



YOUNG BARRISTERS' COMMITTEE

“The Future of the Bar”:

Speech to Lincoln’s Inn BPTC Cohort, 19 February 2018¹

Richard Hoyle, Chair of the Young Bar

1. It is not an easy task to predict the future. History is littered with examples of people who really did get things quite wrong indeed.
2. Take for example King William I of Prussia, who remarked in 1864 in relation to trains that *"No one will pay good money to get from Berlin to Potsdam in one hour when he can ride his horse there in one day for free."* Or Sir Erasmus Wilson, who suggested that *"When the Paris Exhibition [of 1878] closes, electric light will close with it and no more will be heard of it."*
3. More recently, Thomas Watson, the Chairman of IBM, is reputed to have said in 1943 that *"I think there is a world market for maybe five computers"*. And no doubt the Decca Recording Company will never forget the statement it made to Brian Epstein, the manager of the Beatles, in 1962, declining to sign the Beatles to their label with the words *"Guitar groups are on the way out"*.

¹ With the usual caveat that there were minor differences in the delivered version.

4. So it is with some trepidation indeed that I address this potential poisoned chalice of a topic that I have been given, 'The Future of the Bar'. I hope, however, that if I contain myself to slightly less extravagant predictions, I might be saved from the fate of joining my four unfortunate examples in someone else's speech.
5. The Bar of today is nearly unrecognisable from that of 30 or 40 years ago. Handshakes, paid pupillages, and marketing are just some of the things that would have confounded practitioners of that time, but which are the norm today. Against that background, the suggestion that something is done a particular way because it is "*in the best traditions of the Bar*" is a claim that deserves close scrutiny. In some cases, I believe it is justified, such as the contribution of the Inns to the education and continuing development of law students and barristers, although there is still room, and perhaps quite a lot of room, for improvement. In other cases, we as a profession need to be more ready to adapt and change with the times in a much more fundamental way.
6. One area in which this is becoming increasingly clear, concerns the mindset of barristers about what it is that we do. In our interactions with Courts and Tribunals, we are in a curious position where our ethical obligations mean that we are not simply providing a client with a service in the standard sense of that term. Business considerations come off second best under our ethical framework, and rightly so. However, when it comes to the questions of how a barrister fits into Chambers, or how that person, or how Chambers, brings in or maintains clients, then there is room for more creativity.
7. Historically of course, the approach was that work just came to barristers. Seeking it out was seen as rude, uncouth, perhaps even unethical. The proliferation of marketing managers and business development committees within Chambers across the Bar should tell you that that approach is as dead

as a dodo. But not all individual members of the Bar seem to have caught up, and you, the internet generation, should not simply be following the ways of the past without thinking critically about whether they are fit for purpose.

8. Whilst self employed barristers are members of Chambers, we are also small business owners. We are entitled to think about the risks and rewards of what we do, and to demand that the structure within which we work is doing that as well. As part of that, we are going to need to think a bit a bit less like black letter lawyers and a bit more like entrepreneurs.
9. What do I mean by that? Perhaps the main point is to be thinking in an open minded and creative way about what work you are doing, and how you are doing it.
10. It's going to involve an assessment of the areas of work that you are involved in and the case mix to which you are exposed. That might simply be a question of work life balance and pay – for example, my colleagues in Crime tell me of increasing diversification into regulatory work, because it is more certain that it will stay in the diary, at the time that it is first fixed, and at a reasonable fee. Or it might be a question of whether there are new areas that are opening up – for example in relation to autonomous vehicles or FinTech.
11. It's also going to involve striking a balance between maintaining skills that have been historically useful and new skills that might be relevant to practice in the future. As far as the 'bread and butter' skills are concerned, in my own field of commercial law, you see an increasing problem of young barristers who are often led by QCs but spend much less time on their feet honing their own advocacy skills. Opportunities presented by FRU, the Bar Pro Bono Unit and the Chancery Division Litigants in Person Scheme may help to bridge that gap. The experience of many criminal and mixed civil practitioners is precisely the opposite – lots of courtroom experience, but much less work in

the higher courts and few opportunities to work with a leader. Again, pro bono work, this time alongside Bar or Chambers related Committee work to develop collaborative skills, might be at least partial solutions. New skills are likely to involve being more integrated in your work with solicitors on the bigger cases, and increasingly being expected to be comfortable with their technology platforms and case management tools. The same applies in the Courts – and although some of HM Courts and Tribunal Service’s IT systems are genuinely prehistoric, I would expect that to improve in time.

12. Marketing yourself (and your Chambers) is increasingly important. That ranges from things as simple as maintaining an online presence, to giving talks and presentations, and to reaching out to potential lay clients as well as professional ones. I am aware of one barrister who took out adverts in bus stops near certain Court Centres. Not necessarily an approach I would endorse, but certainly thinking a bit outside the box. No longer are solicitors and clients simply looking for a brain to hire, but rather for approachable people who they can instruct again and again, with whom they can build relationships, and who can be team players if necessary. Additionally, Direct Access and secondments represent further opportunities that are there to be seized by those who are thinking proactively about career development.

13. By accident rather than by design, the Chambers model finds itself ideally suited to the Gig Economy. To greater or lesser degrees, barristers operate flexibly, and properly considered, are extremely cost efficient from a client perspective, whether that client is the State or a private party. In percentage terms, the overheads in the form of Chambers contributions and rent are generally low, and the vast majority of the barrister’s time is spent on income generating or career development work, rather than on administrative tasks to which barristers are less well suited. That is of course how things look already. It may be that new approaches, such as remote working or online systems,

could lead to further changes, such as a reduction in Chambers' footprint and costs.

14. However, flexibility and change should not, of course, be seen as an end in themselves. Whilst in some areas it can change things for the better, it can also have negative impacts. To pick up on the last example, remote working might improve retention rates for barristers with children as it offers greater flexibility, but it also leads to empty rooms and increased isolation, as well as a potential loss of a valuable pedagogical aspect of Chambers, where more junior members can just pop in and ask more senior members a question. In considering these kind of difficult issues, the stabilising impact provided by the experience of more senior members of Chambers, and more senior Clerks or Practice Managers, should not be thought of as a roadblock inhibiting progress. The potential for change is not an excuse for us, as more junior members, to assume that we always know best, but rather it should be used to drive conversation and discussion within Chambers at every level. As long as all of the participants are open minded, there is no reason to believe that the best outcomes for Chambers and for individual barristers cannot be achieved.

15. Alongside Chambers, it is important not to neglect the role of the Inns in the lives of students and barristers, both in their early years of practice and later. I expect that this will still form an important part of the future of the Bar, and perhaps increasingly so. The Inns are currently looking into how to deliver a more tailored, two part BPTC which will seek to improve standards and reduce costs. Any such move will unfortunately come too late for the people in this room, but the strength of feeling in the profession backing these changes is greater than on almost any other issue, and I am sure that in due course you will feel no different. The profession expects that the Inns will do everything in their power to deliver on this proposal, and at present the signs are encouraging.

16. Another issue which has recently been under discussion is the role of Qualifying Sessions as part of the process of being called to the Bar. Again, it seems to me that by and large the profession and the Inns are singing from the same hymn sheet when it comes to support for maintaining Qualifying Sessions via the Inns, and rejecting the need for any major regulatory changes in this area. Qualifying Sessions represent an opportunity to mix with your peers, who will come from a variety of different backgrounds, and to meet practitioners and judges in different fields and of differing seniority. Seize that opportunity, and take advantage of the mentoring and marshalling and exchange schemes that the Inns offer.
17. However, that is not to say that Qualifying Sessions are perfect. Going forward, there is clearly more work to be done, not by those who regulate us but by the Inns themselves. I would expect this to involve continuing to rebalance Qualifying Sessions away from dining in favour of training in advocacy and ethics, as well as lectures which focus on the practicalities of life at the Bar which are not otherwise properly covered elsewhere – wellbeing, tax, general financial planning, soft skills, pro bono, etc. That will no doubt be the topic of lively ongoing debate both now and in the future.
18. Looking a bit further ahead, the profile of the profession is already changing and will continue to do so. To take one example, more female than male students now study Law as a degree subject, but this takes time to work its way upwards. As an illustration, the Young Bar had its first female Chair in 1984, but it took until 1998 and the election of Heather Hallett QC (as she then was) for there to be a female Chair of the Bar, and until 2017 for Baroness Hale to become the first female President of the Supreme Court.
19. Even in spite of our advances, and they are far from insignificant, diversity of characteristics such as gender, ethnicity, socio-economic background and

disability can only be regarded as a work in progress, and the profession needs to keep asking itself the question of whether it is doing enough. But you can help. Over the coming years, identify for yourself what you think are the barriers to entry and the reasons that people exit the profession, and if you are able, tell your Chambers, or your Inn, or the Young Barristers' Committee, or the Bar Council. Some of these issues we may have spotted already. Others may never have occurred to us. But we won't know whether they are factors that the profession can control and influence, unless we identify them in the first place.

20. I want to be part of a profession where if you are good enough, then you can join it regardless of your background. If you think that you are from an underrepresented demographic, then please consider whether you feel able to talk about your path to the Bar. The #mypathtolaw tweets on Twitter are genuinely inspiring. Of course, no one should feel pressured to speak up, but positive role models are extremely powerful. And if you don't think that you're a great example of social mobility or overcoming a particular disadvantage, that's ok! But think about how you could contribute – perhaps a talk to a group of school leavers who have never met a barrister, perhaps engagement with Bar Placement Week or some of the Bar's social mobility programmes.

21. Finally, the general framework in which the Bar operates is moving too. I have touched on it already, but the rarefied air of Chambers in and around the Inns of Court is not free from the pervasive spread of technology. Some of this is to be welcomed – it is not clear to me, for example, why there cannot easily be an online docket for case materials that is accessible to the parties – an area in which Crime appears to be one nil up on the Commercial Court.

22. Other areas are more controversial – online Courts and virtual justice to mention but two. The profession has to be involved in shaping and offering both positive and negative criticisms of these kind of proposals. We are the most regular Court users. We understand how Courts work, and how our clients work and interact with them. It is quite clear that we are suffering from an access to justice problem in a number of fields. But we need to ensure that the solutions are the best and most sensible ones, rather than the ones that are quickest or cheapest in the short term.

23. This means that in the future the Bar is going to need to increasingly draw inspiration from two quite different directions. Professor Richard Susskind, who is always worth reading even when one might disagree with him, has previously discussed the concept of legal engineers, who can either be people who design technologies, who then acquire some understanding of law, or people who have an understanding of law, who then acquire some understanding of technology. For me, designers of technology who have only a little understanding of law, represent a potentially grave threat to key principles underpinning the rule of law and our justice system, if they are not counterbalanced by people in this profession who are willing to engage with technology. But in order to do that effectively, we also need to be thinking in a more philosophical, ‘big picture’ way, about what those key principles are, and how best they can be preserved in an age of change. If we fail in that task, then there is more at stake than the future of this profession.

24. As it happens, guitar music was not on the way out 40 years ago. It is not on the way out today. The Bar is not on the way out either, and I very much hope that it will not be in 40 years’ time. By the end of my year as Chair of the Young Bar, I will be able to say in all confidence, like David Cameron once did, that I was the future once, (although perhaps I will just about be able to

claim that I still am). You lot definitely are the future of the Bar. Shape that future wisely.