinary control over those called to the Bar passed to the Inns of Court, with the concurrence of the judges and subject to their visitatorial jurisdiction. The remaining Inns of Court are the ancient foundations of Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn.

In the 17<sup>th</sup> century, the right to practise as an advocate in the Royal Courts was restricted to members of the Inns of Court. The Bar became a referral profession, acting on the instruction of solicitors, in the 19<sup>th</sup> century. In addition to providing a focus for the professional life of their members, the four Inns admitted to membership those wishing to become barristers, called them to the Bar and continued to be responsible for the disciplinary control of practising barristers.

The Bar represented itself as a liberal profession, followed not for private enrichment but for the furtherance of the public good. Out of this developed rules of etiquette that barristers could not sue for their fees which were regarded as *honoraria*, that barristers should not court the company of solicitors and that barristers should not undertake the routine work of soliciting causes or attending to the everyday affairs of clients. Over time steps were taken to exclude attorneys and solicitors from the Inns and the separation between barristers and solicitors became established. In 1729 attorneys and solicitors formed a Society of Gentleman Practisers in the Courts and Equity. It was the forerunner of The Law Society, incorporated in 1826.<sup>1</sup>

In 1852 the Council of Legal Education was founded by resolution of the four Inns. Its purpose was to supervise the education and examination in the law of England and Wales of student members of the Inns wishing to become barristers. However, examinations were not made compulsory for the Bar until 1872.

The General Council of the Bar was established in 1894 through the approval of the Bar in General Meeting. This represented the first organised desire for the Bar to be concerned in the running of its affairs.



Figure 1: Justice for all.

## EVOLUTION OF THE BAR COUNCIL

Following dissatisfaction with the Rules of Court being drawn up by the judges following the Judicature Act 1881, a petition signed by 285 members of the practising Bar was presented to the Attorney General. It resulted in a committee of barristers, known as the Bar Committee, being established in 1883. Its purpose was

'to collect and express the opinion of members of the Bar upon matters affecting the profession and to take such action as may be deemed expedient.'

Elected by the whole Bar, the Bar Committee initially had a consultative role. It was replaced in 1894 by an unincorporated body of barristers known as The General Council of the Bar ('the Bar Council'), which was constituted by regulations approved by the Bar in General Meeting. The four Inns agreed to provide some funding for the newly formed Council, which they have continued to do albeit on a gradually reducing basis.

During the early part of the 20<sup>th</sup> century, the Bar Council grew in stature, providing rulings on questions of etiquette and conduct, although disciplinary control remained with the Inns, subject to appeal to the Judges. The relatively low level of activity at the Bar Council between the two World Wars was followed by a period of post-war reconstruction, the growth of the welfare state and the enactment of the Legal Aid and Advice Act 1949.

In 1946 a resolution was passed at the Annual General Meeting that a new Bar Council Constitution should be drafted. This set out the Council's objects as follows:

- Maintenance of the honour and independence of the Bar, and the defence of the Bar in its relations with the Judiciary and Executive;
- Improvement of the administration of justice, procedure, the arrangement of business, law reporting and the Circuit system; and the preservation of trial by jury;
- Promotion and support of law reforms;
- Co-operation between the barrister and solicitor branches of the profession; and
- Protection of the public right of access to the courts and of representation by Counsel before courts and tribunals.

A reinvigorated Council subsequently addressed, amongst other issues: ethical practices, fees and the possibility of fusion with solicitors. The Bar Council produced a succession of slim volumes on conduct at the Bar.<sup>2</sup> At this time there were some 2,018 barristers practising independently from 181 sets.

Growth in the number of employed barristers followed, including in the Government Legal Service, in banking and finance as well as manufacturing and local government. In the late 1960s there were a little more than 2,200 barristers in practice.<sup>3</sup> The growth of the Bar was stimulated further by the recommendations of the Royal Commission on Assizes and Quarter Sessions, led by Lord Beeching.<sup>4</sup> It found in 1969 a general shortage of barristers and the Bar undertook a recruitment campaign to boost its members to which the Bar Council contributed.

In 1966 by separate resolution of the four Inns and the Bar Council, the Senate of the Inns of Court was created. The Senate comprised the Inns' and Bar Council

representatives charged with acting on matters of common interest, including investigation of allegations of professional misconduct.

A committee chaired by Lord Pearce, a Lord of Appeal in Ordinary, then recommended a combined body of the Inns and the Bar Council, known as the Senate of the Inns of Court and the Bar. It was formed in 1974 to consider and make policies with regard to all matters affecting the profession, other than those within the exclusive jurisdiction of the Inns of Court and of the Bar Council.

The Bar Council continued as an autonomous body whose membership included the Law Officers, the Leaders of the six Circuits, barristers elected to the Senate by the Bar and a number of co-opted barristers.

Senate regulations set out the Bar Council's functions as to:

- Maintain the standards, honour and independence of the Bar;
- Promote, preserve and improve the services and functions of the Bar;
- Represent, and act for the Bar generally as well as in its relations with others and also in matters affecting the administration of justice; and to
- Call and conduct the Annual General Meeting of the Bar.

In parallel, Senate regulations confirmed the Council of Legal Education as an unincorporated body, conducting its educational charity, but with a majority of its members drawn from Senate representatives.

A resolution of the judges, with the concurrence of the four Inns, provided that from 1974 Senate Regulations should govern disciplinary powers over barristers, but with the authority to disbar remaining with the Inns. These arrangements included provision for the establishment of a Bar Council Professional Conduct Committee to make rulings on matters of professional conduct, to investigate complaints against barristers, and to prefer charges of professional misconduct before tribunals; and the establishment of Disciplinary Tribunals, chaired by judges, provided by the Inns and having lay representatives, to hear and determine charges preferred by the Bar Council Professional Conduct Committee.

Between 1975 and 1985 the practising Bar continued to grow in size from 3,370 to 5,203, with greater reliance on publicly funded work. In 1979 the Royal Commission on Legal Services, led by Sir Henry Benson, reported.<sup>5</sup> It unanimously recommended that the legal profession should continue to be organised in two branches.<sup>6</sup> Despite limited extensions made in 1971 as to the circumstances in which solicitors could appear in the new Crown Court, Benson recommended that there should be no general extension of rights of audience to solicitors.

As a result of increased Bar Council authority in matters affecting the Bar, it was felt necessary to review the structure, powers and functioning of the Senate and

the Bar Council. A committee chaired by Lord Rawlinson of Ewell QC (who was a former Chairman of the Bar) recommended a new structure. The recommendations were adopted by the Bar Council at an EGM held on 21 June 1986, as a result of which there emerged a strengthened, and much more representative, Bar Council.

From 1987, the new structure comprised:

- A new Bar Council reflecting its increasingly dominant role in matters affecting barristers, the main factors being its work on conditions of service and fees, challenges to the independence of the Bar and a significantly increased number of barristers practising outside London;
- A new Council, known as the Council of the Inns of Court (COIC);
- The continuation, with altered membership, of the Council of Legal Education; and
- An agreement regulating the relationships between these bodies.

The new Bar Council consisted of three Officers, elected by Bar Council members, 13 ex-officio members (namely the Law Officers, six Circuit Leaders and five Bar Association representatives, 12 Inns' representatives, 17 further Circuit and Bar Association representatives and 51 directly elected members and four co-opted members. The work of some 14 committees was supported by a secretariat of about 40 staff.

By 1994 growth in the number of those seeking to become barristers and competition pressures resulted in a decision by the Bar Council and the Inns to end the monopoly of the Inns of Court School of Law, administered by the Council of Legal Education, on the provision of vocational training for the Bar. It was replaced by the validation of such provision by a number of institutions across England and Wales. The regulation of education and training for the Bar was added to the Bar Council's objects, following transfer from the Council of Legal Education on 1 January 1996. Bar Vocational Course graduates continued to be called to the Bar by the Inns of Court. An Inns of Court and Bar Educational Trust (ICBET) was formed to administer grants for educational purposes using residual funds from the Council of Legal Education.

In 1996 the system for dealing with complaints against barristers was extended to include the concept of inadequate professional service. An independent Lay Commissioner for Complaints was appointed at the same time.

In parallel the range of Bar Council activity continued to increase as a result of the Conservative Government's far-reaching proposals to bring forward legislation to increase competition in legal services. These proposals had been prompted by the conclusions and recommendations of a committee chaired by Lady Marre which had been set up jointly by Chairman of the Bar, Robert Alexander QC (as he was then) and the President of The

Law Society, Sir Alan Leslie. The committee was tasked with examining the practices of the legal profession and to make proposals to "adapt them to ensure that the public need is efficiently met."<sup>7</sup> The committee had been established at the initiative of the two professional bodies in response to the growing pressure on the professions to dismantle restrictions, to allow market forces to operate freely and to recognise that limits on public funding required efficiency and value for money to be demonstrated.

In 1989 several Green Papers were published by Lord Mackay,<sup>8</sup> who had been appointed Lord Chancellor by Prime Minister Thatcher. The Bar Council developed a vigorous and sustained response. Some of the alarm caused by the proposals of the Lord Chancellor's Department was described as 'unduly apocalyptic'.<sup>9</sup> The Bar Council mounted a £300,000 advertising campaign (managed by Saatchi and Saatchi) against the proposals with full-page advertisements in national and regional newspapers:

'300 years after the Bill of Rights, a Bill of Wrongs'

followed by a list of what the Bar thought was wrong. The Bar Council's fighting fund topped £1m in less than 12 weeks. In the course of Prime Minister's Questions, Mrs Thatcher (herself a barrister) condemned the advertising which claimed that criminals would stand a better chance of escaping conviction if the Government's proposals to reform the profession were passed by giving more business to state prosecutors.<sup>10</sup>

In their response to the Green Papers the judiciary recognised that the independence of the judges needed to be supported by a body of advocates who were free of governmental control or interference. They depended on the skill and probity of the advocates who appeared before them. The quality of judicial decisions was thus influenced 'to a great extent by the quality of the advocates.'<sup>11</sup>

The Courts and Legal Services Act 1990 resulted. Section 17 of that Act made provision for 'new and better ways of [providing legal services in England and Wales] and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.'<sup>12</sup> The Act designated the Bar Council as the authorised body for the profession.

The role of the Bar Council was further delineated in 1999 by the Access to Justice Act, while enabling the Council to make rules granting barristers rights to conduct litigation. The same Act authorised the granting of compulsory Practising Certificates Fees to fund the Bar Council's regulatory work which accounted (as it continues to do) for much of its overall activity.

In 1992 a review of the Bar Council structure and organisation was undertaken by the then Treasurer, Martin Bowley QC. It recommended a merger of several Bar Council committees (which included Race Relations and Sex Discriminations Committees) but also

recommended the establishment of a planning committee to consider matters of policy and future planning at a strategic level. Law reform would remain a continuing requirement for the Bar Council. The review recommended that as long as resources permitted, the Bar Council should continue to encourage the development of work overseas.

In 1999 the Bar Council set up a representative office in Brussels close to Le Berlaymont, the headquarters of the European Commission and other institutions.

Following a review in 2000 by former Chairman of the Bar, Lord Alexander of Weedon QC Bar Council membership was enlarged to 114, with scope to co-opt a further six members. At that time the proportion of self-employed and employed representatives broadly reflected the ratio of 11,000 barristers in self-employed practice from about 350 Chambers, around a third practising outside London, and approaching 3,000 in employed practice. In addition to the three Officers, the Law Officers and Director of Public Prosecutions, the leaders of the six Circuits and five senior Specialist Bar Association representatives were ex-officio members. The four Inns each provided three representatives.

The Bar Council constitution, drawing upon earlier language, was slightly reformulated to set out the principal functions and powers of the Council as to:

- Be the governing body of the Bar;
- Consider, lay down and implement general policy with regard to all matters affecting the Bar;
- Maintain the standards, honour and independence of the Bar;
- Promote preserve and improve the services of the Bar;
- Represent and act for the Bar generally as well as in its relations with others and also in matters affecting the administration of justice;
- Formulate and implement policies to regulate all aspects of education and training for the Bar; including qualification for Call to the Bar and grant rights of audience pursuant to the Courts and Legal Services Act 1990 (as amended by the Access to Justice Act 1999); and to
- Refer to the Inns Council, which continues to administer disciplinary tribunals in accordance with the Bar Handbook, any general policy affecting the assets or liabilities of the Inns, consider all recommendations and other matters referred to the Bar Council by the Inns; and agree with the Inns Council any amendments necessary to the Consolidated Regulations.

In March 2001 the publication of the Office of Fair Trading's report on *Competition in the Professions*<sup>13</sup> inaugurated a period of growing public interest in the legal profession. The Government responded with a consultation and report into competition and regulation in the legal

services market. It concluded that "the current framework is out-dated, inflexible, over-complex and insufficiently accountable or transparent."

In July 2003 Sir David Clementi was appointed to carry out an independent review of the regulatory framework for legal services in England and Wales. The terms of reference were:

- To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector; and
- To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.

The recommendations of the Clementi review<sup>14</sup> envisaged a fundamental re-design of the regulatory architecture of legal services regulation in England and Wales:

- Setting up a Legal Services Board – a new overarching legal services regulator to provide consistent oversight regulation of front-line bodies such as the Bar Council and The Law Society.
- Statutory objectives for the Legal Services Board, including promotion of the public and consumer interest.
- Regulatory powers to be vested in the Legal Services Board, with powers to devolve regulatory functions to front-line bodies, now called 'Approved Regulators,' subject to their competence and governance arrangements.
- Front-line bodies to be required to make governance arrangements to separate their regulatory and representative functions.
- The Office for Legal Complaints – a single independent body to handle consumer complaints in respect of all members of front-line bodies, subject to oversight by the Legal Services Board.
- The establishment of alternative business structures that could see different types of lawyers and non-lawyers managing and owning legal practices.

In October 2005 the Government broadly accepted the conclusions and recommendations of Sir David Clementi's report and issued a White Paper announcing its intention to publish a draft Legal Services Bill to implement Clementi.<sup>15</sup> Meanwhile the Bar Council resolved to separate its regulatory from its representational functions by delegating responsibility for regulation of the Bar to an operationally independent Bar Standards Board (BSB), appointing Ruth Evans as the first lay Chair of the Board. The Bar Council re-structured itself into three parts (the BSB, Representation and Policy, and Central Services), appointing three directors reporting to a single chief

executive of the Bar Council. The three parts reflected the so-called 'Clementi B+' model of regulation which the Government had accepted in principle.

In May 2006 a draft Bill was introduced to Parliament which was scrutinised by a Joint Committee of MPs and Peers, chaired by Lord Hunt of Wirral (a solicitor), to which the Bar Council gave written and oral evidence. The Committee's report made recommendations for improvement of the Bill which reflected a number of the Bar's concerns.

In October 2006 the Labour Government introduced the Legal Services Bill to Parliament. Following lengthy and detailed scrutiny (and amendment) in both Houses and a vigorous lobbying campaign by the Bar Council, the Legal Services Act 2007 was finally enacted. This measure set up a new structure for legal services regulation. The separation of regulation of the Bar (dealing with such matters as education and training as well as conduct and discipline) from representation of the profession anticipated the Legal Services Act 2007. It marked the end of pure self-regulation. The General Council of the Bar Council was designated the 'Approved Regulator' of the Bar<sup>16</sup> and the separation of regulation from representation was placed on a statutory footing. The scene was set for the Bar Council of today.

## THE BAR COUNCIL FOLLOWING THE LEGAL SERVICES ACT 2007

In this section we summarise the work of the Bar Council over recent years, highlighting a few themes of possible interest but without purporting to be a comprehensive statement of activity (to which reference should be made to the Bar Council's website: [www.barcouncil.org.uk](http://www.barcouncil.org.uk)).

It was natural that the shape and size of the Bar Council in its new representative capacity should be considered. This was undertaken by a working group chaired by the retired Lord Justice of Appeal, Sir Paul Kennedy whose report was published in March 2007,<sup>17</sup> before the enactment of the Legal Services Act. At that time, there were 11,911 self-employed barristers (and 2,898 employed barristers registered with the Bar Council). The Kennedy report noted that the Bar's representative and regulatory spheres had changed for reasons largely unconnected with the new legal services legislation. The pace of public life had quickened markedly. Changes in the speed of communication had 'ended the relatively sedate cycle of dialogue of the past decades.'

The working group posed the question whether the Bar Council's arrangements in representing the profession, influencing the development of relevant institutions and policy and providing value for subscriptions were effective. It concluded with a generally positive assessment.<sup>18</sup> The group also recognised that a 'small and not always popular profession, delivering specialist services' should remain united. The report found that the overall structure of the Council, based on a number of

committees with members of the Bar contributing their expertise and time on a *pro bono* basis was appropriate to the representative task the Council faced although it made some recommendations for change to increase representation from some Specialist Bar Associations.

The membership of the Bar Council has continued to increase. In 2019 16,500 (self-employed and employed members), from increasingly diverse backgrounds, were registered. The Council has continued to maintain its focus on defending the independence of the Bar, championing the Rule of Law and improving access to justice. The Bar Council also stood up for the independence of the Judiciary in December 2016 when three senior members of the Judiciary sitting in the Divisional Court were branded 'Enemies of the People' in the media coverage of the *Miller* case.<sup>19</sup>

Some examples of the Bar Council's recent representational activity, in fulfilment of a 5-year strategic plan,<sup>20</sup> which is funded largely by the voluntary Bar Representation Fee (and not the Practising Certificate Fee), are summarised below. This is intended to give an indication of the range of activity that is currently undertaken. It provides a snapshot, not a comprehensive picture.

A major thrust of the Bar Council's representative activities continues to be its work, in the public interest, in promoting the Rule of Law, ensuring access to justice and making the case for a justice system that is properly resourced.

In order to ensure that there remains a strong and independent body of specialist advocates which is representative of the communities the Bar seeks to serve, it is also in the public interest that the remuneration of publicly funded barristers is fair so that barristers are encouraged to develop their careers, as well as attract people to aspire to careers at the Bar from which members of the judiciary of the future will continue to be drawn. On behalf of the Bar as a whole, the Bar Council therefore works closely with the relevant specialist Bar Associations to improve the remuneration of legal aid practitioners. The Council organised representations in 2006 to Lord Carter's review of criminal legal aid<sup>21</sup> and more recently, over a period of several years, in the design and development of the Advocates' Graduated Fee Scheme. In 2009 the Bar Council supported the Family Law Bar Association in making representations to the Government to improve family legal aid fees.

The Bar Council assembled a substantial response, from all quarters of the Bar, to the Coalition Government's proposals in 2010 to reduce the scope of legal aid across a wide swathe of practice areas and to introduce deep cuts in legal aid rates through what became the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The Bar Council responded to the subsequent post-legislative reviews and parliamentary and other inquiries including the review of legal aid conducted by the Bach Commission.<sup>22</sup>

The Bar Council has continued regularly to submit representations to Government consultations and

proposals for law reform emanating from the Law Commission, as well as to parliamentary select committees in both Houses, notably to the Commons Justice Committee (on the impact of Brexit on the justice system, legal aid reforms, civil justice reforms, and the quality of criminal defence advocacy) and to the Lords Constitution Committee and various sub-committees of the EU Committee, as well as briefing parliamentarians on all sides for All Party Parliamentary Group (APPG) meetings, debates and parliamentary Bills and draft subordinate legislation. The Bar Council supported the establishment of the Bar Parliamentary Group at Westminster and later collaborated with The Law Society in setting up the APPG for Constitutional and Legal Affairs.

The Bar Council regularly responds to consultations initiated by its over-arching regulator, the Legal Services Board (LSB). It has recently submitted a response to the LSB's proposals to change the so-called Internal Governance Rules (IGRs) which regulate the arrangements between the Approved Regulator (The General Council of the Bar) and the LSB and between the representative arm of the Bar and the BSB and the infrastructure which is needed to make a reality of the Clementi B+ model of regulation which Parliament had approved in 2007. The Bar Council argued that the LSB's final rule changes could result in splitting the Bar Council apart, if the BSB decided to seek full legal and operational independence from the Bar Council. This would increase the costs and burdens of regulation to the profession which, the Bar Council contends, would be in neither the public nor the consumer interest.

In order to underpin the quality of its representations to policy makers, the Bar Council regularly commissions research on such matters as gender equality at the Bar, litigants in person, on the plight of those held in indefinite immigration detention, on alternative sources of funding of the justice system (such as the viability of a Contingent Legal Aid Scheme) and the costs and benefits of price competitive tendering, to name a few examples. The Bar Council's *Working Lives Surveys* also provide valuable data about the reality of practice at the Bar and the essential evidence base to inform representations to government and regulators.<sup>23</sup>

The Bar Council also provided a powerful voice for the profession in arguing strongly (and successfully) for the retention of Queen's Counsel as a mark of professional excellence when the award of Silk was suspended in 2003 by the Labour Government before it decided in 2004 that the title should be retained, the first Silks being appointed under new arrangements administered by QC Appointments in 2006.

The Bar Council has continued to expand the work of the Bar overseas by promoting the profession in international markets through planned and sustained campaigns led by its International Committee. This has seen the growth of the Bar's international work which generated £332m in overseas earnings in 2017, continuing the trend of year on year growth in earnings.<sup>24</sup> The advisory and dispute resolution work that the Bar of England and

Wales attracts to the City of London and further afield, which the Bar Council promotes, provides important underpinning for the financial and related professional services of the City and helps to maintain London's position as a leading global financial centre.

The Bar Council's Brussels office also works to identify opportunities for barristers in EU Member States. In the context of Brexit it has been closely involved with the Bar Council's Brexit Working Group to help the UK Government identify and address a plethora of complex legal issues – all *pro bono* and in the public interest. It has sought to maintain the ability of barristers to practise throughout the EU following Brexit, building on decades of relationship building in Brussels and at Westminster. The Bar Council's 28 'Brexit Papers' (now in their third edition) have been widely praised by policy makers as well as business audiences.<sup>25</sup>

The Bar Council's focus on trade and values in the international sphere has been reflected in the content of the Bar Council's overseas missions and in the organisation of a series of annual International Rule of Law Lectures which aim to stimulate debate, to inspire lawyers to participate in Rule of Law related work and to promote greater awareness of the Rule of Law.<sup>26</sup>

The Bar Council works closely with the Bar Human Rights Committee.<sup>27</sup>

The future of the Bar is in its new recruits. The Bar Council recognises that unless the Bar recruits sufficient young barristers of ability who can train, gain experience, practise and go on to be senior and leading members of the profession, the profession will have no future. The Bar Council has taken the lead in the profession in promoting social mobility at the Bar. In 2007 a ground-breaking report of a working group chaired by Lord Neuberger made 52 recommendations for change at the Bar to improve access to the Bar to people from non-traditional backgrounds. It set up the Bar Placement Scheme with the Social Mobility Foundation to attract talented sixth form students from state schools to consider a career at the Bar by spending time in barristers' chambers. The scheme has been extended to six cities beyond London.

The Bar Council regularly encourages young people from increasingly diverse backgrounds to consider a career at the Bar by arranging for barristers to visit schools and universities and participate in the annual National Mock Trials Competition organised with Young Citizens. It makes a significant financial contribution in addition to the support of the four Inns of Court and the six Circuits. More recently it launched the award-winning social mobility campaign: I am the Bar.

Barristers operate in a changing and increasingly competitive environment, in private as well as well publicly funded practice. Coupled with the economic downturns in the 1990s and the financial crash of 2008, together with the development of new ways of delivering legal services (including through the use of Artificial Intelligence), has reinforced the importance, both to the Bar as well as its clients, of effective and efficient legal practice

management. The Bar Council has been working increasingly closely with the Institute of Barristers' Clerks and the Legal Practice Managers' Association (which attend fortnightly meetings of the Bar Council's General Management Committee) to promote good practice (including on issues of equality and diversity), as well as to provide training and the acquisition of experience and skills in areas like strategy, finance, HR and marketing which are essential for the development of the business of the Bar.

In the year which marks the centenary of the enactment of the Sex Disqualification (Removal) Act 1919, the Bar Council's extensive programme of activity in promoting equality and diversity at the Bar is particularly relevant. This includes provision of E&D training, guidance and networking opportunities, confidential helplines, mentoring for Silk and Judiciary progression, access to independently run nursery facilities, changing rules on shared parental leave in chambers and tightening those

on fair allocation of work, and the Bar Council's development of the 'Next 100 Years' campaign'.

The representational work of the Bar Council is led by the Elected Officers (Chair, Vice Chair and Treasurer), supported by the Chief Executive and Executive Office, and is delivered by a dedicated staff of 40 who support representative committees covering the employed Bar, equality and diversity and social mobility, EU law, international, law reform, legal services, ethics, remuneration, education and training, young barristers, Bar representation and *pro bono*. These committees report to the General Management Committee which is accountable to the Bar Council in its 'parliamentary' capacity which meets eight times a year. The achievements and work of the Bar Council depend significantly on the dedication and commitment of barristers who continue to contribute their time freely, for the public good as well as for their profession, as their forebears at the Bar Council have done for the past 125 years.

## Footnotes

<sup>1</sup> Baker, J *An Introduction to English Legal History* (2019, 5<sup>th</sup> ed) Oxford, p 173.

<sup>2</sup> See Boulton, W W *Conduct and Etiquette at the Bar* (1953) London, Butterworths. William Boulton, who had been called to the Bar by the Inner Temple in 1936 and practised on the North Eastern Circuit, was appointed Secretary of the Bar Council in 1950. His *Conduct and Etiquette*, which appeared in several editions over 25 years, brought together for the first time the principal opinions and rules of the Bar Council. Known as "the little red book" it was presented, until well into the 1980s, to every barrister when called by his Inn of Court. Boulton was knighted on his retirement in 1975. He died in 2010.

<sup>3</sup> In its *Evidence to the Monopolies Commission Inquiry* (1968) at p 11 the Bar Council estimated that about 90% of 2,200 or so practising barristers subscribed voluntarily to the Council.

<sup>4</sup> *Report of the Royal Commission on Assizes and Quarter Sessions* (1969) Cmnd 4153.

<sup>5</sup> (1979) Cmnd 7648.

<sup>6</sup> *Ibid*, paras. 17.45-17.46.

<sup>7</sup> *A Time for Change: Report of the Committee on the Future of the Legal Profession* (1988).

<sup>8</sup> See in particular the Lord Chancellor's Department paper *The Work and Organisation of the Legal Profession* (1989) Cm 570.

<sup>9</sup> *The Times* (leading article), 23 March 1989.

<sup>10</sup> *Official Report* (HC), 21 March 1989 at cols 907-908.

<sup>11</sup> *Judges' Response* (1989) p 5.

<sup>12</sup> Courts and Legal Services Act 1990, s.17.

<sup>13</sup> Office of Fair Trading, *Competition in the Professions: A Report by the Director General of Fair Trading* (2001).

<sup>14</sup> *Review of the Regulatory Framework for Legal Services in England and Wales* (2004).

<sup>15</sup> *The Future of Legal Services: Putting Consumers First* (2005) Cm 6679.

<sup>16</sup> Legal Services Act 2007, Schedule 4.

<sup>17</sup> Bar Council, *Report of Sir Paul Kennedy's Working Group on Bar Council Representation* (2007): [https://www.barcouncil.org.uk/media/58678/kennedyfullreportfinal\\_010507.pdf](https://www.barcouncil.org.uk/media/58678/kennedyfullreportfinal_010507.pdf).

<sup>18</sup> *Ibid*, p 7.

<sup>19</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

<sup>20</sup> Bar Council, *Strategic Plan 2019 – 2024*: [https://www.barcouncil.org.uk/media/743982/bar\\_council\\_strategy\\_document\\_final.pdf](https://www.barcouncil.org.uk/media/743982/bar_council_strategy_document_final.pdf).

<sup>21</sup> (2006) Cm. 6993.

<sup>22</sup> *The Right to Justice* (2017).

<sup>23</sup> See, for example, the Third Survey (2017): [https://www.barcouncil.org.uk/media/661503/working\\_lives\\_-\\_final.pdf](https://www.barcouncil.org.uk/media/661503/working_lives_-_final.pdf).

<sup>24</sup> TheCityUK, *Legal Excellence, internationally renowned: UK Legal Services* (2018).

<sup>25</sup> <https://www.barcouncil.org.uk/media-centre/the-brexite-papers/>.

<sup>26</sup> Bar Council, *International Rule of Law Lectures: The First Ten Years* (2016) Wildy London.

<sup>27</sup> <http://www.barhumanrights.org.uk/>.

<sup>28</sup> On 22 April 2017 the Bar Council resolved by a majority of 48 members of 72 present to change the title of 'Chairman of the Bar'. It was agreed later that the title should be 'Chair of the Bar'.

## ANNEX

*Chairmen of the Bar*<sup>28</sup>

1883–1884	Sir Hardinge Giffard QC
1885–1895	The Rt Hon Sir Henry James QC MP (Lord James of Hereford)
1895–1899	Cozens Hardy QC MP (The Rt Hon Lord Cozens-Hardy)
1899–1901	J Walton KC (Sir John Walton KC)
1901–1907	C.M. Warmington KC
1907–1913	W English Harrison KC
1913–1918	P Ogden Lawrence KC (The Rt Hon Lord Justice Lawrence)
1918–1920	J.A. Foote KC
1920–1931	T.R. Hughes KC
1931	E.A. Mitchell Innes KC
1932–1945	Sir Herbert Cunliffe KC
1945	Sir Charles Doughty KC
1946–1948	G.O. Slade KC
1949	M.G. Russell Vick KC
1950–1952	Sir Godfrey Russel Vick KC
1952–1957	Sir Hartley Shawcross QC MP
1957–1959	Edward Milner Holland CBE QC
1959–1961	Gerald Gardiner QC (The Rt Hon Lord Gardiner)
1961–1963	Geoffrey Lawrence QC (The Hon Mr Justice Lawrence)
1963–1964	Sir Edward Milner Holland KCVO CBE QC
1964–1967	J T Moloney QC
1967–1968	Henry ('Harry') Fisher QC (The Hon Mr Justice Fisher)
1968–1970	Desmond Ackner QC (The Rt Hon Lord Justice Ackner)
1970–1972	John Arnold QC (The Rt Hon Sir John Arnold, President of the Family Division)
1972–1973	Roger Parker QC (The Rt Hon Lord Justice Parker)
1973–1974	James Comyn QC
1974–1975	Patrick Neill QC (Lord Neill of Bladon QC)
1975–1796	Sir Peter Rawlinson QC MP (The Rt Hon Lord Rawlinson of Ewell QC)
1976–1977	Peter Webster QC (The Hon Mr Justice Webster)
1977–1978	David McNeill QC
1978–1979	David Hirst QC (The Rt Hon Lord Justice Hirst)
1979 -1980	Peter Taylor QC (The Rt Hon Lord Taylor of Gosforth)
1980–1981	Richard Du Cann QC
1981–1982	Andrew Leggatt QC
1982–1983	Richard Scott QC
1983–1984	Michael Wright QC
1984–1985	David Calcutt QC (Sir David Calcutt QC)
1985–1986	Robert Alexander QC (Lord Alexander of Weedon QC)
1987	Peter Scott QC CBE
1988	Robert Johnson QC (The Hon Mr Justice Johnson)
1989	Desmond Fennell QC (The Hon Sir Desmond Fennell)
1990	Peter Cresswell QC (Mr Justice Cresswell)
1991	Anthony Scrivener QC
1992	Gareth Williams QC (Lord Williams of Mostyn)
1993	John Rowe QC
1994	Robert Seabrook QC
1995	Lord Goldsmith QC (The Rt Hon Lord Goldsmith)
1996	David Penry-Davey QC (Sir David Penry-Davey)
1997	Robert Owen QC (Sir Robert Owen)
1998	Heather Hallett QC (Vice-President of the Court of Appeal, Criminal Division)
1999	Dan Brennan QC (Lord Brennan of Bibury QC)
2000	Jonathan Hirst QC



2001	Roy Amlot QC
2002	David Bean QC (The Rt Hon Lord Justice Bean)
2003	Matthias Kelly QC
2004	Stephen Irwin QC (The Rt Hon Lord Justice Irwin)
2005	Guy Mansfield QC
2006	Stephen Hockman QC
2007	Geoffrey Vos QC (Chancellor of the High Court of Justice)
2008	Timothy Dutton CBE QC
2009	Desmond Browne QC
2010	Nicholas Green QC (The Rt Hon Lord Justice Green)
2011	Peter Lodder QC (HHJ Peter Lodder QC)
2012	Michael Todd QC
2013	Maura McGowan QC (The Hon Mrs Justice McGowan)
2014	Nicholas Lavender QC (The Hon Mr Justice Lavender)
2015	Alistair MacDonald QC
2016	Chantal-Aimée Doerries QC
2017	Andrew Langdon QC
2018	Andrew Walker QC
2019	Richard Atkins QC

## Biography

**Mark Hatcher** was called to the Bar by Middle Temple and subsequently elected a Bencher of the Inn. He is Reader of the Temple and was Director of the Bar Council from 2006-2013 and subsequently Special Adviser to the Chair of the Bar.

*Legal Information Management*, 19 (2019), pp. 169–175

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doi:10.1017/S1472669619000410

# Researching Customary International Law

**Abstract:** This article written by Hester Swift is based on the online course entitled, ‘Customary International Law’, which was created by the Institute of Advanced Legal Studies (IALS) Library for the Postgraduate Online Research Training (PORT) platform and is available to all at <<https://port.sas.ac.uk/course/view.php?id=120>>. The PORT service is provided by the University of London’s School of Advanced Study.

**Keywords:** legal sources; legal research; public international law

## INTRODUCTION

Custom is one of the principal elements of public international law, as laid down in the Statute of the International Court of Justice.<sup>1</sup> The rules of customary

international law develop over time from the behaviour of sovereign states in the field of international relations; this behaviour is known as ‘state practice’. Dixon illustrates the formation of customary international law with