



Back to the Bar Update: The Impact of Covid-19

Consider the Carers

May 2020

1. In [Back to the Bar](#) 2019, WCWF published evidence showing that two-thirds of those who left the Bar over a six-year period were women. Almost all the men who left became judges or retired after long careers. The vast majority of the women who left dropped out mid-career, citing the difficulty of balancing work and family life. In our [Best Practice Guide for Retention and Progression after Parental Leave](#), we recommended evidenced based, practical steps which the profession should take to support, retain and promote women at the Bar.
2. Today, Covid-19 working practices threaten further significant and disproportionate attrition of women from the Bar. In this paper, we highlight these risks and recommend practical steps to minimise them.
3. The pandemic brings pressure to all self-employed Barristers. Most Chambers recently [surveyed](#) by the Bar Council have said they cannot survive beyond 12 months. A staggering amount of work has been undertaken across our profession to gather evidence, find solutions and offer guidance wherever possible to minimise the risk of the self-employed Bar disappearing.
4. Our concern focusses on the primary carers, who are disproportionately women. This paper highlights the risks to their careers and makes a single recommendation to help ensure that one of the long-term implications of Covid-19 is not a loss of diversity at the Bar.
5. Our single recommendation to the Judiciary, HMCTS, specialist Bar Associations and Chambers is this:

CONSIDER THE CARERS:

When issuing any guidance/ directions, whether national or local, consider:

- How will this affect a practitioner with caring responsibilities?
- Can reasonable adjustments be made to minimise the impact?

The Issues

Caring and Hearings:

6. A key finding of our [Back to the Bar](#) survey in 2019 was that most women who left the Bar cited the difficulty of balancing work and family commitments as a factor in their decision to leave. It was overwhelmingly the case in our responses that female practitioners had primary care of their children, and primary responsibility for arranging childcare.

7. Covid-19 restrictions have meant a loss of commercial and gratuitous child care and patchy and part time availability of schools.¹ Many practitioners have to combine childcare and home-schooling responsibilities whilst also trying to keep meeting professional commitments and maintain some income.

8. Members of the Western Circuit tell us the unpredictability and delays of remote hearings jeopardise this. As one respondent put it:

'By the time I had waited 90 mins, my husband had had to start his work call and I had 2 children in tears (in the next-door room where I had asked them wait quietly).'

¹ Whilst barristers are classed as 'key workers', we hear many schools open only for children of 'critical workers'; where open, the school day is shorter than the court day.

9. It is therefore concerning when Guidance issued by the Judiciary - our example is from the [Guidance for the Conduct of Remote Costs Hearings](#) – fails to recognise the practical problems but indeed compounds them with a threat of adverse costs:

“[37] In all remote hearing cases the parties must recognise that the hearings may not commence at the appointed time and/or conclude in the time estimate and must make themselves available well beyond the time allotted to allow for such contingencies which may include technical difficulties or cases running over. Legal representatives are reminded that it will not be appropriate for them to expect to be able to conduct multiple hearings in proximity of time as a consequence of these matters and costs orders may be made against them if they are unable to attend as required.”

10. It is clear that there will be no return to ‘normality’ in the short term. Re-opening Courts for more substantive hearings is to be welcomed, but may increase practical difficulties for primary carers until commercial and gratuitous child care has returned to normal.
11. Before she could accept a court brief, the practical arrangements for a primary carer of young children to overcome are legion. The strong possibility is that she will have to return the case.
12. This problem can be reduced by considering the carers and making reasonable adjustments when the ‘triage’ process that will precede all in person court hearings occurs.

Finances and Returning to Practice:

13. The financial impact on women is disproportionate.
14. Reduced income for carers and increased costs on return: we are concerned that as lock down is eased, a chronic problem will emerge. As long as practitioners are required to home educate/ shield vulnerable people, their incomes will be diminished. On eventual return to normality, with a non-existent or reduced aged debt, the costs of getting back to the Bar are likely to be prohibitive for many.²
15. Reduced cushion from previous earnings: In **WCWF's Response to the Coronavirus Self Employment Income Support Scheme**, we set out our concerns that the **£50,000** threshold test to qualify for the Coronavirus Self Employment Income Support Scheme discriminated against primary carers who had incurred significant child costs in order to earn the previous years' income. These practitioners will often not have had sufficient previous income to save for these rainy days.
16. Reduced income for the more female sectors of the Bar: the financial challenges of the publicly funded Bar prior to the pandemic are well known. It has consistently been established that women disproportionately practice in the publicly funded areas of law (such as crime and family). These are predominantly 'court based' compounding the issues faced by primary carers.

² For practical assistance with returners, please see WCWF's Back to the Bar Best Practice

Our Recommendation to the Judiciary and HMCTS and some Suggestions

Recommendation: ‘Consider the Carers’

When issuing guidance on new court processes, or ways of working, whether nationally or locally, take into account the practical difficulties faced by primary carers and people shielding the vulnerable and consider the impact of the guidance on their income.

Suggestions:

- a. All guidance should include a requirement that judges invite advocates (and other parties to the proceedings) to notify the court in advance whether they have any childcare or other caring issues relevant to the hearing;
- b. At the start of any hearing, advocates and parties are invited to indicate if there are any childcare issues that might impact during a lengthy hearing and on future timetabling of a case;
- c. Use that information to decide whether any reasonable adjustments are required and can be put in place to ensure a fair hearing - such as:
 - i) Aim to set clear boundaries regarding the time allocated to each case to enable carers to make arrangements suitable to those fixed times.
 - ii) If a court hearing is moved, ensure sufficient notice is given to allow the carer to put other arrangements in place;
 - iii) Aim to ensure that Counsel’s availability for future hearings is taken into account where possible.

- d. There should be no suggestion (either expressly in any guidance, or implicitly in the way the court hears cases), that unavailability due to reasons of care-giving or shielding could be considered improper, unreasonable or negligent such as to expose a practitioner to a costs order.
- e. As a guide to good practice we commend Paras 5 and 6 of the Commercial Bar Guidance Note on Remote Hearings:

5. *It is appreciated, of course, that the pandemic will have differing impacts on individual hearing participants, in particular those with caring responsibilities and/or without access to a sufficiently quiet or neutral location in which to participate in the hearing.*
6. *If you or your client are affected by these issues and they are likely to interfere with your ability (or the ability of other hearing participants) to participate in the hearing, you should raise them as soon as practicable. In the case of an interlocutory matter that is listed for hearing, the issues should be raised straightaway by contacting Commercial Court Listing ...giving precise details of the case and the hearing date. Listing will then put the matter before a Judge at the earliest opportunity. In the case of a trial, please do the same. If there is a forthcoming pre-trial review, the Judge may decide to deal with the matter then. COMBAR is confident that the Judges of the Commercial Court appreciate the need for these matters to be treated with sensitivity.*

Our Recommendation to Chambers and some Suggestions

Recommendation: 'Support, Plan and Retain'

When making plans or considering changes to how Chambers runs, take into account the practical difficulties faced by primary carers and people shielding the vulnerable and consider the impact of the guidance on their income.

Suggestions:

- a. It is even more important than ever that there be an active review of distribution of work. It will be easier for those without caring responsibilities to take on last minute work and work more, but care should be taken not to exclude from the new or last minute work those with caring responsibilities.
- b. When considering new ways of marketing, some strategies (webinars, for instance) may be impossible for those with childcare issues because of the additional work involved, or the time they are to be recorded or broadcast.
- c. Maintain active communication, particularly with those with caring responsibilities. Their career is important to them and the support of Chambers and clerks goes a long way to help them cope with daily struggles.
- d. Help barristers get the message across to the court staff and judiciary about the need for greater notice and greater flexibility.
- e. Ensure all barristers have access to the up to date guidance - see Annex

Annex: Resources

WELLBEING

Source	Link
Lawcare	https://www.lawcare.org.uk/information-and-support
Samaritans	https://www.samaritans.org/
Shelter	https://www.shelter.org.uk/
Spot	https://app.talktospot.com/
Support for victims of domestic abuse	https://www.gov.uk/government/publications/coronavirus-covid-19-and-domestic-abuse/coronavirus-covid-19-support-for-victims-of-domestic-abuse
Wellbeing at the Bar	https://www.wellbeingatthebar.org.uk/
Western Circuit	https://westerncircuit.co.uk/2020/04/14/wellbeing-during-covid-19/ https://westerncircuit.co.uk/harassment-helpline/
Working Families (free advice to parents and carers)	https://workingfamilies.org.uk/

FINANCES

Source	Link
Bar Council	https://www.barcouncil.org.uk/useful-information/coronavirus-advice-and-updates.html
Bar Benevolent Association	https://www.the-bba.com/covid19-appeal-applications
Bar Mutual	https://www.barmutual.co.uk/about-bar-mutual/covid-19/
Government support	<i>General - https://www.gov.uk/government/publications/support-for-those-affected-by-covid-19/support-for-those-affected-by-covid-19 Self-employed - https://www.gov.uk/government/news/chancellor-gives-support-to-millions-of-self-employed-individuals</i>
Grays Inn	https://www.graysinn.org.uk/news/hardship-working-group
Inner Temple	https://www.innertemple.org.uk/news/inner-temple-hardship-funds/
Legal Aid Agency	https://www.gov.uk/government/news/support-package-for-legal-providers-will-ensure-access-to-justice-during-coronavirus-outbreak
Lincolns Inn	https://www.lincolnsinn.org.uk/about-us/our-response-to-covid-19-coronavirus/
Middle Temple	https://www.middletemple.org.uk/education-training/hardship-fund-students-and-pupils
Western Circuit (regularly updated)	https://westerncircuit.co.uk/2020/03/25/c19-personal-finances/