

Diversity and Inclusion – Lets Continue the Journey

Some say that what occurs States side, is a sign of things to come this side of the Atlantic, in the UK. In the current climate, some are questioning, whether EDI (Equality, Diversity and Inclusion) is here to stay or whether we going to see a rollback on such initiatives? What impact, if any, will the statements from Donald Trump have on decades of progress made, which has created a more diverse and representative work space/environment.

The Bar Council represents the voice of nearly 18,000 barristers in England and Wales (self-employed and employed). It promotes high-quality and specialist advocacy and advisory services; fair access to justice for all; business opportunities for barristers; and the highest of standards of ethics, equality and diversity across the profession. At the Bar, there have been a number of initiatives supporting underrepresented groups such as, like Her Bar, Bringing [Dis]Ability to the Bar, Black Barristers Network and FreeBar.

In the wake of the murder of George Floyd, in June 2020, the Bar Council set up a Race Working Group (now the Race Panel) to address and focus on the race inequality at the Bar. It was agreed the initial focus would be on the inequalities faced by Black barristers and students entering the profession; there was, however, a clear commitment to investigate, analyse and report the different experiences of barristers according to race; and to encourage policy interventions to support barristers from underrepresented minority ethnic backgrounds.



Karen Kabweru-Namulemu, Barrister,
1GC Family Law

In November 2020, our regulator, the Bar Standards Board, published its first ever Anti-Racism Statement for

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Resilience at the Bar: Teaching Strength from the Start

The journey to becoming a barrister is an extraordinary one. Demanding, intense, and intellectually rigorous, pupillage is not merely a rite of passage but a vital training ground. It is here that new practitioners learn the craft of advocacy, absorb the nuances of court etiquette, sharpen their legal analysis, and begin to understand the practicalities of financial survival in the world of the self-employed Bar. It is a time of learning, reflection, and discovery and a year that shapes the legal professionals they will become.

But as we prepare the next generation to carry the weight of the law on their shoulders, we need to ask ourselves: Are we equipping them with everything they need?

In recent years, it has become increasingly clear that alongside the practical skills of drafting, advising, and courtroom performance, early-career legal professionals need a deeper strength. One that will serve them far beyond any single case or courtroom. They need resilience.

Why Resilience Matters, Especially at the Start

Resilience is not about being impervious to stress. It is not a hardened exterior or a 'toughen up' mentality. Rather, resilience is the capacity to recover quickly from difficulties; it is emotional elasticity, mental adaptability, and the ability to maintain equilibrium in the face of adversity.

In a profession where unpredictability is the norm, where success can be precarious, and where individuals are routinely exposed to emotionally challenging material and high-stakes pressure, resilience is a fundamental professional asset.

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Chronically under resourced' county court system is 'eroding justice', Bar Council warns



The county court system is 'dysfunctional', 'failing to deliver justice' and now requires 'urgent' review, a new report by the Justice Committee has found.

The report entitled 'Work of the County Court' by the cross-party committee, chaired by Labour MP Andy Slaughter, has concluded that it's 'imperative that the improvement of the county court becomes a key priority of the Ministry of Justice'.

The committee struggled to understand why the county court continues to rely on paper files, which need to be shipped around the country at great cost. It concluded that paper is a serious cause of the delays in the county court.

Welcoming the report and its findings, Bar Council Chair Barbara Mills KC said: "This report paints a picture of a system which often get little attention but is as chronically under resourced as other areas in our justice system."

"The county courts are beset by crippling delays, a massive problem with staffing, and courts in a very poor state of repair, with members telling us that in some cases they do not have basic facilities like a lift, rendering them inaccessible. The reliance on outdated paper-based systems has been identified as one of the key factors contributing to the delays. As the Justice Committee have recommended, we hope HMCTS involves us when future digital reforms are piloted and tested."

"The situation facing the county courts is negatively impacting all involved – detrimentally affects the parties – and hampers the administration of and access to justice. Reform and funding are needed now; the system in its current state is eroding justice."

Extra court tier alone not a silver bullet to tackle rocketing backlogs



The Ministry of Justice will be expanding the Intensive Supervision Courts to build on its 'Plans for Change' aims to tackle the root causes of criminal behaviour and cut reoffending.

Responding to the announcement, Bar Council Chair Barbara Mills KC

said: "We're encouraged by the expansion of the Intensive Supervision Courts. These courts reflect exactly the sort of joined-up approach required if rehabilitative sentencing is to be effective. Their one-stop shop, high-intensity, regular-review ethos echoes schemes that have already been working for some time on an ad hoc basis in court centres. Rehabilitation is key to our sentencing regime as it means we can reduce crime and reoffending rates by addressing the

root cause for offending which will – importantly – help rebuild public confidence in our justice system."

In its submission to Gauke's independent review of sentencing, the Bar Council noted that that intensive, consistent, and focused monitoring is key to rehabilitation

Professor Christopher Bones appointed as the new Chair of the Bar Standards Board



Professor Christopher Bones succeeded Kathryn Stone OBE as our new Chair on 1 September 2025.

Commenting on his appointment, Professor Christopher Bones said:

"I am delighted to have been appointed as the new Chair of the Bar Standards Board and I'm looking forward to helping the organisation to regulate the Bar in the public interest. As the Bar Standards Board prepares its strategy for the rest of the decade it is a good time to join and to understand the challenges and the opportunities for the profession."

Welcoming the appointment, Mark Neale, Director General, The Bar Standards Board said:

"Christopher is an experienced Board Director in global businesses across a range of different sectors. I very much look forward to working with him in the new role as Chair in taking forward our reforms of the Bar Standards Board and in setting a new strategic direction to ensure that the profession continues to serve the public interest."

Bar Council calls for 'urgent and comprehensive' investigation into HMCTS IT incident



A leaked report has found it took several years for HMCTS to react to an IT bug that caused evidence to go missing, be overwritten or appear lost. Sources within HMCTS claim that judges in civil, family and tribunal courts will have made rulings on cases when evidence was incomplete as a result.

The internal report, leaked to the BBC, said HMCTS did not know the full extent of the data corruption, including whether or how it had impacted cases, as it had not undertaken a comprehensive investigation. The

report also found judges and lawyers had not been informed, as HMCTS management decided it would be "more likely to cause more harm than good".

Responding, Bar Council Chair Barbara Mills KC said: "We're alarmed by the news that this bug may have caused miscarriages of justice. We need an urgent and comprehensive investigation to establish any potential impact on case outcomes and particularly whether emergency child protection cases have been affected."

"This is just the latest in a series of issues with the courts' IT systems which it's now apparent are affecting the entire justice sector due to lack of

investment. The Legal Aid Agency cyber incident continues to severely impact barristers and solicitors. Many £100s of millions were spent on Common Platform as part of the Court Reform Programme which did not deliver. Similarly, the online probate service 'fell over' and had to be pulled while it was fixed.

"Given this long list of problems, the Ministry of Justice should undertake an audit of all its IT systems so that any problems can be proactively identified and addressed rather sticking plasters being used as and when these issues come to light.

"If there was a bug in an NHS system which resulted in people being given incorrect diagnoses or in the education system meaning people received the wrong exam results, it would be fixed immediately. Justice is a vital public service and the decisions made in the system can have just as significant an impact on people's lives. Our IT systems must be fit for purpose before they are implemented."



The Bar Standards Board publishes 2025 Annual Report on Bar Training Statistics by Provider

The report provides information for prospective barristers about different Bar training providers and aims to help students when considering which provider to choose when pursuing a career at the Bar.

The report details the differences in the costs of different Bar training courses, enrolment numbers, pass rates for students and the rates of progression to pupillage. The report also shows the relationship between the class of students' first degree and their likelihood of passing and going on to obtain pupillage in England and Wales.

The report finds:

- Fees vary between providers ranging from £13,200 to £20,200 for home students, and £13,200 to £23,700 for overseas students with

- three providers charging higher fees for students from overseas.
- Enrolment numbers continue to increase with 2,445 students enrolled on Bar Training courses by providers (Authorised Education and Training Organisations - AETOs) between July 2024 and June 2025, up from 2,423 in the previous year.
- Enrolment numbers vary by provider and site, from 12 to 422 students.
- Pass rates vary by undergraduate degree class - among the 23/24 cohort, 91% of those with a first-class degree, 70% of those with a 2:1 and 40% of those with a 2:2 have passed the course. Students have five years in which to retake failed assessments and therefore these pass rates will increase over time.

- Pass rates vary by provider, among the 2023/24 cohort, when looking at those with a 2:1 degree, the highest pass rate was 96% and the lowest rate was 48%.
- Those who receive a first-class degree obtain pupillage at higher rates than those with a 2:1, who in turn obtain pupillage at higher rates than those with a 2:2.

Mark Neale, Director General, The Bar Standards Board said:

"This report forms part of the continuing work of the Bar Standards Board to ensure high standards of training for the Bar. It aims to support students to make informed decisions about their choice of provider and their prospects of success before embarking on the journey to become a barrister."

The BSB signs voluntary undertakings agreement with the LSB

Mark Neale, Director General, The Bar Standards Board said: "Following the launch of the BSB's Reform Programme in 2024, we have

been working with the LSB to report on its aims and progress. We are pleased that the LSB has endorsed the Reform Programme and share our ambition. So, although we disagreed with the LSB assessment of BSB's regulatory performance, in the spirit of constructive engagement and cooperation, the BSB has agreed to some voluntary undertakings which reflect delivery of our Reform Programme. A key part of that is to improve the timeliness and efficiency of our enforcement work to match the high standards of decision-making

already achieved. We have in place comprehensive operational performance measures, against which we are making good progress and which we keep under review. We have re-organised to provide unified accountability for our end-to-end enforcement process and launched a consultation on reforms to the enforcement regulations to make processes more efficient and effective. These commitments with the LSB will help to give assurance that the overall direction of improvement at the BSB remains on track."

Expert financial planning for barristers

With the unique demands of self-employment, fluctuating income and a need for long-term planning, barristers often face distinct financial challenges. Clement Cowley, Partner at The Penny Group and Chartered Financial Planner, explores how tailored advice can make a meaningful difference.

Q: Can you start by giving some background on yourself and The Penny Group?

Certainly. I'm Clement Cowley, and I've been advising high-net-worth clients on their financial planning needs for 17 years, including many clients in the legal profession. I am a founding partner of The Penny Group, a multi-award-winning financial planning firm that works with clients across the UK. We help clients make informed, confident financial decisions, and offer fully tailored advice across investment planning, retirement strategies, estate planning, protection and mortgages. We work closely with every client to build a robust financial plan that supports both their professional success and their life outside of work.

Q: What in your view are the key pillars of financial advice?

Financial advice isn't just about choosing the right investments. We take a holistic view, and work with clients to build plans around five core areas:

1. **Retirement planning** – ensuring you have a clear roadmap to financial independence, whether retirement is 10 years away or 30.
2. **Estate planning** – protecting and passing on wealth in a structured, tax-efficient way.
3. **Investment planning** – helping your money work as hard as you do, through tax-efficient, goal-focused investing.
4. **Mortgages** – sourcing and structuring borrowing options, whether that be first-time buyers, remortgages, or buy-to-lets, including tailored advice for self-employed professionals.
5. **Protection** – safeguarding your income, your family and your assets from life's uncertainties.

We aim to help clients achieve clarity, confidence and control over their finances by sitting down with them regularly and providing proactive financial advice.

Q: What are the most common questions you get asked by clients?

Some of the most frequent questions we hear include:

- "Am I on track for retirement?"
- "Could I be doing more to reduce my tax liability?"

- "How should I invest my money?"
- "Am I sufficiently protected, should the worst occur?"
- "Is my overall financial strategy aligned with my longer-term goals?"

Many people come to us with multiple, often uncoordinated financial products. Our job is to simplify and integrate them into a joined-up strategy.

Q: Are there any financial challenges unique to barristers?

Absolutely. Barristers, especially self-employed ones, face unique circumstances:

- **Irregular income:** Earnings may fluctuate month to month, making cashflow planning vital.
- **Limited pension provision:** Unlike salaried employees, you must take ownership of your retirement savings.
- **Tapered annual pension allowance:** Complexities around how much you can pay into your pension to optimise tax efficiency.
- **Tax complexity:** Income may span tax years, chambers structures and different revenue streams, requiring tailored tax-efficiency strategies.
- **Time pressure:** A lot of barristers are incredibly time-poor. You want trusted advice, clear reporting, and efficient implementation.
- **Self-employed mortgages:** Lenders often struggle to interpret barristers' earnings. A mortgage specialist can help to present finances in the best light.

We have worked with many legal professionals and understand the pressures and nuances of your working life.

Q: If you already have an accountant, why would you need a financial adviser too?

A good accountant is essential, but their primary focus is typically backward-looking: managing tax returns, accounts and compliance. A financial adviser takes a forward-looking view: helping you build, grow and protect your wealth in line with your long-term goals.

In fact, many of our clients' accountants refer them to us once they recognise the client needs strategic financial planning beyond their remit.

Q: What does working with The Penny Group look like in practice?

We start with a conversation. We want to understand your goals, your values, and your current financial landscape. From there, we create a personalised plan covering your short and long-term objectives. Our advisers are supported by



Clement Cowley - Partner & Chartered Financial Planner, The Penny Group

in-house mortgage, and protection specialists, ensuring your plan is joined up across the board.

We meet regularly with clients, either in person or virtually, to ensure their plans evolve as their careers and life circumstances change.

Q: How can someone get started?

It begins with a no obligation conversation. Whether you've never taken financial advice before or already have a plan in place, we're happy to offer a fresh perspective.

You can find out more about our services and book an initial consultation at www.thepennygroup.co.uk, or give us a call on 0207 061 2345

The Penny Group

Awarded "London Financial Adviser Firm of the Year" at the 2025 Professional Adviser Awards

The value of investments and any income from them can fall as well as rise and you may not get back the original amount invested.

HM Revenue and Customs practice and the law relating to taxation are complex and subject to individual circumstances and changes which cannot be foreseen

YOUR PROPERTY MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE.

Most buy-to-let mortgages are not regulated by the Financial Conduct Authority.

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Approved by The Openwork Partnership on 28/07/2025

p1 the Bar, setting out clearly, what Chambers are expected to do. This assisted in highlighting the work to be done, and in conjunction with the regulator to establish how these obligations can and will be complied with.

The Bar Council's "Race at the Bar" series, is comprised of three reports. The Reports provide a comprehensive analysis of racial disparities within the legal profession. The reports highlight the systemic inequalities faced by barristers from minority ethnic backgrounds, offering data-driven insights and actionable recommendations aimed at fostering a more inclusive Bar. This article provides only general overview, I encourage readers to read the reports and assess the detailed statistics, which speak for themselves and show the stark race-based contrasts and disparities.

The Race Panel is made up of representatives from the Inns of Court, Specialist Bar Associations (SBAs), Circuits, and Black and Ethnic Minority-led Bar Networks. At the time of its conception, it was co-chaired by Barbara Mills KC and Simon Regis, now CBE. As they each stepped down from office, Laurie-Anne Power KC and Gary Pryce each took up office and are current co-chairs.

Race at the Bar: A Snapshot Report (November 2021)¹

This inaugural report was commissioned to produce a snapshot and to discuss the state of play around race at the Bar at that time and recommendations for the Bar Council and Bar-based stakeholders to consider and/or adopt to tackle race inequality at the Bar.

Research gathered to inform the report, was undertaken in two stages. The first was to gather data on race at the Bar from the BSB, Bar Council monitoring, survey data and external sources. The main sources of internal data was from the membership database, supplemented, where appropriate, from Pupillage Gateway data, the Barristers' Working Lives Survey, and additional reports from the BSB, Ministry of Justice (MoJ) and Queen's Counsel Selection Panel at the time.

The second stage involved roundtable discussions, organised by the Bar Council in September and October 2021. The discussions covered four themes covered in the Report (Access, Retention, Progression and Culture). Participants were barristers across different ethnic backgrounds, on the basis of an interest in the topic, and those identified as having expertise, lived experiences and/or those with influence and responsibility for effecting progress, such as Heads of Chambers (HoC) or Equality and Diversity Officers (EDOs).

The report reveals significant barriers to entry and progression for barristers from ethnic minority backgrounds. Key findings included:

Access to Pupillage: Individuals from ethnic minority backgrounds faced greater challenges in securing pupillage compared to their White British peers.

Earnings Disparities even when factoring in practice area, work volume, region and seniority, women earn on average less than men, with Black women earning the least overall.

Progression: Black and Asian Barristers are underrepresented in taking Silk. With regards to judicial appointments Black, Asian and other ethnic minority candidates are less successful in achieving an appointment.

Workplace Culture: Barristers from minority ethnic backgrounds, particularly Black and Asian women, reported higher instances of bullying and harassment.

The overarching recommendations were: target setting; data transparency and monitoring; and the need for Bar-based organisations to develop a race equality Action Plan. It included a template to help chambers and organisations identify priorities and aid in establishing greater support networks for minority ethnic barristers.

Race at the Bar: A Progress Report (November 2022)²

This was not an in-depth review/analysis of data as in 2021, but did include pupillage and silk appointment statistics for 2022. The focus was to assess the Bar's response to the 2021 findings, looking at the race-based activity at the self-employed Bar in the past year. Chambers, SBAs, Circuits and other Bar-based organisations were asked to share details of their activity, efforts they were making and experiences.

The short online survey was sent to all HoCs on the Bar Councils database; sadly out of 322 chambers only 67 responded, 20.8%. 92% of the chambers that responded had implemented at least one recommendation, with a third taking action across all four priority areas.

Whilst there was cause to celebrate, there was still work to be done. The report emphasised the need for continued collaboration and resource-sharing among chambers to address the ongoing issues identified. Despite efforts being made, challenges persisted, particularly with regards to:

Resource Constraints: The lack of time and personnel hindered the implementation of EDI initiatives.

Sustained Commitment: Whilst the initial enthusiasm was high,

maintaining that momentum proved challenging.

Race at the Bar: Three Years On (December 2024)³

This third report provides an updated analysis since 2021. Three methods were used to collect the updating data: an online survey sent to HoCs and EDOs; a data-gathering exercise similar to that in 2021; and the use of 5 focus groups.

Disappointingly, despite improvements and steps in the right direction, the data evidences limited progress, and continued disparities, especially for Black barristers. The notable findings include:

Tenancy Outcomes: Black/Black British pupils were less likely to secure tenancy immediately, and more likely to be offered a probationary tenancy or offered squatter status.

Earnings Inequality: Black and Asian barristers continued to earn less than their White colleagues across all practice areas and the gap gets wider when gender is factored - with all women earning less than men of their ethnicity, and Black women earning the least of all.

Leadership Representation: Positively, the number of silks from minority ethnic backgrounds had increased, but Black women remained underrepresented, with only 8 Black women silks out of a total of 26 Black silks.

Cultural Challenges: Disparities in perceptions of fair work distribution and experiences of bullying and harassment persisted.

The report called for: enhanced EDI training; improved monitoring of work distribution and income by ethnicity; and stronger support for EDOs within chambers.

The Panel with the Bar Council produced a [Race Equality Toolkit⁴](#) alongside this report to assist the Bar in implementing recommended actions and taking effective steps toward race equality.

The Future

There is now greater recognition of and acceptance that race inequality at the Bar exists. As individuals we can take responsibility by supporting chambers and others' work in this area. Whilst you may not have walked in the shoes of your colleagues who are from minority ethnic backgrounds, it is important to take the time to understand how racism operates within our profession and why it is so important to the profession as a whole to eradicate it. There are a number of resources on the Bar Council website to assist. Engage in the conversation and call out unacceptable, discriminatory practices.



The Bar as a whole, whether via chambers, SBAs, Circuits and the Inns all need to continue to take active steps to build an inclusive culture. They can support members to undertake good quality race awareness training. There is a variation in the quality of training. This should not be viewed as a tick box exercise but a space to learn and grown and an opportunity to change the shape of the future Bar. In addition, they can continue to support outreach programmes such as [10,000 Black Interns](#)⁵, [Bridging the Bar](#)⁶ and the [Charter for Black Talent](#)⁷ to name but a few.

In her [inaugural speech](#)⁸ on 8th January 2025, the Chair of the Bar, Barbara Mills KC, set out her priorities for her term in office. The third being, “to ensure we make further strides in our pursuit of equality, diversity and inclusion.”, and to pursue the Bar

Council’s long-term agenda on the issue of EDI.

In order to achieve this, Barbara Mills KC said she will be focusing on greater awareness, acceptance and action. The Chair fully recognises that she represents all members of the Bar, including those who do not agree with her views on EDI. She has made a commitment to continue the conversation with the aim of persuading (not forcing) those who disagree that it is both a reasonable and realistic expectation of chambers, its members, employers, and Bar stakeholders to monitor internal practices and challenge inequalities. To those who disagree, they are urged not to hide behind the veil of social media or a computer screen but to take up the invitation offered and engage in the conversation. Whilst understanding is key but talking alone is not enough, there also needs to be action.

To date there are members of the profession who are unaware of the Race at the Bar Series. It is hoped this article has provided a snapshot of the data and progression or in some instances lack of it in the past three years. In addition, it is hoped that it has highlighted the important work that has and is being undertaken by the Bar Council. Finally, that it has made the reader think about what they can do, their chambers and/or organisations they work with, to assist to make this a more equal, diverse and inclusive profession.

Referring back to and relating to the old African proverb in her speech, “if you want to go fast, go alone. If you want to go far, go together.” Change takes time and substantial effort. Acceptance of the need for change being the first significant step. Whilst the journey may be seen by some as slow, it is one not to be short-lived. This is a journey we need to walk together, united, and one I hope creates long and sustained changes for generations of barristers to come; to a point, where such conversations are no longer required. Let us work together to see real indents and significant progress at the time of the next review in 2027.

**Karen Kabweru-Namulemu, Barrister,
1GC Family Law**

¹<https://www.barcouncil.org.uk/resource/race-at-the-bar-report-2021.html>

²<https://www.barcouncil.org.uk/resource/race-at-the-bar-progress-report-november-2022.html>

³<https://www.barcouncil.org.uk/resource/race-at-the-bar--three-years-on.html>

⁴<https://www.barcouncilethics.co.uk/documents/race-equality-toolkit/>

⁵<https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/race/10000-black-interns.html>

⁶<https://bridgingthebar.org/>

⁷<https://www.barcouncil.org.uk/resource/bar-council-backs-charter-for-black-talent.html>

⁸<https://www.barcouncil.org.uk/resource/barbara-mills-kc-inaugural-address-8-january-2025.html>

p.1 For pupils, the first year in practice is a unique combination of exhilaration and vulnerability. Every piece of feedback feels personal, every performance in court is scrutinised, and the constant desire to “get it right” can take an emotional toll. Add to that financial uncertainty, comparison culture, and the deeply ingrained traditions of a hierarchical profession, and it’s no wonder that mental health struggles can surface early.

Teaching resilience from the start changes this narrative. When resilience becomes part of the professional toolkit, alongside drafting skills and courtroom etiquette, it empowers young practitioners to approach their work with clarity, composure, and confidence. It helps them manage the inevitable setbacks, silence the inner critic, and make space for growth rather than perfection. Crucially, it enables them to enjoy their work, to find meaning in it, and to sustain it.

A Professional Duty, Not Just a Personal Choice

Building resilience is not only beneficial for the individual, but it is an integral

part of our professional responsibility as barristers.

According to the Bar Standards Board Professional Statement, barristers have a clear obligation to manage personal difficulties that may affect their work. Under section 2.5(e), they must take appropriate action to deal with personal challenges that could impact their professional duties. This means we need to demonstrate that we are aware of our own resilience and can effectively manage the personal impacts of our work.

These duties are not merely aspirational. They speak to the very heart of professional integrity. When we attend to our own wellbeing, we uphold the standards of service our clients, colleagues, and the courts are entitled to expect. A barrister who is burnt out, emotionally exhausted, or overwhelmed is less able to act in their client’s best interests. Personal resilience directly impacts professional competence.

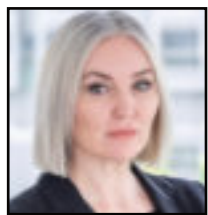
In this way, teaching resilience to pupil barristers is not an optional extra; it is part of fulfilling our obligation to the profession and to the public.

Changing the Culture: A Commitment to Wellbeing

It is heartening that the legal profession is beginning to discuss mental health and wellbeing more openly. But awareness alone is not enough. What we need, what our newest members need, is action. And that begins with training.

The Northern Circuit has taken this responsibility seriously. For several years now, it has provided dedicated training to pupils and new practitioners, recognising that support in the early stages of a career can set the tone for everything that follows. The initiative is forward-thinking, compassionate, and practical. It says to pupils; *You matter, and we will support you not only to be a good barrister, but a well one.*

These resilience-building sessions are not about generic advice or vague encouragement. They provide structured, evidence-based tools, drawn from coaching, psychology, and lived experience, that help new practitioners navigate the emotional and cognitive demands of the job. From managing imposter syndrome to



developing strategies for recovery after a difficult case, from setting boundaries to protecting time for rest, the skills taught are as essential as legal research or

courtroom preparation.

And the impact is already being felt.

Sharper Minds, Stronger Advocates

It is sometimes assumed that prioritising wellbeing is a luxury, something to consider once the real work is done. But in fact, resilience enhances legal performance.

A barrister who has developed their resilience is better equipped to focus under pressure, to handle criticism without spiralling into self-doubt, and to maintain perspective even in emotionally charged environments. Their advocacy becomes more focused. Their submissions are more concise. Their judgment is clearer. Resilience strengthens the mind in the same way physical training strengthens the body, making it easier to respond well when the stakes are high. A resilient practitioner is not only less likely to burn out, but they are also more likely to produce high-quality work over the long term. It is time we recognised this not as a fringe benefit, but as a core element of professional excellence.

Learning from the Next Generation

As the next cohort of pupils begins their journey into practice, there is much we, as established practitioners, can learn from them.

This generation of pupils is entering the profession in a time of change. They are more open about mental health. They are more attuned to the

importance of work-life balance, more curious about sustainable careers, and more willing to question the “this is just how it is” approach that has long characterised the culture of the Bar. Rather than dismissing this as weakness, we should celebrate it as wisdom.

If we teach resilience to our youngest colleagues and instil in them the permission to protect their well-being and the tools to do so, they may, in turn, help transform the profession from within. They will become the barristers who lead chambers with compassion, who manage teams with emotional intelligence, and who build careers that last.

And in doing so, they may teach us something too.

Practical Tools for Pupil Resilience

So, what does resilience training for pupils look like in practice? At its best, it includes a combination of the following:

- **Mindset Training:** Helping pupils understand the power of a growth mindset and how to embrace feedback, learn from mistakes, and reframe setbacks as opportunities.
- **Cognitive Restructuring:** Teaching techniques for managing negative self-talk, reducing catastrophising, and shifting perspective during periods of stress.
- **Emotional Regulation Skills:** Equipping pupils with strategies to calm the nervous system (such as breathwork and mindfulness), enabling clarity and focus in high-pressure situations.
- **Boundary Setting and Time Management:** Supporting pupils in learning how to protect time for rest, manage workload effectively, and avoid the pull of chronic overwork.

- **Values-Based Goal Setting:** Encouraging pupils to define what matters to them, not just professionally, but personally, and to build careers aligned with those values.
- **Community and Connection:** Fostering a sense of belonging, shared experience, and mutual support through group discussions and peer mentoring.

These are not “soft skills.” They are professional competencies. And like any skill, they can be learned and practised.

A Collective Responsibility

The Bar is a noble profession, but it is also a demanding one. If we want it to thrive, if we want our brightest minds to remain in the profession, to contribute their gifts, and to serve justice with vigour and care, we must support them in doing so.

This is not just the responsibility of individual barristers, but of chambers, circuits, and institutions. Resilience training should not be optional or peripheral. It should be embedded into the very fabric of pupillage, alongside every other aspect of legal education.

Fortunately, the tide is turning. Programmes like those delivered by the Northern Circuit are a shining example of what is possible when we take this seriously.

But we must go further. We must make well-being part of our professional identity. We must model resilience ourselves, not as perfection, but as presence, not as invulnerability, but as inner strength.

Shaping the Future

Pupillage is the foundation of a barrister's career. What we teach our pupils today will shape the Bar of tomorrow.

If we teach them that resilience is not a sign of weakness, but a source of strength, and if we show them that their wellbeing matters, they will carry that lesson with them into every courtroom, every chambers meeting, and every client conference. They will become the leaders, mentors, and changemakers that this profession needs.

So, as a new draft of pupils prepares to embark on their journey of discovery, let us stand beside them, not only to guide them in the law, but to support them as whole people. And perhaps, if we are willing, we might learn something from them in return.

Louise Kitchin, Barrister, Lincoln House Chambers

Your taxing questions answered

When we meet clients in the legal profession, there are two common topics of discussion: income tax and inheritance tax. With so many changes over the last 12 months, clients are keen to understand their current obligations and allowances, so they can plan for retirement and protect their family's future wealth. Let's answer two of your most popular queries...

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2. What can I do to reduce my inheritance tax liability?

With careful planning you can minimise the inheritance tax paid on your estate and maximise the legacy you leave your loved ones. As part of this process it's important to use the full allowances available to you. If you don't know what these are, perhaps now is the time to ask.

Let's talk about tax!

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The Impact of the Legal Aid Cyber Attack on Family Legal Aid

Sometime, in April 2025, the Legal Aid Agency was struck by a wide scale cyber-attack. For the most part, the situation has been of limited interest to the general public, with a brief mention here and there. The implications on the profession though and the widescale impact on the publicly funded bar and legal aid solicitors, has yet to be measured in full.

By Adrian Barnett-Thoung-Holland, barrister at Coram Chambers

What we have been told is that a “known” hacking group is responsible for the attack. The attack is assumed to have taken place around April but the full extent of it was better known come May. Injunctions were obtained to prevent the criminals publishing the data they had obtained. That extended to personal information ranging from contact details, addresses and financial information. It was suggested early on that the information taken extended to lay service users as opposed to CCMS recipients (lawyers and organisations). One does not get the sense that the fullest extent of the breach is entirely known or else, is ready to be disclosed just yet. For now, at time of writing, the LAA’s online services remain down so that the service and its users can remain safeguarded.

Meanwhile, Parliament brought the Criminal and Civil Legal Aid (Amendment) Regulations 2025 into force in order to take control of the situation.

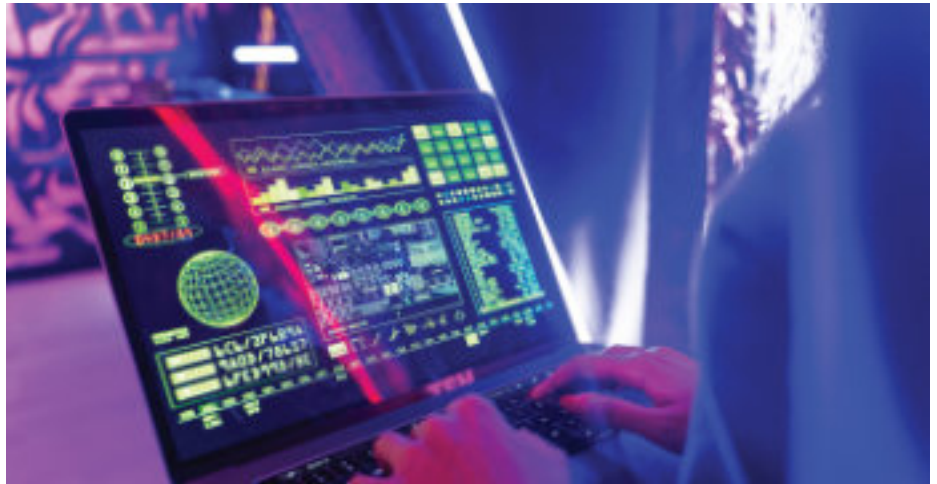
The writing had been on the wall for a while. People might have forgotten the cyber attack on the Bar Council in 2022 or the high profile attack on CTS in 2024. This newest incident is part of a running trend – a trend, one fears, is not likely to stop any time soon.

Even outside the legal profession, cyber attacks are on the rise. Everyone is well aware of the Co-op and M&S cyber hacks with the additional revelation of a further attempt made against Harrods. This is not something that is likely to stop.

Lawyers, generally, are tempting targets for cyber criminals – we deal with critical personal information, sensitive data and information that shouldn’t be even remotely near public consumption in many situations. All big words, all big generalisations – but how is this impacting the hardworking, publicly funded lawyers on the ground at this point in time?

Aftermath

On 28th May, 2025, the Legal Aid Agency rolled out a contingency payment system for civil legal aid, including family work. Essentially, it allows CCMS users to opt in to receive



temporary payments which are averaged out from the previous three months. The system is opted into each week and results in a weekly payment. It would be incorrect to see this as a “wage” or a “salary” – it’s an advance, perhaps even a loan that needs to be repaid. It does appear that people who onboard to the payments can also appeal decisions should their weekly contingency payments work out lower.

There is some confusion over the tax position of the contingency payments as well as the HMRC’s position as well as its treatment for VAT purposes is still a little unclear.

At the family bar, for barristers predominantly representing publicly funded clients, the payments are either bridging a desperately difficult time for them or are highly suspicious, depending on who you ask. Some of my colleagues have been waiting so long for legal aid to actually pay out on their cases that the contingencies are welcome in the immediate, just about getting them by. Some are even getting paid more regularly than they ordinarily would. On the other hand, I have colleagues who are extremely hesitant to go anywhere near them – especially with the threat of recoupment in the background.

Our pupils, now picking up their first (mostly publicly funded) cases, are also unsure of what the future might be. Their three month backlog isn’t there (if available at all) and nearly all family

pupils will start with some element of publicly funded work to get them started, though this differs from degree to degree. This is an extremely shaky start for those who’s first steps into the profession depend on those modest payments at some unknown point in the near future.

Odd then, perhaps, that the LAA’s near weekly e-mails as of June, 2025, mention criminal, civil but not family practitioners, as though we are **not** the bulk of the civil payments.

What about the wider impact on chambers itself? Chambers, like my own, where a significant purpose of its revenue depends on public funding? In order to generate that revenue, members need to take up the contingency payments on which rent is levied in the usual manner. What happens when it is not sustainable for members to take those contingencies and what is the impact on members and chambers when the recoupments come in? And what happens when the recoupments finally hit home? Are we going to be worse off than when we started?

And don’t forget the data risk itself – because from the first time a burglar steps into a pristine home, there is a sense that security will never be the same again. Are we now faced with the reality, when assuring vulnerable parties in need of legal aid, that there is some risk to their data? Can we

honestly say that everything is as secure as we hoped?

Pressure Point

To many, this was the very last thing we needed in the family justice system.

Anecdotally, delays in the family court procedure are commonplace. Depending on who you talk to, the reason for those delays has many different factors. It is simply that there are so many cases in the system? Are cases taking too long to resolve – is 26 weeks for public law care proceedings realistic anymore? Should CAFCASS reports take over 20 weeks to be prepared in private law cases with very present and immediate issues where professional involvement is desperately needed? Is it acceptable that privately funded independent social workers (“ISWs”) are the only speedy option, creating a two-tier system for those who can pay and those who cannot? Do we need more judges? Or more court staff? Maybe, the real reason was the COVID-19 pandemic, which generated a back log of cases not getting resolved which we never recovered from? Or could NCDR be our saving grace and alleviate the pressure from an embattled and struggling court system?

I don’t have any answers to those question. I can’t say that any one of those concerns is or is not more responsible for the pressures we are all facing right now. What I can say, with some confidence, is that the Legal Aid hack hasn’t helped the situation at all.

Implications

It is as yet not clear what the long-term impact of the hack is going to be on the family bar in particular. One wonders if there are longer term issues a foot here. Legal Aid has not been subject to review for over ten years now and the meagre system has been rumbling on despite the increasing challenges of a post-COVID universe.

There are two viewpoints – either this will be the nail in the coffin or there will be an opportunity to reconsider the entire Legal Aid fabric and “start over”. Neither seems immediately more likely than the other, save that the situation is only likely to get worse.

Public opinions on the hack are few and far between, generally because a lot of the public don’t appear to grasp what this means. I am not here to vent opinions or arguments (not today at least) but I make the point that when something so important like access to justice (for example) is damaged and yet it impacts a smaller subsection of the population, it is hard to see why the larger (unaffected) population ought to care. That is why you won’t read about the Legal Aid Hack in daily news cycles outside of the legal profession. That’s a disappointing state of affairs.

I can’t say there is a watertight solution. What I can say is that the financial implications will be felt for some time and the importance of cyber security in legal services is only going become more important. Premiums may rise, services may become more

and more critical – at some point Cyber Essentials Plus will be the basic expectation for every legal organisation in existence. When the burglar has visited, the premium on your security and safety can only go higher...

Green Shoots

As of July, 2025, the LAA has provided a clearer update of the route to recovery. A new “Sign into Legal Aid Services” platform will replace the existing portal. This works, as I understand it, as a filter lens through which Legal Aid Providers will be able to log in and access Legal Aid digital services like the CCMS platform. We have yet to have any clear idea when normal billing and payments will resume.

The current timeframe puts us at about September/October, which isn’t the worst case scenario but it’s the best case either. And that’s not all at once either – we are expecting to return in phases. No firm date has been given so far, just constant promises that the system will be returned to service as soon as possible.

I can’t blame the people working at the LAA undoubtedly doing their level best to bring things back online. It cannot be an easy situation.

For now, we wait, uncertain of the future.

Adrian Barnett-Thoung-Holland, barrister at Coram Chambers, specialising in financial remedies including applications under Sch 1 Children Act 1989 and ToLATA 1996



Reviving Domestic Prosecution of International Crimes

A crime committed anywhere in the world stands against the moral foundations of all societies, yet international crimes are differentiated from domestic crimes. International crimes undergo a stark irony whereby they are labelled as the most serious crimes by a mutual consensus around the world, yet their accountability faces numerous resolvable challenges. Whilst crimes committed locally have a trusted avenue in domestic criminal courts, the prosecution of the most heinous crimes of international law is lost without direction.

By **Breshna Rani**, Barrister (unreg)

Most famously, international crimes are dealt with by the International Criminal Court (ICC) or specialist tribunals, but academically, following the principle of complementarity means these avenues should be secondary to national criminal jurisdictions and have a complementary role (Article 1 of the Rome Statute of the ICC) to domestic investigations and proceedings. The

integration of international criminal law in England and Wales can be found by virtue of the International Criminal Court Act 2001, War Crimes Act 1991, Geneva Conventions Act 1957, Criminal Justice Act 1988 and customary international law, where consistent with existing law. Despite the historic statutes, there have only been three prosecutions in the courts of England; *Sawouniuk* [2000] EWCA

Crim 9, *Zardad* [2007] EWCA Crim 279 and *Payne H DEP* 2007/411, and the actual use of the incorporated law seems to have become stale, not because of its inefficiency but the state of dormancy.

The prosecution of international crimes may be unseen lately, but domestic criminal courts are not shy of using the enshrined principles of



international law. In the notable case of *R v Reeves Taylor* [2019] UKSC 51, the Supreme Court determined whether severe suffering inflicted by non-state armed groups qualifies as torture under Section 134 of the Criminal Justice Act 1988, which pertains to the UK's obligations under the United Nations Convention Against Torture. This matter required interpreting the Torture Convention through the Vienna Convention on the Law of Treaties lens, allowing the court to scrutinise its scope. In the case of *R v Gul* [2013] UKSC 64, an appeal concerning terrorist publications under the Terrorism Act 2006 was examined, where the court utilised international legislation to delineate the term 'terrorism' in the context of non-international armed conflict. One reason the appeal was rejected was that the court did not adopt the various definitions of terrorism found in international law; however, international law norms were applied to guide judicial discretion. The application and utility of international law extend beyond interpretation to assessing the fairness and proportionality of domestic legislation and the application of criminal law procedures. In *R v ABJ* [2024] EWCA Crim 1597, the court examined whether Section 12(1A) of the Terrorism Act 2000 aligns with Article 10 of the European Convention on Human Rights (ECHR) concerning freedom of expression and whether the jury requires a proportionality direction regarding such offences. Section 12A establishes an offence for supporting a proscribed organisation, irrespective of the defendant's knowledge of the organisation's status in the UK; in considering compatibility with international law, it was determined that demonstrating the elements of the offence is sufficient to show proportionate interference with the defendant's Article 10 rights. This non-exhaustive list of cases evidences the routine applicability of international norms in criminal courts; however, the current problem lies in the willingness to prosecute international crimes rather than

utilising international law in a supporting role.

Eurojust's national jurisprudence database on core international law crimes prosecution shows prosecutions by Sweden, France, the Netherlands and Germany very frequently in recent years related to crimes committed in Syria, Iraq, Afghanistan and even Rwanda. The trials also proceed for an extensive amount of time. In Germany, a Syrian doctor, Alaa M., was prosecuted for torturing detainees, and the trial lasted for 3.5 years. This would have undoubtedly consumed domestic resources, but justice prevailed in a domestic court. Over the years, there have been many instances where suspected war criminals were found in the jurisdiction of England and Wales. Around 2013, the Home Office identified around 700 suspected war criminals on the immigration list. Although there has not been an official data set in recent years, the UK is a known safe haven for many. While it is understood that the current domestic framework only allows prosecution of UK nationals, residents or those subject to UK service jurisdictions, it is unreasonable to believe that, in all these years, the lack of immigration jurisdiction prevented prosecutions of international crimes. One practical implication of the state's willingness to prosecute international crimes could potentially manifest in a deterrence against the immigration of such suspects. This could automatically avoid suspects looking at the UK as a haven and prevent the state from breaching its international law obligations.

There are limitations in the current law that prevent foreigners entering the UK from being prosecuted; the lack of universal jurisdiction is a serious issue raised by many organisations and most recently by the Clooney Foundation. However, over the years, various data sets have indicated a significant influx of individuals suspected of war crimes or crimes against humanity who now reside in the UK and can therefore be prosecuted. The limitations exist, but

they don't cause a predicament to all international law crime prosecutions.

Earlier this year, the International Centre for Justice for Palestinians announced it would launch private prosecutions against UK citizens who contribute to the atrocities of Israel in Gaza; the lack of willingness by the public authorities to take action is triggering private individuals and organisations to take the lead. Furthermore, Michael Mansfield KC, alongside Barrister Sean Summerfield and other known organisations, submitted a 240-page dossier of 10 British nationals suspected of committing war crimes and crimes against humanity whilst they served in Israel's military in Gaza. The Metropolitan Police (MET) is currently assessing the report. Beyond this, the BBC noted that the MET has received around 180 referrals regarding war in Gaza since 2023. A significant volume of information is coming in that should potentially trigger prosecution, and this is not novel. There is always a burden placed on investigative and evidentiary challenges involving cross-border crimes, lack of resources, funding and more. Still, Summerfield, in his latest article for the Counsel Magazine, rightly shifted the burden on MET's war crimes team to investigate such crimes despite the challenges and be equipped to tackle them. In *Sawouniuk* [2000] EWCA Crim 9, the trial court visited Domachevo, and the jury had a chance to observe a site where the massacre of the Jewish population occurred. Over two decades ago, a domestic trial for an international crime was given its due importance, and the trial court travelled internationally to examine evidence of a massacre that took place in 1942; the irony is that today we struggle even to bring such crimes for serious consideration. There is now unparalleled access to digitally recorded evidence through social media and other mediums. Additionally, easy reporting of crimes, combined with virtual and augmented reality, can aid in understanding the location or broader scene of the crime or related scene. Although this is not yet implemented or utilised in courtrooms, its existence highlights potential ways in which evidence collection and prosecution can be facilitated for international crimes.

Many might also argue that because the criminal justice system is facing a significant backlog, as cuts to legal aid impact criminal practitioners, creating a gap in representation and triggering a domino effect on other issues, in the midst of these challenges prosecution of international crimes is not of high importance. The criminal justice system will inevitably confront challenges. As long as these issues persist, the willingness to prosecute international crimes should not be postponed because of procedural and systematic difficulties, nor should they be used as an excuse for hesitation. The UK should no longer be a haven for individuals who have committed grave crimes and now enjoy de facto immunity.

*Breshna Rani, Barrister (Unreg),
County Court Advocate*



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Elderly Parenthood and Future Safeguards in International Surrogacy: Mr K & Anor v Mr Z & Anor [2025] EWHC 927 (Fam)

By Monique Simone Fremder, Inner Temple Scholar

The High Court decision in Mr K & Anor v Mr Z & Anor [2025] EWHC 927 (Fam) offers important guidance on how age intersects with the welfare assessment in parental order applications under section 54 of the Human Fertilisation and Embryology Act 2008 (HFEA 2008).

The applicants, a married couple aged 72, sought a parental order in respect of their son, B, born through gestational surrogacy in California. While ultimately granting the order, Mrs Justice Knowles used the case to highlight the importance of proactive welfare planning, particularly in cases where the intended parents are of advanced age or where the application is made by a single person. This judgment builds upon and extends the line of guidance developed in Re Z (Foreign Surrogacy) [2024] EWFC 304 and Re Z (Unlawful Foreign Surrogacy: Adoption) [2025] EWHC 339 (Fam).

Background and Statutory Compliance

Mr and Mrs K entered into a lawful surrogacy arrangement in California. The embryo was created using Mr K's sperm and a donor egg, and a pre-birth order obtained in California confirmed the applicants as B's legal parents, thereby extinguishing any parental rights that might otherwise vest in the surrogate, Mrs Z, or her husband (para 8). Following B's premature birth in early 2024, the applicants took immediate care of him and returned to the UK, where he now resides full-time (paras 8–9).

At the time of the application, B was thriving in a loving and structured home. The Parental Order Reporter noted a strong and affectionate attachment between B and the applicants, supported by a nanny and family routines (para 10). The applicants satisfied all statutory criteria under section 54 of the Human Fertilisation and Embryology Act 2008, including domicile, time limits, genetic connection, and valid consent (para 24). That framework incorporates the welfare checklist in section 1(4) of the Adoption and Children Act 2002. While those criteria were met, Mrs Justice Knowles emphasised that they must be assessed through the lens of B's lifelong welfare, particularly in light of the applicants' advanced age (para 28).

Welfare Throughout Life: The Role of Age

Despite their good health, the applicants' age necessitated a careful inquiry into the long-term

implications for B's welfare. Mrs Justice Knowles observed that by the time B reaches adulthood, both parents will be in their late eighties, raising a realistic prospect of incapacity or death during his minority (para 3). Initially, the arrangements in place for such eventualities were found lacking (para 29).

Following judicial direction, the applicants created a comprehensive care plan. This included nominating special guardians, establishing a discretionary trust, executing lasting powers of attorney, and preparing detailed wills (paras 21–22). These actions were considered sufficient to satisfy the court that B's welfare would be protected in the event of any future disruption to his care (para 30).

Comparison with Re Z (Unlawful Foreign Surrogacy: Adoption) and the Absence of Risk

The judgment draws a clear distinction from Re Z (Unlawful Foreign Surrogacy: Adoption) [2025] EWHC 339 (Fam), where intended parents had not made adequate legal or immigration arrangements, leaving the children stateless and vulnerable (para 32). By contrast, Mr and Mrs K undertook significant due diligence and secured legal parentage at birth in a regulated surrogacy jurisdiction (paras 32–33).

The surrogate, Mrs Z, was not exploited; she was experienced, well-informed, and voluntarily participated. There was continued contact between the surrogate and the applicants, further demonstrating transparency and goodwill throughout the process (para 33).

Expanding the Re Z (Foreign Surrogacy) Checklist: New Welfare Safeguards

In paragraph 35 of her judgment, Mrs Justice Knowles extended the welfare guidance established in Re Z (Foreign Surrogacy) [2024] EWFC 304 by identifying three further matters to be considered in parental order applications. These additional considerations reflect the heightened importance of long-term planning where applicants are of advanced age or applying without a partner. First, the court emphasised the need for intended parents to demonstrate what legal and financial arrangements have been put in place, both before and after the making of a parental order, to establish a secure and enduring framework that supports the child's welfare over the course of their life.

Secondly, the evidence should show that careful thought has been given to how the child's care and financial needs would be met in the event that one or both parents were to lose capacity. Thirdly, the application must set out the arrangements in place to ensure the child's continued care and financial security in the event of the death of one or both intended parents (para 35). Mrs Justice Knowles further advised that these matters should be addressed clearly in the evidence filed with the application and considered by the Parental Order Reporter as part of their assessment of the child's welfare (para 36).

Significance of the Judgment

This judgment makes a valuable contribution to the developing case law on international surrogacy and parental orders. It reflects the court's willingness to engage openly with the realities of later-life parenthood, while reaffirming that the legal test remains firmly anchored in the child's welfare. By extending the established Re Z framework, the decision provides practical guidance for applicants, legal representatives, and parental order reporters on how to plan and evidence long-term safeguarding arrangements. It also signals a careful and inclusive judicial approach, responsive to the diversity of modern family structures while maintaining a clear focus on the enduring needs of the child.

Conclusion

Mr K & Anor v Mr Z & Anor [2025] EWHC 927 (Fam) affirms that advanced age is not, in itself, a bar to obtaining a parental order. However, it also serves as a reminder that welfare is a lifelong consideration under section 1(2) of the Adoption and Children Act 2002 (para 18). Legal practitioners advising older or single intended parents should ensure that comprehensive, forward-looking plans are in place and properly evidenced.

In expanding the judicial framework applicable to such cases, the decision responds to the evolving realities of family formation with clarity, foresight and a principled commitment to safeguarding the child's welfare throughout their life.

Monique Simone Fremder, Inner Temple Scholar



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Barristers, Burnout, and the Broken System

There's a certain irony in the fact that barristers—those trained to advocate, analyse and articulate the finest nuances of justice—are often the last to recognise when they need help themselves. We cross-examine witnesses with surgical precision, yet flinch when asked, "How are you really?" We can cite case law from 1878 at the drop of a hat, but struggle to admit when we haven't slept properly in weeks. Welcome to the Bar: where everyone has imposter syndrome, nobody has a therapist, and burnout is just the price of success.

By **Noshin Nawal**, Barrister, human rights, and environmental policy specialist

Let's not mince words. The legal profession is bleeding. Junior barristers are leaving in droves. Pupils are surviving on stipends that barely stretch beyond Pret's vegan cookie. Ethnic minorities and women are vastly underrepresented in senior chambers and overrepresented in statistics on workplace harassment. And yet, we soldier on, silks fluttering heroically in the wind—like that will somehow plug the gaping hole in our wellbeing.

The Bar has long had a problem with pretending everything is fine. Mental health, for all our eloquence, remains the silent brief in the room. There is, of course, no shortage of glossy campaigns: "Wellbeing at the Bar," mindfulness workshops between trials, chambers offering yoga once a quarter (you know, between your third mention and fourth existential crisis of the day). But the culture hasn't shifted. Long hours, last-minute instructions, and the unrelenting pressure to be "resilient" still dominate. God forbid you admit that juggling ten cases, two appeals, and one panic attack isn't sustainable.

And for those of us who are women, or racialised, or worse—both—there's an extra layer to the fatigue. You're not just trying to survive; you're trying to prove you belong. You're supposed to be grateful. Grateful for the opportunity. Grateful for the seat at the table (even if that seat is unpaid, undermined, or on the farthest end of the room). You carry the weight of being the "first," the "only," the "exception." You're a diversity statistic with a pulse. Meanwhile, your white male colleague with a cricketer's background and a father in the judiciary has the audacity to complain about how "competitive" the profession has become.

Let's talk pay. Or rather, the lack of it. Criminal barristers, particularly at the junior end, are earning less per hour than minimum wage after travel,

preparation, and court time are factored in. Legal aid is a noble cause—but nobility doesn't pay rent. Many of us are financing our careers on overdrafts and fumes. The glamorised image of the barrister in a mahogany chamber with leather-bound volumes and a decanter of whisky? Fiction. Reality looks more like a cluttered kitchen table and a half-dead laptop held together by willpower and charger tape.

And then there's the issue of boundaries—or, more accurately, the complete absence of them. Clients don't care that it's 10:30 PM and you're in your pyjamas when they email. Clerks don't think twice about calling you on a Sunday morning. Courts expect miracles on 48 hours' notice. And chambers? Well, they'll "appreciate your dedication" as long as you don't ask for anything inconvenient—like maternity leave, or mental health support, or actual remuneration.

The problem isn't just the workload. It's the culture that rewards silence and punishes honesty. We celebrate the barrister who never says no, who turns up to court with three hours of sleep and a half-drafted skeleton argument, who hasn't taken a holiday since 2018. We call that commitment. We should call it what it is: a red flag.

And let's not pretend it's getting better. According to the Bar Council's own research, more than one in three barristers struggle with work-related stress. Women are more likely to report mental health challenges, yet less likely to feel supported. Ethnic minority barristers face additional barriers, from coded discrimination to outright exclusion, often with no recourse. These aren't isolated anecdotes—they're systemic patterns.

What's worse is how normalised it's all become. Chambers talk about "resilience" as though it's a badge of honour. Judges scold barristers for

delays without ever asking whether the brief was dumped on them two days ago. Senior counsel who came up through the ranks during a time of relative financial security and housing affordability wax poetic about how "things have always been tough." But this is not the same Bar they knew. The stakes are higher, the costs are steeper, and the margins of error are razor-thin.

Many of us are afraid to speak up. We fear being seen as weak, or ungrateful, or—heaven forbid—"difficult." But let's be clear: asking for fair pay, humane hours, and mental health support isn't difficult. It's basic. If the Bar wants to retain talent, particularly from underrepresented communities, then it must stop treating burnout like a rite of passage and start treating it like the emergency it is.

We also need to talk about retention. The "leaky pipeline" isn't just about numbers—it's about what kind of profession we're building. What message are we sending to brilliant young minds when we say, "Welcome to the Bar. You will be overworked, underpaid, and undervalued, but you get to wear a wig, so chin up!"? Is it any wonder that so many leave, not because they're not good enough, but because the system is too broken to make room for them?

And those who stay? We adapt. We numb ourselves. We joke about our misery. We bond over caffeine and deadlines and a shared sense of doom. But none of that is sustainable. None of it should be considered normal.

So what needs to change?

First, the glorification of overwork must go. We need to stop fetishising exhaustion and start valuing sustainability. Rest is not a reward; it's a requirement. Chambers should be encouraging manageable workloads,

not treating burnout as a sign of dedication.

Second, support services must be properly funded and integrated—especially for pupils and juniors. That means access to counselling, mentorship programmes, and clear policies on working hours. It means making space for conversations about stress, depression, anxiety, and trauma without fear of professional repercussions.

Third, we must rethink pay structures. It is unacceptable that someone called to the Bar is earning less than someone pulling pints at a pub. Legal aid needs proper investment. Chambers must be transparent about income expectations and stop relying on the goodwill of juniors to prop up the system.

Fourth, diversity cannot remain cosmetic. It's not enough to have a Black woman on the website banner or a neurodivergent barrister mentioned at a DEI event. Inclusion means listening, supporting, and retaining those who are too often excluded. It means challenging microaggressions, offering flexible work models, and having hard conversations about race,



class, and gender—not just when the Bar Council issues a statement, but every day.

And finally, we need to change the culture from within. If the barristers best trained in advocacy can't advocate for their own wellbeing, what hope is there for the rest of the justice system?

This isn't just about self-care. It's about survival. It's about preserving a profession that holds itself to the highest standards but often fails the very people upholding them. It's about ensuring that the next generation of

barristers doesn't have to choose between having a life and having a career.

Burnout is not a badge of honour. It is not character building. It is corrosive. And if the Bar is to thrive—not just exist but thrive—it must be reimagined with humanity at its core. After all, we're in the business of justice. Let's try dispensing a bit of it within our own ranks.

Noshin Nawal, Barrister, human rights, and environmental policy specialist

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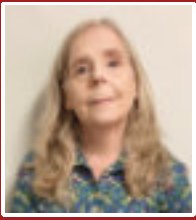
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What's changed in child protection law in the aftermath of the child sexual abuse inquiry



It's three years since the Independent Inquiry into Child Sexual Abuse (IICSA) issued its concluding report and recommendations, in October 2022. Launched as a statutory inquiry a decade ago, this multi-faceted investigation into the systemic abuse of children in a vast array of state and non-state institutions – including children's homes, prisons and religious organisations – found the harm inflicted on victims and survivors to be "incalculable". Almost 6,000 victims and survivors, aged 18 to 87 years, contributed to the Inquiry's Truth Project research programme; for nearly 1 in 10, this was the first time they had told anyone of the abuse they suffered as a child.¹

By **Carolyn Willow**, Barrister, The Barrister Group

In January 2025, Labour's Home Secretary Yvette Cooper MP told parliament *"Before Easter, the Government will lay out a clear timetable for taking forward the 20 recommendations of the final IICSA report"*.² Understandably, this was widely interpreted as government having accepted all 20 final recommendations (a great many others appeared in IICSA's previous reports). The reality is not so clear-cut.

Starting with the Inquiry's call for statutory child protection authorities in England and Wales, the Home Office's April 2025 update promises a consultation *"on a roadmap"* for reformulating the existing statutory Child Safeguarding Practice Review Panel in England (established in 2018 through the Children and Social Work Act 2017). A new Panel Chair has been appointed with an explicit remit to help steer this transition. The Children's Wellbeing and Schools Bill, introduced into the House of Commons in December 2024 and now in the Lords, is the obvious legislative mechanism for creating this body in England. But government timings mean this opportunity is likely to be lost.

IICSA first urged the legal prohibition of pain-inducing techniques in child prisons in February 2019. It described the state-authorised, deliberate infliction of pain by prison officers as a *"form of child abuse"* which subjugates children and makes them less likely to report sexual abuse. It found 1,070 allegations of sexual abuse in child prisons between 2009 and 2017, 54% of which concerned sexual assault or rape.³ The Inquiry's recommendation for a ban was repeated in its final report and followed similar calls from anti-torture committees,⁴ the UK's four Children's Commissioners⁵ and the Committee on the Rights of the Child.⁶ The last government officially rejected this recommendation in May 2023⁷; this government sunk further in the Justice Secretary's announcement in April 2025 of a new pain-inducing technique in England's three juvenile young offender institutions for a 12-

month period.⁸ "Specially trained and selected" staff will be empowered to spray the chemical PAVA into the faces of children. The Association of Directors of Children's Services immediately warned, *"the use of violence to deal with violence could disproportionately impact marginalised children"*.⁹

The Faculty of Forensic and Legal Medicine of the Royal College of Physicians summarises the risks of PAVA as *"injury to the eyes, respiratory tract, and skin"*.¹⁰ Children in custody told Barnardo's they're worried about *"misuse and emotional distress"*, *"fear of escalation"* and *"long-term physical effects and emotional trauma"*.¹¹

Officers are already trained to violently twist a child's wrist, yank their thumb backwards and apply extreme pressure behind the base of a child's ear lobe. The prisons inspectorate reports that 63% of children in custody have formerly been in care and more than a third have a disability. In July 2025, the Howard League for Penal Reform launched a judicial review challenge to the lawfulness of this PAVA decision.

One of IICSA's most innovative legal proposals – a route for children in care to obtain an order from the family court to mandate or limit a local authority's exercise of parental responsibility – was tabled as an amendment to the Children's Wellbeing and Schools Bill by Labour Peer Lord Watson who told the House in June 2025:

The family court is able to intervene [through section 8 of the Children Act 1989] in how parents exercise their parental responsibility, yet it has no equivalent power in respect of corporate parents, when looked-after children are the most vulnerable children in our society... That is an inconsistency that I believe needs to be confronted and brought to an end.¹³

IICSA reviewed existing remedies for children in care – including judicial review, Human Rights Act injunctions and independent reviewing officers referring their serious concerns to Cafcass – and judged none of them to be wholly effective. Education Minister Baroness Jacqui Smith gave a baffling dismissal of Lord Watson's amendment: *"[This] would risk making children's ability to have their voice heard and for the professionals around them to support them less likely to happen"*.¹⁴

In its 2018 interim report, IICSA recommended the registration of children's homes care staff; the following year, it called for the registration of staff in child prisons. Both sets of recommendations were repeated in its final report. With no palpable sense of urgency, the Home Office's April 2025 update stated government would *"continue work to determine whether registration of care staff is the right approach"* and indicated *"an ongoing programme of work [will] determine the most suitable registration framework for the youth custody estate"* and government *"will explore the merits of external registration"* with a decision on this pledged by March 2026.

As for IICSA's call for mandatory pre-screening of child sexual abuse images by technology companies, first made in 2020¹⁵, government signposts Ofcom powers within the Online Safety Act 2023 and commits to *"remain alert to whether further measures are necessary"*.

Mandatory reporting provisions appear in Part 5 of the Crime and Policing Bill. However, government has omitted IICSA's requirement that it becomes a criminal offence for mandated individuals to fail to report child sexual abuse when they have been informed of such abuse by a child or a perpetrator, or they have witnessed this sexual abuse themselves. Moreover, IICSA's narrow scope for the duty to report has been strongly criticised given the low likelihood of mandated reporters being told about or

witnessing child sexual abuse. It will be rarer still for a perpetrator to tell someone in authority that they have violated a child's most fundamental right to physical and psychological integrity. (The Bill also includes a duty to report when an individual has seen an image or heard a recording.)

The Crime and Policing Bill is also the vehicle for IICSA's call for the removal of the three-year limitation period for personal injury claims for victims and survivors of child sexual abuse, through amendment of the Limitation Act 1980. Connected is government's plan to expand section 2 of the Compensation Act 2006, to enable apologies to be given in vicarious liability litigation without this being deemed an admission – another IICSA recommendation (made in 2019).¹⁶ These legal reforms were warmly welcomed by the National Association of People Abused in Childhood.

IICSA urged more stringent age verification for children accessing social media and other online platforms. Since 25 July 2025, as part of the Online Safety Act 2023's implementation, online providers have been required to protect children from harmful content, including through age verification systems for adult websites. Government says it is monitoring these changes.

At the individual child level, which is where we should focus when reflecting on what this major public inquiry

delivered for children, IICSA recommended a "national guarantee" of therapeutic support, with local authorities commissioning such services. Again, the Children's Wellbeing and Schools Bill provides the perfect platform for introducing such an entitlement, though none appears. The Home Office's April 2025 admission that, "Current support for children who have been sexually abused does not meet demand or help children cope and recover from trauma, and this needs to change" is striking, coming a decade after IICSA, costing £186.6 million, started its work. Children don't need government to implore change; they need ministers to get on and make change happen.

Carolyn Willow, Barrister, The Barrister Group

¹The report of the Independent Inquiry into Child Sexual Abuse, October 2022, Annex 4.

²Debate on child sexual exploitation and abuse: House of Commons Hansard, 16 January 2025, volume 760, column 561.

³IICSA (2019) Sexual abuse of children in custodial institutions: 2009-2017 investigation report, pages vi and 30.

⁴Memorandum by Thomas Hammarberg (2008) Commissioner for Human Rights of the Council of Europe, para 53; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2009) Report to the government of the United Kingdom, para 107; and UN Committee Against Torture (2013) Concluding observations on the fifth

periodic report of the United Kingdom, para 28.

⁵UK Children's Commissioners (2015) Report of the UK Children's Commissioners, page 46.

⁶Committee on the Rights of the Child (2007) General comment no. 8. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, para 15; Committee on the Rights of the Child (3 June 2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, para 39b.

⁷Home Office (May 2023) Government response to the final report of the Independent Inquiry into Child Sexual Abuse, para 65.

⁸Statement made by the Lord Chancellor and Secretary of State for Justice in the House of Commons, 24 April 2025.

⁹ADCS response to use of PAVA spray in YOIs, 24 April 2025.

¹⁰Faculty of Forensic & Legal Medicine (December 2024) Irritant sprays: clinical effects and management.

¹¹Ministry of Justice (August 2025) Child rights impact assessment summary: partial deployment of PAVA in public sector YOIs.

¹²HMIP (2024) Children in custody 2023-24, pages 7-8.

¹³House of Lords Hansard, 9 June 2025, volume 846, column 1095.

¹⁴Ibid, column 1104.

¹⁵IICSA (2020) The Internet investigation report.

¹⁶IICSA (2019) Accountability and reparations investigation report.

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Pupillage and Neurodiversity

Neurodiversity touches the lives of millions across the UK.

With approximately 15% of the population experiencing some form of cognitive difference, from autism affecting more than one in every hundred people to ADHD, which is estimated to be present in 3–4% of adults. Dyslexia is similarly widespread, impacting around one in ten individuals, while countless others remain undiagnosed.

By **Anthony Miller**, senior consultant with Liberandi Legal Consultancy

As the legal profession begins to reckon with this reality, it becomes clear that the Bar, long associated with precision and intellect, must also embrace fairness, inclusion, and new understandings of what it means to thrive.

Among those who benefit from this evolving understanding are barristers and pupils who are neurodivergent, including individuals with ADHD, autism, dyslexia, and other forms of cognitive difference.

While awareness of neurodiversity has grown across society, the conversation within the legal profession is still developing. Many chambers', supervisors, and institutions are already demonstrating good practice but there is a general acceptance that more can be done to ensure that support is consistent and sustainable across the profession.

Disclosure risk

Disclosing a neurodivergent condition such as ADHD can be a deeply personal decision. While many chambers are open and well-meaning, there is often uncertainty about what follows from disclosure. Some pupils have expressed fear of being perceived as "difficult" or "high maintenance," and worry that such perceptions even if unfounded could affect tenancy prospects.

The Equality Act 2010 provides robust safeguards and guarantees the right to reasonable adjustments. However, the legal protection may not always translate into psychological safety.

ADHD, for example, is often misunderstood, with symptoms such as challenges in working memory or time management being misinterpreted as carelessness or lack of rigour.

These misconceptions overlook the strengths that neurodivergence can bring such as, creativity, lateral thinking, resilience, and the ability to hyper-focus. Chambers have a critical role in ensuring that disclosure is treated respectfully and results in meaningful support rather than reduced expectations.



Cultural curriculum

Pupillage is an intense year, a bridge between academic study and independent practice. While formal competencies are clearly set out, much of what determines success lies in an unspoken "hidden cultural curriculum", tacit norms, unwritten rules, and subtle feedback cues.

For neurodivergent pupils, who may process information differently, such ambiguity can be a significant barrier. One way to address this is through clear, structured assignment setting.

There has and continues to be discussion around what should be included as best practice. Best practice might include, clear, structured assignment setting such as, offering a short summary of the specific legal issue, listing relevant authorities or suggested starting points, specifying the required format, such as a note, skeleton argument, or opinion; identifying the intended audience, whether that is a supervisor, client, or court, and giving an approximate time limit or word count.

By introducing these measures supervisors are providing structure and this will allow all pupils to focus on analysis rather than second-guessing expectations.

By contrast, vague instructions in sprawling areas of law for example,

judicial review or equitable remedies may risk pupils disappearing down "rabbit holes," investing hours in irrelevant research only to be told their work is excessive or unfocused.

Training v Testing

A long-standing view persists in parts of the profession that "pupillage is not there to educate." While pupillage is indeed a professional training year rather than an academic course, the notion that pupils should simply "sink or swim" is increasingly at odds with modern professional standards.

Many chambers already combine high expectations with constructive feedback and opportunities to improve. This approach should be the norm. Assessment without equipping pupils to meet expectations risks testing prior opportunity rather than genuine potential.

Emotional Labour

Neurodivergent pupils may carry the dual burden of completing pupillage while representing a minority experience within chambers. Being the "first" or "only" openly neurodivergent member can lead to feelings of isolation, the pressure to disprove stereotypes, and the responsibility of explaining neurodiversity to colleagues.

This "emotional labour" is often invisible yet draining. Inclusion should not depend on those with lived experience doing the cultural work; it must be a shared responsibility across chambers.

Feedback

In a feedback-heavy environment such as pupillage, RSD (Rejection Sensitive Dysphoria) can lead to intense self-doubt. Pupils may ruminate over minor comments or assume the worst from ambiguous silence. Supervisors who understand this dynamic can deliver critique in ways that support development without undermining confidence.

ADHD often occurs alongside other conditions, known as comorbidities, which can intensify its impact and

complicate diagnosis. RSD, as well as, learning differences such as dyslexia or dyscalculia are also more prevalent among people with ADHD, as are traits linked to autism spectrum disorder.

These overlapping profiles can create unique strengths such as creative problem-solving and adaptability, but also compound challenges in areas like organisation, working memory, and stress regulation.

In high-pressure environments such as the Bar, unrecognised comorbidities may lead to misunderstanding, inconsistent performance, or burnout.

Effective support requires awareness of the interplay between ADHD and co-occurring conditions, early identification, and tailored adjustments that address the whole picture rather than treating each difficulty in isolation. This holistic approach maximises potential while reducing the risk of disadvantage or exclusion.

Communication

Some neurodivergent individuals have spent much of their lives navigating constant micro-criticisms subtle but persistent feedback that they are “too much,” “too intense,” or “not quite right.” Over time, this can lead to two common responses; withdrawing to avoid confrontation or developing strong self-advocacy that may be misread as defensiveness.

In the hierarchical structure of pupillage, these patterns can be misunderstood. Awareness of this background allows supervisors to focus on substance rather than style, fostering trust instead of mistrust.

Wellbeing

Pupillage is demanding for all. However, the measures that support neurodivergent pupils; clarity, structured supervision, constructive feedback also improve outcomes for every pupil. Inclusion and wellbeing are not separate priorities; they are two sides of the same coin.

Chambers that embed inclusive practices not only meet their legal obligations but also strengthen their position as chambers of choice for talented applicants from diverse backgrounds.

Fairer Future

The Bar’s strength lies in its people. When those people regardless of background or cognitive profile are supported to thrive, the profession, and the public it serves, benefit.

This is not a call for lower standards or special treatment, but for equal footing. Tradition and inclusion can work together to create a Bar that is fair, principled, and representative of the society it serves.

Positive Moves

There are already encouraging signs that the profession is taking neurodiversity seriously. The Bar Council has hosted dedicated training sessions on disability inclusion and neurodiversity, aimed at helping chambers professionals and pupil supervisors translate legal obligations into practical, everyday support.

Its Equality, Diversity & Inclusion framework, together with the Equality & Diversity Officers network, provides a platform for sharing best practice and tackling emerging issues. Specialist working groups and networks such as the Bar Council’s Disability Panel, Bringing [Dis]Ability to the Bar, and Neurodiversity in Law are contributing to sector-wide awareness and policy development.

Networks

Beyond the Bar’s own institutions, professional networks such as the Legal Neurodiversity Network foster

community support and encourage the sharing of lived experience across the legal profession. Recent guidance from the Family Justice Council has also helped embed a “difference not deficit” approach, offering practical adjustments to ensure that neurodivergent individuals are treated fairly in the justice system.

Future vision

A truly inclusive Bar would be one where every pupil and barrister, regardless of background or neurotype, can participate and progress without facing hidden barriers.

Recruitment and assessment processes would be transparent, with clear criteria and structured feedback ensuring that potential is measured fairly. Supervisors would receive training in inclusive practice, enabling them to recognise and respond to diverse communication styles and learning needs.

Reasonable adjustments would be standardised, easy to request, and implemented without stigma. Cultural norms would embrace difference as a strength, with networks and mentoring accessible to all.

Wellbeing would be embedded in the Professional Statement and supported in day-to-day practice, ensuring that excellence is sustained rather than achieved at the expense of health.

Above all, inclusion would be woven into the profession’s traditions, proving that the pursuit of justice must begin within the structures delivering it.

Anthony Miller is a senior consultant with Liberandi Legal Consultancy, completing pupillage, and a certified commercial mediator.

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Honouring Courtenay Griffiths KC: A Towering Figure of Justice and Inspiration

On 23 June 2025, the legal profession lost one of its most formidable, influential, and beloved advocates: Courtenay Delsdue McVay Griffiths KC. His passing at the age of 69 marks the end of an era in British law, but his legacy—woven through decades of fearless advocacy, mentorship, and a relentless pursuit of justice—will endure for generations to come.

By **Derek Payne**, Publishing Director, Barrister Magazine

Early Life and the Journey to the Bar

Born in Kingston, Jamaica, on 10 October 1955, Courtenay Griffiths was the second youngest child of Mrs Adelaide Griffiths and Mr Wrenford Decosta Griffiths who was born in 1909 and was the driving force behind Courtenay. In 1961, his family moved to England, settling in Coventry, where he was educated at Bablake School. Courtenay Griffiths' early inspiration to pursue law came from his father's stories about Norman Manley QC, Jamaica's first Prime Minister and a legal titan in his own right.

After graduating with an LLB (Hons) from the London School of Economics in 1979, Courtenay Griffiths was called to the Bar in 1980. He quickly distinguished himself as a legal assistant to the Greater London Council's Police Support Committee and spent a year as a Revson Fellow at City College, New York, before returning to practice in West Yorkshire's courts

Breaking Barriers and Rising to the Summit

Courtenay Griffiths' ascent was historic. In 1998, he became one of the first Black barristers to be appointed Queen's Counsel, shattering glass ceilings and paving the way for greater diversity at the Bar. His career was defined by a series of high-profile, complex, and often controversial cases that placed him at the centre of British and international legal history. He practised from some of the most respected chambers, including Garden Court and 25 Bedford Row, and was a part-time judge (Recorder), as well as a leader in the Bar Council's Public Affairs and Race Relations Committees.

Landmark Cases and Legal Achievements

Few advocates have left such a deep mark on the criminal justice landscape.



Courtenay Griffiths' courtroom presence was legendary—commanding, eloquent, and unyielding. Among his most notable cases:

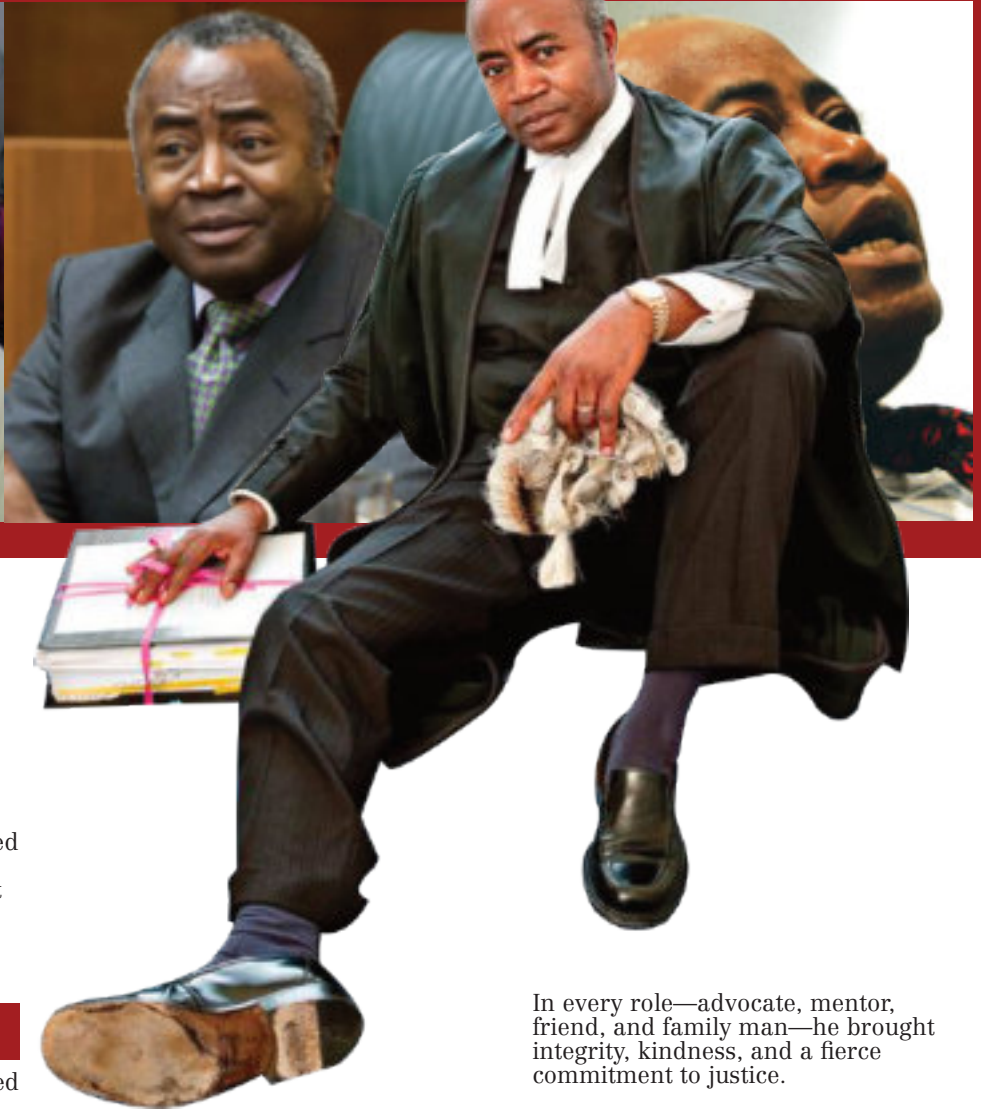
- **The Keith Blakelock Murder Trial:** Courtenay Griffiths defended in the aftermath of the Broadwater Farm Estate riot, a case that remains one of the most significant in modern British legal history.
- **The Brighton and Harrods Bombings:** His advocacy in these terrorism cases showcased his ability to handle the most sensitive and high-stakes matters.
- **Damilola Taylor Murder Trial:** Courtenay Griffiths' role in this tragic and nationally significant case further cemented his reputation for legal brilliance and compassion.
- **Charles Taylor War Crimes Trial:** As lead counsel for former Liberian President Charles Taylor at The Hague, Griffiths

demonstrated his international standing and commitment to the rule of law, even in the most challenging circumstances.

His work also included landmark civil liberties cases, such as *Goswell v Commissioner of Police for the Metropolis*, which resulted in a record damages award against a police force at the time.

Mentorship, Advocacy, and Championing Diversity

Beyond his courtroom exploits, Griffiths was a mentor and inspiration to countless barristers. Laurie-Anne Power KC, among many others, credits him as "the single most influential figure in my legal career. He epitomised brilliance, intellect, and fearlessness in equal measure. He considered it his duty to open doors and provide opportunities to those who might not otherwise have them. He was



unapologetic about changing the landscape of the bar”.

He was renowned for encouraging young lawyers, especially those from underrepresented backgrounds, to aspire to the highest levels of the profession. His influence was deeply personal: “He was my only mentor, in the true sense of the word. He hounded me into applying for silk and did not stop until I got it. He was a friend first and made me believe that I could achieve anything within the profession,” Power recalled.

Recognition and Awards

Griffiths’ contributions were recognised with numerous accolades, including the Outstanding Achievement Award at the Legal 500 Awards in 2020 and a Lifetime Achievement Award at the UK Diversity Legal Awards in 20183. He also received honorary doctorates from Coventry University and Leeds Metropolitan University and delivered the prestigious Norman Manley Lecture at the University of the West Indies in 2008.

A Man of Character: Wit, Warmth, and Humanity



Those who knew Griffiths speak not only of his legal prowess but also of his warmth, humour, and generosity. ITV News correspondent Ronke Phillips described him as “charm itself. Serious about his work but never too serious to be friendly and always with a twinkle in his eye”. He was a passionate supporter of Liverpool F.C. and the West Indies Cricket Team, a music collector, and a trustee of the Bernie Grant Trust.



In every role—advocate, mentor, friend, and family man—he brought integrity, kindness, and a fierce commitment to justice.

A Lasting Legacy

Courtenay Griffiths KC’s passing is mourned across the legal world and beyond. As Jacqueline McKenzie, solicitor and partner at Leigh Day, wrote: “Through his practice at Garden Court and 25 Bedford Row Chambers, he acted in major criminal and human rights cases, in the UK and overseas, and left an indelible mark of greatness on our profession, and on the world”.

His impact is measured not only in the cases he argued or the awards he won, but in the lives, he changed and the doors he opened. He showed that brilliance, courage, and compassion could—and should—coexist at the heart of the law.

As we honour Courtenay Griffiths KC in this issue of *The Barrister*, we remember a colleague who was, in every sense, a giant of the profession. His legacy will continue to inspire all who strive for justice, equality, and excellence at the Bar.

May he rest in eternal peace.



Virtually Criminal? Sexual Violence in the Metaverse

1. Nearly / Almost
2. By means of virtual reality techniques

It has long been recognised that with new technology comes new variants of criminal activity. In response, our criminal laws arrive on the scene as the white blood cells of our body politic and are applied, adapted, or entirely overwhelmed. It is a familiar pattern. The internet brought with it new ways of committing fraud, smaller cameras led to new forms of voyeurism, and as a flurry of recent articles and academic papers have sought to illustrate, virtual reality platforms may now be home to new forms of sexual offence: virtual rape and virtual sexual assault.

By **Alexander Jurczynski**, Pupil at 3PB Barristers

This issue came to prominence in the UK last year after a police investigation into the alleged ‘gang-rape’ of an under-16 year old girl’s virtual persona (avatar) by other avatars in the Metaverse, the headset-enabled virtual world developed by Meta.¹ As reported in the Daily Mail, an unnamed senior officer characterised this behaviour as leading to ‘the same psychological and emotional trauma as someone who had been raped in the real world’ due to the immersive nature of virtual reality. In the US, the Washington Post also delved into this phenomenon, giving an account of a different incident, this time experienced by Nina Patel, a Metaverse researcher:

Three male figures surrounded her avatar [...] They touched her avatar’s breasts and pressed their torsos rhythmically against her, telling her that she wanted it. A fourth took photos of the incident in the app. [She said] “my physical body was responding [...] I was very uncomfortable. Fight or flight mode kicked in.”²

Critics have been quick to critique – ‘Just take off the headset!’ Of course, avoiding the platform avoids the problem, but this raises several issues. On principle, no-one should be precluded from entering any environment for fear of encountering sexual violations, and furthermore virtual reality platforms may soon play a necessary role in our lives. Recent research from the Institution of Engineering and Technology suggests that, over the course of their lifetime, the next generation will spend

approximately ten years in virtual reality – working, socialising, and learning with others.³ In these circumstances, the solution of ‘just take off the headset’ might have the same impractical resonance as ‘don’t go out late alone’ has to women who commute to work in darkness for five months of the year. Therefore, it makes sense for the law to address this form of ‘Metacrime’ – a term used by INTERPOL in a January 2024 white paper in which they stressed that it is essential to identify gaps both in law enforcement and in legal frameworks to criminalise such behaviour.⁴

Does rape exist in virtual reality?

Applying the existing law, defined in Section 1 of the Sexual Offences Act 2003, the offence of rape cannot be made out in virtual reality; the most immediate issue simply being that Metaverse avatars do not have genitalia, and therefore the offence falls at the first hurdle. However, the issue of whether the terminology of rape could be used to include crimes committed in virtual reality has been assessed by Professor Clare McGlynn and Dr Carlotta Rigotti in the *Oxford Journal of Legal Studies*. Their article, ‘From Virtual Rape to Meta-Rape: Sexual Violence, Criminal Law and the Metaverse’ (April 2025) introduces a novel praxis, the new concept of ‘meta-rape’ which they argue better captures the ‘intense and embodied nature of these forms of sexual violence’ than the word ‘virtual’, with its connotations of being less-than-real. They argue that rape as a legal formulation varies across jurisdictions, therefore rape is a

flexible term within the socio-legal discourse, ‘to the extent that it has been considered devoid of an essence’. They continue:

In deploying the term ‘rape’, meta-rape challenges the tendency to downplay acts like ‘groping’ or sexual harassment [...] using the word ‘rape’ can help challenge the social and legal hierarchies that often place acts like harassment as less severe than rape. By framing all sexual violence under a term associated with serious harm, the aim is to resist distinctions that may imply that certain forms of violence are less significant.⁵

This reasoning is two-fold: in the real world, having a gradation in the severity of sexual violations does a disservice to the experience of victims, and this may therefore be rectified in the virtual world with a concept that elevates all sexual violations to the status of rape. This argument is well-intentioned, but is surely undermined by a simple rule of economics – namely that in practice, an increase in circulation leads to a decrease in value. If all non-consensual sexual contact becomes associated with rape, the word loses its meaning and the offence loses the severity which sets it apart. Likewise, if all virtual violations are labelled after rape – an offence which cannot legally be committed in virtual reality – then the term is devalued by its merely symbolic meaning. Perhaps the authors’ aim can be achieved by a reversal of their ‘severity’ proposition. Instead of all sexual offences becoming associated with rape, the focus should be on the fact that not every sexual

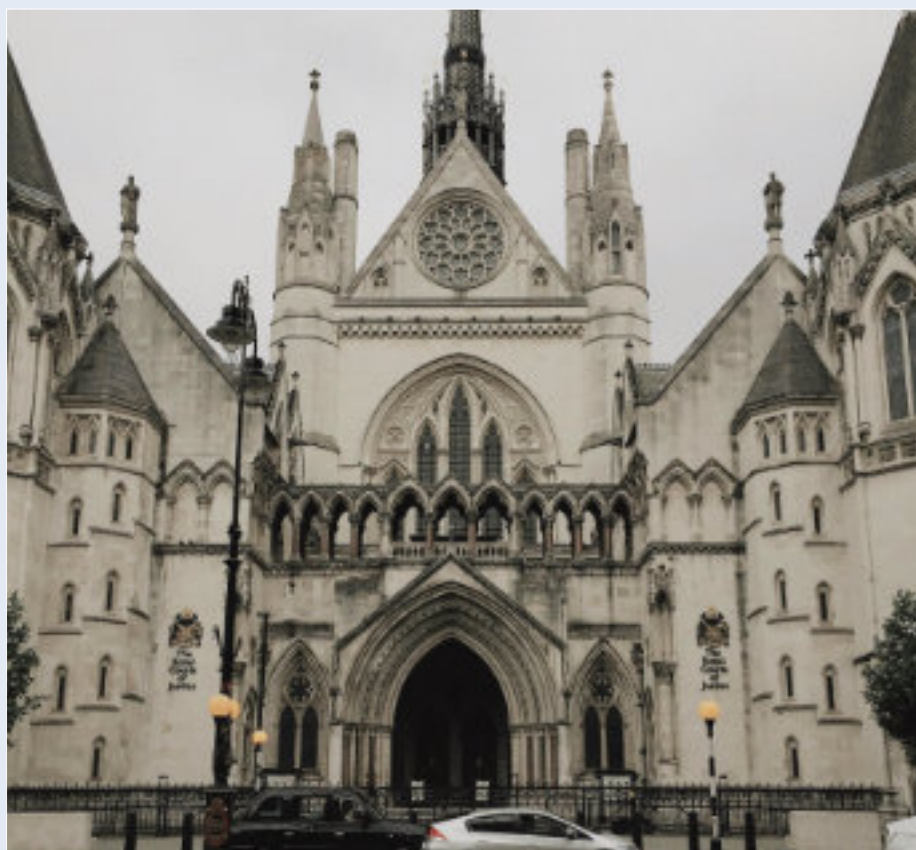
offence is rape. Most sexual offences are covert and socially insidious. Locker room antics have no place in the real world. A sexual offence does not need to be rape to give you a criminal record.

Does sexual assault exist in virtual reality?

Once again, the inability to physically touch another person is the significant hurdle in applying the present law under Section 3 of the Sexual Offences Act 2003. However, touching is defined in Section 79 of the Act as including touching with any part of the body, with anything else, or through anything. This leaves open the possibility for indirect contact, with an analogy potentially arising in case law. In the case of *R v H* [2005] EWCA Crim 732, the test for sexual assault was satisfied in circumstances where a man uttered the words ‘fancy a shag?’, and shortly thereafter, grabbed his victim’s trouser pocket. Both personal clothing and a personal avatar, while being physically inanimate, are intertwined with the personality of the individual. If touching a person’s clothing satisfies the test for physical touch, it is not inconceivable that touching a person’s avatar while making sexual comments would similarly count as a sexual assault. But perhaps the law need not strain itself. With virtual reality poised to incorporate haptic technologies such as gloves and bodysuits, kinaesthetic interactions will lead to direct physical sensation which may make applying the present law more straightforward.

If we were to broaden the existing legislation to include virtual sexual assault, this would seemingly involve drawing a parity in the victim experience between the two forms of the offence. Much like this issue in relation to rape, this is dangerous territory. Opening the aperture of the offence by conflating virtual and real-world offending risks undermining the experience of the victims who did not have the option of removing a virtual reality headset and terminating an adverse interaction. While similar emotions may have been provoked, those who have experienced a sexual violation in virtual reality have not faced the inescapable physical transgression, the unpredictable threat of escalation, or the risk of pregnancy and sexually-transmitted infection that defines its real-world counterpart.

An alternative option to expanding the offence of sexual assault would be to look to other offences, or create new laws altogether. One option is to use the broad provisions contained in the Protection from Harassment Act 1997. Harassment offences are certainly adept at encompassing behaviour which occurs across online and offline mediums, yet the existing law falls short in requiring there to have been a



‘course of conduct’. This means that victims would need to have experienced virtual violations ‘on at least two occasions’ by the same user before the law can step in. An alternative could be a new law of ‘intimate intrusions’, as proposed by Professor McGlynn, which would encapsulate the ‘seemingly infinite variety of ways that abuse is perpetrated without the need to provide a distinct label for each and every different form of harm.’⁶

Ultimately, despite the difficulties in reconciling the actus reus of virtual and real-world sexual violations, the mens rea of the perpetrator remains consistent. As James Cleverly, then home secretary at the time of the virtual ‘gang-rape’ investigation, told LBC radio, ‘someone who is willing to put a child through trauma like that digitally may well be someone that could go on to do terrible things in the physical realm.’ Therefore it is clearly an issue that should engage legislators and law enforcement bodies. In the age of the Online Safety Act, where a legislative focus has been on prevention – shifting the responsibility for user safety onto the platforms themselves – a path forward may be to move towards AI-enabled moderation of every interaction in the virtual worlds. All users could be kept in arms-length forcefields (‘personal boundaries’ already being an optional feature in the Metaverse), derogatory language could be sanitised in real-time, and every interaction could be automatically policed. If this degree of social oversight does not appeal, then

perhaps it really is time to take off the headset and rejoin the real world.

Alexander Jurczynski, Pupil at 3PB Barristers

¹Rebecca Camber, ‘British police probe VIRTUAL rape in metaverse: Young girl’s digital persona ‘is sexually attacked by gang of adult men in immersive video game’ - sparking first investigation of its kind and questions about extent current laws apply in online world’ (Daily Mail, 1 January 2024) <<https://www.dailymail.co.uk/news/article-12917329/Police-launch-investigation-kind-virtual-rape-metaverse>> accessed 10 August 2022

²Naomi Nix, ‘Attacks in the metaverse are booming. Police are starting to pay attention’ (The Washington Post, 6 February 2024) <<https://www.washingtonpost.com/technology/2024/02/04/metaverse-sexual-assault-prosecution/>> accessed 10 August 2025

³E+T Editorial Team, ‘Children likely to spend 10 years of their lives in VR metaverse, study suggests’ (Institution of Engineering and Technology, 9 October 2023) <<https://eandt.theiet.org/2022/04/20/children-likely-spend-10-years-their-lives-vr-metaverse-study-suggests/>> accessed 10 August 2025

⁴INTERPOL, Metaverse: A law enforcement perspective (White Paper, January 2024)

⁵Clare McGlynn, Carlotta Rigotti, ‘From Virtual Rape to Meta-rape: Sexual Violence, Criminal Law and the Metaverse’ (Oxford Journal of Legal Studies, 8 April 2025) <<https://doi.org/10.1093/ojls/ggaf009>> accessed 10 August 2025

⁶Clare McGlynn, ‘Towards a New Criminal Offence of Intimate Intrusions’ (Fem Leg Stud, 13 June 2024) <<https://doi.org/10.1007/s10691-024-09547-y>> accessed 10 August 2025



A Recent Case Law in Switzerland Arising from China-UK Bilateral Investment Treaty (Song v PR China, PCA Case No. 2019-39)

By Cecilia Xu Lindsey¹

The Dispute

Mr Song was an investor and the Claimant in the arbitration based on the China-UK Agreement Concerning the Promotion and Reciprocal Protection of Investments (the bilateral investment treaty (BIT), signed on 15 May 1986).² Mr Song is a national³ of the United Kingdom.

The Respondent is the People's Republic of China.⁴ It received Mr Song's investment in a company, B Ltd (the "Company") located in Shaanxi Province, China.

The parties' dispute was to be resolved through arbitration with the Permanent Court of Arbitration (PCA) in Geneva, Switzerland.

Investor-State Arbitration

Mr Song alleged that he sustained loss caused by the measures and policies implemented by the local authorities in Shaanxi, China, concerning the land which the Company had rights to use. As a result of the measures and policies effected, the Company's rights were expropriated, yet the Company was not compensated.⁶ In January 2019, Mr Song commenced arbitration in Geneva (which was the seat of the arbitration). A three-arbitrator tribunal was constituted.

China raised objection to the tribunal's jurisdiction on 9 December 2021. On 30 December 2021, the tribunal affirmed its jurisdiction over the dispute and dismissed China's objection.

As for the substantive matters in the dispute, on 24 January 2025, the tribunal gave its Final Award that China breached Art. 5 of the BIT and should pay Mr Song compensation and interests in the aggregate sum of USD \$26,045,613.90.

Matters before the Swiss Federal Supreme Court

On 23 January 2024, China made an application to the Swiss Federal Supreme Court (the "Court") for a declaration that the tribunal's Decision on Jurisdiction made on 30 December 2021 should be set aside based on newly discovered three evidence pursuant to 1a of Art. 190a of the Swiss Private International Law Act ("PILA") (the "First Application", Case No. 4A_46/2024). Mr Song responded that the application should be dismissed.⁷ On 12 July 2024, the Court made an interim security for costs order that

China should pay CHF 250,000 as security deposit which would be used to compensate Mr Song should it be so required.

On 4 October 2024, pursuant to 1a and 1b of Art. 190a of the PILA, China made a second application to the Court (the "Second Application", Case No. 4A_528/2024) and requested that, in the light of Yulin Intermediate People's Court Criminal Conviction Judgment against Mr Song on 4 June 2024, the Court should set aside the tribunal's Decision on Jurisdiction.⁸

On 9 October 2024, the Court held that the two applications China made should remain separate, as opposed to be joined, due to the different factual and legal foundations.



On 24 February 2025, China applied to the Court to set aside the tribunal's Final Award. (the "Third Application", Case No. 4A_100/2025)

In assessing whether or not it should set aside the tribunal's decisions made in international arbitration, the Court clarified that the new evidence:

- i) should not be a mere "occurrence";
- ii) must expose significant facts or bear material impact on the decision in question; and
- iii) evidence of facts arising after the arbitral decisions had been excluded.

The Court further pointed out that, where evidence was presented only after the arbitral award, pursuant to Art. 190a 2, the application for setting aside must be made within 90 days after when the need for setting-aside arose, that the new evidence concerns the issue of admissibility, and that the applicant had the burden of proof to satisfy the deadline test.

The three new evidence China provided in support of its First Application are:

- a) a written admission dated 9 October 2023 and provided by China's witness, Mr. C that his two witness statements dated 13 August 2020 and 28 October 2020 and used in the arbitration were incorrect;
- b) an email on 12 September 2012 that Mr Song joined the UK citizenship in order to gain the BIT protection; and
- c) a document called "Undertaking" signed and dated on 22 December 2012.

New Evidence and Impact on China's Applications

The Court considered the new evidence in support of China's First and Second Applications.

On 17 April 2025, the Court decided on the evidence concerning the First Application that:

- A) Mr C's written admission on 9 October 2023 satisfied the 90-day deadline, which started to run from 10 October 2023 at the earliest, and that the facts and circumstances contained in the admission were before the tribunal's decision; and
 - B) the two 2012 documents only "appeared" in December 2023 after China submitted its application, although both firmly presented that Mr Song acquired the British citizenship in order to take advantage of the investment protection under the BIT, which as China contended *demonstrated* "abuse" by Mr Song. The Court, however, required detailed facts of the specific circumstances of the discovery of the new evidence in order to examine how discovery was proved. The Court held lacking precise facts about the discovery, in addition to the failure of non-compliance with the 90-day deadline. The Court on 17 April 2025 rejected this application and imposed on China the court costs CHF 200,000 and a compensation of CHF 250,000 to be made from the security deposit payable to Mr Song.
- On 26 June 2025, the Court decided on the evidence concerning the Second Application that:
- C) the Criminal Conviction Judgment relates to a crime committed, based on which China contended that Mr Song conducted illegal actions to acquire shareholdings, which related to illegality of investments. The prin-

ciple is that, where investments are made illegally in a hosting country, the investments would not be protected under international investment laws including the BIT. The Court scrutinised the document. The arbitral tribunal had already decided on jurisdiction before the Criminal Conviction Judgment was issued. The Court regarded that the crime (irrespective of its time) must have had an actual, direct or indirect, influence on the dispute so that it has disadvantaged the applicant. Further, the criminal court's conviction judgment must show that the objective requirements for a crime have been met, despite that Art. 190a 1b does not require necessarily that the criminal proceedings should lead to a conviction. The Court is minded that an arbitration tribunal is not bound by a criminal conviction judgment when considering the context of the dispute having the same facts. Further, the Court held that there lacked secure reference to the Criminal Conviction Judgment to prove a crime relating to Mr Song's shareholding in B Ltd. The Criminal Conviction Judgment referred to the fourth shareholding he had in another company. The tribunal's decision-making was based on the fact of Mr Song's shareholding in the Company (which represented the "investment" under the BIT). The Court held that the requirements of Art. 190a 1b have not been met and this application is rejected.

The Court on 26 June 2025 imposed on China CHF 200,000 for the court costs and a compensation of CHF 250,000 to be made from the security deposit payable to Mr Song.

To date, the Third Application is pending, as seen through the information available in public domains.

Conclusion

Investor-state arbitrations have been increasing, which demonstrates that reliance on the mechanism is growing. Alongside BITs, free trade agreements and other multilateral international agreements are frequently taken to safeguard private investors rights. These agreements are drafted to provide for neutral forums against arbitrary government's actions, which allows foreign investors to avoid local courts. Strategic planning will enable parties successfully take advantage of the dispute resolution mechanism.

In practice, disclosing documents (subject to privilege) often provides an opportunity for the tribunal or court to decide on issues and resolve the dispute fairly. Witnesses must ensure the facts they state are true; this will not only uphold personal honesty and integrity but also avoid undermining the party's own credibility. Independent counsel's advice and expertise if needed must be obtained, ideally before concerns take place.

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²The purpose of this BIT is to create favourable conditions for one contracting country's investment by nationals and companies in the territory of the other contracting country, to recognise reciprocal protection under the BIT so to encourage business initiative of nationals and companies and to increase prosperity in both countries.

³Pursuant to Art. 1 Definitions (1) (c) "Nationals".

⁴China, to date, as Respondent State has been in nine reported cases, among which two were decided in favour of the State, five are pending, one was settled between the parties and one was discontinued.

⁵"Investment" is defined in Art. 1 (a) (i) – (v).

⁶Arts. 4 and 5 provide that the investor shall be entitled to compensation for losses which are caused by requisition or destruction and expropriation by the authorities in the Contracting State.

⁷Details of the arbitration remain limited. Through the Court proceedings, some information about the arbitration has been enlightened.

⁸For completeness, the arbitral tribunal waived giving its view on this.



Called to the Bar: Why Some Voices Remain Unheard

As many readers will know, being Called to the Bar is of limited value if you have not already been offered a pupillage (the work-based learning component of the Bar training). Without pupillage, you are simply an unregistered barrister, with no rights of audience and no ability to practise as a barrister.

By **Chelsea Sparks**, Barrister at Lamb Chambers

That is not to say that all unregistered barristers have never practised; this category will consist of those who have previously practised and retired or pursued alternative careers. However, the vast majority of this category is made up of those individuals that have been Called to the Bar and have been unable to obtain pupillage. For example, in 2024 the Bar Standards Board was responsible for the regulation of: 17,862 practising barristers; 38,826 unregistered barristers who have never practised; and 10,265 unregistered barristers who had previously practised.¹

In 2023/24 there were 1,924 individuals Called to the Bar², yet only 671 pupillages were advertised.³ It is important to remember that

unregistered barristers can continue to apply for pupillages for up to five years after completing their vocational training. As a result, the number of applicants will always far outweigh the number of pupillages available. This can be illustrated by the data from the 2023/24 application year, where there were 3,408 applicants vying for the 671 pupillage places.

Despite the stark state of affairs, enrolment numbers on the Bar Training course continue to grow, with 2,445 students enrolling between July 2024 and June 2025 (up from 2,423 in the previous year)⁴. How much does it cost to embark on this uncertain future? Currently, for 25/26 entry under the 3-step pathway, between £12,900 - £19,100 for UK domiciled students.⁵ That is on top of the debt

students will have from their undergraduate degrees and, if applicable, the Graduate Diploma in Law.

The statistics lay bare an uncomfortable truth, something in the system is broken. This prompts the question: where does the problem lie? Is it with the Authorised Education and Training Organisations ("AETOs") who continue to enrol far more students than pupillages available? Is it with the structure of the training pathway? Is it the scarcity of pupillages? Or is it fuelled by multiple factors and supported by the Bar's reluctance to evolve?

The AETOs

If we consider the key findings from the Bar Council's Pupillage Gateway

Report 2024⁶, degree classification is a key indicator for success. The pupillage candidates with a First-Class Honours degree were more than twice as likely to secure an offer of pupillage when compared with candidates that have an Upper Second Class Honours (2:1). Most notably, no candidates with a Lower Second Class Honours (2:2) or a Third-Class Honours degree secured a pupillage offer in 2023/24.

If pupillages are that scarce and competition is so fierce, why does the BSB set the minimum standard as a 2:2?⁷ In 2023/24 and 2024/25 students with a 2:2 degree classification made up 23% of total enrolment⁸ - around 1,119.64 students. At current course prices, that represents between £14.443 - £21.385 million in fees in just two years. Against figures like these, it is easy to see why AETOs aren't incentivised to restrict admissions; however, changes to the minimum academic requirements could be made by the BSB as the regulator and the AETO would have no choice but to follow suit.

Raising the minimum academic requirement to a 2:1 degree classification would not only spare many students from incurring crippling debts in pursuit of an unachievable career, but it would also shrink the number of unregistered barristers which the BSB is obliged to oversee. That, in turn, would ease the burden on the practising Bar, who shoulders the cost of regulating the sizeable cohort of unregistered barristers¹⁰, most of whom have never practised and never will.

The training pathway

Following recent changes by the BSB there are now four approved training pathways¹¹; the most common of which is the three-step pathway. One thing all of the pathways have in common is that students are Called to the Bar after the academic and vocational element has been completed, but before pupillage. There is no requirement to have been offered pupillage to be Called.

From a practical perspective, one of the reasons for this structure must be that in order for a pupil to commence the practising period of their pupillage they need to have been Called and have obtained their Provisional Practising Certificate. Although, pupils could be Called, either: (1) during the six month non-practising period, or (2) once their pupillage supervisor has signed the Certificate of Satisfactory Completion of Non-Practising Pupillage. This may require some tinkering with the dates for the Call ceremonies; however, if the number of individuals being Called is lowered significantly, it is unlikely that the 16 ceremonies held each year (four ceremonies by each of the four Inns) would be required.

This change would prevent the accumulation of high numbers of unregistered barristers. Further, when individuals attend their Call Ceremony they will be celebrating the

achievement of qualifying and completing all of the necessary components, just weeks before they are able to practise themselves. Before, during and after my Call Ceremony I was consumed by one singular thought: will I be offered pupillage?

The apprenticeship pathway is one of the lesser known routes to qualification. It is yet to be utilised, despite it being approved by the BSB in 2018, but it would offer a combined approach to the academic, vocational and pupillage/work-based components. There has been some development of the pathway, culminating in the Institute for Apprenticeships and Technical Education publishing the Barrister Apprenticeship Standard.¹² The current proposed duration is 72 months and the proposed funding structure is not yet clearly set out.

As it currently stands, there are no apprenticeships to apply for. Moving this pathway forward would require prospective apprenticeship providers to submit applications to the BSB.

Furthermore, it seems unlikely that sets of chambers would be keen to invest in aspiring barristers over a seven year period at a stage in their life when they have little to nothing to show by way of commitment to the profession, experience and/or qualifications, particularly when chambers often show a reluctance in funding a one year pupillage. The idea may be well-intentioned, but it is far from the saving grace the Bar needs.

The lack of pupillages

Whilst the amount of pupillages advertised on the Pupillage Gateway continues to rise¹³ it certainly isn't rising in line with the demands of the profession or the number of applicants hoping to qualify. This is a particular concern in relation to the Criminal Bar which is facing 'significant recruitment and retention challenges'¹⁴.

One of the reasons why pupillages are limited is due to funding. The current minimum pupillage award is £24,203 in London and £21,060 outside of London, but higher awards can be offered. Pupillage awards vary based on practice areas and the mean award for 2022/23 was between £30,000 (crime) - £74,000 (commercial)¹⁵. The vast majority of pupillages available come from the self-employed Bar and the funds set aside for the pupillage award are made up of the chambers contributions or rent collected from members.

The funding is a substantial financial commitment from chambers which often do not have a recruitment or HR department and will have to rely on members to set-up, recruit and train pupils. Additionally, the time spent on training by self-employed members of the Bar will undoubtedly have a direct cost and time consequence on the members practice and income.

Overall, although members of the Bar and chambers identify the importance of training pupils there are often

concerns around the prospect of investing in pupils when there is no guarantee of a return. To minimise the risk exposure some sets of chambers will only offer one pupillage a year, contributing to lower levels of pupillages.

There is some funding assistance available; the Council of the Inns of Court offer a Pupillage Matched Funded Scheme for chambers engaged predominantly in legally aided work. More recently, Sir Leveson proposed a government match funding for criminal pupillages¹⁶ as a solution to the Criminal Bar's recruitment issues.

Previously, the Bar Council suggested an external funding pool made up of public benefactors, public authorities or private sector firms could be a possible solution¹⁷; although such a scheme would need to be developed and piloted before being a realistic option. Unfortunately, this idea does not seem to have been developed beyond this proposal which was made some years ago.

Even once the hurdle of pupillage is cleared, the struggle is far from over for the chosen few. Incoming pupils and junior barristers continue to face significant challenges: a persistent gender pay gap¹⁸, structural and racial inequalities¹⁹, excessive last-minute workloads, poor scheduling, and a lack of work-life boundaries.²⁰ Unsurprisingly, only a third of pupil barristers would 'definitely' recommend the profession as a career path.²¹

As a profession, what are we doing to attract, encourage, support, and retain barristers? The Bar still has considerable work to do to align itself with the standards and expectations of its professional counterparts.

One of the Bar's greatest strengths lies in its long standing traditions, with individual chambers and barristers operating on their own terms. Yet this can also be one of its deepest flaws. Achieving any meaningful change will require collective action, shared views and a willingness to change; which I suspect will be difficult to come by. During my time working as a clerk, I found that organising barristers was rather like herding cats.

Chelsea Sparks, Barrister at Lamb Chambers

¹The Bar Council, 'Bar Council response to the Bar Standards Board's (BSB) call for evidence on its 5-year strategy' (9 April 2025) <<https://www.barcouncil.org.uk/static/e002f4b4-8418-4fab-8f05e65cf1fe5427/Bar-Council-response-to-the-BSB-call-for-evidence-on-its-5-year-strategy.pdf>> accessed 15 August 2025, Annex 1

²The Bar Standards Board, 'Call to the Bar and tenancy statistics' <<https://www.barstandardsboard.org.uk/data-and-research/statistics-about-the-bar/>>

call-to-the-bar-and-tenancy.html> accessed 15 August 2025

³ The Bar Council, 'Pupillage Gateway Report' (November 2024) < <https://www.barcouncil.org.uk/static/de2150b0-756d-4158-a5002fa899915507/Pupillage-Gateway-Report-2024.pdf> > accessed 15 August 2025, page 4

⁴ The Bar Standards Board Research Team (July 2025) 'Bar Training 2025 Statistics on enrolment, results, and student progression by course provider' < <https://www.barstandardsboard.org.uk/static/4435a0f5-866d-4eeb-b237ed28538f31fa/Bar-Training-2025-Statistics-by-course-provider-31072025.pdf> > accessed 15 August 2025, page 10

⁵ Ibid, Table 2

⁶ The Bar Council, Pupillage Gateway Report 2024, page 4.

⁷ Part 2 of the BSB Qualification Manual, section 2B, para 6.

⁸ Bar Training 2025 Statistics, table A1

⁹ Ibid, page 10 (There were 2,445 students who enrolled between July 2024 – June 2025 and 2,423 students between July 2023 – July 2024).

¹⁰ Bar Council response to the Bar Standards Board's call for evidence on its 5-year strategy, page 19, para 72

¹¹ The Bar Standards Board, 'Authorisation Framework for the Approval of Education and Training

Organisations' (25 October 2022) < <https://www.barstandardsboard.org.uk/static/9cde1627-bfc5-4fd4-b02a051980d5c0a9/4758519a-bda1-40ff-a7d90b1ee8717fb5/authorisationframework.pdf> > accessed 15 August 2025, page 8 -9

¹² Skills England, 'Barrister apprenticeship' < <https://skillsengland.education.gov.uk/apprenticeship-standards/st1389-v1-0> > accessed 15 August 2025

¹³ There were 638 pupillages advertised during the 2022/23 recruitment rounds, 447 in 2020/21 and 578 2021/22 (see page 7 of the Bar Council's Pupillage Gateway Report 2024); however, the Covid-19 Pandemic would have had an impact on pupillages due to commence in 2021 and 2022.

¹⁴ Sir Brian Leveson, 'Independent Review of the Criminal Courts' (10 February 2025) < https://assets.publishing.service.gov.uk/media/686be85d81dd8f70f5de3c1f/35.49_MOJ_Ind_Review_Criminal_Courts_v8b_FINAL_WEB.pdf > accessed 15 August 2025, page 20, para 74

¹⁵ The Bar Council, Pupillage Gateway Report 2024, page 9

¹⁶ See Sir Leveson's Independent Review of the Criminal Courts

¹⁷ The Bar Council, 'Entry to the Bar Working Party Final Report' (November 2007) < https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Annex_A_Neuberger_Final_REPORT_with_appendices_15_Nov_07.pdf > accessed 15 August 2025, page 75

¹⁸ The Bar Council, 'New practitioner earnings differentials at the self-employed Bar' (April 2024) < <https://www.barcouncil.org.uk/static/952cdfc3-909c-4429-a71b9d82939af386/e56ffc25-77a3-4aa4-ba61f05b6b6659b2/New-practitioner-earnings-differentials-at-the-self-employed-Bar-April-2024.pdf> > accessed 15 August 2025

¹⁹ The Bar Council, 'Race at the Bar: Three years on' (December 2024) < <https://www.barcouncil.org.uk/static/f1da4b31-7adb-475b-900b6a0f20cf1530/2d0ba62c-4e1e-4d2c-aecf7fc44b0781cf/Race-at-the-Bar-three-years-on.pdf> > accessed 15 August 2025

²⁰ The Bar Council, 'Pupil Survey Report' (June 2025) < <https://www.barcouncil.org.uk/static/07067935-8b90-4faf-a21d2bbb0ce564ca/5bfec97d-eed2-4333-b83b353281c4be8a/Pupil-Survey-2025.pdf> > accessed 15 August 2025, page 2

²¹ Ibid, page 9



Why are Hate crime Laws in the UK being unfairly used to prosecute Black Language Speakers?

There has been a disturbing growing trend in the UK that involves the prosecution of Black language practices, wrongly under the guise of hate crime for words that have been reclaimed and given new meanings within languages like Black-British English (BBE) and (AAVE) African American Vernacular English. This practice by the CPS engages concerns about how these prosecutions in fact disproportionally inference with language speakers' linguistic rights under Article 8 and 10 of the ECHR and has been rightly called out by lawyers, journalists, community groups and organisations.

By **Ife Thompson**, Barrister, Nexus Chambers

As a criminal defence barrister that is also a fluent speaker of Black - British English it was particularly alarming for me to witness the wholesale criminalisation of an entire language community, especially because I know how those words are used within the language.

I have acted in 4 such cases so far of which the community have dubbed the N-word on trial and Black Political thought on trial. In this piece I will expand on the why this is an issue all barristers must be alive to and share how to successfully support clients charged under the Malicious Communications Act 1988, Communications Act 2003 and Racially

Aggravated Public Order offences for their everyday language usage. The practice of denial of Black language speakers' rights is not something unique to the UK and is just as prevalent in the USA but communities and lawyers have fought back and I am proud to be a part of that same tradition in the UK.

The N-word on trial and Black Political thought on trial.

The hate crime laws were introduced first introduced in the UK through the 1965/ 1968 Race Relations Act which were a testament to the campaigning of the Windrush generation and the likes of Claudia Jones against the colour bar

in the UK and the systemic, violent and rampant racism they faced when they arrived in the UK. Despite the original purpose of hate crime legislation, the first person to ever be prosecuted and convicted under hate crime legislation was a Black Political Activist called Michael X, in 1967 he was prosecuted for inciting racial hatred under the 1965 Race Relations Act after giving a political speech in Reading.

Throughout my criminal practice I have been instructed on cases where the N-word spelt "Nigga" and pronounced that way which infers the what Dr April bell explains following linguistic history of the term stating "The term nigga is a linguistic

reappropriation of the racial slur *nigger*, which was a derogatory term used by white Americans toward Black Americans to express hatred, bigotry, and anti-Black racism. Because the term *nigger* is a racialized epithet within the broader American English lexicon, the reappropriation of the term by AAVE speakers is often misunderstood by non-members of the Black speech community. When used by AAVE speakers, *nigga* has a different pronunciation (postvocalic -r deletion rule), a different spelling (*nigga* vs *nigger*), and a variety of meanings. I highlight this difference from the onset as this is a key signifier of the words difference from the racist anti-black slur created in standardised English know as “Nigger”.

I was instructed on a case where a Black child who was 14 a time of arrest brought before the youth courts for stating the term ‘My Nigga’ to a white police officer and then the term ‘Craka’. Both words come out the Black resistance struggle and political struggle to name our experiences and reclaim words that were used to and/or caused us harm. The whole exchange was captured on CCTV Camera. When I reviewed the case file and started my prep, I could instantly recognise the language use of my client’s terms and instantly knew that it would be vital to instructed an African American Vernacular English linguist to explain the **Etymology** of those two words within AAVE and the Black linguistic diaspora. Once the expert report was drafted, I wrote representation to the CPS expanding on the CPS failure to recognise Black Language speakers’ rights and the need to stop the overcriminalisation of Black girls within the YJS and how this meant both the evidential and public interest test were not met.

On the day of the trial, I spoke to the trial lawyer and carefully took her through the expert evidence and my human rights concerns about the continuation of this prosecution. She spoke to the reviewing lawyer noting the points I had raised, and they offered no evidence to that charge.

A similar fate happened into two of my other cases. The first one being the Justice for Jamila A campaign which attracted support from Black Lives Matter UK, 4Front, BLAM UK and Nels Abby of the Black Writer Guild, it was also featured in the Guardian and the Independent’s by the UK first Race Correspondent, this is to show how much an important issue it was for many within the Black British community. This was a case where Jamila A had been charged under s.127 of the Communications Act 2003 for allegedly using obscene communications after responding to a tweet on 27 August 2023 from another Black person in the USA with the African American Vernacular English (‘AAVE’)/Black British English (‘BBE’) term “Nigga”. Jamila A’s tweet was picked up by a data monitoring organisation, passed on to the Met

Police who visited her home address and subsequently interviewed her at the police station. She was later charged and brought before Westminster Magistrates’ court.

As part of this case, I drafted letters of representations to the CPS, one a total of 23 pages, arguing that the matter did not pass the evidential or public interest stage of the test required to prosecute someone. A few of the points highlighted are noted below:

1. Jamila A is a fluent Black-British English speaker, and her use of the term “Nigga” was a fundamental part of her language practice;
2. The prosecution disproportionately interfered with her rights under Article 10 of the European Convention of Human Rights (‘ECHR’) to Freedom of Expression and right to use language from her culture which should be protected from discrimination under Article 10, read in conjunction of Article 14 of the ECHR;
3. The case placed undue stress and anxiety on Jamila A by prolonging proceedings unnecessarily;
4. The CPS’s failure to consider the cultural and linguistic context of her speech, reinforces anti-Black linguistic discrimination and raises concerns about its compliance with Section 149 of the Equality Act 2010;

The Expert reports also noted :

- Dr Dominique Branson (USA-based AAVE linguist) emphasised that language interpretation belongs to the speech She noted that Jamila A’s identity as a Black person and acceptance of the term within her social network aligned with broader linguistic research, confirming that her usage was consistent with AAVE norms;
- Dr Ian Cushing (UK-based linguist, specialist in Black British English) highlighted that “Nigga” has been widely used in Black British English (BBE) since the rise of hip-hop in the 1980s, particularly in He pointed to sociolinguistic research showing its role in expressing Black identity and solidarity. He also referenced the Aston University Institute for Forensic Linguistics, which classifies the term as neutral or affectionate in many context.

A lengthy Defence Case Statement was also served which set out 19 disclosure requests the Defence required of the CPS not limited to but including whether various parties had consulted their equality and diversity team/s about the nature of the use of the word “Nigga” and whether a black person would find this offensive.

The CPS subsequently requested an adjournment after receiving our Defence Statement of which the Judge granted noting “that there were serious issues of fact and law with the case and that it is appropriate and

necessary for the Crown to review its position in light of the Defence statement.”

On 5th March 2025, the Crown formally wrote to the Defence, confirming that they would no longer be proceeding with the charges against Jamila A.

Another more recent case I acted on of which the crown offered no evidence to on 15th August 2025 was a young adult who was a fluent Black British English use of the word my nigga to a Black police officer. Due to being on a prison licence he was automatically recalled for being prosecuted for this offence which I can only describe as being criminalised for his fluency in BBE. After careful instruction of an AAVE and BBE linguist and the detailed representations to the CPS explaining the inherent unfairness and the linguistic discrimination this prosecution lays bare the crown offered no evidence.

The CPS’s repeated ability to reverse its position and offer no evidence underscores a troubling pattern: a tacit acknowledgment that their prior actions were fundamentally flawed. This is not merely an oversight, but I would argue it reflects a systemic failure to understand and respect linguistic diversity, with serious consequences for justice. A reflection of this concern is further seen in the persistent absence of clear CPS and police guidance on the linguistic rights of Black language speakers in line with their duties under the equalities act and human rights conventions. The consequences of having a criminal record are profound, extending beyond legal penalties. Yet, despite Black communities already being disproportionately overpoliced, there appears to be minimal oversight to prevent the further criminalisation of these communities under hate crime laws, laws that were ironically intended to protect them.

This is why in light of this ongoing injustice, I invite all defence and prosecution lawyers to read this guide I created for Youth Justice Legal Centre on Rap and Drill Music as there is a section within it where I focus on Linguistic Justice in the CJS. I believe that in the absence of official police and CPS guidance on the issue lawyers need to better equip themselves in understanding anti-Black linguistic racism to better aid in calling it out and resisting the wrongful and unfair prosecution of it.

Ife Thompson, Barrister, Nexus Chambers

¹ Please read the USA case of (MARTIN LUTHER KING JR., ETC. v. Ann Arbor Sch. Dist., 473 F. Supp. 1371 (E.D. Mich. 1979)



Briefs for the Greater Good: The Case for Pro Bono Work

There is a long tradition of UK lawyers acting pro bono, said to stretch back to the medieval ages. Without Mrs Donaghue's lawyers acting pro bono, Mr Stevenson's snail-infested ginger beer might not have contributed so seismically to the concept of a duty of care. More recently, there have been invaluable contributions by barristers acting pro bono in high profile legal disputes such as the Hillsborough Inquest, the Belhaj litigation, and the Windrush compensation claims. (Of course, in Ancient Rome, the Lex Cincia prohibited advocates from charging any fees, proving that one can have too much of a good thing).

By **Jamie Goldsmith KC**, One Essex Court/founder of Pro Bono Connect

In the face of escalating unmet legal need and chronic legal aid shortages, pro bono work has become a vital part of modern legal practice at the Bar. It plays a key role in facilitating access to justice for those without means, which is a cornerstone of the rule of law, and aims to ensure that (win or lose) everyone can have their day in court. Pro bono costs order obtained by barristers who are successful for their clients also puts money back into the wider access to justice community.

As Lord Reed said in *R (on the application of Unison) v Lord Chancellor* [2020] AC 869 at [68]: *"Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter; the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other."*

For barristers in England and Wales, the benefits of acting pro bono extend well beyond charity. Barristers who volunteer their time and expertise to assist those without the means to pay not only serve a critical societal function but can also enjoy significant professional, reputational, and personal advantages as a result.

This article identifies three key benefits for barristers to bear in mind when considering pro bono work, in addition to the overriding and critical function of ensuring access to justice for those without means and thereby upholding the rule of law.

First, for junior barristers in particular, pro bono work is one of the most effective ways to gain hands-on experience, especially in their early years of practice. Newly qualified



tenants often face the 'catch-22' of needing courtroom experience to attract instructions but requiring instructions to gain that experience. Pro bono work, particularly through organisations such as Advocate (formerly the Bar Pro Bono Unit) or FRU (Free Representation Unit), can provide invaluable early exposure.

Unlike traditional paid work where silks or senior juniors may dominate complex cases, pro bono cases often afford junior barristers sole conduct of hearings in tribunals and courts. This allows them to take full responsibility for drafting pleadings and skeleton arguments and making submissions to judges or even cross-examining factual or expert witnesses—thereby accelerating their learning curve and helping them to develop confidence and courtroom skills that will stand them in good stead for paid work.

It is also well known that advocacy experience through pro bono cases can also help enhance a silk application for a senior junior.

Getting first hand advocacy experience can be particularly difficult at the Commercial Bar, which is my neck of the woods. Juniors often work on large cases where they have one or more leaders and can struggle to get adequate time on their feet themselves, even following the judicial-led encouragement to help them do so. With that in mind, I am pleased to

report that the Commercial Court and London Circuit Commercial Pro Bono Scheme, run by Advocate and Combar, has been recently expanded to cover hearings or trials of up to one week, with the ability to seek assistance from pro bono solicitors through Pro Bono Connect (more on that below). Volunteers to join the mailing list for the expanded scheme should contact admin@combar.com.

Second, pro bono work is well recognised by and receives the gratitude of the judiciary. In 2023, Sir Robin Knowles, Judge of the Commercial Court and then Chairman of Advocate, said *"whether you are at the start of this profession or you are at the top of it, pro bono is part of being barrister" and that it is a "badge of the Bar's integrity and a sign of its commitment to the public and the public interest, which should be a source of pride in our profession"*.¹

Whenever I talk to Judges about pro bono, they stress how valuable it is to have counsel acting pro bono. Leaving litigants in person at the mercy of a court system they do not understand can make litigation more intractable for everyone involved (judges, litigants-in-person, and opposing parties), as anyone who has experience of a disclosure application against a litigant-in-person will know all too well.

It is no surprise, in those circumstances, that Baroness Carr,

Lady Chief Justice and Patron of the Pro Bono Recognition List, has said: *“The judiciary recognises the critical contribution that the Bar makes to access to justice through its pro bono work. It is a huge credit to practitioners that they are willing to give up their time for free to help the most vulnerable members of society”*.²

Pro bono experience can also be helpful if you are thinking of applying to go on the bench. For example, Advocate reports that “Government panels and judicial appointments have used pro bono cases to enhance their applications”.³

Third, undertaking pro bono work can help you make new professional connections and enhance existing ones. Most importantly, for barristers, Pro Bono Connect offers the opportunity to work with solicitors, who also have a long history of acting pro bono and recognise the business case for pro bono in the modern world. By way of example only, according to a 2024 survey by Thomson Reuters, 73% of law firms who participated in the survey use pro bono work as a tool to train and develop their staff.⁴ I set up Pro Bono Connect, nearly 10 years ago, with a colleague at One Essex Court, Eleanor Campbell. The service matches barristers and solicitors on pro bono cases so that they can work together as a team in the same way that we do for paid litigation. There are currently 70 law

firms and 67 chambers participating in Pro Bono Connect, including some of the biggest hitters and international, national and regional powerhouses. The cases placed through Pro Bono Connect enable pro bono clients to get access to first class legal teams for extended periods of time for free. I know from personal experience that barristers who seek solicitor assistance through Pro Bono Connect often talk of the substantial assistance they received from supporting solicitors, the relationships they made as a result and above all the huge difference it made to the pro bono clients.

In 2023, in conjunction with the National Pro Bono Centre, we set up a sister scheme, Pro Bono Expert Support, which extends to the model to cover experts and litigation support providers from a whole range of fields including forensic accountancy, investigations, strategic communications, eDiscovery, case presentation, costs, translation, and a plethora of expert witnesses.⁷ These eclectic experts work together with a pro bono lawyer (including a barrister acting through Advocate) to ensure that the full spectrum of modern litigation services are available to anyone who requires them to get justice. Pro Bono Expert Support therefore gives barristers the opportunity to get to know and work with experts and litigation support providers in a myriad of disciplines, thereby building contacts

and relationships that may be valuable for future paid work.

In short, pro bono work is a powerful engine for personal and professional growth at the Bar, in addition to performing a vital public service. It serves as a pathway to courtroom experience, professional recognition and relationship building with solicitors, not to emotional satisfaction in an era of increasing anxiety. For barristers seeking to develop their skills, raise their profile, and soothe their soul, pro bono is not just a duty for a modern barrister—it is an opportunity on which you cannot afford to miss out.

*Jamie Goldsmith KC, One Essex Court/
founder of Pro Bono Connect*

¹ Sophie Cartwright KC, *Pro bono advice and representation – part of being a barrister?*

² <https://weareadvocate.org.uk/volunteer/barrister-volunteering.html>

³ <https://weareadvocate.org.uk/public/downloads/74REL/Volunteering%20with%20Advocate%20Leaflet%202024%20Movers%20and%20Returners.pdf>

⁴ 2024 Index of Pro Bono: <https://www.trust.org/2025/02/05/2024-index-of-pro-bono-findings-revealed/>

⁵ Pro Bono Connect is now a collaboration between LawWorks, Advocate and the National Pro Bono Centre.

⁶ www.probonoconnect.co.uk

⁷ <https://www.nationalprobonocentre.org.uk/project/pro-bono-expert-suppo>



Handling of legacy IPP sentences in 2025

The widely criticised sentence of Imprisonment for Public Protection, otherwise known as the IPP sentence, was available to the courts pursuant to section 225 of the Criminal Justice Act 2003 from 2005 until it was abolished in December 2012.

By Libby Anderson, Barrister, Crucible Chambers

Background to IPP sentences

As with a life sentence, there are three elements to the sentence, namely the tariff, the unlimited period of further imprisonment following completion of the tariff, and the release under licence. Prisoners can only be released once the Parole Board is satisfied that they no longer need to remain in prison for the safety of the public. Release is not guaranteed at any stage. Once in the community on licence, prisoners can be recalled to prison if they breach their licence conditions, and must then go through the parole process again.

IPPs in 2025

Although new IPP sentences are no longer passed, large numbers of offenders remain subject to sentences

passed prior to 2012. The HMPPS Annual Report on the IPP Sentence 2024/2025 was published in July 2025. This report sets out the current statistics: in March 2025, 2,544 people were still incarcerated on an IPP, comprising 1,012 unreleased IPP prisoners and 1,532 recalled IPP prisoners. Of these, only 30 were women. As at December 2024, over 1300 remained on licence in the community, 51 of whom were women. Recent statistics show that 4% of the entire prison population are women, this proportion having remained stable for the last five years, whereas less than 2% of IPP prisoners are women. There are also hundreds of IPP prisoners in hospital settings.

Thirteen years after IPP sentences were abolished, they remain a regular topic of discussion and dispute. To the

public, IPP sentences may still carry many negative connotations, conjuring up thoughts of dangerous offenders requiring prolonged supervision in custody. To those serving IPPs, their friends and family, and their representatives, the reality is quite different. IPP sentences are recognised as having an unduly severe impact on offenders, with offenders made subject to indeterminate sentences for relatively minor offences or held in prison long after their minimum term expired. IPP prisoners, especially those on shorter tariffs, frequently struggled to access the courses and interventions necessary to show that they no longer presented a risk, and are recognised to be at a higher risk of suicide, self-harm, and mental health difficulties. In March 2025, the Independent reported a ‘death toll’ of 94 self-inflicted deaths

of offenders on IPP sentences, including 37 in the five years to April 2024.

For these reasons, many anti-IPP advocates argue that the mere abolition of this type of sentence did not go far enough because it did not have retroactive effect and only prevented the imposition of new IPP sentences. A large number of people remain subject to these sentences and the particular stresses and privations that occur in consequence. There have been some recent developments, in both statute and case law, which address some of these concerns, but ultimately progress is slow.

Meaningful changes?

In 2022, the Justice Committee recommended introducing legislation to enable a resentencing exercise for all IPP prisoners with a view to ensuring proportionality and justice, balanced against public protection. In September 2024, the Labour Peer, Lord Woodley, introduced a Private Members' Bill to make provision for a resentencing exercise in relation to all IPP sentenced prisoners within 24 months, with the proviso that any resentencing court would not be able to impose a tariff greater than that imposed by the initial sentencing court. The PMB is currently at the Report stage in the House of Lords. In October 2024, the government indicated that they were not considering a full resentencing exercise, citing the likely compromise to public protection. This approach seems likely to continue; in May 2025 IPP prisoners were excluded from emergency measures to automatically release offenders recalled on licence after 28 days in order to free up prison spaces. With Parole Boards only sitting a limited number of times a year, it can take a long time for recalled IPP prisoners to secure their release. The Annual Report 2024/25 confirms this, showing a broad increase in time spent recalled since 2021, with the average time on recall in 2024 being 25 months.

IPP offenders on licence in the community have historically also been subject to very long periods on licence, frequently disproportionate to the offence committed. The Victims and Prisoners Act 2024 introduced major changes to IPP sentence licence termination. Most notably, it reduced the qualifying period for the Parole Board to consider ending licences to three years (from ten years) and included a clear statutory presumption that the Parole Board will terminate the IPP licence at the end of that qualifying period. If the Parole Board decides not to terminate an offender's licence after the three-year qualifying period, but the person avoids recall for a further two years, the licence will terminate automatically at that point. All of this is subject to good behaviour, which should afford significant reassurance insofar as public protection is concerned.



The impact of being recalled on licence

Although recalls can occur for any breach of licence conditions, such as missing a curfew, sometimes IPP prisoners are recalled on suspicion of committing further offences. In this situation, the IPP prisoner cannot apply for parole and will not accrue any time served to count towards sentence for the new offence. This means that any sentence passed for the new offence will only take effect from the day of sentence, and the prisoner will not be eligible to apply for parole until after they have completed the required period in custody for the new offence. As a matter of practicality, for offences hovering around the community order and/or the custody thresholds, only a custodial sentence could be passed in such circumstances, because a community order or suspended sentence would not be workable.

Case law has developed with this situation in mind in recent years, predominantly to ensure fairness to the defendant. For example, the recent case of *R v Barrett* [2025] EWCA Crim 559 dealt with how the court should reflect the loss of remand time by defendants on recall due to delays in sentence.

The court emphasised that there is no established rule requiring the allowance for delay to be doubled to accommodate early release provisions, although it does not shut down that possibility altogether. Instead, the correct approach is for the sentencing court to identify the period of delay attributable to external factors and reflect that in the final sentence. It is therefore a matter for the sentencing judge's discretion in full knowledge of all the circumstances leading up to the date of sentence as to what allowance or reduction should be made, and in some cases, a very significant allowance may be appropriate.

Barrett cited the case of *R v Saunderson* [2020] EWCA Crim 1556, which addressed the situation where a defendant had been subject to an extra delay prior to sentencing due to the Covid-19 pandemic. This case involved a 47-year-old man, a heroin addict. He

was on licence having been released from a 6-year sentence for supplying Class A drugs, when he began stealing to fund his drug addiction once again. He was arrested for two offences of theft and one offence of possession of a bladed article, and made full admissions in interview. He was then recalled prior to entering his guilty pleas in March 2020. Due to Covid related delays, he was not sentenced until August 2020, at which point he received a nine-month sentence. However, none of the time spent in custody counted towards his sentence as he was on recall.

The court recognised the fact that the defendant was in custody due to his own past behaviour; his recall was justified and it was his own fault that this did not count towards sentence. However, there was a delay in sentencing for which he was not responsible, which meant that his period of recall under licence was extended and causing loss of remand time. In *Mr Saunderson's* case, the court took the view that it would be wrong to penalise him for the extra delay for which he was not responsible, and took the approach of maintaining each individual sentence but making all sentences concurrent. This meant that he would be eligible for release much sooner, although any decision on release would still have to come from the Parole Board.

Conclusion

The current legal framework shows that blanket rules are simply not appropriate when it comes to handling IPP sentences, whether in the context of licence termination, resentencing, or considering loss of time on recall when sentencing for other offences. IPP sentences, though well intentioned in the first instance, remain a complex area at all stages of proceedings from remand through to parole and continue to cause stress and trauma to prisoners and their families. What is clear is that, although some steps are being taken to address the IPP crisis, public protection remains the priority.

Libby Anderson, Barrister, Crucible Chambers



Cyprus Property Disputes and the Erosion of Legal Consistency

The latest prosecutions by the Republic of Cyprus concerning property transactions in the North have placed the island's decades-old territorial and legal division under renewed international scrutiny. A raft of recent cases—culminating in the imprisonment of European nationals for facilitating property sales in Turkish-controlled Northern Cyprus—exposes not only the enduring volatility of the Cyprus question, but also a troubling degree of legal and political asymmetry in the treatment of property rights across the island.

By **Lennart Poulsen**, Barrister at 9BR Chambers

At the heart of the matter lies a fundamental question: can a legal system genuinely lay claim to impartiality when it disregards both the principles of effective remedy under international law and the treatment it affords its own displaced citizens?

The Legal Landscape Post-1974

The Greek Cypriot administered Republic of Cyprus maintains, as a matter of both domestic law and international diplomacy, that the entire island constitutes a single sovereign territory, unlawfully divided following the Turkish intervention in 1974. In practice, however, the Turkish Republic of Northern Cyprus (TRNC)—while unrecognised by all but Turkey—has functioned with its own judiciary, legislature, and administrative mechanisms for over half a century.

Property disputes are among the most contested legal issues arising from this division. Greek Cypriots who fled the North in 1974 continue to assert ownership of homes, land, and commercial plots now governed by the TRNC. Conversely, Turkish Cypriots displaced from the South face immense legal hurdles in asserting any rights to their former properties—if such recourse exists at all.

Recent Prosecutions and the Question of Jurisdiction

The most recent case to make international headlines involved the conviction of two Hungarian nationals who were sentenced in May 2025 for brokering property sales in the North on land formerly owned by Greek Cypriots.¹ The individuals had acted in good faith in the course of regular business transactions but were prosecuted under Cypriot law for dealing in property the Republic considers to be “illegally occupied.” The Hungarian case is not isolated. An Israeli businessman faces similar proceedings,² while the long-running case of a British developer who constructed housing in Northern Cyprus remains unresolved.³ These prosecutions stem from the Republic's

assertion that any unauthorised dealings in pre-1974 Greek Cypriot land are criminal acts—regardless of the effective control exercised by the TRNC and regardless of the involvement of recognised international legal mechanisms.

The ECHR's Ruling in *Demopoulos* and the IPC

In 2010, the European Court of Human Rights delivered a landmark decision in *Demopoulos and Others v. Turkey*,⁴ (affirmed by the Court in a separate 2025 Judgment⁵) holding that the Immovable Property Commission (IPC), established by the TRNC authorities, constituted an “effective domestic remedy” for the purposes of Article 35 of the European Convention on Human Rights. While reaffirming that the TRNC is not internationally recognised, the court nonetheless acknowledged that its institutions may, in certain circumstances, satisfy obligations under the Convention (*Demopoulos*, paras 130-132).

The ruling had several legal ramifications:

- Greek Cypriots seeking restitution, compensation, or exchange of property in the North must first exhaust remedies through the IPC before applying to the Strasbourg court (*Demopoulos*, para 134).
- The IPC provides a structured and judicially supervised mechanism for property redress within the territory of Northern Cyprus (*Demopoulos*, paras 134-136).
- Participation in proceedings before the IPC by third parties—including foreign nationals, legal advisors, and developers—does not violate international law (*Demopoulos*, paras 138-139).

Crucially, the Court went further, stating that former Greek Cypriot owners do not have an automatic right to restitution of their property. In a widely noted passage, the Court held that it is not permissible “to remedy an old injustice by creating a new one,” and recognised that, given the passage

of time, the rights of current users and good-faith purchasers must also be considered. This judicial balancing reflects a broader principle of legal certainty and social stability in post-conflict settings (*Demopoulos*, para 151).

This framework was broadly understood as a pragmatic concession to political reality, endorsing functionality over formal recognition. However, the Republic of Cyprus has since pursued criminal prosecutions against those engaging with this very mechanism, thereby contradicting the principle of effective remedy acknowledged by the European Court. These prosecutions not only contravene the Strasbourg Court's acknowledgement of effective remedy but also risk undermining the equitable balance between displaced owners and present-day users, which the judgment explicitly affirmed. Most recently, the issuance of Interpol Red Notices and the imposition of travel bans on Turkish Cypriot officials and property stakeholders reflect an increasingly extraterritorial and politicised use of law enforcement, raising further concerns about proportionality, jurisdiction, and due process.⁶

Legal Asymmetry and the Question of Good Faith

The prosecutions become all the more questionable when viewed against the Republic's own practices. Turkish Cypriot land in the South—left behind by those displaced in 1974—has been held under custodianship by the Guardian of Turkish Cypriot Properties. Much of it has been developed or leased for extended periods to Greek Cypriots or foreign investors.

Though the Republic asserts that it holds such properties “in trust” and does not confer ownership rights, the reality is more complex. Turkish Cypriots have limited access to restitution mechanisms in the South. Legal pathways are often protracted, unclear, and as emerging evidence suggests, ineffective.

A case in point is that of Emine Hatice, a Turkish Cypriot woman whose family land lies in Paphos. Despite applying for restitution or compensation in 2012, she has received no formal reply from the relevant authorities in over 13 years.⁷ Her legal counsel has now indicated an intention to bring proceedings before the European Court of Human Rights, citing a denial of access to justice.

This stark contrast in treatment—prosecuting those who transact under a legally validated mechanism in the North, while offering no meaningful remedies for similar claims in the South—undermines the Republic’s moral and legal standing.

Moreover, Professor Eyal Benvenisti of the University of Cambridge observed, “The Greek Cypriot judiciary has no jurisdiction over property located outside its effective control.”⁸ To persist in asserting jurisdiction over such matters, while ignoring long-standing Turkish Cypriot grievances within its own administered territory, is not merely inconsistent, it is legally incoherent.

The Spectre of Varosha and the Political Escalation

This legal entrenchment risks fuelling political escalation. President Ersin Tatar’s administration in the North has hinted at further opening the fenced-off town of Varosha (Maras), a long-abandoned suburb of Famagusta once inhabited by Greek Cypriots. Varosha has long been viewed as a potential “confidence-building measure” in peace negotiations, with its redevelopment frozen by mutual understanding.

The North’s move to unilaterally develop the town is seen by many as retaliation against legal and diplomatic isolation. Similarly, the Republic’s aggressive legal posture toward foreign

nationals conducting lawful business in the North appears less about law enforcement and more about political signalling.

The result is a mutually reinforcing cycle of provocation, in which legal institutions are used to entrench division rather than enable resolution.

The Rule of Law or Lawfare?

Law, in divided societies, must tread a delicate path. Its authority derives not merely from its enforcement but from its perceived legitimacy across communities. Legal action that appears one-sided, or which disregards judicial comity and international principles, risks being interpreted as “lawfare”—the strategic use of legal mechanisms to advance political aims.

Those currently being prosecuted under Cypriot law often acted in good faith. Many engaged with the IPC under legal advice, relying on the precedent set by *Demopoulos*. Criminalising such conduct deters engagement with the very mechanisms designed to facilitate inter-communal property restitution.

Moreover, by dismissing the legitimacy of the IPC—an institution whose efficacy has been endorsed by the European Court—the Republic not only undermines confidence in its legal system, but also signals a retreat from any credible commitment to reconciliation.

Conclusion: A Call for Legal Reciprocity

Cyprus’s property disputes are among the most complex and emotionally charged legal issues in Europe. Yet they cannot be addressed by selectively invoking principles of sovereignty or legality. What is required is a reciprocal, principled approach grounded in international law.

The continued marginalisation of the IPC, the asymmetric enforcement of property laws, and the inordinate delays faced by Turkish Cypriots seeking redress in the South all point to a system at odds with the ideals of justice and equality.

Reconciliation will not be achieved through the courts alone. But the law, if applied impartially and consistently, can be a bridge rather than a barricade. For that to happen, both communities—and their legal systems—must recognise that justice cannot be conditional on political recognition. It must be rooted in fairness, reciprocity, and the courage to face uncomfortable truths.

Lennart Poulsen, Barrister at 9BR Chambers

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Repurposing the Presumption of Death Act 2013

A quick google of the Presumption of Death Act 2013 leaves no doubt that the purpose behind the legislation was to assist ‘those left behind’. Together with the Guardianship (Missing Persons) Act 2017, this legislative double act enables friends and family to deal with a missing person’s property and affairs, and a declaration of presumed death is “conclusive as to the presumed death and effective for all purposes and against all persons”¹.

By Nicola Phillipson, Barrister, Parklane Plowden Chambers

But what if you’re not the friend or family of the missing person, and the situation arises where you have never met the person you want to ‘presume dead’? Where you know next to nothing about the missing person, but they are standing in the way

of your ability to deal with someone else’s property and affairs. Can the Presumption of Death Act help in these circumstances? The answer to that is, provided you have enough evidence, yes.

The Act

The Presumption of Death Act enables a court to make a declaration of presumed death in two situations:

- (i) where a missing person is thought to have died, and
- (ii) where a missing person has not been known to be alive for a period of at least 7 years.

For scenario (i) the court needs to be satisfied, on the balance of probabilities, that the missing person has actually died, with such a finding requiring “clear evidence of [the missing person’s] death”². By contrast, under scenario (ii) the applicant need not adduce any evidence to show that the missing person is dead, or even that that it is likely that he or she has died. The test under this limb of the Act is not to establish death, but “is to establish the absence of knowledge of the person being alive”³.

Before an application for presumed death can be made the applicant must be able to show “a sufficient interest in the determination of the application”⁴, and there is also a requirement of domicile. Either the missing person must have been domiciled in England or Wales on the day upon which they were last known to be alive or have been habitually resident in England or Wales for the year prior to that, or if the applicant is the spouse or civil partner of the missing person, the applicant must be able to fulfill one of those criteria.

The Repurposing

In *Reynolds v Saul*⁵, the applicant was the administrator of the estate of Dennis Fullwood, a bachelor who had died intestate with no issue, and who had lived alone since 1973 in a flat in London. In the course of administering the estate it came to light that the flat had been purchased by Mr Fullwood and a person called Paulene Saul, and that Mr Fullwood and Ms Saul owned the flat as joint tenants at law and in equity. Therefore, if Ms Saul was still alive at the time of Mr Fullwood’s death, the flat belonged to her, but if she had pre-deceased, the flat was an asset of Mr Fullwood’s estate.

All attempts to find any information about Ms Saul failed. Nobody connected to Mr Reynolds had any idea who she was, other flat owners in the building confirmed that Mr Fullwood had always lived in the property alone, and as the judge noted, “other than in documents relating to the purchase of the property, there is no record of [Ms Saul’s] existence”.

The administrator therefore made an application to the court under the Act, seeking a declaration that Ms Saul be presumed dead, on the basis that she had not been known to be alive for a period of at least 7 years. As the date of death under this scenario is calculated to be 7 years after the missing person was last known to be alive, which in this case was the date of the property purchase in 1973, the date of presumed death would be 1980 and the effect of the declaration would be that Ms Saul pre-deceased Mr Fullwood

and the property would pass into Mr Fullwood’s estate.

I represented the administrator, instructed by Ramsdens Solicitors, and at the hearing the substantive issues were:

- (a) Was Ms Saul “missing” within the meaning of the Act?
- (b) Did Ms Saul fulfil the domicile criteria?
- (c) Did the administrator have standing to bring the claim? and
- (d) Could it be proved that Ms Saul had not been known to be alive for a period of at least 7 years

As to (a) and (d), the court accepted that the term “missing person” is a description of the person who is the subject of the application, rather than an independent criteria to be satisfied, and that “once it is established that a person was once alive, a stranger may prove that that person has not been known to be alive for a period of 7 years if all reasonable enquiries fail to reveal any trace of their continued life.”⁷ The court accepted that the documentary evidence proved that Ms Saul was a person alive in 1973, and that she had not been known to be alive for a period of at least 7 years.

The court was also satisfied as to issue (c), that the administrator had standing to bring the claim. It is worth remembering that the relevant interest must be in the determination of the application, and in this case it was clearly satisfied as a declaration would result in Mr Fullwood’s estate having ownership of the flat.

The insurmountable difficulty in this case however came with the issue of domicile. In the absence of any information at all about Ms Saul, the applicant not even being able to prove Ms Saul’s address prior to purchasing the flat, the court was not willing to find that Ms Saul was domiciled in England and Wales at the time of her death, or that she had lived in England and Wales for the year prior to buying the flat. The application therefore failed.

The judge did however state that, but for the issue of domicile, she would have made the application, and this encouraged us to try again with a different case, with stronger evidence on domicile.

Our second case was not reported, and a judgment is not available, but it was heard by DJ Obodai in Manchester in June 2025⁹. The facts were very similar to *Reynolds* in that the property which formed the bulk of the estate was found to have been purchased in 1979 by the Deceased and an unknown person called Arthur Ball, as joint tenants at law and in equity. All attempts to locate Mr Ball failed and therefore an application was made for a declaration that Mr Ball be presumed to have died in 1986. The crucial difference between *Reynolds* and the *Ball* case was that we had evidence that although it appears that Mr Ball had



never lived at the property with the Deceased, he had been a man who attended the local pub, and there were some family members of the Deceased who remembered Mr Ball and were able to say that he had been older than the Deceased. The court accepted this as evidence that Mr Ball had been domiciled in England and Wales at the time he was last known to be alive, and made the declaration of presumed death, along with a declaration that the property was an asset of the Deceased’s estate.

Comment

In neither of my ‘stranger’ cases could it really be said that the Act was being used by ‘those left behind’, i.e. the friends or family of the missing person struggling to cope with the property and financial affairs of a person who has simply disappeared, but that does not make this use of the Act any less valid or effective. The Act has previously been used to resolve the issue of property ownership¹⁰, and has also enabled an applicant to regulate a remarriage¹¹, and allowed a missing person’s son to benefit from a bequest from a third party estate¹². The willingness of the court to accept the wider practical uses the Act can provide is to be welcomed, and it now just falls to practitioners to take advantage of the same.

Nicola Phillipson TEP, Barrister at Parklane Plowden Chamber and Author of ‘A Practical Guide to the Law in relation to Presumption of Death and Guardianship orders’

¹ *Presumption of Death Act 2013 Explanatory Notes*

² *Re P (Presumption of Death) [2021] EWHC 3099 (Fam)*

³ *Re AB [2019] EWHC 2785 (Ch)*

⁴ s.1(5)

⁵ [2024] EWHC 3593 (Ch)

⁶ As the administrator was not the missing person’s spouse or civil partner his domicile could not be used

⁷ Para 52 of the judgment

⁸ s.1(5)

⁹ *Re Arthur Alan Ball (A Missing Person) PT-2025-MAN-000062*

¹⁰ *Johnson v Persons Unknown [2020] EWHC 207 (Ch)*

¹¹ *A v H [2016] EWHC 762 (Fam)*

¹² *Re P [2021] EWHC 3099 (Fam)*



Family Farm Tax

Inheritance Tax ("IHT") is levied on the value of the estate of the deceased, on a gift made by the deceased less than 7 years before death, that is to say a potentially exempt transfer ("a PET") or upon an immediately chargeable transfer ("an ICT") such as a transfer into a discretionary trust. Transfers to a spouse or civil partner are exempt. After the deduction of the applicable nil-rate band, the IHT which is payable depends on the nature of the assets in the estate or given during the lifetime.

By **Sean Kelly**, Parklane Plowden Chambers, Leeds

At present, nearly all of the assets used in a working farm will attract either agricultural property relief ("APR") or business property relief ("BPR") at 100 per cent. For a sole trader, agricultural land attracts APR limited to the "agricultural value" of the same, while farm equipment, machinery and livestock attracts BPR. Agricultural land will attract APR at 100 per cent if it was occupied by the owner for two years before the death or transfer or occupied by someone else for 7 years. APR relates to the land. An investor who owns agricultural land can claim APR, but only if the land is farmed.

APR and BPR were increased from 50 per cent to 100 per cent by the John Major Government in 1992 to ensure that the death of a farmer would not lead to the enforced sale of the farm (or significant parts of the same) to pay IHT. I started practice in 1992 and the effect of IHT on working farms was real.

As a general rule, farmers die rather than retire. Capital gains tax ("CGT") and IHT are not payable in relation to the same transfer at the same time. A lifetime gift will give rise to CGT (subject to hold-over relief) and will be a PET, but these do not take effect at the same time. Where the interest in a farm passes on death, the beneficiaries of the estate are treated as having received such interest at the current probate value. This sets their base cost for CGT in relation to any future sale.

From April 2026 100 per cent APR and BPR on any transfer by death or lifetime transfer will only apply to the first £1million of assets. Thereafter, APR and BPR will be at 50 per cent. For partnerships, the £1 million figure must relate to the capital account of an individual spouse or civil partner in the partnership rather than the entire assets of the partnership. A partner does not have any interest in specie in partnership property (see *Popat v Shonchhatra* [1997] 1 WLR 1367).

This change does not apply solely to farms. It applies to any business where the expectation is that ownership will pass to the next generation. Its effect is



more profound on farms because farming requires considerable capital whether as land or machinery. The value of agricultural land has increased significantly since 1992. Whether this is due to 100 per cent APR is unclear. Much of the increase can also be traced to the replacement of agricultural holdings with farm business tenancies. The lack of security of tenure for farm business tenancies makes them a better investment.

The Chancellor of the Exchequer has stated that the "effective" threshold for IHT on farms could be as high as £3 million. The July 2025 Guidance still uses this figure. It is difficult to see how this figure can apply to the majority of farms. The single transferable nil-rate band still applies. Where one spouse or civil partner dies and does not use up their nil rate band for IHT, the balance can be used by the second spouse or civil partner to die. The single transferable nil rate band is now £650,000 (with a higher figure for a dwelling-house), so the "effective" threshold could be said to be £1.65 million. However, the nil rate band of the first to die can only be used by the second if the marriage or civil partnership was ended by death. There is a record rate of divorce in the farming community. The individual nil rate band is only £325,000 and there are many "small family farms" with assets of over £1.325million.

It is extremely difficult to provide any sensible estimate of the yield from this alteration to IHT. The effect of partnership options (as described below) has not been taken into account. Further, where a deceased farmer has been a partner, his estate will usually claim only BPR on his capital account. The figures produced by HMRC do not include claims solely for BPR.

Aside from making full use of the spousal exemption and any transferable nil-rate band, the most obvious form of tax planning which could be used is merely for the farmer to give an interest in the farm or its land to his children during his lifetime and hope to survive for seven years. However, it is not as simple as this. If such a gift is made and the farmer continues to use the land as before, the gift with reservation of benefit rules will apply.

Farms could be transferred into a discretionary trust. However, this would give rise to an ICT (albeit with £1 million relief at 100 per cent). The trustees would need to manage the business. This would be a gamble on the result of the next General Election.

To date, partnership has not generally been viewed as part of farming tax planning due to the availability of 100 per cent APR or BPR. However, partnership does enable value to be transferred between generations in a

manner which other forms of business association do not. In this regard, there are two situations to consider. The first is pre-existing partnerships. The second is partnerships to be formed in response to the changes.

Pre-existing partnerships

Partnerships property is held under the trust created by section 20(1) of the Partnership Act 1890. The interest of a partner is manifest in the capital account. Where a partner transfers property into the partnership, he is credited with its current value as an addition to his capital account. Partnerships are not required to revalue assets. A farming partnership might have land included as partnership property which was brought into the partnership decades ago.

Not all farming partnerships have a written partnership agreement or deed. Where they do, then there will usually be a clause giving the surviving partners the option of purchasing the interest of a deceased partner. This will either be at historic book value or subject to revaluation. In determining which applies, the Court uses normal principles of contractual construction

and there is no presumption either way (see *Drake v Harvey* [2011] EWCA Civ 838). Up until the end of the last century at least, the former was the norm as revaluation takes time and costs money in surveyor's fees. The effect of this is that the interest of the deceased could be purchased at a very low historic cost. It would be this cost which is used to calculate IHT. Could the partners in a pre-existing partnership enter into an agreement including such a book value option? A disposition is only a gift if this is intended (see section 10 of the Inheritance Tax Act 1984). It is not a gift if "it was such as might be expected to be made in a transaction at arm's length between persons not connected with each other", that is to say a normal commercial transaction. It would be difficult for HMRC to argue that such a partnership agreement operated as a gift given that this type of agreement was the norm and is still used. In any event, such an option is against the interests of the first to die, but this might not necessarily be the parent.

New partnerships

Where a farmer admits a child as a partner, the agreement will not create a

PET unless the initial capital account of the child is credited with part of the value of the property transferred into the partnership. If the farmer is credited with the full value of the property transferred by him into the partnership as his initial capital account, then there is no gift. The partnership agreement can give the child a significant share of the profits of the business moving forward. As capital profits follow income profits, the child will receive a share in the increase in the value of the partnership property from the time of his or her admission. In addition, if the farmer has drawings which exceed his share of profits, this will over time reduce his capital account naturally. As a partner has no interest in individual assets, the only interest which can be transferred on death is this capital account. Accordingly, this natural reduction will reduce the IHT. The partnership share of the child can be increased each year without varying the partnership agreement.

*Sean Kelly, Parklane Plowden
Chambers, Leeds*



Has the Use of Hearsay in UK Law Gone Too Far?

In the British legal system, the principle of a fair trial has long stood as a cornerstone of justice. Central to this is the defendant's right to confront and challenge the evidence against them, largely through cross-examination of witnesses. However, legal developments and the increasing reliance on hearsay evidence are beginning to erode this foundational principle, leading to a growing concern that the use of hearsay in UK law has gone too far.

By **Stacey-Lee Holland**, Barrister, 2 Dr. Johnson's Buildings

Understanding Hearsay

Hearsay, broadly defined, is an out-of-court statement relied on for the truth of its contents. For example, if a witness says, "She told me the defendant hit her," to prove the defendant committed an assault, that is hearsay and traditionally, that would be inadmissible.

The Criminal Justice Act 2003 and the Expansion of Hearsay

The Criminal Justice Act 2003 significantly expanded the scope for

admitting hearsay evidence in criminal trials. The Act allows hearsay to be used during a trial in a range of situations, including when a witness is unavailable due to death, illness, fear, or when the court considers it to be in the "interests of justice."

While these provisions were intended to modernise and streamline the justice system, in practice, they have opened the door to a potentially dangerous erosion of defendants' right to a fair trial.

Instead of being an exceptional remedy, hearsay is increasingly used as a tool of

convenience, particularly in cases where witness engagement is difficult or uncertain.

Res Gestae and Domestic Violence Cases

One of the most controversial areas is the use of the *res gestae* exception, a common law principle that permits certain spontaneous or contemporaneous statements to be admitted as evidence. Originally intended for statements made in the heat of the moment, a reaction to a traumatic incident such that it could be

presumed trustworthy, *res gestae* has become a frequently invoked route for admitting untested allegations, particularly in domestic violence prosecutions.

While domestic violence is undeniably a serious issue, and victims may face complex barriers to giving evidence against their abusers, it is now common practice for prosecutions to rely heavily on *res gestae* statements from 999 calls, body-worn video footage, or hearsay from third parties. This is often done where the alleged victim is unwilling to attend trial or have withdrawn their support for the prosecution. The result? Defendants are left unable to cross-examine their accusers or to test the veracity of the account given, even when these accounts are not free flow conversation but rather borne out of questions the police have asked which contain suggestions like “did he ever control your finances” or “did he ever stop you seeing your friends”. Worse still, juries are asked to convict based on unchallenged statements made in the immediate aftermath of alleged incidents.

ABE Interviews and Sexual Offences

A similar problem has emerged in sexual offence cases, particularly those involving rape. Achieving Best Evidence (ABE) interviews, detailed video-recorded interviews with complainants, are increasingly used as the main form of evidence in chief. In some cases, complainants then later decide they do not want to be cross-examined, citing trauma, fear, or anxiety and instead of withdrawing the case or ensuring the complainant attends court, prosecutors are applying to admit the ABE interview as hearsay. This deprives the defendant of the chance to challenge inconsistencies, explore motive, or test the reliability of the allegations through cross-examination.

The impact is profound. Juries are presented with compelling pre-recorded evidence with no real opportunity for the defence to interrogate its substance. In a system that relies on adversarial testing to find the truth, this marks a serious departure from long-standing principles of fairness.

ECHR and the Erosion of the Right to Challenge

The European Court of Human Rights has repeatedly held that where a conviction is based “solely or decisively” on hearsay, it may breach



Article 6 of the European Convention on Human Rights — the right to a fair trial. Yet in practice, UK courts continue to admit hearsay in cases where it plays a decisive, sometimes central, role in conviction.

Judges may issue cautionary directions to juries, warning them about the limitations of hearsay but such directions are no substitute for meaningful cross-examination and the risk of injustice is significant and leaves those accused of a crime feeling like the criminal justice system is simply unfair, with the scales of justice tilted in favour of complainants of crime.

A Slippery Slope

What was once intended as a narrow exception has gradually become standard practice. The proliferation of hearsay in criminal cases, particularly those involving vulnerable or reluctant witnesses, reflects a shift from a system based on testing evidence to one that accommodates prosecutorial convenience.

The expansion of hearsay undermines the presumption of innocence and overtime, the reliance on hearsay will corrode core safeguards and alter the nature of criminal justice itself.

A Call for Balance

The use of hearsay must be rigorously controlled, not casually permitted. Courts should be more sceptical of attempts to rely on hearsay when the underlying witness is available but unwilling to testify. In domestic abuse and sexual offence cases, special measures already exist to support

vulnerable witnesses, these should be explored fully before hearsay is even considered.

Reform should include:

- Tighter judicial oversight on the admissibility of *res gestae* and ABE hearsay evidence.
- A clearer statutory presumption against hearsay where the witness is alive and competent.
- A reinforced application of the “sole or decisive” rule to prevent unfair reliance on hearsay.

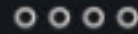
Conclusion

The criminal courts of the UK are tasked with balancing fairness, efficiency, and protection for the vulnerable but in recent years, the pendulum has swung too far toward admissibility at the expense of due process. When defendants are convicted based on evidence they cannot challenge, justice is not being done nor is it seen to be done. The system must recalibrate before these exceptions become the rule and the right to a fair trial becomes a legal fiction.

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- **Planning law** – where the impact of a planning application on UK climate change targets may be material. Such proposals may include airports, roads, oil and gas and power generation proposals. Mark has particular experience with appeals and public inquiries at airports acting both for airports and Local Planning Authorities.
- **Fiduciary Duty** – challenges as to whether Trustees or Directors have met their Fiduciary Duty in considering ESG, environment or climate change in investment decisions and risk management. Mark has a particular interest in pensions and other funds in multiple jurisdictions.
- **Greenwashing** – assembling a case against a claim, or defending the accuracy of claims made by, financial institutions retailers or producers.
- **Challenges to Government policy** – including under the Climate Change Act, carbon budgets, policy impact assessments, efficacy, proportionality, cost etc.
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