

Technophobe barristers are stuck in the past

Jonathan Ames , *The Times* December 2020

An aloof aversion to teamwork; an old-school insistence on formal instructions taken through at times belligerent and self-interested clerks; a woeful lack of commercial awareness and an almost proud insistence on being technologically backward. The charge sheet levelled at the supposedly modern Bar is made all the more damning by the fact that it is enumerated not just by one of the profession's own, but by one who has risen to its top rank of Queen's Counsel.

As the Bar Council wrapped up its pandemic-enforced online annual conference, Shantanu Majumdar, QC, a commercial and professional negligence law specialist at Radcliffe Chambers, told *The Times* that solicitors and clients still hurl that litany of criticisms at the Bar.

"If the Bar continues to be like this, then its survival really must be doubtful," Majumdar says. On the face of it, the Council, which represents nearly 17,000 practising barristers in England and Wales, has much to celebrate — even if it was forced to do so remotely. Overall, the number of practising barristers has risen by more than 6 per cent over the past five years. But the combination of the Covid-19 emergency and much more endemic legal aid funding woes mean that the junior Bar, particularly younger criminal barristers, is under threat.

Arguably more importantly, evolutionary political moves have gradually and subtly eaten away at the Bar's uniqueness and monopoly position. It is a generation since first the Courts and Legal Services Act 1990 then the Legal Services Act 2007 moved the entire legal profession in England and Wales ever closer to fusion in practice if not in name. Thanks to those legislative reforms, solicitor-advocates can appear before the highest court in the UK, barristers can offer services direct to the public, and they can form partnerships with solicitors.

Perhaps the most striking illustration of the impact of the legal moves towards fusion is the rise in numbers of solicitor-advocates with rights of audience in the higher courts, which until 1990 was the almost exclusive preserve of barristers. There are now more than 7,100 solicitors with higher court certificates, a figure that equates to about 40 per cent of the practising Bar — and their ranks have grown by 25 per cent over the past nine years. Those numbers are forecast to continue rising.

Mentioning the "f-word" — fusion, to be clear — within ten yards of a senior Bar Council member is like detonating a bomb, but there may not be a need to worry just yet. Despite the rising numbers of senior solicitor-advocates, Amanda Pinto, QC, the chairwoman of the Bar Council, says that "there has not been the take-up that some expected". Likewise, while Pinto acknowledges that about 40 per cent of barristers can now take instructions directly from the public, that facility "almost always forms one part of a diverse practice of which the majority is referral work". According to the Council, only 5 per cent of barristers are authorised to conduct litigation, and, Pinto says, "relatively few barristers and solicitors have formed partnerships".

Despite the law blurring the lines between the professions, some specialist litigation law firms argue that practical distinctions remain. "Even if the profession becomes increasingly fused there will remain a role for highly skilled and experienced advocates, whether solicitors or barristers, employed or self-employed," says Robert Coffey, managing partner of Cooke, Young & Keidan. He argues that the crucial point is the need for specialisation. "In high-value, complex matters it makes sense for experienced advocates to represent all parties to a dispute. It is not in the best interests of a client for a solicitor-advocate, for example, with comparatively little experience on their feet cross-examining, to perform the trial advocacy."

Bucking up the spirits of online delegates at the Bar's conference was Sir Geoffrey Vos, who leads a government-sponsored UK group of experts on Legal Tech . He encouraged barristers to jettison the technophobe image. He told the conference that the processes of the English courts — which he said were largely adopted in the 19th century — must be revisited. Yet Sir Geoffrey reassured the conference that there was "absolutely" no risk that the change would lead to a thinning out of the Bar in favour of artificial intelligence and robot lawyers. "Lawyers will not be redundant — people will need legal advice more than ever," he said. "The challenge for lawyers and judges is to stay ahead of the game." [...]