

BACFI

**Bar Association for Commerce,
Finance and Industry**



**Response to Questions posed by
The Rt. Hon. Sir Paul Kennedy on the structure,
composition and membership of the Bar Council**

March 2007

Response to “Kennedy” Working Party

The Bar Association for Commerce, Finance and Industry (“BACFI”), which was founded in 1965, represents members of the bar who work in-house or provide legal services outside chambers. Amongst its members are those who, although called to the bar have been unable to obtain a practising certificate under the current regulations, the group formerly known as non-practising barristers.

BACFI is keen to play its part as a representative organisation in helping shape the development of the bar of England and Wales, by bringing forward the views of its members and pressing for appropriate change. BACFI actively supports the objective of an independent and high quality bar, accessible to all.

This response is based on the questions posed by Sir Paul Kennedy in his article in Gray’s News and as part of the current debate.

Who should the Bar Council represent?

The Bar Council as a professional representative body should represent all barristers (i.e. all those who have been called to the Bar) provided they pay a subscription to the Bar Council. All those paying a subscription should be allowed to vote in Bar Council elections. The disenfranchisement of non-practising barristers in the 2000 reforms was felt very keenly by that group and their voting rights should be restored. We are aware that there is a separate consultation on the question “Who should the Bar regulate”. We do not comment on this aspect except to recognise that the use of the title barrister to signify both:

- a) someone who has been called to the Bar; and
- b) someone who has the right to practise at the Bar

has caused many difficulties. However, we feel that it was wrong in the 2000 reforms to recognise only those barristers who had the right to practise. Although there was a 5 year transitional period for non-practising barristers to qualify for practising rights, the rigidity of the waiver requirement meant that very few were successful.

How should the Bar Council be constituted?

The structure of the Bar Council and its Committees has always seemed to us to be rather unwieldy although we recognise that here are many constituencies which should be represented. Under the present structure there can be several sub-committees/working groups looking at the same issue and there needs to be much better streamlining of and co-ordination between the various groups. For example the issue of Training for the Bar, with which BACFI is particularly concerned, seems to be covered by many different groups.

Employed barristers registered as such with the Bar Council represent about 25% of the total Bar and should therefore have corresponding representation on the Council and relevant Committees. The Non-practising Bar in its widest sense (all those called to the Bar but not having a practising certificate) is the largest constituency of all but yet currently is not represented. Estimates of numbers (based on figures supplied by the Inns) range from 25-30,000. Many of these are retired, overseas or working in a non-legal environment. However, there are also many who are doing legal work but because of the practising rules (pupillage and three years supervised practice) are unable to obtain a practising certificate. Numbers are difficult to estimate but they are increasing year on year as the number of those passing the BVC and not able to obtain a pupillage is added to those who have not been able to obtain a pupillage in previous years. The “non-practising” bar should be represented on the Bar Council, as was the case immediately after the 2000 reforms. We are not clear why this representation was discontinued. The Employed and Non-Practising Bar Association, which represented such barristers, merged with BACFI in 2003 and BACFI can nominate an “NPB” representative.

How should members of the Council be appointed

Currently members of the Council are either appointed by the organisations they represent or elected in two separate elections for employed and self-employed barristers. There are also certain ex-officio members.

We believe that the appointed representatives should have been elected to that role by members of the organisations they represent.

We believe that at least 60% of seats on the Council should be for elected representatives. There should also be a review of which organisations should have a nominated seat. BACFI has one seat as a specialist Bar Association and the Chairman of BACFI is an ex-officio member of the Council. We believe that at least this level of representation should continue. BACFI members also stand for direct election and currently two of the Employed elected members are BACFI members.

Much of the work of the Bar Council is carried out in Committees and Working Groups. The opportunity should be taken to review the system of how the membership of a committee is decided. At present members of the Bar Council are asked to state the preferred committee they would like to serve on. The decision seems to rest with the Chairman of the Bar in consultation with the committee chairman. There is also an opportunity for non-Council members to apply to be co-opted. Whilst the present system appears to work there is a lack of transparency. It is possible that a committee could be ‘packed’ and potentially ‘awkward’ people excluded. If committees are to conduct more business then the lack of transparency in appointments must be addressed.

The current regulations require some committees but not all to have an employed bar member. All Committees should have at least one member of the employed bar. It may be argued that the employed bar has its own committee, the Employed Barristers Committee. Often this Committee responds to the deliberations of other committees but this is not a substitute for participating in decision making at first hand.

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BACFI supports the work of the Bar Council and is keen to see the Council as a strong and supported representative body. We should be happy to provide any further information to the Working Party.

Stephen Bacon, Chairman
Bar Association for Commerce Finance and Industry
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