

Minutes of the Bar Council Meeting held on Saturday 17 November 2012 at the Bar Council Offices

Present:

Michael Todd QC - Chairman
Maura McGowan QC - Chairman-Elect
Stephen Collier - Treasurer
Rt. Hon. Dominic Grieve QC MP - Attorney General

61 further members of Bar Council attended.

1. Apologies

Apologies for absence had been received from Mr Oliver Heald QC MP, Keir Starmer QC, Mirza Ahmad, Michael Bowsher QC, William Boyce, Ian Bugg, Alex Carington, Lord Carlile of Berriew QC, Nicholas Cusworth QC, Mark Fell, John Furber QC (represented by Daniel Gatty for the Property Bar Association), Guy Fetherstonhaugh QC, Peter Grieves-Smith, Charles Hale, David Euan Hammond RM, Adam Hiddleston, James Hines, Fiona Jackson, Michael Kent QC, Hannah Kinch, Natalia Levine, Sailesh Mehta, Paul Mendelle QC, Christina Michalos, Lucinda Orr, Winston Roddick QC, Deana Smith, Michael Soole QC, Geoffrey Tattersall QC, Belle Turner and Nicholas Worsley.

2. Approval of the Minutes and Matters Arising

The minutes of the 20 October 2012 Bar Council meeting were approved. There were no matters arising from the minutes of the last meeting.

3. Statement by the Chairman

The Chairman congratulated Winston Roddick QC, former leader of the Wales and Chester Circuit and member of the Bar Council, on his election as North Wales' police and crime commissioner. Mr Roddick has done a great deal for the Bar Council and the Bar as a whole and is thanked for this service.

The Chairman wished, as this was his last full Bar Council meeting, to give a few words of thanks.

Firstly, to Oliver Delany, Director of Central Services, on whom the Chairman has been heavily reliant and who has given a great deal of support and help. Also to

Mark Hatcher, Director of Representation and Policy, who, to all intents and purposes, is the real Chairman of the Bar as far as Whitehall and parliament are concerned. He has given the wisest of counsel. To Vanessa Davies, Director of the BSB, for all her support; the Chairman may not have always seen eye to eye with the BSB, but he has always enjoyed an open and productive working relationship with Dr Davies. The Chairman also thanked the Treasurer, Stephen Collier, for his commitment and engagement during these difficult times for the Bar.

The Chairman thanked Baroness Deech for her commitment to the profession and the continuance of its future; there is little doubt that she has fought many battles on behalf of the Bar. Thanks also to Sir Geoffrey Nice QC, who attends Bar Council for the last time as Vice-Chair of the BSB; it is important to recognise his service to the profession over the years and the support that he has given Baroness Deech.

The Chairman also wished to thank the Law Officers who have been in post during his tenure: the Rt. Hon Dominic Grieve QC MP, Sir Edward Garnier QC MP and Oliver Heald QC MP. He made specific mention of Mr Grieve, to whom the Chairman owes a debt of gratitude for all his efforts to make the position of the Bar clear in government.

The Chairman thanked the Director of Public Prosecutions, Keir Starmer QC, for his constructive support.

The Chairman gave special thanks to his Vice-Chairman, and now Chairman-Elect, Maura McGowan QC. It is very important for a Chairman who is a commercial practitioner to have a publicly-funded practitioner at their side, providing support and guidance in decision-making processes. The Chairman thanked her for the great kindness and friendship that she has shown.

The Chairman also thanked Toby Craig, Head of Communications at the Bar Council. He has established a tremendous Communications Team, which is so important to the work of the Bar, and also become a friend.

Thanks also to those in the Chairman's Office: Victoria Carpenter, Sarah Riley and Charlotte Hudson, to whom he owes a debt of gratitude.

The Chairman closed his "Halle Berry moment" by thanking all the committees of the Bar Council and the practitioners who give so much of their time pro bono; he thanked members of the Bar Council for all their support and the work that they have done.

Any comments / questions arising out of the Chairman's written or oral statement

There were no questions arising.

4. BSB Report

Sir Geoffrey Nice QC (GNQC) offered apologies on behalf of Baroness Deech, who had a prior, longstanding commitment which prevented her from attending the meeting. The BSB's report had been circulated at Annex 3 on the agenda; questions were invited.

Questions to the BSB

QASA

Nigel Lickley QC (NLIQC) said that the BSB had presumably now had their Board meeting at which the responses to the QASA consultation were to be discussed. Were the BSB now able to give any indication as to the timetable for next steps? When are they due to meet with the other regulators? Registration is due to start on the Western and Midland Circuits in January; this does not give sufficient time for the Bar to digest the BSB's response to the consultation when published.

GNQC said that the Board had met, but that the Solicitors' Regulation Authority does not meet until 28 November and it would be inappropriate to give any indication before then as to what they intend to do. The BSB Board will meet again on 13 December so this date is more realistic in terms of making any announcements. The idea of a postponement to the registration period is very well in mind.

Alistair MacDonald QC (AMQC) said that there had been some discussion about having an additional Bar Council meeting in December, possibly on the 8th or the 10th, to discuss the BSB's response. Vanessa Davies (VLD) suggested that this would be a good idea, but that it would be best to have it after 13 December when the BSB Board next meets.

5. Advocacy Training Council

Suzanne Goddard QC (SGQC) presented the ATC's report (at Annex 4 on the agenda). She said that, upon joining the ATC, she had been astounded to learn of the amount of work undertaken both in London and on the Circuits. SGQC referred to the efforts underway to build on the solid work of the ATC, including a review of how advocacy is taught and looking - in an academic sense - at the methods of teaching being used.

The ATC is hoping, with assistance, to roll the Keble training out to the Circuits. Funding is a very important issue to the ATC; COIC currently provides that funding

and it is hoped that will continue, but additional funding is also sought.

The ATC is also looking to assist members of the Bar when QASA is rolled out. On an international level, the high regard for the excellence of advocacy in England and Wales means that there are often enquiries from overseas for assistance, which the ATC tries to meet.

Questions regarding the Advocacy Training Council's report

John Cooper QC (JCQC) said that he hoped that the ATC would make sure that its work was closely coordinated with that of the Circuits and Inns, so that there is no duplication of effort. SGQC said that this was part of her role on the ATC.

AMQC said that his Circuit (NE Circuit) spends more money on training than any other and that the ATC tends to be very London-centric. Their programmes of training are very rigorous and other areas could learn from them.

David Wurtzel (DW) thanked SGQC for reference in the report to the toolkit for handling vulnerable witnesses, but hoped that recognition would be given to those bodies other than the ATC which have contributed; SG confirmed that a host of work had been undertaken by others and that this would be recognised.

6. Employed Barristers' Committee Report

The Chairman reported that, unfortunately, Melissa Coutino, Co-Chairman of the Employed Barristers' Committee, was unable to attend owing to illness. Stephen Leslie QC, a member of the committee was happy, on her behalf, to answer any questions arising out of the committee's report at Annexes 5a and 5b on the agenda. There were no questions.

7. Young Barristers' Committee Report

David Nicholls (DN), Chairman of the Young Barristers' Committee, presented this item with reference to Annex 6 on the agenda. DN said that he did not intend to repeat the report, just to draw attention to some specific points.

A particular highlight of the year had been the Young Bar Conference, the theme of which was advocacy, and DN thanked the ATC for their support and Sir Sydney Kentridge QC for giving the keynote address.

The recent publication of the Bar Barometer shows the changing face of the Bar. There is increasing diversity, a trend which can only be applauded, but there is more to be done.

DN recently undertook an informal survey of young barristers' on the subject of remuneration, which he had been asked to write an article about. He was surprised to learn that a number of young, commercial barristers were earning up to £500k per year, whilst publicly-funded practitioners of a similar Call were earning only £20k (before expenses, tax and paying off student debts). This makes it all the more important for everybody to complete the PCF survey and express a wish to have the charge levied on the basis of income and not year of Call.

DN also observed that - without wishing to characterise the young Bar - he has realised over the last year how conservative they can be. If there is a suggestion of change or a new way to approach something, they often react against it. This has been seen to be the case in respect of proposals in relation to unfunded pupillages, ABSs and new guidance on wearing wigs and gowns. It reminds him of an old joke; Q: how many members of the young Bar does it take to change a light bulb? A: CHANGE?

DN wished to thank all members of the YBC and particularly Hannah Kinch, his Vice-Chair. He also wished to thank all the Bar Council staff involved in the committee, without whom they would not have been able to operate. He made special mention of all senior members of the profession for their continued support and to the Chairman for his leadership.

DN said that it had been a privilege and a pleasure to be Chairman of the Young Barristers' Committee and that he had learned a lot, not least about what one should or shouldn't wear to certain occasions. For example, wearing robes to the Opening of the Legal Year when the invitation stipulates "business suit", or wearing yellow trousers in Nashville, where the traffic literally stopped at the sight of them.

Questions regarding the Young Barristers' Committee's report

It was raised that although diversity at the Bar is improving, it is not enough and that the statistics are still poor. Also, there is no information about what sort of practice people from diverse backgrounds are working in.

DN replied that the trend is clear and that the demographics are improving, but that the profession is still not representative of society and this must change. This is why it is important to go out to schools and colleges to encourage those from diverse backgrounds to consider a career at the Bar. However, this must be tempered with the reality of how difficult it is to get pupillage and all the other current challenges. DW said that all information regarding backgrounds and practice area is in the Bar Council's "Barristers Working Lives" publication.

JCQC said that the message should not just go out to state school pupils; in his experience, it is often the teachers who need educating as they are dissuading their pupils from considering a career at the Bar. DN agreed.

Rick Pratt QC (RPQC) commented that the YBC report details a number of international trips and asked DN where the funding comes from and what benefit there is to the publicly-funded Bar from his going abroad.

DN said that not all trips were paid for by the Bar Council and that some were self-funded. Each was rigorously assessed for its purpose and usefulness both before and afterwards. Most trips are excellent opportunities for the young Bar to build links in other countries; for example, his attendance at the Opening of the Legal Year in Paris has led to a seminar on the comparison of legal aid provision. Each event is seen as an opportunity to speak or achieve a specific aim. AMQC said that it would be useful if DN could update his report to show which international trips were funded by the Bar Council.

The Chairman thanked DN for his report and spoke of the support he had received from YBC over the last year, especially in helping him connect to other parts of the Bar.

8. Member Services Board Report

Richard Atkins QC (RAQC) delivered a report, additional to that at Annex 7 on the agenda, in the form of a rap (available on request). RAQC stressed that income from the voluntary Member Services Fee (MSF) pays for representational activity by the Bar Council on behalf of the Bar. Paying the MSF helps to bring down the cost of the PCF. Services provided by the team include courses on topics such as direct access, mediation and confiscation and those who pay the MSF have access to great deals on car insurance, holidays and other services.

The Member Services team now runs the Annual Bar Conference in-house and has also organised this year's World Bar Conference. They also go out to the Circuits to discuss their work, which includes BARCO, the new escrow account service.

If anybody has any queries about the work of Member Services, Paul Mosson, Lois Rolfe or Sophia Kakabadse will be happy to help.

RAQC said that he was happy to take any questions. There were none.

RAQC concluded by saying that it had been a pleasure to work with the Chairman this year.

9. Draft Bar Council Budget 2013-14

SC opened the discussion by summarising the conclusions of the meeting held on 20 October, namely that the logic and the process behind the budget proposals were sound but that there was resistance to the resultant cost to the practising Bar.

SC outlined what actions have been taken since that last meeting; he had met with the Directors on the Tuesday following that Bar Council meeting to revisit the budget and further discussions had since taken place within GMC, the BSB Board and at Finance Committee. The result of this is that the brakes have been put on some areas of spend for this year (totalling c. £210k) which means that there is a lower deficit and therefore more flexibility in building back the reserves. For the budget year, 2013-14, the BSB had managed to cut £100k from its proposed budget, which has had a knock-on effect of a £45k cut to the Central Services budget. It has been agreed to defer the attempt to build back the reserves (saving £500k) and the amount being put aside for contingencies has been reduced, saving £200k. GMC were clear that there should be no reduction to the Representation and Policy budget. Therefore, in total, the budget has been reduced by £845k.

SC explained that this represents an average 10% increase to the core PCF, but that when the other levies are added, this reduces to an average 5.7% in total. SC showed a slide which demonstrated what the impact will be for different practitioners e.g. employed / self-employed; Silks / juniors of various years' Call.

AMQC said that at the recent Bar Conference he had attended a session run by the employed Bar. It seems that they wish to be treated the same as the self-employed Bar. If this is the case, why do they pay so much less for their practising certificates? SC said that he hopes that the PCF consultation will address this point. There is an argument to say that the profession is "one Bar" and therefore there should be no distinctions drawn.

SC was asked why the percentage increase is not a flat rate across all types of practitioners and year of Call? SC said that some drivers work differentially; it was possible to change those differentials and to consult on that changed approach within the overall budget consultation, but the budget has to be approved first.

Michael Turner QC (MTuQC) said that at the last meeting there had been talk of making savings in relation to accommodation and office space. What has come of that? SC explained that the working group considering options relating to the break clause arising in 18 months' time will be reporting to Finance Committee on 27 November. In light of the timing of the break clause, any decisions will not affect this budget.

It was suggested to SC that if this budget is approved, it has to be on the basis that there will be a formal review of the way that the PCF is levied across the employed and self-employed Bar. SC said that this discussion is simply scratching the surface in terms of the complexities involved here. The PCF consultation has to be completed in order to understand what the profession wants. It is not possible to flick a switch to make all the levies equal.

NLiQC said that in a time when there are fewer barristers, those barristers are earning less money, the Government is cutting costs and everyone has less money, there should be no increase at all to the PCF. It is unacceptable to the rank and file. The pension levy should have ceased by now - it hasn't - and criminal practitioners will be paying more for QASA. This is not the time to be increasing the PCF.

SC reminded the meeting of the discussion on 20 October. The increase is not all about the Bar Council having more money to spend, it is about making up the shortfall of income lost this year

e.g. the Inns' subvention. It is necessary to have the requisite funds to be a focussed, quality organisation. Also, if one looks at the figures, gross earnings at the Bar have increased; they may be disproportionate in terms of where that income is, but the gross is greater than before. This is why the PCF consultation is so important.

Stephen Leslie QC (SLQC) asked whether those who do not need a practising certificate e.g. members of BACFI, should pay a smaller PCF, like a subscription, for representative services. SC said that he has heard suggestions along these lines which he personally supported, but it is a very sensitive area, which needs very serious thought.

Robin Knowles QC (RKQC) said that if there is to be any exploration of bringing in more people by way of a subscription, it is necessary to provide good representative services to make it worth their while, and this won't be possible if cuts are made to the representative side.

SC made three linked recommendations: first, to approve the budget; secondly, for the newly appointed CEO to undertake a full review and thirdly, for Bar Council to engage early (rather than only within the annual budget discussions) on the big decisions that need to be made in the future.

SC also said that, having seen the Bar Barometer, he felt slightly more confident about the number of practitioners at the Bar (which will have an impact on the number of those needing a practising certificate).

Robert Rhodes QC (RRQC) congratulated the Treasurer on what he has managed to

achieve since the last meeting. He asked whether the savings made this year, which have reduced the need to increase the reserves, have been used to reduce the increase in the PCF or if they have been put back into reserves. SC confirmed that it was the former; had it been the latter, the PCF would have increased by a further 4% or so.

Tricia Howse CBE (TH) said that BACFI would support the budget but that it was clear that the Bar Council has to cut costs and increase income. She urged consideration to be given to engaging those barristers who do not require a practising certificate.

SC was asked how he could justify any increase when there are practitioners who are borrowing from their parents to pay their chambers rent. The figures do not seem to appreciate that some will have to leave the profession. SC reminded the meeting of the waiver available to those whose gross fees are below £40k.

AMQC asked what the impact would be if the PCF was income-based. SC said that he can work this out but this requires making some strategic decisions. AMQC asked what will happen to next year's budget; SC replied that it doesn't look good and will on present trends be unpalatable. There is no denying that approving the budget for 2013-14 is a part-deferral of bad news to 2014-15.

MTuQC asked what potential there is in, say, two years' time, for the PCF to be reduced. SC said that there are many factors which cannot be quantified at the moment e.g. the rate at which the Inns' subvention will reduce and decisions around the office accommodation. He was not however hopeful of a material reduction.

RKQC recommended that this question be re-worded to ask what the future looks like for the lowest-earning practitioners. SC said that, depending on the outcome of the PCF review, if there was a shift away from length of call as the criterion, it would be more encouraging both for them and for the "squeezed middle".

Mark Wall QC (MWQC) said that he could not understand why, when government departments are able to cut their costs and live within their means, the Bar Council instead works out how much money it needs and then goes out to find it. The Bar Council will soon become a figure of hatred for many at the Bar. SC assured the meeting that all the Directors are aware of what needs to be done and have already responded well to the challenge. Everyone is on board.

Maura McGowan QC (MMQC) said that she was saddened by the number of people who have not even heard of the PCF review. There is an obvious benefit to a reconstructed levy (with an income-based adjustment) to those at the publicly-funded Bar. If people cannot even be bothered to fill in a survey, what hope is there?

RPQC asked what happens if the budget is not approved. SC replied that, in a nutshell, the BSB's funding and activities would be taken over by the LSB and the reserves would be used to wind down the Bar Council.

Stephen Moriarty QC (SMQC) said that he had recently joined Finance Committee and was now aware of the enormous amount of work which has already been undertaken. This proposed budget is pared down to the bone. There is no time left to make strategic decisions.

DN said that the YBC support this budget; everybody on the committee (75% of which are publicly-funded practitioners) voted in its favour. There were three issues which helped the YBC make its decision: (1) the vast overhaul in the proposed budget since the last meeting; (2) the unavoidable reduction in the Inns' subvention and (3) the effort made by the BSB to reduce their budget.

The Chairman said that if this budget is approved, it has to be on the terms that some very hard decisions will have to be made over the next year. He tried to address some of these in his structure review, but found that there was very little appetite for change.

Nicholas Lavender QC (NLQC) thanked SC and said that these had been the best budget presentations that he had seen in his 19 years on Bar Council. It was no doubt as a result of this that the Council had had a very intelligent discussion and it is clear that some very difficult decisions will have to be made. It is fair to say that today's position is a result of not making those decisions earlier. There were three lessons to be learned: (1) practitioners must be urged to complete the PCF consultation; (2) Bar Council members are encouraged to approach their Inns if they have concerns about the reduction in the subvention and (3) the Treasurer should give a budget / finance update at every Bar Council meeting so as to ensure that everybody is well-informed.

SC was asked to clarify when it was likely that a CEO would be in post and commence work on a full review. MTQC said that he, Mark Hatcher, Oliver Delany and Sir Roger Jackling had met with various head-hunters the day before and the timetable suggests that they will finish the process of selection in February. Therefore, it is anticipated that a CEO will be in post by June.

SC asked Bar Council to vote on whether to approve the proposed budget. There were six votes against and a considerably larger number for, and the budget was therefore approved.

10. Any Other Business

The Chairman repeated his plea for practitioners to support the Bar Pro Bono Unit. He said he appreciates that many cannot afford to do so and therefore he would ask those who can afford it to dig a little deeper into their pockets. This is not a good time to be asking for money, but April will not be a good time for those affected by the LASPO Act and for whom access to justice will be withdrawn.

The Chairman thanked the Chairs of the Specialist Bar Associations and the Circuit Leaders for their support this year and expressed the hope that this constructive relationship will continue.

The Attorney General said that he had been listening very carefully to the discussions about the budget and that while he understood some of the points being made about the cost of the PCF to the employed Bar, it is worth remembering that many of these practitioners are in government service, who are facing cuts too. It is a delicate area and not an easy issue to tackle.

The Attorney also took this opportunity to thank the Chairman for his outstanding support. He wanted to say how grateful he was for the Chairman's approach to some very difficult issues.

MMQC then paid tribute to the Chairman. It was hard to imagine how anybody could have fought harder (sometimes almost literally) on behalf of the Bar, particularly the publicly-funded Bar, in the last year. He has been a true friend, a true supporter, a staunch advocate on everybody's behalf and will be missed greatly. MMQC has managed to rope him in to helping with some Bar Council projects next year e.g. BARCO and he will be called upon when he is needed (MMQC predicted that this would be around 2 January 2013). On behalf of the Bar Council, and the profession, and herself personally, MMQC thanked the Chairman for this support and fighting spirit.

11. Date of Next Meeting

The next meeting will be the incoming Chairman's inaugural, to be held at 17.30 on Monday 10 December 2012, in the Bar Council offices.