



BAR COUNCIL NEWS UPDATE – FRIDAY 5 MARCH 2021

Budget

[Daily Mirror](#), [Evening Standard](#), [Law Society Gazette](#), [Politics Home](#), [New Law Journal](#) – National and legal media report on the Bar Council’s initial reaction to the Budget announcement this week.

Chair of the Bar, Derek Sweeting QC, is quoted. He said: “With parts of our justice system facing unprecedented challenges, a 56,000 case backlog in the Crown Court and some victims of crime having to wait until 2023 before they are likely see justice done, it is disappointing to see no extra funding emerging from the Treasury in today’s Budget announcement.

“The Chancellor has turned a blind eye to law and order and settled for stretching last year’s commitments to cover the future survival of our justice system. It’s not enough. Although additional funding for domestic abuse is welcome, access to legal aid for the victims of this crime remains means-tested, denying the many who suffer at the hands of violent abusers living in their own homes from gaining access to justice. Once again, the Ministry of Justice, the courts and the wider justice system are the poor relations in the Treasury’s priorities.”

Justice Week

[The Times](#), [Legal Futures](#), [New Law Journal](#), [Law Society Gazette](#) – Coverage of Justice Week appears across the legal media.

Chair of the Bar, Derek Sweeting QC, Law Society President David Greene and Chair of CILEX, Chris Bone write a joint column in Times Law about Justice Week and what the justice system might look like post-pandemic.

Letter from the Chair

[Legal Futures](#), [Law Gazette](#) – Legal media report that the chair of the Bar Council has dismissed as nonsense the suggestion that it had to publicly support the barrister at the centre of a racism row over his comments on Twitter.

Jon Holbrook caused a storm of outrage for tweeting that “The Equality Act undermines school discipline by empowering the stropky teenager of colour”. It was in response to an Equality and Human Rights Commission tweet about a Black girl, Ruby Williams, who was sent home from school because her Afro-style hair breached its uniform policy and then successfully challenged it under the Act. Holbrook was expelled from his chambers soon after, although he said he had resigned four days earlier. In an open letter to **Chair of the Bar, Derek Sweeting QC**, Mr Holbrook asked for its public backing.

Replying to Holbrook’s letter, the Chair of the Bar described the suggestion that Mr Holbrook could set the Bar Council a test which it could only pass by publicly supporting his views as “sententious nonsense”. He said: “Behind all of this is a young woman, still a teenager, who brought a claim in accordance with the law. She is a student, no doubt experiencing the same pressures as the rest of her generation.

“You could have expressed your point in other ways. I wonder if the real test here is of personal judgment and empathy.”

Video evidence

[The Guardian](#) – The Guardian reports that up to 10,000 vulnerable victims facing long delays for trials should be allowed to give evidence by video in an attempt to stop them falling out of the system, according to the victims’ commissioner for England and Wales.

Dame Vera Baird warned of a collapse in confidence in the criminal justice system and an exodus of complainants if unprecedented trial delays were not urgently addressed. She accused the government of not being sufficiently ambitious in its efforts to tackle a backlog of more than 50,000 criminal cases at crown courts in England and Wales.

Mark Fenhalls QC, Vice-Chair of the Bar, is quoted. He said wanted to see the courts maximising the use of pre-recorded video cross-examination for children and vulnerable witnesses before its scope was extended. “If used more widely these measures will help mitigate the worst of the damage caused by the increasing backlog,” he said.

But he warned that an extension of the scheme was no alternative to increasing capacity in the crown courts. “All victims and complainants deserve to have their

cases heard within months and not years. My fear is that if you roll out these powers, it may distract from the urgent need to provide enough judges and courtrooms to try all cases within a reasonable period,” he said.

Damages Based Agreements

[Law Society Gazette](#) – The Gazette gives further coverage to the Court of Appeal damages-based agreements (DBAs) ruling that they are not unenforceable if they provide that the client has to pay incurred costs and expenses on termination.

The decision – the first at this level on DBAs – has been hailed as unblocking their use, including hybrid versions.

Nicholas Bacon QC, who acted for the Bar Council as intervener in Lexlaw, said the ruling would allow ‘greater flexibility’ in DBA arrangements, which is what the government had wanted.

He said: “Any solicitor doing DBA work should certainly include provision now in the agreement that allows them to be paid something for the case if the client terminates the agreement, or the client breaches it. That is solid, sound, safe territory now... But those who are more adventurous, who might well be doing a whole basket of DBA cases, may well want to put in a clause that says, “if we lose, we’re going to be paid, say, half an hourly rate or a discounted fee”, on the back of that judgment’.”

BAR COUNCIL TWEETS



The Bar Council ✓
@thebarcouncil



#Budget2021 reaction: "The Chancellor has turned a blind eye to law and order."

Full statement: barcouncil.org.uk/resource/budge...

@BarCouncilChair

Mirror

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16:49

Lawyers slam lack of extra funding as case backlog builds up

Lawyers have accused the Chancellor of turning a "blind eye" to law and order in his Budget, by failing to commit more money to invest in the justice system.

Chairman of the Bar Council Derek Sweeting QC said no extra funding being announced on Wednesday was "disappointing", although he welcomed the £19 million boost for domestic abuse support services.

The Treasury's Budget document said the Government had already provided "over £450 million in 2020-21 to support the justice system in England and Wales, including funding to ensure safety in prisons and courts and funding to reduce backlogs in the crown court caused by Covid-19".

Mr Sweeting said: "With parts of our justice system facing unprecedented challenges, a 56,000 case backlog in the crown court and some victims of crime having to wait until 2023 before they are likely see justice done, it is disappointing to see no extra funding emerging from the Treasury in today's Budget announcement.

"The Chancellor has turned a blind eye to law and order and settled for stretching last year's commitments to cover the future survival of our justice system. It's not enough.

"Although additional funding for domestic abuse is welcome, access to legal aid for the victims of this crime remains means-tested, denying the many who suffer at the hands of violent abusers living in their own homes from gaining access to justice.

"Once again, the Ministry of Justice, the courts and the wider justice system are the poor relations in the Treasury's priorities."

5:32 AM · Mar 4, 2021 · Twitter Web App

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pj1kbw @pj1kbw · Mar 2



Excellent letter from Derek Sweeting QC @BarCouncilChair. There is no place for lazy casual racism and discrimination at the Bar. That's not 'woke' it's just common decency and respect. @thebarcouncil



Kate Williams @KateRoseWill · Mar 1

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Via email: [REDACTED]

19 February 2021

Dear Mr Holbrook,

I refer to your open letter of 10th February.

I disagree with you. The Bar is a modern profession whose members hold and express a wide range of views with tolerance and respect.

As I understand it, you commented on a case in which a pupil brought a claim against her school. The school could have contested the case but chose not to do so and settled. As a result, the case was not tested at a hearing. The claim was brought under the Equality Act. You appear to take a dim view of this legislation which Parliament enacted to eliminate discrimination and advance equality of opportunity. You chose to characterise the claim as one involving the undermining of school discipline by "a stroppy teenager of colour".

No one doubts your right to express your opinions on social media but there is a constraint on your entitlement to do so. That is because you are a barrister and so subject to specific professional conduct rules which apply at all times. These include an obligation not to behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

Your letter is entirely silent in relation to this professional obligation.

Whether you have contravened the code is not a matter for the Bar Council, of which I am Chair, but for our regulator, the Bar Standards Board (the "BSB"). The BSB has set out guidance in relation to the use of social media. It includes the following:

"Comments designed to demean or insult are likely to diminish public trust and confidence in the profession. It is also advisable to avoid getting drawn into heated debates or arguments. Such behaviour could compromise the requirements for barristers to act with honesty and integrity and not to unlawfully discriminate against any person. You should always take care to consider the content and tone of what you are posting or sharing. Comments that you reasonably consider to be in good taste may be considered distasteful or offensive by others."

I understand that you resigned from your chambers some days before you were expelled because you concluded that you no longer wanted to practise as a full-time barrister and wished to have more time "to polemicise against the woke". I do not know whether those who have known you longest in a professional capacity expelled you as the result of a single tweet, as you suggest, or had wider concerns. They were entitled to form their own view as to whether it was possible for you to remain a member of chambers. I understand they have issued their own statement.

As far as David Perry QC is concerned, and as I explained in my interview with the Times on 18th January, it is not the role of the Bar Council to express views about the professional judgements of barristers who are acting within the code of conduct. Individuals may choose to comment on cases in which they are, or may be, instructed or they may choose not to. As to the other barrister you reference - Dinah Rose QC - she was subject to the cab rank rule. She did choose to comment and gave an explanation of her position which I and many other members of the Bar shared through social media. It did not need further elaboration from me.

These cases have little or nothing to do with your use of Twitter and I doubt that either David Perry or Dinah Rose would wish to be recruited to your arguments.

The suggestion that you are in a position to set the Bar Council a test which it can only pass by publicly supporting your views is sententious nonsense.

Behind all of this is a young woman, still a teenager, who brought a claim in accordance with the law. She is a student, no doubt experiencing the same pressures as the rest of her generation. You could have expressed your point in other ways. I wonder if the real test here is of personal judgment and empathy.

Yours sincerely,

Derek Sweeting QC
Chair of the Bar





The Secret Barrister
@BarristerSecret



Whack.

Good on @BarCouncilChair, giving short shrift to the "sententious nonsense" of those who embarrass our profession.

Kate Williams @KateRoseWill · Mar 1
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Yours sincerely,

Derek Sweeting QC
Chair of the Bar

12:27 PM · Mar 2, 2021 · Twitter for iPhone

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