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REGULATING BARRISTERS

**Does Cross-cultural Communication Matter at the Bar?
Report from a Symposium hosted by the Bar Standards Board
12 January 2016**

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“Communication is a crucial aspect of a barrister’s role. I cannot think of any other profession where both the content and style of talk and text are so fundamental to achieving a just and fair society” Dr Ranjit Sondhi, Commissioner, Criminal Cases Review Commission



Figure 1 Dr Ranjit Sondhi

1. Introduction and context

Communication is at the heart of the legal process in England and Wales: justice relies on uncovering the truth of a situation through discourse between the many parties involved. Barristers, in particular, need to be able to elicit, listen and understand their clients’ legal problems and their accounts of relevant events. This is because, in order to represent their clients effectively in court, barristers need to be able to accurately re-tell their client’s account of events. For these reasons, communication skills have long been regarded as critical for barristers to provide a high quality service. They are a major focus of training for barristers.

Cross-cultural communication is the ability to empathise, understand and communicate effectively with those who may not share one’s own style of spoken language or one’s own background - be that racial, gender, religious or any other background.

Our Symposium brought together over 30 participants to explore the impact of cross-cultural communication at the Bar. Contributors included practising barristers, representatives of diversity groups, Specialist Bar Associations and leading experts in the field of cross-cultural communication. They were joined by senior leaders from our team (see Appendix Two for details of speaker biographies and BSB staff profiles).

This report is a summary of the discussion that took place at the Symposium. In the interests of candour, the event was held under “Chatham House” rules, so in this report, with the exception of our invited speakers, who gave their consent to be quoted directly, quotes and comments from participants are anonymised. The purpose of the event was to stimulate discussion and generate ideas for activities that the BSB might consider in the future. This report is not, therefore, a statement of BSB policy. Views expressed were those of the individuals who attended.

The question posed by the symposium was “Does cross-cultural communication matter at the Bar?” Discussions on the day were wide-ranging, but a clear consensus emerged that effective cross-cultural communication is indeed of critical importance to the Bar. There was general agreement that failure to address weaknesses in this area can present serious risks to both the legal process, consumers of legal services and the Bar as a profession. Participants were also clear that, as the regulator, we have a crucial role to play in ensuring that barristers develop the necessary skills and competencies to deliver the highest quality service to everyone in our society.

In our increasingly diverse society, good cross-cultural communication is recognised as being critically important for the legal profession. It is necessary to help meet the needs of a diverse client base, increase access to justice and minimise disadvantage and unwitting discrimination. The competencies required for effective cross-cultural communication are included within our recently published Professional Statement (see Appendix One) which describes the knowledge, skills and attributes that a newly qualified barrister should have on their first day of practice.

The legal sector can learn from other professions, such as medicine and global corporate businesses, by making sure that cross-cultural communication forms part of professional development. Evidence from a variety of sources suggests that despite excellent practice in some areas, breakdowns in cross-cultural communication do happen at the Bar. This can sometimes have damaging consequences for individuals, and for justice more widely¹.

These issues are of concern to us as the regulator of the Bar as they have particular relevance to a number of our regulatory objectives. These include improving access to justice, protecting and promoting the interests of consumers, and encouraging an independent, strong, diverse and effective legal profession. At the individual level, we see competence in cross-cultural communication as being important to a barrister’s ability to carry out their core duties within the BSB Handbook².

We believe cross-cultural communication is also an important issue as we consider the future of the profession as a whole. This is a time of unprecedented change at the Bar. Changes include a growth in litigants-in-person, the introduction of new providers and alternative legal services models, cuts to public funding and an increasing diversity amongst legal consumers. There is a need to understand how cross-cultural communication can increase standards and improve the consumer experience. In order to support this, as the regulator, we need to develop realistic and effective measures that can be built into our regulatory frameworks and activity.

This report sets out the key themes emerging from discussions at the event. Participants were asked to consider:

- Why cross-cultural communication matters at the Bar, both for the provision of a fair and high quality service to the public, and for the efficient operation of the Bar as a profession;
- What factors contribute to breakdowns in cross-cultural communication; and

¹ For example, Youth Proceedings Advocacy Review, www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf, (2015)

² The BSB Handbook, www.barstandardsboard.org.uk/media/1720092/bsb_handbook_april_2015.pdf (2016)

- Potential solutions and areas for further exploration and action by us in partnership with others.

Our Symposium and this accompanying report are a step on an ongoing journey - part of an equality and access to justice programme exploring issues of diversity, equality, leadership and risk in relation to the Bar. This is a journey of the utmost significance for the future of the profession and of the justice system more widely. We look forward to continuing it in partnership with colleagues, consumers, members of the profession and other stakeholders.

What we mean by “cross-cultural communication”

To be competent in cross-cultural communication has been described as being “appropriate and effective in the communication process that takes place between individuals from different cultures.”³

The agenda of cross-cultural communication has tended to be associated with ethnicity, race and language groupings. While these remain important dimensions, participants agreed that the concept needs to be defined more broadly to incorporate the ability to understand, empathise and communicate across all protected characteristics, including gender, disability, age or religion. Socio-economic background was also felt to be a particularly important and relevant cultural factor within the legal system affecting both the public experience of justice and how the Bar profession itself operates. At the same time, participants noted that the concepts of culture and identity are fluid rather than fixed: it is important to avoid making untested assumptions or stereotypes about a particular individual’s needs or behaviours based on their cultural background.

With a strong emphasis on the role communication plays in the legal process, navigating through cultural differences can be complex. Embedded patterns of verbal and non-verbal communication can often be subtle; differences in the meaning of eye contact, politeness and silence in a conversation are informed by a person’s cultural conditioning. Even when the same language is spoken, if the speaker’s first language or background differs there may be cultural influences that cause misunderstanding or confusion within the exchange, potentially leading to negative impact. Communication can be a complex transaction given the interplay of the cultural dimensions such as nationality, region, disability, sexual orientation, gender and religion.

³ Messner, W., & Schäfer, N., *The ICCA Facilitator's Manual, Intercultural Communication and Collaboration Appraisal*, (2012)

2. Why cross-cultural communication matters at the Bar

Across the Symposium there were consistent messages that effective cross-cultural communication, and the need to evidence its value within the profession, is of growing importance to the Bar.

Within a highly complex and multi-layered legal system serving an ever more diverse group of clients - including at international level – the ability of a barrister to overcome cultural factors to understand, interpret and accurately represent the perspective and instructions of the client was seen as fundamental for a fair justice system and professional practice. Participants identified a range of ways in which breakdowns in cross-cultural communication impact access to justice and clients' best interests. They also identified ways in which it can damage the health of the market for barristers' services and the development of the profession itself:

Access to justice

The principle of access to consistently high standards of advocacy is one of the fundamental foundations on which the rule of law is built. Users of legal services, especially in criminal law, are often among the most vulnerable and marginalised in society⁴ and frequently face particular problems in engaging with the legal process⁵. Participants felt that a barrister who is skilled in cross-cultural communication can play a pivotal role in supporting access to justice. They can quickly attune to the cultural context of the client or witness and identify any differences that could impact their ability to engage. They can familiarise the client or witness with the court, explaining the process and clarifying any misconceptions. As the process unfolds, they can help participants on all sides uncover the intended “meaning” behind what is being said. This can be so easily obscured by culturally informed choice of words, gestures, tone and so forth. Culturally aware barristers can also identify and resolve any miscommunications that arise, and ensure that the client understands what is happening. They are able to give well-considered advice. As a result, evidence pointing to the truth is more likely to emerge and, whatever the outcome of the trial, those involved are more likely to feel satisfied that justice has been served.

“People from minority groups often have the most need for access to justice, but are amongst the least likely to get it.”

Conversely, failure on the part of the barrister to understand the client's and/or witness's cultural context and an inability to help them overcome cultural barriers or communicate their meaning and truth to the court can have highly damaging consequences. At its most serious, it might result in a miscarriage of justice. It can also result in clients and witnesses losing confidence and faith in the legal system as a whole, leaving them less able – or willing – to engage properly next time.

⁴ *Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups* (Buck et al 2005)

⁵ *Knowledge, capability and experience of rights problems* (LSRC 2010)

Health of the legal services “market”

Participants noted that breakdowns in cross-cultural communication at an individual level can have a wider impact on the health of the legal services market – including the Bar – as a consumer market. A functioning market calls for informed consumers who are able to exercise choice in selecting a service provider. Concern was expressed about a trend in some communities, where clients who have had negative experiences in the justice system as a result of poor cross-cultural communication disengage from mainstream service providers. Instead, they may turn to providers who share their cultural background, whether or not the provider has the necessary level of expertise or specialism. This was seen as restricting consumer choice.

Elsewhere, there was concern that lack of understanding of the justice system in England and Wales among those from minority and/or marginalised cultures leaves the balance of power tipped in favour of service providers rather than users.

Effective cross-cultural communication, on the other hand, makes sound business sense for both the consumer and provider: a barrister competent in this can often pre-empt and mitigate time-consuming communication problems, offering a more efficient and cost-effective service as a result.

Impact of cross-cultural communication on the wider justice system

Although the primary focus of discussion among participants was the criminal justice system, it was noted that effective cross-cultural communication is equally important in other areas of law. Given the wide range of international clients who use the English courts for business, commercial law was cited in particular.

Impact on the Bar as a profession

Participants were clear that poor cross-cultural communication and insensitivity towards diverse groups is, equally, an issue within the Bar as a profession. As one barrister from a minority group put it: *“People perform at their best when they feel they can be their authentic selves. I have a choice: do I edit, or am I just me?”*

Those chambers and practitioners who do this well create an open and safe environment. Practitioners feel able to disclose aspects of themselves that may be “invisible” – including sexual orientation or disability – in the knowledge that their differing cultural perspectives are valued. Nevertheless, participants agreed that, although some progress has been made in recent years, lack of diversity remains a major problem at the Bar. They also agreed that discrimination on cultural grounds – eg socio-economic background, gender, sexual orientation, disability – persists, seriously affecting the fair recruitment and retention of practitioners. Concern was expressed that unless it can attract more new entrants from a wide range of social and cultural backgrounds, problems in cross-cultural communication will persist, and the Bar will fail to be truly representative of the public at large. Chambers may

“There is real dissatisfaction at what is perceived as the Bar’s continued capacity to “clone” itself on the historical and stereotypical model.” Dr Vanessa Davies, Director-General, Bar Standards Board

also be failing to recruit the best or most able candidates if they are only able to communicate effectively with those from a similar background to them. Moreover, because the Bar is a feeder profession for the judiciary, this has ramifications for diversity in the legal system more widely.



Figure 2 Dr Vanessa Davies

3. Challenges and barriers to effective cross-cultural communication at the Bar

Participants identified a range of critical factors and tensions, often inter-related, which can make cross-cultural communication at the Bar especially complex and challenging.

Some of these issues affect the legal system as a whole:

Culture and language of the court. Appearing in court can be distressing and cause anxiety. The formalities of court culture and the obscure, often alien language used in legal proceedings can accentuate problems in cross-cultural communication, leaving clients and witnesses confused and alienated. Particular concerns were shared about Youth Courts⁶, for example. Those involved in youth proceedings are commonly from highly deprived backgrounds and poorly educated and often struggle to comprehend what is happening to them. There was also comment that legal professionals are more likely to pitch their communication at a level to suit other professionals, often at the expense of the client's ability to follow proceedings.

Translation and the “language gap”. Precision in language is critical in court: even subtle nuances can alter meaning. Most languages – including English – have their own distinct national and regional dialects. Yet concerns were heard from some participants about the quality of court translation services. Interpreters are often drawn from the majority group within a given nationality/language and may be unable to translate a less common dialect accurately. This can have potentially serious consequences. An example was given by one participant, a magistrate, of an occasion when because he happened to speak the dialect of a witness, he was able to alert the court to a serious error on the part of the interpreter. Had the magistrate not done this, it could have resulted in a miscarriage of justice.

“Some of our most vulnerable clients express bewilderment at the criminal process.” Sir Andrew Burns, Chair, Bar Standards Board

This issue can be especially acute for litigants-in-person who do not speak English as a first language. They rely on court interpreters to translate legal terminology.

Concerns were also heard about problems in using sign language in court, because some legal concepts and terms do not have signs associated with them.

Even when a common language is shared and used relatively fluently, words can carry very different culturally determined meanings. Again, this can have potentially serious implications for justice. An example was given of a defendant using the term “my friend” to describe a distant associate. This is a common manner of speech in many cultures, but a British judge/jury may misinterpret this term as implying a much closer relationship and form an

⁶ Youth Proceedings Advocacy Review, www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf, (2015)

inaccurate perception as a result. Multiple interpretations of language can also present challenges for clients with learning difficulties.



Figure 3 Sir Andrew Burns KCMG

Complexity of communication within the legal system. The legal system in England and Wales involves many parties. These can include law enforcement, court officials, the full range of legal professionals, external agencies, and social services in family law cases. Each part of the system has its own “sub-culture” with distinctive terminology, practices, needs and expectations. Communication among and between these many parties is inherently complex, often happening between different groups simultaneously. The differing cultural norms, needs, expectations and practices of minority and marginalised clients or the jury introduce further complexity into the system. The judge, for example, may require communication in very precise legal terms, which may in turn be confusing or opaque for the jury or clients and witnesses. This puts a particular onus on barristers to mediate between different cultures. They may lack the skills to do this, or they may decide to prioritise communicating with one audience at the expense of another.

Imbalances in power. There was much discussion about the role of power – and especially imbalances in power – in problems in cross-cultural communication. The court is, as one participant put it, “the architecture of the dominant culture” and has near-absolute power. Clients and witnesses - particularly those from minority and marginalised cultures - are often at the bottom of the pyramid, entirely reliant on others, such as barristers, to make themselves heard. It was felt that barristers themselves are not always aware of how much power they have within the legal hierarchy, or how utterly powerless their clients or witnesses may feel.

Participants felt this imbalance is frequently mirrored within the Bar profession, particularly in the pupillage system, where qualified barristers hold considerable power over their pupils.

Differing cultural norms, values and beliefs about justice. People from different cultures may have widely varying – indeed, conflicting – attitudes and expectations about law and justice.

Even fundamental principles of the English legal system, such as the presumption of innocence, may be alien in some cultures. Elsewhere, other cultures may have very different norms about what is acceptable behaviour, from dress codes and social customs to what constitutes “good manners” in addressing court

officials. People from differing cultures can place different emphasis in their tone and expression when answering questions. For example, a perceived over-emphasis in responding to questions could be viewed as aggressive by certain communities. All of these can contribute to misperceptions and misinterpretation, which may in turn affect the legal outcome. An example was given of an employment tribunal involving a man who worked for a sheikh: his working conditions, including sleeping at the foot of his employer’s bed, would have been considered objectionable by some cultures, but they were quite acceptable within his own culture.

“We need to recognise the power the court has and ask, does that power aid or inhibit justice? Does it promote full disclosure that enables truth to emerge?”
Dr Ranjit Sondhi

Participants felt that this is also an issue for legal professionals, including barristers and judges – an increasingly diverse group in its own right⁷. Every legal professional will bring their own culturally informed values, perceptions and biases, and these may conflict with those of clients and witnesses. There was concern that many lawyers may be unaware of how unconscious biases and cultural pre-conceptions may affect how they interpret and make judgments about a person’s remarks or behaviour in court.

Other challenges and barriers to effective cross-cultural communication relate to the Bar in particular:

⁷ Report on Diversity at the Bar, www.barstandardsboard.org.uk/media/1729995/report_on_diversity_at_the_bar_2015.pdf, (2016)

“Cross cultural communication should also be seen as cross-cultural perception.”

The focus of Bar training. Traditional training for barristers places a strong emphasis on the advocacy skills needed to win a case in an adversarial system. Participants were concerned that the rhetorical tactics and questioning techniques routinely used by barristers to elicit concessions can be deeply confusing for vulnerable clients and witnesses. Participants shared examples about some of the

complicated, convoluted questions asked by barristers. These were shown to be incomprehensible to someone who does not speak English as a first language, and/or who has been poorly educated, and may result in them giving incorrect answers. The need to avoid complex and technical language is starting to be recognised, for example, with the introduction of “vulnerable witness training” for barristers. However, participants felt that this remains a critical challenge for the Bar. One experienced barrister who had undertaken vulnerable witness training commented, *“I had to unlearn everything I’d learned before.”*

There was also concern about the absence of a *specific* focus on cross-cultural communication in Bar training, at vocational level and beyond. As a result, barristers are often unaware of the importance of this dimension of their role. There was comment that many cultural communication errors are unintentional or kindly meant. However even the most well-intentioned barristers may be insufficiently sensitive to cultural issues and some may even over-estimate their own competence in handling them: as one participant put it, *“They think they’re better at this than they are!”*

A “tribal” Bar culture. There was widespread agreement amongst participants that the Bar itself has its own distinct and tribal culture. This can exacerbate challenges in cross-cultural communication. The complex language and mannerisms routinely used by barristers in communicating with each other and with members of the judiciary can make it harder for clients and witnesses to understand what is happening to them and to ensure that they are being accurately represented. It also contributes to a damaging perception that the justice system is remote, powerful and inaccessible. In turn, this can erode faith in the legal process. As described earlier, this may lead clients to seek representation from providers from their own cultural background, even if those services may not be most appropriate for their particular case. It may even discourage them from engaging legal help at all.

This tribal culture was also recognised as a challenge that needs to be addressed in order to improve diversity at the Bar. Participants commented on the subtle but well-established cultural codes and practices, from dress code and mannerisms of speech to perceived bias towards particular educational or economic backgrounds. These create a sense of a group who are “in the know” and part of “the tribe”, and leave those outside the tribe – including newcomers such as pupils – feeling isolated or excluded, undermining efforts to improve diversity and inclusivity within the Bar.

Time and cost pressures. Even the most skilled and empathetic barrister needs time to attune to a client’s cultural issues; the initial contact is especially important to establish trust and win confidence. Many were concerned that the growing pressure to cut costs in the legal system, in

particular for legal aid cases, means that a barrister's time with a client is increasingly squeezed. These pressures compete directly with the need for sensitivity towards cross-cultural issues.

The Cab Rank Rule⁸. A barrister must be able to establish a relationship with any person they are required to represent, even if their own beliefs and values clash with those of the client. It was felt that a barrister who is aware of their own cultural biases and assumptions is better equipped to provide a high quality service to the client, despite any clash in values or beliefs.

⁸ The "cab rank rule" is the obligation of a barrister to accept any work in a field in which they profess themselves competent to practise and to do so irrespective of the party on whose behalf they are instructed, the nature of the case, and any belief or opinion which they may have formed as to the character, reputation, cause, conduct, guilt or innocence of that person.

4. Addressing the challenges – potential solutions and areas for further exploration

Participants recognised that there was not a single “magic solution” to resolve the many complex and systemic factors that can undermine effective cross-cultural communication in the legal system. Many of these factors are deeply rooted and affect wider society as well as the legal profession. Dealing with them calls for sustained effort across the many agencies and professions involved. There was agreement, however, that as the regulator of barristers, we have a critical contribution to make. Working in partnership with others, we can raise awareness of the importance of cross-cultural communication as an important component of providing a high quality legal service. We should ensure that barristers have the skills and information they need to be competent in this area:

Building skills and knowledge

There was a strong consensus among participants that barristers need training in cross-cultural communication, both at vocational level and as part of continuing professional development. Some of the key skills identified included:

- **Listening skills** – it was felt that these are sometimes overlooked in favour of traditional advocacy skills.
- **Building rapport** – this was seen as essential for a barrister to overcome any cultural barriers and quickly establish trust and confidence. It was felt that exploring a client’s background and expectations of the legal process from the outset is a key way of avoiding breakdowns in cross-cultural communication.
- **Identifying when a cross-cultural misunderstanding has taken place, clarifying and repairing it, (or best of all, preventing it from happening in the first place)** – The nature of this skill was outlined in a briefing paper for the Symposium called “A Centre for Intercultural Development handbook on cross-cultural communication in courtroom practice”. It was recently produced as part of a national training programme for tribunal judges (see Appendix Four). Symposium participants recognised that it can be very difficult to “step outside one’s own cultural context” and spot problems. Video case studies can be a very helpful medium within training. They can help to reveal to professionals how unconsciously ingrained habits and professionally traditional ways of speaking can lead to misunderstandings and miscommunication.

“We all know barristers who are good at talking, but what about those who are good at listening?”

There were calls for the BSB to show leadership in ensuring that these skills are properly prioritised within Bar training.

“Things that are confusing for a vulnerable witness will be equally confusing for someone whose first language isn’t English.”

Empathy was also identified as a quality that is critical for effective cross-cultural communication. Although there were doubts as

to whether empathy could be “taught”, several participants felt it could be useful to devise training that puts barristers “outside their own comfort zone”. This could help them better understand the disorientation and stress many clients and witnesses feel in court.

It was noted that there was a wealth of experience and resources from similar training for other professions (eg medicine) and, more recently, from diversity training programmes for the judiciary. The Inns of Court already conduct training in how to question vulnerable witnesses. These could be drawn on and modified to address wider cross-cultural communication issues.

Information and guidance

Knowledge of different cultural norms and expectations was identified as an enabler of effective cross-cultural communication. There was a suggestion from some participants for us to develop an “information” hub, highlighting key cross-cultural communications issues. This could include:

- Common cultural “faux pas”, which can contribute to breakdown in cross-cultural communication.
- Simple tips and quick wins, for example using blue text on cream background for people with dyslexia.
- Case studies to highlight examples and show why cross-cultural communication matters.

This suggestion prompted some debate among participants. Although there was broad welcome for efforts to gather information and guidance to support barristers in this work, some were concerned that an information hub *in isolation* would be unlikely to result in significant or lasting change: culture itself is rapidly-changing and a static information resource quickly becomes out of date. Concern was also heard that – without the necessary skills and training – attempts to codify behaviours and practices could even prove counter-productive, leading to an inflexible or “tick-box” approach. There were also calls to involve barristers themselves in co-creating any guidance as this could improve adoption and effectiveness.

Challenging power dynamics

Participants felt that redressing imbalances in power-relationships between the court and those it serves is an important step towards improving cross-cultural communication. There was recognition that these imbalances are systemic and long-standing and will not be shifted overnight. Nevertheless, it was felt that barristers, who are among the most powerful within the court, can play a key role in re-balancing the system in favour of the power-less.

“We’re not arguing for a perfectly ‘power-less’ system in the courts, but we can ensure that the way we run our courts and conduct ourselves is in the interests of justice.” Dr Ranjit Sondhi

Similarly, there were calls for us to use our power as regulator to champion this issue within the court system and within the Bar as a profession.

“We need to be aware of how much power we have. Our role as advocates is to use that power to empower our clients, so that they feel they have influence.” Brie Stevens-Hoare, QC



Figure 4 Brie Stevens-Hoare QC

Next steps

This Symposium has been an important first step in opening dialogue with our colleagues, barristers and other stakeholders on how to improve cross-cultural communication at the Bar and, with others in the wider legal profession. We intend to consider all of the issues raised at the Symposium in more detail. We will continue our dialogue with those who have insight and expertise in this area. Some of the specific proposals that we will explore include:

- **Equality and Access to Justice:** Considering relevance to the equality rules of the BSB Handbook and the potential development of an equality objective relating to cross-cultural communication.

- **Consumer Engagement:** Integrating cross-cultural communications within our publications to make them more accessible and embedding cross cultural communication considerations within our consumer research programme.
- **Regulatory Risk:** Oversight of the cross-cultural communication risks highlighted in our Risk Outlook. Explore relevance within our risk-based Supervision approach.
- **Future Bar Training:** Consideration of how to integrate cross-cultural communication within the BSB Professional Statement, threshold standards and Bar Professional Training Course curriculum.
- **Professional Conduct:** Explore how cross-cultural communication features within the assessment of complaints against barristers.

We are extremely grateful to participants for their valuable input and have been delighted by the enthusiasm that Symposium participants have expressed in working in partnership with us. We warmly invite colleagues, service users and other organisations in the field to work with us to progress this important agenda. Get in touch with us via ContactUs@BarStandardsBoard.org.uk if you would like to be involved.



Appendix One: Extracts from our Professional Statement⁹

In 2015 the BSB published a “Professional Statement” which describes the knowledge, skills and attributes that a newly qualified barrister should have when issued with a Full Practising Certificate. The Statement provides a high level indication of the characteristics needed to be a barrister. The Professional Statement is part of the BSB’s Future Bar Training programme and it will play an important role in the ongoing reform of the education and training of barristers.

The following barrister characteristics within the Professional Statement are particularly relevant to issues of cross-cultural communication:

- *Barristers will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background*
- *They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients*
- *They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace, through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of the workplace*
- *They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences or those who have characteristics which are protected under the Equality Act 2010*
- *They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all.*

⁹ www.barstandardsboard.org.uk/media/1707496/bsb_professional_statement_2015.pdf

Appendix Two: Speaker biographies and BSB Staff Profiles

Symposium Speakers

Sir Andrew Burns, KCMG

Sir Andrew Burns was appointed Chair of the Bar Standards Board on 1 January 2015, following a long career in the Diplomatic Service. He was the UK Envoy for Post-Holocaust Issues from 2010 to 2015 and was Chair of the International Holocaust Remembrance Alliance in 2014/15. His past roles include British High Commissioner to Canada (2000-2003), British Consul-General in Hong Kong and Macau (1997-2000) and British Ambassador to Israel (1992-1995). He was the final International Governor of the BBC; Chairman of Royal Holloway, University of London (2004-2011); and Chair of the Committee of University Chairs (2008-2011). He chairs Hestercombe Gardens Trust and the International Polar Foundation-UK and is a Governor of the Guildhall School of Music and Drama.

Dr Vanessa Davies

Dr Vanessa Davies has been the Director General of the Bar Standards Board since January 2011. Prior to joining the BSB, Vanessa was the deputy Chief Executive and Director of Operations at Refugee and Migrant Justice, which was one of the largest legal aid charities in the UK, supporting over 7,000 vulnerable people on an annual basis. She was responsible for the professional training, standards and compliance of solicitors, barristers, accredited caseworkers and paralegals. Vanessa was a British Academy post-doctoral fellow in French at King's College London and then the Director of the Language Centre there, establishing it as one of the leading centres in the UK for applied language studies. Dr Davies then spent nearly a decade at the Foreign and Commonwealth Office, first as Director of the Diplomatic Service Language Centre and subsequently as a Group Director overseeing a range of services in support of UK foreign policy. Vanessa is an unregistered barrister, and a Bencher of Inner Temple.

Oliver Hanmer (event Chair)

Oliver Hanmer is Director of Supervision at the Bar Standards Board with a broad range of regulatory responsibilities including assuring standards of advocacy. He has held a number of senior positions within legal regulation and has developed a particular interest in consumer vulnerability and engagement. He has experience of the voluntary sector both through his professional commitments but also in his role as a governor at a local primary school.

Dr Ranjit Sondhi CBE

Dr Ranjit Sondhi is currently a Commissioner at the Criminal Cases Review Commission, Vice Chairman of the Sandwell and West Birmingham Clinical Commissioning Group and lay member of the Council of the University of Birmingham. He has just been appointed as a member of the Queens Counsel Selection Panel. Ranjit was previously Deputy Chairman of the Commission for Racial Equality, Chairman of the Refugee Education Training and Employment Forum, Governor of the BBC, Trustee of the National Gallery, Member of the Lord Chancellor's Advisory Committee on Legal Education and Conduct, a member of the

Ethnic Minorities Advisory Committee of the Judicial Studies Board and a member of the Civil Services Commission and the Judicial Appointments Commission.

Brie Stevens-Hoare QC

Brie Stevens-Hoare QC is a barrister at Hardwicke Chambers practising in property law. She was appointed as a Deputy Adjudicator to HM Land Registry in 2005 and continues now as a Judge of the first Tier Tribunal (Property Chamber) (Land Registration Division). Her approach is very client focused, taking account of all aspects of disputes from the client's point of view, and recognising the difficulties faced by vulnerable clients and those from different backgrounds. Brie is also an expert in mediation and has the benefit of a great deal of experience of mediation from both angles: as a mediator and representing clients in mediations. From 2003-05 Brie was a member of the Bar Council's Pupillage Board, from 2006-13 she was a member of the Bar Standards Board's Quality Assurance Committee, and she is currently a member of the BSB's Pupillage Sub-Committee.

John Twitchin FCIPD

John Twitchin is the Director of the Centre for Intercultural Development (CICD), within Diversity Works Ltd. A long-experienced trainer in managing diversity for NHS and other public services, John also lectures at many universities on applied linguistics - with an emphasis on practical Cultural Competence for professionals. He was senior producer in BBC TV Continuing Education Department for 25 years, and editor-in-charge of BBC multicultural output. He was consultant to Justice Brooke in preparing an early equality guide for judges for the Judicial Studies Board; he has run national training in the legal sector on intercultural communication - for Employment Judges; Magistrates; the Police. His training films and manuals include advocacy skills for 'race' cases; and on the nature of discrimination law featuring Robin Allen QC; Sir Goolam Meeran, Sir Bob Hepple and Sir Nicholas Browne-Wilkinson. Documentary training films and Handbooks analysing intercultural communication include the BBC's award-winning 'Crosstalk' project, made with Professor J.J. Gumperz of University of California at Berkeley, the founder of interactional socio-linguistics.

BSB Staff Profiles

The symposium was jointly organised and hosted by two teams within the BSB.

Equality and Access to Justice Team

The Equality and Access to Justice Team is responsible for the BSB's Equality Strategy and objectives and supports the BSB Board in fulfilling its public equality duties. The team helps to embed equality and diversity into everything that the BSB does through equality impact assessments, engagement with external stakeholders and the collection of diversity monitoring data. The Equality and Access to Justice team comprises a Policy Manager (Amit Popat) and a Senior Policy Officer (Jessica Prandle).

Regulatory Risk Team

The Regulatory Risk Team is responsible for embedding a risk-based approach to regulation across the BSB. That means supporting informed decision making across

the organisation about the best use of our limited resources, so that we can provide proportionate, targeted and effective oversight of the Bar. The team comprises a Head of Regulatory Risk (Pippa Prangle) and a Regulatory Risk Analyst (Nicholas Bungard).

Appendix Three: Definition of terms

Access to justice: equal and non-discriminatory access to legal services.

Continuing Professional Development: The CPD process requires barristers to manage their own learning and development on an ongoing basis.

Litigant in person: an individual, company or organisation who appears in court but is not represented by a solicitor or barrister.

Protected characteristics: Nine groups protected under the Equality Act 2010; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, sex, race, religion or belief, sexual orientation.

Specialist Bar Associations: SBAs are dedicated to the interests of groups of barristers within specific practice areas and geographical regions.

Unconscious bias: A person's background, personal experiences, societal stereotypes and cultural context can have an impact on decisions and actions without the decision-maker realising.

Vocational level of barrister training The Bar Professional Training Course (BPTC) is the vocational training after the academic stage. The purpose of the BPTC is to ensure that students intending to become barristers acquire the skills, knowledge of procedure and evidence, attitudes and competence to prepare them, in particular, for the more specialised training in the twelve months of pupillage.

Vulnerable client/witness: The terms vulnerable and vulnerability are used here as a shorthand to address a range of situations which could affect any client or witness who is at a disadvantage because of factors that affect their access to, and use of, legal services.

Appendix four: Extract from Centre for Intercultural Development Handout

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Figure 5 John Twitchin

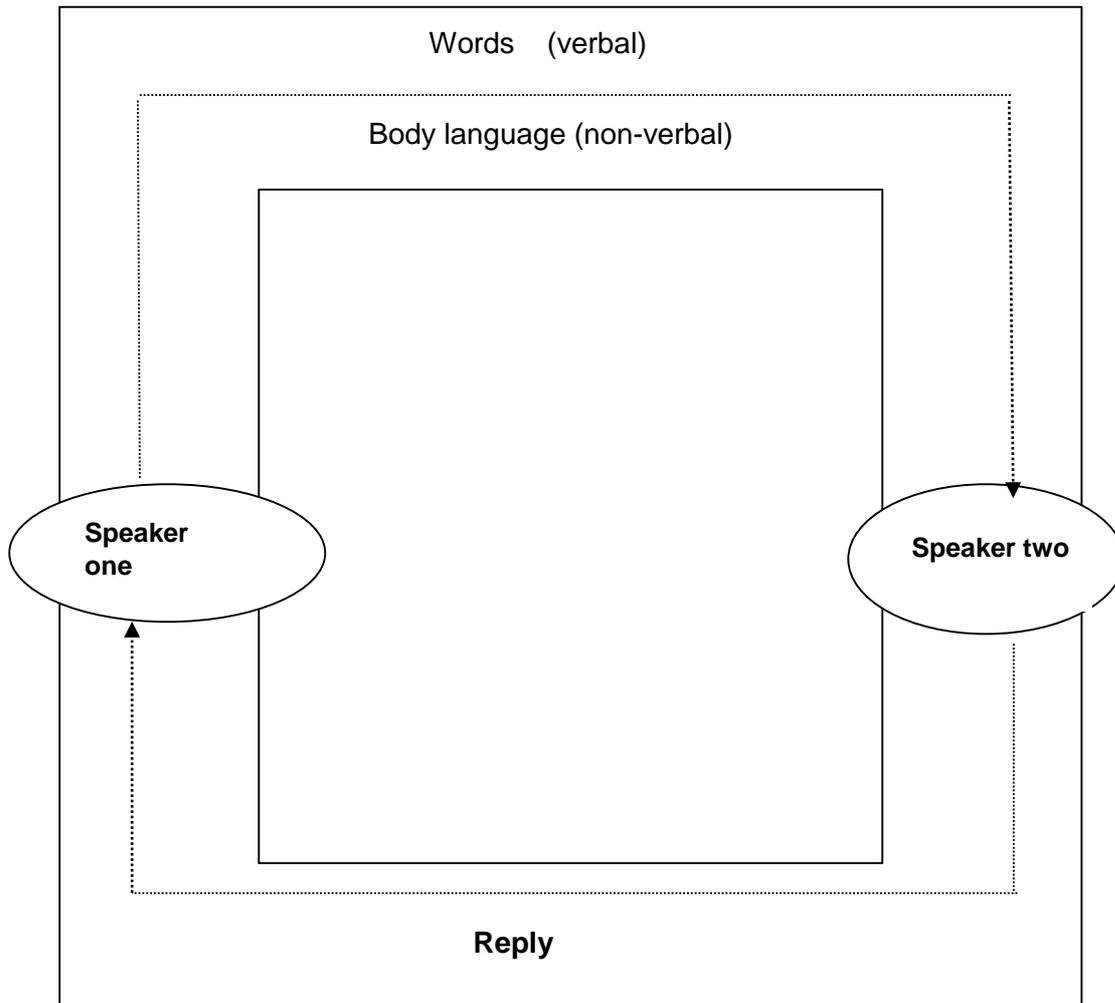
“A policy or Code can be agreed with in principle but may not engender change until professionals are equipped with the practical intercultural communication skills needed to implement it in day-to-day practice.”
John Twitchin,
Director, Centre for
Intercultural
Development

So what is “intercultural communication”?

It is a problem for judges, barristers and other legal advisers who are seeking to ensure good communication, whether in chambers or in hearings, that the way everyone talks is mostly unconscious. We just say *things*, focussing on what *information or question* we want to convey or ask, and/or what *feelings* we want to express, rather than on *how* we are using the English language. This handbook brings this latter process into more conscious awareness in courtroom practice.

Let’s start by looking at a simple exchange between native speakers of the same language:

Verbal communication

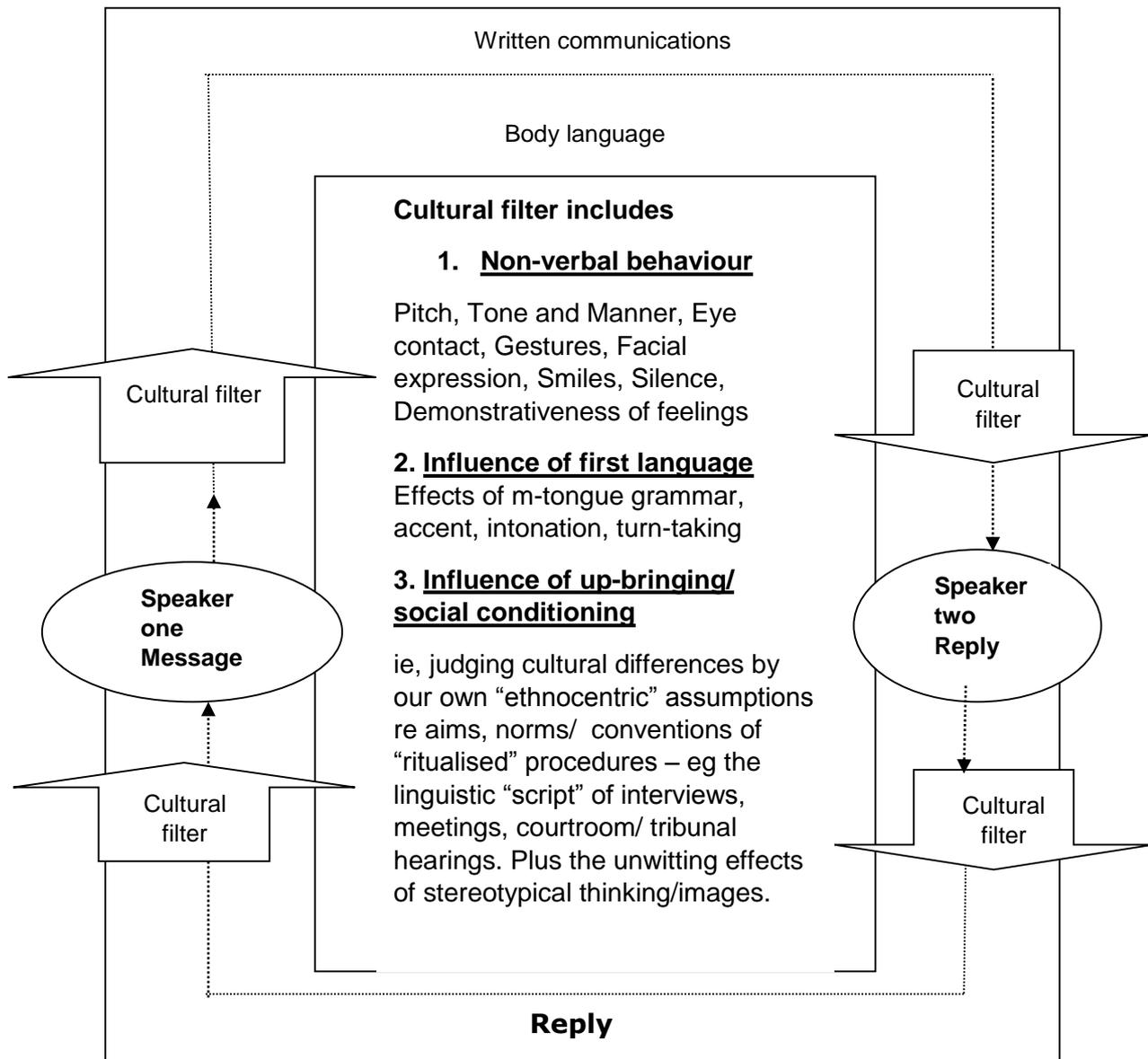


The diagram represents the **mono-cultural** situation where a native-speaker of a language makes a statement, request or question in a combination of words and body language to another native-speaker, who replies in a similar, easily recognisable, linguistic style. As both are native-speakers of the same language, and as both are brought up and “socialised” in the same culture, they communicate within a shared “cultural comfort zone”.

Misunderstandings may of course occur (perhaps arising from varying levels of grammatical literacy; the effects of psychological factors; class differences; or use of jargon/legalese) but as they are not a result of unfamiliar cultural differences, they are usually perceived and resolved easily enough.

But in an **intercultural** exchange between people of different cultural background, even if both are relatively fluent in English, the communication needs to be pictured more like this:

Interpreting meanings across cultural differences



This diagram shows how a native-speaker (Speaker one) expresses his/her message through a (largely unconscious) “*cultural filter*” (sometimes referred to as “frame”, “schema”, “mindset”, “cultural lens/prism” “cultural comfort zone” or “cultural luggage”) ie, what we take for granted from our upbringing and social conditioning about what are ‘*normal*’ values and behaviours, and how these are reflected in our ways of thinking and talking. But assumptions about what are ‘*normal*’ ways of communicating meaning in one culture can be very different in other cultures. Whether in English or any other language, the practical meaning of a word is not universal or “culture-neutral”: it is *culturally determined/ inflected*. In intercultural exchanges the meanings embodied in, or conditioned by, differing “cultural filters” need to be *clarified and mutually negotiated on equal terms*. So for judges to be ready to “take a proactive role....to clarify and resolve the extent of any language difficulty faced by a witness”, and for barristers “to represent clients from diverse

backgrounds more effectively” they need the awareness and skills of *intercultural communication*, ie “cultural competence”. What is this?

Patently, if neither of two people can speak the other’s language, they are not going to understand each other. Beyond what can be indicated by gesture, an interpreter is needed. That communication difficulty is both *obvious* and *expected*. As a result, when a foreign-born person and a native-English speaker are both using English relatively fluently, they tend to assume they will understand each other. But they’d be **wrong**. Linguistic research shows that in exchanges between people from different cultures it is completely unsafe to presume that *mutual understanding* is being achieved, even when both parties are using English with fluency. In any legal setting such communication difficulties can block the process of winning a foreign-born or BAME party’s confidence that they are receiving fairness and justice. And the misunderstandings produced by cultural misalignments are all the more likely and damaging because they are *unobvious* and *unexpected*.

Glance back at the second diagram showing communication as a two-way process. A statement, question or request by a native-English speaker (Speaker one) is expressed via a combination of words and non-verbal body language which reflects his/her English “cultural filter”. This is heard and interpreted by a *non-native* English speaker from another background (Speaker two) through *their* cultural filter. Speaker two then makes a reply via their cultural filter, which is “received” in turn by native-English Speaker 1 in terms of his/her cultural filter. This is how *slippage* of meaning and mutual understanding between cultures occurs in an interactive process. Without due intercultural awareness and skills, we may not realise this is happening, and so fail to clarify misunderstandings as a step to repairing them. Unfortunately, such gaps of *comprehension/meaning* can escalate into misperceptions of *intentions*, leading to a downward spiral of uncertainty and confusion.

To underline the point: because the way we speak is largely unconscious, it’s easy to overlook how much of the meaning we intend to convey by the English words we use is based on assumptions from within a cultural context that a foreign-born person may not share. (The trouble with assumptions of course, is that we don’t know we have them; we are hardly aware of our own norms until we encounter people from another culture). Ways of talking and inferring meaning that are specific to our own culture may influence our assessment of how someone from another culture “comes across”, and how we “hear” what they are saying. It’s common to feel irritated by having to *strain* or *infer* what a non-native speaker means by an unexpected response or an unfamiliar style of speaking English: it creates misgivings and uncertainty as to whether the other person has understood us, or we them. We tend to blame the other person for such ‘gut feelings’ of discomfort – feelings that can fuel negative stereotypes about the person’s cultural background. When we can’t explain a difficulty of intercultural communication, the gap of understanding may be filled with a negative generalisation (“these Chinese/Poles/Indians/Nigerians... are so difficult”), and so reinforce negative stereotypical thinking *on both sides*. And as we know, stereotypical thinking predisposes us to expect similar discomfort when we next talk with someone from that same culture or linguistic background – so becoming a self-fulfilling prophecy which can damage the fairness of our interactions with culturally different parties and witnesses.

Below is a list of 12 key points of cultural contrast. These serve as “conceptual weapons” or “tools of analysis” for identifying whether communication difficulties are

the result not of personality clashes, or non-cooperation, or equivocation/ evasiveness, but of misperceptions of meaning and intention resulting from linguistic misunderstandings. If you are a native speaker of English, it would be helpful to keep this list to hand - to prompt your memory of cultural contrasts that cause difficulties in communication with a *non-native speaker*, or a BAME person, from any cultural background different from your own.



Figure 6 From L to R: Dr Ranjit Sondhi, Brie Stevens-Hoare QC and John Twitchin

Intercultural Communication: 12 key cultural contrasts in talk in English

1. **Low or High Context:** How much un-stated local context is needed to understand/ infer meanings? Do words carry the whole meaning overtly (low context) or is the intended meaning to be found more implicitly 'between the lines' (high context)?
2. **Direct or Indirect:** ways of replying to questions, stating/ asking things, expressing disagreement. These overlap with contrasting individualist vs collective cultural values – eg “blunt” Western direct straightforwardness vs. Asian indirect ‘narrative/ proverbial’ style which avoids precision, specifics and negativity of “No” by using *face-preserving* hints (US: “Now I’m off”. UK: “I think I should probably leave now”. Asia: “We will not bother you any longer”), or “Yes”, meaning “I hear you” or “It would be unkind to disagree”, rather than giving assent or making commitment to action
3. **Formal or Informal:** how personal (warm/”chatty”) or impersonal (“distant”/guarded)?
4. **Turn-taking:** (When to speak? Interrupting or overlapping style? Gaps of silence?)
5. **Body Language:** (Carrying meaning via Gestures; Smiling (as signal of warmth, or embarrassment, or anger?); Low Eye Contact (equals insincerity, subservience or respect?))
6. **Effects of a first (mother-tongue) language on use of English:** as a learned, second language: *Grammatical structures* (eg verb at the end; Chinese “Topic – comment”; whether first language has definite and indefinite articles (a; the), past/future tenses, plurals, pronouns, or hypothetical conditionals (can equals could; will/must equals might); plus *Intonation* patterns (whether and how meaning is carried by stressing syllables and/or particular words in a sentence)
7. **Politeness forms:** (When and How to make request/query/response and use of Please/Thanks)
8. **Time: Concepts and Attitudes:** (Linear from past to future, or mindfully ‘here and now’? Punctual or loose (ie, “go with the flow”)? “Speed” confused with “efficient”? “Time is money” or “Time is relationship”? Short-term pragmatic or long-term holistic?)

9. **Low Key or Expressive:** (How much factual information to display, and how much feeling? How emotion is, or is not, expressed in different cultures. Does tone of voice, eg, loudness, signal anger/rudeness – or seeking attention/demonstrating involvement?) Plus: Ways to influence/argue persuasively (eg, verbose or quietly concise?)

10. **Ways of structuring information or answers:** (ie, order of points – eg Asian relevant point last, with background context first? Linear logic or associative, “narrative style”? What is taken for granted as “logical” and/or relevant? Use/role of “contextualisation cues”.)

11. **Idiomatic expressions:** (Are figurative English terms being (mis) understood literally?)

12. **“Linguistic scripts”:** ie different cultural assumptions about the role/powers of a legal representative, or about the purpose and “normal” steps (“rituals” of procedure) of formal interactions like a tribunal/court hearing. Such “scripts” determine much of how we act and speak (eg in answering the phone; consulting a doctor; conducting mediation; in counselling or training; in a recruitment or appraisal interview.) Cultures vary widely in what’s taken for granted about how such “routinised” and regular interactions “should” be done/conducted, and what implied actions/outcome can be expected.