

## Shared Parental Leave consultation responses

1. The BSB received a total of 19 responses to the Shared Parental Leave: consultation on a possible change to parental leave rules (“the consultation”).
2. Of those who responded, 8 were individuals, 6 were chambers, and 5 were representative bodies (including one of the Inns of Court).
3. Some respondents wished to remain anonymous. Those who responded and did not express a desire to remain anonymous were:
  - a. Rachel Marcus
  - b. Francesca Quint
  - c. Timothy Brennan QC
  - d. Paul Ashwell
  - e. Esther Gamble
  - f. Jamie Johnston
  - g. Fiona Ryan
  - h. Keating Chambers
  - i. Cloisters Chambers
  - j. Brick Court Chambers
  - k. Lincoln House Chambers
  - l. St Philip’s Stone Chambers
  - m. Matrix Chambers
  - n. The Commercial Bar Association (COMBAR)
  - o. The Bar Council
  - p. Family Law Bar Association
  - q. Inner Temple Bar Liaison Committee
  - r. The Association of Women Barristers

## General responses

4. The following responses did not respond directly to the questions posed in the consultation paper:

### **Rachel Marcus, One Crown Office Row**

My view is that any barrister should be able to take the same parental leave, regardless of whether s/he is at that point in time the main carer. Parents must be enabled to arrange their caring responsibilities as they see fit; that is the only way in which equality of access, opportunity and retention will be achieved.

### **Francesca Quint, Radcliffe Chambers**

I am in favour of anything which helps and encourages female member of the independent bar to stay in practice and anything which encourages the culture under which it is expected by chambers that both parents share the demands of childcare.

I consider that the introduction of SPL where both parents are barristers in independent practice (whether or not in the same chambers) or where one parent is a barrister in independent practice and the other is employed would be a minimum requirement in order to contribute to these two objectives.

I also consider that where the other parent is not in paid employment and is able to act as a joint carer it would be reasonable for the barrister parent to be able to take 50% of the parental leave available to a main carer. Where the other parent is unable to act as a joint carer eg through being self-employed in some other role the barrister parent will be the main carer and therefore able to take parental leave as a main carer.

I do not consider that chambers should be required to delve into the household circumstances of any individual member other than to ask reasonable questions and expect accurate answers.

### **Keating Chambers**

The Equal Opportunities Committee of Keating Chambers welcomes the BSB consultation on shared parenting leave and broadly welcomes the proposals which will mandate Chambers to adopt policies which allow their members to take shared parental leave.

We recognise that flexibility in parenting arrangements, especially where the nature of employment of one or other parent is self-employment, is important and may encourage retention and return of parents to work. Where Chambers can assist with easing and encouraging the return to work they should do so. However, any change in the rules must be balanced, recognising that any costs associated are borne by other members of Chambers, many of whom will not benefit from parenting leave.

We, therefore, welcome the proposed rule change specified in the consultation paper.

As a control measure, however, and consistent with the current parental leave provisions, we would ask that during the period of parental leave taken under the shared parental leave provisions, the parent is the primary/main carer. This may be what the proposed rules have in mind in any event, but we consider it would be beneficial if this is made clear. We believe this is important as we do not think that members of Chambers generally would support a system whereby they are required to support, financially, what is a discretionary family decision to have both parents taking time off work beyond the existing provision for secondary carers. If this is not clarified, there is a risk that the whole policy is discredited and undermined.

So far as the options are concerned:

We do not consider there is a need for rigid implementation of leave into three blocks as proposed.

We do not support the proposal allowing for a barrister on shared parental leave to undertake 20 days of work without otherwise terminating the parental leave. This seems to go beyond what is provided for individual parental leave. Plainly there can and should be flexibility as to when the leave can start and finish and the same 'contact days' provision should apply to shared parental leave. A proper flexible work policy should deal with parents who wish to work only part-time.

We are content with the option of extending shared parental leave to self-employed barristers where the other carer is not in paid work, however, as stated above, the barrister taking the shared parental leave should be, in practice, and should self-define as the primary/main carer. For example, if the other parent is not well or otherwise unable, there is every reason why the barrister who wishes to take leave, should be able to. Similarly, even for those families where the barrister is the only working parent, they should be permitted to take more than the secondary carer's leave, subject to the above-mentioned caveat.

The option allowing for full parental leave for both carers, is a step too far and would not find the support of members of Chambers. There may be circumstances where a Chambers may wish to agree to such a proposal, however, it is possible to envisage circumstances where a compulsory policy on these lines would be seen as the imposition of a rule where working barristers financially support a 'lifestyle choice' of other members of Chambers. Such an open-ended policy is a step too far and we do not think it would find the support of members of chambers.

### **Anonymous**

I am an employed barrister, but the proposals have implications for equality at the Bar in general, and in the wider society. Therefore, I believe it is appropriate for me to respond.

Pressure of work prevents me from considering the proposals in detail, but I can say that I am supportive of the spirit, and of the idea of requiring chambers to allow

shared parental leave. Allowing the sharing of care between parents is certainly a step in the right direction. In particular, in a modern society, it should not be assumed that children have a “primary carer”. This may be the arrangement that a lot of couples adopt, but it needs not be the only one. It may also well be that the only reason why couples feel bound to adopt it is the continuing disparity of pay and career prospects between women and men, as opposed to a positive choice. A proposal such as this can be a step to reduce such disparity and change mentalities.

## Direct responses to the consultation questions

5. The questions asked in the consultation paper were:
  - a. Q1: Do you agree with the proposed change to the wording of the parental leave rule above?
  - b. Q2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers' SPL policies?
  - c. Q3: What are your views on how the suggested rule change will affect these three scenarios?
  - d. Q4: Are there any additional scenarios we should consider?
  - e. Q5: Are there any additional potential benefits or challenges to the proposed new rule?
  - f. Q6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB or chambers in their SPL policies and why?
  - g. Q7: Would you support this alternative approach and why?
  - h. Q8: Would the increased burden on chambers be justified in the light of any benefits?
  - i. Q9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?
  
6. The responses below dealt directly with some or all of the consultation questions. These responses have been broken up by question, and reorganised so that all direct answers to each question appear under the same heading.

**Question 1: Do you agree with the proposed change to the wording of the parental leave rule above?**

**Timothy Brennan QC, Devereux**

No, I do not agree. The proposals are patronising, bureaucratic, complex and obscurely drafted. They address a problem which does not need to be addressed, and envisage a beneficial result which is not based on any evidence at all. (See below).

The drafting of the proposed change to HandbookrC110(.k) is defective because it does not include any indication of what is meant by “sacrificed”: doubtless this could be addressed with more rigour. But there is no need for any maternity (or paternity, or adoption) leave to be linked to the leave taken by a partner. This is an intrusion into private life and is likely to fall foul of Article 8, in respect of the partner. The appropriate provision for any parental leave arrangement is that there should be a defined period in which the relevant parent can limit her or his practice in any way s/he chooses, and be entitled to a “rent” break for the appropriate period. Nothing more is then needed. Chambers do not means test the benefits given to pupils, starters, junior tenants or under maternity (etc) provisions. There is no justification for intruding into the circumstances of the partner in order to see what s/he has “sacrificed”. To that extent, the entire project of applying SPL to the self-employed Bar is flawed, and pointless.

**Cloisters**

For the reasons we explain further below, we favour a simpler approach to SPL, which gives all self-employed barristers who care for a child full access to chambers’ parental leave policy.

We would therefore amend the rule as follows:

- k. chambers has a parental leave<sup>1</sup> policy which must cover as a minimum:
  - i. a provision for parental leave that enables a member of chambers to take such leave during a child’s first year;
  - ii. the right of a member of chambers to return to chambers after a specified period of parental leave (which must be at least one year);
  - iii. the extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave;
  - iv. the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;
  - v. where any element of rent is paid on a flat rate basis, the chambers’ policy must provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers’ rent;

- vii. the procedure for dealing with grievances under the policy;
- viii. chambers' commitment to regularly review the effectiveness of the policy;

1 Parental leave means leave taken by a carer of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex.

**Jamie Johnston, Government Legal Department**

Yes.

I'm an employed (government) barrister. I support the proposals.

They seem to me to benefit everyone concerned, and at least in theory would help to erode the unhelpful and sexist social convention that one member of a couple with a child will inevitably be the 'main' carer, that person usually in practice being the mother if the couple consists of a man and a woman. If the changes help to improve the gender balance of the self-employed Bar that would also be a good outcome.

Knowing that in private practice I would benefit from broadly equivalent parental leave arrangements to those I currently enjoy as an employee would remove one disincentive to moving into private practice. The change could also indirectly assist employed barristers, or at least those who work in government. As you probably know, pay for government lawyers tends to be lower than earnings for equivalent work in the private sector. When we express dissatisfaction about this, a common response is that other benefits make up for the disparity. The greater the parity between non-pay benefits in private practice and employed practice, the less force this argument has and therefore the better we're able to make the case to our employers for appropriate pay increases.

Of course, what would be even better would be to give a full parental leave allowance to both parents. This would challenge not only the cultural assumption that one parent should care for a child more than the other, it would also challenge the cultural assumption that it's reasonable to expect a child to be cared for by only one parent at a time (or both at the same time but only for half the length of time). But I appreciate that such a change would involve additional costs for chambers. From the perspective of the employed barrister, it would do a lot to counteract the various current incentives for parents, especially mothers, to prefer employed practice over self-employment.

**Fiona Ryan, 5 King's Bench Walk**

Yes (subject to answer to alternative Q).

**Paul Ashwell, One Crown Office Row (Brighton)**

I do not agree. I am opposed in principle to shared parental leave for fathers who are self-employed barristers. I speak as a self-employed barrister who is the father of 2 children. It is wrong in principle for self-employed colleagues to bear any burden

for fathers who choose to take parental leave, unless the father is the sole parent, i.e. the mother has died in or after childbirth.

### **Family Law Bar Association**

If the aim is to reflect the statutory scheme then we agree that the proposed wording does so. Our response on the extent to which SPL should cover circumstances outside of the statutory scheme is set out in response to question 6.

### **Esther Gamble, No. 5 Chambers [in answer to Qs 1-3]**

I think the proposals are fine, but I think it would be better to go further as per Q7 & 8.

I think it's a really important issue – the more I think about retention of women at the Bar, and the difficulties of accommodating family life alongside a career at the Bar, the more I am convinced that there is a real limit to what can be achieved unless and until it is socially and professionally “acceptable” (or even encouraged) for MEN to be seen as care-givers, to work part-time and to take time out from their careers for family reasons. Any steps that encourage men to participate in child-rearing are a good thing for women at the Bar! My husband and I are both barristers, in the same chambers, and whilst I took maternity leave, on my return to work we BOTH went part-time and since then (8 years ago) have remained equal care-givers.

Finally, I think it is unhelpful to talk about a “main carer” – forcing parents to define themselves in this way works against the idea that parenting should be a shared, and flexible, partnership.

### **Commercial Bar Association (COMBAR)**

COMBAR agrees with the BSB’s “core proposal” that rC110(.k) of the BSB Handbook should be amended broadly in the manner proposed at paragraph 13, but subject to some drafting amendments to sub-paragraph (iii) (considered below). This would align the SPL position for self-employed barristers so near as possible with that for employed barristers covered by the Shared Parental Leave Regulations 2014 (“the SPL Regulations”).

COMBAR does not however consider that the BSB should, at least in the first instance, implement the additional SPL options discussed in Section III of the Consultation, which would have the effect of conferring on self-employed barristers greater SPL rights than employed barristers. Nor does COMBAR consider that the guidance proposed at paragraph 16 necessary or appropriate, save that in the case of discontinuous leave it would be appropriate for there to be guidance to the effect that (a) a non-main carer should be entitled to take an initial period of two weeks’ parental leave (corresponding to statutory paternity leave for employed male non-main carers) and (b) there should be flexibility on allowing discontinuous leave where appropriate.

[In answer to the question] Broadly yes, for the reasons given in the Consultation. COMBAR considers that the proposed rule change would promote equality and

diversity in the profession and may reduce attrition from the self-employed Bar of barristers (disproportionately women<sup>1</sup>) who take on caring responsibilities. This would also align the position of self-employed barristers, as near as possible, with that of employed barristers.

COMBAR does however consider that the drafting of the proposed rule change in sub-paragraph (iii) might give rise to uncertainty since it may depend on the scope of the financial rights enjoyed by the other carer, for example where a Chambers offers both a “rent holiday” and also a waiver of expenses during a parental leave period. A preferred draft, with the same effect, might be as follows: “where shared parental leave is taken, a joint carer is entitled to a proportion of the leave and financial rights available under their chambers’ policy, equivalent to the proportion of the period of any leave and financial rights sacrificed by the other carer”.

#### **Bar Council [with whom the Association of Women Barristers agreed]**

Yes. We agree with the BSB proposal to amend the definition to say “shared parental leave means leave taken by the joint carers of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex (Definition 150, BSB Handbook)...”

*[NB: the quote that the Bar Council has ostensibly agreed to above was not in the consultation paper.]*

#### **Matrix Chambers**

In general yes, though with the following reservations:

“iii) where shared parental leave is taken, a joint carer is entitled to a proportion of the leave/rights available under their chambers’ policy, equivalent to the proportion sacrificed by the other carer;”

We are not sure this paragraph is clear, including the use of the words “sacrificed by the other carer”. Perhaps: “a joint carer is entitled to their parental leave and rights available under their chambers’ policy. The joint carer is entitled to a proportionate amount of leave and rights, balanced with the percentage of leave taken by the other carer.”

“FOOTNOTE 1 Parental leave, including when taken as shared parental leave, means leave taken by the main or joint carer of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex (Definition 150,BS Handbook).”

We are unsure whether this includes a scenario where a person intending to take shared parental leave is not an adoptive or biological parent, but is the married, civil, or de facto partner of a parent, or if they are not the biological parent but no formal adoption has taken place. We consider that as a matter of policy, the shared parental rule should encompass leave which is being taken by a person in the capacity of a

parent by virtue of being a partner of a birth parent or adoptive parent who is taking a proportionate share of that parent's leave.

### **Inner Temple Bar Liaison Committee**

We agree with the thrust of the proposed changes to the rules in the BSB Handbook but believe – if the decision is to proceed with the ‘complicated rule’ (see consultation paper, paragraph 26) – that further refinement of Handbook rule r C110k(iii) would be desirable, as set out below.

The consultation paper (pages 7-8) sets out three scenarios in which Shared Parental Leave (“SPL”) would be accessible. While scenarios 1 and 2 deal with self-employed barristers (in the same chambers or different chambers respectively), scenario 3 involves another carer who is ‘employed’. The nature of the ‘employed’ carer’s parental leave entitlement differs to that of the self-employed barrister, consisting (generally speaking) of a continued right to receive the whole or a portion of their salary for a specified period rather than a right to return to chambers after a specified period together with rent and/or expenses relief.

For this reason, sub-paragraph k(iii) does not immediately appear apt to cover scenario 3 (‘The first carer is a self-employed barrister / The second carer is employed’). The words “a joint carer is entitled to a proportion of the leave/rights available under their chambers’ policy, equivalent to the proportion sacrificed by the other carer” imply that one is looking at the carers taking a proportion of equivalent rights, namely that “... a joint carer is entitled to a proportion of the leave/rights available under their chambers’ policy, equivalent to the proportion (of those rights) sacrificed by the other carer”. Such rights are only equivalent in the case of scenarios 1 and 2.

While it emerges from paragraph 2 of scenario 3 (page 8) – “The percentage of entitlements sacrificed by the employed carer could be taken by the self-employed barrister as a proportion of the chambers’ policies” – that the intention in this scenario is that each carer takes a proportion of their respective sets of rights regardless of their nature, we believe that this needs to be made clear in the rule itself.

To avoid confusion as to the scope of sub-paragraph k(iii), a potential amendment to the provision – so that it clearly encompasses all three scenarios – might read as follows:

“... a joint carer is entitled to a proportion of the leave/rights available under their chambers’ policy, equivalent to the proportion of whatever leave/rights have been sacrificed by the other carer (whether such rights be under (i) the same chambers’ policy; (ii) a different chambers’ policy; or (iii) the policy of a different third party employer).”

The accompanying guidance can then illustrate how SPL would be accessible in each of the three scenarios, as foreshadowed in paragraph 17 of the consultation paper.

The above comments, however, assume that the BSB proceeds with the 'complicated rule'. In fact, our preference is for the 'simplified' rule set out in paragraph 27 of the consultation paper – see paragraphs 26 and 27 below.

### **Brick Court Chambers**

Brick Court Chambers welcomes the BSB's initiative to introduce shared parental leave, because we support steps designed to enable or help barristers who care for children to maintain their practices even though they take leave from chambers, and to facilitate barristers' return to work after taking leave.

We have a few reservations about the proposed wording, primarily because it assumes that the distinction between the "main carer" and the other carer can be abandoned (which we doubt, as explained below), and because of a concern that the wording introduces an element of ambiguity and, possibly, potential for misuse.

Although the term "main carer" is not used in the Shared Parental Leave Regulations 2014, the regulations do, importantly, distinguish between "M" (the mother) and "P" because it is "M" who sacrifices maternity rights in order to create a period of Shared Parental Leave (SPL). The same applies in the case of adoption where the main adopter sacrifices adoption rights. In other words, the main carer at the birth of the child is the person whose leave and pay allowances can be shared with P (whose right to up to two weeks of paternity leave is unaffected by the SPL regulations). "M" is used below to refer to a mother or main adopter.

Following a period of maternity leave or adoption leave, a period of SPL can be created from what remains, which the two carers of a child can divide between themselves as they wish. This enables, for example, (a) M to take a period of leave to care for the child followed by a period of P caring for the child (and, possibly, M taking over again later in the period), and/or (b) for M and P to take a period of time off together.

As the consultation paper notes, if M is a self-employed barrister she has no statutory right to maternity leave and cannot herself take SPL (although her period working and paying national insurance contributions may be used to qualify P to take SPL if P is an employee). Already, steps have been taken by the Bar to ensure that M is entitled to take parental leave from chambers and to be relieved from the obligation to pay rent during some of that time. However, the present rule confines M to taking one continuous period of leave from chambers. She may be joined during that period by P taking SPL but she cannot take her leave in separate periods of time.

We consider that one primary objective for the Bar should be to ensure that if M is a self-employed barrister, she ought to be able to take her leave in separate periods rather than be confined to one continuous period of "parental leave" as a main carer as the current rule allows. This facility would promote diversity at the Bar as M is given additional flexibility as to how much time to take off and when to be absent during the first year of her child's life.

The proposed change in the definition of “Parental leave” to include leave taken by a person who is not the main carer, when read with subparagraphs .k.ii and .k.vi, would appear to mean that even if there is no sharing – ie. the main carer M takes his/her full leave and rights – then a barrister P (who is not the main carer) would nonetheless also gain an entitlement to a year’s absence with at least 6 months of that being rent free. We assume this result is not intended, not least because the consultation paper does not directly address it. It would in effect create a right to a prolonged rent-free period of ‘paternity leave’. This point could be addressed either by a change either to the definition or to the wording of subparagraphs .k.ii and .k.vi. The definition of “Shared Parental Leave” should make clear that the opportunity for it arises only if maternity rights or adoption rights (or their equivalent in the BSB’s existing parental leave) have been sacrificed.

There is also an ambiguity in the present rule that has not been addressed in the new wording. Both wordings might suggest that any person taking parental leave needs to take at least one year and that regardless of how much leave is taken, 6 months worth of relief from rent must be granted. This particular point could be cured by revisions which make clear that Chambers should specify maximum periods of leave and maximum periods of relief from rent while imposing rules as to the minimum length such periods should be: e.g.

**“.ii the right of a member of chambers to return to chambers after a specified period of parental leave provided that such leave does not exceed a specified maximum period (which must be at least one year, or, if taken as shared parental leave with another joint carer, must total at least one year when combined with the other joint carer’s leave)”**

### **Lincoln House Chambers**

Yes. Lincoln House Chambers is supportive of the proposal to incorporate the spirit of the shared parental leave regulations into the Bar Standards Board Handbook. However it should be noted that Lincoln House Chambers does not operate a system of minimum or fixed rent payments: we operate on a straightforward percentage. Most chambers outside London are in a similar position. If a member has a period of time not working, they are not incurring any rent. This automatically allows members considerable flexibility in their working arrangements. Also, we already have a general flexible leave policy. Therefore for us the financial impact of these rule changes will have less impact than in chambers that do operate such a system.

### **St Philips Stone Chambers**

Unsurprisingly given our Chambers’ policy, we are pleased to see any extension of parental leave rights across the sexes and/or to partners of primary carers who may want to take over that primary care themselves.

We appreciate that other Chambers may be resistant to such changes and as such, the alterations proposed would probably be taking matters as far as possible for the moment.

However, Rules .k.iv; v; and vi should – in our view – be reconsidered. The writer is aware that provisions for reduction of chambers’ contributions are a major source of concern amongst members of the Bar seeking to take maternity leave, and a major source of friction between such individuals and their chambers. In our view, the reduction in rent payable should be compulsory no matter what basis the rent is paid on and/or should be extended to situations where there is a pure (or partial) percentage rent policy. Further, the huge problems for returners when they recommence work in chambers, with the associated time lapse in receipts, needs to be addressed.

**Question 2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers' SPL policies?**

**Timothy Brennan QC, Devereux**

No. See above. Neither should the rule be supplemented with "guidance". Either provide a properly drafted rule, or do not. A rule supplemented with non-binding guidance is particularly unhelpful.

**Cloisters**

The guidance proposed would clearly need to be altered (although not substantially) to fit with our proposed wording. The references to SPL would have to be replaced with references to Parental Leave. In relation to each section:

- (a) Following consultation with our Head Clerk, we see no reason why Parental Leave should have to be taken in a maximum of three separate blocks of leave. We believe that some barristers may prefer to take leave in smaller "chunks" and that may be beneficial both to them as carers and practitioners, and to chambers financially. Following internal consultation, we do not consider that this should cause any significant administrative issues. We would propose guidance that Parental Leave may be split into blocks of no shorter than a week.
- (b) We agree with the guidance as to SPLIT days.
- (c) We agree with proposal (c), save that the word "joint" should be omitted.

**Jamie Johnston, Government Legal Department**

I have too little experience of work in chambers to understand the practical implications of this proposal but the underlying intention seems fair.

**Fiona Ryan, 5 King's Bench Walk**

Yes – as a minimum.

**Paul Ashwell, One Crown Office Row (Brighton)**

No.

**Family Law Bar Association**

Paragraph 15

We agree that it would be cumbersome and probably unhelpful for the guidance to attempt to cover every eventuality that may arise in relation to SPL. In light of the complexities of implementation chambers are likely to benefit from some detailed guidance on the issues to which they must give consideration in devising and implementing their policies. This guidance could helpfully take a similar form to that currently available in relation to parental leave, including a model policy.

Paragraph 16 (a)

In the event that the SPL provisions are extended to those scenarios we identify in our response to question 6 (second carer is self-employed etc), it may be possible for members of the Bar to benefit from a greater level of flexibility in their SPL arrangements.

In those circumstances we would not consider that chambers should necessarily be encouraged to reflect the terms of the statutory scheme in relation to the blocks of leave that may be taken as SPL. The restriction in the statutory scheme, preventing the splitting of SPL into more than three blocks (i.e. 4 months each), may provide specific benefits to employers who need to arrange temporary cover for the period of leave. It is not understood what, if any, objectives this provision may fulfil for chambers, in which arranging temporary cover is unlikely to be an issue. On the other hand, as most chambers rent policies are calculated on a monthly basis it is likely to be inconvenient for SPL to be split into blocks of less than a month.

Paragraph 16(c)

The current BSB guidance on parental leave does not include a provision similar to that set out here. Chambers are not therefore encouraged to require a barrister to show that they are the main carer by not submitting bills during their parental leave. Whilst it may be reasonable for chambers to require barristers who are on SPL (or parental leave) not to submit bills, we do not consider that this requirement is necessary in order for that barrister to 'show that they are a 'joint' carer'. It is recognised elsewhere in the consultation that abuse of the SPL provisions would be a breach of the Code of Conduct in any event.

Paragraph 17

We agree that this would be a helpful way of illustrating the rule change.

**Esther Gamble, No. 5 Chambers [in answer to Qs 1-3]**

I think the proposals are fine, but I think it would be better to go further as per Q7 & 8.

I think it's a really important issue – the more I think about retention of women at the Bar, and the difficulties of accommodating family life alongside a career at the Bar, the more I am convinced that there is a real limit to what can be achieved unless and until it is socially and professionally “acceptable” (or even encouraged) for MEN to be seen as care-givers, to work part-time and to take time out from their careers for family reasons. Any steps that encourage men to participate in child-rearing are a good thing for women at the Bar! My husband and I are both barristers, in the same chambers, and whilst I took maternity leave, on my return to work we BOTH went part-time and since then (8 years ago) have remained equal care-givers.

Finally, I think it is unhelpful to talk about a “main carer” – forcing parents to define themselves in this way works against the idea that parenting should be a shared, and flexible, partnership.

## **Commercial Bar Association (COMBAR)**

No, for the reasons set out below, but subject to the further comments at paragraph 18 of this Response below.

As to paragraph 16(a):

a) It is not the case that under the SPL Regulations employees are entitled to discontinuous periods of leave as of right. Regulations 14(2) and 30(2)2 entitles an employer to refuse a request for discontinuous periods of leave, in which case the employee will instead be “entitled to take the total amount of leave requested in the notice as a continuous period of leave” (Regulations 14(4) and 30(4)). It is understood that this is reflective of the fact that discontinuous periods of leave may be more disruptive for employers than a continuous period of leave.

b) COMBAR considers that the position should be the same for SPL for self-employed barristers, for much the same reason: notwithstanding that the barrister is self-employed, it is likely to be more disruptive to Chambers and the clerking team for him or her to take discontinuous leave. It would of course be open for self-employed barristers to agree discontinuous leave with their Chambers, but given the statutory position there should be no presumption or guidance either way on this issue.

As to paragraph 16(b):

a) COMBAR does not consider that it would be appropriate for a self-employed barrister on SPL to be entitled to SPLIT or KIT days during the period whilst retaining the benefits of SPL. That would unfairly privilege that barrister over other members of Chambers, in that he or she would be potentially entitled to perform remunerative work (and, presumably, avail himself or herself of Chambers’ clerking and administrative resources) without making any flat rate contribution towards Chambers’ rent.

b) COMBAR does however consider that there may be justification for a more limited proposal, whereby a member of Chambers on SPL would be entitled to SPLIT or KIT days without forfeiting the right to return to Chambers (i.e. the right covered by new rC110(.k)(ii)). The logistical difficulties involved however mean that this is probably best addressed by the individual Chambers and its member.

As to paragraph 16(c):

a) The proposal that a barrister taking SPL “would show that they are a ‘joint’ carer by not submitting any bills during their time on leave, save for any SPLIT days worked” is not explained, but is presumably intended to contrast with the position under regulations 8 and 9 of the SPL Regulations where an employee intending to take SPL must give notice specifying, inter alia, the proposed start and end dates of that SPL. In other words, the proposal is that instead of given prior notice of a period of SPL, the barrister would “notify” chambers of his or her period of SPL retrospectively, by not submitting bills during that time.

b) This is likely to be confusing and unhelpful. It is common for members of COMBAR chambers to be booked for hearings a long time in advance, and it is therefore in the interests of both chambers and the member to have (and be able to convey to instructing clients) a high degree of certainty as to when any period of SPL will begin and end.

c) COMBAR does not consider that the notification regime set out in the SPL Regulations will cause significant “bureaucracy”. It would be straightforward for chambers to administer SPL on a prior notice basis and indeed is likely to be less bureaucratic (and significantly less prone to error) than seeking to infer a period of SPL from an absence of bills.

d) Nor does COMBAR understand how this proposed guidance would recognise “...the practical differences between self-employed barristers and those in employment” in a relevant sense. The certainty associated with a pre-notified period of SPL is important to both self-employed and employed barristers and respectively their chambers and employers.

e) COMBAR does not consider that prior notice would create any “infringement on privacy”. Chambers are expected to have a high degree of trust with their members and COMBAR would expect there to be a constructive professional dialogue on the period of any SPL taken by members of Chambers.

COMBAR does however consider that there should be guidance in place on discontinuous leave as follows:

a) Discontinuous leave should be permitted for an initial period of two weeks followed by a longer continuous period of SPL during the child’s first year. This is consistent with the position for employed male non-main carers who are entitled to statutory paternity leave and (separately) continuous SPL (<https://www.gov.uk/employers-paternity-pay-leave/entitlement>).

b) Chambers should be encouraged to be flexible on discontinuous leave in appropriate cases. It is not possible to be prescriptive on what constitutes an “appropriate case” but two examples might be as follows:

i) in the event that the child is seriously unwell such that both carers need to take time off for their caring responsibilities. It might be appropriate in such a case to allow one or both carers to then take a separate period of discontinuous parental leave;

ii) in the event that the barrister taking SPL has pre-existing commitments and it would cause hardship to force the barrister to choose between those commitments and forfeiting SPL rights. An example would be if the barrister was instructed on a short appeal having acted at first instance but where the appeal hearing will be early in his or her SPL. In those circumstances it might be appropriate for that barrister to be allowed to act on the appeal without bringing his or her SPL to an end, either by allowing discontinuous leave around that hearing or by allowing a limited number of SPLIT/KIT days for that purpose. COMBAR does not, however, consider that that encouragement should extend to the barrister being exempted from making a flat rate contribution

during this period, which should be a matter of negotiation between the barrister and his or her Chambers

**Bar Council [with whom the Association of Women Barristers agreed]**

We agree generally with these suggestions, save that in paragraph 16c. relating to demonstrating joint care, we propose that the first sentence should read “That a barrister taking SPL would show that they are a ‘joint’ carer by not submitting any bills for work done during their time on leave...”.

**Matrix Chambers**

Yes, though it would be worth further exploring how an individual removes themselves from SPL and the consequences of this. Similarly, we recommend encouraging the chambers to make clear what would happen in a scenario where a barrister agreed to work for a maximum of 20 ‘keep in touch’ days, but for reasons beyond their control the work to which they have committed themselves professionally takes longer than anticipated, is delayed or becomes significantly more complex.

We would question whether the effective ban on submitting bills during their time on leave may be too restrictive, and suggest that the rule should allow flexibility particularly at the start and end of their leave in order to finish work off or prepare for work upon their return.

We would question the advisability of having a strict maximum number of SPLIT or KIT days, or a ban on billing during periods of leave. The formal concept of KIT does not transfer well to the self-employed bar, when barristers are accustomed to working/keeping in touch on an informal basis. We understand that a number of female barristers have experienced difficulties with in other chambers applying an unnecessarily restrictive interpretation of KIT days, and attempting to stop female barristers from working (in any shape or form) whilst they are on maternity leave. If this is the case, it clearly risks constituting unlawful indirect sex discrimination contrary to section 47(2)(e) of the Equality Act 2010. We believe that all chambers, and the BSB should be supportive of barristers undertaking bits of work on parental leave, whether this work simply consists of monitoring emails or monitoring legal developments to ensure that their return to work is as easy as possible, attending chambers marketing functions, or whether this work extends to the barrister in question working on a few select cases or a few select clients to enable a smoother transition back into full practice. This is in order that the barrister’s practice is not negatively impacted by taking parental leave. It is in chambers’ interest to let the barrister in question make this choice. This is particularly important as we believe that a significant factor in the poor rates of women returning to the Bar after having children relate in part to the structural difficulties of resuming practice at the Bar after taking time out. Accordingly, the BSB guidance should be phrased so as to encourage chambers to do all they can to make this transition time as easy as possible.

## **Inner Temple Bar Liaison Committee**

We agree with the suggestions for appropriate guidance outlined at paragraphs 16-17, subject to the following points.

### **SPLIT and KIT days**

The consultation paper notes that 'Keeping in Touch' (KIT) days and 'Shared Parental Leave in Touch' (SPLIT) days would not be a compulsory element of the rule, so would need to be agreed by carers and their chambers: paragraph 16(b). The consultation paper also notes that SPL can be taken as one continuous block of leave, or split into a maximum of three separate blocks of leave: paragraph 16(a). Accordingly, sets of chambers would need to decide whether to place an upper limit on the number of SPLIT and/or KIT days that could be taken during any one block of leave. For instance, if a self-employed barrister was entitled to 6 months of parental leave and opted to split it into three blocks of 2 months, would it be permissible to take all the SPLIT and KIT days (amounting to 6 weeks in total) within one 2 month period, or would they need to be allocated pro rata?

In addition, the concepts of SPLIT and KIT days were formulated in the context of paid employment and may require some modification when applied to self-employed barristers. While individual days of paid work may be an appropriate measure for SPLIT time for those in paid employment, in the context of the work of the self-employed barrister, an hourly figure may be more realistic. The appropriateness of the 'Keeping in Touch' nomenclature may also be questioned in sets of chambers where the majority of members travel frequently and spend the remainder of their time working at home and/or at the Inn libraries. In such chambers, physical presence in chambers is not the norm in any event so 'keeping in touch' seems less relevant.

### **Proof of joint carer status**

Paragraph 16(c) states that "a barrister taking SPL would show that they are a 'joint' carer by not submitting any bills during their time on leave". The concern is, of course, that a barrister could assert joint carer status and obtain the associated benefits but carry on a full time practice from home or elsewhere.

However, the language of paragraph 16(c) is somewhat puzzling, since "not submitting any bills" is a negative stipulation, and this is said to "minimise bureaucracy", but joint carer status is also a matter for the barrister to "show". Is the intention for the non-submission of bills to be policed? We note in this regard that while the consultation paper states "[w]e also do not propose to set up any regime to require chambers to check what leave is being taken by a barrister's partner" (paragraph 13), the document is silent as regards checks a chambers might perform on its own members.

If the intention is for the non-submission of bills to be policed, who by? In sets of chambers with their own accountants, these individuals would be a logical choice. Alternatively, it might be done by the clerks. The guidance accompanying the proposed rule change would benefit from further elaboration in this regard.

### **Brick Court Chambers**

We have the following comments on each of the guidelines

a) We agree with the proposal making clear that leave can be taken in one continuous block or in blocks. While statute enables an employer to say that circumstances are such that it is not convenient to allow leave to be taken in anything other than a continuous block, we do not consider that Chambers should be entitled to say that it is too difficult to allow leave to be taken in blocks. Indeed, allowing M to take leave in blocks where possible is one of the main purposes of SPL. We consider that the guidance should say that where a barrister wishes to take leave in blocks, Chambers should allow a minimum of two blocks of leave to be taken but rather than specify a maximum of three, we consider that this should be a matter for negotiation.

b) Prohibiting barristers from returning to Chambers during a period of leave other than a maximum number of days for the purposes of keeping in touch is potentially contrary to the objective of allowing SPL. Chambers would benefit from flexibility in allowing barristers to visit during periods of leave according to the demands of maintaining a practice while on leave; any other approach would risk discouraging barristers from taking SPL, or hampering the preservation of their practice during such leave, which would not be conducive to promoting diversity.

c) Requiring barristers not to submit any bills during a period of leave (or, presumably, forfeit the benefits of SPL) would not be conducive to promoting diversity. Barristers with long-term commitments to a case may need to carry out some paid work while otherwise on leave in order to keep that work available for when they return or to serve the needs of a client who has expected that work to be done by a particular barrister. An example would be if the barrister was instructed on a short appeal having acted at first instance but where the appeal hearing would be early in his or her SPL.

### **Lincoln House Chambers**

16a is a sensible proposal, although it is perhaps unnecessary to cap the 'split' of time with a maximum of three separate blocks. The self-employed nature of a barrister's practice allows for greater flexibility when negotiating a leave from practice, and chambers may benefit from being able to negotiate the 'time-split' with the member in a more tailored way.

16b is appropriate.

16c appears unnecessarily restrictive, and in some cases will be counter-productive. The nature of a barrister's practice may mean that cases conclude, and bills fall to be submitted, during the period of leave. Some barristers will continue to deal with some cases despite being on leave, as that best serves the clients. 16c removes this flexibility and appears to be tailored towards salaried employees rather than the self-employed. We do not think it is appropriate guidance.

17 is appropriate.

### **St Philips Stone Chambers**

We are in agreement with the guidance set out at paragraphs 16-17, save for the following points:

- a) It would be appropriate – in the interests of directing chambers towards ensuring full equality – to point out that although the Code of Conduct envisages members of chambers only benefiting from the leave provisions if the leave is shared, that it is possible – if chambers so wishes – to extend the full maternity leave provisions to all members of chamber if they are carers for a child in its first year of life.
- b) That the reference in 16c. to any bills should refer to bills for work done during that period
- c) That a reminder/warning should be given about the potential risk to a woman's entitlement to maternity allowance if she takes additional SPLIT days.

**Question 3: What are your views on how the suggested rule change will affect these three scenarios?**

**Cloisters**

Under our proposals, in each of these scenarios, each self-employed barrister carer would be entitled to chambers' full parental leave allowance and the associated rent relief. We explain our views on the likely financial effect of these provisions on individual chambers in response to question 9 below.

**Jamie Johnston, Government Legal Department**

The effects seem fair.

**Fiona Ryan, 5 King's Bench Walk**

Both carers would obtain some benefit to having flexibility to share the leave between them and Chambers would not suffer disproportionately.

I am not concerned about the potential negative impact which might be felt by a majority male Chambers resulting from fathers taking more parental leave than previously was the case. It sounds like the beginning of a slight tip in the balance. The negative impact on mothers of having to be out of work and the difficulties in returning to work warrant more concern. I would argue that the alternative option is preferable.

As pointed out the long term financial impact should be positive.

**Paul Ashwell, One Crown Office Row (Brighton)**

It would be wrong in principle to grant SLP right to fathers dependent on whether or not the mother happens to be a self-employed barrister whether at the same chambers or other chambers or an employed barrister.

**Esther Gamble, No. 5 Chambers [in answer to Qs 1-3]**

I think the proposals are fine, but I think it would be better to go further as per Q7 & 8.

I think it's a really important issue – the more I think about retention of women at the Bar, and the difficulties of accommodating family life alongside a career at the Bar, the more I am convinced that there is a real limit to what can be achieved unless and until it is socially and professionally "acceptable" (or even encouraged) for MEN to be seen as care-givers, to work part-time and to take time out from their careers for family reasons. Any steps that encourage men to participate in child-rearing are a good thing for women at the Bar! My husband and I are both barristers, in the same chambers, and whilst I took maternity leave, on my return to work we BOTH went part-time and since then (8 years ago) have remained equal care-givers.

Finally, I think it is unhelpful to talk about a “main carer” – forcing parents to define themselves in this way works against the idea that parenting should be a shared, and flexible, partnership.

### **Commercial Bar Association (COMBAR)**

COMBAR considers that the analysis set out as to how the “core proposal” affects these three scenarios is likely to be correct, with the exception that it would not be correct in Scenario 1 to say that the rule change would allow each carer to “split their leave into up to three blocks”. The proposal for discontinuous leave is only part of the proposed guidance not the rule change (and COMBAR considers that guidance inappropriate for the reasons set out above).

### **Bar Council**

We agree with the BSB’s views on how the suggested rule change will affect the three scenarios given. In each of these scenarios, each self-employed barrister carer would be entitled to their chambers’ parental leave allowance and the associated rent relief.

### **Matrix Chambers**

#### **Scenario 1**

As above, we question the wisdom of banning a barrister on SPL from billing – outside of the set SPLIT days. In scenario 1 for example, this might be counterproductive for the chambers in question if the barristers were both high earners and were not allowed to bill at the same time. Though the length of the leave would be shorter overall, the impact could be deeper than if they were in different chambers. In addition, a key benefit to add is that the two barristers are allowed to support each other during leave, which leads to better work-life balance and wellbeing for both.

#### **Scenario 2**

Although only felt by one chambers, the following sentence also applies to Scenario 1: “However the financial impact on the Bar as a whole would depend on how the financial impacts will be felt by different chambers.” In both Scenarios 1 and 2, the benefit to the Bar as a whole is that the retention of women is likely to improve. Further, more men at the Bar will feel able to take parental leave and will not have to pay rent whilst doing so.

#### **Scenario 3**

No views. This is likely to be the most common scenario. Particularly when the self-employed barrister is at the publicly funded Bar, it may make sense for him or her to be the person undertaking the majority of the childcare during the first year of a child’s life. Scenario 3 will allow him or her to do so, without having to pay rent for that year.

### **Inner Temple Bar Liaison Committee**

For the reasons given above, we would suggest that there is an air of unreality about scenarios 2 and 3 given the current draft of the rule change.

Dealing first with scenario 2 – that of two self-employed barristers in different chambers. It is envisaged that if barrister A gives up a percentage of his/her entitlement then barrister B would be able to take up that sacrificed percentage under his (Chambers B's) parental leave policy (as envisaged by proposed rule rC110(k)(iii)). Because of potential differentials in parental policies this could mean that there would be a disproportionate impact on those sets with a more generous policy which is, we would suggest, undesirable.

As to scenario 3, we again think this unrealistic – especially at paragraph 2. For the reasons given above we would advocate the rewording set out above.

### **Brick Court Chambers**

Scenario 1 seems entirely unobjectionable because Chambers A has chosen to allow more generous entitlements than are required under statute (and under the BSB Proposed Wording) and there could be no sensible objection to two barristers within the same set sharing them

However, in the case of Scenario 2, Chambers B has (for whatever reason) chosen to adopt the minimum requirements. On the one hand, the proposed wording is aimed at enabling SPL to cover a child's first year whereas the combination of Chambers A and Chambers B entitlements now requires Chambers B to contribute to overall benefits which exceed the minimum requirements. It is not difficult to envisage that Chambers B may object to that approach where the main carer is a barrister at Chambers A. Chambers B may argue that its obligations are limited by the objective to cover "the child's first year".

The application of Scenario 3 is unclear. It is suggested that "The same approach to sharing the entitlement would be adopted as in Scenario 2" but that is not the equivalent situation. Under the statutory provisions for Shared Parental Leave and Shared Parental Pay, while there are 52 weeks (12 months) of Shared Parental Leave (less any weeks taken as maternity or adoption leave), there are only 39 weeks (9 months) of Shared Parental Pay (less any weeks of maternity allowance or adoption pay). It is assumed from the proposed wording that the relevant proportions of leave and relief from rent are to be calculated accordingly.

Suppose, for example, that an employed M were to limit his/her leave to 6 months. M would then be able to give 6 months of Shared Parental Leave to partner (i.e. half of his/her leave), but only 3 months of those would qualify for Shared Parental Pay (i.e. one third of P's total allowance of pay). Accordingly, we assume that P's chambers would be expected to allow P at least half the available parental leave (which would be at least 6m) and one third of the available relief from rent (which would be at least 2m since the BSB propose only 6m rent free rather than 9m) provided that the total period of leave shared does not exceed one year.

We consider that this is the right approach. In other words, to the extent that M is sharing a period of unpaid leave, that results in barrister P being entitled to a corresponding proportion of the entitlement to leave from chambers but not to relief from rent. If, on the other hand, chambers in the hypothetical example above were expected to offer half the available parental leave and half (as opposed to 1/3) of the available relief from rent, then the BSB would be requiring more from a set of chambers choosing to adopt the minimum requirements (Chambers B in the scenarios) than the statute requires in terms of financial compensation.

### **Lincoln House Chambers**

From LHC's perspective the rule change will have minimal effect, and that effect would not differ across the three scenarios. We operate a very flexible leave policy and work closely with the individual barrister to come to an arrangement that benefits both parties. As we do not have a minimum or fixed rent system, there are no rent relief implications. The only cost to chambers would be if a greater proportion of members took parental leave as a result of the current gender imbalance in parental leave being corrected. However this would be balanced by the practical reality of barristers being self-employed and thus unable to earn an income when not working. It is likely that few members will take the full entitlement. It is more likely that members will take shorter periods of leave, or undertake some work during their period of leave. Consequently the costs to chambers (in the form of lost income) is unlikely to greatly increase.

**Question 4: Are there any additional scenarios we should consider?**

**Cloisters**

Our proposals would apply equally to barristers who care for a child or children together with a person who is a “worker”, self-employed in a different field or who does not undertake paid work.

**Jamie Johnston, Government Legal Department**

I can't think of any other scenarios.

**Paul Ashwell, One Crown Office Row (Brighton)**

No.

**Family Law Bar Association**

We have identified a number of further scenarios which we think merit consideration. These are set out in answer to question 6. These are scenarios in which SPL would not be available in the event that the rule change is as set out at paragraph 13.

**Esther Gamble, No. 5 Chambers**

No.

**Commercial Bar Association (COMBAR)**

Not under the “core proposal”. COMBAR responds to Scenario 4 further below.

**Bar Council [with whom the Association of Women Barristers agreed]**

A further scenario might be barristers who care for a child or children together with a person who is a “worker”, self-employed in a different field or who does not undertake paid work.

**Matrix Chambers**

Perhaps where one carer is a self-employed barrister in a chambers, and one carer is a self-employed sole practitioner or in a very small chambers, as the impact for the second may be significant and they may not have support in place.

**Inner Temple Bar Liaison Committee**

No – subject to the response below to scenario 4 (second carer not in paid work and not in receipt of state benefits).

**Brick Court Chambers**

Not under the “core proposal”.

**Lincoln House Chambers**

No.

**St Philips Stone Chambers**

The scenarios given and explanations seem clear and cogent. However although it is interesting to consider what the financial impact is on the Bar as a whole (Scenario 1), my role as an EDO in a large chambers and as someone who is committed to equality, means that I’m not particularly interested in whether the Bar as a whole might feel the financial pinch in the short term. The overall picture (as set out in point 4 under Scenario 3) is that the Bar is haemorrhaging women, who find the prospect of returning to work and facing the uphill struggle of re-building a practice daunting. Consequently, anything that can be done to assist them would be useful, particularly the point made in paragraph 7 above about chambers making provision for those returning from career breaks so that they do not have to immediately face paying a full chambers’ percentage rent on tiny receipts.

**Question 5: Are there any additional potential benefits or challenges to the proposed new rule?**

**Timothy Brennan QC, Devereux**

The “potential benefits” are largely imaginary, and not evidenced at all. They are based on assertion. In particular, there is no evidence whatsoever that “retention” of female barristers will be significantly, or at all, affected by provision of a shared rent-free period within the first year of a child’s life. Lack of retention of women of child-bearing age is not unique to the Bar. But it is certainly not caused by a minimal financial impact during pregnancy or in Year 1. It has a much wider causes, buried in societal attitudes to child rearing. It is simply not the job of a professional regulator to tackle those, but even if it were, they will not be effectively, or at all, addressed by the current proposals.

**Cloisters**

We consider that the potential benefits and challenges of the BSB’s proposed new rule are well summarised at paragraph 18 of the consultation paper.

We consider the principal benefit of our proposed rule over the rule proposed by the BSB to be its simplicity. In our view the BSB proposals, and in particular the proposals around calculating the “remaining” portion of SPL entitlement, would place an unnecessary administrative burden on chambers. For the reasons we give in response to question 9 below, we do not believe that the financial impact on individual chambers of our proposal will be disproportionate, although we accept that it is likely to be greater than the financial impact of the BSB proposal.

**Jamie Johnston, Government Legal Department**

I’ve mentioned an indirect benefit to employed barrister above.

**Fiona Ryan, 5 King’s Bench Walk**

The benefits to the child.

**Paul Ashwell, One Crown Office Row (Brighton)**

The question is plainly biased. "Challenges" seems to be a euphemism for "disbenefits" or "disadvantages." The obvious disbenefit is that the proposed new rule undercuts the principles of self-employment and self-reliance.

**Family Law Bar Association**

The BSB ‘Women at the Bar’ survey (July 2016) reveals that more than 70% of the women respondents said that taking parental leave had had an impact on their practice or progression. Whilst the aim of the rule change is to reduce this negative impact, a potential challenge is the increase in the number of barristers taking

parental leave (SPL) who may experience some impact on their practice or progression.

#### **Esther Gamble, No. 5 Chambers**

I think the rules are unnecessarily complicated, which would be an obstacle to people taking advantage of them. Life is complicated enough with a new baby, without trying to navigate detailed and complicated rules, particularly if having to liaise with one's partner's workplace as well. I think it is important that the rules are simple and easy to understand, otherwise people will be put off using them and chambers will struggle to implement them effectively. I have a general concern that it is all well and good for chambers to formally put in place policies on issues concerning equality and diversity, but it is quite another for those policies to be promoted in practice and to be of practical use. Simplicity and transparency is important, otherwise there is a danger that implementation of these sorts of policies is largely about box-ticking rather than making a real difference to people's lives.

#### **Commercial Bar Association (COMBAR)**

No. COMBAR agrees with the BSB that the risk of "abuse" (in the sense of both carers claiming full parental leave entitlement to which they would not be entitled) is low given the standards of honesty to be expected of members of the profession.

#### **Bar Council [with whom the Association of Women Barristers agreed]**

We agree with the potential benefits and challenges outlined by the BSB and, on careful reflection, believe that the benefits of adopting the proposed rule change outweigh the drawbacks, therefore militating in favour of change.

It is accepted that in the short term there may be challenges for chambers, and it is clear that there may be some costs implications initially. However ultimately the Bar would be at the forefront of advocating full equality for all of its members in relation to parental leave, and this would probably act as a draw to recruitment of the best and most talented women who would otherwise not consider a career in what is still a male dominated profession, especially at the more senior levels. Cost is a matter for each chambers to consider itself and it may be that for some there will have to be a period of graduation on to the new scheme, but the BSB should not be put off putting into place changes that will ultimately benefit the profession as a whole. In terms of the possibility of the risk of abuse, members could be required to notify an appropriate person in chambers of the identity and occupation of their joint carer.

#### **Matrix Chambers**

We consider the majority of the benefits and challenges are set out, save for perhaps acknowledgement that chambers should put in place support mechanisms for all barristers returning to work after taking shared parental leave, so this process is smooth. Further, that the BSB and Bar Council should take steps to encourage take

up, and to encourage a more positive and imaginative attitude towards childcare – particularly at the senior end of the Bar.

### **Inner Temple Bar Liaison Committee**

In our view the following ‘potential benefits’ listed in the table may be overly optimistic:

“improve the gender diversity at the senior end of the self-employed Bar by supporting the retention and progression of female self-employed barristers” (bullet point 4)

“increase income for chambers that would otherwise have failed to retain female members” (bullet point 5)

“mitigate possible unconscious bias against selecting women of child-bearing age as pupils or tenants” (bullet point 10).

We ask: how can SPL hope to improve gender diversity at the senior end of the self-employed Bar when it only covers the first year of a child's life? Also, the consultation paper does not acknowledge the extent of the cultural shift necessary for an SPL regime to succeed. If a male barrister is not minded to share the task of childcare with his female partner it seems unlikely that offering him rent and/or expenses relief during his leave and a right to return to chambers at the end of it will make a difference. We would, however, stress that these are not reasons for declining to adopt a rule change to effect SPL, only that the likely impact of such a rule change may not be as significant as hoped.

Further we would add an additional bullet point to the ‘potential challenges’ column, namely that the rule change as currently drafted – or indeed in the revised form set out above – would mean that sets of chambers would incur additional accounting costs in implementing SPL, particularly so if the requirement regarding bills is implemented. See our comments above.

### **Brick Court Chambers**

None foreseen.

### **Lincoln House Chambers**

Nothing to add.

### **St Philips Stone Chambers**

The reader is referred to the response of the Bar Council to this consultation, with which we concur.

**Question 6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB or chambers in their SPL policies and why?**

**Cloisters**

This question deals with the situation of the self-employed barrister whose fellow carer is not in paid work and does not receive state benefits. Under our proposal, this individual would be treated in precisely the same way as all other barrister carers, so we favour option (c).

**Jamie Johnston, Government Legal Department**

I would support option (c). Of course people may be out of work for many reasons, including being sufficiently wealthy that they don't need to. But many non-working parents are likely to be looking for work, which can consume as much time and energy as paid work. Option (c), and to a lesser extent option (b), would also avoid a socially regressive situation where a new parent who is (perhaps involuntarily) out of work – and who is more likely to be a woman – is effectively forced to act as main carer, while their partner is unable to assume the role of main or equal carer simply because they are in work and their partner isn't.

**Fiona Ryan, 5 King's Bench Walk**

23c. The barrister should not suffer because of their partner's position and there could be any number of reasons why a person might be out of work AND unsuitable to be a full time carer for a new baby.

**Paul Ashwell, One Crown Office Row (Brighton)**

Does not arise, but of the 3 choices [a].

**Family Law Bar Association**

**Option A**

We identify a further scenario in which self-employed barristers (who are not main carers) would not be able to take SPL. That is where the first carer is a self-employed barrister and the second carer is self-employed (but not a barrister). If the rule is aligned with SPL legislation the barrister would only be entitled to parental leave if he or she was the main carer.

Option A will also prohibit the sharing of parental leave by members of the Bar in circumstances where the second carer is not employed but looking for work or engaged as a student.

Whilst this option would bring the minimum standards in line with the statutory scheme and thus the provision for employed members of the bar, a principled justification for limiting the opportunities for SPL in the above scenarios is not identified. There is inevitably a financial justification for such an approach in that it

reduces overall the amount of SPL that will be taken by barristers. We do not however consider that the overall financial impact of the scheme on the Bar is sufficient to justify the exclusion of those members of the Bar that we identify from the SPL scheme.

#### Option B

This option appears to provide a reasonable response to the circumstances identified in Scenario 4 and those additional scenarios identified above. Whilst 50% is an arbitrary proportion of leave (not related to the actual sharing of the care), it provides a mechanism for those otherwise excluded from the scheme to benefit from SPL. Further, this option ameliorates the financial impact on chambers when compared to option C.

#### Option C

It appears to us that this option could have a significant financial impact on some chambers. In light of the current circumstances for many chambers undertaking primarily publicly funded work, we would be concerned that the application of this option, as a minimum policy, may have a serious and detrimental impact. We are not in a position to make further comment in the absence of any information on likely financial impact for such chambers.

#### **Esther Gamble, No. 5 Chambers**

Option c.

#### **Commercial Bar Association (COMBAR)**

23(a), for the following reasons:

- a) This is commensurate with the position under the SPL Regulations for employees (including employed barristers).
- b) Paragraph 22 misstates the objective of the SPL Regulations. The Department for Business Innovation & Skills made clear in its consultation paper that the SPL Regulations were introduced primarily as a “labour market policy, designed to support working parents who wish to share childcare responsibility between them to better balance their responsibilities at home and at work”<sup>3</sup>. It is for that reason that an “economic activity test” was proposed, which was subsequently modified to become the “employment and earnings test” in the regulations as enacted.
- c) Similarly, COMBAR understands that the proposed rule change is directed principally at the problem of (particularly female) barristers leaving the profession when they take on caring responsibilities. That being so, the justification for extending SPL to Scenario 4 is considerably weaker than the other Scenarios to which the “core proposal” is directed.
- d) The proposed rule change is concerned with minimum standards. In those circumstances an incremental approach is likely to be desirable. There is nothing to

prevent individual Chambers and their members from agreeing more generous parental leave policies.

e) Options (b) and (c) may well have a more negative financial impact on Chambers. The counter-argument at paragraph 25 posits that the self-employed barrister in Scenario 4 as the sole family breadwinner would not take up a lengthy period of parental leave, but if that so then it is difficult to understand why these options are needed at all.

#### **Bar Council [with whom the Association of Women Barristers agreed]**

Whilst our preference would be (c) access to 100% of chambers parental leave policy, we

propose that the BSB should adopt option (b), namely that in the scenario where one carer is a self-employed barrister and the second carer is not in paid work and does not receive state benefits, the self-employed barrister should be entitled to 50% of their chambers' parental leave policy, which would mirror the position the barrister would be in if their partner was employed and they shared their SPL equally. This should be subject to review at a later date.

We do not agree that the barrister in this scenario would only be entitled to parental leave if

they were the main carer, because the Bar Council is keen to promote shared caring of children even in families where only one carer is in paid work. We expect, for reasons dealt

more fully in response to questions 7-9 below, that there would be a minimal impact on chambers, and also because if the self-employed barrister is the sole earner then it is highly

unlikely that they will want to take a lengthy period of parental leave.

#### **Matrix Chambers**

We would support [Option B] as a minimum standard, with the option for [C] for chambers to implement if they wish. We think [A] would not set a high enough standard to accrue the benefits of SPL for the Bar as a whole.

#### **Inner Temple Bar Liaison Committee**

For ease of reference we have reproduced the three options contained in paragraph 23 (a-c) below:

“a. Align the Handbook rule with SPL legislation. This would mean that the self-employed barrister in scenario 4 would only be entitled to parental leave if they were the main carer;

b. Entitle the self-employed barrister to 50% of their chambers' parental leave policy. This would mirror the position the barrister would be in if their partner was employed and they shared their SPL entitlement equally; or

c. Entitle the self-employed barrister to 100% of their chambers' parental leave policy. This would mean that all self-employed barristers would have access to a full parental leave policy, no matter what their partner's employment status was. Unlike in options (a) and (b), self-employed barristers, whose partner is not in paid work, could choose to be the main carer in their child's first year."

In our view access to parental leave should not be dependent upon the employment status of the barrister's partner. We take the view that overall SPL is a positive measure which should be equally available to members of the Bar, regardless of their partner's employment status or whether they are the main carer. We therefore favour option 23(c). We come to that conclusion because it seems to us that the principal benefits of SPL apply more or less equally to the barrister, the profession and to the child in Option (c) as they do in Options (a) or (b). Furthermore, if entitlement to SPL were to depend on the current employment status of the partner, that seems a somewhat arbitrary limitation, in that employment status is something which can and does change over time, and over the course of a career.

### **Brick Court Chambers**

17. Our comments on the options in paragraph 23 are the following
- a.
    - (i) Where one carer is a self-employed barrister and the other carer (who is in fact the main carer) is not in paid work and does not receive state benefits, there is no need to extend a share of what is intended as a main carer's parental leave or relief from rent to the barrister.
    - (ii) However, a situation may arise where a self-employed barrister takes over the role of main carer during the child's first year of life. This may arise because the original main carer is incapacitated, or gets a new job, or simply because the couple choose to share main care with M taking the first half of the leave and P the second. In such a case, we consider it desirable for any barrister acting as a main carer at any time during the maximum period allowed by Chambers for parental leave (which will be a minimum of 12 months measured from birth) can access all or part of the Chambers' parental leave allowance during that period. This is not directly connected with SPL but recognises that a need or wish to take parental leave as a main carer may arise some time after a child's birth.
  - b. We do not agree with Option B. It should be for Chambers to create their own equivalent of "paternity" (or non main carer) leave which is a subject independent of SPL. If, however, the barrister in fact becomes the main carer, then please see our comments in a above.
  - c. We consider that it would be excessive to require chambers to entitle a barrister to 100% of their parental leave policy where his/her partner, the main carer, is not employed and thus is not sharing parental leave. In addition, we do not understand the last section of 23c: if the self-employed barrister is the main carer then surely the need for SPL does not arise and the full parental leave benefits are available.

### **Lincoln House Chambers**

The nature of LHC's policy, and our flexible approach to leave for members, is such that there is little practical difference in these options. It is unlikely that a member who is the sole income for their family would choose to take their full parental leave in any event, and therefore in practical terms option C is unlikely to be used in full.

As a bare minimum the handbook should reflect the shared parental leave regulations (option A). If, however, the BSB chooses to take advantage of the greater flexibility that self-employment offers in these circumstances, then option B is a sensible proposal and should be adopted as the minimum standard.

However LHC cannot comment on the impact options B and C would have on a chambers that operates a minimum or fixed rent system.

### **St Philips Stone Chambers**

Ideally, given this Chambers' parental leave policy, we would suggest that option (c) should be adopted. However, as a realist the writer understands that some chambers still have a problem with the concept of a maternity policy, even now. Hence option (b) would probably be more appropriate, with a statement that chambers should seriously consider option (c) if their finances and rent structures permit. Taking a career break still has a deleterious effect on one's practice: if a barrister chooses to do this even though their partner is working, they are the one who is going to suffer (probably more severely than any other member of chambers). Surely they should be supported if they chose to take this step to ensure the best start in life for their child?

## **Question 7: Would you support this alternative approach and why?**

### **Cloisters**

As set out above, we would support the alternative approach. In our view, this is the most effective way of ensuring the greatest level of access to parental leave amongst all barristers and thus of improving gender diversity within the profession, reducing the proportion of women who leave the Bar when they start a family, encouraging cultural change amongst male and female members of the Bar and improving well-being at the Bar by promoting better work-life balance. It also has the very important advantage of simplicity, and we think it likely that financial cost will be saved by eschewing the administrative complexities of the BSB's proposal.

### **Jamie Johnston, Government Legal Department**

I would support this. It would have obvious benefits for self-employed barristers and would help to reduce the substantial factors that make many (especially women) barristers feel pushed into / stuck in employed practice and unable to work at the self-employed Bar. It would also help employed barristers to put pressure on their employers to offer similarly favourable arrangements if they don't already.

### **Fiona Ryan, 5 King's Bench Walk**

Yes. Both parents should approach childcare as an equal responsibility and even the proposed changes require decisions about who is the 'main' carer and who is the secondary carer. A move towards equal shared parenting, at very least equal access to leave, is absolutely the right step for the bar, and will result in happier, healthier, more effective practitioners and ultimately greater diversity at the bar. However freer choice to take joint or shared parental leave, with both partners taking their time off at the same time, without the very real worry that this will force them to return to work whilst the baby is still too young, would be of greater benefit.

In the case of, for example, a self-employed barrister with a partner who is employed, there would be no detriment to the Bar of permitting the barrister the full parental leave (minimum one year) they would have been allowed had they decided to be the main carer.

Of course in many if not most cases carers will not choose to both take the maximum to which they could be entitled under the alternative option, but for both carers to take a couple of weeks or months early on, without the calculation that this requires a return to work earlier than would otherwise have been the case, would be vastly preferable and not require stressful choices at a stressful time of life.

Having the freedom for both parents to take the leave they would otherwise be entitled to, without requiring the sacrifice of the others' leave – or at least allowing some period for which it does not result in a straight swap – would be an attraction of the bar over employment. Each family could allow their own financial situation to dictate the leave they could afford both to share and take individually.

**Paul Ashwell, One Crown Office Row (Brighton)**

No.

**Family Law Bar Association [in answer to Qs 7 and 8]**

Whilst there are doubtless many advantages to members of the Bar in this approach in terms of wellbeing and the capacity for very flexible shared parenting, we reiterate our concerns set out in relation to option C. We would be very concerned if this policy were to be adopted in the absence of a robust analysis of the likely financial impact on chambers, particularly those undertaking primarily publicly funded work.

**Esther Gamble, No. 5 Chambers**

Yes. We are self-employed and chambers should facilitate whatever working arrangements people choose, particularly in the context of accommodating a family. It seems to me ridiculous and illogical to limit parental leave, in a self-employed context, in the way proposed in the consultation - to start from a premise that only one parent at a time should be involved in childcare. It should be made as easy as possible for barristers to take time out from their careers to contribute to their family life, for the well-being of the child, for the well-being of fathers, and to encourage retention of women by making it socially and professionally encouraged (not just acceptable) to devote time to your family (and not just women at the Bar, but wives in other jobs, who will feel more able to return to work if their barrister husbands can easily take parental leave). The importance of making the new arrangements simple and transparent, combined with the advantages of encouraging men to take time out for their families, more than outweigh any detriment to chambers finances (of which I am not convinced there would be any, at least in the long-term) so I am strongly in favour of these wider, simpler proposals rather than the primary proposals put forward in the consultation.

**Commercial Bar Association (COMBAR)**

No, for much the same reasons as above. A proposed rule change that would set minimum standards should be incremental in nature and aim to balance parental leave rights and the needs of Chambers. A scheme that reflects the SPL Regulations is likely to be reasonable in striking that balance. It is open to individual Chambers to adopt more generous policies if so advised.

**Bar Council [with whom the Association of Women Barristers agreed]**

Current SPL legislation does not give true equality to male carers, and it is better to put in place provision so that all members of the Bar are treated equally: it will only be when male members of chambers are able to take full advantage of the benefits currently enjoyed by women, under chambers' maternity leave policies, that damaging stereotypical assumptions will begin to change.

BSB's alternate approach therefore may be the most effective way of ensuring the greatest level of access to parental leave amongst all barristers and thus of

improving gender diversity within the profession. It may assist in reducing the proportion of women who leave the Bar when they start a family, encouraging cultural change amongst male and female members of the Bar and improving well-being at the Bar by promoting better work-life balance. Its simplicity will also reduce costs associated with administrative complexity.

### **Matrix Chambers**

We support his approach. In practice, most couples are very unlikely to both take a significant period of time off at the same time because one of the two will need to be earning enough money to support the household. This approach would avoid the need for complex questions about defining main carer, and complex implementation issues.

### **Inner Temple Bar Liaison Committee**

For ease of reference paragraph 27 is reproduced below:

“... to give all self-employed barristers who become the carer of a child full access to the chambers’ parental leave policy, regardless of whether their partner is a barrister at the same chambers, a different chambers, is employed, or is not in paid work” (emphasis in original).

We are mindful that this alternative approach may result in a greater financial burden on chambers, but also consider that that additional burden may be at risk of being overstated. In practice, we consider that notwithstanding the availability of SPL, the vast majority of barristers whose partner is not in paid work or self-employed will be unlikely, for economic reasons if nothing else, to avail themselves of their full entitlement to SPL.

We therefore support the alternative approach because we consider that it best furthers the laudable objectives of SPL. If in time it is apparent that uptake of this is so prohibitively costly for chambers the rule can be revisited, but as a starting point and for the reasons set out at paragraph 24 above, this is our favoured approach.

### **Brick Court Chambers**

No. While some chambers may choose to take this step, it should not be a measure imposed on chambers. The policy underlying the statutory provision for employees is to allow the sharing of benefits between partners, rather than to mandate the creation or expansion of benefits so that they exceed the aggregate benefits available to both partners taken together.

### **Lincoln House Chambers**

In practice LHC already operates this policy. Leave is dealt with on an individual basis and if a member chooses to take a period of extended leave at the same time as their partner, chambers would not object unless there was a compelling reason to the contrary. Therefore LHC would not object to this policy. It would also have

obvious practical benefits to members and is likely to benefit the work-life balance of members, as well as potentially increase retention of new parents.

However LHC cannot comment on the effect such a policy would have on the parental leave entitlement of the member's partner. This does not appear to have been considered in the consultation, and the BSB may want to consider whether such a policy could negatively impact an employed partner. If a member is having a year's parental leave, is there not the potential that an employed partner would not be entitled to leave under their own shared parental leave policy? If so that this would be an 'alternative approach' in name only for those members who have employed partners, whilst giving a benefit to those with self-employed or non-working partners.

### **St Philips Stone Chambers [in answer to Qs 7-9]**

With regard to question 7: yes – we've already done that. I initially proposed it because my view was that it was unfair to men to have a policy that women could take advantage of but men could not. We came to a point of trying to draft more complex rules, and in the end just thought that the simplest option, that would be truly fair, would be to cross-apply the full maternity provisions.

The increased burden on chambers is less than it would be if a parallel system was put in place: the Chambers finance team has its systems in place in relation to maternity leave and these can – obviously – easily be applied to any other member of Chambers. The only other burden would be a decrease in Chambers income. As noted in paragraph 4 above, this burden has so far been zero.

For each person who goes on maternity leave for a year Chambers' income reduces by about £13,000. At any one time there may be 3-4 women on this option. As with any other organisation, this has to be factored into the budget i.e. you cannot expect a Chambers of 160 barristers to have 160 barristers working to 100% of their capacity the whole time (it's the same for ordinary employers who have to factor in absence levels and maternity/parental leave into their productivity budgets). In the view of the writer, there is not going to be a sudden rush of male barristers who want to take up this option due to gender stereotyping. It is more likely to be a gradual increase, and therefore a gradual drop in Chambers income which will hopefully be matched by an increase in Chambers' income due to more women returning to Chambers and becoming fully productive as soon as possible (and on into later years of practice and greater seniority within the profession).

**Question 8: Would the increased burden on chambers be justified in the light of any benefits?**

**Cloisters**

Taking into account our answers to question 7 above and 9 below, we do think that any increased burden on chambers would be justified by the benefits set out above.

**Fiona Ryan, 5 King's Bench Walk**

Yes. The benefits would be happiness with chosen career, work/life balance, health of parents and child.

**Paul Ashwell, One Crown Office Row (Brighton)**

No.

**Family Law Bar Association [in answer to Qs 7 and 8]**

Whilst there are doubtless many advantages to members of the Bar in this approach in terms of wellbeing and the capacity for very flexible shared parenting, we reiterate our concerns set out in relation to option C. We would be very concerned if this policy were to be adopted in the absence of a robust analysis of the likely financial impact on chambers, particularly those undertaking primarily publicly funded work.

**Esther Gamble, No. 5 Chambers**

Yes.

**Commercial Bar Association (COMBAR)**

No.

**Bar Council [with whom the Association of Women Barristers agreed]**

We believe the current lack of data available on uptake of SPL amongst employed fathers makes it difficult for Chambers to calculate uptake and therefore any financial risks and may therefore have a chilling effect on current enhanced parental leave provisions designed to retain women at the Bar.

**Matrix Chambers**

Absolutely. The benefits of providing SPL far outweigh the burdens. It encourages greater support for the child, the mother, the father in having more time with his child, and to creating equity for women and men at the Bar as a whole. It is likely to improve diversity and retention of women at the Bar, and to have long-term mental health benefits for barristers by assisting them in balancing family and working life. It is also a significant step towards changing the perception of the Bar as a traditional and backward-facing profession.

We have always had parental leave available for both men and women, and have implemented our SPL policy for both members and staff at Matrix. On the three occasions [it] has so far been used (twice by staff and once by a barrister), it has been used by men and given them an opportunity they would not otherwise have had. It is the sign of a forward-facing and empathetic chambers.

#### **Inner Temple Bar Liaison Committee**

Yes, we believe that the increased burden on chambers is justified.

Subject to the note of caution sounded in paragraph 21 above, we believe that the benefits of the alternative approach include supporting a cultural shift and a change in public attitudes towards traditional gender roles. The alternative approach would make it easier for men and women to share the child carer and breadwinner roles interchangeably without any complicated rule changes.

#### **Brick Court Chambers**

We anticipate that this may become quite disruptive given the frequency with which people become parents and the proposal would go well beyond the legislation – especially in cases where Chambers (like ours) have adopted a more generous period of parental leave for the main carer.

#### **Lincoln House Chambers**

Yes.

#### **St Philips Stone Chambers [in answer to Qs 7-9]**

With regard to question 7: yes – we've already done that. I initially proposed it because my view was that it was unfair to men to have a policy that women could take advantage of but men could not. We came to a point of trying to draft more complex rules, and in the end just thought that the simplest option, that would be truly fair, would be to cross-apply the full maternity provisions.

The increased burden on chambers is less than it would be if a parallel system was put in place: the Chambers finance team has its systems in place in relation to maternity leave and these can – obviously – easily be applied to any other member of Chambers. The only other burden would be a decrease in Chambers income. As noted in paragraph 4 above, this burden has so far been zero.

For each person who goes on maternity leave for a year Chambers' income reduces by about £13,000. At any one time there may be 3-4 women on this option. As with any other organisation, this has to be factored into the budget i.e. you cannot expect a Chambers of 160 barristers to have 160 barristers working to 100% of their capacity the whole time (it's the same for ordinary employers who have to factor in absence levels and maternity/parental leave into their productivity budgets). In the view of the writer, there is not going to be a sudden rush of male barristers who want

to take up this option due to gender stereotyping. It is more likely to be a gradual increase, and therefore a gradual drop in Chambers income which will hopefully be matched by an increase in Chambers' income due to more women returning to Chambers and becoming fully productive as soon as possible (and on into later years of practice and greater seniority within the profession).

**Question 9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?**

**Cloisters**

We have undertaken some internal costings based on rent income lost as a result of members taking parental leave over a five year period. Those internal costings suggest that the average lost rental income per member who takes the full rent reduction (over an average leave period of 8 months) is 0.76%. Even in a year where 3 female members and 1 male member took parental leave, had all of them taken the full rent reduction, the lost rental income would have been around 4.55%.

In our view, these figures support the argument that even with a full take-up of parental leave, the costs to individual chambers will not be prohibitive. Furthermore, not only was the top annual estimated “cost” of 4.55% of rental income based on an outlier year in terms of the number of individuals taking leave, it assumes that all those taking such leave will take the full rent reduction. We consider this to be unlikely as where the barrister is not the “primary” carer, he/she is likely to take a relatively shorter period of leave in order to maintain the family income. For these reasons, we think that the financial impact of our proposal is likely to be relatively small.

**Paul Ashwell, One Crown Office Row (Brighton)**

I cannot estimate but the framing of the question shows the BSB's incomprehension of the nature of self-employment. The financial burden is born not by "chambers" but by the individual barristers who are the members of it.

**Esther Gamble, No. 5 Chambers**

I don't think there would be any significant financial cost in my chambers. The work which would otherwise have been done by the absent new parent would simply be covered by others. The lack of rent from them would be made up for by others covering their work. Overall, it would result in better retention of women in chambers, which is good financially, and a better work-life balance for men resulting in them being healthier and more productive over their entire careers. Any short-term detriment would be more than made up for in the long-term.

**Commercial Bar Association (COMBAR)**

It is impossible to say as this would depend on take-up. COMBAR recognises however that the level of take-up is likely to be relatively limited because the family's main breadwinner is unlikely to wish to take long periods of unpaid leave.

**Bar Council [with whom the Association of Women Barristers agreed]**

We note that the proposed rule change prior to this section of the consultation paper seeks to set the minimum stands on chambers' parental leave policies, and not the upper limit. For obvious reasons, the Bar Council supports this approach. Although

the proposed rule change is relatively complex, the Bar Council fears that the alternative approach (of giving all self-employed barristers who become the carer of a child full access to the chambers' parental leave policy regardless of the work position of their partner), may entail too great a potential financial burden for chambers to carry, particularly in mainly publicly-funded chambers and where it is difficult to predict how many parents would take up this option. We do however think this should be kept under review and revisited within a specified period.

The Bar Council believes that the general rule change proposed strikes the right balance in seeking improved work-life balance for both parents and emphasises the benefits of shared parenting across the profession and beyond.

As the representative body rather than a single set of Chambers, the Bar Council is unable to assess the financial cost of giving full parental leave entitlements to both carers.

### **Matrix Chambers**

We have not tried to quantify this, since we consider that we might have risked losing good employees (or the goodwill of good employees) without it, and since we consider it a long-term investment in the career and well-being of barristers and staff who use SPL.

### **Inner Temple Bar Liaison Committee**

The Inner Temple Bar Liaison Committee is not a chambers. We do however recognise that there is the potential for more members of a chambers to take up SPL on the alternative approach, which would in turn mean that more members of chambers would be entitled to rent and/or expenses relief during chambers' lifetime.

However, in light of the reasons set out in paragraph 26, we believe that the financial cost to a chambers will not outweigh the benefits of implementation of this alternative approach.

### **Brick Court Chambers**

It is difficult to estimate the financial cost because it is difficult to estimate what proportion of non-main carers would choose to take a significant period of absence from their practice, particularly if there is no pressing need to do so, and knowing the risks of being absent from the market. We estimate that the average cost to our chambers of each occasion a person took our full parental leave entitlement (which includes 9 months' relief from rent and rates and a £6,000 credit against chambers expenses on return to work) would be £15,000.

### **Lincoln House Chambers**

The financial cost overall is unlikely to increase significantly from the current position. The junior end of chambers - those likely to take parental leave in the near future - has a higher number of female members than male. In present

circumstances women are more likely to take parental leave. If this policy causes parental leave to be more evenly split between partners, then it has the potential to be a costs saving to LHC amongst the current member profile.

### **St Philips Stone Chambers [in answer to Qs 7-9]**

With regard to question 7: yes – we've already done that. I initially proposed it because my view was that it was unfair to men to have a policy that women could take advantage of but men could not. We came to a point of trying to draft more complex rules, and in the end just thought that the simplest option, that would be truly fair, would be to cross-apply the full maternity provisions.

The increased burden on chambers is less than it would be if a parallel system was put in place: the Chambers finance team has its systems in place in relation to maternity leave and these can – obviously – easily be applied to any other member of Chambers. The only other burden would be a decrease in Chambers income. As noted in paragraph 4 above, this burden has so far been zero.

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