

Minutes of the Bar Council meeting held on Saturday 15 March 2014 at the Bar Council offices

Present:

Nicholas Lavender QC - Chairman

Alistair MacDonald QC - Vice-Chairman

Stephen Collier - Treasurer

Rt Hon Dominic Grieve QC MP - Attorney General

Mr Oliver Heald QC MP - Solicitor General

66 further members of Bar Council attended.

1. Apologies

Apologies for absence were received from Alison Saunders CB, Safira Afzal, Rachel Ansell, Lesley Bates, Michael Bowsher QC, Ian Bugg, Lord Carlile of Berriew QC, Ivor Collett, Tony Cross QC, Gemma de Cordova, Malcolm Dodds, Amanda-Jane Field, Peter Grieves-Smith, Martin Griffiths QC, Susan Grocott QC, Max Hardy, Adam Hiddleston, James Hines, Jennifer Josephs, James K Juggapah, James Kitching, Natalia Levine, Jolyon Maugham, Gerard McDermott QC, Kevin McGinty CBE, Gregory Mitchell QC, Benjamin Myers, David Nicholls, Geoff Payne, Simon Picken QC, Paul Stafford, Jason Sugarman, Mark Thomas, Helen Tung and Nicholas Worsley.

The following did not attend and did not send apologies: David Anderson, Phillip Blatchly, William Boyce QC, Kerry Bretherton, Alex Carington, Edward Henry, Roger Quickfall, Hefin Rees QC and Muhammad Saley.

The following attended as guests: Vanessa Davies (until item 6), Patricia Robertson QC (until item 6), Andrew Dymond and James Gerard.

2. Approval of the minutes and matters arising

The minutes of the last meeting were approved. There were no matters arising.

3. Statement by the Chairman

The Chairman apologised for the late provision of his written statement. As the topic of legal aid reform was an item on the agenda in its own right, the Chairman said that he did not intend to say anything further on that matter at this stage, but would return to it later.

The Chairman welcomed new members of Bar Council and invited those present to formally co-opt Daniel Sternberg, Vice-Chairman of the Young Barristers' Committee, as a member of the Bar Council. Approval was given.

The Chairman reported that the process to elect the Bar Council officers for 2015 would begin shortly and that further details as to the timetable would be circulated in due course.

The Chairman asked the Council to spare a thought for those members of the profession who had passed away since the last meeting, including Florence O'Donoghue and Graham Hylands.

There were no questions.

4. Chief Executive's report

Stephen Crowne (SCr) wished to update the Council on three matters.

At the Bar Council meeting in January, there was a discussion about the relationship with the Inns and the potential for the provision of meeting rooms given the 'compression' of space within the High Holborn offices. James Wakefield, Director of COIC, is happy to broker something and discussions are ongoing. They are also in discussion about the constitutional relationship between the Inns and the Bar Council in light of COIC setting itself up as an incorporated body. A report will be brought to Bar Council later in the year on this matter.

SCr reported that after some technical difficulties on the first day, the Authorisation to Practise process is going well. By 12 March, 72% of the profession had completed the process, a far higher proportion than last year.

The imminent departure of Simon Garrod, Deputy Director of Representation and Policy (R&P), affords the organisation an opportunity to look at the department's structure as part of the longer-term planning work which is already underway. SCr has told staff that he particularly wants to make sure that all activities are aligned with strategic, corporate and business plans; that all services are effectively managed

and that they are well-marketed to the membership and that a flexible way of working can be developed. Paul Mosson, currently Head of Member Services, will step in to Simon Garrod's role on an interim basis while this work is undertaken.

Tim Devlin (TD) reported that he has had difficulties registering through Barrister Connect to start the Authorisation to Practise process and has heard that a lot of other people have complaints. He asked that SCr arrange for the problems to be sorted. SCr said that data shows that complaints only account for just less than 1% of all contact from the profession during this process.

5. BSB report

The Chairman explained that Baroness Deech QC (Hon) was unfortunately unwell and wished her a speedy recovery. Patricia Robertson QC (PRQC) was present at the meeting to present the BSB report in Baroness Deech's absence.

The BSB's report was provided at Annex 3. PRQC wished to highlight just a few matters from that report.

The BSB's application to the LSB to regulate entities is close to being submitted. A survey has been launched on the website to test likely take-up and members are encouraged to bring it to the attention of their constituents.

The process to appoint a new Chair of the BSB is underway through an independent appointments panel.

There is a great deal of information relating to the BSB's increased focus on regulating through supervision and a risk-based approach on the website; as there is a degree of novelty to this, there may be some uncertainty as to how it will operate. The team are very happy to answer any questions; the point of contact is Chris Nichols, Supervision and Policy Manager.

The BSB welcomes recent developments on the management of complaints; members will recall the controversy when the LSB insisted on direct contact between the barrister and the lay client but new SRA guidance has now been issued which should address concerns arising from that.

The BSB would also welcome assistance as they collect diversity data among the profession; disclosure is very low (perhaps even falling), which means that no reliable conclusions can be drawn. Bar Council members are asked to encourage

practitioners to collaborate and provide that data.

PRQC asked if there were any questions.

Tim Fancourt QC (TFQC) asked for elaboration in relation to what he had been hearing about the introduction of competency frameworks. It is particularly troubling that none of what he has heard has come directly from the BSB; it is not clear what they are intending to do and what the purpose is. Are the frameworks to be applied throughout the professional career of each barrister?

PRQC said that the work is about what every barrister needs to know on Day One of their practice, which is not to say that this can be divorced from what they need to know throughout their career. Vanessa Davies (VLD) said that the primary driver is to set out what competencies people need to practise as a barrister and what training the relevant institutions have to provide. The framework may also be helpful when, in eighteen or so months' time, CPD is far more in the hands of the practitioner.

VLD conceded that communication has been difficult as the BSB is still working out a comprehensive programme of work following the outcome of the Legal Education and Training Review (LETR). The BSB is setting up a 'Bar briefing group' consisting of representatives from the Advocacy Training Council, the Inns and the Bar Council; they will be consulted before any programme is made public.

Susan Jacklin QC (SJQC) asked whether the SBAs would be included in this group; VLD confirmed that the specialist knowledge from the SBAs would be very helpful. SJQC said that the FLBA would definitely like to be involved as she was very concerned to hear about it for the first time last week but not from the BSB.

PRQC said that nothing is in the public domain as the work programme has not even been put before the BSB Board yet! VLD said that they have been trying to engage, but there is a balance to strike between getting views from all the relevant parties and creating a large and unwieldy group which does not manage to progress matters. She hoped that they would meet at some point between the end of Easter and the end of April.

TFQC asked whether it was the BSB's intention to be 'checking' competence throughout the career of every barrister? VLD said that if the question was really is this QASA by the back door? Then it certainly was not; the programme is being developed for use first and foremost with training providers.

Guy Fetherstonhaugh QC (GFQC) said that it is not a great leap to go from that position to it becoming a cumbersome process for the whole profession. This will be enormously unpopular. VLD conceded that this is a leap, but not one that has even been considered. Moving to that state would involve a long and complicated debate. There is certainly no glimmer in the BSB's eye to introduce a compulsory competency framework across the Bar.

GFQC said that his concern was that the practising Bar was not included in the early part of the debate; instead, a *fait accompli* has been presented. The Bar has been excluded and told that they could not come to any of the workshops.

VLD explained that workshop numbers were limited and as such were restricted to the Inns and the training institutions as the primary providers of legal education. A line had to be drawn somewhere. This is why the reference group is being set up, because the introduction of a programme has to be undertaken in collaboration with the profession.

GFQC said that impressions are terribly important and that it appears that the regulated community was being excluded. VLD said she understood his perspective but did not agree that the regulated community was being excluded.

Sundeeep Singh Virk (SSV) asked for the timeframe in respect of the BSB's application to the LSB to regulate entities. PRQC explained that informal discussions have been underway for some time so as to increase the likelihood of the application being approved as any problems would have already been addressed. The application should be made in the next few weeks, after which the LSB has three months to respond. It is unlikely that the LSB will wish to extend that timeframe. SSV asked how PRQC knew that; she replied that the BSB has been in negotiation with the LSB for a long time and thought that the ground had been well prepared. PRQC stressed that the process to regulate ABSs (i.e. barristers and other practitioners / lay members) may take longer, but regulating barrister-only entities should hopefully be straightforward.

SSV asked what the position is in relation to individuals becoming incorporated and the tax implications of that; have the BSB spoken to HMRC? PRQC said that the Bar Council may well be in discussion with HMRC, but that does not fall within the remit of the BSB. SSV asked if the BSB were engaged in discussion with BMIF? PRQC replied that they had, but the BMIF Board has not yet made any decisions. However, if the BSB thought that the insurance position would not be viable, it would not have constructed the regime.

6. Legal Aid reform

The Chairman introduced this item. The Government published their response to the 'Legal Aid - Next Steps' consultation on 27 February; the Bar Council has been clear that the position taken is contrary to the public interest and that this is not a matter of a representative body just being concerned for its members.

The Chairman is particularly concerned at this stage that members have as much information as possible about the implications of the announced changes. As set out in his written statement, the Chairman has attended a number of meetings since the announcement with Government representatives to try to clarify some of the proposals which remain ambiguous. An overview of the current position has been provided at Annex 4a.

The Chairman said that he was grateful to the Attorney General and Solicitor General for meeting with him, the CBA and the Circuit Leaders to discuss the reforms, and also for coming to these Bar Council meetings. As you would expect, they appreciate the value of an independent Bar which both prosecutes and defends.

The Chairman, the CBA and the Circuit Leaders have had a number of meetings with the Legal Aid Agency (LAA) to try to understand their case as to why they think the cuts are necessary. So far, the Bar representatives have not been convinced. The Bar Council's independent economist, Professor Martin Chalkley, is not convinced either. There are still savings from earlier reforms working their way through the system which cannot yet have been quantified. The Chairman will continue to press the point that the reforms are not necessary.

If the Lord Chancellor were addressing the Council today, he would no doubt invite members of the Bar Council to consider the fact that, compared to solicitors, the Bar's problems are not as great. He decided not to include Crown Court advocacy within his proposals for contracting, while the solicitors' contractual framework has been fundamentally shaken up. The average AGFS cut for the Bar is 5%, while solicitors are facing cuts of 17.5%. The Government has also abandoned some of the worst proposals from their first consultation, for example, tapering. The Lord Chancellor would say that he has tried his best. The Bar, however, takes a different view.

Professor Chalkley was astonished when he analysed data last year which showed that what criminal practitioners are being paid compared with only six years previously when the Carter reforms were introduced, has fallen by 21% in cash

terms. In real terms, this is closer to 37%. It is of no surprise that the call is for not a penny more in cuts.

The last three rounds of cuts to remuneration were easy to calculate - there were reductions of 4.5% each year. This time, they are harder to fathom. The Government proposed to align defence fees with prosecution fees in that they propose, instead of paying an evidence uplift, that this is included in the basic fee. The effect of referring to the cuts in terms of an 'average' is to ignore the winners and losers in different cases.

There will be a cut of around 20% in daily attendance fees, which means that the cuts fall heaviest on the longest cases. To ensure that the cuts fall least heavily on the junior Bar, which is the Government's stated aim, cuts fall more heavily on those leading or QCs acting alone.

The Chairman said that he is very keen to see some examples of those cases which will be badly affected. Earlier this week, Professor Chalkley attended a meeting with the statisticians at the Ministry of Justice (MoJ) in order to look more closely at their data. The Chairman met with some of the members of the CBA - notably Chris Henley and Mark Fenhalls - who have been so ably leading on the calculations, in order to draw further data together. The Chairman offered his thanks to those who have dedicated so much time to this work.

The Chairman drew the Council's attention to the Government's impact assessment relating to the cuts to advocacy fees. They predict that the net impact will be a reduction to the legal aid budget of approximately £10m in steady state. The preliminary indications are that this figure is accurate. However, it should be taken into account that "steady state" means that these are the savings to be made once those cuts which are still working their way through the system have been counted. Therefore, the £10m is in addition to those other cuts.

It is also believed, at this stage, that the figure given for the average cut (5%) is accurate. However, this is still being checked and the Chairman would not like to confirm that conclusively at the present time. Even if it is true, for some cases the cut will be greater and in others it will be less.

The Government has decided to implement Option 2 from their consultation, which will see an average cut of 11% for guilty pleas, 2% for cracked trials and 6% for trials. Option 1 would have seen an average 23% increase on guilty pleas (very little of which would have been seen by the Bar) and an 8% reduction on trials.

The Government tends to include VAT in their calculations, as they do in charts 1 and 2 in the impact assessment, and consider gross income figures. Therefore, where the figures suggest that practitioners who only receive up to £50k will only get a 2% cut (on average), the figure of £50k includes VAT. The data from which the Government is working cannot be verified. The Bar Council requested it last June but has yet to see it.

Chart 1, showing the average effect of the cuts, is unhelpful as it combines income from AGFS and VHCCs. As 89% of barristers do not undertake any VHCC work, the inclusion of the VHCC income in this chart dilutes the effects of the cuts. The Chairman has requested a version of this chart without the VHCC data.

The Chairman has not yet been able to verify chart 2 as the Bar Council has not been given access to the underlying data. If he understands it correctly, the columns to the left are intended to show the average effect on both graduated fee and VHCC income of both sets of changes for those barristers who do both types of work. Understandably, for those people, the cuts are large.

The Chairman expressed gratitude to Edward Henry, a Bar Council member not present at the meeting, who attended a recent Policy Exchange event and put questions to the Lord Chancellor. In the course of his answers, the Lord Chancellor said, in reference to the Leveson review and the proposed review of the graduated fee scheme, that he has: "effectively turned what we are doing now into an interim exercise". If indeed this is the case, and these are interim measures, why implement them? Why not just undertake the review now. Before that review is due to take place, there will be a general election, which may change matters. It may be that the Bar no longer has the benefit of the current Attorney and Solicitor at these meetings.

The Chairman will continue to press the Bar's case, not least that the cuts are not necessary. If the Government says that their proposals will save £10m, this amount is wasted regularly in other areas of government. The Government says that £10m equates to a 5% cut. The Government estimate that the total spend on the AGFS at current rates will be £200m, rather than £275m in 2010/11. When all the previous cuts have gone through the system, this is what they will be spending, which begs the question as to why they are making more cuts.

Sarah Forshaw QC (SFQC) rose to thank the Chairman for getting on top of the figures. It is really hard for busy practitioners to find the time to be able to achieve that sort of granularity. It is good to know that there is someone at the Bar Council

going through it all and challenging the Government.

Alistair MacDonald QC (AMQC) said that found this to be a devastating critique of the need for cuts. He encouraged the use of intelligent arguments, such as those just presented, to fight the position, and to concentrate on facts and not bluster.

Suzanne Goddard QC (SGQC) reported that her chambers are 60% dependent on legal aid. With less income, there will be an overall impact on expenses pay. How will chambers be able to provide a quality service when costs for materials, staff (including pensions) and overheads go up but earnings go down. Chambers have compared billing for January 2014 against the new rates and there is a significant reduction. The Chairman asked SGQC if she would be willing to share that data to assist Professor Chalkley. The Government needs to be shown real examples, not hypothesis and anecdote.

Charles Cory Wright QC (CCWQC) said that although he was not a criminal barrister, he had been lucky enough to walk to the Ministry of Justice on 7 March with the criminal practitioners; it was a very powerful event and good to see solicitors and barristers united. There was a clear sense of disgust at the proposals. A lot of what was said - so eloquently - was not put forward by members of the profession. The concern extends beyond self-interest. It is important that those who are not at the criminal Bar receive as much information as possible so that they can add their support.

Nigel Lithman QC (NLIQC) echoed SFQC's thanks to the Chairman. He stressed that the need for cuts is not made out and the figures are not comprehensive. To counter the proposals, it is necessary to have the facts, as calculated by those like SGQC. The Government needs to know the damage being done on a personal level to individuals. AMQC says that the fight should be fought without 'bluster', but what the CBA is doing is what it will carry on doing. The CBA has shown the MoJ that it is indispensable; the days of action have proved successful and while the 'no returns' policy is causing hardship to the practitioners, it is effective.

NLIQC expressed disappointment when Judges are critical of the CBA's actions; they too were at the Bar not that long ago. People may call the CBA's stance 'bluster' and say it isn't appropriate, but that is what it has resolved to do. The CBA is the only democratically elected representative of the criminal Bar. Years of inaction have led to this point, so action is necessary.

Robin Allen QC (RAQC) introduced himself as the Chairman of the Bar Council's

Equality and Diversity Committee. He wanted to share with the Council some of the discussions that he had had with the committee last week. Their specific concern about the legal aid reforms is the way in which the MoJ has assessed the impact of the cuts on equality and diversity at the Bar.

On page 80, paragraph 15 of the impact assessment, the MoJ refer to the 2011-12 Bar exit survey published by the Bar Council. The survey clearly shows the impact of cuts on diversity as publicly-funded practitioners leave the Bar and yet MoJ say that they do not think that the link is clear. The message is that MoJ disregards data. This is incomprehensible and shameful. It can only be understood that MoJ cannot deal with the truth. This cannot be allowed to take place. The E&D Committee wish to support the Bar Council and the CBA about this and would be grateful for real-life tales of those leaving the profession because they can no longer stay in self-employed practice.

Additionally, on page 83 (paragraphs 32-35), MoJ say that they have no part to play in the consideration of the future profile of the judiciary. This is a ridiculous proposition. They would not make the same argument about the police, for example. The committee is horrified and are looking for support to refute MoJ's argument.

Alexandria Carr (AC) said that she is a BACFI representative and conceded that she has not looked through the details, but wondered if there are any analogies which can be drawn with the Government's policies on regulating small businesses.

Richard Atkins QC (RPAQC) said that, at the Bar Conference, the Attorney General said that if the Bar did not take VHCC cases, then someone else would. Does he still think that is accurate? In the case at Southwark where an amicus has been appointed, could the Attorney tell the Council the rates at which that amicus is being paid?

Paul Mendelle QC (PMQC) asked the Chairman if he knew when the cuts are due to be implemented as the only indication so far is "the summer". Additionally, is it known why there is a delay when the cuts to solicitors' remuneration are being made this month? The Chairman said that he did not know of a specific date for implementation and that he suspected that the delay is to allow a Statutory Instrument to be drafted and for preparations for interim payments to be made. Specifically, issues relating to the identification of the Instructed Advocate may need to be addressed before interim payments can be introduced.

Eleanor Mawrey (EM) said that on the day of action, the Bar walked out and there

was no reaction from MoJ. Meanwhile, Simon Hughes MP (Minister of State for Justice and Civil Liberties) tweeted on the following morning that he was in Yorkshire saving two pubs. EM asked the Attorney General to convey to MoJ the level of anger felt by the criminal Bar at that tweet.

NLiQC said that the CBA were willing to cooperate but were still waiting to see MoJ make out their case. A starting point would be a pay freeze and a postponement of any other reforms pending a full review.

Mark Wall QC (MWQC) said that it was obvious from what a number of people had said that the anger at the criminal Bar is unprecedented. People have taken direct action on two days, not just because of the reduction in fees but because there is a genuine fear that if these cuts come in, they will change the face of criminal advocacy forever. They will make chambers that are reliant on criminal work unviable. That change in landscape will happen by summer 2015. MWQC urged the Chairman to press for a pay freeze until the outcomes of the Jeffrey and Leveson reviews are known. The case needs to be based on figures, not in a vacuum.

The Chairman drew the Bar Council's attention to a recent report relating to judicial salaries, which claimed that a 'tipping point' has been reached whereby judicial remuneration is such that people will no longer wish to become judges. This is a 'tipping point' for the Bar. The Government accepts that there is a point after which a career at the criminal Bar will no longer be viable, but in their opinion it would be as a result of any cuts in addition to these.

Nigel Sangster QC (NSQC) said that his practice is entirely VHCCs, where the cuts have already been introduced. He is not taking any more cases and, owing to his specialisms, will not start doing any graduated fee cases and cannot get any private work. He will go from being one of the 'top ten earners' to earning nothing unless he gives in or the Government does. The strikes have been valuable but the tipping point is the VHCC cases where there are defendants without representation because no barristers will take the work. In those cases, the courts will have to let defendants go or let them represent themselves; this cannot go on forever. NSQC said that he did not expect any sympathy but pointed out that the 'fat cats' are taking the brunt of the cuts and urged everyone to remember that VHCCs are also affected, not just AGFS.

The Chairman urged members to send him the details of any VHCC cases which they knew to be affected by the lack of representation owing to the cuts.

The Chairman invited the Attorney General to respond to the points raised.

The Attorney thanked the Chairman for the extremely clear presentation of the issues which are dividing the Bar and the Lord Chancellor. He said that he had met with a number of Bar Council representatives and also spoken at length to the Lord Chancellor. He has no doubt that the Lord Chancellor would like to bring the ongoing differences of view with the Bar to an end. He was also in no doubt that the Lord Chancellor feels that he has bent over backwards to accommodate the Bar in these reforms, and yet there remains a serious difference of view. The Bar says that this is the point where the straw has broken the camel's back; the Attorney said that he has listened carefully to what the Bar has to say and will feed that back.

The Attorney said that he sees a danger, of which he has informed the Bar Council and the CBA, that there is a lack of recognition of the success the Bar has achieved so far. The Bar has successfully argued the need to keep an independent Bar doing this sort of work. A number of key agreements have been reached, such as not including Crown Court advocacy in contracting arrangements. His concern is that the longer this dispute goes on and there is disruption of the criminal courts, the more pressure the Lord Chancellor will come under to find solutions. This may include revisiting key benchmarks that the Bar has established.

The Attorney expressed his anxiety about the continuing dispute leading to more radical solutions being considered. He has spoken to the Lord Chancellor and discussed the Bar's preference for waiting for an outcome from the Jeffrey and Leveson reviews before assessing whether cuts are necessary. However, the Lord Chancellor has been clear in his view that he does not have - within the current financial restraints - the 'wriggle room' to provide that indulgence. All the Attorney can do is commit himself to continue to keep speaking to all parties. He hoped that what was now a relatively small disagreement wouldn't adversely affect the decisions that have already been made.

The Attorney confirmed that the amicus in the VHCC case at Southwark is being paid at public law rates by his own department. He agreed to provide a full response on the pay formula being applied.

In response to RAQC, the Attorney confirmed that he did say at the Bar Conference that advocacy may take a very different turn if the Bar refuse to do certain types of work. He reiterated that he is at the disposal of the Bar Council and the CBA and perfectly willing to carry on talking to the Lord Chancellor on the Bar's behalf. It is in the public interest to do so.

NLiQC said that the Criminal Justice and Courts Bill proposes replacing Imprisonment for Public Protection (IPP) sentences with indeterminate sentences. Is it seriously being proposed that the Government could look somewhere other than the Bar for this work to be undertaken?

The Attorney replied that while the Bar may take the view that there is no-one else to do this work, he can only re-emphasise the risk that if the Bar cannot work within these economic parameters, then a different model will be sought. It could be that One Case One Fee (OCOF) is considered again. Whilst the Attorney can think of many reasons why OCOF would not be good for criminal justice, it could still be a consideration. If the actions of the Bar lead to alleged criminals walking free, then this will constitute an emergency which may require Government to consider draconian solutions.

The Chairman thanked the Attorney for setting out the position so clearly. It is important that everyone is informed of the possible consequences of their actions. There has already been growth in the Public Defender Service (PDS); he understands that a silk from the PDS is about to appear as a junior in a case thanks to the 'no returns' policy.

AMQC said that while the Lord Chancellor continues to say that he needs to make cuts, he has found the money to extend the PDS. If that money was just paid to the Bar in the first place, there wouldn't be a dispute.

Andrew Langdon QC (ALQC) said that he had been listening carefully but found himself in a familiar position. Every time the Bar has been in a similar position, practitioners have been told that they had better swallow the reforms, because if they don't then something worse could be introduced. The overwhelming mood is that the Bar feels that it is waltzing off the stage. The Bar is scared. It is not that the threat is not being taken seriously, but that it could be used many more times and the cuts will never end. If the Lord Chancellor recognises, as he has done, that OCOF is a bad idea, then he could not introduce it with any conscience.

The Attorney General agreed with the analysis, but said that there is also a long history of the Bar claiming that cuts cannot be absorbed, and then continuing to work at reduced rates. The figures are indeed startling and he has not been lacking in passing on the view of the Bar. However, any view that the Government might back down is misplaced. Unless an agreement can be reached, there is a danger that drastic solutions will have to be found so that the courts can function. The Attorney

acknowledged the Bar's distaste over the PDS, but said that it is a response by the Lord Chancellor that VHCCs must continue to be heard. The Attorney reiterated that he is very mindful of the issues and the strength of feeling.

NLiQC asked the Attorney what he means by "reaching agreement"? The Lord Chancellor has heard the Bar's views and chosen to ignore them. Is what the Attorney means by "agreement" actually "submission"? The Attorney replied that what he meant was that he wanted the Bar to go back to work. He said the Lord Chancellor accepts the long-term issues but there are wider issues about the size of the criminal Bar and the provision of advocacy. The cuts have to be accepted, but the intention behind the Leveson and Jeffrey reviews is to create sustainability in the long term. It is not that the Bar is being asked to "roll over". Some of the most vehemently opposed proposals have already been dropped.

RAQC said that although he is not a criminal practitioner, he looks at this discussion in amazement. There is no 'potential' emergency; this is a present emergency. What is the Cabinet's view of the reforms? Do they release that the Rule of Law is this jurisdiction's most precious asset and the most important part of it is in collapse. How does that play out on the international scene? The economic value to this country is enormous; possibly billions. Has an economic assessment been undertaken on a macro level? Is the impact really worth £10m?

NSQC asked whether the Prime Minister and the Chancellor have taken any notice of this dispute? The Attorney replied that he is sure that they have. The Prime Minister has been in government for four years, a time dominated by departments having to make savings which have had to be rigorously enforced. The Ministry of Justice has had some of the biggest cuts.

Neil Ross (NR) asked at what point the £175m repayments from SERCO and G4S will be factored in. The Attorney replied that he does not control the MoJ's budget and therefore does not know, but he would be happy to take that point back.

James George (JG) said that reforms to the system so as to reduce the number of ineffective trials would save much more than £10m. The Attorney said that there is a lot of work underway to improve efficiency, not just in the courts, and there was already a lot of good practice. Leveson will be looking specifically at this and the Bar Council has been pushing very hard on this issue. The trouble is that when you look at the system, knowing that it can be improved, what looks easy on paper is much harder in practice.

Gregory Jones QC (GJQC) said that he is not a criminal practitioner. He asked the Attorney whether the Government simply does not believe what is being said to it by the CBA as to the threat to the independent Bar? If it does - does it care? Last year, GJQC went to Lincoln's Inn to attend a pupillage fair, designed to encourage a wider range of applicants to the Bar. There was not one single stand from the criminal Bar. This gives an indication of what the future looks likely to be; there are potential implications for the future of the independent Bar.

The Attorney said that he is perfectly aware that recruitment has fallen to very low levels. However, irrespective of fee structures, the criminal Bar has a problem regarding the number of practitioners compared to the work available. The Government does believe that the criminal Bar should have a future; there had been a number of occasions where the Government had been given the option of moving to alternative models, and it had not done so. Practitioners should draw comfort from knowing that the need for the delivery of a high quality service is recognised. There may well be a difference of perception. The Attorney said that he does not have the nuts and bolts figures for individuals in terms of the work they do, how it is structured and what they do when they are not in court. He therefore cannot say how individuals will be affected. It is complicated as not all practitioners rely solely on criminal work or defence work. MoJ need to know how it works in practice; there is a lack of understanding around that.

The Attorney said that he was the first to accept that, while he has looked at the models produced by the MoJ and he is sure that they are right, no financial model reflects every individual's experience, and there may be room to provide more detail. This is a fertile area for the Bar to concentrate on - to develop MoJ's understanding of the impact on individuals and in specific cases. Working at the criminal Bar can be very intense, carrying stress and competing demands which many may not understand. Some practitioners have an appetite for this, some don't. There may be a lack of understanding about a busy criminal practitioner's work / life balance.

NLiQC said that there are plenty of examples provided in the CBA's Monday message, which the Lord Chancellor reads. He therefore does not accept that MoJ do not understand the impact of the cuts. All he asks is for the Lord Chancellor to take his foot of his neck.

Joe Smouha QC (JSQC) queried whether there has been a proper assessment of the impact to the economy? He recently went to a meeting at MoJ in relation to the consultation on the increase in court fees in the commercial courts. Practitioners have

no personal interest in this as the costs are passed on to the client, but he was surprised that no-one from the Treasury was at the meeting. There is a danger that the amount of revenue raised in relation to the commercial courts would be outweighed by loss of one significant client or case because of those increased fees. When he asked whether this had been considered, the answer was no. The economic impact was being assessed to the department, not to the economy. There is no evidence that an assessment has been undertaken of what is in the public interest.

The Attorney said that this was a good point, which he accepted entirely.

Colin Andress (CA) said that the responses were not good enough. Government spending has not gone down and the deficit still exists. Why are the smallest budgets meant to take the biggest cuts? The money is there but it is not allocated properly and basically constitutes financial mis-management on behalf of the Government.

The Attorney said that the economy is starting to revive. However, some mistakes do get made. The Government is always looking for ways to improve efficiency; he said that he appreciated the point CA was making, but the Government is trying to put public finances on to a firmer footing.

7. Legal Services Committee: for report

Lord Carlile of Berriew QC, Chairman of the Legal Services Committee, was unable to attend the meeting to present this item. A written report was provided at Annex 5.

8. Professional Practice Committee: for report

Andrew Walker QC (AWQC), Chairman of the Professional Practice Committee, spoke to this item, supported by Annex 6. The work of the committee has largely been 'business as usual'. The focus has been on the new Handbook and updating various documents on ethical issues and the website. One particular issue that has proved to be of concern is devilling, on which the committee anticipates finalising its thinking shortly.

Ruth Hughes (RH) said that the guidance on mini-pupillages is particularly important; without it, her chambers will not be taking on any mini-pupils. AWQC said that this was not a new issue, and had been raised with the PPC, and by them with the BSB, under the old Code. The point had now been reached at which PPC needed to reach its own view on this under the Handbook. There was an overlap on

relevant issues with the committee's consideration of devilling. He was aware of the need for assistance on this issue as soon as possible.

Christina Michalos (CM) asked about the status of Bar Council documents, given the new Handbook and the different roles of the BSB and Bar Council. AWQC said that, as stated in the report at Annex 6, the website now sets out what benefits members of the Bar can get from considering Bar Council publications or from seeking assistance from the Ethical Enquiries Service. This was part of the new material on the website.

Alison Padfield (AP) asked whether the committee was aware that there is guidance on the BSB website which is not in the Handbook. AWQC said that although it is not in the Handbook, guidance on the BSB website has the same regulatory status. Practitioners will need to keep an eye on the website; even the PPC has not generally been told when new guidance has been released.

There were no further questions.

9. Any other business

Eleanor Mawrey (EM) said that in the last fortnight she made a request to Charlotte Hudson at the Bar Council for the email addresses for SBA representatives on Bar Council so that she could contact them. This request could unfortunately not be fulfilled as it would constitute an infringement of the Data Protection Act. EM asked that a directory of Bar Council members, including contact details, be made available so that members can communicate with one another.

Alexander Learmonth (AL) - who is also a trustee of the Barristers' Benevolent Association - said that the BBA is coming under increasing pressure, which is only likely to increase. He asked that those who can still afford to give to charity to consider donating to assist their fellow practitioners.

The Chairman gave special thanks to the Attorney General for volunteering to be cross-examined and to the Council for the professional manner in which the meeting's debate concerning legal aid was conducted.

10. Date of next meeting

The next meeting of the Bar Council will be held on 26 April 2014 at 10.00 at the Bar Council offices.

