



The Bar Council

Meeting of the Bar Council

Minutes of meeting: Saturday 29 January 2022, 10am, Hybrid (MS Teams and Bar Council office)

Present

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| Mark Fenhalls QC | Vice Chair | MFQC |
| Nicholas Vineall QC | Vice Chair Elect | NVQC |
| Malcolm Cree | CEO, The Bar Council | MC |
| Lorinda Long | Treasurer | LL |
| Baroness Blackstone | Chair, BSB | BB |
| Alex Chalk QC MP | Solicitor General | SG |
| Michael Jones QC | Chair, Employed Barristers Committee | MJQC |
| Jason Sugarman QC | Co-Chair, Remuneration Committee | JSQC |
| Leanne Targett-Parker | Co-Chair, Pro Bono and Social Responsibility Committee | LTP |

Members in attendance (listed alphabetically)

Paul Adams; Dr Mirza Ahmad; Shazia Akhtar; Stuart Alford QC; Yaa Dankwa Ampadu-Sackey; Simon Anderson; Nicholas Bacon QC; Lorna Badham; Sasha Bailey; Michael Bellis; Minka Braun; Carl Brewin; Kirsty Brimelow QC; Alexandria Carr; Mark Chaloner; Ben Close; Richard Cole; Ivor Collett; Celina Colquhoun; Barbara Connelly QC; James Corbet Burcher; Kitty Colley; Melissa Coutino; Emily Formby QC; Sahar Farooqi; Sarah Fearon; Andrew Granville Stafford; Cathrine Grubb; Alex Gunning QC; Birgitte Hagem; Jacob Hallam QC; Amanda Hardy QC; Michael Harwood; Matthew Howarth; Neil Hawes QC; Isabel Hitching QC; Harriet Holmes; Richard Honey QC; Sa'ad Hossain QC; Shobana Iyer; Sean Jones; Susan Jones; David Joseph QC; Faith Julian; Joanne Kane; James Keeley; Stephen Kenny QC; James Kitching; Kate Lumsdon; Hannah Markham QC; Lee Marklew; Oliver May; Louise McCullough; Cait McDonagh; Martyn McLeish; Christina Michalos QC; Andrew Morgan; Philip Moser QC; Yasmin Omotosho; Lucinda Orr; Harry O'Sullivan; Sean O'Sullivan QC; Deshpal Panesar QC; Reagan Persaud; Francesca Perselli; Michael Polak; Charlotte Pope-Williams; Jonathan Rees QC; Simon Regis; Ryan Richter; Robert Rhodes QC; Rehan Popal; Natasha Shotunde; Joe Smouha QC; Kate Spence; Gordon Stables; Jessica Stephens QC; Heidi Stonecliffe QC; Philip Stott; Ben Symons; David Taylor; Steven Thompson QC; Samuel Townend QC; Linda Turnbull; Anton van Dellen; Sunny Virk; Gaynor Wood; Ellen Wright; Richard Wright QC;

In attendance:

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| Piran Dhillon-Starkings | Adviser to the Chair | PDS |
| Carolyn Entwistle | Director of Services | CE |

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| | Sarah Kavanagh | Communications Manager | SK |
| | Rose Malleson | Policy Analyst | RM |
| | Andrew Mitchell QC | Vice Chair, BSB | AMQC |
| | Mark Neale | CEO, BSB | MN |
| | Phil Robertson | Director of Policy | PR |
| | Joseph Rucklidge | AGO office | JR |
| | Adrian Vincent | Head of Policy | AV |
| | Wilf White | Director, Comms, BSB | WW |
| | Natalie Zara | Head of Governance | NZ |
| Minutes | Yvonne Treacy | Executive Officer | YT |

Apologies were received from

Christine Agnew QC; Sydney Chawatama; Michelle Heeley QC; Kim Hollis QC; Hugh Mercer QC; Lisa Roberts QC.

1. Conflicts of Interest

None were declared.

2. Minutes of the last meeting and matters arising

The minutes from the meeting of 13 November 2021 were approved.

3. Statement by the Chair

The Chair welcomed everyone to the meeting – to those in person and those joining online. In particular he extended a welcome to Alex Chalk QC MP, Solicitor General who was attending as an observer, and also to new members on the Bar Council.

i) Report highlights

The Chair referred to his report which he would take as read but wished to highlight the following:

- Congratulations to those who had recently been appointed silk or become recorders. It was great to see so many people from different parts of the profession being recognised.

Welcome to Michael Polak, the new chair of the Young Barristers Committee (YBC), whom he will invite to say a few words at the end of the meeting. It was noted that the Life at the Young Bar report had recently been published. The Report, by the

Careers Research & Advisory Centre (CRAC) and commissioned by the Bar Council, presents a snapshot of life at the Young Bar in 2021. One of the main outcomes was that roughly one in six young barristers said they were considering leaving the Bar. The issues that concern them most are the working hours (extent and unpredictability) and consequent lack of work-life balance. The Chair said that we should all be concerned about this although it should be noted that this issue was not confined to England & Wales but was worldwide. He had attended an online international bar leader's roundtable event on Tuesday as part of the Opening of the Legal Year in Hong Kong. Many senior bar leaders who spoke talked of their concerns for young lawyers, about isolation, and the culture and training of young lawyers. The Bar Council (BC) was committed to addressing these concerns.

- The Chair's Statement sets out the meetings he has attended with various stakeholders including government ministers, government officials, SBAs, the Inns, and senior judiciary. He met the Lord Chancellor at which they discussed the CLAIR report, and we now await the government's response.
- He wished to pay particular thanks to the following for their work:
 - The Hon. Mrs Justice Tipples DBE, who stepped down as Chairman of the Trustees of ICBET at the end of last year.
 - Baroness Blackstone, Chair of the BSB, who has announced that she would be leaving in the summer.
 - Rachel Langdale QC and Andrew Walker QC, the current Bar Council representatives on the Queen's Counsel Appointment (QCA) Selection Panel.

ii) Human Rights Act

The proposed HRA reforms are of great importance to all lawyers. The BC would be responding to the proposed reforms and that the BC response would be politically neutral but setting out what the BC thought would work and would not work.

iii) CLAIR

Sir Christopher Bellamy's report was published by the government in mid-December 2021. The Bar Council held a webinar for members on 20 December in conjunction with the CBA – "Understanding CLAR: a Bar Council online briefing." At that webinar they presented a summary of the key points contained in the report and details of the consultation process. The Chair said that Sir Christopher Bellamy's report posed a series of complicated questions for the government to consider, for example, what should happen in police stations through to the Crown Courts. The BC was working hard to try and make sure that the Response/ Consultation, when published, was one that the profession would find favour with by making it sustainable, successful and serve the interests of justice. Whatever did emerge would be unlikely to give practitioners all they wanted immediately but it would hopefully

be a positive start to a process of rebuilding. With regards to potential action, the Chair said he would encourage all members to consider beforehand all the materials available, to think through what the government has said and to be mindful of the complexities involved.

4. Bar Standards Bar Report

Baroness Blackstone (BB) presented the BSB report and said that she would take the report in the papers as read. She has also asked Mark Neale (MN) to say something about their budget in the light of the Practising Certificate Fee (PCF) consultation. She said that the BSB strongly agrees with that Chair that the BSB should seek to deal with their core regulatory business more swiftly. They must also of course maintain standards. And the Board are also determined to ensure that they keep all their processes under review to see what more can be done to improve productivity further.

i) Appointment of Emir Feisal

On Tuesday they announced the appointment of Emir Feisal as a new lay Board member. Emir is a Chartered Accountant and has spent most of his career at the Sunday Times as Associate Managing Editor. He is a Commissioner for the Judicial Appointments Commission and a Board member of several organisations including the Serious Fraud Office. He was involved in a number of initiatives in the diversity and inclusion arena. He has held non-executive board member positions with a number of bodies including the Bar Tribunals & Adjudication Service. He is also a lay magistrate. He therefore brings many skills and wide experience to the Board and BB welcomes him to his appointment.

ii) The Diversity Report

BB said that since they submitted their report for the BC agenda papers, they have also published their annual report on Diversity at the Bar. She was pleased to say that the report showed that the profession continues to become increasingly diverse and that a greater proportion of barristers disclosed their demographic data. Men still outnumber women at the Bar, but the overall percentage of barristers from minority ethnic backgrounds now matches the proportion of people from minority ethnic backgrounds in the working age population. However, women and barristers from minority ethnic backgrounds remain underrepresented as Queen's Counsel and people from a Black/Black British background remain underrepresented at all levels of the Bar. Therefore, progress was being made but there was still more to be done to ensure that the Bar was truly representative of society at every level.

iii) Leaving the BSB

Finally, BB informed the meeting that she had announced to the Board on Thursday evening that she would be stepping down as Chair of the Bar Standards Board in the summer.

Therefore, the BSB will be advertising for her successor in due course. She has enjoyed being the Chair of the BSB over the past four years but now wishes to pursue other activities.

BB then handed over to MN to say a few words regarding the BSB budget.

iv) BSB budget

MN commenced by referring to the BSB's consultation setting out their views on their strategic priorities and aims for the next three-year period and the BC's consultation on the PCF. He said that the two were linked as the BSB budget was a reflection of the Board's view that BSB needed to strengthen their capability in order to be effective over the next three years. He went on to say that a clear message arising from the consultation responses, and which they agreed, was that they needed to prioritise in terms of turning round their core regulatory operations more quickly i.e., the handling of reports on barristers, authorisations, independent investigation work - without compromising quality. Therefore, this was the reason why a significant part of the budget increase proposed was focused on productivity, improving processes and strengthening and supporting those teams which had been struggling, for example, with rising volumes of cases including those of a more complex nature.

In terms of their processes, they would be reviewing them on a continuing basis to identify ways to set aside unmeritorious cases and in the longer term hoped to take steps to ensure they would receive fewer reports that don't fall within their regulatory remit. Furthermore, they will be undertaking a major review of their regulatory operations later in the year to ensure that their processes were as efficient as possible.

However, the BSB could not set aside their wider statutory responsibilities i.e., to promote the interest of consumers, competition and the diversity and the independence of the profession. In order to pursue these wider regulatory objectives, the BSB was keen to work with the BC and the profession. A good example of this would be in relation to diversity where the BSB had had productive discussions with the BC about how they could jointly take forward the recommendations of the BC's Race at the Bar report.

In conclusion MN said that he hoped this was helpful background to their approach regarding their budget proposal and thanked everyone for the many constructive responses they received to the strategy consultation and the PCF consultation.

The Chair thanked MN for his report and said that while the BC would welcome the BSB's major review of their operational processes, it was unclear why this did not take place before the BSB asked for additional funding. The BC would of course work in partnership with the BSB where appropriate but would seek assurances that the right processes were in place before more money was spent.

v) Discussion

Samuel Townend QC said he wished to make two points. First, the proposed budget hike was not going down well with the profession and there did not appear to have been any impact assessment carried out beforehand. Therefore, was the BSB going to carry out an impact assessment, particularly in relation to diversity issues and the impact on the criminal bar, before proceeding with the proposed-increase? Secondly, there were concerns about the cost of regulating and disciplining the unregulated Bar. It has been reported that half of the barristers appearing before the disciplinary tribunal are non-registered barristers, not paying the practising certificate fee. The BSB has previously refused to provide even a range of likely cost to the regulated Bar on the regulation of unregistered barristers. Could the BSB please let the profession know how much of the BSB budget has been spent in relation to disciplining the unregulated / unregistered Bar?

MN replied that the BSB did have regard to the impact on the profession of the fee increase and was conscious that their costs, in seeking to improve their regulatory performance, were met through the PC fee. With regard to unregistered barristers, they had provided a great deal of information to the BC on the proportion of their work that related to unregistered barristers. However, they did not have the mechanisms in place to provide precise costings, although the cases involving unregistered barristers tended to be more straightforward than cases involving practising barristers. Consequently, the costs were unlikely to be commensurate with the proportion such cases represented of the total caseload. However, the broader issue was whether it was appropriate for the BSB to continue to have regulatory oversight of non-practising barristers. This in turn was linked to the timing of call to the bar and therefore the BSB had agreed that it would add this issue to the programme of work over the next three years. This would require engaging with a wide range of interested bodies including universities and the Inns before any changes could be made. An important factor for consideration was protection of the public as unregistered barristers were able to use the title of barrister and it was not guaranteed that changes would result in immediate financial savings bearing in mind the number of people who had a continuing right to use the title of barrister.

Anton van Dellen said that it was his understanding that call to the bar was a matter for the Inns to consider and not the BSB, but he was open to correction. He then asked a question about the Bar Tribunal and Adjudication Services (BTAS), and in particular, how much did the BSB spend in the last financial year on prosecuting counsel at BTAS?

MN replied that the timing of call did indeed engage the interest of the Inns, but it also engages the BSB because of their statutory responsibility for the qualification as a barrister and therefore he would expect the BSB and the Inns to be partners on this. With regards to the cost of prosecuting counsel information can be provided and he would therefore come back to AVD on that.

RWQC said he was disappointed to hear BB say that the BSB continues to support a budget that represents a significant increase in fees at a time when members of the profession are struggling. The general impression he took from the consultation responses was that a fee hike at this time was unconscionable. It also comes on the back of the Regulatory Return which he felt was ill timed and ill thought through. He would encourage the BSB to rethink their position and listen to the profession.

In response MN said he disagreed on the point made about the Regulatory Return as it represents a valuable part of the evidence the BSB use to inform their work and strategy. Furthermore, they extended the deadline due to the pressures on the profession at the time. They are also aware that whilst some chambers were unhappy about the Regulatory Return, others found it useful in clarifying some of their regulatory responsibilities. MN said he would like to reassure RWQC that they have read all the responses to the strategy and PCF consultations and take them very seriously.

MC made the point that there were many lawyers from overseas who come to this jurisdiction to undertake Bar training, who then come back at a later stage to practice in the UK and thus help to build the reputation of the UK as a place to work. If there was to be such a consultation on call to the Bar, she would expect the Inns to have a view.

MN said that the Inns would be central to the consultation and that MC made a good point about lawyers from overseas being deterred from undertaking bar training if the date of call was changed. It was therefore a point for consideration.

The Chair referred to a comment in the MS Teams Chat which summed up the reaction of many i.e., amazement that the profession's PCF has to cover the BSB dealing with those who do not pay the fees. However, it should not be assumed that the question of whether it was right to regulate the unregistered was necessarily connected to the question of deferral of call and would ask the BSB not to necessarily link the two and to keep an open mind.

BB replied that the BSB was concerned about unregistered barristers, and they fully understand the Chair's concerns as well and would therefore look at the case for breaking the link between regulation and call. For the purposes of clarification, the budget has not gone up by 20 per cent but by 9 per cent. Furthermore, they are not tone deaf, but BSB staff are under a great deal of pressure because the profession itself has grown. The BSB Board has spent a great deal of time on developing the budget, including consideration of the impact on the profession of an increasing PCF.

The Chair thanked BB and MN for addressing the issues discussed. He invited the BSB to consider the nature of the complaints they receive and how they are recorded and processed, for example, in relation to social media, where one comment on social media might lead to several hundred people complaining. Perhaps this should be treated as one complaint as opposed to several hundred complaints.

5. Statement by the Chief Executive

Malcolm Cree, CEO of the BC, presented his report but commenced by furthering the discussion about the PCF submission by saying that we need to be careful about the language used. The issue is about unregistered barristers, who are not generally non-practising barristers because the vast majority are not eligible to practise as they have not done pupillage. He also felt it was a separate issue from deferral of call although not completely unrelated.

He confirmed that the BC's PCF submission had been sent to the Legal Services Board (LSB). Whilst the BC was not allowed to reject the BSB budget, it was able to provide a view. The BC view therefore reflected the views of the profession which were overwhelmingly negative.

The new chair of the QCA Selection Panel is Monisha Shah whom he will be meeting the following week. One of the issues they aim to look at will be the possible introduction of a QCA audit. Although he feels that the current system operates very well the directors nonetheless want to ensure that they have sound governance arrangements in place.

The BC continues to have discussions with the pension trustees regarding the defined benefit pension scheme and the investment strategy. He hopes to report to BC with further news later in the year.

Finally, he and Nick Vineall QC (NVQC) attended a meeting of the Four Bar Associations in Belfast the previous week. It was a very productive meeting at which they discussed a number of issues including regulation, HRA review, impact of covid on the young bar and legal aid fees.

6. Treasurer's Report

Lorinda Long presented the Treasurer's Report as follows:

i) PCF Update

- A proposal has been put forward to the LSB to increase the PCF by 4.5%. An increase in PCF has been necessary, for the most part, to meet the proposed increase in the BSB budget.
- Under the new Internal Governance Rules the GCB as the approved regulator cannot accept or reject the BSB budget.
- The GCB is using its reserves and proposing fee band changes to mitigate the effect of the increase on the profession.
- Without this mitigating action the increase in PCF would have been 9% across the board.

- The GCB, as the approved regulator, has consulted with the profession and the overwhelming response has been to reject the proposed increase.
- The Bar Council, as the representative body, is completely aligned with the views of the profession and does not agree with the increase. We have asked the LSB to look rigorously at the proposed increase.

ii) Consultation responses – themes

Most of the responses to the consultation concentrate on the BSB's budget. The key themes are:

- The lack of a fully costed business case with sufficient justification for an extraordinary uplift in staff (c.40% over 3 years, mainly in 2022/23).
- The issue of money, time and resources spent on regulating unregistered barristers, paid for by registered ones.
- Concerns that an increase in the PCF is unfair and misplaced, especially considering a struggling publicly funded Bar, which has lost a significant amount of income due to the impact of the pandemic.
- Mission creep and regulatory overreach / the role of the regulator and budgetary efficiency.

iii) December 2021 management accounts position

- The forecast out-turn at December 2021 is a surplus of £1,288k compared to a surplus of £1,317k at November 2021. The outturn surplus has improved by £885k against the original budget in March 2021.
- The £488k increase in income has been driven by increases in Regulatory Income (see the table below) these are not expected to be repeated in the coming years.
- The £126k overspend in staff salaries is due to additional temp staff and replacement recruitment in the BSB and RG.
- The £570k savings in non-staff costs are driven by one off savings in the BSB exams team and savings in the Bar Council from the cancellation of events both due to covid

Finally, as MC mentioned earlier, they are talking to the pension trustees about the investment strategy. They have yet to receive the triennial evaluation. The BC has until the end of the year to finalise and agree the evaluation.

Making a further point about the BSB budget increase MC said that 9 per cent is the overall requirement to increase the PCF which the BC has decided to spread over a couple of years and have thus reduced it to 4.5 per cent. However, the BSB staff costs are actually increasing by 22 percent and therefore the figure of 9 per cent is not one that he recognises.

Christina Michalos QC said she was surprised by the number of unregistered barristers who are subject to regulation, 70,000 plus, and also surprised by the BSB's response that the

mechanisms were not in place to calculate the cost of regulating unregistered barristers not least because of issues of costs recovery following any hearings. Therefore, was there anything that the BC can do to persuade the BSB that they should take steps to introduce such mechanisms?

The Chair said that the internal governance rules (IGRs) were imposed upon the BC by the LSB and limit what the BC may do.

7. Remuneration Committee Report

Jason Sugarman QC presented the report of the Remuneration Committee. He said that he was delighted to be the new co-chair of the committee along with Sean O'Sullivan QC. He would like to thank Nick Bacon QC and Neil Hawes QC the previous committee co-chairs who carried out a huge amount of work over the last four years, along with Adrian Vincent of the BC. He was pleased that they would still be involved in certain projects as this will ensure a degree of continuity, particularly in regard to CLAIR. He was pleased to welcome a number of new members to the committee. The committee remit included consideration of criminal legal aid fees, family legal aid, civil legal aid and privately funded fees and they continue to react to issues as they arise including new matters raised by the Bar.

With regards to CLAIR he reported that this was going to dominate the next few weeks and that it was a serious issue for the criminal bar, which has been dramatically underfunded in recent years. They have held regular meetings on CLAIR with stakeholders including the CBA. They will continue to make representations to the MoJ and parliamentarians about ensuring that the publicly funded bar is put on an effective and sustainable footing and that it should be dealt with urgently.

Referring to the CBA survey carried out recently and the unhappy mood in the robing rooms, Gordon Stables said that the Chair seemed to be suggesting that any action was premature. If so, the BC should be telling this to criminal practitioners as he was concerned that criminal barristers on the frontline were not receiving enough information.

JSQC replied that the BC did understand the frustrations expressed by the criminal bar. However, digesting the report, meeting with government ministers, discussing workable solutions takes time. As the Chair said earlier, it is time for a period of reflection. He was not against action but said it needed to be paused while the issues were still under consideration and sufficient time given to ongoing discussions.

In response to the above and by way of continuation, the Chair said that he is a criminal practitioner and a former chair of the CBA and shares and understands the concerns and anxieties of criminal barristers he meets in chambers and court and members of the CBA in trying to persuade the government to put more money into criminal legal aid as a matter of urgency. It is his understanding however that about half the membership of the CBA responded to the ballot. Bar Council and CBA alike have tried, for many years, usually

without success to persuade government to uncouple AGFS remuneration from other parts of the system. In his personal assessment, the best possible long term financial settlement for the criminal bar will involve looking at the whole system from police stations through to AGFS. It is in the Bar's interests to have solicitors fairly paid for the skilled work they do in police stations and Magistrates Courts. This is not something that is easy to do in six weeks. It is hoped that the government proposals that are published in March will address our concerns. In the meantime, we are engaged behind the scenes exploring ways in which money can be injected as soon as possible. We have also been discussing with the Law Society how we can persuade the Government that reform can be carried out in stages and at different speeds. So that, for example, money might be put into police stations and AGFS immediately while more complex reform of LGFS might take place over the medium term.

James Keeley said that during covid there was little assistance for the Bar and this, along with many years of government underfunding, may have contributed to people leaving the independent criminal bar in droves. Now there were not enough of them left and it has impacted upon the handling of cases. He has never seen such stress and anxiety in the profession leading to real mental health problems. They are working punishing hours to support a transparent and decent criminal justice system for all. In order to get people back into the profession he suggests two approaches. First, there needs to be a substantial amount of public funding injected into the criminal justice system as a matter of urgency, for the good of the profession and the public. Secondly, the mental health issues of the profession need to be addressed. Without these measures more people will leave and then the government will be forced to pay higher fees.

The Chair thanked JK for his comments. He said it was important to note that barristers were not leaving the profession in droves. Instead, authorisation to practice data shows that they are leaving criminal practice when they can earn more in other areas of work.

8. Employed Barristers Committee Report

Mike Jones QC, Chair of the Employed Barristers Committee, presented the committee's report. He commenced by saying that he has taken over as chair from Emma Walker and that he would like to thank Emma for the sterling work she undertook last year. He took the report as read but wished to highlight the following:

- i) The EBC was in the process of liaising with the BSB on the issue of registration, hardship and redundancy. Under the current regulatory rules, a barrister has to register their new practising address within 28 days. If they fail to do this, they become unregistered, and this is a problem if a barrister is looking for employment. They await a response.
- ii) The EBC's collaboration with BACFI continues to grow and strengthen. There was a meeting on 20 January which looked at support for pupillage and pupils in the employed bar.

iii) They are liaising with the various employed Bar committees of the Inns with a view to reengaging members of the employed bar with their Inns and to put on relevant events.

iv) It was reported that the constitution of the Wales and Chester Circuit had now been amended to enable a vote, that does not require a majority vote from the whole circuit, to admit employed barristers. The committee is awaiting confirmation of the results of the vote to accept employed barristers as members to the circuit.

v) Forthcoming activity over the next period would include the 2022 Employed Bar Awards which they are in the process of organising, and promotion of the QCA and judicial appointments process, in particular to raise awareness within the employed bar of the opportunities available.

Lucinda Orr noted that the Wales and Chester Circuit had been attempting to amend its constitution and vote on the admittance of employed barristers, since she was Chair of the EBC in 2019. She asked therefore whether there was a timeline for this coming year on when the vote would be taken on admitting employed barristers?

Jonathan Rees QC, the Wales and Chester circuit representative on the Bar Council, confirmed that the constitution has recently been amended and it now allowed for easier amendments to be made in future. This followed a previous vote on the admission of employed barristers to the circuit which was not successful, and which was voted under the previous constitution. They are planning to hold a vote under the new constitution regarding the admission of employed barristers before the end of spring.

9. Pro Bono and Social Responsibility Committee Report

Leanne Targett-Parker presented the Pro Bono and Social Responsibility Committee report. However, she first wished to say that she agreed with everything that JK said earlier, particularly with regard to wellbeing and the profession, and that this was evident at the family bar, her own area of practice. She also wished to make the point that she co-chaired the PBSR committee with Laurie Scher and it had been agreed that she would attend General Management Committee (GMC) and Bar Council meetings on behalf of the committee and that she felt honoured to be re-elected to Council again this year.

With regard to the PBSR committee report, which she took as read, LTP highlighted the following:

- i) The committee welcomed four new committee members – two covering pro bono and two covering social responsibility issues, all of whom bring a new perspective to the work of the committee.
- ii) Annex 1 of the report sets out the Bar Council strategy for the climate crisis strategic overview and details of the sustainability network. This includes setting

up a working group to sit under the PBSR Committee, made up of expert members from across the Inns, SBAs, other BC committees or external groups. She expressed her thanks and admiration to Laurie Scher for the speed at which he had developed this aspect of the committee's work and also to Rose Malleson, policy analyst at the BC, for her hard work in support of the committee and its initiatives.

- iii) One of the areas the committee was looking to promote this year was expanding the scope of pro bono and to encourage more pro bono volunteering across the Bar. They would be looking further into the use of remote hearings and how they better support unrepresented litigants in person and thus increase access to justice.
- iv) With regard to their CSR work including community and outreach, one of their projects was developing a profile in schools. It was noted that there were already a number of projects and agencies working on this and therefore they will be looking to see how all interested parties can work together.

10. Regulatory Review Working Group – Update

NVQC presented an update on the work of the BC's Regulatory Review Working Group (RRWG), which he chairs and which STQC vice chairs, and which included an overview of the regulatory framework which new members may find helpful, the RRWG position and identification of four hot topics for consideration.

i) Overview of the regulatory framework – the Legal Services Act 2007 and the LSB

The present system was set up under the Legal Services Act 2007 which included a series of reserved legal activities e.g., conduct of litigation, will writing, exercise of a right of audience. Not included was giving legal advice as this is not a reserved legal activity. You can only carry out a reserved legal activity if you are an authorised person in relation to that activity. Therefore, anyone can give legal advice.

There are a series of regulatory objectives identified in the Act including, for example, promoting and maintaining adherence to the professional principles which include, for example:

- that authorised persons should act with independence and integrity,
- that authorised persons should maintain proper standards of work,
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and

The Act created the Legal Services Board as an overarching regulator and provided for each profession to have its own regulator i.e., for barristers the General Council of the Bar is the approved regulator, although regulatory functions are delegated to the Bar Standards Board. For solicitors there is the Law Society and the Solicitors Regulation Authority.

ii) The RRWG position

The RRWG is in favour of regulation. It is necessary and is in the public interest. There are two core areas of regulation:

- Regulation needed to police the perimeter to stop people doing things they are not allowed to do such as exercising rights of audience if they are not authorised to do so.
- Regulation needed to police within the perimeter i.e., make sure that that the profession does its job to proper professional and ethical standards.

These are quite widely drawn and create a risk that regulators stray wider and are tempted to become an economic regulator rather than a conduct regulator. It is important to note that regulation creates cost, in two ways:

- Direct costs of the regulators raised by the PCF and levied on registered barristers.
- An additional cost burden that some regulatory interventions impose on the profession, for example, if there were to be compulsory revalidation that might, depending on how it was structured, have serious costs consequences in terms of the cost of compliance and the lost opportunity cost associated with it

Ultimately both types of cost are paid by barristers who are practising, and who pay the PCF, and who will, if they can, pass them on to their clients.

iii) Regulatory Review Working Group

The RRWG has had some useful engagement with the Legal Services Ombudsman (LeO) recently. It is noted that it only deals with complaints about poor service and not professional negligence. However, the LeO has been failing but is keen to improve and to simplify and speed up its procedures. The RRWG has offered to help as in order to see LeO succeed so that its procedures are cheap, quick, easy to use and proportionate.

iv) Hot topics

NVQC identified four hot topics on regulation as follows:

a) Hot topic 1 – the role of the LSB and whether it is overreaching its remit

The LSB has a very important role but it has not been charged with oversight of the entire legal services sector for two reasons. First, not all legal services are regulated i.e., anyone can give legal advice., and secondly, they are regulated by the front-line regulators for each profession. However, the BC finds it concerning that that the LSB has said publicly it is critical of the difficulties created by “the focus on title-based regulation as opposed to activity-based regulation”. They are also quoted as saying:

- “The LSB’s position remains that ultimately moving to a single regulator for all legal services would have significant public benefits.”.
- “The current system of multiple organisations regulating the same activities does not deliver clarity and simplicity for consumers, risks inconsistency of standards and approach and duplicates cost.”
- The LSB has decided “not just to create another corporate strategy for the LSB, but rather to develop a strategy for sector”.
- “Our vision was to develop a strategy for the entire sector and not just for the Legal Services Board.”

It is the RRWG belief therefore that the LSB is behaving as though it were the regulator that it thinks it ought to be, rather than the regulator which in fact it is and is treating its remit as wider than it is and overreaching.

b) Hot topic 2 – LSB and ongoing competence

The LSB has commissioned research which shows that consumers are surprised that for lawyers there is no system for revalidation of competence. However, the barristers profession is a referral profession and does not operate in the same way as most other providers of legal services in that if they are not competent, they will not receive instructions. Furthermore, there is no research or analysis by the LSB to assess the extent of harm caused by the absence of revalidation and neither is there analysis to show that the cost of any regulatory interventions would be outweighed by the benefits. The profession maintains its competence through its membership of SBAs and via the circuits.

The LSB has said, “We want to support regulators to adopt a proportionate and risk-based approach and develop an approach that is fit for purpose for the professions they regulate, while ensuring a minimum standard of ongoing competence requirements across the sector.” The RRWG is concerned by this and

need an outcome in which the LSB allows the BSB sufficient space to regulate in a way which is proportionate and reflects the unique position of a referral profession.

c) Hot topic 3 – deferral of call

The RRWG believe serious consideration should be given again to deferring call to the bar until pupillage is complete. Under the present system all you need to do to become a barrister is to have a qualifying law degree and do the Bar course. That makes you a barrister but does not qualify you to do anything.

The RRWG believe there is a very strong argument that Call to the Bar should mark the beginning of professional life as a barrister, not a staging post along the way to being able to practise as a barrister. Furthermore, there is a risk that the present system where there is no correlation between your profession title and what you can actually do plays into the hands of the LSB and others who say that regulation by title is old fashioned and outmoded and it would be better to have one regulator for the entire legal services sector. The role of Inns and the BSB with regards to call is thus important.

d) Hot topic 4 – regulating unregistered barristers

This relates to the nature of and cost of regulation directed at unregistered barristers ie who do not have a practising certificate. There are two aspects to the problem. First, more than twice as many people are called as ever practice, and second, people leave practice. This means that although there are only 17,000 or so practising barristers there are another 70,000 or so barristers who are not registered.

It is accepted that they clearly have to be subject to regulation and enforcement to this extent in order to stop them holding themselves out as entitled to act as barristers in providing legal services. Therefore, the regulated barristers pay for the regulation of unregulated barristers, and we would like to know how much of the BSB budget goes on regulating unregistered barristers. At a time when the BSB is seeking significant increases in PCF, it is especially appropriate to look to see whether it is really sensible to spend money disciplining people who misbehave when they were not doing anything to do with legal services at all, were not holding themselves out as a barrister, and were not a registered barrister.

v) Discussion

Sunny Virk raised the issue of CPD. He said that we currently have quite an effective CPD system. However, would this likely disappear if there was any form of revalidation introduced by the LSB? NVQC replied that it is likely that the LSB view would be that the BSB, as the profession's regulator, should have some way of determining competency. In reality however, incompetent practitioners would not get any work as we are a referral profession.

Melissa Coutino asked if unregistered barristers bring the profession into disrepute, could not any penalty include a financial element that makes them pay for the cost incurred? NVQC replied that in principle they could but there may be issues about enforcement.

11. Any other business

i) The Inns of Court Women's Alliance – launch event – 8 February

CMQC posted in the Teams Chat the following notification to be included under AOB for information:

The Inns of Court Women's Alliance is being launched in Gray's Inn on 8 February. This is a successor to the Temple Women's Forum now joined by Gray's and Lincoln's under the new title of the Inns of Court Women's Alliance. Temple Women's forum objectives & information here: <https://www.innertemple.org.uk/your-professional-community/temple-womens-forum/>

The Chair said he would be attending this event and would commend it to Bar Council members.

ii) Employed Bar and the criminal justice system

With reference to the earlier discussion about CLAIR and comments in the Teams Chat, Heidi Stonecliffe QC wished to make the point that the decision by practitioners to leave the self-employed criminal bar because of ongoing funding issues has an impact on everyone in the profession and also on the wider criminal justice system, including the employed bar. She makes this point as a member of the Employed Barristers Committee practising in the CPS and what she has witnessed. In the last few months, and during the pandemic, the CPS has noticed a significant increase in the return of trials at quite a late stage as practitioners are not able to cover them in chambers. The entire criminal justice system is impacted by this, including witnesses, defendants, the independent criminal bar and the employed bar. The issues around funding and the pressures, stresses and impact upon mental health and wellbeing are the same for the self-employed bar and those in house. The employed bar feels just as overwhelmed as those at the self-employed bar. We are one bar and we are stronger when we speak with one voice.

The Chair replied that when he meets with stakeholders and senior decision makers he tries not to distinguish between employed and self-employed. He knows that the pressures are felt throughout the system and that HSQC can reassure her constituency that this is not overlooked or forgotten.

iii) Bullying, discrimination and harassment / Spot

JK wished to raise the issue of bullying, discrimination, and harassment by saying that anyone experiencing these behaviours were not alone and did not need to suffer in silence. They are encouraged to reach out for help and support to their circuit leaders, heads of chambers and via the Bar Council Spot support facility. BC members were asked to pass this message on.

For those who were unfamiliar with Spot, the Chair explained that it was an online tool for the Bar to confidentially and anonymously report inappropriate behaviour and concerns. It can be used if something happens to you or if you witness an incident and further information can be found on the BC website.

iv) Alex Chalk QC MP, Solicitor General

The Chair thanked the SG for attending the meeting throughout and asked if there was anything he wished to say in response to the various issues raised during the course of the meeting.

The SG said he had listened carefully to what had been said and wished to make the following observations. First, he would like to endorse the Chair's approach in terms of his engagement with government and ministers on behalf of the profession which has been extremely vigorous. Secondly, he noted the discussion about practising certificates fees and the cost of regulating unregistered barristers. This particular discussion resonated with him because he was aware of some barristers in Parliament who were unregistered who found themselves on the receiving end of complaints because of the way they voted in debates. Ultimately these complaints came to nothing but there were cost implications which would have to be borne indirectly by fee-paying members of the profession. With regards to CLAIR he informed the BC that Sir Christopher Bellamy's review was commissioned by Sir Robert Buckland and himself when they were at the MoJ because they believed passionately in the Bar and the criminal justice system more widely, and want both to be properly resourced and sustainable. In terms of delays, he understands the frustrations and anguish of the criminal bar but wanted to provide reassurance that their work is valued and the difficult circumstances in which they work is also recognised.

v) Michael Polak, Chair, Young Barristers Committee

The Chair invited MP, the new Chair of the Young Barristers Committee (YBC), to introduce himself to the committee. MP confirmed that he had recently taken over from Joanne Kane as Chair of the YBC and that the Vice Chair was Michael Harwood. The YBC is made up of barristers who are seven years post pupillage and is therefore a large constituency. As mentioned by the Chair earlier, the Life at the Young Bar Report had been published recently and whilst there were many positives in the report, it was concerning to read that

one in six young barristers are looking to leave the profession due to burn out and unmanageable workloads. This year the YBC is concentrating on finding solutions to the problems identified in the report and he would encourage anyone to get in touch with him if they would like to discuss any of the issues in the report or regarding the YBC generally.

12. Date of next meeting – 26 March 2022

The next Bar Council meeting would be on Saturday 26 March 2022, at St Philips Chambers in Birmingham but online facilities would be available also for those unable to attend in person. The Chair thanked Michelle Heeley QC, Leader of the Midland Circuit, who would be co-hosting the meeting.

In closing the meeting, the Chair said that all the issues that impact on the stresses and strains, which we all feel, are keenly felt by the Bar Council also. Your voices in raising these issues are critical. As we emerge from the pandemic, we need to strike a balance between having the right amount of work and finding ways to manage the pressures. We also need to think about the culture of the Bar. He would encourage everybody to think how to plan and to work out how you can see your friends and colleagues again face to face. It is an issue facing lawyers all over the world. Think about what you can do. We all want the bonds of friendship which foster the culture, learning, training and excellence of the bar to be promoted.

Thank you to everyone for your attendance and for your contributions.