

A Grocer in Oxford Street

by Francis Bennion

It is reported in Middle Temple Table Talk by W. G. Thorpe, a barrister of that Society, that Chief Baron Kelly was once a grocer in Oxford Street.² Thorpe's statement, though doubtless true, is irrelevant to the subject of this discourse. It is included only to gain attention.

What I really want to talk about, apart from a grievance I have against the Bar Mutual Insurance Company (to be mentioned later), is my feelings on the fortieth anniversary of being called to the utter bar by the aforesaid Honourable Society. After that initial vocatory and hortatory effort, coupled with the kindly award of a Harmsworth Scholarship, the Society displayed no interest whatever in my progress (or lack of it) through the ranks of the law. Why did I choose the Middle Temple? Solely because, out of the four, it alone possessed an ancient hall - even though pieced together, splinter by splinter, at the hands of careful craftsmen after the Blitz.

Ah, the Blitz! Aged seventeen, and employed (pending enlistment as an RAFVR pilot) at nearby Gosling's Bank, I had wandered daily round the stricken Temple. That next-day vision of the Inner Temple library, books bursting out all over as it was split from top to bottom by Hitler's bombs, is with me still. Did I then form the desire, since realised, to add my own little quota to that store of legal textbooks?

Let me briefly recall a few of those early figures. My head of Chambers at 2 Plowden Buildings R. F. Levy, short, smooth and quiet of tongue but a deadly advocate. Fearnley-Whittingstall, also smooth and deadly, though tall. Jolly Jack Simon the divorce specialist, who on attaining the House of Lords became rather less jolly.

Another Jack was my dear pupil master the late J. L. Elson-Rees. He complained, justly, that on the question of prospective pupillage I interviewed him rather than the other way round. Jack was kind to everybody. He was even kind to another and greater Lord Simon (previously Sir John). On the golf course, where I gather many legal careers have been made, Jack tried to smooth the way for that frosty statesman by getting him called Lord John as a compromise between friendship and statesmanship. The saddest thing about cheery Jack was the way his wife would call him Elsan (after the portable relieving contraption).

Perhaps our greatest advocate of that time was Gilbert Beyfus KC. He was plagued by some tic which caused his eyelid rapidly to fall and rise without his control. I remember being in court one day when he reduced a female witness to a fit of the giggles. After sharp questioning by the judge she admitted the cause. 'Mr Beyfus keeps winking at me, My Lord.'

That will have to suffice for an introduction. Now for my grievance. I should explain by way of preamble that I am currently practising as what Bar Mutual calls a 'single practitioner' (although in fact respectably married). Another way they put it is that I am practising 'from Chambers at which there is no other practising barrister'. I now find it convenient, for reasons I need not go into, to operate in this fashion. There was a protracted struggle before on 20 October 1989 I received the permission of the Bar Council to do so. I understand that I was the first barrister to receive this permission, but since then the Code of Conduct has been amended to allow it generally.

The Bar is a conservative profession, and many barristers do not approve of this new-fangled idea of

practising as a 'single practitioner'. This may be the explanation for what has given rise to my grievance, which is the insistence by Bar Mutual that 'single practitioners' shall pay a minimum annual insurance premium of ,250. It looks as though someone has had the idea, without any evidence, that 'single practitioners' are a greater risk, and has plucked out of the air a figure of ,250 as a suitable minimum premium.

For a barrister who is not a 'single practitioner' to reach this level of premium would require an annual income from fees (excluding VAT) of something of the order of ,35,000. I suspect that most 'single practitioners' do not reach this figure. As an academic whose main occupation now is writing books I do not reach it myself. So we singletons are being mulcted in what might over years add up to a substantial sum as a penalty for practising 'from Chambers at which there is no other practising barrister'.

I understand this rule has been introduced on the analogy of Law Society experience with solicitors in sole practice. However the position is quite different for barristers. Unlike solicitors, we do not practise in partnership anyway. We are all individuals, and all really in 'single practice'. Moreover we do not have charge of clients' funds and other property as solicitors do.

When I asked for an explanation I was told that the Directors had decided 'that for a number of reasons including their isolation and lack of established facilities, a barrister practising by himself is likely to be a greater risk to BMIF than other barristers'. I was not told what the other reasons were. My attempts to obtain information about statistics of claims against 'single practitioners' as opposed to those against what I suppose must be called 'multiple practitioners' have met with no success.

I have argued that I am not in fact 'isolated'. As a research associate of the Oxford University Socio-Legal Centre I am privileged to enjoy exclusive occupation of a room in the Bodleian Law Library and to be a member of the Oxford University Law Faculty. I am in close contact with other practising barristers when necessary. Nor do I truly lack 'established facilities'. On the contrary, I enjoy facilities far superior to those available to most sets of Chambers. Admittedly I do not now have a Clerk in the traditional sense (though I do have clerical help), but that simply means I carry out myself, with utmost care, duties that such a functionary usually performs. In that way I keep a close watch on everything that goes on.

As things currently stand over this matter, I have the very strong impression that Bar Mutual's rule about 'single practitioners' is irrational in Wednesbury terms. So it could be challenged by judicial review. Perhaps it ought to be so challenged, for if institutions of the Bar do not observe fairness in dealings with its own members how can they be relied on to do so with anyone else?³

Footnotes

1 An utter barrister, or (somewhat elderly) *apprenticius ad legem*.

2 Hutchinson & Co. (1895), page 323.

3 If any other singleton is interested in taking the matter further I would be pleased to hear from him or her at 62 Thames Street, Oxford OX1 1SU.

[Published in COUNSEL, April 1991.]