



**Minutes of the Bar Council meeting  
held on Saturday 9 April 2016 at the Bar Council offices**

Present:                      Andrew Langdon QC                      Vice Chairman (acting Chair)  
                                     Robert Buckland QC                      Solicitor General

**Apologies for absence**

Apologies for absence were received from: Chantal-Aimée Doerries QC (Chairman), Celina Colquhoun, Gemma de Cordova, Joseph Curl, Anita Davies, Tim Devlin, Katie Drummond, Mark Fenhalls QC, Courtenay Griffiths QC, Sean Jones QC, Rachel Langdale QC, Lorinda Long (Treasurer), Athena Markides, Stuart McCracken, Andrew Morgan, Francesca O'Neill, Christopher Rees, Alison Saunders, Rachel Spearing, Paul Stafford, Geoffrey Tattersall QC, Christopher Tehrani QC, Helen Tung, Jacqueline Wall, Greg Williams, Jeremy Wright QC and Victoria Yates.

The following did not attend and did not send apologies: Mirza Ahmed, Colin Andress, Rachel Ansell QC, William Boyce QC, Simon Broomfield, Harriet Brown, Simon Clements, Michael Duggan QC, Richard Gibbs, Katherine Goddard, Alexandra Healy QC, James Hines QC, Richard G Jones, James Keeley, Justin McClintock, Paul Mendelle QC, Neil Mercer, Giles Powell, Laurie Rabinowitz QC, Mark Trafford QC and Sundeep Singh Virk.

60 further members attended.

**1. Minutes of the last meeting**

The minutes of the last Bar Council meeting (27 February 2016) were approved subject to the amendment of Andrew Langdon QC's title from Chairman Elect to Vice Chairman.

**2. Statement by the Chairman**

The Vice Chairman, the acting Chair for the meeting, relayed greetings from the Chairman of the Bar who is coming to the end of a trade mission in Asia. He reported that she has visited Seoul and Shanghai and is now in Hong Kong.

**Introduction**

The Vice Chairman delivered an opening introduction during which he ran through the items on the agenda. He reminded members that the election period for the officer positions is open. The period will close on 29 April 2016.

The Vice Chairman welcomed the Solicitor General, Robert Buckland QC, to the meeting. Robert Buckland QC explained to members that he and the Attorney General have agreed that one of them will be present at each of the Bar Council meetings.

The Vice Chairman noted two 'important' birthdays. First, on a positive note, he congratulated Jeremy Hutchinson, Baron Hutchinson of Lullington, QC on reaching 101 years of age. Secondly, he observed that it has been three years since the introduction of LASPO. Saying that 'the fight still goes on in some quarters' and that efforts are ongoing to 'put right some of the wrongs', he reported that the appeal to consider the lawfulness of the residence test is due to be heard at the Supreme Court on 19 April 2016.

Referring to the agenda for the meeting, the Vice Chairman explained that, in the absence of the Treasurer, Stephen Crown, Chief Executive, would speak to the 'Treasurer's Report'.

The Vice Chairman noted the presence of Sir Andrew Burns in attendance to deliver the BSB report. The Vice Chairman acknowledged that BSB have been very busy with the launch of their Strategic Plan and Risk Outlook. He explained that the need for the regulator to consider risk is understood, but said that he hopes that the BSB also recognise the need for a balanced approach. Alluding to the recent negative headlines in the press, he raised concerns that the BSB is giving disproportionate prominence to the identified risks and questioned whether this approach and the potential damage to Bar's reputation was in the public interest.

With regards to the discussion item on the 'JUSTICE Working Party', the Vice Chairman reminded members that the Chairman is keen for Bar Council agendas to contain topical themes that generate debate. JUSTICE has convened a working group to look at what is going to happen to the configuration of the Court in light of court closures. The Vice Chairman explained that JUSTICE were invited to the meeting to deliver their message and to hear to the views of barristers.

### **Officer elections**

The Chairman is encouraging members to nominate themselves or others to stand for the officer positions. For the first time a hustings will be held to enable candidates to speak directly to the members.

### **AGFS**

The work being carried out with the Ministry of Justice (MoJ) in relation to AGFS is taking longer than anticipated. MoJ have recently suffered staff cuts that have affected progress, however, the valuable talks continue, albeit at a slower pace.

### **Briggs Reports**

The Chairman had previously reported that the Bar Council was looking for an opportunity to invite Lord Justice Briggs to an open session. A date has now been found: Tuesday 10 May 2016. The event will take place in the BPP lecture hall.

### **Other matters**

Referring to detailed paper being prepared by the EU Committee on the consequences of the EU referendum, Richard Hoyle enquired as to whether or not the EU Committee are inviting contributions.

Gordon Nardell QC, noting that it is impossible to ignore the political context in which the paper will be released, acknowledged that the paper has had a long gestation period. The 'paper' currently consists of three papers dealing with distinct topics. The International Committee have had some involvement and decision is due to be taken at GMC on Monday 11 April as to who else should be encouraged to contribute. Gordon Nardell QC asked for any committees or specialist associations who wish to contribute, to make themselves known to him.

## **3. Treasurer's report**

Speaking on behalf of the Treasurer, Stephen Crowne delivered a brief update to the members.

The financial year has just come to an end. A loss of £300,000 had been predicted due to inaccurate forecasting in the past. The actual figure will be higher as two sets of instructing costs will now fall into the last financial year as accruals.

Authorisation to practice (AtP) has gone extremely well from a technical point of view and no complaints have been received from barristers. The Records Team are still working through the last few hundred being processed through the system but the Bar Council is confident that it will reach its £11.42M target.

The Bar Council is cautiously optimistic of hitting, and potentially exceeding, the BRF target. While some barristers who previously paid the BRF have chosen not to this year, over 2000 barristers have registered for the first time. The main challenge is the unregistered Bar.

The triennial valuation indicates that the pensions deficit has shrunk from £2.8M to £2.5M. Nevertheless, it remains a major funding challenge.

## **4. BSB report**

Sir Andrew Burns introduced Wilf White, BSB Director of Communications, to the members. Wilf White has previously worked for the Treasury and the BBC. Also in attendance from the BSB were Vanessa Davies, BSB Director-General, and, Naomi Ellenbogen QC, BSB Vice-Chair.

### **Risk-based regulation**

Sir Andrew Burns assured the members that the concerns raised by the Vice Chairman in his opening address had been heard. The BSB is pleased to have launched a suite of paper explaining its work and the reasons behind risk-based regulation. The fourth BSB Strategic Plan covering the years 2016-19 and the Business Plan 2016/17 have been published, despite uncertainty about the future of regulation that has made it difficult to identify work streams for the next three years.

Three BSB papers on risk have been published:

- 1) Regulatory Framework: the Framework sets out the regulatory framework, analyses risk and takes forward risk-based regulation;
- 2) Risk Index: the Index sets out the current risks facing the Bar and the regulator; and
- 3) Risk Outlook: the Outlook follows an overview of the legal services market and sets out the aspects of regulatory focus.

Sir Andrew Burns encouraged members to read the Risk Outlook and to give consideration to the issues it raises. It is due to be launched at an event on Tuesday 12 April 2016 and all members are invited to attend and take part in the discussions.

Sir Andrew Burns explained that the papers represent conclusions drawn from research, consultation and experience. The BSB has tried to distil the responses it has received, prioritise risks, and, make decisions about how to mitigate those risks. It is the regulator's responsibility to spot risks and to focus on those that are serious. The BSB remain conscious of value for money and the need to reduce expenditure where possible. A 4% reduction in costs is predicted in the budget going forward.

The point of risk-based regulation is to make the regulatory process less burdensome and to move away from 'overly rigid rules'. The regulatory environment is complex and the philosophy of regulation has been evolving since the 2007 Act. The BSB needs to demonstrate that it is facing up to the issues.

Sir Andrew Burns said that he understands concerns about the BSB's approach but maintained that the BSB has tried to present opportunities as well as identify risks. Saying

that the BSB is not pessimistic about the Bar, he emphasised the value of reading more about the work of the BSB.

### **ABS regulation**

Although there are still some formalities to take place, the BSB hope to begin licensing ABSs in the autumn.

### **Cross-cultural communications**

The BSB work on 'Advocacy and the Youth Courts' has revealed some interesting points around the need for barristers to be able to relate to clients from all backgrounds. Findings will be fed into work on barristers' training.

### **Consultation on threshold standards**

The consultation is live and closes on Sunday 5 June 2016. The BSB look forward to receiving responses.

### **Women at the Bar survey**

Some very thorough responses containing lots of qualitative and quantitative evidence have been received to the BSB's survey on women's experiences at the Bar. The BSB are in the process of studying the responses carefully to avoid sensationalism. It was noted that the Bar Council has already issued specific guidance on dealing the harassment allegations.

### **New CPD scheme**

The BSB are finalising the guidance on the new CPD scheme. The BSB believe that the scheme will be welcome but have heeded the call for improved guidance.

### **Bar Course Aptitude Test**

The BCAT will be reopening for candidates applying for 2016 entry to the BPTC and, for the first time candidates will be provided with their test scores. The test pass mark will be raised in 2017, subject to approval by the LSB. In deciding the right 'cut-off point' The BSB has been conscious of the need to strike a balance between discouraging those who are unlikely to succeed and encouraging talented candidates from different backgrounds who are likely to find it hard but have a chance of success.

### **Other matters**

Sir Andrew Burns finished his report by saying that he wished to emphasise that the BSB is working for and with barristers. Far from adopting a cavalier approach, the BSB Board, half of which are barristers, pay great attention to arising issues.

Louisa Nye said that she had listened to Sir Andrew Burns but wished to echo the comments made by the Vice Chairman in his opening address. She explained that, although she understands that there is a risk of barristers' conduct being affected by commercial pressures, she is concerned about the level of risk implied. She suggested that levels of risk be characterised when risks are identified and enquired as to where the evidence has come from to warrant the level of publicity that it has received.

Sir Andrew Burns replied that the evidence has come from supervision work and a variety of other sources. The BSB does not say that risks are likely to happen but recognises that they could.

Richard Hoyle read out a passage from the Risk Outlook (p.63) 'Whilst we have identified several drivers of commercial pressures and can see some likely consequences, direct evidence of commercial difficulties themselves is limited as few are prepared to disclose them. However, we are confident that the factors described above are having some impact on significant numbers of barristers'. He suggested that the point that there is a possibility of misconduct but no real risk should be better emphasised by the BSB and counterbalanced by examples of things that the Bar does well.

Sir Andrew Burns explained that the passage read out by Richard Hoyle is contained in a section about commercial pressures. The BSB has a strong professional conduct operation that deals with barristers whose conduct has been affected by stress. A number of consultations have raised issues and there is enough evidence to justify prioritisation of this risk.

Vanessa Davies alerted members to the challenges faced by the BSB in presenting an evidence base. Much of the evidence is collected through supervision returns and cannot be shared openly due to data protection issues. She acknowledged that the BSB could perhaps have been more explicit but sought to reassure members that the BSB Board have adopted a careful and measured response.

Guy Fetherstonhaugh QC recounted a story published online about a barrister alleged to have taken a large bribe. He raised concerns that such stories, when followed by BSB papers on risk, appear to denigrate the Bar and inaccurately portray a difficult relationship between the Bar Council and the BSB. The Bar Council already works to help the public understand the changing market and carries out cross-cultural research. He suggested that it is duplicatory and expensive for the BSB to be doing the same work.

Robin Allen QC said that the BSB's report has caused some real concern. He asked the BSB the extent to which it internally reflects the question about whether there is any 'mission creep'

going on. Continuing on the theme of cross-cultural communication, he made the point that a vast amount of work in this area has been carried out within the Bar Network.

Robin Allen QC raised a further concern about the topic of wellbeing. The Bar Council has an extensive wellbeing programme and, last autumn, an issue was raised with the BSB about the need for Head of Chambers and clerks to be able to support barristers who are 'on the edge of doing something wrong'. The BSB Handbook places a duty on barristers to report misconduct immediately which causes problems with supporting barristers. The BSB have been asked to produce guidance but nothing has been forthcoming. He suggested that this is an example of work that should be carried out by the BSB and urged the BSB to think about whether it is concentrating its resources in the right places.

Sir Andrew Burns acknowledged that the BSB report had raised a variety of issues and advised members to read the Risk Outlook carefully as it contains a lot of thoughtful responses. The BSB is a regulator that has statutory duties to educate the public about access to justice. It operates within the complex and sophisticated range of rules in the 2007 Act and needs to take regulatory issues into account in order to be credible.

Sir Andrew Burns recognised the need for the Bar Council and BSB to work in parallel and confirmed that the BSB asks if an issue is already being dealt with before undertaking a new piece of work. He welcomed a meeting with the Chairman of the Bar to address the issues raised about the duplication of work.

Naomi Ellenbogen QC, picking up on Robin Allen QC's point about the duty to report, explained that it is 'serious misconduct', as opposed to 'misconduct' that must be reported. There is a difference between the two that is identified in the rules and related guidance can be found at rC68 onwards in the BSB Handbook. The intention is not to report to the BSB at the first hint of concern: an attempt should be made to mitigate first. Naomi Ellenbogen QC spoke about the need for the BSB to understand and engage with Bar Council committees on shared common issues or concerns. The BSB identifies risk with rules and guidance but does not intend to create an 'us and them' culture. She asked anyone with issues or concerns to speak to her.

## **5. Proposed amendment to Bar Council Constitution – redefinition of the Young Bar**

Louisa Nye spoke to her paper on the proposal to redefine the term 'Young Bar' in the Constitution. She reminded members that when she spoke in her capacity as Chairman of the Young Bar at the first meeting of the year, she mentioned that there was a case for re-examining this definition as it takes longer to enter practice today.

The current definition, which relates to call (7 years past), worked in 1954 when, generally speaking, barristers went straight into practice after call. Today, this is far rarer and while this is not a concern - barristers are getting more experience – it does mean that ‘young barristers’ are given less time to be representatives of the Bar Council. It also means that there are fewer barristers for the Young Bar Committee to support. Various options were set out in the proposal but the view is that the best point in time is when a barrister becomes eligible for a full practising certificate.

The Young Barristers’ Committee have considered the impact that the proposed new definition will have on the Bar Council and have concluded that the proposition will better reflect the members at the Bar. It is not thought that there will be any real change to the operation of the Bar Council, the Young Barristers’ Committee hope that it will increase the pool of barristers who are able to take part.

One of the members asked if the change in definition would affect the elections. Louisa Nye replied in the affirmative saying that the constitutional amendment will need to be come into effect before the AGM. Louisa Nye and Natalie Zara, Head of Governance, will be checking details in terms of vacancies but doubt that there will be many.

Max Hardy said that he had endorsed a change to the definition when he was Chairman of the Young Bar as he had recognised that the Bar Council would struggle to recruit young barristers in the future. He made the point that the solicitors refer to their equivalent committee as the ‘Junior Lawyers Committee’ as ‘young’ implies ‘youth’. Louisa Nye replied that the title ‘young barrister’ has been discussed previously but no one has been able to think of a more suitable term. She asked those with suitable suggestions to email her.

Those members present unanimously voted to approve the change to the definition of ‘young barrister’ in the Constitution.

## **6. JUSTICE Working Party on ‘What is a Court?’ information gathering from the Bar**

This item was listed as item 8 on the agenda but taken as item 6.

The Vice Chairman introduced Alexandra Marks, Chair of the JUSTICE Working Party, and Nadia O’Mara, Legal Researcher, to the members and thanked them for coming to the meeting.

Alexandra Marks thanked the members for inviting them both to the meeting. She introduced herself as the Chair of the JUSTICE Working Party on Court Closures and explained that she was previously a partner at Linklaters. Subsequently, she became a recorder in the Crown Court and she now sits as a Deputy High Court Judge. Although she has never been a litigator, she has some personal insight.



JUSTICE are currently compiling a report about the future configuration of the court and tribunal estate in England and Wales. JUSTICE have been considering the administration of justice in many other forms and this report, which has been prompted by the Court Closure Programme, will be one of a number produced by JUSTICE. The HMCTS have been keen to involve JUSTICE in looking at the future structure of the courts and the Working Group are trying to set out a vision of how access to justice might be improved by technology and initiatives such as pop up courts.

Alexandra Marks said that she would be grateful to establish a dialogue with the members, with a view to gathering thoughts and ideas. She was clear that the Working Group do not suggest that the role of the lawyer will not feature in the future court structure. On the contrary, the Working Group envisage an enhanced role.

Derek Sweeting QC mentioned the Briggs Review and its timeliness. He said that, while the Working Group may see an enhanced role for barristers, this is not what barristers understand from the Briggs Report. Furthermore, that the Working Group appear to be suggesting the introduction of highly paid staff aligns their views with those of Briggs.

Alexandra Marks clarified that the point on investing in highly trained individuals refers to an 'upskilled staff' as the Working Group believe that the needs of the court users are poorly served by staff. If, for example, pop-up courts are realised, an improved staff skill set will become very important.

Derek Sweeting QC questioned whether the Working Group are supporting the view that the 'bottom end of the scale' should include lawyers. Alexandra Marks confirmed that the Working Group are not in support of this view.

Malcolm Dodds said that he works in the front line of the HMCTS (Kent and Bedfordshire) and he shared his professional experiences with the members. He said that the role of the lawyer in virtual remand hearings in Kent and Bedfordshire is to represent the client remotely. In such cases, the prisoner will remain at the police station but the advocate may be at the police station, the court, or somewhere else where s/he is 'beamed in'. This system is already in operation. On a low level basis, the idea is to carry out most proceedings in an office and not in a court. He highlighted the importance of allowing defendants to be heard without having to travel too far.

Malcolm Dodds continued by describing the challenges posed by court closures. In Kent the Tonbridge Wells court is being closed and much of the work will transfer to Hastings. It would be unreasonable to expect some vulnerable defendants to travel and there are plans to hold a 'pop-up court' in the Tonbridge Wells office. Already in Kent it is assumed that witnesses give evidence by 'live link'.

Duncan McCombe shared his professional experiences of the County Courts. To illustrate the need for greater flexibility, he talked about one case, started in the High Court, in which both the witnesses were elderly and unwell. The case was subsequently transferred to Norwich County Court where a Case Management Conference was held without the parties in attendance. The lawyers, who were London-based due to the case starting in the High Court, had to travel to Norwich. He also made the point that, often, the first time that the defendant engages with the process is when the hearing has been set. Normally in such situations, there has been no reply at all to letters or documents. He suggested that remote hearings could present problems that could be solved by the setting of an earlier hearing.

Duncan McCombe also talked about court facilities observing that the removal of the robing rooms in civil cases has led to a shortage of areas to store bags and coats. Cloakroom areas would be welcome. Similarly, a number of County Courts have no catering facilities which can cause problems for all court users.

Richard Posner said that he is in favour of the Circuit configuration remaining as it is for reasons of accessibility. In terms of flexibility and design, the court services fall under 'one umbrella' but there remains a distinction between courts. There is no need for listing to be managed in the same court system when it could be done electronically. He suggested circuit wide diaries and sitting days and made the point that suitable technology would need to be in place to support electronic working. Richard Posner finished by saying that remote participation can work if it is used for uncontested hearings, however, it is important to remember the needs of those served by the court. There is a risk that the public could become alienated by a remote system that relies completely on electronic communications.

James George suggested that the Working Group approach the Legal Aid Agency, Crown Prosecution Service and other services for input.

Alexandra Marks, in reply to the comments and suggestions made during the discussion, explained that the report will not be addressing overall oversight and strategy but she noted the need for more 'joined up thinking' about resources. She thanked those who had contributed to the discussion saying that the comments about Kent had been very valuable. Referring to the point made by Duncan McCombe on remote hearings, she explained that there are plans to 'front load' the process to encourage better engagement and participation at an earlier stage.

Alexandra Marks continued by saying that she accepted the point on ensuring that all staff share a common approach. She was keen to stress that 'court users', such as litigants and witnesses, rarely go to court and more evidence is required from them. With regards to court listings, the Working Group focus is on making sure support services are co-located. The Working Group are opposed to the idea of the 'back office' becoming a remote operation as some human interaction is essential.

It was agreed that members with further comments and suggestions for the JUSTICE Working Group should email Natalie Zara ([nzara@barcouncil.org.uk](mailto:nzara@barcouncil.org.uk)), who will send them to the Working Group.

## **7. International Committee**

This item was listed as item 6 on the agenda but taken as item 7.

Amanda Pinto QC introduced herself to the members as the Chair of the International Committee. Rather than reading through her report (annexes 5a & 5B), she provided an overview of the three main headlines:

- 1) Business development: the Committee have just concluded a very successful mission to South Korea that was well-attended and fantastically supported, indicating the level of respect with which the Bar Council is viewed internationally. This type of work exemplifies what the International Committee can do for practitioners at the Bar.
- 2) Rule of Law: John Black QC is responsible for setting up a mechanism to train barristers in Oman on the Rule of Law.
- 3) Liason work: the International Committee liaise with the other Bar Associations, the Inns of Court, the Specialist Bar Associations and the Circuits, as well as those overseas.

Amanda Pinto QC encouraged all members to sign up for the international barristers email. She reported that a seminar event supported by the Cyprus Supreme Court is due to take place in Nicosia on 3 June 2016. The topics include cross boarder issues and anti-money laundering issues that affect both jurisdictions. The event is an example of how international work can be developed and it demonstrates 'joined up' thinking between the legal professions in both countries.

The Vice Chairman noted that the International Report refers to the Edinburgh World Bar Conference. The Chairman of the Bar is attending and more attendees are required. Amanda Pinto QC said that traditionally there has been little take-up for cross boarder events and she advised the members that it is a worth attending, particularly for the kind of liaison work referred to in her third headline.

Shobana Iyer asked if there has been any development work in South Asia. Amanda Pinto QC replied that the strategy plan is available. There are ongoing talks about Singapore and consideration has been given to developing links with India. The International Committee have just been in South Korea and there are limited funds available to carry out missions. The International Committee have had to take decisions on where to build on emerging markets taking into account the budgetary constraints.

Gerard McDermott QC reported that he is finalising the programme for the Bar Conference and Young Bar Conference. He encouraged members to get involved as there are learning opportunities in every field of law.

Amanda Pinto QC said that the Bar Council provides grants for young practitioners to attend international events. For each grant, a third is funded by the Specialist Bar Associations, a third is funded by the Bar Council and the remaining third is self-funded. She noted that, due to the change in the definition of a 'young barrister' barristers will have longer to take advantage of these opportunities.

## **8. Introducing the Bar Representation Board**

This item was listed as item 7 on the agenda but discussed as item 8.

Richard Atkins QC introduced himself as Co-Chair of the Bar Representation Board and gave an animated overview of the new 'feel good' Bar Representation Board.

The aim of the Board, previously the Member Services Board, is to provide answers to barristers who ask 'what do those on the Bar Council do for me?' The terms of reference for the Board are:

- a. To develop and keep under review a strategy for the provision of services to the Bar;
- b. To provide strategic direction and support to the Director of Services in relation to the development and implementation of services to members;
- c. To ensure that services are fit for purpose, competitively priced (if commercial) and meet the needs of the members of the Bar;
- d. To ensure that the Services function provides a portfolio of commercial services which generate incremental revenue for the Bar Council;
- e. To make recommendations on new services and revenue opportunities to the Finance Committee, General Management Committee and Bar Council as appropriate;
- f. To consider whether any currently out-sourced services can be brought in-house for the benefit of the profession and the Bar council;
- g. To ensure that contractual arrangements with third party service providers offer appropriate protection for the Bar Council and safeguard its reputation and financial standing;
- h. To conduct research into members' needs to support proposals for new services as appropriate;

- i. To oversee the work of the Bar Conference Organising Board;
- j. To oversee the work of the Bar Nursery Committee;
- k. To support the strategic aims of the Bar Council, as published.

Richard Atkins QC talked about the tensions associated with generating revenue. The Bar Council need to find a way of making money on services but want to keep it as competitive as possible. Research is carried out into members' needs and the Board act as a consumer panel. Amongst other things, the Board runs the Bar Nursery, oversees the Bar Conference, and, looks at training programmes and products that are being developed.

The Board comprises two co-chairs: Richard Atkins QC and Fiona Jackson. Paul Mosson, Director of Services and Mark Hatcher, Special Advisor to the Chairman, attend meetings and there are at least five members of the self-employed Bar who are members. The Board is seeking additional members and Richard Atkins QC is intending to write to the Circuit Leaders to ask them to nominate individuals.

Richard Atkins QC encouraged members to join the Board: employed, self-employed and unregistered, asking them to talk to him at the end of the meeting. He thanked Alison Padfield who remains on the Board having been part of the Member Services Board. Meetings take place four times per year and members may attend remotely.

## **9. Any other business**

There was no other business reported.

## **10. Date of next meeting**

The next meeting of the Bar Council will be held on 21 May 2016 at 10.00 at the Bar Council offices.

*The meeting closed at 11.50am*