

New barristers: one-size-fits-all or equal opportunity?

By Antony Cheshire SC

The lot of the young is to rail against any suggestion that things were better in the *olden days*. Indeed, if history allows us to learn from our mistakes, then things should be better now. Issues such as the resurgence of the far right and antisemitism in Europe and America's retreat into insularity, however, have echoes of the early 20th century and should cause us to question whether we are indeed repeating the mistakes of history.

One of my daughters wrote on my birthday card this year: *'You're a good dad'*. Initially this seemed a rather underwhelming compliment, but it emerged that it was meant as her reassurance to someone who questions, analyses and worries. And this brings me to my pet worry for this issue, which is our system for supporting our readers and new barristers and our failure to provide equal opportunity of access.

There is a well-worn path from university to law school to a solicitor's firm, but no-one would suggest that this suits everyone: the SAB/LPAB courses have allowed many solicitors to practise without a law degree; many solicitors have come to the profession from different careers; and many now start with firms as paralegals rather than junior solicitors. A diversity of different avenues promotes an equal opportunity of access into the legal profession.

So, why are we so reluctant to embrace, promote and support different avenues for coming to the bar? Our structure has become far too rigid and there are a lot of very good candidates who have been put off coming to the bar.

Why do we tell people that they should work as a solicitor *'for a few years'* before coming to the bar? I went straight to the bar in London (in 1992) and have never worked as a solicitor. I have never regretted that, but whenever I raise it here and suggest that it might be right for some people to go straight (or early) to the bar, it is brushed off on the basis that we do things differently here. That may be so, but that does not mean that it always has to be that way.

There is a sizeable contingent that did



come straight to the bar in New South Wales, have been very successful and seem very happy with that choice. So why the resistance?

It is suggested that lawyers need to make contacts as solicitors in order to generate work when they come to the bar, but it is often the case that anticipated work from previous employers never eventuates. There may be many reasons for this, including the size of the firm, the respective areas of practice and a potential reluctance on the part of some solicitors to brief work to former subordinates.

It is then suggested that lawyers need to learn the legal system before coming to the bar, but some will have little exposure to litigation and some will receive little or poor quality instruction. Indeed, one might think that the bar is better placed to provide that instruction.

It is true that some people who have come straight to the bar have not succeeded, but that does not lead to a conclusion that no-one should. It is also true that those who come straight (or early) to the bar are likely to need greater support, at least initially, but that provides a reason to provide that support not a reason to tell them not to come. Equal opportunity should include those who wish to come straight to the bar.

There is an important albeit unintended consequence of telling students that they should spend several years as a solicitor before coming to the bar.

The traditional model here has people coming to the bar in their late 20s or early

30s, but for some women that is when they may be thinking about having children. The early years at the bar can be extremely difficult and stressful. For some women, the prospect of trying to start a career at the bar while at the same time having children (and, for at least some of them, being their full-time carer for a period) may be a disincentive to coming to the bar.

As my repeated use of the word *'some'* should make abundantly clear, I am not suggesting that this is the case for all women, but it is likely to be the case with some. Indeed, even if it is only one, then that woman has not been given an equal opportunity of access to a career at the bar.

A person who has come straight (or at least early) to the bar is then able to establish a career and reputation over 10 years or so before having children or taking time off to care for them; and it is likely to be easier to resume a career with young children than to commence and establish one.

The statistics of women at the bar may support this view. In England and Wales, where the traditional route is to go straight to the bar, women make up 52 per cent of pupils and 37 per cent of the practising bar (from a total of about 16,500); whereas in New South Wales the comparable figures are 35 per cent of readers and 23 per cent of the practising bar (from about 2,500).

Furthermore, people who come straight (or early) to the bar are likely to have fewer financial commitments at that stage of their life. Thus, for at least some people, coming to the bar in their mid 20s is likely to be a more realistic financial proposition than in their mid 30s.

Encouraging different models of access is likely to lead not only to an improvement in equal opportunities for women but also people from many different backgrounds.

During the first six months of my pupillage (equivalent to the reader's year), I was not entitled to take paid work and I spent the whole time with my pupil master: sitting in his room, doing his chamber-work and observing him on the telephone, in confer-

ences and in court and dealing with clerks, peers, solicitors, clients and judges. I did pro bono work throughout the year and during my second six months I was able to take paid work, but I stayed in his room. This meant that he was easily available to answer the stupid questions of a new barrister, which he did patiently, without complaint and indeed willingly. Other members also provided encouragement, input and support. That year provided an outstanding grounding in the legal system and the practice of a barrister.

Floor members here are generally aware of their responsibility to support new members by providing work and assistance. It is the support of the tutor, however, that is critical. In my view, it is all too often lacking, particularly to the reader who has little experience in the legal system. It is precisely this area that needs to be improved to encourage those people who wish to come straight (or even early) to the bar that there are proper support networks in place.

Many tutors see their role as providing work, either directly or through referrals and introductions, together with an open-door to the reader, but there is often little in the way of pro-active support. There appears to be a reluctance here for barristers to share rooms, but in my view readers should be encouraged where possible to sit and work in the same room as their tutor, even if only from time to time. That immediate exposure to an established barrister and his or her practice is invaluable.

The emphasis in that first year should be on learning, with earning being secondary. That raises a potential need for financial support. While initiatives encouraging equal opportunities to those at the bar, such as Equitable Briefing, are very important, the initial concern of someone looking to come to the bar is surviving that first year. We have little in place to support those from financially less privileged backgrounds.

For my pupillage year, which included six months of not taking paid work, my floor of barristers paid me £6,000 (which is equivalent to about \$22,000 in today's prices). It



Lincoln's Inn Fields Photo: Chris Winslow

was very welcome for me, but some of my colleagues could not have gone to the bar in London without it.

Floors could easily introduce such a system here, either for all readers (as was the case for me in London) or on a discretionary basis for those in financial need. By way of example, an annual contribution of \$1,000 from each member of an average floor here would provide about the equivalent level of financial support to a reader that I received. There could be a graded contribution where more senior members contribute a larger sum (as generally happens with floor fees in England) or junior members being exempt; and the reader could be required to repay a portion of the grant where their earnings exceed a certain level (as occurs in some chambers in England).

I think we have become complacent or lazy in accepting a standard model for how people come to the bar without considering that there are some people who would thrive outside of that model or simply would wish to do things differently. We need to improve the support for the readers and new barristers, in particular in the level of input from

their tutors and, where it is needed, financial input from the floors.

I have been judging the Law Society schools' mock trial competition for many years. After giving feedback on the performances and before giving the scores, I always tell the students that the bar is a wonderful profession, but it is hard and you have to really want to do it. Relevantly here, I tell them there are many different ways of coming to the bar and that for some it may be better to come straight (or early) to the bar: there is no normal! Some of them have done work experiences with me and it is inspiring to see some of them now commencing their legal careers. They are from many different backgrounds and I would like to be able to reassure them that the support they may need at the bar will be available. At the moment, I am not sure that is the case.