

Opening of the Legal Year 2018

Friday 28th September 2018

Chairman's Speech

1. I returned to chair the Bar Council in an acting capacity last November, on the standing down of my immediate predecessor Keith Azopardi, and at the annual general meeting in April this year I was elected to the substantive post.
2. Before reporting on the main work of the Council in the last year, I wish to acknowledge the presence today of Lord Lloyd-Jones a most distinguished Justice of the Supreme Court of the United Kingdom and a member of the Judicial Committee of the Privy Council, who shall be joining us at the Bar Lunch later today as guest speaker.
3. I also want to record the fact that since last year's Opening, tributes were expressed in this Court on the death of Sir Brian Neill and that of Sir William Aldous. They were both very experienced and highly-respected members of our Court of Appeal, in the case of Sir Brian as President, coming to us after their respective distinguished judicial careers in England and Wales, latterly as Lords Justices of Appeal. Both of them left marks on our jurisprudence, invaluable and indelible in equal measure.
4. Turning to the business of the Council, the most significant pending matter is the implementation of the Legal Services Act, which, I acknowledge, has not seen the progress that was envisaged this time last year.
5. However, progress has been made in identifying nominees for appointment to the Legal Services Regulatory Authority, the new regulatory body created by the Legal Services Act, without which the Act would simply not get off the ground. Also a road-map for implementation of the Act is in the course being laid out, bearing in mind that different sections of the Act have to come into operation before others. A prime example is that the LSRA members need to be appointed, and therefore that part of

the Act commenced, before the post of Chief Executive Officer can be advertised and filled.

6. Much has already been said publicly about the Act which I will not repeat. However, I will restate that the Act represents a major, modernising reform of the regulation and delivery of legal services in Gibraltar – not just by lawyers in private practice, but also those in Government service, in private business where they act as in-house counsel, legal executives, law costs draftsmen and as EEA or registered European lawyers. Whilst My Lord remains the final authority on matters of admission, discipline and regulation, the functions are delegated to the Legal Services Regulatory Authority, whose day-to-day business is handled by its Chief Executive Officer.
7. For its part, the Bar Council is replaced by the Law Council, created by statute and membership of which, increased to include the categories of providers of legal services which I have just mentioned, is compulsory.
8. This comprehensive reform comes at a price, in the form of annual fees payable mainly to the LSRA with a smaller percentage to the Law Council. However, in the view of those of us who started this process of reform 9 years ago, Government who took on the legislative reform, Parliament which passed it coupled with the lack of objections in the consultation process, it is a price worth paying. Indeed it is a small price to pay to maintain the highest standards of delivery and quality of legal services for the benefit of the public within a regulatory framework which sits well with regulation of professions in the modern age.
9. And this brings me to the Code of Conduct, on which significant progress has also been made in the last year. The creation of a new Code custom-made for Gibraltar was specifically provided for in the Legal Services Act. One of the anomalies which the legal profession has had to grapple with over the years is that whilst most of us had entered practice after qualifying as barristers, later solicitors have been admitted and both professions have practised as a fused profession. Therefore practitioners have found themselves subject to the English conduct rules of barristers and those of solicitors,

somehow trying to establish what part of their professional conduct should be governed by the Bar rules and which would be governed by the solicitors' rules. This sometimes gave rise to conflict, and usually to a confusing picture, of no use either to the client. It was a problem that could only be resolved by creating a Code of Conduct for a fused profession, which is what has been done, having been modelled on the New Zealand Code of Conduct, covering also in-house counsel, legal executives and law costs draftsmen. It will come into force when the Act is fully commenced, although the Bar Council has recommended that it should be distributed to all those who will be subject to regulation beforehand, so as to familiarise themselves with its content ahead of commencement.

10. The reform of legal assistance was concluded with appropriate publicity in the last year, the product of Government proposals and contribution from the Bar Council. Again, I shall not repeat what has already been said publicly on the subject, save to say that whilst not all Bar requests could be accommodated, and some cases will be subject to scale fees, the two key reforms did go through. These were that the income and capital thresholds have been raised very significantly (from £5,000 to £14,000 and from £350 to £10,000 respectively), thus increasing the number of persons who are eligible for legal assistance, and the rates payable to practitioners have also increased to more realistic levels.
11. Alongside this reform the Bar Council has also worked towards creating a Duty Solicitor Scheme which the Government was keen to implement. It will run alongside the Legal Aid Scheme, in that lawyers who choose to be on the legal aid panel, also have to join the Duty Solicitor Scheme. The uptake has been good. The DSS will ensure that every person in custody will have the opportunity of legal representation at the start of detention, 24 hours a day, 7 days a week and 365 days a year. The DSS goes live next Monday, 1st October, albeit as a pilot project for review before the final first year is up. I take this opportunity to thank Kenneth Navas who has greatly assisted me in both the legal assistance reforms and the creation of the Duty Solicitor Scheme.

12. The Bar Council was asked to comment on the Government's proposal to peg the Discount Rate to be applied to special damages in personal injury cases to that in the UK. The Council repeated earlier submissions that the rate should be specific to Gibraltar, and when the matter was raised at our AGM, it was evident that there were two opposing positions, that expressed by those representing victims and those representing defendants and, more importantly, their insurers. Coupled with this reform the Bar Council also proposed that guidelines for assessment of general damages should be set by My Lord and, less controversially, that periodical payments should be formally introduced.

13. There are two other items of work being undertaken which I want to highlight. The first is that we have requested that My Lord revise upwards the hourly rates which are applied on summary assessment, which were last reviewed in May 2000. We are in the process of gathering information on current rates to enable you to make an informed decision. We have also requested that the court-users' forum be reinstated so that matters of mutual interest to the judiciary, the court service and the profession can be discussed and aired. I have received a number of topics to be raised at the first meeting. These are with regard to work in this court and also in the magistrates' court.

14. I have had the good fortune of enjoying the support of the Council members, not just in the business that I have referred to but also on other matters. The current composition of the Bar Council is relatively young. I am the only silk and apart from Andrew Haynes and Kenneth Navas, its members were all called post the year 2000. One positive aspect of its composition is its keenness, enthusiasm and vigour. They certainly keep the chairman on his toes. However, not all places have been taken up and as we move towards transition into the Law Council with compulsory membership for the wider catchment of members which I have already referred to, I expect the composition of the Council to broaden.

15. There is a kind of expectation, if not a loose tradition, that on the occasion of the Opening of the Legal Year, the Chairman of the Bar raises or comments on a topical and possibly controversial subject. However, that doesn't mean one should scratch around to find something to say that fits the bill. There is always what could now be termed the old chestnut of Brexit and attempt a forecast as to how it may play out from the perspective of our legal system and our daily lives whether as judges or lawyers. It is undoubtedly the case that for those of us who have lived by the Brussels Regulation on civil and commercial matters in its original and recast forms and the original and subsequent forms of the Insolvency Regulations, amongst others, not to mention the transposition of dozens of EU Directives, life after Brexit will never be the same, however much we are told that these legal structures and concepts will somehow remain in place in some other form. The reality is that no-one can fully and reliably predict where we will be in a few months' time, and this applies to the legal as much as to the political world. So no headlines from me there.

16. Instead, on this occasion I wish to reflect on the significance of this event, its *raison d'être*, what it represents and its real and tangible hopes and aspirations for the coming legal year. Again I am afraid that for the headline hunters none of that is controversial. But it is worth remembering that, for all the pomp and ceremony, today's event is fundamental to the proper workings of the administration of justice and more important, the meting out of justice, in accordance with the rule of law of our democratic society. We are all committing ourselves to upholding that rule of law and all that it entails, a fair hearing before an impartial tribunal, and fearless and wholly committed representation regardless of the circumstances of the case and of the individuals who find themselves before a judge. Today we also duly record the crucial work which the staff of the Court Service are called on to perform behind the scenes in order to keep the administrative wheels well-oiled and in proper working order.

17. The commitment we make, whether as judges, lawyers or administrators in our day-to-day work, is therefore fundamentally important to the survival of our society as a free and fair one. Those who attended the Red Mass this morning would have received their annual dose of spiritual strength, guidance and wisdom for the year ahead. Those who did not, will rightly draw important temporal sustenance for the year ahead from the true meaning of today's proceedings.

18. With those sobering sentiments squarely in mind I second the motion that the Legal Year be opened.

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