

BARRISTERS AND SOLICITORS

SOLICITORS

Governing body

- The Law Society
- Supervises training and discipline of solicitors
- Represents the profession

Work

- Advocacy in the lower courts (magistrates' court and county court) with limited rights of audience in the Crown Court and High Court
- Most solicitors provide general advice and do 'paper work', eg writing letters, drafting contracts and tenancies, conveyancing, wills, divorce petitions
- Can form partnerships with other solicitors
- Work in ordinary offices all over England and Wales
- Approximately 75,000 solicitors

Contact

- Clients approach solicitor directly
- Solicitor decides whether or not to take the case

Qualifications and Training

- Law degree or any degree and a Diploma in Law (previously, CPE)
- Legal Practice Course (one year and approximately £6-7,000)
- Training Contract (two years paid at the Law Society minimum: £10,850 outside London; £12,150 in inner London)
- Professional Skills Course (twenty days and includes an advocacy module)
- Name added to roll of solicitors
- 16 hours of Continuing Professional Development per year for three years and 48 hours for each subsequent three year period

Promotion to the Judiciary

- Possible to all levels since the Courts and Legal Services Act 1990 (prior to this, they could only become circuit judges)

Complaints

- Handled by the Solicitors' Complaints Bureau, until 1996, which was criticised for delay, inefficiency, favouring solicitors, maximum compensation of £1,000 and not being sufficiently independent of the profession (as powers delegated to it by Law Society)
- Replaced by the Office for the Supervision of Solicitors (OSS) which has the power to award up to £5,000 compensation, reduce or abolish the solicitor's fees and force them to rectify their mistakes free of charge

- OSS assessed in the Legal Services Ombudsman's 1997 Annual Report: more user-friendly than SCB but backlogs in handling complaints
- OSS criticised by *Which?* magazine for not being sufficiently independent of the profession. It is still run by the Law Society. Complaints should be handled by a completely independent organisation
- Dissatisfied complainants can go to the Legal Services Ombudsman who can recommend that the OSS reconsider the complaint, and/or order compensation to be paid. Under the Access to Justice Act 1999, s49, the LSO can order the solicitor or the Law Society to pay compensation to the client
- Solicitors can be sued for negligence
- Solicitors can be suspended from practice or struck off by the Solicitors' Disciplinary Tribunal
- The Law Society now has greater powers to inspect solicitors' files and accounts under the Access to Justice Act 1999, sched.7

BARRISTERS

Governing body

- The Bar Council
- Supervises training and discipline of barristers
- Represents the profession

Work

- Advocacy in the superior courts (Crown Court, High Court, Court of Appeal and House of Lords) as well as rights of audience in the lower courts
- Some paper work: drafting legal documents and providing written opinions
- Self-employed
- Cannot form partnerships
- Work from chambers shared with other barristers and managed by a clerk
- Seventy per cent based in London
- Approximately 9,500 practising barristers and 2,500 employed barristers

Contact

- Usually engaged by solicitor on behalf of client
- Work on the 'cab rank' rule
- Direct access limited to overseas clients (since 1973); certain professionals, eg accountants and surveyors, under the CLSA 1990; trained CAB staff and law centres (November 1997); and now employment tribunal cases (November 2000)

Qualifications and Training

- 2(1) Law degree or another degree plus Diploma in Law/CPE
- Join one of the four Inns of Court (in London)
- Bar Vocational Course (one year and approximately £6-7,000)
- Dining at the Inns of Court now voluntary
- Called to the Bar

- One year pupillage (or two six month pupillages)
- Find a tenancy in chambers or 'squat'
- Can apply to LCD to become Queen's Counsel after ten years' experience (currently 600 also known as QC or silk)
- Forty-two hours of advocacy training in first three years of training

Promotion to the judiciary

- Has always been possible to all levels

Complaints

- Until recently, barristers could not be sued for negligent work in court as a result of the decision in *Rondel v Worsley* (1969) but could be sued for work outside court: *Saif Ali v Sydney Mitchell & Co* (1978)
- Barristers can now be sued for negligence since the decision of the House of Lords in *Arthur Hall & Co v Simons* (July 2000)
- Complaints were made to the Bar Council until a lay Complaints Commissioner appointed in 1997. Complaints Commissioner can refer complaints to a Complaints Committee who can require barristers to reduce, refund or waive fees and order compensation of up to £2,000 (although work in court was not covered because of immunity from being sued in negligence)
- Dissatisfied complainants can go to the Legal Services Ombudsman who could recommend that the Complaints Commissioner reconsider the complaint, and/or order compensation to be paid. Under the Access to Justice Act 1999, s49, the LSO can now order that the barrister or Bar Council pay compensation to the client
- Barristers can be disciplined and even disbarred by the Senate of the Inns of Court for failing to maintain the standards of the Code of Conduct

BACKGROUND OF BARRISTERS AND SOLICITORS

Class

- Largely middle class, partly due to the lack of funding for professional courses

Race

- In 1999, ethnic minorities formed 8.5% of the Bar and 5% of solicitors. In 1998 ethnic minorities formed 16% of trainee solicitors and pupil barristers
- Ethnic minority candidates find it more difficult to obtain training contracts, pupillage and tenancies: 7% succeeded compared to 45% of white students in 1993
- Five QCs out of 69 in April 1999 were from an ethnic minority

Sex

- Women make up 25% of practising barristers and 33.9% of practising solicitors (as at July 1998)

- Women earn less than men and men reach higher positions (LCD Report, *Without Prejudice*, 1994; and a Law Society survey, September 1999)
- Women make up 7% of QCs (as at October 1998); only nine out of the 69 new QCs in April 1999 were women
- The Law Society and Bar Council have issued policies to prevent sex discrimination

PERFORMANCE OF THE LEGAL PROFESSIONS

Royal Commission on Legal Services (1979)

- Reported that 84% of clients were satisfied with the work done by their lawyers, and only 13% were actually dissatisfied

Royal Commission on Criminal Justice (1993)

- Found that defence cases were frequently inadequately prepared
- Advocacy standards were low, on the part of both barristers and solicitors, possibly because of inadequate training
- Criticised pupil barristers being allowed to take on cases during their second six months of training
- More advocacy training needed
- Lawyers frequently failed to advise convicted defendants about their appeal rights
- Of those lawyers who did mention appeal rights to their clients, many seriously misunderstood the powers of the Court of Appeal

Bar Standards Review Body (1994)

- Report, *Blueprint for the Bar*, expressed dissatisfaction with the way some barristers undertake pre-trial work and advocacy

Jenkins and Lewis, Client Perceptions (1995)

- 66% were very satisfied and 23% fairly satisfied with the personal business services which they received from solicitors
- 10% were dissatisfied. Reasons for the dissatisfaction: delays, incompetence, high expense and having to chase the solicitor

Report by the Consumers' Association (1995)

- Researchers for *Which?* magazine (October 8) telephoned a number of solicitors asking for advice about simple consumer problems
- Much of the advice was inadequate or simply wrong
- Two years later, the majority of the 79 solicitors phoned gave incomplete or incorrect advice

Report by the National Association of CAB, *Barriers to Justice* (1995)

- Few clients received clear information about costs which was part of the reason why fees were often the cause of complaints

Report by the Council of Mortgage Lenders (1996)

- Slapdash solicitors were responsible for the majority of compensation claims made for poor conveyancing work
- Most of the mistakes were caused by simple carelessness rather than misunderstanding complex issues

Office of Fair Trading (March 2000)

- OFT will investigate the fees charged by lawyers and accountants. The inquiry by the Director General of Fair Trading will be completed by the end of the year

Office for the Supervision of Solicitors (April 2000)

- Report to the Law Society says that 20,352 complaints were received by the OSS in 1999
- The backlog of cases awaiting determination by a case officer is 14,907

Legal Services Ombudsman Report (July 2000)

- More than 17,000 complaints were made against solicitors last year and 568 about barristers
- The LSO was satisfied with the way complaints were handled in just 63% of cases

RECENT REFORMS

The Courts and Legal Services Act 1990

- Direct access to barristers by certain professional clients allowed
- New judicial qualifications (ensuring access to the higher levels of the judiciary for solicitors)
- Multi-disciplinary partnerships to be allowed, subject to the agreement of the Law Society and Bar Council (as yet still not agreed)
- Rights of audience in all courts should be extended to 'suitably qualified' persons (not necessarily barristers or solicitors). Applications to be made to the LCAC (see below)

The Lord Chancellor's Advisory Committee (December 1993)

- Approved the Law Society application, made under the CLSA 1990, to enable solicitors to apply for full rights of audience in civil or criminal proceedings, or both, in the higher courts
- Solicitors must have experience of advocacy in the lower courts, attend a training course (two long weekends and about £3,000) and pass a test
- Those successful are known as solicitor-advocates
- Advocacy Certificate to be renewed each year
- As at May 1998, only 624 solicitors had obtained one of the Law Society's higher courts qualifications, of whom 387 qualified to appear in criminal proceedings, 120 in civil proceedings and 117 qualified to appear in all proceedings
- Solicitor-advocates can apply to the LCD to become QC

The Lord Chancellor's Advisory Committee (February 1997)

- Announced that solicitors employed in industry or other organisations (as opposed to law firms) could apply for rights of audience in the higher courts, subject to a number of restrictions: they can only appear in preliminary hearings and not in proceedings which dispose of the merits of the case. Application was made under the CLSA 1990

The Bar Council (November 1997)

- Allowed suitably trained Citizens' Advice Bureau staff, law centres and Shelter to prepare a case for a barrister on behalf of a member of the public, without involving a solicitor

The Access to Justice Act 1999

- Solicitors will be given full rights of audience upon qualification: s36. However, this provision will not be introduced until new training requirements are brought in

In July 2000, the Bar and Law Society revised conduct rules having been approved, the following changes were introduced:

- Providing employed advocates, including Crown Prosecutors, with the same rights of audience enjoyed by lawyers in private practice: s37
- Establishing 'portability' of rights of audience for authorised advocates on a change of employed status (eg from barrister to solicitor): s39
- Enabling barristers employed by firms of solicitors to provide legal services direct to the public: s44

FUSION OF THE LEGAL PROFESSION

See Jacqueline Martin, *The English Legal System*, ch.12 p201, for details of the following arguments for and against the fusion of the legal profession.

Advantages

- Costs would be reduced
- There would be less duplication of work
- The system would be more efficient
- There would be more continuity
- Fusion would allow a later choice of specialisation to be made by students

Disadvantages

- It would lead to the loss of the independent Bar
- The specialist skills of advocacy might be lost
- The second opinion of a barrister on a case can bring an element of objectivity to it
- The 'cab-rank' principle would be lost