

**Kirsty Brimelow QC**  
**Doughty Street Chambers**  
**Manifesto For CBA Vice-Chair**

Dear Colleague,

This is a request for your vote in this election for Vice Chair of the CBA.

I would like to move from being an individual highlighting the reality of the criminal justice system -bowed and on its knees -to joining the voices of the CBA and leading change.

I have the experience of having served on the CBA executive from 2004-2010. I am buoyed that some of my adopted initiatives from this time are still embedded in the CBA structure and other initiatives appear in today's CBA's strategy. Time supports my judgement as being sound.

Also, I stand in this election as a professional who is regularly consulted by cross-party parliamentarians and respected national and international legal charities (such as the Bingham Centre for the Rule of Law and PLP) and treaty monitoring bodies (such as Greivio) to give evidence and to develop policy in consultation processes. Between 2019- 2021 I gave evidence before both House of Lords and House of Commons Select Committees, namely the House of Lords Constitution Committee and the Parliamentary Joint Committee on Human Rights and the Commission on Miscarriages of Justice. For over a decade I have been a speaker at the Thomson Reuters and Justice Criminal Law annual conferences on criminal law and human rights law

updates; including analysis of recent criminal law bills. I also am regularly called upon to speak at and moderate United Nations Human Rights Council side events and at Bar Council Conferences, including to 10,000 barristers at the Nigerian Bar Association Conference.

I would like the opportunity to apply this expertise for the profession and on behalf of the CBA. Parliamentarians should be turning first to the opinion of the CBA and so trusting its position when the criminal justice system is under attack. I have developed that trust. The value of the modern CBA can be further enhanced.

**But first a little about myself.**

I was brought up in Lancashire, near Chorley. My parents did not have the opportunity for education beyond the age of 14 but ensured that I pursued a career.

I was State educated, obtaining a scholarship to study my A-levels for 2 years outside the State system. I read law at Birmingham University and turned my thoughts to becoming a barrister after winning the Law Faculty's prestigious mooted competition (judged by Sir Stephen Brown; then President of the Family Division).

Grants and scholarships and part-time work held the road to the Bar. I was called to the Bar in 1991 and at the end of 1992, I started pupillage at a civil law set -2 Crown Office Row; now Littleton Chambers. I had deferred my pupillage and chambers' award a year in order to backpack around the world, funding it through work ranging from pubs to cleaning to

telemarketing. I travelled by train and bus to Kashmir awakening a lifelong commitment to using law to protect and advance human and environmental rights.

In 1993/1994, I acquired tenancy at 10 Gray's Inn Square, a small common law set. Sadly, it did not survive beyond 18 months into my tenancy. I became a "squatter" for 12 months at a criminal law set of chambers and my common law practice developed a more defined criminal law seam.

I was invited to join Francis Taylor Buildings. After 5 years, FTB decided that it wished to focus entirely on civil work and so those of us who also practised in crime found new homes. I and others moved to 187 Fleet Street. My practice specialised further into crime -prosecution and defence - but continued to encompass international and national human rights law and related civil work and, increasingly I worked alongside Doughty Street Chambers. I was "headhunted" and have been a tenant at Doughty Street Chambers for 13 years.

I was appointed QC in 2011 -19 years after I started my pupillage. The longer account lifts the veil on what was a struggle to secure a footing at the Bar.

I practise in crime, public law- internationally and across all circuits- and international law. This lends solid knowledge in comparing the value of criminal law barristers of England and Wales to those practising in other areas of law and in other jurisdictions. It brings a unique perspective on the results of underfunding the criminal bar in a wider political strategy.

I am a Bencher of Gray's Inn and elected member of the management committee. I am experienced at leading organisations and being a Board member. I hope it is not out of place to refer to my chambers' website. I have practised at the litigation coal face for nearly 30 years and tried to give back with each step.

In 2021, I was appointed trustee of the World Wildlife Fund UK. This enriches my knowledge and places me firmly on a bandwidth outside the narrow echo chamber.

### **Criminal Bar Association, the Bar Council and the media**

Between 1998 and 2010 I was one of the Bar Council's Young Spokespeople. The Bar Council and I were keen to try and change the public perception of barristers and present a counterpoint to the annual fat cat stories. I was put in front of the media. Journalists and television presenters have become friends and professional contacts over the last decades. I would be able to communicate the CBA's views and have a strong working relationship with all forms of media. I am an experienced and capable communicator through all forms of public media. I regularly provide comment pieces for The Times's law pages. Through my expertise in protest law, I also have solid connections with young Instagram "influencers"

Between 2004 – 2010 I was elected and co-opted to the Criminal Bar Association Executive. I worked hard on behalf of the CBA, including organising the CBA seminars at the Bar Conferences. I also was part of the Bar Conference Organising Board for 2 years

I was very junior but many of my ideas on structure are still operating today. It was I who suggested the Head of Chambers continued to meet to discuss fees (I was at the first meeting and it was about to disperse with no cohesion) and I who first canvassed that a weekly message should be sent to the CBA membership to better connect with members– that idea came into force after I left the executive. In the mid 1990s, through work on a young barristers' committee (the YBC wasn't formally in existence at that time) I advocated for direct action against the cuts to barristers' fees and proposed that barristers wore wigs and gowns on the street to get public/press attention. I wanted to set the record straight and tell the public about the paltry fees we received- particularly in the magistrates' courts and Youth Courts. I often wasn't paid at all.

It took around two decades for the Criminal Bar to take direct action. I was proud to join colleagues on those days. I very well understand financial struggles and the demoralisation of having to fight to be paid for representing clients; very often the most disadvantaged and those at the bottom of society's heap. But how we treat those members of society reflects on us as a whole.

## **Diversity**

I embody diversity. My own struggle has been one against class and gender discrimination and economic disadvantage. I keep the ladder down to those from non- traditional backgrounds. I remain driven by the twin fires of fairness and change.

I am a pupil supervisor and a trainer in advocacy and ethics to students. I have given my time consistently over my career to those entering the profession both through interviewing for scholarships and awards and mentoring individuals. This included aiding the entry into the profession of a former criminal law client, a young black person who I had represented.

I work alongside lawyers, judges, NGOs and States from all cultures. I have worked in Jamaica representing those on death row and spent over a decade working in Nigeria on child rights for UNICEF. My work for the vulnerable has been recognised in awards that I did not apply for; nor know who nominated me- the First 100 Years Inspirational Woman in Law Barrister Award was one such accolade of which I am particularly proud.

### **Last Chance Opportunity**

I have been one of a small number of lawyers representing members of the public pro bono against Covid Law charges and pointing out how it has gone wrong. The public and politicians know that stripping resources from the Criminal Justice System drives down quality. This work has shown that the public cares (they feel the stress and uncertainty of being caught up in the criminal process) and so politicians are being forced to act.

Politicians cannot boast of the UK justice system being the best in the world and seek to attract commercial litigation when a poorly resourced and disheartened criminal justice system drags the claim into the mire with the ~~and~~ filthy reality of backlogs and a steady decline in the prosecution of crimes.

The poor state of the criminal justice system is impacting negatively on the global perception of the functioning of the law in the UK. This creates an opportunity for change.

### **Making Change**

I have a proven track record of success in change of laws and policy. Between 2014- 2016 I was part of a Bar Human Rights Committee team of barristers which provided expert evidence to Parliament Select Committees on legal strategy to stop Female Genital Mutilation. I headed the proposals and then the drafting which resulted in the introduction of FGM Protection Order legislation . This law has been successful in preventing girls being taken overseas to be cut.

Between 2019-2020 I was part of changing the rape law in Denmark to consent based legislation.

I continue to work with Amnesty Finland and Switzerland with the same aim.

In 2020 I led the call for review of all Covid 19 emergency laws charges by the Crown Prosecution Service after highlighting wrongful prosecutions. This was brought in in May 2020 and the review continues on a rolling basis. Credit goes to the DPP Max Hill QC and the CPS for recognising that these prosecutions were going badly wrong and acting to safeguard the public.

I would like to better utilise the CBA's talented barristers to use their legal skills to tackle harm and influence policy.

## **These are my pledges**

### **1. Maintain high quality criminal justice system**

A criminal justice system cannot invoke pride without adequate funding. However, high quality also depends on excellence in training, morale and process. Frankly, if quality drops then the argument on increased funding drops in free fall. It becomes a self-fulfilling prophecy that quality cannot be found at the publicly funded criminal Bar, the most talented hasten their exit and separate levels of criminal justice for rich and poor becomes entrenched. Whilst getting back into court and proper payment for barristers are fundamental, they cannot be considered separately from the need for criminal justice system to function at a high level. Proper remuneration and quality are intimately and inseparably bound together.

Written submissions aid quality and barristers now are directed to draft skeleton arguments often requiring them to work all night to set out detailed submissions where unforeseen matters of law arise. This additional and unremunerated work is a significant burden. There is an obvious tension in increasing demands for written submissions but at a cost; which actually is of no cost and no additional fees to the barrister.

I will work across institutional and political bodies to address the twin competing pressures of quality and demands on advocates and increased fees. Both are necessary but not as currently experienced by the criminal bar.

I will keep focus on disclosure challenges and failures and on developing a partnership with the CPS to support its implementation of the national disclosure plan following the latest HMCPSI review.

## 2. Fair and Appropriate Remuneration

We know that since 1997 fees have not only not walked alongside inflation but have fallen substantially in real terms when measured against inflation. Barristers have become used to being expected to work not for remuneration but for goodwill; for the public good. There is a selflessness in our profession which gives a voice to those at the bottom of society's heap. But this sentiment has been exploited by politicians. However, the pandemic has stripped the criminal justice institutions of distorted political messages to show the damage done by slashing and withholding funding. And so, as another review is being held – gathering information that we already know- I will fight against flat fees and push for bolt on payments for work done and for analysis of unused material. Low and inadequate remuneration is not fair, is wrong and simply takes advantage of our professionalism.

The CBA ballot in 2019 determined to postpone further action but it was not a mandate to cancel it. I will lead a reconsideration of all options, including working to rule and refusing returns. And all of the criminal bar across each quarter will have its voice heard.

## 3. Pandemic Assistance

The CBA's response to the Independent Review of Criminal Legal Aid Panel, dated the 7th May 2021 sets out that the Authorisation to Practise process has demonstrated that 38% of all criminal

barristers have dropped an income band during the pandemic. At the criminal Bar, the largest gross income band by number of barristers is band 4 (£90k-150k). 50% of barristers dropped one or more income bands (35% to band 3 [£60k-90k] and 15% to lower bands below £60k). When we last surveyed in December 2020, 83% of the criminal Bar told us they had incurred personal debt or used savings to support their practice through the pandemic; over a quarter (27%) had taken on personal debt of over £20,000.

I will review the scope of hardship funds available, the appropriateness of their parameters and consider whether any teeth can be given to the pandemic slogan “we’re all in this together” when applied to the criminal bar.

#### 4. Remote Working and Courts

Remote working has advantages of stopping barristers being directed to travel across the country for a 10-minute hearing, often spending more on the train fare than remuneration and negatively impacting upon the environment to boot. I will work on appropriate remote working protocols so that these gains are not lost whilst clients do not suffer from a lack of conference time. Improvements to booking of remote conferences must be implemented across prisons.

#### 5. Well-being and Women

In 2017, the CBA’s survey of the profession found that 58% of criminal barristers felt under too much pressure from work; 50% were emotionally drained by work; 34% worked more than 20 hours per week that were unpaid; and 57% worked 51 or more hours per week.

The “Back to the Bar” survey for the Western Circuit Women’s Forum found that, over a six year period, 2/3 of leavers from the Bar on that Circuit were women. The report stated that the survey showed “many working mothers seek part time work, shorter trials or not to stay away from home.”

I will continue to develop well-being programmes and survey their effectiveness. The days of working all hours and choosing between a successful career and a healthy personal life should be in the past. They are not. And the criminal bar needs to catch up before it burns out.

#### 6. Judicial Conduct

Bullying and unpleasantness by Judges needs to stop. Amusing as the criminal bar finds itself at handing down stories through the generations, poor judicial conduct is not acceptable. If elected, I will look into the extent of the issue and solutions.

#### 7. Diversity and communication with CBA members

Diversity, inclusion, empowerment are familiar watchwords. However, the CBA needs better understanding of the challenges faced by its members. It is time that the Monday message is accompanied by transparent two-way conversations. We all are able to speak to each other on zoom. If elected, I would open up communication with members to better understand challenges and barriers and work to apply remedies. Otherwise, the CBA may succumb to signalling across to members who are placed on mute.

#### 8. Communication with the press and politicians

Since 2010, there has been a 24% real term reduction of investment in the justice sector and a selling off of the physical court estate. This now is in the spotlight and I will work strategically with press and politicians to reverse damage and restore a quality criminal justice system out of the wreckage.

#### 9. International Work

If elected I will seek to strength and open opportunities for CBA members to work outside the jurisdiction of England and Wales; as well as improving links with other Bar Associations.

#### 10. Protection of Children's Rights in the Criminal Justice System

The Youth Court always has been the wasteland of troubled kids, teetering on the brink of being locked up into an institution. The number of BAME young people in detention is at a record high. If elected, I wish to examine this issue and propose amendments to the current treatment of children by the criminal justice system of England and Wales.

I leave this manifesto with my own hopeful observation that this may be the first CBA election where two woman are standing for the CBA Vice-Chair position.

This is a critical time for the criminal justice system and the criminal bar. It also is its time.

I would be privileged to lead.

**Kirsty Brimelow QC**