

Derek Sweeting
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20th April 2021

Dear Derek,

“REPLYING BY SILENCE”

I have received the attached correspondence from Mr Noah Gifford about the practice of “replying by silence” (which might be more accurately described as not replying at all) to applications for pupillage places.

On the face of it Mr Gifford appears to make a strong and fair point, one indeed that might go beyond the immediate concerns of courtesy and integrity that he describes, and raise questions about how diversity and inclusion in the pupillage process can be properly demonstrated. It is hard to avoid drawing the conclusion that in a process where many candidates do not even receive a reply, let alone feedback on their application, the power of open and transparent recruitment in achieving a more diverse and inclusive profession must surely be undermined.

I know from our discussions that the Bar Council views diversity and inclusion as a priority. I am also aware of the Bar Council’s support services and work to address barristers’ psychological wellbeing, including those who are yet to secure pupillage.

I would be very grateful to know, therefore, as a focus of leadership for the bar (and indeed as an Approved Regulator), what steps the Bar Council intends to take in relation to this matter, and therefore what reassurance I am able to provide to Mr Gifford.

Yours sincerely

A handwritten signature in black ink that reads 'Helen Phillips'.

Helen Phillips
Chair
Legal Services Board



The Chair of the Bar

Dr Helen Phillips
Chair, Legal Services Board

Via email: Helen.Phillips@legalservicesboard.org.uk
CC: Cathy.Rideout@legalservicesboard.org.uk

7 May 2021

Dear Helen,

Thank you for your letter of the 20th of April. You ask me to assist you in replying to an email from Mr Noah Gifford sent to you on the 1st of April. I think you can be fairly brief as he has already received a full reply from the Bar Council and the Bar Standards Board. I doubt that there is any need to repeat the explanations and reassurances he has already been given by both the Approved and Frontline Regulator.

Mr Gifford wrote to me on the 29th of March. He did not await a reply but, at the same time as sending me a letter, shared it with the Legal Cheek website, various members of the Bar and on social media. On the same day he wrote to the Director General of the BSB. His email to you a few days later indicates, from its title, that he was conducting a public campaign.

The issue he raised was that he had not received a rejection, by letter or email, to a pupillage application made to a commercial set of chambers recruiting outside of the Pupillage Gateway.

I replied to him on the 1st of April and attach a copy of my letter. He had received a reply from the BSB on the previous day. Mr Gifford appears to have misconstrued part of that letter from the Director General which did not ask the Bar Council to make a public statement but to strengthen its existing guidance, in the Fair Recruitment Guide, as to the importance of telling candidates that they had not been selected for interview.

Notwithstanding that I did in fact send a message to the entire Bar which read as follows:

"Lastly, it is both good practice and good manners to inform pupillage applicants when their applications have been unsuccessful. So, it is concerning to see recent reports of "rejections by silence". Chambers that use the Pupillage Gateway receive several reminders to communicate with unsuccessful candidates and more generally, the Bar Council recommends that feedback is offered to

THE BAR COUNCIL

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shortlisted individuals who have not been offered pupillage. The manner with which they are treated can have a significant impact on both candidates themselves, given the time and energy they put into their application, and on chambers' reputation among future potential pupils and barristers. For all organisations that offer pupillage, informing unsuccessful candidates needs to be managed professionally and sensitively. Our Fair Recruitment guide, currently being updated, covers this in more detail and will be published shortly."

Our Director of Services contacted all AETOs on 30 and 31 March 2021 with the following message:

"If you're a social media user then you may have recently seen an open letter from an applicant to the Chair of the Bar, in which they ask that the Bar Council publicly expresses its concern about AETOs that are engaged in the practice of replying by silence (i.e. not informing pupillage candidates that they have been unsuccessful). I am conscious that many, if not most, of you are in communication with all of your applicants but please do remember to email unsuccessful candidates so as to ensure that they are kept fully informed of their position."

The User Guide for AETOs who use the Pupillage Gateway explicitly states that:

"One of the most frequent complaints from applicants is that AETOs have rejected them 'by silence'. To that end, please don't forget to change the status of, and contact, those candidates that have not been successful."

If any candidates are moved within the system but the Recruitment Lead leaves a number in the "Applied" status, the Pupillage Gateway also generates a pop-up notification that reminds them to notify the remaining applicants of their progress (or lack thereof).

The Bar Council delivers Fair Recruitment training to chambers and in doing so makes it clear that candidates should be notified of the status of their application.

The Bar Council's Fair Recruitment Guide (2021) contains the following:

Candidates that are not shortlisted should receive notification by email, informing them of the decision and thanking them for their application. Chambers and BSB entities using the Pupillage Gateway should also change the status of the application on the platform.

TIP: Letting people know as soon as possible if they haven't been shortlisted helps them to make decisions about what to do next. This has an impact on applicants' perceptions of the process and your organisation.

Mr Gifford's letter to me suggested that I should publicly express my concern about the practice of rejecting by silence. I have done so.

He also acknowledged that any regulatory response was a matter for the BSB. The Director General has replied summarising the relevant regulations. I take it from his response that he does not believe that further regulation is necessary. If so, I agree with him.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Derek Sweeting', with a long horizontal flourish extending to the right.

Derek Sweeting QC
Chair of the Bar