



The Bar Council

## **The Bar of 2043: Thoughts for the future**

### **Speech by Nick Vineall KC, Chair of the Bar**

Inner Temple Hall, London

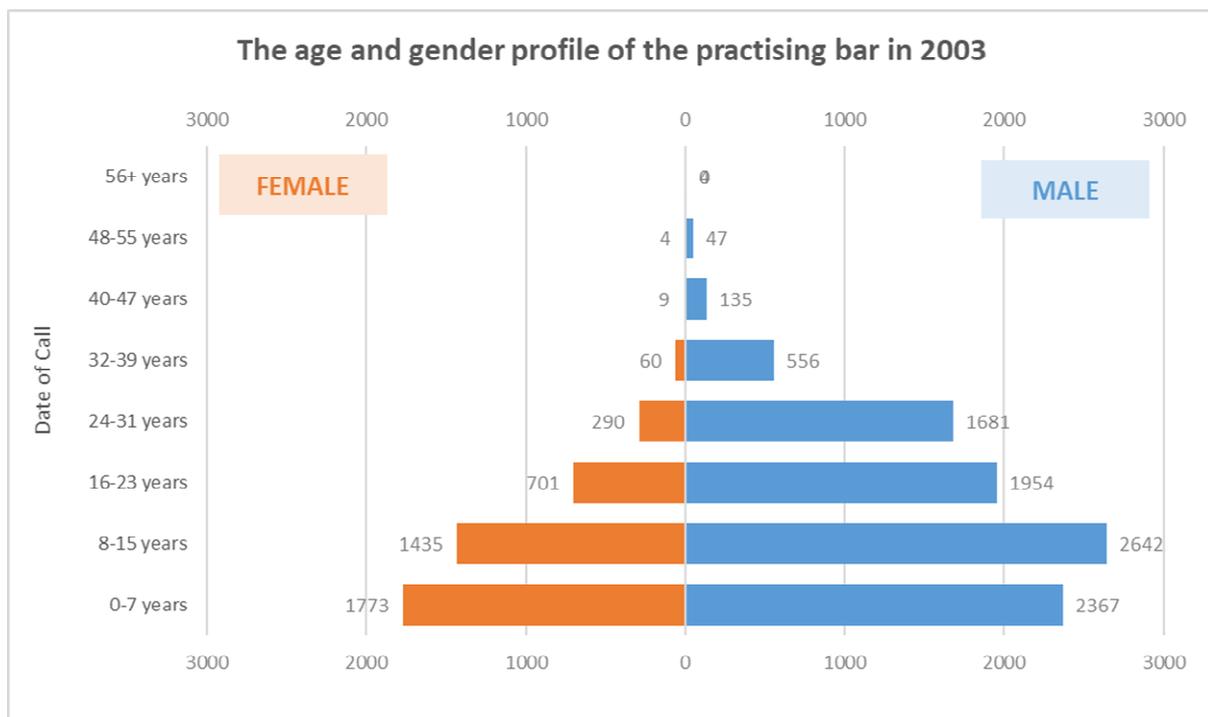
EMBARGO: 18:00, Wednesday 13 September 2023

*CHECK AGAINST DELIVERY*

1. What will the Bar look like in 20 years' time and what are the challenges we are likely to face as a profession? What, indeed, do we want it to look like?
2. I hope I might be around in 20 years and if so what I hope I will see then is a thriving Bar which is a true meritocracy, in which the ablest succeed irrespective of background or gender or race; I would like to see a Bar which remains overwhelmingly a referral profession, and which provides excellent service to its clients whilst remaining true to its first duty which is to the Court. Because if we advise and represent our clients without fear or favour, always fulfilling our ethical obligations, but never judging our clients, that is the best way to support the courts - judges and juries – in fulfilling *their* function of dispensing justice.
3. Can I say at the outset that I am going to disappoint those of you who have come hoping to hear my views on some of the profoundly important challenges which society faces more broadly – climate change, our post-Brexit relationship with our European neighbours, and so on. These are not Bar-specific issues, and they are issues on which I have neither special knowledge nor experience. Nor am I going to talk today about regulation, save very tangentially – it is important, but there have been, and will be, other opportunities to talk about that. Nor am I

going to talk today about access to justice. We will certainly be talking about this at the party conferences and asking the major parties what their plans are.

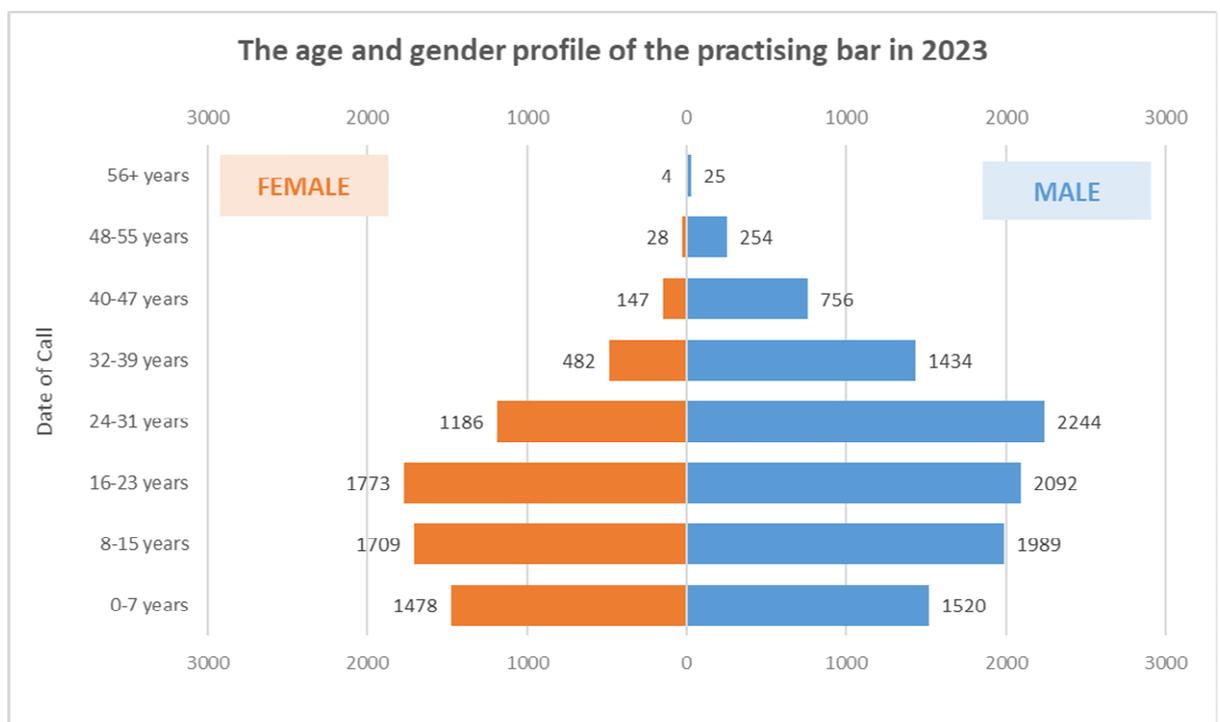
4. But my focus today is on the future shape and structures of our profession. These may not be the most critical issues to broader society, but they *are* important for us, and many of them are issues which are within our control and where we have the power to make things better.
5. The structure of our profession is essentially that you go in at the bottom and gradually work your way up. So what the junior end of the profession looks like now is the biggest single determinant of what the senior end of the profession will look like in 20 years.
6. So I want to begin with some facts and figures.
7. And let's first wind the clock back 20 years and look at the overall demographic of the practising bar – that's all the barristers with practising certificates – so practising as a barrister either in employment, or as a self-employed barrister, typically in chambers somewhere.



So we can see (speaking to slide):

- It is in 8-year brackets of call – women shown orange on the left and men shown blue on the right. So if the Bar was of consistent overall size over time you would expect to see basically a pyramid shape = broader at the bottom than the top.
- You can see that the skew in favour of men had by 2003 already markedly – but not completely – reduced for the new intakes

8. We can look at the same graph as of now:

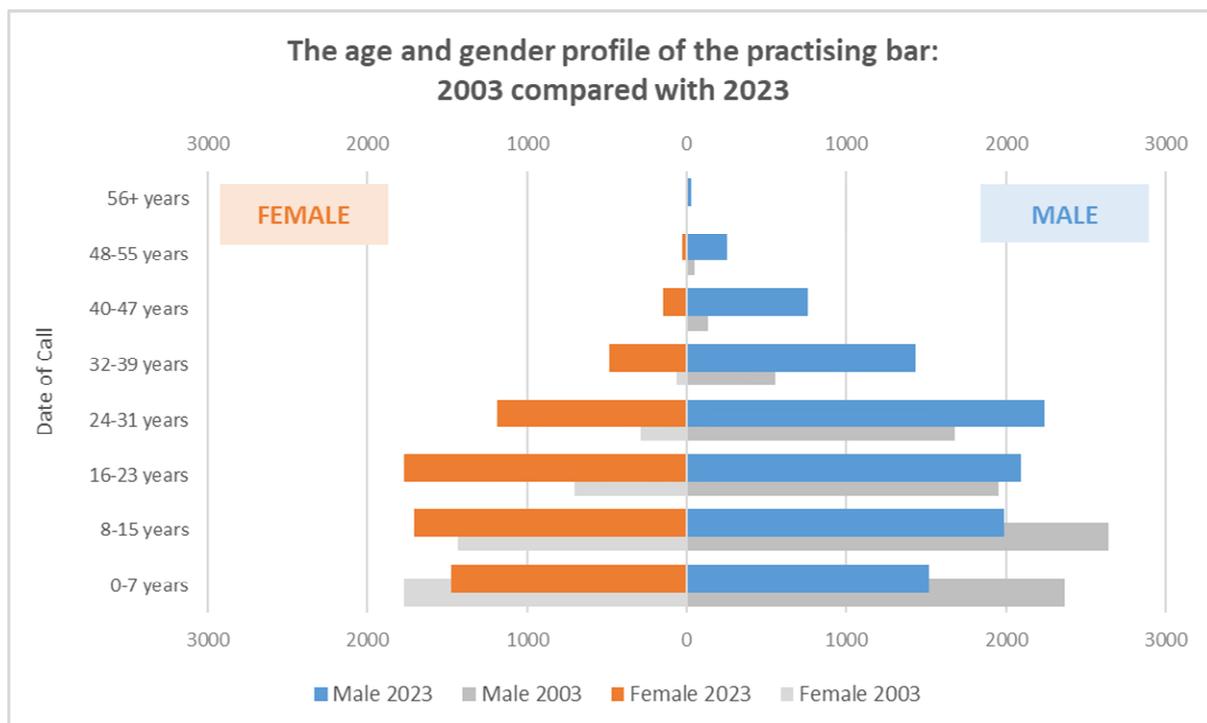


9. Points to note

- Still – of course – we have the very strong skew towards men at the *senior* end of the profession
- But at the more junior end two striking changes
  - the balance between men and women is much closer to being equal

- and the pyramid is no longer a pyramid – there are more in the 16-23 bracket than in 8-15 and more in 8-15 than 0-7.

10. And you can see that a bit more clearly by superimposing the two – the grey is 2003, the colour is now:

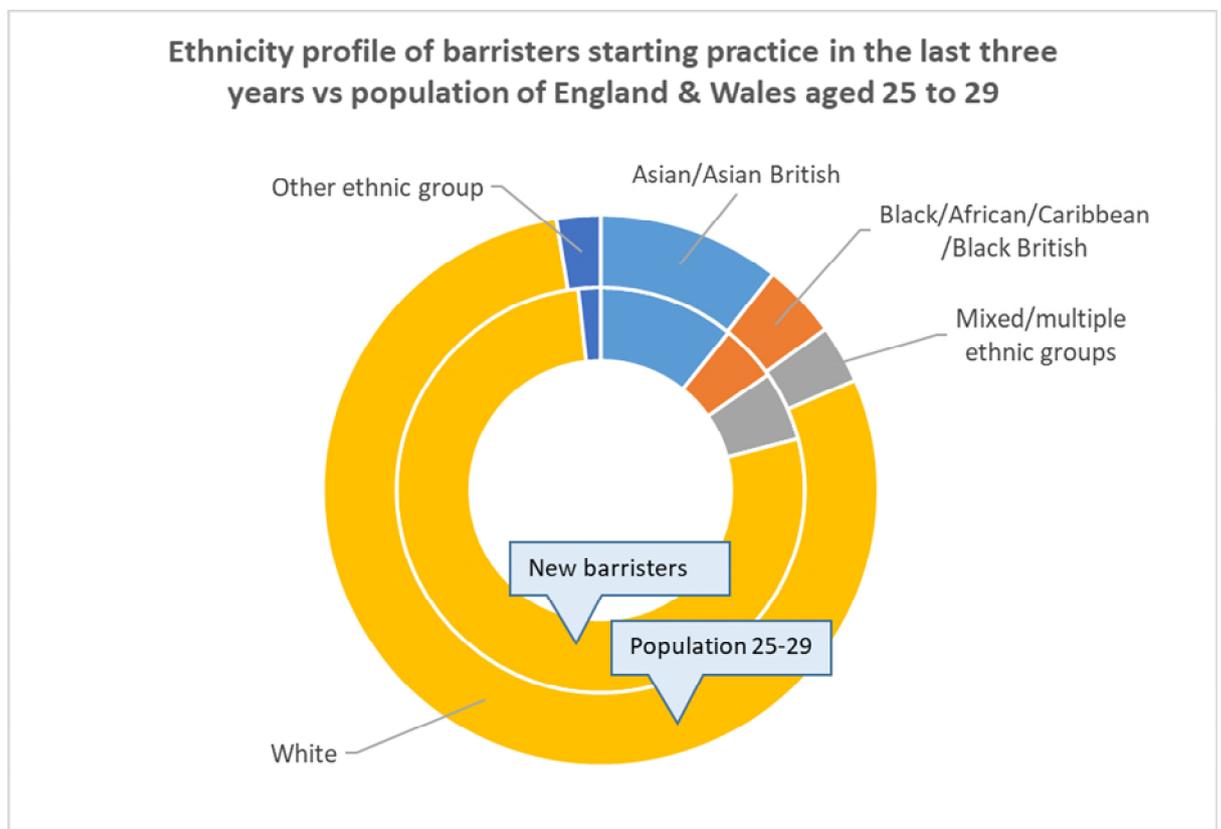


11. Bar Council modelling suggests the profession – in terms of practising barristers – is likely to stabilise in size over the next 10 years at about the 18,000-mark.
12. But before we move on let's look in a bit more detail at the current intake to the practising Bar, not only in terms of gender but also ethnicity. So let's focus again on those who start practice – i.e. complete their pupillage and get a practising certificate.
13. If we aggregate the last 3 years of entry, these are the figures

Ethnicity	Number of barristers	Percentage of barristers with known ethnicity	England & Wales population age 25 to 29 (Census 2021)	
Asian/Asian British	171	10.8%	416,165	10.7%
Black/African/Caribbean/Black British	72	4.5%	170,665	4.4%
Mixed/multiple ethnic groups	89	5.6%	133,475	3.4%
White	1226	77.3%	3,081,335	79.0%
Other ethnic group	28	1.8%	100,095	2.6%
Prefer not to say	39			
No information	45			

14. And in the table we compare those figures to the equivalent figures for 25- to 29-year-olds in England and Wales.

15. But it is easier to see this with pie charts. Like this:



16. So you can see that the ethnic mix of those who succeed in obtaining and completing pupillage is pretty close to the ethnic mix of the population of similar age.
17. For *gender* the figures for the last three years of entry to the practising Bar are that women very marginally outnumbered men at 51% to 49%. Our projections suggest that in 2043 the practising Bar overall will be about 45% women and 55% men – with women outnumbering men up to about the 20 years of call-mark.
18. **So in terms of recruitment to the practising Bar we now have an intake to the Bar that very closely reflects the general population demographic in terms of gender and race.** I think that this is important. It is what you would hope to see if recruitment is open and meritocratic. I think enormous credit here is due to the Inns and especially their student officers. Credit is due to pupillage and tenancy selection committees for their work in trying to ensure there is no unconscious bias, and to organisations like Bridging the Bar, and to the Bar Council's Equality and Diversity committee. Notice too that when we talk about recruitment this is an area where the practising Bar has a large degree of autonomy in encouraging students and applications, and full autonomy at the stage of selecting between them, and I think we can be proud that we seem – at the recruitment stage, to be well on the way to a race-neutral gender-neutral intake and therefore on the way to a meritocracy.
19. What we don't have a very good handle on is how the *social background* of the practising Bar compares with the population as whole. That is partly because it is a difficult thing to measure and partly because when we do ask people questions about their social background not enough people answer. But I suspect we can all agree on two things at least:

- the Bar and the Inns can be very daunting, very off-putting, for those who come from what are sometimes called non-traditional backgrounds (although I don't much like that expression); and second
  - what we ought to be interested in when we recruit to pupillage is potential - how good a barrister you can soon become, and that may not be exactly the same as what grades and extracurricular activities you can put on your CV.
20. And I would suggest that we also need to ask ourselves whether we are entirely comfortable that – of those who disclose the relevant information, about 35% of the *current* intake to the practising Bar is privately educated as against 18% of the A-level cohort and only 8% of all secondary school pupils.
21. So I have felt for a long time that on recruitment we can still do better on the social mobility front.
22. I said in my inaugural address in January that I was keen to explore whether we could support and build on the excellent outreach work of the Inns, and some chambers and SBAs, and organisations like Bridging the Bar by making available contextual recruitment tools as part of the Pupillage Gateway process. Contextual recruitment tools help to identify candidates who have outperformed their immediate peer group, or who have had to overcome particular types of adversity. Such tools can help chambers ensure that they are not missing candidates with great potential who, because of their background might not yet have achieved quite so highly as contemporaries from a more advantaged background. I am delighted to be able to say that the Bar Council and Tribepad, who provide the Applicant Tracking System on which the Pupillage Gateway runs, are going to be working with **Rare Recruitment** to integrate Rare's extremely impressive and carefully developed contextual recruitment tools. Whether or not to use these tools will be a matter for chambers. You might for instance use it at the stage of inviting people to interview. The cost will be included in the Gateway subscription fee so there will be no separate cost. This

won't be available for the coming round, but it will be ahead of the opening of the 2025 recruitment timetable in late 2024. I really hope there will be a very broad use of Contextual Recruitment tools.

23. I have talked about recruitment but that is only the first task in achieving a meritocratic profession. We also need to address progression and retention. This is where we need to focus our ongoing efforts. Here the profession is not in full control of all the contributory factors – as an obvious example, how you progress will depend on what work you get and that depends, at least in part, on client choices – but even those choices are not beyond the realms of our influence.
24. We will be publishing our annual update on earnings disparities by race and gender later this year and we think we have greatly improved the analysis and presentation of that data. In terms of gender there is a clear and very pervasive overall disparity between the earnings of men and women, driven in part by a particularly marked disparity seen in the highest earners, who are very disproportionately men. Similarly with race we know from the work of the Bar Council's Race Working Group that the average Black barrister earns markedly less than the average White barrister and the average Black woman earns less than the average Black man.
25. We need to do more work to understand the cause of these differences but some of the work we have done with individual chambers suggests that there may be hard-to-justify disparities in work allocation in the very early years of practice which can have a lasting impact on career trajectories. We will have more to say about all of this in October.
26. So looking forward to the Bar of 2043 I think the picture is mixed, in terms of equality and diversity. We can already be sure that the Bar of 2043 will be more diverse and much better reflect the mix of race and gender in society, than the Bar as it is today. So in terms of getting in, we appear to operate pretty

meritocratically, although I believe we have more to do in terms of social mobility. I haven't said anything about disability because our data is not good, but we continue to try to improve the support available to those disabled people who can, with reasonable adjustments, build a successful practice at the Bar. But the key take away is that in terms of staying in, and particularly in terms of getting on – that is to say retention and progression – we have much more to do.

27. I want then to turn to consider what practice might *look like* for those who come to the Bar in the next 20 years.
28. Will it be transformed by AI?
29. Personally I doubt it, although I'm sure our practices will be affected by AI to some extent.
30. One specific subset of AI has caught the public imagination. Large Language Models or LLMs, of which Chat GPT is the best known, have already been used – and misused – in litigation. It is important to understand both their capabilities and their limitations. LLMs like Chat GPT can produce text in response to prompts which is often extremely convincing, though I think usually less than wholly inspiring. But what is it actually doing? Is it thinking? Is it intelligent? No, it is not.
31. LLMs are developed by first scouring the internet for text, and then use complex mathematics – which I do not begin to understand – to create a linguistic model. That programme – which models the relationships between words, but has no sense of their meaning - allows the programme to respond to text prompts in a way which produces text which is a relevant response to the prompts, and which conveys meaning to its human readers, and which makes a very good stab at sounding as though a real person produced it. It is like predictive texting on steroids. It is not the same as an internet search. As one academic has described it,

LLMs are good at 'formal competence' (the knowledge of linguistic rules) but not functional competence (understanding and using language in the world).

32. In the next 20 years LLMs will I am sure be increasingly used, but as barristers I suggest that we need to recognise the following key points (and I am grateful to the Bar Council's IT panel for their assistance here).

- AI is not intelligent in any normally understood sense of that word. LLMs do not think.
- LLMs neither tell the truth nor lie. They just produce text. The meaning of that text might be true or false. In some widely reported recent instances, LLMs have just made up things which are entirely false, even producing false references to "support" the text.
- The text which LLMs produce obviously depends on the content of the text that was originally scoured from the internet. As a result biases and prejudices in the text that was used to create the model will be reflected in the text that the LLM produces. And because the internet scouring process takes ages and is costly, it is not done on a frequent basis, so the raw data may not be up to date.
- With many LLMs the text that you put in by way of prompt, can itself be used by the LLM more widely, so great care is required not to divulge information which is privileged or confidential.

33. So I very much doubt that we will be replaced by robots or Chatbots or AI – at least in the next 20 years. But we do need to make it our business to understand what AI can do, and to understand enough about how it does it, so that we can appreciate both its capacities and its weaknesses. A head-in-the-sands approach is not remotely advisable, but neither should you be asking GPT to settle your skeleton arguments.

34. I think a development that *is* much more likely to affect our practices in the next twenty years is the growing realisation that court-based dispute resolution is, or at least ought to be, a last resort, to be used only when other alternative methods of dispute resolution (or at least other peaceful alternative methods) have been tried without success. The mandatory use of ADR as precursor to bringing proceedings is, I think, likely to increase. Although that will create opportunities for barristers, I think its net effect may be to close off more work than it opens up.
35. The Bar Council will be intervening in an important Court of Appeal case this autumn which is likely to consider whether and in what circumstances a court *can* direct ADR as mandatory precursor to the issuing of proceedings: watch this space.
36. And what of **working patterns**, and the future of the chambers working model, and remote hearings?
37. I suspect that some increase in the use of remote hearings, above pre-Covid levels, is here to stay. But I hope that their use will reduce from present levels. We are still analysing the views expressed by the Bar in the latest Barristers Working Lives survey but I count myself in the camp which believes that the right approach to any type of materially dispositive hearing is that it should be done in person and not on-line. On-line hearings risk breeding sloppiness and informality. Save where there are very good reasons to the contrary, people's rights and obligations should be determined face-to-face, with a proper degree of formality in a real room to which the public and journalists have access, and in which every participant can see and hear everyone, and can see and hear everything, that is happening. We have a name for rooms like that – court.
38. But leaving aside the question of remote hearing, remote working is certainly here to stay. But I think there are real challenges for us here as well.

39. Being a barrister is rewarding but it can also be deeply stressful. There are the perennial problems of work/life balance, and, particularly for the young Bar, managing debt loads. We have all had clients who have lost cases and we think it is our fault. We have almost all had judges say things to us which we know are grossly unfair – although we cannot tell them why. We have all had those sets of papers where one does not really know where to start. And so from time to time we all need support. I think the criminal Bar can be especially stressful but at least for criminal practitioners, in court almost every day, robing rooms provide a chance to interact with colleagues and friends. I worry particularly about civil practitioners with paper-based practices who may go for long periods with little face-to-face professional interaction. I wish I had a simple answer to all of these issues, but I suspect this is one of those problems where we have to learn to help ourselves, by understanding and thinking about wellbeing. We need to make the effort – when things are going well and we don't particularly need mutual support networks – to build up these networks. Then we can not only be around when colleagues need help, but we won't be starting from cold when it is we who are in need of help or support - as at some stage we will be. So that is a roundabout way of saying – go to circuit messes, or get involved in your SBA, or make the effort to go into chambers, or to attend chambers' social events, or get involved with your Inn, or get involved in the Bar Council – or maybe even do all of those.

40. And what about the traditional chambers model itself, is that sustainable? By traditional model I mean a group of barristers combining to pay for clerks and marketing and rental of rooms and so on, but without a profit share and, crucially perhaps, without any external equity investment. I see no reason why this model should not survive, and great benefits if it does: it tends to avoid conflicts problems; it means that there are no external investors to take a share of income; and very often there is in practice an attractive cross-subsidy of junior

members of the profession by those who are more established. I benefitted from such a cross subsidy when I started at the Bar, and I will be very happy when I return to 4 Pump Court in January to go back to that kind of system.

41. But there is at least one interesting variant on the traditional model at the moment. An organisation called Clerksroom has 240 or so barristers on its books – including 8 silks. The barristers contract individually with a corporate body – Clerksroom – which provides clerking services in exchange for a percentage-based fee. The holding company of Clerksroom recently announced it had attracted funding in an 8-figure sum - so that must be at least £10million - from a Lloyds Bank subsidiary, to develop its business. It has a client-focussed website and there is another business in the same group called Clerksroom Direct which acts as a portal for direct access work.
  
42. This sort of model is interesting and may offer benefits for clients, and for the external investors. What is less clear to me is the long-term benefit for barristers. The history of outside party investment in solicitors' businesses, for instance Inces and Plexus law, has so far not been one of conspicuous success, but it may be that this, the first such example at the Bar, will turn out better for the equity investors. Strictly speaking the investment by Lloyds Bank is not in an entity which is itself providing legal services, but this type of model will nevertheless require careful handling from a regulatory and a conflicts perspective. And rather like what I said about wellbeing, the broader answer here may be for us as barristers to be careful that we take care of ourselves. Perhaps if there is some monetisation available by investing into our traditional clerks' rooms structures we might prefer it if we as barristers were the investors in that innovation – and therefore the owners of the benefits that might come from such innovation. And if we don't do that, we should not be surprised to find that the fruits of our labours – our fee income – has to be shared with the external investors who were prepared to take on the risk of investing.

## TIMING OF CALL

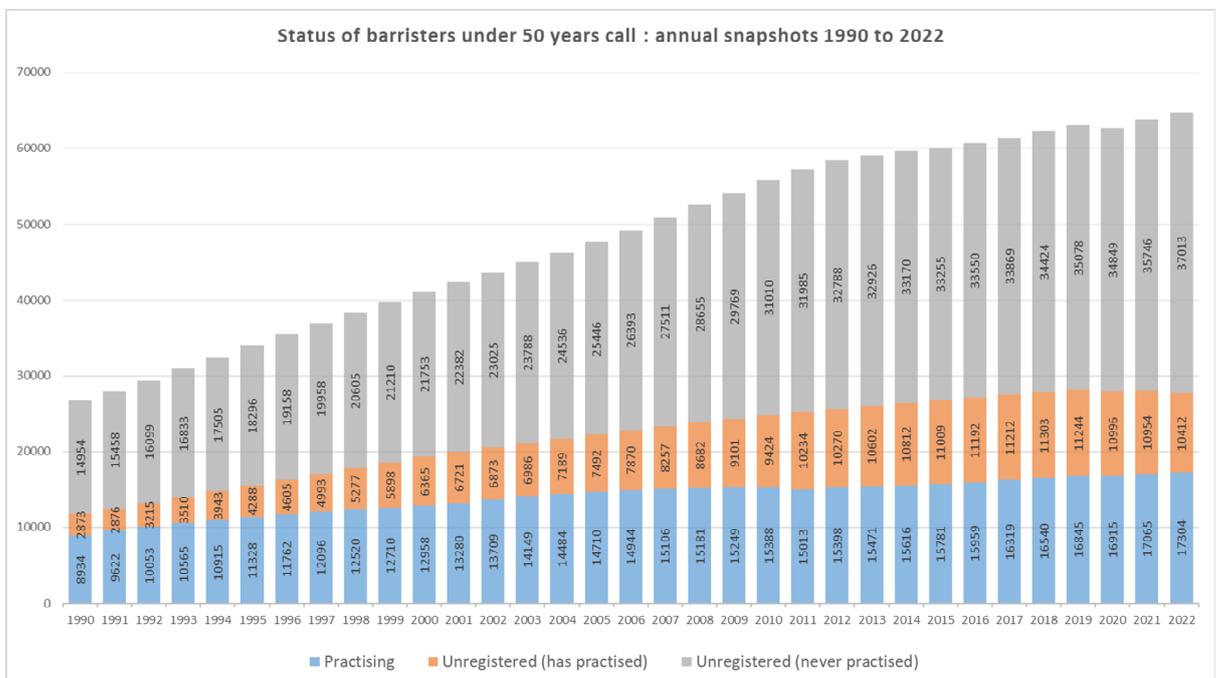
43. Finally I want to turn to the issue which I see as a serious long-term systemic risk to our profession as we look to the future. It is one which has crept up on us stealthily, although not entirely unnoticed. We have as a profession thought about it before, and come close to resolving it, but never in the end done anything about it. It is about as fundamental as any question could be because it is about what makes you a barrister.
44. What makes you entitled to use the protected title “barrister” is being called to the Bar by one of the four Inns of Court.
45. But – bizarrely in my view - we confer the title of barrister on people who are not entitled to practise as barristers.
46. In order to become a barrister all you have to do is get a qualifying law degree with a 2.2 or better (or convert your degree using a Graduate Diploma), complete 10 Qualifying Sessions with your Inn of Court, and pass the vocational course offered by one of the now ten<sup>1</sup> providers. These are courses which the BSB permits you to pass in dribs and drabs over no fewer than 5 years. So you can become a barrister without ever having practised, and without even having done pupillage, and you can retain that title for life. Incidentally: contrast becoming a solicitor: The main route to becoming a solicitor is that a person must have a qualifying law degree or equivalent and complete the LPC (so that is very similar to the Bar route), but would-be solicitors must also complete two years of “recognised training” before they become a solicitor.
47. There is nothing of substance you can do as result of being called to the Bar – you acquire no rights of audience. You can of course have your photograph taken on call day in a wig and gown and put it on your, or your proud parents’,

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<sup>1</sup> <https://www.prospects.ac.uk/jobs-and-work-experience/job-sectors/law-sector/bar-courses>

mantelpiece. But in order to exercise the rights of audience that we associate with being a barrister you have to get pupillage, and you have to complete pupillage to be entitled to a full Practising Certificate.

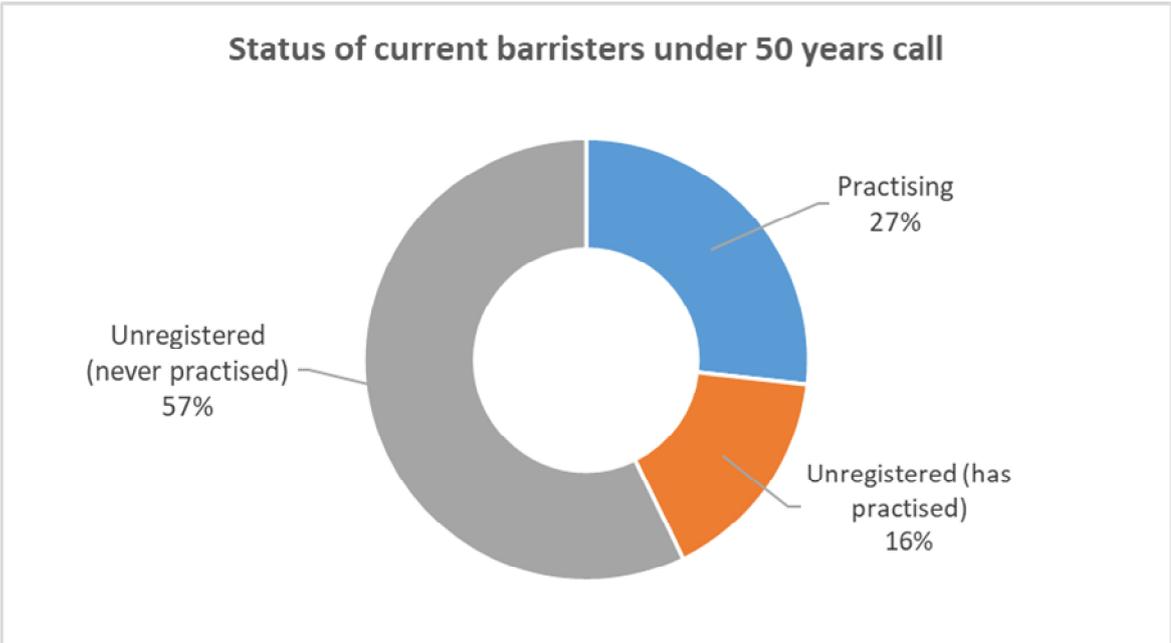
48. As a result of our present arrangements there are far more barristers who are non-practising than who are practising. There are really three categories of barrister – practising barristers who have a practising certificate, barristers who were once entitled to practise but no longer have a practising certificate, and those who have never obtained a practising certificate.
49. Let’s look at the numbers and how they have developed over recent years.



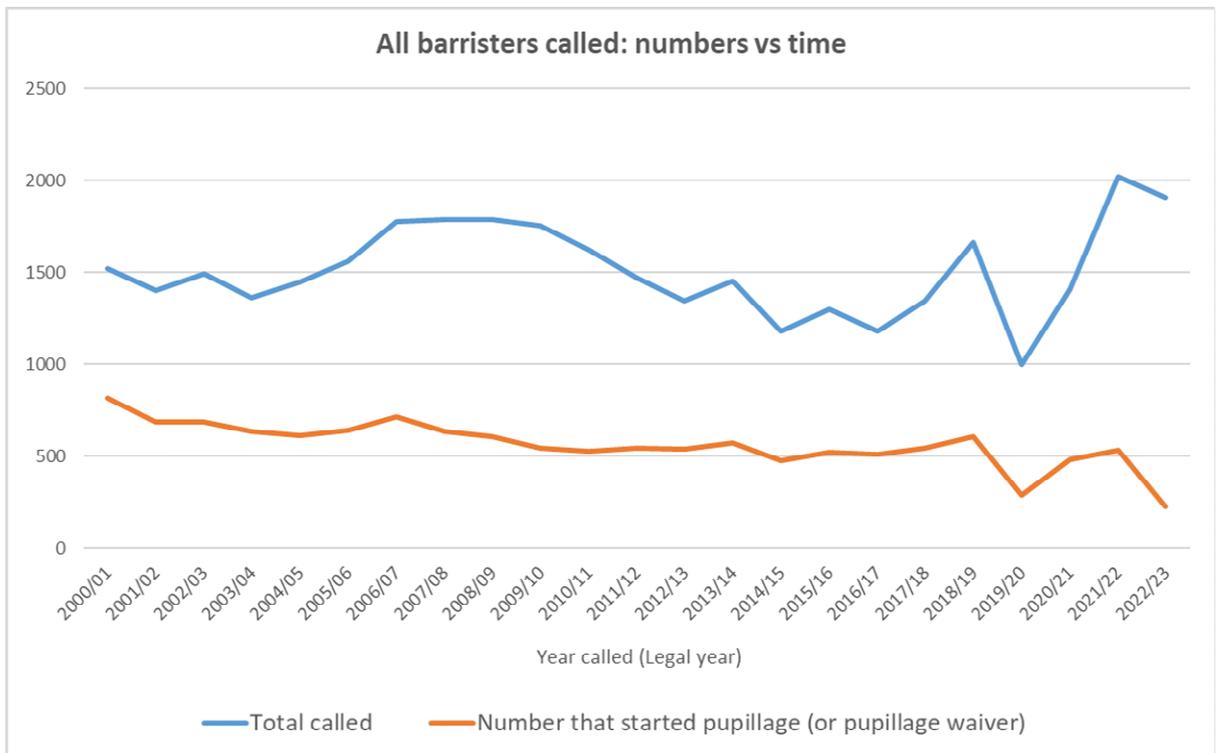
Note that we have taken up to 50 years call because the unregistered barristers who die can be very slow to come off the records – but it means the figures in the grey area are uncertain, and almost certainly an underestimate.

50. So if we take snapshot of the position now – and again limit it to those under 50 years’ Call we get a pie chart like this [slide]. For every barrister with a practising certificate there are **two** who have never been entitled to a practising certificate.

And of all the people in the world who are entitled to tell you they are barrister called to the Bar of England and Wales, only 1 in 4 has a practising certificate.

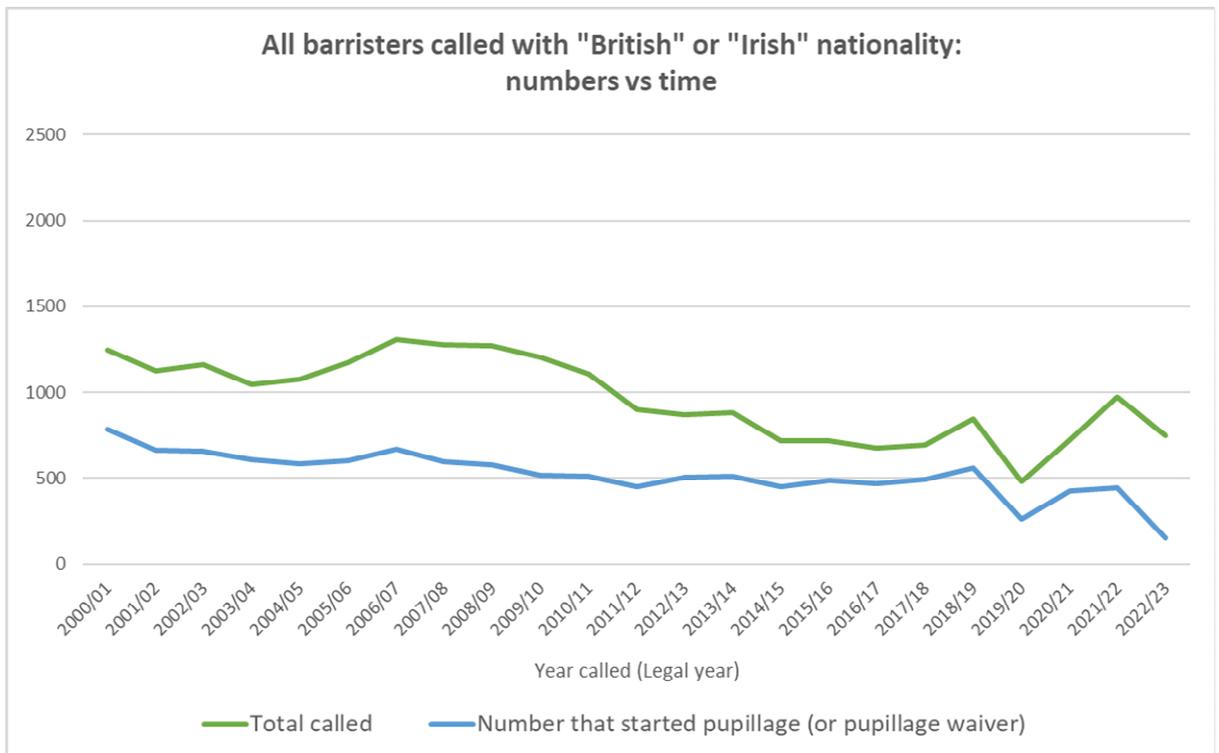


51. Another way of looking at this is to look each year at the number of people called to the Bar as against those starting pupillage.



Points to note – there are obvious Covid blips; *and* this includes overseas students.

But if we take out the overseas students, who are probably never intending to practise here, and just stick to students with British or Irish nationality, we still see a big difference between the number called and the number who start pupillage. [We can obviously ignore the 22/23 numbers because we haven't finished that year.]



52. So we have a system in which we call to the Bar large numbers of non-UK-domiciled students, even though they will have to complete pupillage in their own jurisdiction before they can practise there. And we also call far more British Isles domiciled students than will ever get pupillage. The chance of eventually getting pupillage for British and Irish students is somewhere between a half and two thirds.
53. The result is that the Bar as a whole is getting bigger and bigger whilst the practising Bar stays about constant. For every practising barrister there are another 3 members of the profession who either once practised but don't anymore, or who have never been entitled to practise.
54. Does this matter, and if so what should we do about it?
55. I think it does matter. For at least five reasons.

56. First, and perhaps most importantly from a public interest point of view, there is a real risk of confusion for clients – or in more modern parlance consumer detriment. The rules about holding out and unregistered barristers are a quagmire likely to be incomprehensible to most clients. They are certainly confusing for unregistered barristers as evidenced by the many calls to the Bar Council’s ethics helpline – and by the fact that almost every year at least one unregistered barrister is subject to disciplinary proceedings for holding themselves out as barrister in connection with the provision of legal services.
57. And the position, in terms of use of the title barrister for barristers is in stark contrast to the position for those who are entitled to call themselves dentists, pharmacists, vets, or – closest to home - solicitors. None of these professionals can use the title until their qualification process is complete.
58. Second, the creation of this mass of unregistered barristers creates an unfair financial burden on practising barristers. Let me explain. Once you have a protected title (like barrister or solicitor) you need both to regulate its use and to regulate the conduct of those entitled to use it. Regulation is, alas, increasingly costly. The BSB’s budget this year is nearly £15m. And the great majority of that cost burden falls on those who pay the practising certificate fee. So 17,000 or so practising barristers pay for the regulation of 70,000 or so people. It is striking I think that unregistered barristers who have never been entitled to practise account for over a quarter of cases that get to the Bar Tribunal.
59. Third, I believe that some people embark on the Bar course who in truth have little prospect of securing pupillage. But it may I think be a reasonable inference that they console themselves with the idea that even though they may never be able to practise as a barrister they will become a barrister, nevertheless. If you

have a 2.2 you have only about a 1 in 10 chance of securing pupillage<sup>2</sup> – but if you pass the Bar course you nevertheless become a barrister. So I think the system artificially encourages some people who probably should not be encouraged.

60. Fourth, I believe the present system is likely to discourage some of the young people who *do* have what it takes and who *ought* to be encouraged. If you are a really bright, sensible and ambitious 20-something, with no bank of Mummy and Daddy to fall back on, and you are trying to decide whether to go for the Bar or be a solicitor, we have created a system that makes the Bar look distinctly unattractive by comparison with becoming a solicitor. So not only do we have a system that sometimes encourages the wrong people, but I also fear that we are discouraging some of the best people.
61. Fifthly, and perhaps most importantly from our profession's point of view, I think that if we continue as we are we will create wholly unnecessary and eminently avoidable risks to our continued existence as an independent profession. If the profession of barrister is going to continue it must mean something. The title "barrister" must be meaningful. At the moment it means only that you have completed the Bar Course. So there is no connection between the title and what you can do.
62. Remember that there are some strident critics of the present regulatory system. They describe the present system, pejoratively, as a system of regulation by title. They would like to see all lawyers regulated according to function, and some of them would like to see a single regulator. I disagree. I want to see our profession continue as a separate profession, separately regulated. But for so long as we continue to confer the title of barrister in circumstances where the title has no

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<sup>2</sup> <https://www.barstandardsboard.org.uk/uploads/assets/adeb685a-26f7-434d-9c0ccb33c05de50f/BAR-TRAINING-2022-STATISTICS-BY-COURSE-PROVIDER.pdf> page 12

correlation with what you are actually allowed to do, we make the job of our critics easier.

63. So I am delighted that the Inns are looking at these issues again. The vocational course providers can and should, of course, confer a qualification to recognise success on that course, but more should be required before you become entitled to call yourself a barrister. My own view is that we should call people to the Bar only when they have satisfactorily completed pupillage, with some sort of provisional call or provisional practising certificate to cover the second six. The Bar Council strongly supports such a change. My strong sense is that the practising Bar as a whole is in favour of such a change, and that those practising barristers who are closest in time to having experienced the present arrangements are the most firmly in support of change. It is therefore particularly important that when the benchers of the Inns consider this issue that they take proper account of the views of those who will still be barristers in twenty years' time.
64. So to summarise: we have this obvious anomaly of conferring the title barrister before the qualification process is complete. I fear that if we do nothing the problem will get worse, that it will become increasingly difficult to resolve, and that it poses a long term risk to the profession. The problem is readily fixable, and it should be fixed now. We must all rise to the challenge.
65. Finally before I sit down may I pay tribute to my colleagues at the Bar Council, both members and staff, and all those who through SBAs or Circuits or Inns contribute to the Bar Council's work, and who have therefore very much contributed to the forward thinking which I have just tried to articulate, and in particular in relation to Call, the Education and Training Committee and the Regulatory Working Group.

Thank you.