



**ANNUAL GENERAL MEETING OF THE BAR 2011**  
**HELD AT 1030 ON 18 JUNE 2011**  
**AT THE BAR COUNCIL OFFICES**

Present:            Rt Hon Dominic Grieve QC MP            Attorney General  
                         Peter Lodder QC                                    Chairman  
                         Andrew Mitchell QC                                Treasurer  
                         Oliver Delany    Acting Chief Executive

And more than 60 Subscribers.

Peter Lodder QC (PL) welcomed all to the AGM and thanked the Attorney General (AG) for attending and agreeing to chair the meeting. Unfortunately, the AG would be unable to stay for all of the AGM as he had another commitment to meet. When the AG had to leave, PL would chair the remainder of the meeting. PL said that the AG took his position as Leader of the Bar seriously. He was diligent in attending Bar Council meetings, where he often gave a valuable insight into the Government's position, and in turn took away a close understanding of the Bar's concerns. A man of great wisdom, he fulfilled this position without compromising his role as a Law Officer to the Crown.

**1. Opening Remarks by the Attorney General**

The AG thanked attendees for taking the time and trouble to come. He expressed gratitude to the Bar for all it had contributed in the last 12 months, providing input to Government in challenging areas, and assistance in finding the correct way forward for our justice system.

Some issues remained unresolved. Attendees would hear in the next few days more about the plans from Government for legal aid. Some of these plans would be difficult for both the Bar and the Law Society. However, the Bar's ideas had been considered and included where possible in the Lord Chancellor's proposals.

The AG thanked the Bar for helping the Director of Public Prosecutions and himself to get the CPS Advocate Panel scheme into operation. It had not been an easy task and there had been occasional breakdowns in communication. The Bar had shown energy and stamina in persevering, and the Bar's concerns that the panels should not be too restrictive had now been addressed, both to allow career development for the young Bar, and to keep the highest panel level open so that all those who were talented enough could be included. The decision was taken after the last Bar Council meeting not to move the AG's unified list into the new panel system. He did not think that those relying solely on work from the unified list would

be adequately provided for by a panel system. If this position changed in the future then they would consult the Bar.

The AG had recently met with the BSB to talk about development issues. It had been an opportunity for a wide-ranging discussion as to how certain aspects of the Legal Services Act 2007 were being and would be implemented. He found the meeting very useful and would feed the discussion back to his colleagues.

The AG noted that ten days ago his offices had received enquiries from a journalist working for *The Guardian* as to the legitimacy of the AG's role as Leader of the Bar. The journalist questioned whether it was proper for a Minister of the Crown to act as Leader of the profession, albeit in a nominal sense, as the Chairman of the Bar looked after the Bar's interests. This approach seemed to highlight an increasing problem, identified by the AG as the compartmentalisation of functions, encouraged by certain quarters. He thought that the only way to address the problem was to maintain his links with the Bar, to meet regularly, and to report to the Bar Council on the Government's work. He found it a hugely productive exchange.

As they looked forward to another year, undoubtedly a year of change, the AG expressed his absolute commitment to the principles of an independent Bar, and to maintaining the Bar's links with Government, as in the recent discussions with the Lord Chancellor. He hoped that they would look back at the 2012 AGM, having navigated this path successfully.

## **2. Chairman's Address**

The Chairman thanked the AG for his remarks, and for the commitment to the profession that he shared.

Over the course of the past 6 months the Chairman had learned how extraordinarily challenging his own role could be. He was very grateful to his colleagues on the GMC; in particular the Circuit Leaders. The Chairmen of the Specialist Bar Associations each had a part to play, and the Family Law Bar Association (FLBA) and Criminal Bar Association (CBA) had particularly heavy burdens. He also recognised the important contribution of the Young Barrister's Committee (YBC). These groups, and many other members of the Bar, worked tirelessly and voluntarily for the profession.

Sadly, there were those who would do the Bar down, and one only had to look at the press to see that on a regular basis. That morning, the *Daily Mail* had published a list of five hundred barristers earning more money than the Prime Minister. This was a sensationalised story focussing on the earnings of a senior few. It did not compare like with like: the Prime Minister did not pay for his travel, or rent on his office, nor, fortunately for him, did he have to wait for the Legal Services Commission (LSC) to pay his salary cheque. The story ignored the important caveat, included by the Ministry of Justice (MoJ) when publishing the figures, that such earnings could reflect years of work, and made no account for the costs of practice. The Bar maintained a united front, reinforcing the camaraderie for which they were renowned. The Bar would continue to thrive by working as a team.

Recent obituary notices had included a number of significant members of the profession in a short period of time. He could not account for all, but noted in particular the deaths of Barbara Mills QC, HHJ Ann Goddard QC and Ann Curnow QC. This seemed to mark the passing of a generation of female barristers who had altered perceptions by demonstrating excellence. They each rose to the top through their own highly professional standards, at a time of male dominance not only in the profession, but in the areas of practice they had chosen to work.

The level of diversity that the profession now enjoyed owed much to their achievements. Gilbert Gray QC could not be similarly remembered as a champion of diversity, but he would never be outshone, and would be delighted, the Chairman felt sure, to be mentioned alongside such distinguished female company. Gillie was a much loved giant of the North Eastern Circuit. The stories about him and the stories which he told - some of which were true - would be re-told for many years.

The passing of such great advocates was a loss to the Bar as a whole, and a reminder of how important it was that we valued our colleagues so highly.

### **Domestic matters**

The Chairman held regular meetings with Ministers and their advisers, and took each and every opportunity to fight the Bar's corner.

The Bar continued to await the MoJ's response to the green paper consultation on Legal Aid, and the Bill to introduce changes to the civil and family legal aid system. The Chairman had referred at the last BC meeting to the late Douglas Adams, author of *The Hitchhiker's Guide to the Galaxy*, who had said how much he loved deadlines, particularly the whooshing sound they made as they rushed by. However, the Government's response was expected the following week. If this expectation was correct then the Chairman's meeting with the Lord Chancellor on 22 June could not be better timed.

There had been significant fears about the application process and operation of the new CPS Advocate Panel scheme and there had been intense negotiations recently with the CPS. The Chairman and Vice-Chairman of the CBA, Chairman of the YBC, Circuit Leaders, and the Bar Council's Equality and Diversity Committee were all closely involved.

At the same time, the Bar Council had sought advice on the prospects of a successful legal challenge to the proposed system. The advice they received found no basis upon which to commence judicial review.

During the negotiations, the CPS agreed to make a number of important modifications to their scheme, the detail of which could be found on the Bar Council and CPS websites. In the efforts of so many, we had secured much of what the Bar had been calling for, and it was now widely felt that we had a scheme with which we could work. All those who had played a part were united in encouraging members of the Bar to engage in the scheme.

## **Relations with the LSC**

Since the LSC had taken over responsibility from the Crown Courts for the payment of fees under the Advocates' Graduated Fee Scheme (AGFS), there had been a growing number of complaints about delays and non-payment. Telephone enquiries were dealt with poorly. These issues had been raised in regular communication with the LSC, but the problems continued.

The Chairman had recently met the Chief Executive of the LSC, Carolyn Downs, and repeated the concerns. He had been told that payment procedures were complex and that many staff had been made redundant, so there were fewer to carry out this function. However, more staff were being allocated to the task. Hitherto there had been no direct point of contact between the LSC and individual sets of Chambers, but this too would be remedied. The LSC intended to nominate an experienced individual to that post by the end of June.

Otherwise, we enjoyed greatly improved relations with the LSC. As a consequence of previous bad management, and an adverse report from the National Audit Office (NAO), the LSC was now heavily regulated. There was a new leadership, and a growing appreciation at senior levels of the value of the Bar, and how the Bar operated. There was now an awareness that open, raw competition was not a suitable mechanism for the provision of legal services.

## **Prepare for Change**

The Bar Council continued to engage with the Bar via its Prepare for Change programme, to assist barristers with the forthcoming changes to contracting arrangements for criminal legal aid work. The Vice-Chairman headed up a trouble-shooting team. Discussions had taken place with National Association of Licensed Paralegals and ILEX. The Bar had organised Direct Access training through its Member Services team, and a significant number of barristers were now qualified for this purpose. A difficulty had been identified in undertaking Direct Access work for a client who could be eligible for legal aid. However, the issue was being addressed with the BSB, and the Bar Council's enthusiasm for Direct Access remained undiminished.

## **Advocacy Training Council**

The Bar continued to value the Advocacy Training Council (ATC) and its important role in marketing the Bar both here and abroad. The Chairman welcomed the announcement of Nick Green QC as the new Chairman, and Peter Hilling, former Under Treasurer of Middle Temple, as the Interim Chief Executive.

## **Contingent Legal Aid Fund (CLAF)**

Guy Mansfield QC's Working Group on CLAF continued its work on initiatives to provide access to justice in areas where legal aid no longer existed. There would be a seminar on 21 June at University College London, with Sir Andrew Morritt, Sir Rupert Jackson and Professor Dame Hazel Genn attending for a presentation of Europe Economics' Interim

Report. A wide-ranging audience (including representatives of the MoJ) would be invited to participate in finding a way forward.

### **Referral Fees**

The Chairman had been surprised and disappointed that the Legal Services Board (LSB) had decided not to ban referral fees. Referral fees were not in the public interest, nor in the interest of the consumer. The choice of lawyer should be made according to quality, not according to payments made to the referrer. This practice was now taking place not just in the private sector but the public sector too. The Bar Council continued to campaign for their abolition.

### **Public Affairs**

The Chairman reported that he had made important changes to the structure and operation of the Public Affairs Committee (PAC), to give it a more strategic focus. The Chairman of the Bar would now chair the PAC. He had also improved Circuit representation, and half of PAC meetings would now take place outside of London.

The first of these PAC meetings was held in June at St Phillips Chambers in Birmingham. Afterwards, alongside the Midland Circuit Leader, Gareth Evans QC, the Chairman hosted a reception for journalists from a variety of Midlands newspapers, television and radio stations. This provided an excellent opportunity to develop existing relationships and make new contacts between the media and the local Bar. These regional connections would make it easier for the press to gain an understanding of the Bar, and barristers as ordinary folk, and combat the residues of the myth that the Bar was remote. The Chairman planned to hold the next event in Manchester, to be run on similar lines.

Two days after the Birmingham event, the Chairman hosted the Bar Council's Annual Media Reception in London. This brought the Bar Council together with the national print and broadcast media, and was attended by twenty-two journalists covering a wide range of publications and interests. They met members of the Bar from differing Call bands, disciplines and geographical areas. Whilst it was difficult to assess the success of these initiatives, in recent days the media had sought contributions from the Bar on a range of issues: referral fees, legal aid cuts and sentencing discounts, CPS Panels, Facebook-use by jurors, and lobbying parliament.

The Chairman invited attendees to contact their Circuit office, or the Bar Council Communications team, to discover who their area representatives were on the PAC, and ask how they could become involved in this new initiative.

### **The Bar and the City Group**

The Bar and the City Group had been a strong and successful initiative, led by the Vice-Chairman, to enhance the Bar's profile and to expand work opportunities. The Bar was a highly valued profession and regarded as providing good quality, cost-effective, advice. They would continue to develop this profitable connection.

Some reflection of their success could be found in the *Action Plan for Legal Services* issued jointly by the Department for Business, Innovation and Skills and the MoJ.

The Action Plan was a key part of the Government's *Plan for Growth* and aimed to encourage overseas clients to use UK legal services. It included commitments to create an online promotional toolkit for trade and investment advisers and to ensure that, wherever possible, professional representatives would attend official visits. This initiative was testament to our efforts.

In speaking of the Action Plan, the Lord Chancellor had reinforced the view firmly held in many countries around the world that, "Whether it's in the provision of legal services, the use of our courts for the resolution of disputes, or the application of English law for contracting, the UK is truly a global centre of excellence."

### **International activity**

The Chairman continued to witness first-hand the international respect held for the Bar of England and Wales. In May, the Chairman had attended the first International Legal Forum in St Petersburg, as a guest speaker at the Plenary Session. He had shared a platform with the Russian President, the Russian Minister of Justice, the Secretary General of the Council of Europe, the Chairman of the Constitutional Court of the Russian Federation, the European Commissioner for Home Affairs, the Secretary General of the Hague Conference on Private International Law, the President of the International Bar Association, and the former Chancellor of Germany. It was an indicator of the importance of the Bar Council of England and Wales that he was the only Bar leader. This was influenced by meeting the Russian Minister of Justice on his visit to London in December 2010, and by the significant contact of the British consulate in St Petersburg.

The following week, the Chairman had attended the International Bar Association's (IBA) Bar Leaders' Conference in Warsaw.

On 20 June, the Bar Council had co-hosted with the CBA, FLBA, and European Circuit of the Bar, a seminar entitled "Justice in Times of Austerity". The keynote address was delivered by the Vice-President of the European Commission, Viviane Reding, with a distinguished line-up of speakers including Shami Chakrabarti, Lord Justice Goldring, Sir Nicholas Wall, Stephen Cobb QC, Fergus Randolph QC, and senior members of the MoJ. It was an impressive and interesting seminar, and investigated how we could move forward beyond the domestic area.

At the end of June, with the Lord Mayor of London, the Chairman would lead a delegation to take part in English Law Week in Moscow, where we would hold seminars on a wide range of topics.

Looking ahead, the Chairman would attend the American Bar Association and Canadian Bar Association conferences in August.

In order to increase our knowledge and extend our contacts, the Chairman had recently met with FCO Middle East officials. There would be a trip to the Ministry of Justice in Abu Dhabi later in the year.

In November the Bar would host receptions and press the Bar's case at the IBA's annual conference in Dubai.

### **Other matters**

The Bar Council continued to seek to better understand the profession and its needs and had launched a biennial Survey of the Bar. It was the first survey to be commissioned on the working lives of barristers. Members of the Bar would be contacted via random selection and invited to take part by providing comments about their lifestyle in the context of their practice. He encouraged attendees to respond.

Following the departure of David Hobart as Chief Executive, Nicholas Green QC's working group on how the Bar Council structures itself would shortly be circulating a preliminary account of their findings. In the meantime, the BC and BSB Officers and Directors continued to meet regularly. Oliver Delany, Director of Central Services and Mark Hatcher, Director of Representation and Policy, continued to work in a triumvirate arrangement with the BSB Director, Vanessa Davies. The Chairman was extremely grateful for the enormous amount of work that they had undertaken in order to continue the agenda as if David Hobart had not left.

The Bar Council was installing a new Core Database. This was a major initiative in modernisation to help the Bar Council and BSB Secretariat better carry out its day-to-day functions.

The Chairman wished to thank the Bar Council Secretariat for their continued hard work on behalf of the profession, routinely going way beyond normal working hours. To name just a selection: Simon Garrod and Adrian Vincent, stalwarts in Remuneration and Policy; Christian Wisskirchen and his International team; Sandra Sidey and Ariel Ricci in his own office; Smita Shah in the Records Department; Janice Marshall in Fees Collection; Aaron Dolan in Member Services; and Sam Forman the Office Manager. Thanks were also due to Michael O'Regan, the building's security officer.

The fact that the staff felt so committed to their duties was a testament to the profession. They believed in the service provided by barristers, and they believed in the value of the Bar. We, in turn, were grateful to them.

The Chairman had always been proud to be a member of the Bar. Six months into his chairmanship, however challenging the role could be, he felt that pride even more. The Bar had vitality, skill and commitment. The Bar worked well together, and would continue to do so to maintain the profession. He remained truly grateful to his fellow Bar Council Officers and members. He thanked all present for attending the AGM and supporting the profession.

### 3. Treasurer's Report

Andrew Mitchell QC (ARM) directed attendees to the Annual Report and Accounts (ARA) 2010, tabled for the meeting, and to his report at page 12, where a summary could be found on the substantive policy issues since the beginning of the year.

The BSB continued to develop in sophistication. The Representation and Policy Department was also growing, and boasted increasing investment from its Member Services Board.

Steps had been taken to ensure that the Bar Council carried out its Approved Regulator duties. The Finance Committee had served the Bar Council very well for many years, but could not continue to sit on the Representative side of the organisation. In the interests of transparency, healthy debate, and proper distribution of resources, the Finance and Audit Committee (FAC) was formed last year. It included representation from both sides of the Bar Council, and two lay members. Decision-making at FAC was made in the interests of the profession, the public, and sound regulation.

The Practising Certificate Fee (PCF) had been kept in line with levels of inflation. During the course of the year, the Bar Council had changed the accounting date for the collection of the PCF for self-employed practitioners. This would ease the burden falling on the practitioner at the end of the calendar year, at a time when tax bills and other financial commitments were often due. The collection of the PCF for both self-employed and employed barristers would now take place at the end of March.

A consultation with the Bar on the PCF would be undertaken with the assistance of outside advisers. The results would decide how the PCF would be collected from March 2012.

As an organisation turning over in excess of £12 million, the new *Bar Council Finance Manual* ensured that the organisation's funds were properly accounted for.

The Bar Council continued to engage with the LSB. Importantly, the LSB would have the final say not only in the level of the PCF but also on those aspects of Bar Council activity that could be so attributed. Much of the work of the Bar Council was attributable to the PCF.

Annual discussions took place with the Inns regarding the subvention. There was an important link between the Inns and the Bar Council, and their support behind the scenes remained. However, it was to be debated whether the Inns should be subsidising the profession. There was an argument that the profession should be self-funding.

With the support and help of the profession, the Bar Council had raised £5 million to defray the staff Defined Benefit (DB) pension scheme deficit. The pension issue remained the most important financial concern for the Bar Council. The profession had an obligation to continue to ensure that the past service deficit was properly funded.

The pension review had precipitated a long debate. The Treasurer was grateful for the work of Richard Salter QC's group, in contributing to the review. The Bar Council had at length



reached the conclusion that the staff DB pension scheme should continue in an amended form (the 'Mark II' pension scheme). Under the revised scheme, the Bar was expected to be minimally, if at all, at risk for liability for past service. There would be a continuing need to fund the pension deficit, but this would be spread over a number of years and absorbed within the PCF. The Bar Council had voted, by a 4 to 1 majority, in favour of continuing with the Mark II pension scheme.

As some employees in the pension scheme worked for the BSB, the Bar Council should not make a decision about their employment terms without consulting the Board. The BSB and the Performance and Best Value Committee both endorsed Bar Council's view that we should consult with staff on a revamped "Mark II" pension scheme.

However, for reasons of transparency, balance, and fairness, the formal decision regarding the future of the staff DB pension scheme would be taken by the FAC on 29 June. The Committee was composed of representatives from each part of the organisation, and was best placed to make the final decision on what was reasonable and what was practicable.

However, the work would not stop there. A staff consultation document would then need to be agreed. If the staff did not agree to the terms of the consultation the staff DB pension scheme would be closed to future accrual.

The Treasurer wished to mention a few names worthy of thanks. Ken Craig had served the Finance Committee for 16 years, and now left the FAC to take up another appointment. Vicki Harris had been the first BSB representative on the FAC. She had opened the Treasurer's eyes to the advantages of lay members, and the immense experience they brought with them. David Hobart had now departed after years of fun. Oliver Delany and Brian Buck continued to provide thorough advice and support to FAC. The Treasurer also applauded the efforts of the Records Manager, Smita Shah. She and her staff provided a fantastic service despite the astonishing rudeness they continued to have to put up with from barristers telephoning in.

Turning to the numbers, ARM noted that with an income of £12,653,000 and an expenditure of £11,685,000, the organisation was operating with a surplus. However, the Bar Council was low on reserves. The Treasurer wished to build three to six months' of reserves to protect against unforeseen expenditure. In the 2010/11 cycle, entity regulation and ATC costs would be funded from reserves.

Some entity regulation set-up costs would be recouped from the 2011/12 PCF. However, at only £12 per head, these costs were very low given the huge amount of work involved.

The Treasurer commended the Annual Report and Accounts 2010 to the AGM.

#### **4. Acting Chief Executive's Report**

Oliver Delany (OD) prefaced his report by saying that, whilst he had the privilege of reporting to the AGM bearing the title of Acting Chief Executive, as the Chairman had explained, the responsibilities of Chief Executive were being shared between the three Directors, excellently supported by Lana Locke (LL), Assistant to the Chief Executive. He

therefore addressed the meeting also on behalf of his colleagues Dr Vanessa Davies and Mark Hatcher.

OD took the opportunity to record the staff of the Bar Council's appreciation for the former Chief Executive, David Hobart. He was an exceptionally able and industrious colleague and we would much miss his support, wise counsel and good humour. In reporting to the AGM in 2006, David Hobart observed – following a statement made by the then Treasurer about the DB staff pension review – that it was “frightening a lot of people”. He added “A pension review is as unsettling to the staff as the Carter Review is to publicly funded practitioners”. It was unfortunate that, 5 years on, the issues raised by both reviews remained unresolved.

Whilst the overall percentage of staff now part of the DB pension scheme had dwindled to about 50%, the issue remained live, and was undoubtedly an influencing factor in what could only be described as a disappointing outcome to a recent staff survey. Last December some 70% of staff, from the then Chief Executive downwards, took the opportunity to participate in *The Sunday Times* 'Best Companies Survey'. Our results, as compared to other small, not for profit employers, for all of the eight factors used to measure what is termed 'workplace engagement', left considerable scope for improvement.

It was gratifying and appropriate to record, and echoing the Chairman's and Treasurer's kind and thoughtful words, that notwithstanding the discontent captured in the staff survey, the profession continued to benefit from a high level of dedication and performance from so many of the staff. We were trading on their goodwill.

It was important, therefore that the Bar Council had agreed to recommend to the FAC that the staff DB pension scheme stayed open albeit in amended form. Remedial measures, however, did not stop there. While the senior management of BC and the three Directors in particular may be the catalyst for action, moving the Secretariat out of the doldrums was very much a collective responsibility. To that particular end, all staff had been working hard to put together an action plan and a series of positive steps had already been taken.

The Directors were consequently optimistic that whoever had the privilege of reporting to the AGM next year they would be able to paint a more positive picture. In the interim, the Directors would be grateful if the Bar could take any opportunity available to encourage the staff. A simple word of thanks went a long way. OD would take particular pleasure in relaying the remarks of the Treasurer and Chairman made that day.

OD's further responsibility was briefly to report, for the benefit of non-BC members attending the AGM, on the changes made to the Bar Council's Constitution over the past 12 months. Tracked change copies of the relevant parts of the Constitution had been tabled. The latest complete version of the Constitution was placed on the Bar Council website on 10 June 2011, and hard copies were available on request from LL.

The key changes in the last year related to the election of Officers and members of the Bar Council:

First, to recognise the posts of Vice-Chairman Elect and Treasurer Elect as Bar Council members;

Second, to bring forward to May each year the date of the election of the Chairman, Vice-Chairman and Treasurer. The purpose of this amendment was to give the incoming post holders a greater locus and continuity in developing Bar Council policy; and

Third, to bring forward to October each year the date of the Subscriber elections for Bar Council membership. Formerly, Subscriber nominations and elections had been completed in November, giving little opportunity in-year to match successful candidates with the likely vacancies on the several Representative committees, which refreshed their membership with each calendar year. We had brought forward this process by one month, to ease the appointment of new committee members.

Finally, OD had been asked to state, with specific regard to the Resolution that was to follow, that on 6 June the Head of Remuneration and Policy had published on the Bar Council website "Guidance to Barristers undertaking Civil Legal Aid Work". The guidance was approved by the General Management Committee, and reflected the deliberations of the Remuneration Committee and the Legal Services Committee.

### **Questions**

Ahead of the AG's departure from the meeting, Nigel Ley (NL) asked the AG whether there was a conflict of interest between his duty to the Crown and his Bar responsibilities. For example, when a High Court judge attempted to reclaim money. As Leader of the Bar, his legal position should be accurately stated.

The AG said that, notwithstanding the fact that his work represented a series of conflicts of interests, his role as Leader of the Bar was foremost to take part in such activities as the Bar wished him to. He was very happy to discuss the issue raised by NL with colleagues, if the Bar Council wished him to do so. He was not directly responsible for this issue, but recognised that if he were, his position might be slightly different.

The AG then left the meeting and PL assumed the Chair.

PL advised that further questions for the speakers would be dealt with under Any Other Business.

## **5. Resolutions**

### ***First Resolution***

Proposer: Nigel J Ley

Seconder: Renee J Calder

*This meeting notes that at the AGM of 2010 the Bar Council undertook to look into the present position, and to report back within 6 months, whereby the solicitors of a successful publicly funded claimant can, with the approval of the Legal Services Commission, keep all counsel's fees.*

*This AGM registers its strong disapproval of the Bar Council's failure to report back.*

Ahead of proposing his resolution, NL asked, out of interest, how many people present were not members of the Bar Council? Four people showed their hands.

NL thanked the Bar Council for reporting to him at this meeting the action it had taken, in regard to his 2010 resolution. However, he asked why they had not at least telephoned him earlier to say that they had published further guidance to their website. Expecting him to see all of the output of the Bar Council website was akin to asking him to read all of the Sunday papers. NL asked for an adjournment so that he might read what had been published.

The Acting Chief Executive read the following website entry to the meeting:

***Guidance to barristers undertaking civil legal aid work***

*6 June 2011*

*When an assisted (legally aided) person succeeds in a civil case and recovers a costs order against the unassisted (privately funded) party, the assisted person's solicitor will then submit a bill to the paying party which will include fees for solicitors and counsel at full inter-partes rates (not at restricted legal aid rates). That bill will then be agreed or assessed. The sum due will be paid to the assisted person's solicitor and the solicitor should pay counsel.*

*Under paragraph 19(3)(a) of the Unified Standard Contract between solicitors and the Legal Services Commission, solicitors have a contractual obligation to pay counsel as a third party. However, under paragraph 2.9 third parties do not have enforceable rights under that contract.*

*This lack of enforceability by counsel of payment by solicitors for work done means that the barrister is in the same position as any other barrister who does not undertake work on contractual terms and there are few options other than to make a complaint to the Bar Council against the solicitor under the Withdrawal of Credit Scheme.*

*To guard against the remote risk that the solicitor for the successful party will not pay over to counsel any monies received from the losing party, barristers may wish to take instructions on contractual terms agreed with the instructing solicitor. The current contractual terms in the Bar Code of Conduct could be used with the amendment that, where those terms are inconsistent with the LSC regulations, the latter shall prevail.*

NL concluded that the position remained the same and that nothing had been done by the Bar Council to alter it since the last meeting. The LSC reportedly received complaints every week from barristers. When funds were recovered, the LSC should deduct the amount owed to the barrister from the solicitors' account. NL highlighted the irony that if we lost a case, we got paid, but if we won, who knew when we would get paid.

NL sought the AGM's support for his resolution, whilst making the observation that as only five people, himself included, were non-BC members, he could predict what the result would be. He felt that this showed the extent of the Bar's interest in the AGM.

The Seconder of the resolution, Renee Calder, said she had nothing to add.

The Chairman invited contributions from the floor.

Non-BC member, Bill Gardiner, of 6 Gate Street, had last attended the AGM in 1994. As to today's resolution, he remarked that the Bar Council had been asked to do something, and rather than conspicuously saying what it had done, had posted an entry on its website. He agreed with the Proposer that there should not be a requirement to read the contents of the Bar Council website. He thought that the Proposer and Seconder made a good point in their resolution, and a good criticism of the Bar Council.

PL explained that the Bar Council was asked to take action on many hundreds of issues on a regular basis. He appreciated that this issue had arisen from the AGM, but pointed out that matters were often addressed through the website. He said that we sometimes tried to communicate with the Bar through direct messages, but that barristers often deleted the emails before reading them. It was an impossible task to ensure that the Bar were informed on what the Bar Council was doing in all areas.

PL acknowledged that there were occasional glitches in the system, and that the Bar Council was remiss in only publishing guidance on the issue comparatively recently. There were so many issues of concern to fight for on behalf of the Bar. He asked for forgiveness that on this occasion NL's resolution had slipped through the net. He was happy to take culpability, but not necessarily through the resolution.

NL reiterated that the Bar Council should have told him what they had published on the website. As things stood, they had waited a week before today's meeting to tell him what the present position was. NL said that he had been on the Committee that had decided on the withdrawal of credit scheme. He complained that the Bar Council did not know anything about it, and had done nothing at all to alter the position. If the solicitor did not pay up, they should ask the LSC to make the solicitor pay up. He wondered what the Bar paid their subscription for.

PL reminded NL of the contents of the resolution, and to remain within the remit of the resolution.

NL said that placing an entry on the Bar Council website was not adequately reporting back, as required by his 2010 resolution. He therefore invited the meeting to support his motion to register strong disapproval of the Bar Council.

The resolution was defeated on a show of hands.

## **6. Any other business**

## **Pension Fund**

Tricia Howse (TH) reverted to the issue of the pension fund. She reminded the meeting that BACFI had raised the debate and put forward a resolution at last year's meeting. As to the statements made by the Treasurer and the Acting Chief Executive at today's meeting, they were not entirely satisfactory. Whilst she was glad that the issue was facing the Bar Council and not just FAC, BACFI were concerned that there was a conflict of interest in FAC having members of staff on its committee.

ARM recorded his grateful thanks to BACFI for the paper they had contributed to the pension review. He stated that Brian Buck was not an FAC member and neither were the Directors. The pension debates had been full and frank, without regard to the presence or absence of staff. The staff were not part of the decision-making process.

TH thanked ARM and asked for his assurance that the Bar Council would revisit closure of the scheme if the staff did not agree to their terms. ARM reiterated that if the consultation was rejected by staff, he would not be reporting back for further debate, but to say that the scheme had closed.

## **Payment of Fees**

Non-Bar Council member, Anne Crossfield, said that she had voted in favour of today's resolution. She said she was only present at the meeting through the support of her family. She remarked on the huge problems in barristers getting paid. She came to the Bar from the City and could not understand why 'x' case with 'y' fee could not be paid. Could a working party be set up to address the issue, with clear parameters and representation from the senior and junior Bar? People should be paid without it taking years to accomplish.

PL explained that the Bar Council had looked at countless ways to address the issue, which he assured her we objected to vociferously. The process used to be run by court clerks. Government had completely changed the system, and the fees now went directly to the LSC. The Chairman had impressed upon the LSC Chief Executive the need for speedy payment, and presented her with a sheaf of complaints. However, working party or otherwise, we could not force the LSC to pay more quickly than they already were. He also feared that if efforts were made for criminal fee payments to be speeded up with more LSC personnel, then family fee payments would suffer as a consequence. The NAO had been all over the LSC like a rash after the Bar's last attacks on them, and as a result had imposed a hugely complex payment system to ensure that the defendant was linked to both the solicitor and the barrister in the case. As many defendants had similar names, the fee process now incorporated dates of birth. There were big problems with the system, but they could not in this instance be resolved by working party. The working party on contractual terms in the privately funded sphere would report shortly.

Tamsin Cox of the Remuneration Committee (RemCom) explained that RemCom looked at both what needed to be paid, and the Government's position. A lot of work was going on to iron out problems on how the Bar were being paid, whether criminal, family or civil. RemCom could also be asked to look into requests from individual barristers.

Nigel Lickley QC had grave concerns about the personal consequences of the non-payment of fees. He knew of one barrister left unable to pay their tax bill. Outside of the Barristers' Benevolent Association (BBA), as many looked to the Bar Council as a trade union, could we not offer emergency provision for those in hardship? And if we were restricted by the Constitution, why not change it?

PL confirmed that we did not have constitutional authority to provide such assistance. PL was sad to say that he knew of two barristers on circuit who had committed suicide, and that money was thought to be a contributing factor for both. However, with so many different problems, the Bar Council could not favour any single group. Council was alive to the issues that most worried members. He could not and would not comment regarding any constitutional amendment. He endorsed the work of the BBA.

### **Comments on AGM format and procedure**

Stuart Brown QC (SB) agreed with Nigel Ley's earlier point that it was wrong for BC members to constitute 95% of the AGM. A larger and more disparate audience ought to be encouraged.

PL agreed, but pointed out that this could also be an indication of how interested the Bar were in today's resolution. A larger attendance had been attracted in the past. He suggested that if interest could be stimulated on circuit, SB was welcome to bring a coach-load of non-BC members.

Renee Calder (RC) complained that in the past barristers had been notified of resolutions for the AGM, but that this had not happened for today's meeting. Also, not all barristers had received copies of the Treasurer's report.

The Acting Chief Executive confirmed that the resolution had been included on the Agenda, which had been circulated widely, and published on the Bar Council website. The Bar Council did not send the Agenda to all 15,000 individual current practitioners.

RC said that many barristers were too discouraged to look at the Bar Council website. Barristers did the best they could to keep their practices going. Why would they bother to look at the website? She argued that BC could still have sent everyone notice of the resolution.

PL explained that the website was the most effective way of providing information to practitioners. The vast majority of barristers had internet access. Communicating through the website also represented a significant saving for BC's limited funds. It cost £20,000 to send a notice to all practitioners in hard copy.

### ***Daily Mail Story***

John Cooper QC asked for a press release to be issued to counteract the 'fat cat' stories such as that in the *Daily Mail* that morning.

PL confirmed that they had, and would continue to, fight against this false image. However, the real story of barristers struggling was not very sexy as far as the press were concerned. They were more interested in the single practitioner who had just earned £800,000. We all knew how difficult the situation was.

Ruth Cabeza said that she had not read the *Daily Mail* article, but that it sounded highly misleading. If manifestly so, could we not bring it to the Press Complaints Commission and ask for a retraction? PL said that it was not sufficiently misleading to lodge a complaint. The article used information from the MoJ, but excluded the caveats regarding the figures. Whilst we had pushed for the MoJ to include those caveats, we could not require the newspapers to publish the same. Ruth Cabeza said she recalled the AG having promised not to release the figures. PL understood that it was Number 10 rather than the AG who had initiated the publication of the figures, having recently taken a closer interest in legal aid.

Renee Calder complained that the MoJ figures did not take account of VAT.

Nigel Ley made the point that no one knew what the Bar earned except the Inland Revenue. The only way to change public perception would be to publish band earnings.

PL agreed that we all knew about the distortions, such as being paid for a significant amount of work in a short amount of time. PL declared that the topic had been exhausted for the day, and called the 2011 AGM to a close.

**Lana Locke**  
**Assistant to Chief Executive**

27 June 2011