TENANT ANALYSIS, THE FUTURE AND RECRUITMENT: DISCUSSION PAPER

1. The purpose of this paper is to provide a factual basis for debate on future recruitment, either in our current premises or elsewhere. The information is based upon two analyses: (i) members of Chambers joining and departing between 2003 and 2021; and (ii) our current junior membership. The analysis of our current membership obviously involves an element of subjectivity and is partly based upon information provided by the clerks. The figures are as stated in March 2021. Since that date we have had two juniors who are leaving to practice in the north of England as from the end of June.

2. We do not have diversity statistics for this entire period and address this issue below. We have added a gender categorisation on the historical and current data.

Silks

3. We have not undertaken a separate analysis of current silks, and we do not think we need to review our recruitment policy or processes as regards silks. Applications by silks for full membership are usually made discretely; often need to be considered swiftly, and will never be granted without consulting all silks in Chambers. Able silks are always welcome as they widen Chambers' expertise, experience, enhance our reputation and add to Chambers' resources and strength.

Historical Analysis

4. Chambers was about 46 strong in 1996. Between 2003 and 2021 it grew from 70 to 110 members, a growth rate of 57%. Some patterns remained reasonably consistent throughout that period. In broad terms:

- Female membership has accounted for about one third or more of Chambers, growing from 33% in 2003 to a high of 39% in 2019.

- Silks have accounted for approximately one quarter of Chambers with some fluctuations ranging from a low of 17% (2016) to a high of 29% (2003). There are now more silks in Chambers (26) than ever before, representing 23% of all members.

- Fluctuations among the junior call bands are much more variable:

  - 0-7 years call 10% - 19%
  - 8-13 years call 11% - 28%
  - 14-19 years call 14% - 26%
  - 20+ years call 10% - 41%

- The number of juniors over 20 years call has increased over the last 10 years. There were 7 such members in 2003 (10%) rising to 41% in 2016. There are now 33 such members (30%). The figures and a more detailed analysis are set out below.

Table A: RLC 2003-202: Membership Data: Graphics

The data below slightly overstates the annual position as it includes everyone who was a member in any given year, thus including those who left in January or joined in December.

Departures can also be misleading as some people left the year they became tenants. This is particularly true when 3 tenants departed to join Fulcrum when it was set up.

The raw data is at Appendix 1.

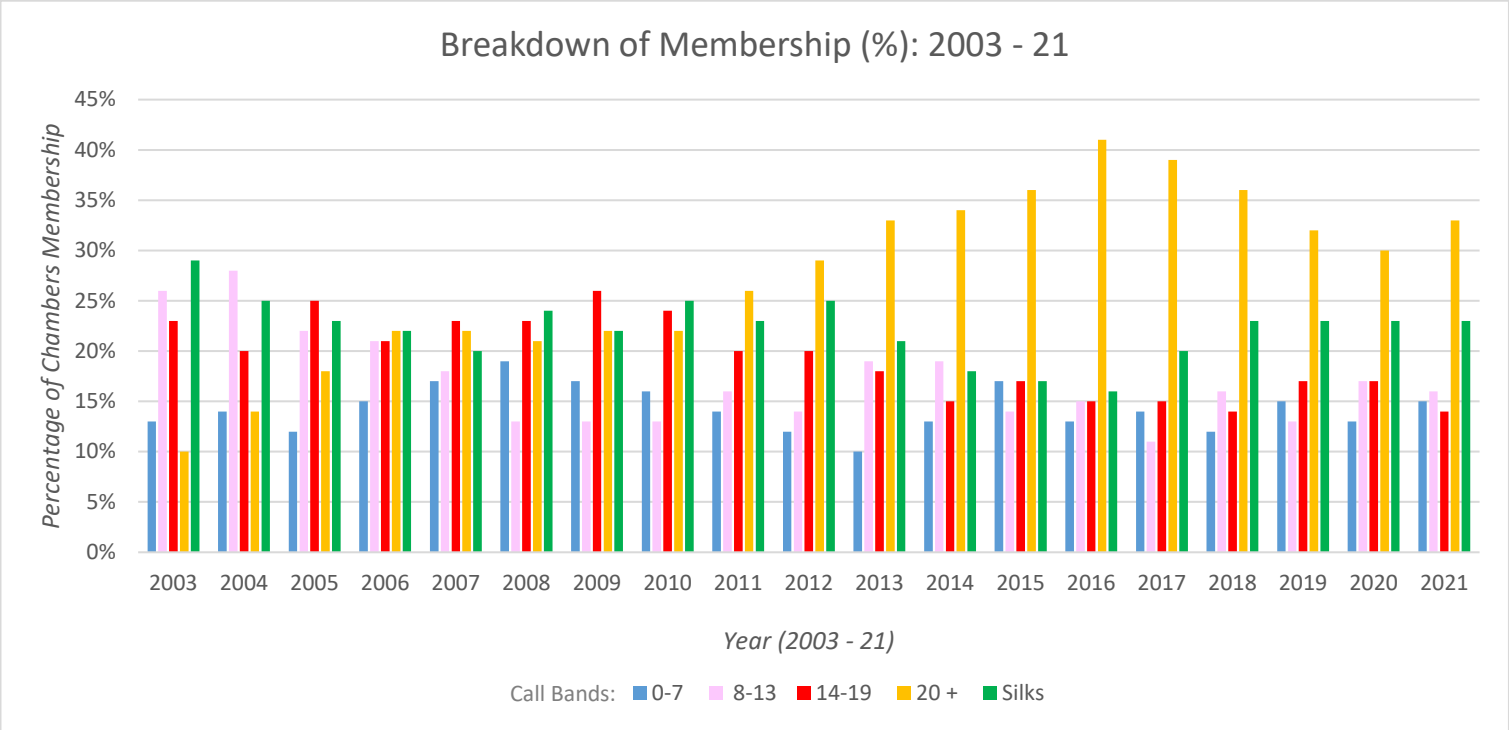


Table B: Attrition: 2003-2021

	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21
Nos.	69	78	81	85	87	90	93	96	97	95	93	96	96	87	97	108	112	109	110
Leavers	1	3	2	6	1	3	6	3	4	12	10	10	10	0	1	4	6	3	1
%	1%	4%	2%	7%	1%	3%	6%	3%	4%	13%	11%	10%	10%	0%	1%	4%	5%	3%	1%

Table C: Gender: 2003-2021

Gender	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21
M	47	54	57	58	60	64	64	64	65	62	61	63	61	58	64	69	69	69	68
F	23	26	26	29	28	27	30	33	34	35	36	35	35	29	34	40	44	42	42
M%	67%	68%	69%	67%	68%	70%	68%	66%	66%	64%	63%	64%	64%	67%	65%	63%	61%	62%	62%
F%	33%	33%	31%	33%	32%	30%	32%	34%	34%	36%	37%	36%	36%	33%	35%	37%	39%	38%	38%

Recruitment: 2003 - 2021

5. Over the period under review, about 120 members joined Chambers (50 women and 70 men). 45 of these were pupils (28 women and 17 men). 10 joined as silks and the remainder were very broadly equally distributed between call bands. Most recruitment in the 0-7 call band was through pupils, where we have the advantage of a rigorous selection process from a wide pool of applicants followed by a consistent and strong in-house training program during pupillage. The figures include at least two who joined, left and re-joined.

Table D: RLC 2003-2021: Recruitment

To be checked

6. The data has been amalgamated into 3 year periods for convenience. Accordingly, 2018 falls within the 2018-2020 bracket. Queries have been raised in the past about the rate of recruitment. Leaving aside pupils, the data shows that the 16 individuals recruited in that period, 2 were associate tenants. The majority (10) were recruited in 2018 prior to the change in leadership.

Departures

7. Between 2003 and 2021, about 83 members left Chambers. The majority of departures arose from appointments (23.75%), moves to Government Departments or prosecuting authorities (13.75%), retirement (13.75%) or departures to other sets (25%), others to solicitors or leaving the Bar.

8. Half of those left between 2012 and 2015 (42 members). Of those:

9 joined other sets or became sole practitioners and 4 joined and helped set up Fulcrum
8 appointments to the Bench
6 joined solicitors firms or foreign law departments
5 retired
4 joined NGOs / Government Departments
4 left the Bar
2 became in-house counsel

9. There appears to have been no marked gender differential in departures. In the period of highest departures, 10 (35%) were women and 18 (65%) were men.

Current Junior Membership

10. Many people think we have 84 juniors who actively practice in a prosecution set. They are wrong.

Numbers

11. Of our 84 juniors:
    - 8 members are not practising full-time members or practising at all
        - 1 sabbatical
        - 1 academic
        - 1 long secondment
        - 1 operating largely from his own legal entity
        - 2 Associate Members
        - 2 on shorter (3 and 6 month) secondments
    - 4 members are on maternity leave
    - 3 members practice international law
    - 2 members focus exclusively on advisory or investigatory work
    - 10 members undertake regulatory or civil work in whole or as part of a mixed practice, and of those 10 at least two undertake no or minimal criminal work.

Of the 15 members (excluding those in maternity leave) not currently undertaking criminal work, 7 are above 20 years call, and the remainder are divided approximately equally among all the younger call bands.

12. Despite our apparent numbers, approximately 63 junior tenants undertake criminal work and some of those also undertake regulatory work. We had 63 juniors in 2003.

13. Of those 63 juniors, 18 practice from Chelmsford. Most both prosecute and defend: 4 largely or exclusively prosecute, and 1 largely or exclusively defends, and one also undertakes some regulatory work. Most Chelmsford members practice exclusively within East Anglia although about 7 will travel to London and elsewhere. Chelmsford is currently inundated with work. 3 members based in Chelmsford are currently involved in documentary review or inquiry work.

Table F: Chelmsford Members and Inquiries

Call band	Total	Chelms -ford
20 +	29	9
14-19	10	3
8-13	17	5
0-7	14	1
Total	70	18

14. Of the 46 or so juniors based in London, about 23 are currently engaged in documentary review or inquiry work. The call spread is set out below:

Call band	Total	Doc rev/ Inquiries
20 +	29	3
14-19	10	3
8-13	17	7
0-7	14	8
Total	70	23

Regulatory Work

15. Most members who do regulatory work also undertake criminal work, but they are unable to provide the same cover for their colleagues as full time criminal members. Criminal solicitors are accustomed to diary changes and cases having to be returned and covered by others. However, in regulatory cases solicitors normally expect the person instructed to see their case through: returns are often regarded as unacceptable. Accordingly, diaries have to be prioritised around any regulatory fixtures to avoid the possibility of potential clashes, so that on occasions those with regulatory cases cannot be used to cover criminal cases as they must be kept free to ensure that they can guarantee to cover their regulatory fixtures.

16. As an aside, the growth of regulatory work is partly a manifestation of the recruitment policy of "crime +" which was instituted some years ago when it was felt that diversification of practice should be encouraged.

Prosecution or defence?

17. Of the 70 juniors (i.e. including those on maternity leave and short secondments) who normally undertake criminal court work in whole or in part, about

- 21% exclusively or largely prosecute
- 35% exclusively or largely defend
- 42% do both

18. That careful but subjective clerking analysis is supported by receipts for the last non-COVID calendar year (2019). Approximately half of junior receipts came from prosecution work, and half from defence and regulatory work. The latter represented about 12.5% of total junior receipts. Obviously, there were large variations in 2020 partly as a result of the pandemic, and partly as a result of the increase in review work, but the one income stream where turnover remained constant was regulatory.

Observations

Recruitment from Pupillage and elsewhere

19. We have tended to offer our pupils tenancies. 48 pupils have been taken on since 2003 (29 women and 19 men). We recruit our pupils because they are excellent. We can select from a large pool of applicants who are attracted to Chambers; our pupillage recruitment standards are very high; our interview processes are rigorous; and our training regime is well-tested and thorough. Chambers is very well served by the ETC, our current systems and our pupil supervisors. Subject to the assessment of the suitability of individual candidates, we hope that such recruitment continues.

20. Former Chambers pupils represent about 41% of our current juniors.

Diversity

21. Chambers needs to do more to address the diversity of its membership. Whilst we can neither advertise for applicants with a diverse background, nor exercise any form of discrimination. However, we believe that Chambers should state publicly that it encourages applicants from diverse backgrounds, and that all things being equal, would favour the applicant from a disadvantaged background on the basis that their achievements are the greater. That policy should be articulated on our website and made clear to pupillage and tenancy applicants.

> **Our pupillage section states:** ***Chambers remains committed to our outreach programme and promoting diversity, equality and social mobility within the profession.***

There is no similar statement under our Tenancy section and we think there should be.

International and Regulatory work

22. There are obvious reasons why we need to recruit some experienced juniors for this work to boost the numbers of those who undertake it.

Criminal Work

23. Criminal Work:

- Since the end of last year, we have been turning away criminal work because we cannot service it. The fact that we have a smaller number of active criminal junior practitioners than our website suggests, and the other factors mentioned above, presents a clerking and a Chambers problem which will only be exacerbated if some juniors leave. Historically, some always do.

- Solicitors are understandably reluctant to brief a junior of say 3 years call when they can get someone of 7 years eleswhere. There needs to be a significant numbers of juniors (ideally undertaking both defence and prosecution work) who

will generate returns to the junior end and work to go up the diary. Most members in chambers cut their teeth in the early years of tenancy on returns from those above them.

- There appears to be a diminution of full-time crime members in the 8 to 19 years call bracket. Partly that is historical because of the losses Chambers suffered in 2012-2015 were not always replaced in that call band. To restore a balance, we should consider focusing on recruitment in the lower middle of that range i.e. 7/9 to 14 years.

- Historically, it appears that recruitment policies were often a function of space rather than a consideration of the shape of chambers, its culture and its future.

Future trends

24. Recruitment policy cannot be discussed in isolation. Some attention and consideration must be given to possible or likely future trends at the Criminal Bar. There are two issues:

    (i) the effect of COVID on work and workflows in the immediate and medium term; and
    (ii) longer term developments at the Bar and in the legal profession. Fortunately, the Law Society has done a considerable amount of work in this field.

Covid and post-COVID

(a) The Backlog

25. As of 23 May 2021 there were 57,503 Crown Court cases outstanding with weekly receipts at about 2,100 cases.[1] That represents a rise of from a pre-COVID baseline of 39,351 cases, which was already high. The rise in the backlog appears now to have stopped: disposals now marginally outweigh receipts.

26. However, the current scenario is bleaker than it looks. Of the 39,351 post-COVID cases, all obvious sentencing cases and pleas have been weeded out. Receipts during COVID (March 2020 to date) total 122,551 cases, of which 64,414 were appeals, breaches, committals for sentence and "others" leaving 58,137 potential trial cases. During the same period, there were 7,155 trials and 3,761 "cracks", a disposal of 10,916 cases, and 30,816 cases which were vacated. 496 cases were vacated weekly in the past 8 weeks compared with a pre-COVID figure of 292 cases, an increase of 204 cases per week. The pre-COVID backlog has been largely culled of sentencing cases and other non-trial matters. The effect is that the current backlog is heavily weighted towards outstanding jury trials. It would not be unreasonable to assume that the current backlog comprises approximately 40,000 - 45,000 outstanding trials.

27. Even without ongoing receipts, 40,000 trials at a pre-COVID weekly disposal rate of 300 trials and cracks would still take over 2.5 years to eliminate. Obviously, reducing the backlog will take time. At the other extreme, over the past 4 weeks, the backlog has been reduced by 725 cases (8,700 pa), which means it would take about 5 years to clear.

28. The duration of backlog work is a factor of the difference between receipts and disposals. There is every indication that receipts are shortly going to increase as the CPS move to charge

[1] *HMCTS weekly management information during coronavirus - March 2020 to May 2021* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992440/10_6_21_weekly_MI_tables_.xlsx

outstanding matters which have accumulated over the past months. At the same time, disposals will increase as more court rooms become available. All one can do is make an intelligent estimate. The best guestimate which can be made is that the current backlog will take about 3-5 years to reduce to reasonable levels, and may well take longer depending on political will and expenditure.

(b) Increased post-COVID Workflows

29. A number of members have been undertaking charging advices. We have heard from a number of sources the CPS charging decisions are likely to increase substantially towards the end of June to deal with their backlog of cases.

30. There are now 19 Nightingale criminal court venues: London – 5; Midlands – 3; North-west – 5; South-east - 3; South-west – 2; Wales – 1. Chester, Lancaster and Birmingham are reported to be shutting by the end of June. The MoJ is reported to have negotiated extensions to 14 courtrooms.[2]

31. There are no current restrictions on sitting days. The Lord Chancellor confirmed in a speech to the Law Society on 4 June 2021[3]

> "*for the next year at least, that our crown courts will be authorised to work at full throttle, to their maximum capacity. What this means in effect is that we have removed the usual restrictions on the maximum sitting days in the crown court, so that judges are free to unleash the full potential of the courts system and they can start to work through the high numbers of cases waiting to be heard.*"

32. Providing sufficient judges may be problematic but is unlikely to be an insurmountable difficulty. We anticipate a resumption in judicial appointments, and note that Recorders are under some pressure to sit 80 days annually as opposed to their required 15 or 30 days.

33. Staffing of additional courts may prove a greater problem. Although, in the summer of 2020 it was announced an intention to recruit a further 1,600 staff for HMCTS, it is understood that there remains a 1,400 staff shortfall.[4] This appears to support Lord Burnett's observations to the Parliamentary Constitution Committee on 27 May 2021[5]:

> *"The retention problem is a really serious one for the courts service. The courts service recruits into its ranks. The pay in the courts service, at an equivalent grade, is rather less than in many other central government or public sector departments and organisations, including HMRC and the MoD. What we find happens all the time is that someone joins the courts service, is trained to do a particular job, then transfers over to another department because the pay is better. So we lose talent and experience, and this has to be filled in with temporary staff from agencies, who are more expensive.*

---

2 *Law Society Gazette*: 20 May 21. https://www.lawgazette.co.uk/news/three-nightingale-courts-to-close-next-month/5108562.article

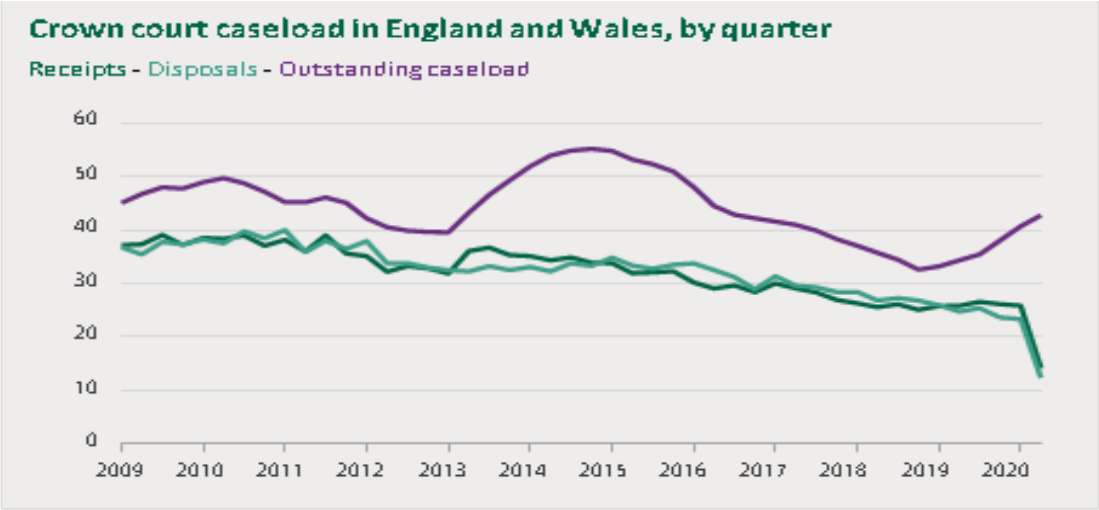
3 *Lord Chancellor outlines his plans to recover the justice system from COVID-19:* https://www.gov.uk/government/speeches/lord-chancellor-outlines-his-plans-to-recover-the-justice-system-from-covid-19

4 Ruth Cadbury: Hansard HoC Vol 696: 9 June 21: col. 1030: https://hansard.parliament.uk/Commons/2021-06-09/debates/56E70CD4-FE77-4824-AA18-0562CE707188/ProtectingThePublicAndJusticeForVictims

5 *Lord Chief Justice gives evidence to Parliament's Constitution Committee* https://www.judiciary.uk/announcements/lord-chief-justice-gives-evidence-to-parliaments-constitution-committee/ . Lord Burnett provided further detail when expressing the same views at the *Association of District Judges Annual Seminar* on 11 June 21: https://www.judiciary.uk/wp-content/uploads/2021/06/The-LCJs-speech-at-Association-of-Distict-Judges-Annual-Seminar-11-June-2021.pdf

"This has been a problem for a long time, and it has been a real disappointment the Government has not been able yet to solve it. I understand that a proposal is being developed by the MoJ to try to resolve this issue and it will require Treasury approval. It's absolutely idiotic that HMCTS recruits good people and trains them, then quickly loses them. It shouldn't be allowed to happen."

34. These measures and responses have of course to be seen against a low starting point: see graph[6] below.



There appear to have been a fairly constant backlog of about 10,000 between 2009 and 2013. These increased dramatically to about 55,000 towards the end of 2014, and fell to about 31,000 at the end of 2019. These figures have to be seen against a drop in receipts from about 40,000 to 28,000 pre-COVID.

(c) Current reduction in numbers of available practitioners.

35. There has been real reduction in the number of criminal barristers available to undertake work. The fall in work noted above, and the constant attacks on criminal legal aid are likely to have led to some criminal barristers have voting with their feet. Most accounts are anecdotal and statistics are not readily available from the Bar Council. However, what is noticeable is the change in the age profile of our criminal barristers, which is also noted by the Bar Council in their more recent statistics. Young practitioners are not attracted to the criminal Bar, and departures appears to have been most acute when legal aid cuts are threatened and implemented.

36. Although the causes are historic, the extent of the problem has been exacerbated by the consequences of the pandemic:

(ii) We are not aware of any data on the number of criminal barristers who have not survived the financial drought brought about by COVID. There must be some, although we suspect those who may have moved on are relatively small.

(iii) We are aware that a number of criminal practitioners sought work elsewhere where they could. Those who practice in other areas, such as regulatory work or inquiries, have naturally taken up additional work where they could. Others have taken secondments of varying length. The result is that many junior practitioners (i.e. those under 10 years

[6] *Court statistics for England and Wales:* HoC Briefing paper CBP 8372: 27 Dec. 20. https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf

call) have become so employed, significantly reducing the potential pool of individuals who can cover cases for others. In Chambers of the 46 juniors based in London, 23 (15 under 13 years call) are currently engaged in enquiry and documentary review and secondments.

(iv) Some sets have stopped recruiting pupils, either because they could not afford to fund them and/or because under the COVID they felt that they could not offer a proper criminal advocacy based pupillage. The result is again a reduction in the number of available practitioners.

(v) Mutual cover offered by more senior barristers is also reduced by the request that Recorders sit up to 80 days annually.

(vi) Remote hearings provided obvious advantages in minimising the transmission of COVID at the height of the pandemic. However, some courts are defaulting to face to face hearings in nearly all cases, despite appeals from the higher judiciary. This also significantly reduces the availability of counsel to cover other matters. Of course, remote hearings are not without their problems, but neither are face to face hearings where defendants may not be produced, or produced late.

(vii) From the barristers clerks' view point, listing is a lottery. In many if not most courts, listing offices are woefully understaffed. Emails are not answered, and it usually impossible to speak to a listing officer. As a result, managing an individual barrister's availability and practice has become much more of a hit or miss affair and infinitely more time consuming. Efficient clerking is being severely hampered.

(viii) There is less "slack" in the system. Some members hold instructions in double the number of cases they held 12 months ago.

(ix) We understand the pressing need to ensure that the backlog is reduced. However, that priority means that cases are often listed without warning or consultation, and sometimes away from the courts where it was anticipated they would be tried. The lack of warning or consultation reduces the likelihood that counsel originally instructed can attend. Transferring a trial to another court can also affect those practitioners who, because of child care or similar obligations, cannot undertake trial work outside a given locality. We anticipate that the problem will become more acute.

(x) Efficient use of advocates requires efficient clerking. Allowing courts the freedom to develop their own responses to COVID was a successful strategy because it permitted different solutions to be tested and the best to be adopted nationally. However, decentralisation can have unfortunate side effects.

By way of example, Chester Crown Court lists cases for mention "By CVP." However, as from 17 May 2021 according to Chester Crown Court guidance, that terminology only applies to Defendants, and not to counsel. It is misleading to say the least.

It is an example of the proliferation of guidance and protocols issued by local regions and court centres. These provide little difficulty to those who practice regularly in local courts, but become a problem for those individuals and Chambers who are only occasional users of particular courts. Obtaining local protocols and guidance from such courts is time consuming and sometimes difficult. [We are attempting to address the latter issue.]

37. Sooner or later we anticipate that Mark Bennett and one or more of the Heads of Chambers will be summoned to appear before a Crown Court judge to explain why one of our cases has

not been covered. Assuming that there has been no clerking error, and the matter has arisen because of the pressures cited above, we obviously apologise, but will also attempt to explain the current position in which we find ourselves.

(d) Longer Term Trends

38. For the past three years the Law Society has issued a series of *Horizon Scanning* reports on developments and challenges to the profession.[7] Its recent *Future Worlds 2050*[8] (FW2050) (8 June 21) looks at the key trends likely to shape the world in the coming decades, and they might impact and change the legal profession. The first FW2050 report, *Images of the Future Worlds Facing the Legal Profession 2020-2030*[9] deals with wide ranging global political, geopolitical, economic and technological developments, some of which sound fanciful, but which are based on current thinking and cutting edge developments in scientific and other research. A number of issues are raised including the obvious such as global warming, mass migration and increased cyber-crime. There is also a strong focus on the increasing use and impact of AI which was also a constant topic of the *Horizon Scanning* reports.[10] Unless otherwise stated, the issues and facts set out below are culled from those reports. Their application to the criminal Bar is not.

39. Three things can be stated with certainty. (i) Whatever threats or issues may develop as a result of global warming, mass migration and AI, they are all likely to lead to substantially increased regulation and further offences on the statute book. (ii) There will always be crime and regulatory work. The issue for us is how future developments might impact upon working practices. The most obvious of these flow from the development of Artificial Intelligence. (iii) Getting fixated on particular predictions is as dangerous as ignoring future trends. What is required is intelligence preparation and flexibility.

Artificial Intelligence (AI)

40. AI is the broad umbrella of software development for "*task assemblage, task augmentation and task substitution, including chatbots, machine learning, natural language processing and other cognisant systems.*" PwC (2019) believe that AI's job displacement effect will occur in three broad waves: 'algorithmic (until early 2020s), augmentation (to late 2020s), and autonomy (to mid-2030s). The first wave will impact relatively few jobs in terms of direct substitution – perhaps 3%. By the mid-2030s, however, up to 30% of all jobs (or the tasks therein) could be automated – mostly those involving clerical and manual tasks. Others take a more pessimistic attitude.

41. The application of AI to non-manual tasks in the law depends on algorithms, analysis and machine learning. Therefore the development of quantum computing becomes highly relevant.

---

7 Employment Trends - *Research to inform workforce planning and career development in legal services: Employment trends, workforce projections and solicitor firm perspectives*: Institute for Employment Studies: Dec 2019: https://www.lawsociety.org.uk/en/topics/research/research-to-inform-workforce-planning-and-career-development-in-legal-service
AI -*Artificial Intelligence and the Legal Professional*: May 2019 (AI): https://www.lawsociety.org.uk/en/topics/research/ai-artificial-intelligence-and-the-legal-profession
Future Skills - *Future Skills for Law*[7]: 1 June 18 https://www.lawsociety.org.uk/topics/research/future-skills-for-law
Digital Futures 12 Aug. 20 https://prdsitecore93.azureedge.net/-/media/files/topics/research/horizon-scanning-digital-futures-june-2020.pdf

8 https://prdsitecore93.azureedge.net/-/media/files/topics/research/fw2050-images-facing-legal-profession-report-june-2021.pdf?rev=1f8d3561ea994e19804dac6bf3b0a0ac&hash=56840E6B682275DA42AB6BF1AE79BA63

9 https://www.lawsociety.org.uk/topics/research/future-worlds-2050-images-of-the-future-worlds-facing-the-legal-profession-2020-2030

10

Quantum computing is "*a new method of computing potentially 100 million times faster than conventional computing and able to simulate complex scenarios, analyse patterns, solve compound problems and accelerate machine learning.*" There are none in the legal profession as yet, and they are unlikely to replace traditional computers *en masse.* However, IBM sees them as becoming mainstream within 5 years. AI with quantum computing is therefore likely to have a significant impact. There are even suggestions that implanting AI may be a reality in the longer term: it is already possible to transfer experiential knowledge from one organism to another via an 'experience chip' (effective in mice in 2020).

42. The application of quantum computing to AI will permit greater and swifter examination of data. Data collection and storage has proliferated at an extraordinary rate. The technology we already use generates 44 times the amount of data that we produced in 2009, and storage costs are relatively small. In 1964, one terabyte of storage cost $3.5 billion: today it costs $27.

43. The speed and impact of AI on legal work is difficult to predict. It's predicted AI will eliminate most paralegal and legal research positions within the next decade. Some software such as Della which accelerates the contract review process, are already well established.

44. **Document review and disclosure work** is likely to be substantially replaced because of the advantages of cost and speed. A 2018 study pitted the LawGeex AI solution against 20 US-trained top corporate lawyers with decades of experience specifically in reviewing non-disclosure agreements. The legal AI system took 26 seconds to complete the review: the human lawyers averaged over 92 minutes. The AI system achieved a 94% accuracy rate at identifying risks: the human lawyers averaged 85%. Obviously lawyer(s) are then needed to deal with the identified risks, but the initial work of identifying possible relevant documents or material from a filtered dataset is often the bulk of traditional review work. As AI becomes faster and machine learning improves, algorithms become more effective in reducing the volume of material which needs to be actually examined by a lawyer.

45. **Lawtech, Chatbots and the democratisation of law**. Digital assistants and chatbots are computer software that interface with the user, usually by speech. RentersUnion is a London organisation with a chatbox that provides legal advice on housing issues for local residents. The bot analyses a user's tenancy agreement and then helps generate letters or recommends appropriate action. DoNotPay is a free service that helped appeal over $4m in parking fines in just 21 months by successfully contesting 160,000 of 250,000 parking tickets (64% success) in London and New York. As from April 2022 in a "boost for open justice" all European and UK legal judgements will be hosted on the National Archives website.[11]

46. **T**he adoption of AI and new technologies which have the potential to reduce costs are reach the general public. This can range from sophisticated assistance to the automation of standard tasks. For example, US law firm BakerHostetler is using a company called ROSS which builds on IBM's Watson to develop a legal adviser (ROSS Intelligence 2016). Lawyers ask ROSS their research question in natural language, as they would a person, then ROSS reviews the relevant law stored in its system, gathers evidence, draws inferences and returns highly relevant, evidence-based candidate answers. ROSS also monitors the law around the clock to notify users of new court decisions that can affect a case. The programme continually learns from the lawyers who use it to bring back better results each time. At the other end of the spectrum, AI could largely replace the conveyancing, land registration, probate and other bread and butter work of the average high street firm. Members of the public will increasingly be able to access such facilities themselves.

47. AI also creates opportunities for the creation of new models.

[11] https://www.gov.uk/government/news/boost-for-open-justice-as-court-judgments-get-new-home

- Lexoo[12] began as an online marketplace for lawyers and is evolving into a 'new law' company, providing bespoke and tech-enabled teams of former big law lawyers typically on a fixed-fee basis. It now has a network of more than 1,000 lawyers covering 65 countries.

- CrowdJustice[13] selects public interest cases and invites the public to fund them.

- InCloudCounsel[14] which provides remote, flexible working opportunities for freelance US lawyers and managers.

- Farillio[15] which provides US SMEs with access to legal "how-to" tutorials, checklists, infographics, curated templates and experts on a pay-as-you-go basis.

It is perhaps worth stating that the idea of plug-in lawyers, recruited for specific tasks and/or to make up a specific task force is typical of much of our work.

48. Other possible or probable applications of legal AI include AI created contracts and criminal sentencing. Its application to criminal sentencing is inevitable. Sooner or later a program will be developed which will allow the details of the offence and offender to be entered together with responses to prompts dealing with culpability and aggravating or mitigating features, which will in turn generate the appropriate starting point and range and identify the material differences between prosecution and defence input. This will assist the judge and speed up the process by focusing attention on any fundamental differences of approach. It is unlikely to replace the need for the advocate and advocacy at the final hearing. There is no obvious reason why confiscation could not benefit from a similar approach.

49. **Regulation.** It is thought that the mismanagement and illegal use of all this technology and information will demand new regulation and legal frameworks and practices, not to mention new approaches to cybersecurity. With broader sets f regulations railing tech developments, new spaces of preventative law are likely to emerge. One report notes that given the rate of 'fast technological and social change, relying only on government legislation and incentives to ensure the right outcomes is ill-advised'. These measures are likely to be out-of-date or redundant by the time they are implemented.' Likewise, entities that develop rules in areas where there are few existing ones, stand to benefit, as exemplars in their field or trusted bastions of good practice.

50. **Online dispute Resolution.** The Master of the Rolls recently examined methods of resolving future disputes and the reform of processes to achieve resolution: *Recovery or Radical transformation: the Effect of Covid-19 on Justice Systems.*[16] He foresees that most future disputes are likely to originate on the internet because of purchases or transactions concluded online. The UK Jurisdiction Taskforce introduced streamlined *Digital Dispute Resolution Rules*[17] on 26 April 2021 to allow experts and arbitrators to resolve on-chain disputes in days rather than months or years, and to implement decisions directly on-chain using a private key, allowing also for optional anonymity of the parties. An online funnel for all civil, family and tribunal disputes is now in the course of creation. In just a few years, almost all cases will be capable of being started and progressed online. This is an area where developments in each

---

12 https://info.lexoo.com/
13 https://www.crowdjustice.com/
14 https://www.incloudcounsel.com/
15 https://www.farill.io/
16 Sir Geoffrey Vos MR: LSE: 71 June 2021: https://www.judiciary.uk/wp-content/uploads/2021/06/20210616-MR-to-LSE-Recovery-or-Radical-transformation-Covid-19-FINAL.pdf
17 https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Lawtech_DDRR_Final.pdf

of the criminal and civil jurisdictions are likely to inform the other, and AI is likely to help speed up the pre-trial process. It would be nice if it could also be adopted by Listing Offices!

51. **The effect of AI on solicitors**. The initial capitals costs of AI may prove prohibitive for some. Botchats and the applications of AI to conveyancing, land registration and probate will simply remove much bread and butter work, while simplified and streamlined AI enhanced civil processes in low level simpler cases will encourage litigants in person. Consequently, there is likely to be a diminution in the number of independent high street firms which at best will be replaced by larger, possibly franchised firms.

52. **Legal aid crime.** Firms specialising in criminal legal aid which are capable of adopting economies of scale are those most likely to survive. To maximise their returns, it seems probable they will continue employ cadres of in-house advocates to undertake routine cases in the magistrates and Crown Courts. More complex cases which require the absence of their advocates for long periods either as senior juniors or in mixed doubles will probably remain unattractive.

53. **The Criminal Bar**. Despite assurances from the Government, the costs incurred by COVID and the increase in criminal justice expenditure required to process more cases, more sitting days, and employ more judges suggest that any meaningful increase in legal aid fees should be regarded as optimistic in the short or medium term. Incomes for those with a Crown Court practice will almost inevitably increase over the next three or four years, but only because of the increase in the volume of such work.

54. One threat to traditional sets of Chambers may be the growth of virtual firms such as Clerksroom and Clerksroom Direct. We understand that Clerksroom expanded its own stable from 75 to 175 barristers in January 2020 and currently has a waiting list. They charge a percentage of fee income (15%) with other charges added if required. Clerksroom Direct was set up as Barristerweb in 2000 and now claims access to 1,000 direct access barristers. Despite the BSB's expressions of concern about their support services and collegiality, virtual sets seem likely to expand. Others are still being formed[18] and the Middle Temple website currently contains an advertisement for *barristers of at least 5 years call who would be interested in joining an exciting new Virtual set of Chambers enhanced by the latest AI technology platform* " intending to "*transform the legal landscape.*"[19] We anticipate that more minimalist virtual sets will be created with a low percentage charges or monthly fees.

55. **Chambers.** Whatever the future holds, some of it will be predictable; some will develop faster than anticipated; and some will appear from left field. Chambers must be ready to meet short-term challenges, anticipate medium term developments, and always consider longer term scenarios. We have to be ready to be nimble and flexible as well as pragmatic. A Law Society report suggests that firms must be resilient: they cannot afford to be brittle focused only on short term fixed goals. "*Antifragile organisations not only respond to shocks but seek and embrace them*." That makes sense.

56. **Recruitment.** Recruitment is currently the subject of a paper being prepared by the AMQC, AWQC and MGQC to consider criteria and business needs in the current climate. Factors of relevance to the short term appear to be:

    (i) **Current lack of cover**. We note the current lack of cover and increase in work. We also note that some sets have offered "fixed term tenancies" for 2 years and that a

---

18 Cannon Chambers (civil and criminal tax disputes) Feb 2021: https://www.legalfutures.co.uk/latest-news/tax-barrister-aims-to-make-virtual-chambers-biggest-of-its-kind.
Addington Chambers (2020): https://addingtonchambers.com/

19 6 April 20: https://www.middletemple.org.uk/noticeboard/new-virtual-chambers

large number of sets are advertising vacancies for "third 6 month" pupillages on the Bar website. We regard a major factor in our lack of cover is the growth in the backlog of cases, indifference to counsel's availability when listing, and unresponsive listing offices caused by years of underfunding.

(ii) **Pupils.** We have not recruited pupils for next year. There were excellent reasons for that. If we had done so, there would likely to have been an additional 2 or 3 tenants in Chambers during the high workload period which we foresee. If recruitment is proposed in this area, it should be on the understanding that it would have no effect on the future positions of current pupils. In the light of current workloads, that seems an undertaking which can be readily given.

(iii) **Chambers attrition.** We believe that Chambers is likely to lose about 10 -12 members from crime in the next 18 months (including those who have given notice) on the basis of past analysis and profiles:

- 3-4 members may go to the Bench as the judicial appointments process has started to ramp up.
- 2-3 members may be nearing retirement
- The "grapevine" suggests that 4-5 members will not return to criminal work, and may depart to pursue enquiry work if it is available elsewhere.