Time to End the Split Legal Profession in England and Wales

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It may seem strange that a British barrister— and I have been a KC since 2014 —should suggest ending the split legal profession. Were those days of blood, sweat and toil, of financial precariousness, not really worth it? Well let me take you on the journey I took to get here.

I set out to write my latest lecture 'Do We Need Barristers' at a time when I could really reflect on what I've observed both in the U.K., but also in the Eastern Caribbean- where I practise as a barrister; and in other Commonwealth countries.

Unlike many other countries which have only one type of lawyer, England and Wales has a split legal profession, with a traditional distinction between solicitors and barristers. This split profession has its roots in the 13th century when two branches of the profession were established: pleaders (later barristers) and attorneys. Originally, barristers had a monopoly on the right of audience in the higher courts, while solicitors had a monopoly on the "conduct of litigation"..

In the last few decades, however, many of these rules have changed, with solicitors being allowed to qualify as solicitor-advocates and barristers being allowed to accept instructions directly from clients. However, the working life of a typical barrister and a typical solicitor are still quite different, with barristers being self-employed and working in chambers while solicitors tend to work in law firms.

Today, barristers and solicitor-advocates have a monopoly on rights of audience in the Crown Court, High Court, Court of Appeal and Supreme Court, but not in the magistrates' court or the County Court. This doesn't make a great deal of sense in the modern world. After all, the same skills are required to conduct effective advocacy in an inferior court and in a superior court. If solicitors can be trusted to carry out advocacy in some courts, why not all of them?

And the structure of the Bar, where most barristers are self-employed, creates a lot of avoidable difficulties. It is true that barristers often bring significant benefits to our cases, due to our specialist skill in advocacy and our independence. Similarly, it is true that solicitors often have skills and experience that most barristers do not. But this does not necessarily require a rigid separation between the two professions, nor does it justify the current arbitrary limits on what each can do.

So is it time to merge the English legal Professions, as happens in many other countries? Well, we can't do this overnight, but the legal distinctions between what solicitors and barristers may do have already been significantly weakened in recent decades. That process should continue.

What would that mean for Barristers and Solicitors in England and Wales? Well, in a fused profession, there is no reason why we couldn't have some lawyers who are primarily advocates, and others who are primarily litigators. Indeed, we already have solicitor-advocates in England, many of whom have years of experience in courtroom advocacy under their belt and are highly skilled at it, while being solicitors. Nor is there any reason why lawyers couldn't bring on other lawyers to assist them with a case, just as solicitors presently instruct barristers.

However, the structure of the legal profession does not exist in a political vacuum. We are having this conversation against the backdrop of the systematic underfunding of legal aid over the past two decades. Many of the financial pressures on the self-employed Bar, and indeed the financial pressures on solicitors' firms, are caused by the current parlous state of legal aid. The Legal Aid, Sentencing and Punishment of Offenders Act 2012, which radically reduced the scope of legal aid, was a huge blow to the legal profession and to the integrity of the legal system, from which it has never recovered.

Whether we have a split profession or a fused one, it is essential that it be funded properly.