

BIRKENHEAD LECTURE
14 November 2023 at 5.30pm

THE FUTURE OF THE LEGAL PROFESSION

A DISCUSSION BY THE RT HONOURABLE LADY DORRIAN
THE LORD JUSTICE CLERK, SCOTLAND

Introduction

In 2016, a report by the House of Commons Public Accounts Committee described the criminal justice system as “close to breaking point”¹. Seven years on, many would say it has worsened. The pandemic, and consequent backlog, took its toll. But the greatest current threat is to the future of the criminal defence bar. Practitioners have been leaving criminal defence work in significant numbers, and not enough of those at the early stages of their career are entering it to replace them. If we are unable to attract and retain passionate, empathetic and talented lawyers in this crucial field, the effect on justice, the development of the criminal law and society overall will be devastating. I do not profess to have identified all of the problems, nor to have all the solutions. Rather, what I hope to do today is to highlight some of the issues, their consequences and some ways in which they might be addressed.

The Rule of Law and the criminal justice system

The importance of adherence to the Rule of Law is often taken for granted - in this country one might even say it is routinely taken for granted. That is often the way as Lord Neuberger said²:

“... in countries with a long peaceful and democratic history such as the UK..., we face the serious risk that the rule of law is first taken for granted, is next consequently ignored, and is then lost, and only then does everyone realise how absolutely fundamental it was to society.”

¹ House of Commons Committee of Public Accounts, “Efficiency in the Criminal Justice System”, First Report of Session 2016/17, 19 May 2016, accessible at:

<https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/72/72.pdf>, page 3.

² Lord Neuberger, “Access to Justice”, Welcome address to Australian Bar Association Biennial Conference, 3 July 2017, accessible at: <https://www.supremecourt.uk/docs/speech-170703.pdf>, page 4.

You will be relieved that I am not intending to trace the concept's historical origins, through ancient civilisations, to the writings of Locke and Dicey, via Magna Carta, (who did not, in fact die in vain). My focus will be elsewhere.

There are serious consequences when the Rule of Law breaks down. Take Venezuela, which ranks last in the World Justice Project index of countries respecting the Rule of Law, with reports³ indicating retroactive issuing and forging of warrants; arbitrary detention; a lack of access to a proper defence; frequent violations of the right to a fair trial; and a lack of an independent judiciary⁴. This illustrates the rights put at risk if we take for granted the importance of the rule of law.

The Hon Michael Kirby, Justice of the High Court of Australia, once said that, “[i]t is when the law protects the poor, the powerless, the vulnerable and the unpopular that it knows its finest hour”⁵. Many, if not most of the people we find standing in the dock fit into at least one, or more, of these descriptions.

To focus, however, only on the importance of protecting these rights from the perspective of those involved in the criminal justice system would be seriously to undermine and underestimate the vital significance of these issues to society as a whole. It is often observed that the Rule of Law underpins economic and social activity in the UK⁶. Data from the World Justice Project, shows a clear correlation between a strong adherence to the Rule of Law and a high GDP⁷. The quality of a country's legal institutions bears an important relationship to levels of investment, innovation, and economic growth⁸. In 2014 the then

³ US Department of State, “2022 Country Reports on Human Rights Practices: Venezuela”, accessible at: https://www.state.gov/wp-content/uploads/2023/02/415610_VENEZUELA-2022-HUMAN-RIGHTS-REPORT.pdf

⁴ *Ibid*, page 15, citing the International Commission of Jurists, NGO reports and Amnesty International.

⁵ The Hon Michael Kirby AC CMG, “The Rule of Law beyond the law of rules”, Article for Australian Bar Review (Based on part of address to 15th Malaysian Bar Association Conference, Kuala Lumpur, 29 July 2010), accessible at: [2471-ARTICLE-AUST-BAR-REVIEW-RULE-OF-LAW.pdf \(michaelkirby.com.au\)](https://www.michaelkirby.com.au/wp-content/uploads/2010/07/2471-ARTICLE-AUST-BAR-REVIEW-RULE-OF-LAW.pdf), page 15.

⁶ Lord Burnett of Maldon, Lord Chief Justice, “The hidden value of the Rule of Law and English law” Blackstone Lecture 2022, 11 February 2022, accessible at: <https://www.judiciary.uk/wp-content/uploads/2022/02/Blackstone-Lecture-2022-final2-1.pdf>, page 1.

⁷ LexisNexis, “Rule of Law Impact Tracker”, (2015).

⁸ Lord Hodge, “The Rule of Law, the Courts and the British Economy”, Guildhall Lecture 2022, 5 October 2022, accessible at: <https://www.supremecourt.uk/docs/the-rule-of-law-the-courts-and-the-british-economy.pdf>, page 2, citing Social Market Foundation, Law and the Open Economy (November 2021), accessible at: <https://www.smf.co.uk/wp-content/uploads/2021/11/Law-and-the-open-economy-Nov-2021.pdf>, page 12-13.

Attorney General, Sir Jeremy Wright, noted that adherence to the Rule of Law⁹ was “a significant reason for the success of our legal services both at home and abroad.”

Total revenue from legal services stood at around £36.8 billion in 2020¹⁰, having generated a trade surplus of £5.9 billion in 2019, and the sector provides employment throughout the UK¹¹. Five of the world’s largest law firms have their main base in the UK¹². It has long been the case that London, and the UK more widely, is a global legal hub for dispute resolution.

The reasons for this are not hard to decipher. In October last year, in his Guildhall Lecture¹³, Lord Hodge highlighted the great strengths of UK commercial laws, specifically in relation to freedom of contract, party autonomy, the certainty and predictability which may be derived from bright-line principles and that of stare decisis, and a flexibility and pragmatism which reflects commercial reality. We have world-leading commercial courts with specialist expertise. Lord Hodge was correct in describing these features of our system as enabling us to “punch above our weight”¹⁴, and he was surely right to emphasise that a critical factor in this has been a judiciary of the highest quality and integrity, independent of government influence¹⁵, as well as a robustly independent legal profession. Students of International Private Law are taught of London’s place as a primary hub for global dispute resolution. Choice of law and jurisdiction clauses favouring English law are commonplace in international and cross-border commercial contracts, no matter the origin of the parties and this has continued unabated post-Brexit¹⁶.

Lord Hodge’s comments are transferable to many of the UK’s other large cities, as he himself recognised, helping to distribute the economic benefits of the sector across all regions and

⁹ The Rt Hon Sir Jeremy Wright KC MP, “The Rule of Law and the Future of the Sector”, Attorney General speech to London Law Expos, 14 October 2014, accessible at: <https://www.gov.uk/government/speeches/the-rule-of-law-and-the-future-of-the-sector>.

¹⁰ Lord Burnett of Maldon, Blackstone Lecture, page 3.

¹¹ *Ibid.*

¹² *Ibid.*, page 4.

¹³ Lord Hodge, Guildhall Lecture, page 9-11.

¹⁴ *Ibid.*, page 11.

¹⁵ *Ibid.*, page 15.

¹⁶ QLTS Journal, “Why English law governs most international commercial contracts”, accessible at: [https://www.qlts.co.uk/blog/why-english-law-governs-most-international-commercial-contracts/#:~:text=Parties%20to%20international%20contracts%20and%20cross-border%20transactions%20often,don%E2%80%99t%20have%20any%20geographic%20connection%20with%20the%20UK,](https://www qlts.co.uk/blog/why-english-law-governs-most-international-commercial-contracts/#:~:text=Parties%20to%20international%20contracts%20and%20cross-border%20transactions%20often,don%E2%80%99t%20have%20any%20geographic%20connection%20with%20the%20UK,) citing The Law Society, “Brexit and the legal profession”, 27 January 2022, <https://www.lawsociety.org.uk/topics/brexit/brexit-and-the-legal-profession>.

nations of the UK. This is important because it is not simply a London-centric matter. Other major UK centres reap the benefit also. None of this occurs by happy accident. As Lord Burnett noted in his Annual Report of 2023¹⁷

“The judiciary and the courts underpin the rule of law. They underpin economic growth, prosperity and a settled society. They are not optional extras or just a service but one of the foundations on which all else is built.”

Continued, open and dedicated adherence to the principles implicit in the Rule of Law are crucial to the UK’s future as a leading player in the world in the field of legal services, commerce, and litigation. If this is undermined, or weakened, faith in the whole system is put at risk. Otherwise, as Lord Neuberger put it,

“society will eventually start to fragment. That is not merely a fragmentation in the sense of the gulf between rich and poor, which leads to real frictions and difficulties if it gets too wide. It is a fragmentation which arises when people lose faith in the legal system: they then lose faith in the rule of law, and that really does undermine society.”¹⁸

The question for us is how we can ensure that adherence if we cannot maintain a strong, independent and thriving criminal bar.

The importance of legal representation

A strong criminal defence profession is crucial for the proper functioning of our criminal justice system. Both north and south of the border, the high numbers leaving criminal defence, and the low numbers entering it has all the makings of a crisis in terms of adequacy of representation, protection and vindication of individual rights, and the fair operation of our systems.

Our respective legal systems have long recognised the right to representation and some form of equality of arms. In Scotland, it commenced with the Poor’s Roll, rooted in a statute

¹⁷ Lord Burnett of Maldon, Lord Chief Justice, “Lord Chief Justice’s Annual Report 2023”, 5 September 2023, accessible at: <https://www.judiciary.uk/lord-chief-justices-annual-report-2023/>, page 2.

¹⁸ Lord Neuberger, Access to Justice speech, page 4.

of March 1425.¹⁹ England was not far behind with the *forma pauperis* statute of 1495. Fast forward to the 20th century. The right to defend oneself through legal assistance of one's own choosing is enshrined in Article 6.3 of the European Convention on Human Rights and the UN's Basic Principles on the Role of Lawyers²⁰. It is a "fundamental ingredient of the rule of law"²¹. Only by providing the option for legal representation in all cases, no matter the circumstances, can access to justice and respect for the Rule of Law be maintained.

The lack of young talent entering, and staying in, criminal defence work is likely to limit the availability of choice. There are myriad reasons why lack of choice is becoming a real issue in our jurisdictions, and why there has been a significant downturn of those entering, or even remaining, in criminal defence work. I do not shy away from the significant impact of funding and resources, or lack thereof. These are matters which require to be addressed. But they are not the sole cause.

Overview of current issues

Difficulties of both recruitment and retention are the twin evils facing the criminal defence solicitor branch of the profession today; and similar issues can be seen at the Bar. The level of new entrants is reportedly inadequate to sustain the network of criminal firms in Scotland. In 2022, only 15.67% of trainees focussed on criminal law, whereas 37.34% focussed on company and commercial law²². At the English Bar, where figures for 2019/20 suggest that only 10.6% of applicants were successful in obtaining pupillage²³.

I acknowledge that the problems facing us in our respective jurisdictions, while involving some common themes, are not entirely parallel. For example, in England and Wales, the

¹⁹ APS ii, 8 (c 24)..

²⁰ United Nations Basic Principles on the Role of Lawyers, Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990, accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

²¹ Lord Neuberger, Access to Justice speech, page 4.

²² Law Society of Scotland, "Traineeship Survey Analysis: Trainee solicitor survey", November 2022, accessible at: <https://www.lawscot.org.uk/media/373848/trainee-solicitor-survey.pdf>, page 8.

²³ The Bar Council, "Bar Council Response to the Criminal Legal Aid Review Call for Evidence" (May 2021), accessible at <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>, page 43.

Law Society has spoken of “a dearth of young solicitors willing to go into criminal law”²⁴. On the contrary, in Scotland there is an appetite amongst young lawyers to enter into criminal law. One firm, Keegan Smith in Livingstone, recently reported 120 applicants, of very high quality, for a single criminal defence trainee role.²⁵ But barriers are put in their way from the earliest stages of their career. Professor James Chalmers of Glasgow University comments:

“My impression ... is that at the trainee level it is supply of roles (and the ability to fund such roles) that is the problem, not any lack of interested applicants...”²⁶.

A scheme designed to try to rectify recruitment issues in relation to criminal defence trainees, funded by the Scottish Government, was introduced in 2021, creating a Legal Aid trainee fund of £1 million, designed to support 40 legal aid traineeships²⁷. The fund was very popular and allowed small firms who had not previously employed trainees to do so. The feedback from those firms was that they found the experience beneficial and would welcome continuation of the scheme.

Another development in Scotland has been the “early admission” scheme, primarily directed at the criminal defence sector, to relieve the ever-growing pressures on legal aid firms. It enables trainee solicitors, only three months into their traineeship, to apply for admission to the Roll of Solicitors via a “restricted practising certificate”. They must have completed twenty hours of sitting in and must also have passed an advocacy course provided by the Law Society of Scotland. Once admitted on this basis, they are permitted to appear in any matter in the Sheriff or Justice of the Peace Courts. You might think that this is a good opportunity for early progression for young lawyers. For many this is no doubt true, but it is also important that trainees should not feel compelled to appear in cases they feel are beyond their present level of training and capabilities. Otherwise there is a risk that the trainee will feel insecure, and even exploited . Moreover, those responsible for allocating

²⁴ Further, in a flash poll aimed at junior lawyers, the Society asked participants if they believed that criminal law was an attractive long-term career. Only 19% of the 139 people who completed the survey said ‘yes’. Nearly all respondents were aged between 18 and 35.

²⁵ McKinney, CJ. “Meet the law students having second thoughts about criminal practice”, Legal Cheek, 12 August 2021, accessible at: <https://www.legalcheek.com/2021/08/meet-the-law-students-having-second-thoughts-about-criminal-practice/>.

²⁶ *Ibid.*

²⁷ Scottish Government, “Investment to support legal aid traineeships”, 3 June 2021, accessible at: <https://www.gov.scot/news/investment-to-support-legal-aid-traineeships/>

cases to trainees require to bear in mind the principle that, where the interests of justice so require, persons shall be entitled to a lawyer “of experience and competence commensurate with the nature of the offence” .

That is not to say that the early admission scheme should be done away with. Quite the reverse: it is a scheme which seems to have enormous potential, properly handled. The scheme recognises that for criminal defence firms a first year trainee, unable to appear in court, is of limited utility. Before the introduction of the scheme, the number of traineeships being offered by such firms was negligible. The scheme is one of the measures designed to combat this, and it should succeed, as long as the principals take sufficient care to ensure continuity of training for the trainees in question, are judicious in the allocation of cases, take time to give, and to hear, feedback and to remember that the individuals are still subject to a training contract for which the principal is responsible. The important point, surely, is that “it should be emphasised that it is about learning and development rather than increasing profits” .

Anything which tries to address the problem is to be welcomed, and these schemes are to be applauded. However, recruitment is only the start; retention thereafter remains a significant problem. For example, while not all of the legal aid traineeships have concluded, the trainees who have qualified to date have all been unable to remain at their training firm and have moved to areas outwith criminal defence work. This replicates what the retention problem seen at other levels of the profession.

The Law Society of England and Wales reports that, as of October 2022, there were just 964 firms holding a criminal legal aid contract, compared with 1,652 in April 2012; only 9.3% of all law firms²⁸. It is estimated that 290 criminal legal aid firms left the system between 2014/15 and 2019/20²⁹. The number of new practitioners who left full criminal practice

²⁸ The Law Society, “No justice without a defence: New data shows funding needed now” 11 February 2022, accessible at: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/no-justice-without-a-defence-new-data-shows-funding-needed-now>. The Law Society of Scotland has undertaken no analogous exercise but anecdotal evidence appears to suggest that the situation in Scotland is similar.

²⁹ Legal Action Group, “Report shows decline in criminal legal aid providers”, 18 September 2023, accessible at: <https://www.lag.org.uk/article/210205/report-shows-decline-in-criminal-legal-aid-providers>, citing “Summary information on publicly funded criminal legal services”, February 2021, accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf.

increased by 86% over the period. The Law Society describes the decline as “terminal”. In Scotland, in June 2021 there were 1,054 individuals registered to do criminal legal aid down from 1,415 in 2011; only 11% of all firms.

A similar pattern is seen at the Bar, with 10% drop in those in full-time publicly funded criminal practice between 2019/20 and 2020/21, and an overall reduction since 2015/16 of silks and juniors by 22% and 11% respectively³⁰. The Bar Council reports a particular exodus from the middle of the profession, with those of more than 8 years of practice moving away from dedicated criminal practice³¹. Only two weeks ago, in Scotland, a solicitor despondently reported³² his inability to find counsel to appear in a particular criminal trial.

The issues have been becoming more pronounced. The backlog, and in Scotland at least, the increased level of prosecutions, is the focus of most at the criminal defence bar at the moment. I have no hesitation in saying that they are doing an excellent job in the most difficult of circumstances. But the system simply cannot be sustained if the rates of those entering and leaving criminal defence continue along current trends.

I propose to focus on six further issues which might in particular bear on the issue of retention: perceptions about legally aided work; the potential for progression; the culture; the structural issues, with a particular focus on the business models of firms practising in the area; and funding. By no means do I suggest that this represents the entirety of the difficulties facing the criminal justice system, nor do I suggest that the order in which I address them is indicative of their priority or significance.

Specific issues: perceptions about legally aided work

Since I am trying to look to the future there is little to be gained by looking to the past. Traditionally, the professional paradigm of legal practice adopted a privileged position of

³⁰ The Bar Council, “The Impact of the Covid-19 Pandemic on the Criminal Bar” (April 2022), accessible at: <https://www.barcouncil.org.uk/uploads/assets/278149e5-0d7c-44ac-a92115a79cce2af1/Bar-Council-data-analysis-criminal-Bar-April-2022.pdf>, page 2.

³¹ Bar Council Response to Criminal Legal Aid Review, page 42.

³² Scottish Legal News, “Lawyer warns Scottish legal aid system ‘can’t cope’”, 30 October 2023, accessible at: <https://www.scottishlegal.com/articles/lawyer-warns-scottish-legal-aid-system-cant-cope>

civic morality based on access to justice and “universalistic notions of service”³³. Political and societal changes have shifted perception. There are those who look with suspicion at those who undertake legally aided work; who suggest they may be taking advantage of the system; or overstating the need for legal assistance by providing unnecessary services. Public pronouncements along these lines by prominent figures, some of whom should know better, observations about “lefty lawyers”, and criticisms of lawyers conducting certain types of case, do not help³⁴. These kind of comments fly in the face of paras 4 and 18 of the UN Principles on the Role of Lawyers, which state that:

“Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.

...

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”

Promoting such perceptions is damaging, and far from the truth. The criminal defence bar perform a crucial, and sometimes thankless, public service. Mark Fenhalls KC, former Chair of the Bar Council recently described the work of criminal barristers as “relentless”³⁵. Most of those in the know would agree with this, but the impact of changing perceptions has already been felt. In recent times, lawyers have been vilified and demonised in all quarters. Inaccurate news reporting compounds this. The result is a disconnect between the criminal justice system and those it serves, including the wider public who have a universal, but generally unacknowledged, and often not understood, interest in the safe and fair operation of the system. I do not pretend that this is a problem confined to criminal law, but it is often the assertions of “soft sentences” and “putting criminals’ rights ahead of the victim” that burn the brightest.

³³ Welsh, L. “The effects of changes to legal aid on lawyers’ professional identity and behaviour in summary criminal cases: a case study”, 2017 J. Law & Soc. 559, page 561, citing Sommerlad, H. “Criminal Legal Aid Reforms and the Restructuring of Legal Professionalism” in Young, R and Wall, D. “Access to Criminal Legal Aid: Legal Aid, Lawyers and the Defence of Liberty” (1996), page 292-293.

³⁴ Scott, J. “Summary criminal legal aid and the Law Society”, 2008 S.C.L. 1202-1204.

³⁵ The Bar Council, “New data shows extent of crisis at Criminal Bar”, 8 April 2022, accessible at: <https://www.barcouncil.org.uk/resource/new-data-shows-extent-of-crisis-at-criminal-bar.html#:~:text=New%20data%20published%20today%20reveals,figure%20had%20reduced%20to%202%2C400>.

The formula is predictable. There is a headline attack on an “out of touch” judge (pictured, for enhanced ludicrousness, in ceremonial wig), with a decontextualized snippet of the judicial remarks and a gaping absence of impartial analysis. Sentencing is a particularly easy area of criticism, where sentences can be presented purely in terms of duration, and without conveying the very nuanced issues which impact upon the decision, and which were probably addressed in detail in carefully crafted sentencing remarks.

Specific issues: progression

The lack of opportunity for progression is a factor which underlies the retention issue. Those offered qualified roles are unlikely to be offered salary packages which are competitive with those offered to their peers in different areas of the law, or indeed, which are commensurate with the scale of their duties and responsibilities. The result is that many move on. A talent gap arises, between those in the early years after qualifying and more senior colleagues, making it difficult for the former to receive proper training, guidance and experience in criminal defence. If action is not taken, this will inevitably lead to a dearth of those in more senior roles within the profession. For those with ambitions to go to the Bar, there are further difficulties. Devilling, the equivalent of pupillage, involves a nine month unpaid period of training. The Faculty of Advocates has taken steps to rectify this by offering scholarships, but this does not yet seem to have attracted significant numbers to criminal practice.

In Scotland, the common legal education of solicitors and advocates, who both require to complete a traineeship in a solicitor’s firm, ensures that a drop in numbers in the solicitor branch of the profession sooner or later carries through to the Bar and beyond. The reality is: fewer criminal defence solicitors means fewer future criminal defence advocates; fewer criminal defence advocates means fewer future criminal silks; and fewer criminal silks means fewer future judges with real and extensive experience in criminal practice. There may not be the same symbiotic relationship south of the border, but I doubt whether declining figures of solicitors and barristers can be entirely divorced from a common cause.

Connected issues include that, in criminal practice, as solicitors gain seniority, the profile of the work they require to do may change little, partly because of a lack of younger

practitioners to shoulder some of the less serious work. The overall result for younger lawyers is that disillusionment can bed in at an early stage. The Bar Council reports that pupils at Criminal sets were least likely of all to feel that a career at the Bar was viable for them. Two main issues were identified, (a) work/life balance, and (b) poor remuneration³⁶.

Specific issues: culture – work/life balance

There has certainly been a trend towards glamorisation of chasing the billable hour at ‘Magic Circle’ firms, especially US firms, international entities, and large commercial organisations, all no doubt assisted by TV shows such as ‘Suits’, ‘LA Law’, and others. Legal Cheek recently noted that:

“Kirkland & Ellis rookies reported the longest hours of any law firm in the country for the third year running. They start work on average at 9:14am and finish close to midnight at around 11:28pm...³⁷”

Those working hours, apparently newsworthy, have been the reality of some criminal practitioners for years, just without the glamour and the partner profits of \$7.38million³⁸. Criminal practitioners may need to travel miles across country to represent individuals in relatively remote locations; and to visit police stations through the night and into the early hours of the following morning, before appearing in court the following day; all against a backdrop of feeling that their work is undervalued or unappreciated. The Law Society of Scotland suggests that the culture encourages anti-social hours³⁹. One report indicated that solicitors in legal aid firms may individually be having to do the work of at least four solicitors. The perception that successful lawyers must work long hours and be available anytime, anywhere, is an enduring one, apparently reinforced by lawyers themselves. It is

³⁶ Bar Council Response to Criminal Legal Aid Review, page 44-45.

³⁷ Hussain, A. “Revealed: The extreme working hours of big-paying US law firms in London”, Legal Cheek, 26 October 2021, accessible at: <https://www.legalcheek.com/2021/10/revealed-the-extreme-working-hours-of-big-paying-us-law-firms-in-london/#:~:text=Kirkland%20%26%20Ellis%20rookies%20reported%20the,at%20around%2011%3A28pm>.

³⁸ As of 2021. See Booth, J. “Kirkland & Ellis’s new equity partners take home \$1.5m after partner track shake-up”, Financial News, 8 June 2022, accessible at: <https://www.fnlondon.com/articles/kirkland-ellis-new-equity-partners-take-home-1-5m-after-partner-track-shake-up-20220608>.

³⁹ Law Society of Scotland, “Gender Equality Roundtables: Bias” (May 2020), accessible at: <https://www.lawsco.org.uk/media/368871/bias-publication.pdf>.

considered conventional and normal at the Bar. But it is one which is damaging to wellbeing, the longevity of careers, enjoyment and job satisfaction and potentially the quality of a lawyer's output. It is an outdated, macho approach; based perhaps upon the mistaken, and outrageous, perception that the best criminal defence lawyers are invariably male and of a certain, advanced, age.

I say this was a "macho" notion, partly because over the years I have seen how a practice not only of working exceedingly long hours, but perhaps even more importantly, being seen to be working such hours seemed to be intertwined with certain concepts of masculinity and success within the profession; those who viewed Gordon Gecko and his acolytes (complete with the requisite gaudy braces) as deities. The corollary was that those who stuck to reasonable, or even contracted, hours, who would not engage with the lack of work/life balance involved, were deemed by some as unable to "handle" the long hours' culture, and viewed as somehow lesser beings. It is easy to see why this would disproportionately affect women. Shorter working patterns became shameful. Working 9-5 meant working "secretarial hours". It is difficult to shake the suspicion that this traditional approach hid many examples of an inefficient use of time. But in any event new generations do not associate long working hours with success.

Our perspective on what constitutes a healthy work-life balance has undoubtedly changed as a result of the pandemic. This is a positive thing, but there remain further opportunities for change. The demand for better work-life balance is very high; especially amongst younger legal professionals. Outside the law, as a result of this, many companies are struggling to attract and retain employees. So, what will attract young employees into the law? It seems that new lawyers may not be willing to sacrifice years of their life to climb the greasy pole, and some are willing to say no to a possible promotion in order to secure a better work-life balance. A study of Scandinavian lawyers found that 75% of lawyers aged 23-29 perceive increased demands for work-life balance as one of the most important issues facing the legal industry⁴⁰. The younger generation are also conscious of the environment;

⁴⁰ Karnov Group, "The Future of the Legal Profession, 2022 Industry Report: Scandinavian report providing insights to the legal industry in Denmark, Sweden and Norway" (September 2022), accessible at: <https://www.karnovgroup.com/en/wp-content/uploads/sites/2/2022/09/the-future-of-the-legal-profession-2022-final.pdf>, page 88; see also page 22 where it was noted that 53% of legal professionals aged 23-29 said that they want managers who see them as a person, not a work resource compared to 28% among the 50-59 age group.

49% of solicitors in this study considered it important or very important for their employer to have a sustainability policy or plan in place⁴¹. A more balanced approach from employers is sought⁴². The position now is in stark contrast to that which prevailed in the 1980's and 1990's where there was significant focus on income, salary progression and advancement within the profession.

However, the pressures of business, and economics, preclude many criminal defence firms from devising green policies and make it difficult to introduce genuine improvements to work/life balance. The effect of this on young trainees is apparent, with some trainees saying they feel “unsupported, overworked and overwhelmed”⁴³. It is hardly surprising that many young lawyers who have had this experience at the earliest stages of their career will think better of it and move onto pastures new.

One can see why. The work is challenging. A criminal defence solicitor is required to provide support to many people in their most vulnerable and desperate moments. Many of the individuals with whom the criminal defence lawyer engages have mental health difficulties, learning difficulties, personality difficulties, social isolation and other largely intractable problems. The hours are long, and the amount of travel involved may separate you from your family over extended periods. The vast majority of criminal defence solicitors in Edinburgh (87.5%) report having suffered mentally and physically from the work that they do⁴⁴. Burnout – and worse – is a real possibility. Concerns about well-being are felt both north and south of the border. The leadership of the Faculty of Advocates is acutely aware of this. A Criminal Bar Association spokesperson has referred to “daily tales of burnouts”⁴⁵. The availability of support is crucial. In Scotland, 80-85% of High Court business concerns serious sexual offences, including those against children⁴⁶. This type of work inevitably takes its toll on all concerned. Resources to alleviate secondary trauma amongst lawyers, and indeed the judiciary, are necessary. From what I can gather the experience at the English

⁴¹ *Ibid*, page 72.

⁴² *Ibid*, page 22: 53% of legal professionals aged 23-29 said that they want managers who see them as a person, not a work resource compared to 28% among the 50-59 age group.

⁴³ Law Society of Scotland Trainee solicitor survey, page 39.

⁴⁴ Scottish Legal News, “Most Edinburgh defence lawyers burnt out”, 11 October 2022, <https://www.scottishlegal.com/articles/most-edinburgh-defence-lawyers-suffering>.

⁴⁵ McKinney in the Legal Cheek.

⁴⁶ BBC News, “Law chief backs ‘non-jury’ trials for rape cases”, 3 November 2021, accessible at: <https://www.bbc.co.uk/news/uk-scotland-59151540>

Criminal Bar is similar. The Bar Council has reported that the burdens in each case have become considerably greater in recent years, involving gruelling caseloads, and consistently long, stressful hours, which are emotionally draining; workload, stress and work-life balance for criminal barristers were reportedly all worse in 2017, than in 2013. They were expected to be still worse in 2021,⁴⁷ and no doubt even worse now.

Specific issues: business models

The decline in numbers suggests that to continue to conduct this type of business in the manner of the past may be not be sustainable for the future. The archetypal, stereotypical model of a high street criminal legal aid firm is a sole trader or a relatively small partnership. But this is a stereotype for a reason; it is the trading model we most frequently see, certainly in Scotland. Such models carry with them greater risks than, for example, larger firms with a more diverse practice base, and different sections where one area may be able to pick up the slack when another is experiencing a downturn. A small firm does not have that option.

This traditional business model impacts on both recruitment and retention. The traditional criminal defence business model is to recruit at short notice. The number of criminal defence traineeships that will be on offer is often uncertain, always extremely limited and usually not known until late in a student's university career, or even until the individual has already left university. On the other hand, civil and commercial firms recruit at a much earlier stage, often in the second, certainly the third year of a four year course.

Many aspiring criminal defence lawyers are understandably anxious about delaying their application for a traineeship. The consequence is that much of the best young talent is snapped up by firms undertaking commercial or private civil work. The Crown recruits in advance too. The security of having a traineeship coming out of university, for many, is crucial. People want to begin paying off their student debt, and who can blame them?⁴⁸

⁴⁷ Bar Council Response to Criminal Legal Aid Review, page 13-14

⁴⁸ Those starting out at the English criminal Bar had debts in the range of £20-29,000 in 2019/20, a figure which is reportedly creeping up, with debts in the region of £30-39,000 in 2021/22 and 14% of applicants for pupillage having debts of over £60,000 Bar Council Response to Criminal Legal Aid Review, page 25 and 43.

Many large commercial firms finance their prospective trainees' diploma or LPC/GDL fees. Criminal defence firms simply cannot do this.

It is not necessarily lack of interest, therefore, which results in the small numbers entering, or staying in, criminal defence practice: the business model virtually ensures it. For those who have qualified, and who want to undertake criminal work, firms invariably ask for experience practising in the criminal courts, resulting in something very near to a closed shop. Contrast this with the Crown's recruitment process for newly qualified solicitors, under which anyone qualified is encouraged to apply. Criminal defence firms, especially those following the traditional small firm model, need a solicitor who can come in and hit the ground running. Opportunities to provide further training which might encourage qualified individuals to engage in criminal practice, are virtually non-existent. Thus, the consequences for an aspiring criminal defence lawyer of failing to obtain a criminal defence traineeship are often long term ones, both for the individual and for the future of the profession.

In Scotland, some of those coming to the bar from other areas of practice would be interested in undertaking a certain amount of criminal work, but may be inhibited from doing so, not through a lack of knowledge of the law, but an unfamiliarity with practice and procedure. No doubt others who would be interested in extending their practice in other different directions are similarly inhibited. There must be scope for the Faculty of Advocates to offer a degree of support to individual practice development by offering to those in the first few years of call additional courses on practice and procedure in specific fields, and in particular, given the clear problems which exist, in criminal practice and procedure.

Specific issues: Funding

There is no getting away from it: adequate funding of legal representation is critical. The need for it underlies many of the other issues which I have discussed. Legal aid has been

described as a service which the modern state owes to its citizens as a matter of principle⁴⁹. It is a right enshrined in International Instruments⁵⁰.

It is not only important that legal aid must be available. The system must operate efficiently and expeditiously. As we all know, “Justice delayed is just denied”⁵¹. Lord Bingham acknowledged the twin pillars of funding and delay in saying that,

“if denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the rule of law, delay in affording a remedy is another”⁵².

It is axiomatic that delay breeds further expense -the longer a case takes to be resolved, the more it costs⁵³. Providing adequate, efficient legal services to those who cannot afford them, at a level of experience commensurate with the offences charged, is a means of ensuring that a system operates on the basis of respect for human dignity⁵⁴, adherence to the Rule of Law and the importance of a fair trial.

So, what has gone wrong? Lord Neuberger has spoken of how eligibility for legal aid in England has been progressively reduced since its inception in 1950, from 80% then to 30% in 2008. The cost of premises and professional indemnity insurance increases. Firms cannot predict where they will be financially in two or three years’ time. It is outwith my knowledge or expertise to offer the precise solution to this issue, but investment is vital. The issue is a systemic one for government to tackle. I note the recent comments of Secretary of State for Justice, Alex Chalk, KC, where he stated that “widening access to legal aid secures

⁴⁹ Cohn, E.J. “Legal Aid for the Poor: A Study in Comparative Law and Legal Reform”, (1943) 59 L. Q. REV. 250.

⁵⁰ Article 6.3(c) of the European Convention on Human Rights provides that a person who is of insufficient means to pay for legal assistance should be “given it free when the interests of justice so require”; UN Basic Principles, paras 3 (“Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources”) and 6 (“Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services”).

⁵¹ Often attributed to Gladstone, but arguable. See Platt, S. Respectfully quoted: a dictionary of quotations (1993), Magna Carta 1215, as well as remarks from Francis Bacon, Lord Chancellor of England in 1617, and William Penn.

⁵² Lord Bingham, *The Rule of Law* (2010), page 88

⁵³ *Ibid.*

⁵⁴ José Luis De La Cuesta, “The Principle of Humanity in Penal Law”, 2011 *Int. Rev. Pen. Law.* 457, accessible at: <https://ehu.eus/documents/1736829/2010409/A+76+The+principle+of+humanity+in+penal+law.pdf>, citing Beristain, A. “Axiomas fundamentales de la Criminología ante la globalización y la multiculturalidad”, 2003 *Eguzkilore* 89.

justices and strengthens the rule of law”⁵⁵. This is rather the point I am seeking to make! To adopt what some of you might, quite properly, regard as an understatement, many in the legal profession (primarily representing criminal defence) are unhappy and disillusioned with how the legal aid system is working, and are leaving in significant numbers. The Bar Council has expressed the concern that there may not be enough criminal lawyers to represent suspects entitled to free legal advice in the next five to ten years⁵⁶.

Consequences

It is readily apparent when one sits in our criminal courts on a daily basis that the criminal defence bar is ageing. The mean average age of a criminal duty solicitor across England and Wales rose from 47 in 2018 to 49 in 2021⁵⁷. In many regions the average age was even higher⁵⁸. The same is true at the criminal Bar. Of the pool of full practice criminal barristers in 2019/20, 45% were aged 45 or over⁵⁹. While the gender make-up of the criminal defence bar, at junior levels, is changing⁶⁰, at the senior end of the profession men significantly outnumber women. The face of the profession at those senior levels, at least in criminal practice, remains male dominated. Although the profession is becoming more ethnically diverse, this is moving slowly, in Scotland at least⁶¹. The reality is that the demographic of leading solicitors and counsel at the criminal defence bar in Scotland is mostly middle-aged,

⁵⁵ Ministry of Justice, “Press release: Access to vital legal support extended to millions of vulnerable people”, 25 May 2023, accessible at: <https://www.gov.uk/government/news/access-to-vital-legal-support-extended-to-millions-of-vulnerable-people>.

⁵⁶ The Guardian, “The Guardian view on the Barristers’ strike: justice is on their side”, 4 September 2022, accessible at: <https://www.theguardian.com/commentisfree/2022/sep/04/the-guardian-view-on-the-barristers-strike-justice-is-on-their-side>.

⁵⁷ The Law Society, “Criminal duty solicitors: a perfect storm”, 12 October 2023, accessible at: <https://www.lawsociety.org.uk/campaigns/criminal-justice/criminal-duty-solicitors>.

⁵⁸ *Ibid.* In Bristol, Cornwall, Devon, East Sussex, Lincolnshire, Wiltshire and Worcestershire, over 60% of solicitors were aged over 50, the highest being 74% in Cornwall. Between 2018 and 2021, the number of duty solicitors aged 35 and under plummeted by almost 35%. In Cornwall, Lincolnshire, Wiltshire and Worcestershire there are no criminal law solicitors aged under 35 – with only one in Norfolk, Shropshire and Warwickshire.

⁵⁹ Bar Council Response to Criminal Legal Aid Review, page 24.

⁶⁰ Of the 952 criminal legal aid firms in Scotland, women practitioners between 20-40 outnumber their male counterparts: 191-128. This difference is even more pronounced at the 20-30 age group, with men representing just 35% of the total number.

⁶¹ Law Society of Scotland, “Diversity Data from 2022/23 Practising Certificate (PC) Renewal”, accessible at: <https://www.lawsocot.org.uk/media/374903/diversity-data-2022-23.pdf>. Just over 86.84% of the profession is white, with at least 4.01% of the profession coming from a Black, Asian and Minority Ethnic (BAME) background. More than 10% of solicitors aged under 30 come from a BAME background, up more than 3% in two years. However, progress is not equal across all ethnicities. For example, solicitors under 30 from a Pakistani background have increased, while those under 30 from a Chinese background have decreased.

white and male. This was recognised by Lord Scott, now a Scottish High Court judge but at the time a criminal defence practitioner when he said in 2008:

“The face of the legal profession is changing - it is becoming younger and more feminine. The face of the criminal lawyer is changing too. It is not becoming much less masculine but it is certainly grizzlier and greyer. It is like the Picture of Dorian Gray.”⁶²

The situation has not improved since then, with one young solicitor recently describing the majority of criminal solicitors he encounters as men in their 50s and 60s, even 70s in some cases.

What is the effect of this? Well, first and foremost, it makes it easy to understand why a career in criminal defence might not be the most attractive career choice for younger and more diverse lawyers, when the face of it is not one with which they feel that they can resonate. Disparities in the treatment of female solicitors by members of the judiciary, when compared to male solicitors, have been reported as recently as 2020⁶³. A female partner currently practising in a criminal defence firm in Scotland noted:

“It is a very male dominated environment and I think that the men within the profession often patronise the women. I do not think that it is intentional and I think most of the time they do not realise that they are doing it!”

None of this bodes well for the diversity of the profession, already an issue of concern, in the future.

Addressing the issues

Generally

It is not all doom and gloom. Collegiality at the Bar remains high, promoted strongly by the Inns of Court south of the border, and by the Faculty of Advocates in the north. This is

⁶² Scott, J. “Criminal lawyers: the future”, 2008 SCL 1113-1114.

⁶³ Law Society of Scotland Gender Equality Roundtables, page 5. One roundtable noted “Where your opponent is male and perhaps of the same generation as the sheriff can leave you feeling dismissed and not being treated seriously” whilst another noted that ‘regardless of how you are presenting your argument, the sheriff might try to draw in the male opponent to agreeing with his point’.

particularly strong amongst criminal practitioners, since, to quote one silk, they “are all going through the same stuff”. That this support network exists within the bar ought to encourage young aspiring criminal defence lawyers and advocates that they are not alone.

The Scandinavian study, and much anecdotal evidence, suggests that there is an appetite amongst young lawyers to do work which they think is worthwhile, and of clear value to society. There are brilliant young people who would definitely take up the baton, if we could pass it to them without dropping it. We need to make sure that the issues which are causing the drop in numbers are properly addressed. Instead of expecting young people to mould themselves to models of working which are outmoded, and clearly proving unsuccessful, we need to change those models and practices to make them better align with the expectations and experiences of the young.

1. Changes in generational attitudes

By 2025 millennials will account for 75% of the global workforce. It is reasonable to assume that the majority of trainees over the most recent intakes in the past two years are either millennials or Gen Z, generations who will: continue to push existing boundaries and demand change; hold themselves and others accountable; and be overall more persistent, more vocal and more apt than others to question and even upset the status quo⁶⁴. Millennials are often unfairly tagged with a sense of entitlement, when in reality they are merely comfortable advocating for themselves and their interests, and questioning the status quo⁶⁵. The young bring different attitudes and cultures. A survey by Deloitte Global suggests that attracting the next generation of lawyers requires a focus not solely on profit, but an emphasis on the legal profession as upholders of the Rule of Law. Most encouraging is the emphasis given to committing to causes which are important to them. Is there a more important cause than ensuring that everyone in our society has access to justice? But in order to attract these vibrant, vital individuals into criminal practice, managing culture,

⁶⁴ Deloitte “A call for accountability and action: The Deloitte Global 2021 Millennial and Gen Z Survey”, accessible at: <https://www.deloitte.com/content/dam/assets-shared/legacy/docs/insights/2022/2021-deloitte-global-millennial-survey-report.pdf>, page 2.

⁶⁵ Beheshti, N. “New Millennial Survey Finds A ‘Generation Disrupted’: How Business Leaders Can Respond”, 27 June 2019, accessible at: <https://www.forbes.com/sites/nazbeheshti/2019/06/27/new-millennial-survey-finds-a-generation-disrupted-how-business-leaders-can-respond/>.

expectations, and shifting mindsets will be essential. Recruiters will have to demonstrate a commitment to upholding the values in which these young lawyers believe⁶⁶.

2. *Legal aid*

The Legal Aid trainee fund in Scotland, which I mentioned earlier, is to be evaluated by the Scottish Government. The previous President of the Law Society of Scotland has suggested that a longer-term commitment from the Government might level the playing field between the smaller and larger firms. The Scottish Government has pledged an additional £11 million for legal aid, described by the Law Society of Scotland as a “step in the right direction”⁶⁷. In England & Wales the Ministry of Justice, on 25 May 2023, pledged an additional £25 million for legal aid every year⁶⁸.

In Scotland, the chief executive of the Scottish Legal Aid Board has encouraged reform of the system “to ensure that legal aid delivery remains a sustainable commercial prospect for private sector providers”, adding that it , “would be truly remarkable if a system designed over 70 years ago was able to respond effectively to the range of problems we see today” or encompass what we have learned about patterns of use, need, and models of service delivery. He was hopeful that there would be forthcoming legislation to make these changes.⁶⁹

In short, all the key stakeholders in the criminal justice system appear to have formed the view that the current system of legal aid is in need of reform. A common, collaborative approach to finding a solution is essential. Only then might stakeholders be able to find common ground and engage in a debate which is constructive rather than polarised. The fact that the conversations have begun is encouraging for the future.

⁶⁶ Legal Reset, “Why law firm culture must change now” (2022), accessible at: https://obelisksupport.com/wp-content/uploads/2022/03/obelisk_report_legal_reset_why_law_firm_culture_must_change_now.pdf, page 12

⁶⁷ It has called for urgent progress on a formal review mechanism to ensure the sector remains sustainable.

⁶⁸ Ministry of Justice, “Government Response to Legal Aid Means Test Review” (May 2023), accessible at: <https://www.gov.uk/government/consultations/legal-aid-means-test-review/outcome/government-response-to-legal-aid-means-test-review--3>.

⁶⁹ Scottish Legal Aid Board, “Annual Report and Accounts 2022-23” (October 2023), accessible at: <https://www.slab.org.uk/app/uploads/2023/10/SLAB-2022-23-Annual-Report-and-Accounts.pdf>, page 7-9.

3. *Technology*

Technology will also be a key driver for improved efficiency and profitability in criminal practice, particularly given the traditional business models often adopted. I speak not of Chat GPT or use of AI, although these may have their part to play. I speak of technology at a much simpler level. Electronic filing systems, online accounts and outsourced secretarial services, can all play a part in streamlining existing processes. For sole practitioners, the cost of adequate systems and support staff may be off-putting, but given the benefits which may accrue, and the efficiencies which may follow, there must be scope for re-training and upskilling existing staff in order to make the most of the resources available to them. It is important that criminal defence firms move with the times. Our respective Law Societies have a great many helpful publications, research and often free CPD training on improving IT awareness and how technology can assist in business management. LawscotTech is an initiative by the Law Society of Scotland to stimulate legal technology innovation in Scotland which brings practitioners together to consider the challenges facing the legal profession and to try to identify potential technological solutions. The Law Society of Scotland also annually hosts a free Law and Technology Conference providing 6 hours of CPD with topics including digital upskilling, breaking down barriers, and how to get the most out of tech. These are opportunities to ask whether we are truly making the best use of those assets which are already available to us.

We made enormous technological advances during the pandemic. The profession rose to the challenge and dispelled the common perception of judges and lawyers alike as unwilling to embrace new ideas. The pandemic was a catalyst for changes which were already in the early stages of development. It enabled those changes to move more rapidly and successfully. In 2021, SCTS developed a pilot project for virtual summary criminal trials to be conducted in Aberdeen and Inverness, with the sheriff, clerk, prosecutor, and witnesses all in different locations, but the accused and his agent sharing the same physical space. Such courts are likely to be a long-term fixture. Virtual custody courts for first appearances and procedural hearings are now routine. Hybrid hearings are not uncommon, with some parties being physically present and others attending remotely. The availability of virtual and hybrid models of working should be of particular benefit to the criminal Bar, enabling better case management and avoiding long round-trips for short appearances. There is no

one-size-fits-all approach, but a flexible approach appropriate to the circumstances is mandated. While there may be costs associated with securing access to the required equipment and software, there are also many savings to be made in terms of travel time and other costs. Elimination of travel also has positive sustainability outcomes, which align with the principles of young people. On a similar note, paperless files bring considerable savings as well as supporting sustainability: one Scottish firm reported that going paperless saved £100,000 per annum on stationery alone⁷⁰.

4. *Alternative business models*

Traditional solicitors' business models may be improved by moving to more dynamic ways of working. There is an appetite for change, for looking at ways of doing business outside those tried and tested – or perhaps tired and tested – structures. Alternate models operate more like a typical business than a law firm. There need be no real distinction between the two, as long as professional and ethical considerations are met. Undergraduate and Diploma students across Scotland's universities now often undertake courses in commercial awareness, as well as other modules which would assist them with the day-to-day activities, and practicalities, of running their own business. It is important that senior practitioners draw on the unique experience and knowledge of the young lawyers they employ. Or perhaps this ought to be a focus of the Law Society's essential CPD programme, in the same way that risk management training is now a prerequisite.

In 2019, the Ministry of Justice⁷¹ provided some information relating to the business models operated by criminal legal aid firms. Despite the growth of new business models and technological innovations, there was some evidence to suggest that the criminal legal aid market, and legal aid providers more generally, were not mobilising opportunities to drive efficiency as widely as those in other areas of work.

⁷⁰ Information provided by Stuart Munro, solicitor.

⁷¹ Ministry of Justice, "Criminal Legal Aid Review: Programme overview", 30 April 2019, accessible at: <https://assets.publishing.service.gov.uk/media/5ccc1408ed915d50b6c44fb9/criminal-legal-aid-programme-overview.pdf>.

For those smaller firms whose ability to invest in, and maintain, up-to-date technology is limited, more creative solutions are needed. In 2012 it was reported⁷² that 6% of those surveyed indicated an intention to seek external investment following the introduction of Alternative Business Structures. However, firms working in the area of criminal law were least likely to do so. Dispersed firms, akin to a barristers' chambers, provide another potential alternative. Virtual firms too. The term "virtual firm" originally described firms which decided to do away with a permanent physical office; many were essentially sole practitioners who worked from home, with their website the primary public-facing presence, but otherwise having familiar features of the traditional firm. Gradually, a new structure developed, under which firms and individuals joining found that it was more efficient to pool secretarial and practice management resources and possibly even to have a centralised office; this set-up became known as the dispersed firm⁷³. The burden of the heavy reliance on technology is shared in the case of dispersed firms. Other advantages are said to include: a greater degree of independence; a focus on "lawyering" rather than business operations; shared costs and increased revenue; and potential better financial health for smaller firms⁷⁴. This is likely to be an area ripe for development, and perhaps external investment.

Conclusion

The issues facing the criminal defence profession are manifold. The effect of young talent not entering this vital area will be to stunt the proper development of the criminal law. It will limit the pool of those who may become prosecutors, silks, sheriffs, recorders, crown and circuit court judges, and intermediate appeal judges. It will raise the possibility of a future senior judiciary with limited experience and expertise in the practice of criminal law. It will

⁷² Prof. Pasco Pleasence, Dr Nigel Balmer and Prof. Richard Moorhead, "A Time of Change: Solicitors' Firms in England and Wales", 16 January 2013, accessible at <https://www.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf>

⁷³ Simpson, A. "New types of business models for the legal profession", LexisNexis, 15 September 2021, accessible at: <https://www.lexisnexis.co.uk/blog/future-of-law/new-types-of-business-models-for-the-legal-profession>.

⁷⁴ The Law Society of Scotland had found that larger firms, especially those with a turnover greater than £1 million were more viable; that smaller firms, with annual fees of under £250,000, had difficulty creating a viable structure that enabled their owners to achieve earnings comparable to what they could have earned if they had been employed elsewhere and that the owners of the smallest firms that participated with fees of under £100,000 were earning just £6.65 an hour, a level below the living wage. See Otterburn Legal Consulting, "The financial health of legal aid firms in Scotland: A report for the Law Society of Scotland" (February 2017), accessible at: <https://www.lawsocot.org.uk/media/10079/legal-aid-financial-health-report-february-2017.pdf>

create a risk that individual rights are not properly protected, let alone vindicated. It will ultimately threaten adherence to the Rule of Law and with it the pre-eminence of the UK in the global legal market, and this country's economic success.

There are some encouraging signs. It seems that there are still plenty of idealistic, committed young people who have a profound belief in the Rule of Law. The problem is that the system as currently operating does not offer them adequate opportunity for entering, and remaining in, criminal practice. We, at the senior levels of the profession and the older generations, have an important responsibility to encourage and support tomorrow's lawyers, barristers and judges. Different, and more modern, attitudes are required.

Perhaps amongst the doom and gloom, we forget to emphasise enough the enormous job satisfaction that comes with practising criminal law. The work is important, challenging and constantly changing. It is very demanding, but at the same time can be exciting, even exhilarating. Criminal lawyers –prosecutors or defenders are at the forefront of protecting and vindicating individual rights when people- accused and victims – may be at their lowest. In the high-pressure, fast-paced, emotionally-charged environment of a criminal trial it takes enormous skill to have to think quickly on your feet; to react to unexpected evidence with little notice; to control a witness; to persuade twelve or fifteen members of the public with whom you have never spoken. There is the feeling of adrenaline which comes with appearing in court way more frequently than any other type of litigator, in some of the most high-profile cases in the land, which are of such vital importance to the individuals involved, as accused or witnesses, and to society as a whole. There is a pride that comes with knowing you are playing a part in seeking to deliver justice, whether from the position of the Crown or the defence. Despite the proliferation of programmes like Suits and LA Law, for the public the archetypal notion of a lawyer remains that of a criminal lawyer. Ask any member of the public what a lawyer does and they will come up with a mention of Perry Mason or Petrocelli. When a cab driver finds out you are a lawyer, they never ask what you think about the Unfair Contract Terms Act; they ask about the latest high profile criminal trial. Practice in the criminal law is an extremely rewarding, highly motivating career, and we should never forget that.

It is important to remember that we are all working towards a common goal, that our criminal justice system functions the way that it should and, as a consequence, the Rule of Law in our society is upheld. The work of the criminal lawyer is at the heart of this. It is worth recalling the words of Justice Michael Kirby:

“Where there is no independent legal profession there can be no independent judiciary, no rule of law, no justice, no democracy and no freedom”.