

Opening of the Legal Year 2022

Friday 7th October 2022

Law Council Chairman's Speech

Chief Justice, I also welcome His Excellency the Governor, the Chief Minister, the Minister for Justice and other distinguished guests.

Introduction

1. My Lord it is a privilege to address you for a third year running, and especially so in the company of so many of my esteemed colleagues.

The Queen

2. Whilst this year my speech can thankfully proceed with but a passing nod to the pandemic, my tone is necessarily tempered by the passing of Her Majesty Queen Elisabeth II, which the Council has noted with great sadness.

The Legal Services Regulatory Authority

3. I turn first to the work of the LSRA which continues to be the most significant development in the operational side of our sector for several decades.

AML/CFT

4. Law firms have continued to work with the LSRA and the Registrar in relation to annual client account audits and reviews of their AML/CTF compliance obligations.
5. This year practices have also been required to undertake and submit independent audits to test their AML/CFT/CPF policies, controls and procedures, adding an additional layer of oversight by the LSRA. This has presented a challenge for smaller firms who may have had to consider outsourcing the process due to a lack of internal independence.
6. Compliance Officers and internal procedural frameworks have become an integral part of every legal practice undertaking Relevant Financial Business, from those undertaking a single conveyance or commercial transaction to those undertaking many hundreds in any given period.
7. The sector is still digesting the financial and resource impacts of this increased regulation.
8. Fortunately, many practices are able to draw on the regulatory experience of the financial services sector, in particular, their trust and company management arms.
9. I do however repeat my comments of last year: smaller firms, and sole practitioners in particular, continue to express concerns about the viability of undertaking Relevant Financial Business, particularly when occasional only, in light of the increasing regulatory obligations which they are subject to.

10. The Council is already aware of a reluctance by new entrants to the market to undertake such work and expects these requirements to result in a decline in the emergence of small practices engaging in Relevant Financial Business.

Code of Practice

11. I am pleased to report that a Code of Practice approved by the LSRA and the Council is now ready to be issued by the Chief Justice. Publication is expected to be subject to a lead in period during which those subject to it will be allowed an opportunity to acquaint themselves with their obligations.
12. The introduction of the Code will accompany a full commencement of the Legal Services Act pursuant to which the LSRA will assume the regulatory functions of the Registrar (which it has been discharging on a delegated basis to date) and include the requirement for practitioners and firms to register under the relevant parts of the Act.
13. This will also result in the Law Council gaining a statutory basis under the Act with the benefit of a new constitution.
14. Once again, the Council would like to thank those involved in bringing the Code to fruition in particular the Chief Justice, the Registrar, Chairman Sir Peter Caruana, CEO David Dumas and Crown Counsel Ms Michele Walsh.

The Ministry of Justice

15. The Council continues to enjoy regular contact with the Ministry of Justice on all matters of common interest.
16. At a recent meeting with Minister Sacramento and her staff, the Council was updated in relation to the Ministry's work on law reform in various areas of interest to the profession and on which it will be consulted in due course. This meeting also provided an opportunity for the Council to raise the issues of interest to the sector.
17. A review of the Duty Solicitor Scheme is currently underway and we look forward to our next meeting in order to agree an agenda of next steps in relation to the various issues discussed.

The Duty Solicitor Scheme

18. We are now in the fifth year of the Scheme.
19. The Council and other stakeholders, in particular the RGP and Magistrates' Court Clerk Mr Maurice Turnock, have commenced the process of review envisaged by the Scheme but interrupted by the pandemic.
20. Participants in the scheme, past and present, will be consulted once an initial review has been completed.
21. The new Roster, which will take us to 30 September 2023, commenced on 1 October with 5 practitioners on the Senior Panel and 25 on the Legal Aid List, an increase of one from last year.

The Employment Tribunal

22. The work of the Employment Tribunal continues to grow. There has unfortunately been little progress in reducing the backlog of cases awaiting chairperson appointment, despite significant and commendable efforts by the Ministry and Tribunal staff to cajole existing panel chairpersons to take on more cases.
23. My observations from last year continue to stand.
24. Tribunal claims are now comparable in practically every respect to claims before the Supreme Court in terms of complexity of issues raised, case management, witness and documentary evidence, length of hearings and length of judgments. Details of claim and responses can sometimes run to hundreds of paragraphs with witness and documentary evidence running to several lever arch files, often with one and, ever more often, both parties unrepresented and relying on chairpersons for a level of case management and support which the Tribunal can simply not comfortably provide.
25. My observations are not meant as a criticism of any of the stakeholders, but rather a necessary reflection of the concerns expressed to me by practitioners and parties alike in relation to this important branch of our justice system.
26. On a lighter note, the issue regarding premises has been alleviated temporarily with ad hoc premises at various locations in HM Government buildings being made available to accommodate interlocutory and final hearings as and when required, a facility which had not been available for some time.
27. However, Council urges the Ministry to maintain its efforts to source a permanent home for the Tribunal which is also easily accessible to members of the public and therefore consistent with the requirement for open justice.
28. And on a further positive note, the Council also awaits with interest the results of the recruitment drive in relation to a Lead Chairperson and new Chairpersons to the Tribunal. This will hopefully help to alleviate the backlog.
29. Finally, I would like to thank the Ministry and Director of Employment Ms Debbie Garcia in particular for their receptiveness and attention to any issues raised by the Council on behalf of our members and to the Tribunal's staff for the seamless transition from its outgoing secretary.

The Mental Health Review Tribunal

30. The work of the Mental Health Review Tribunal has slowed down now that the first full review of all long-term patients over the last two years has concluded. The result of this review has been that many of those patients have moved into Elderly Residential Care placements and many others are now living in the community under Community Treatment Orders and independently.
31. It is still sitting most weeks but with a reduced case load for the time being.
32. The Tribunal welcomes the continued participation of an increasingly experienced group of practitioners with growing expertise in this complex area of law and practice who

provide invaluable assistance to the Tribunal. Their empathy and dedication are truly commendable.

33. The Tribunal panel members will soon have an opportunity to sit in on equivalent proceedings in England in order to further their training.
34. I take the opportunity to thank all medical and administrative staff at Ocean Views and the GHA who participate in the Tribunal process for stepping up to its demands over the last two years. It has been and continues to be a steep learning curve for all involved.

The Courts Service

35. The Council continues to enjoy a fluid and productive relationship with the Courts Service through its Court User's Committee meetings and on an ad hoc basis via the offices of Chief Justice, the Registrar and the CEO.
36. The Council is grateful for the receptiveness of the Courts Service to the issues raised by the Council on behalf of its membership and hopes that the Council's responses to any issues raised with it have been equally well-received.
37. A result of this communication is a greater and more informed understanding of the demands and realities at play in both environments to the benefit all concerned.
38. The litigation Bar has certainly noted the increased availability of hearings dates across all jurisdictions and in particular in the criminal jurisdiction where the delays of some years ago have been consigned to history. The present timelines which we enjoy would be a pipe dream in the criminal courts system of England and Wales, where cases take many years to come to trial and with the consequent effect on the profession which is turning away from publicly funded work in this area.
39. Here I must stop and thank the work of our senior judiciary in resolving the criminal backlog whilst simultaneously creating the much needed space in the court diary in the other jurisdictions as soon as the Covid restrictions have allowed.
40. Our Admiralty jurisdiction has been back on the global map with the arrest and auction of the Axioma superyacht. The expertise of the jurisdiction in this area of law coupled with the experience of our Admiralty Marshall and his staff continue to make Gibraltar a jurisdiction of choice in this area of work.
41. Finally the Council welcomes the new and much improved Courts Service website which has become a key resource for practitioners and the general public. The upgraded search fields will be of great assistance.

The Magistrates' Court

42. The Magistrates' Court continues to work closely with the criminal Bar ensuring, as far as possible, that hearing slots are not lost and keeping up its long-standing rapport with practitioners who appear before it regularly and thereby ensuring that publicly funded defendants have timely access to representation.
43. The lay Bench continues to handle an increasingly complex caseload, sitting once a week and longer when required.

44. Here, once again, and on behalf of the criminal Bar in particular, I would like to thank the Stipendiary Magistrate, the members of the Lay Bench, the Clerks and their staff for their work.

The Law Council

45. The Council's work has slowed down generally this year with practitioners focusing on recovering the time and opportunities missed in the previous two years.
46. The focus of our work has been in supporting the work of the LSRA in relation to, inter alia, the Code of Practice and preparations for the full commencement of the Act. The Council looks forward to its increased membership and to addressing with the variety of issues that will no doubt arise from increased regulation across all areas of the legal services industry.
47. I would like to thank all Board members and, once again, in particular Vice-Chair Ms Emma Lejeune for occupying the Council's statutory seat on the Finance Centre Council – of which she is now also the Vice-Chair – which this year has focused on an array of issues concerning the industry with an emphasis on product development and industry marketing.

General Observations

48. On a different note, I would like touch upon one of my observations from last year concerning new entrants to the profession.
49. The issue of supply of new practitioners not meeting demand continues. This is particularly acute for smaller firms. Whilst this is a sign of the robust health of the sector, it results in increasing workloads having to be distributed amongst less practitioners with the consequent detriment to those shouldering greater levels of responsibility.
50. For the litigation Bar, this issue appears to be compounded by a lack of interest on the part of new entrants in litigation and even less so in advocacy. The Council will be watching this space closely.

Acknowledgements

51. I would like to note the recent passing of a member of the Bar this year, Mr Stephen Bullock. I knew Stephen well and he will be missed by all who did.
52. I asked his close friend and colleague Mr Stephen Bossino to provide me with some appropriate words of remembrance. Please bear with me, in the words of Mr Bossino:

“A good colleague from the best of the old school. His evident agitation in Court was one of his best skills as an advocate and totally disarming for negotiating purposes. His drafting skills were unique.

He always remained intellectually rebellious and was a challenge to any smart Alec ... his preferred past-time.

I will always remember him with a big smile and a clean heart. He has left us all with bright memories.”

53. Our condolences go out to his family.

Today

54. I thank the Bishop for holding the Red Mass today which is an important event for many of our practitioners.
55. This year the Council will once again hold its annual lunch after a break of two years. We have extended invitations to all practitioners including those in Government employment and unsurprisingly it will be the best attended in years - hopefully a sign of things to come.
56. And on that note, I second the motion that the legal year be opened.

Kenneth Navas
Law Council Chairman