



An explanation of why barristers fall outside the Government financial provision

Issue

The various Government financial measures aim to give relief to the self-employed and businesses, but many barristers fall outside these schemes. Recognised by the Government as essential workers critical to the administration of justice and maintaining law and order, barristers need urgent help now. We believe the Government cannot have intended junior practitioners, who are particularly financially vulnerable, to be excluded. During the Covid-19 pandemic, barristers are not only unable to work in chambers (in accordance with the Government guidelines) but the Government has closed many of the courts and those that are open for business, are working at less than half capacity. The impact on the Bar's ability to earn a living has been devastating. We believe that, in the circumstances, the Government should exempt barristers from business rates.

Timing

Urgent investment is needed now to prevent the Bar from collapse. Given the Government's commitment to the domestic agenda and manifesto pledges around law and order, immediate action must be taken to ensure barristers can continue to play their vital role in the administration of justice.

Recommendations

We recommend that the Government:

Sustaining the Bar

- 1. Accepts verified and reliable alternative evidence to the 2018/2019 tax return, for very new barristers or those returning after parental/sickness leave who are otherwise eligible for the Self-Employment Income Support scheme.**
- 2. Extends business rates exemption relief to barristers' chambers.**
- 3. Increases the threshold above the £50,000 trading profit for self-employed barristers, to ensure that more junior barristers are eligible for relief, thereby going some way to ensuring the sustainability of the profession.**

Protecting barristers doing publicly funded work

- 4. Provides an urgent rescue package for those at the publicly funded Bar who are ineligible for the self-employed scheme.**
- 5. Provides an urgent rescue package for chambers doing publicly funded work.**

Background

Young practitioners: self-employed barristers immediately become sole traders in 'independent practice' upon finishing their academic and vocational training, rather than being employed by a company, firm or partnership unlike other professionals (such as architects, doctors or accountants). Overwhelmingly, they have very substantial debt from their studies (at least 5 years) and, from the outset, have to pay high professional expenses, including chambers' expenses, typically based on a percentage of their received fees.

Chambers: barristers who are sole traders work in chambers to share administrative costs, leading to limited overheads and a very good-value model for members of the public needing their services. The main expenses of chambers are typically rent, business rates, staff and IT.

The Government's financial schemes do not meet the needs of the Bar for a number of reasons:

Bounce Back Loan Scheme (BBLs)

- The £50,000 limit on the loan is not of any meaningful use to chambers as their annual operating expenditure is significantly higher.
- There are far fewer lenders for BBLs than the Coronavirus Business Interruption Loan Scheme (CBILS) and more than 50% of these will not lend to those who are not existing customers. Appendix 1 summarises the current lenders.
- The limit of 25% of self-employed turnover particularly affects recently qualified barristers at the junior end of the Bar and those returning from career breaks for e.g. childcare or sickness.
- The limit of 25% self-employed turnover up to a maximum of £50,000 will mean that many barristers are only eligible for a very small loan that will not tide them over.
- The fact that most income must be from self-employment excludes those, for example, who are part-time judicial office holders whom the Government has required to keep e.g. 80 days per year free for such work. If their judicial post accounts for more than 50% of their income, they will not be eligible.
- Some banks will not lend to those without a business account and many barristers operate their practice through a personal bank account. Even with those that do allow an existing customer with a personal account to apply for a BBLs loan, there is a substantial delay because they require a business or feeder account to be set up in advance.
- Whilst most BBLs lenders will now lend to existing customers who operate their business through a personal bank account, if you do not bank with one of these lenders, you have to apply to one that will lend to current "non-customers". Banks are explicitly prioritising their existing customers, resulting in substantial uncertainty, considerable delay and, often, a negative result. Here are two real examples:

A is a criminal barrister with 20 years' banking history with Halifax (part of Lloyds Banking Group) who runs their sole-trader business through a personal account. Halifax is not a BBLs lender, although Lloyds and Bank of Scotland, in the same banking group, are and will lend to their own existing business- and personal-account customers. They will not lend to A, because their personal account is with Halifax rather than with Lloyds or Bank of Scotland. A cannot apply online to another lender (because they are not an existing customer) and cannot get through by phone. They are not eligible for SEISS and have no current work.

B is a criminal barrister (prosecutes and defends in serious sex and violence cases) with 24 years banking history with Barclays as a Premier customer and has been trying to apply for a BBL since 4 May. Barclays will not accept applications unless you hold a Business Account (B has never been advised to do so in 24 years).

Initially, Barclays website said they would accept applications from sole traders and directed B to a webchat. B was told to apply for a new business account and call the dedicated Business Banking phone number. After several days spent on hold for 2-3 hours a time, B gave up. The bank manager cannot get hold of anyone to speak to either. B remains unable to make contact with anyone at Barclays to begin the process of applying for a business account.

Starling Bank have been aggressively marketing their ability to offer BBLs and welcoming applications for new Sole Trader accounts from 11th May. B duly applied, got a new Business account and applied for the BBL last week. Without explanation, they have been rejected for a loan. This has compounded the deep dissatisfaction at not being able to simply apply via B's own Bank based on 24 years of banking with them as a barrister.

Recommendation: If these limitations could be resolved alongside an increase in the number of lenders offering BBLs, it would be a useful scheme for many barristers.

Self-Employment Income Support Scheme (SEISS)

- SEISS aims to support the self-employed with a trading profit under £50,000 but its terms explicitly exclude all those who started self-employed business after March 2019.
- The requirement for and dependence on a 2018-2019 tax return, wrongly disadvantages or completely excludes the most financially vulnerable. The requisite tax returns of those who started practice from early 2018 or those who have returned from career breaks for e.g. childcare or sickness reasons, will show a distorted picture of the income they have earned and upon which they are eligible for SEISS relief. This will disproportionately affect women.
- Many junior tenants who have been in practice since 2018 and all who started practice from early 2019 cannot benefit from SEISS. We have been contacted by numerous junior barristers indicating that they will be unable to survive at the Bar without immediate and significant relief.

Recommendation: Accept verified and reliable alternative evidence, to enable those under the threshold but without 2018/2019 tax returns to be eligible for SEISS.

We estimate just under 1,000 barristers would fall into the category of those eligible but without the required documentation. Uniquely, from our records, the Bar Council can easily verify a barrister's identity, where they work and, by a declaration from chambers, how much they earned. Our sources are reliable, robust and risk-free, accurately ensuring that financial assistance would be directed to those eligible barristers who urgently need support. The

number of barristers affected is small and the adjustments suggested will have a negligible effect on the overall cost of the scheme.

- The arbitrary “cliff edge” of having profit of £50,000 results in a grant of £7,500; having a profit of £50,001 results in no grant.
- SEISS excludes those whose self-employed trading profit is not more than 50% of their total income; hence, many part-time judges (whom, for this purpose the Government does not treat as its employees and who, therefore, are ineligible for furlough relief under CJRS) or those who were on employed secondment, or those who were on parental leave but had some other minor form of income would not be eligible.

Recommendation: The threshold for support for self-employed barristers should be increased to above the £50,000 limit for trading profit, with a tapering benefit up to a higher limit.

This would remove the arbitrary “cliff edge” and make more junior barristers eligible to apply for the grant, thereby going some way to ensuring the sustainability of the profession.

Business Rates Exemption Relief

- Business Rates exemption relief has been made to businesses in the leisure, retail and hospitality sectors which have had their premises closed to the public (although many continue to operate in a restricted way). Barristers continue to provide a vital public service in the administration of justice, as key workers by attending court hearings and representing the interests of the public and helping them to exercise their rights.
- Nonetheless, in line with Government guidance, they have been unable to use their chambers, and the Government has closed over one third of all courts and tribunals buildings - their other place of work. Of the rest, half are not open to anyone but are staffed courts only doing remote hearings and the rest are open but operating at under 50% capacity and, in some instances, at about 25% or less capacity to ensure social distancing.
- Barristers’ chambers need to be near courts to allow for ease and speed of access and convenience to the public; they are often in prime property spaces in central locations. Business rates for barristers’ chambers are therefore high across the country and typically account for one of the top three or four expenses of chambers, divided between barristers whose work has been decimated by the crisis.
- Extending business rates relief to chambers would help to sustain the profession and protect the critical infrastructure that will be required to administer justice after we emerge from this pandemic.

Recommendation: Extend business rates exemption relief to barristers’ chambers.

Coronavirus Job Retention Scheme (CJRS) – furlough scheme

- CJRS is a welcome interim measure which enables chambers to retain employees whilst the justice system is working at a much slower pace than usual and eases chambers' cash flow. Reducing the scope or benefit of the scheme for chambers before the justice system returns to close to normal operation will impose further financial pressure on chambers which will inevitably result in an increase in staff redundancies.
- As return to work gradually begins, adjusting the CJRS to enable furloughed staff to undertake some part-time work for the employer (as recently announced by the Chancellor) will be beneficial.
- Many chambers have furloughed staff, some more than half.

Coronavirus Business Interruption Loan Scheme (CBILS)

- CBILS has attracted very little interest from chambers. Our survey at the end of March indicated that only about 5% were considering taking it up. Whereas the Government removed the need for a personal guarantee before the banks would grant a CBILS loan, in practice, barristers' personal assets will still be at risk because of the structure of the vast majority of chambers. They are not limited companies, and each member shares the financial liabilities of chambers jointly and severally so, if individual practitioners leave chambers the others, regardless of seniority, are liable for the whole of the debts. This is a serious disincentive, regardless of the amount of the loan. There are too many limitations in the scheme for CBILS to be of benefit to most individual barristers.

Appendix 1 BBLs lenders

HSBC will lend to existing business, personal-account holders and those who are not existing customers. If you do not want to open a HSBC business account, a temporary feeder account will have to be opened to draw down the loan, from which you can then transfer the funds.

RBS, NatWest and Ulster Bank (all part of the RBS Banking Group) will lend to existing business and personal-account holders only. If you have a personal account, you will need to open a feeder account to draw down the loan, from which you can transfer the funds. Due to “unprecedented demand”, if you opened a business account after 4 May 2020, you will not currently be able to apply for a BBLs loan.

TSB will lend to existing business and personal-account holders only. They are no longer accepting BBLs applications for non-customers. Personal account holders will need to open a business account before applying for BBLs.

Barclays Bank will lend to existing business and personal account holders and those who are not existing customers. Personal account holders will need to open a business account before applying for BBLs. There is likely to be a substantial delay for new customers.

Clydesdale Bank and Yorkshire Bank (part of Virgin Money UK plc) will lend to existing business and personal account holders. It is not clear if personal account holders will be required to open a business account.

Lloyds and Bank of Scotland (BOS) (both part of Lloyds Banking Group) will lend to existing business and personal-account holders only. Personal account holders will need to open a business account before applying for BBLs.

Cooperative Bank will lend to existing business and personal-account holders only. Personal account holders will need to open a business account before applying for BBLs.

Danske Bank will lend to existing business account holders only.

Santander will lend to existing business account holders only. They are not currently accepting new applications for business accounts, but “will review this position over the coming weeks”.

Starling Bank will lend to existing business or sole-trader-account holders. They are not opening any new sole-trader accounts but aim to reopen for applications on 1 June.

Allied Irish Bank is a BBLs lender but only holds business accounts.

Bank of Ireland UK (which operates in Northern Ireland) has recently become an accredited BBLs lender and is “working hard to open applications to existing customers in the coming days”.