



**SPEECH TO THE ANNUAL BAR CONFERENCE AND  
YOUNG BAR CONFERENCE 2016**

**Chairman of the Bar**

**Chantal-Aimée Doerries QC**

Good morning ladies and gentlemen. *Raising the Bar: Innovation and global opportunity for a forward-thinking profession* – the title for this year's conference.

Looking towards the remaining years of the second decade of the 21<sup>st</sup> century, there can be little doubt that innovation and internationalisation will increasingly influence our lives, whether in our professional capacities as barristers, or in our personal lives as individuals.

In January of this year it was clear that these themes would continue to resonate, but we could not have foreseen all the events of this year, ranging from the Brexit result to the joint statement by Lord Justice Ryder, the Lord Chief and the Lord Chancellor on Transforming Justice.

We do not yet know what Brexit means for the UK, but we do know that international work has grown steadily, both in the sense of barristers working in overseas courts and tribunals and in the sense of representing and advising foreign individuals and corporations in England and Wales. Since the referendum result, I have had a number of meetings with Government and also with overseas lawyers

and Bar associations to highlight our concerns about ensuring that judgments continue to be recognised, that we maintain a viable jurisdiction regime, that our barristers are able to practise in the EU, and that England and Wales, as a legal market, remains open for business as well as to foreign lawyers and markets.

Technology has forever changed how we live and how we deliver our services. And it is continuing to do so. At the Bar Council, as part of our drive to keep costs down, we have introduced smart working, allowing for a smaller office footprint and more working from home. Many chambers around the country are also looking at how technology can help them reduce their overheads and allow them to respond to challenging market conditions and to cuts in legal aid.

As Chairman of the Bar, it is clear to me that the Bar continues to face real challenges, some of which I will talk about later and some of which this conference addresses, but that despite these, the Bar is a strong and determined profession.

One of the most enjoyable things about being Chairman of the Bar is the opportunity to meet fellow barristers from many different walks of life. I have always believed fundamentally that we are one Bar, whether we are employed or self-employed, whether we practise in commerce or crime, and whether we work from Leeds, London, Swansea, or Brussels. The barristers I have met this year have only strengthened my conviction that this is the case. And they have also convinced me that in some respects there has never been a greater need for a healthy and independent Bar.

What are the essential traits of the Bar? I would suggest they include independence, excellence in advocacy, a willingness to be challenged, and a good degree of courage. During my year, I have met with a large number of aspiring barristers and young barristers. Talking to them about why they want to make a career of the Bar and what they believe it stands for has given me real hope for the future. There are significant challenges for people embarking on a career at the Bar today. These

include the staggering cost of qualification, the radically reduced earnings potential in publicly funded areas such as crime and family, and the reduced prospects of success as a result of the larger number of students qualifying. But we do not lack for talent from people of all backgrounds who want to come the Bar. They value what the Bar offers as a career, and its role within society. Our challenge as a profession is to make it possible for the talented among them to succeed.

As a profession we cannot stand still. Nor would we want to do so. In truth, we have never done so. We need to move with the times, just as the rest of society does. But, this does not, and should not, mean change or innovation for its own sake. Upheaval and disruption remain threatening to individuals, but in markets they have become perceived as necessary, or inevitable forces for good, simply because they are innovative, or represent a different way of working. They may be a positive influence, but it does not necessarily follow.

Barristers are not mere 'economic actors', using the language of Sir David Clementi many years ago. We are professionals whose role is at the heart of our justice system. As a profession, we act not only in the interest of consumers, but also in the public interest. Acknowledging this role is not the same as saying that our profession is unwilling to move with the times, but rather that there is at the core an irreducible essence, which must be protected. At the heart of this profession are three commitments: to independence, to excellence and to advocacy.

These three tenets, combined with the Bar's high degree of flexibility, are why the Bar has survived over centuries, and why in my view, despite the challenges which exist, it will continue to survive and thrive. But we should not take this for granted. The essential elements of the profession must be guarded and valued. They are central to what is best about our justice system, and our judiciary.

Perhaps the Bar should not expect to be popular – after all the hallmark of the profession is to represent all without fear, including litigants who are unpopular

with Government, or with society. That is why this profession has fought so hard to keep the Cab Rank rule. But the profession should at least be valued. Not just for the money it contributes to the Exchequer, but because the justice system, in which the Bar plays a central role, is part of the glue which holds society together. We need to ensure that society and politicians understand what we do, and the important roles we play in ensuring our society is able to exist as we know it.

Much work has been spent this year engaging with the Ministry of Justice about reforms to criminal legal aid. We welcomed the abandonment of the criminal courts charge and of two tier contracts. We also welcome the joint work carried out by the Ministry of Justice, the Legal Aid Agency, the Criminal Bar Association and the Bar Council which reported at the end of last year. It concluded, among other things, that there was very little meaningful career progression under the current Advocates Graduated Fee Scheme. Much time and effort has been invested through a working group led by Richard Wright QC into moving towards a new AGFS scheme which is determined not by page count but by the complexity of the case, and which allows for career progression by rewarding the skill and experience of the advocate. I very much hope that we will see movement on this front. Criminal advocates deserve a better deal.

Significant reform of the regulatory regime for legal services has been suggested by the Government in the past. Although it has not been forthcoming we cannot assume it will not become so at some point in the future. We need to be ready for this eventuality and we need to be prepared to stand up for the Bar as a profession. I have set up a working group which includes representation from the self-employed and employed Bar, as well as a number of former chairmen of the Bar, so that we as a Bar Council are prepared.

We are a forward thinking profession. This is evident from the work of the criminal Bar in supporting and enabling the introduction of the Crown Court digital case system, and in making a reality of the Better Case Management initiative. Through

this input, the Bar is helping to deliver the efficiencies recommended by Lord Justice Leveson. Our forward thinking is visible in the commercial Bar's outward reach in opening annexes overseas, for example in Singapore and Kuala Lumpur. This progressive outlook is central to the hard work of the Bar Council and to so many barristers who are committed to a profession that is open to all those of talent, irrespective of background, and who work towards building a profession that is properly reflective of the society it represents in courts around the country.

As a profession we are embracing what the 21<sup>st</sup> century offers. Our goal, both as the Bar Council, and as individual barristers, should be to do so without sacrificing what it means to be a barrister. We are not alone in facing this challenge and balancing act. It is the same for the senior judiciary, Government and HMCTS when looking at reforms to our justice system. We support the substantial investment programme which is being embarked upon and the goal of widening access to justice. But it is important to acknowledge that access to justice has been eroded by so-called enhanced court fees and by radical cuts to social welfare and family legal aid. A full review of the consequences of these increased fees and legal aid cuts should be carried out by Government as a matter of urgency and necessity.

This conference seeks to address

- The ability of the Bar to adapt to change, see for example the session run by the Ethics Committee on how to make the most of non-traditional ways of working
- Innovation in our Courts and tribunals, see for example the Chancery Bar's session with Lord Justice Briggs, the Legal Services Committee session on digital courts, the COMBAR and PIBA sessions with a comparative view from America, and the FLBA session on arbitration in family cases, and
- The possibilities of international practice both in the UK and abroad with the International Committee's session.

There are also sessions that will:

- Explore comparative approaches to ethics and advocacy
- Encourage awareness of international opportunities both in terms of work and learning from other jurisdictions, and
- Look at practical steps in a barrister's career, including the Circuit Leaders' session on career advancement and the Institute of Barristers' Clerks session on marketing and client service.

Time does not permit me to cover all sessions or topics but I believe that we have a genuinely interesting mix of sessions.

Nor do I have the time to say all I would like. Let me just focus on two in closing.

Being a barrister has never been an easy calling. It can be challenging, rewarding, exciting and great fun. But it is hard and demanding. I know this from my own practice. I have also met many barristers this year whose practice demonstrates the demanding nature of the job. The female barrister in her 30s from the north of England who has had a diet of sex cases over the recent years and who has had to digest the horrors of these cases. The young male barrister in London struggling with the loneliness which can sometimes be a feature of the job. The female barrister juggling family life, travelling to far-flung courts, and leadership responsibilities, all while earning much less on legal aid than many would consider reasonable.

There was a time when this was simply accepted. We cannot make it easy, but we can recognise that there will be times when each one of us will need support, be it physical or psychological.

I am delighted to announce the launch, today at this Bar Council conference, of the Bar's Wellbeing Portal. It is the culmination of a journey which began with a survey of the profession in 2014. This attracted a huge response and the results were sobering. For example: one in three barristers find it difficult to control or stop

worrying, one in six reported feeling in low spirits most of the time, and two in three felt that showing signs of stress was a weakness. To build the portal, we set up a working group pulling together representatives from each of the Inns, Circuits and Specialist Bar Associations and the Institute of Barristers' Clerks. The portal includes a wealth of material aimed at barristers and those who work with them. It includes inspiring stories from individuals who have suffered from wellbeing problems as well as a wealth of practical information for individuals who are struggling, and for those around them. Over the last 10 months as Chairman, I have been deeply struck by how many barristers from all practice areas, regions and ages have spoken to me about difficult times they have faced either personally or in the context of looking out for colleagues.

Whilst it is almost always invidious to name individuals I would like to acknowledge the hard work and commitment of Rachel Spearing who led the working group, and Sam Mercer Head of Policy Equality & Diversity and CSR at the Bar Council who supported Rachel. I would also like to acknowledge that the funding for this groundbreaking work has come from the Bar Council, the Inns and the Institute of Barristers' Clerks. Working with the four Inns, the Specialist Bar Associations, and the Circuits, the Bar Council has been able to play a leading role in bringing together a wide range of sources of support to help the Bar and those who support the Bar to withstand the pressures of professional life. The significant investment by all those mentioned is absolutely vital for the wellbeing of the profession. It is a first class example of what, by working together, the Bar can achieve.

2016 must also be acknowledged as the 20<sup>th</sup> birthday of the Bar's Pro Bono Unit. Pro bono is part of the Bar's DNA. It is about giving back to society and providing support for the vulnerable. Speaking with individuals who were represented by barristers through the Unit, they told me about the relief they felt when they were given representation. In the words of one, it felt like someone was reaching out to them and guiding them through the process.

The profession's commitment is evident in the investment we make in the Bar Pro Bono Unit, as well as the Free Representation Unit and many other pro bono schemes. I have set up a permanent committee of the Bar Council this year, the Bar Pro Bono Board, so that we have a central point for information about our pro bono efforts and a place for solving problems.

In 1996 a former Chairman of the Bar, Peter (now Lord) Goldsmith established the Unit in a pre-LASPO world. It was before the swingeing cuts to social welfare and family cases, yet there was a clear need for pro bono representation.

We now live in a post-LASPO world with huge increases in litigants in person. When LASPO was implemented in 2013, about 17% of family court cases had no representation for either party. Ministry of Justice statistics indicate that in the period April to June of 2016, neither side was represented in 34% of family cases. This is the highest since 2013 when legal aid was taken out of scope in many cases. This is disturbing enough, but it is important to recognise that on top of this, there are the many cases where one side is represented and the other is not. Quite aside from the potential unfairness, this can be particularly challenging in the context of family cases. We have called on Government several times to carry out the promised review into the consequences of LASPO and I believe that an announcement will be forthcoming before long.

Let me be absolutely clear, pro bono cannot be, and should not be seen as, a replacement for an adequately resourced legal aid system.

Resilience is central to the profession. Our work on wellbeing is aimed at supporting the profession going forward. In my experience, the Bar is strong, determined and resilient. It will not only survive, but it will thrive, because the Bar's focus has always been on excellence and independence, and on being the best it can be.