



Minutes of the Bar Council meeting held on Monday 24 January 2015 at the Bar Council offices

Present:	Alistair MacDonald QC	Chairman
	Chantal-Aimée Doerries QC	Vice-Chairman
	Lorinda Long	Treasurer
	Rt Hon Jeremy Wright QC MP	Attorney General
	Mr Robert Buckland QC MP	Solicitor General
	Alison Saunders CB	Director of Public Prosecutions

1. Apologies for absence

Apologies for absence were received from David Anderson, Rachel Ansell QC, Celina Colquhoun, Elisabeth Cooper, Tony Cross QC, Gemma de Cordova, Tim Devlin, Michael Duggan QC, Guy Fetherstonhaugh QC, Amanda-Jane Field, James George, Manjit Gill QC, Susan Grocott QC, Max Hardy, Michael Jennings, Gregory Jones QC, Rupert Jones, Jennifer Josephs, James K Juggapah, Christopher Kennedy QC, Taryn Lee QC, Naomi Madderson, Gerard McDermott QC, Paul Mendelle QC, Christina Michalos, Peter Petts (Stephen Murch attended as alternate), Dawn Pritchard, Robert Rhodes QC, Joe Smouha QC, Andrew Granville Stafford, Geoffrey Tattersall QC, Helen Tung, Andrew Walker QC and Nicholas Worsley.

The following did not attend and did not send apologies: Safira Afzal, William Boyce QC, Simon Clements, Mark Engelman, Alexandra Healy QC, Hannah Kinch, Anna Macey, Gregory Mitchell QC, Rebecca Murray, David Nicholls, Zoe Saunders, and Sundeep Singh Virk.

The following attended as guests: Vanessa Davies (until item 6) and Sir Andrew Burns (until item 6).

64 further members attended.

2. Minutes of the last meeting and matters arising

The Chairman welcomed everybody to the meeting, the second of his year as Chairman, the first having taken place in December. The Chairman asked if there were any apologies which had not already been notified. There were none.

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

3. Statement by the Chairman

The Chairman had provided his statement in writing ahead of the meeting and said that he did not intend to repeat anything therein, but he wished to also deliver a short oral update.

The Chairman gave a warm welcome to Sir Andrew Burns KCMG, the new Chair of the Bar Standards Board, to his first Bar Council meeting. Sir Andrew was the Ambassador to Israel between 1992 and 1995, the Deputy to the Secretary of the State responsible for UK bilateral trade relations outside of Europe from 1995 to 1997, Consul General to Hong Kong between 1997 and 2000 and High Commissioner to Canada from 2000 to 2003. Since June 2010, Sir Andrew has been the UK's first envoy for post-holocaust issues.

The Chairman also welcomed the Attorney General, Solicitor General and Director of Public Prosecutions.

The Chairman congratulated Peter Lodder QC, Chairman of the Bar in 2011, on his appointment as resident Judge of Kingston Crown Court.

The Chairman welcomed newly-elected members of the Bar Council, as well as newly appointed representatives of the Inns, Circuits and SBAs, and those who have been co-opted, namely Alexandra Healy QC, Ian Bugg, Gordon Nardell QC and Derek Sweeting QC.

The Chairman also offered special thanks to all other Committee Chairs, some of whom are newly-appointed and others who are continuing their chairmanship, for their commitment to the Bar as well as the organisation. They are:

- Training for the Bar Committee: Guy Fetherstonhaugh QC
- Ethics Committee: Andrew Walker QC
- International Committee: Amanda Pinto QC
- Employed Barristers' Committee: Peter Grieves Smith
- E&D and Social Mobility Committees: Robin Allen QC
- Law Reform Committee: Fergus Randolph QC
- Member Services Board: Richard Atkins QC
- Young Barristers' Committee: Daniel Sternberg
- Remuneration Committee : Alexandra Healy QC and Ian Bugg
- EU Law Committee: Gordon Nardell QC
- Legal Services Committee: Derek Sweeting QC

The Chairman congratulated those current members of Bar Council who were announced in the recent QC list, namely Gary Blaker and James Hines, and former members Andrew Bagchi and Jolyon Maugham. He also congratulated Chris Henley and Mark Trafford, who are not members of Bar Council but have contributed much on behalf of the CBA.

The Chairman offered his condolences on behalf of the Council to His Hon Mr Justice Nugee and his family on the passing of his father, Edward Nugee QC (known as Ted), who died on 30 December. Called in 1955, he was still in practice at the age of 86 and was thought to be the most senior Chancery silk still in practice. He was also a member of the Bar Council (1962-66) and a member of what was then called the External Relations Committee (1966 to 1971), where he was

responsible for the suggestion that a selection of foreign judges should be invited to the Lord Chancellor's Breakfast. He was thought to have been instrumental in establishing the biennial Anglo-Dutch Young Lawyers Exchange, a programme which is still running. He was also heavily involved with the Council of Legal Education.

The Chairman brought the Council's attention to a number of very important Equality and Diversity publications which are due imminently. These include the Public Sector Equality reports on the make-up of the profession and Bar Council staff (31 January); parental leave policy guidance for chambers (February); change of status survey results (February); snapshot of women's experience at the Bar (March) and the Wellbeing at the Bar report (March). The E&D team has been working with Professor Martin Chalkley on identifying 'momentum measures' i.e. extrapolating data to forecast when, in the future, the profession will be fully representative. This is due for publication at the end of February.

The Chairman had referred to advocacy training for those in cases with vulnerable victims and witnesses and offered to take any questions. There were none.

The Chairman has had a number of encouraging meetings in the last week with subject experts on the rollout of IT improvements across the criminal justice system. He is very encouraged that the funding to support those improvements has been ring-fenced and does not come from the Ministry of Justice. They are therefore not subject to cuts. The Chairman met Leveson LJ during the week, who concedes that many of the improvements that he recommended in his report rely heavily on these improvements being made.

There has been quite a lot of coverage in the press and on Twitter in the past week about the Global Law Summit (GLS). There are accusations of hypocrisy by the Government of holding an event under the banner of Magna Carta, when it has been responsible for the decimation of legal aid. The Chairman used this opportunity to clarify the Bar Council's position. The Bar Council is supporting the GLS (albeit with no financial contribution) for two reasons in particular. The first is that it is a showcase of this jurisdiction to international litigants; by promoting the quality legal services available, it may encourage more use of the Bar. The Bar Council wishes – and has a responsibility - to support commercial and chancery practitioners; given the incredible support the privately-funded Bar has given the publicly-funded Bar over the last few years, this is particularly important. The second reason is that it provides a platform to demonstrate the impact, and warn of the further erosion of, access to justice.

The Chairman expressed concern about the Ministry of Justice's plans to impose a blanket 5% court fee of the value of the claim for all claims over £10,000. There is a fear that people will be priced out of the courts and small businesses will be saddled with debts that they are unable to recover. This increases the risk of damaging the UK's reputation as a global leader in commercial dispute resolution. The Bar Council has issued a press release to that effect and the Chairman encouraged members to raise awareness of these proposed reforms.

The Bar Council is co-sponsoring a cross-party debate on "UK laws and English votes: the aftermath of the Scottish vow" on 9 March at Middle Temple Hall and practitioners are free to attend. Speakers include the Rt Hon Lord Falconer QC, The Rt Hon Dominic Grieve QC MP,

Professor Robert Hazell CBE, Stephen Hockman QC, Lord Marks QC, Dinah Rose QC, Roger Smith OBE, Anthony Speaight QC and Lord Wallace of Tankerness QC.

The Chairman emphasised his wish to promote more engagement at Bar Council meetings. Whilst of course there are things that he must raise and tell members about, if there is something that anyone wants on the agenda for discussion, then they are encouraged to put it forward. It would be marvellous to have more debate this year. People come a long way to attend the meetings; the Chairman is committed to making attendance worthwhile.

The Chairman invited questions and comments.

Nigel Lithman QC (NLQC) and Andrew Langdon QC (ALQC) both offered their support to the stance on the Global Law Summit, as set out by the Chairman. NLQC said that it would be wholly wrong not to engage with it; ALQC said that it is a means to express anxieties and to put the case for access to justice. The Attorney General added that this is an important opportunity to market British lawyers.

Duncan McCombe (DM) raised the cost of attending the GLS, which is prohibitive to most practitioners. AMQC explained that a special delegate fee for members of the Bar (available until 22 February 2015) of £999 (plus VAT at 20%) had been secured. There is also a special rate of £599 (plus VAT at 20%) for one-day delegate participation. Tickets are also transferrable.

Paul Stafford (PS) referred to the imposition of increased court fees and the impact on property disputes. The Access to Justice Act 1999 abolished legal aid in the Chancery Division and as a result all actions are funded by the parties. In many cases, it may be an individual, already deprived of assets, in dispute with a large organisation with funding behind it. The introduction of increased fees shows the unfairness of this situation. Has this topic received as much attention as it deserves? The Chairman agreed that this is a very important issue and that the Bar Council will continue to apply pressure in the appropriate areas.

3. Chief Executive's report

Stephen Crowne (SCr) welcomed the new members of the Bar Council and Committee Chairs; he echoed the Chairman's wish for proactive engagement across the Council.

SCr also welcomed Phil Robertson, the newly-appointed Director of Policy. His appointment completes the line-up of senior managers at the Bar Council. The Bar Council induction pack will be updated in due course to include a 'who's who' of senior managers for members' information.

SCr reported that the Authorisation to Practise process will open shortly for practitioners to renew their practising certificates for 2015-16. The practising certificate fee (PCF) levels are based on income (as opposed to year of call) for the first time. In terms of last year's process, the number of barristers registered remained at the same level as last year, despite planning assumptions that there would be a 1% decline. There were no significant issues with the process last year as practitioners used Barrister Connect to renew, although an unprecedented volume of applications

on the first day did slow the system down a little. In response to that, this year, practitioners will be reminded on a staggered basis that the window has opened in order to prevent that 'bulge'.

Business planning for 2015-2016 is progressing well. The corporate plan for 2015-2016 will focus on high-level objectives and outcomes (aligned to the organisation's strategic and business aims) rather than focus on operational issues and tasks. One of the key priorities for the next business year is marketing and support for direct access work.

The Law Reform and Regulatory Affairs team, led by Jess Campbell and with the expertise of the new Legal Services Committee Chair, Derek Sweeting QC, has been working on practical guidance for the Bar in light of the BSB opening its doors to regulate barrister-entities.

The Criminal Justice Reform Group, led by HH Geoffrey Rivlin QC, is focusing on the production of its final report, which will provide recommendations on the future of the criminal Bar and the Criminal Justice System more generally. The draft report will be presented to the General Management Committee on 16 February.

As mentioned by the Chairman, the Equality and Diversity team is due to publish its Wellbeing report in March. Wellbeing (and mental health more generally) within the legal profession is rarely spoken about, yet within the Bar's relatively small community everyone is affected by their own/colleagues' poor mental health. During October and early November 2014, the Bar Council – through the Equality and Diversity team - undertook research to identify risk factors that impact on a barrister's professional practice. There were an overwhelming 2,456 responses, indicating the high levels of interest in this issue. The survey is now closed and the results are being analysed. With this information, the plan is to create tools for those with a management role in chambers to deal with those risks and develop relevant support resources for individuals.

SCr invited questions.

Jeremy Phillips (JP) asked if SCr had an update on *R (On the Application of Timothy Hemming & ors) v Lord Mayor and Citizens of Westminster UKSC*, in which the Bar Council is intervening, and whether there is a contingency plan should the judgment not fall in the interveners' favour. SCr reported that there was a hearing in the Supreme Court on 13 January and that the Court had subsequently asked for clarification on some matters. Judgment is awaited. Given a slight change of position by the respondents, it is possible that the Bar Council and the Bar Standards Board's arrangements for fee collection fall outside the scope of the case, but that cannot be confirmed without the judgment. SCr thanked Hugh Mercer QC for all his work.

Max Hill QC (MHQC) expressed concern at the statement that the number of barristers overall has not changed masks the reality 'on the ground'. The Law Schools continue to create barristers by taking students through the BPTC, but that does not mean that they are all in practice or that there are not practitioners leaving the profession mid-career. SCr clarified that this was not what he had intended to imply and, indeed, the Equality and Diversity team's research through the 'change of status' survey as mentioned by the Chairman will go a long way to fill in the gaps as to movement within the profession.

There were no further questions.

4. Treasurer's report

The Treasurer, Lorinda Long (LL), presented a series of slides showing the headline budget position.

A solid operating surplus is expected for the year, of c. £560k, which will represent an increase on last year. The outturn for 2014-15 was slightly less than some earlier forecasts, owing to the decline in some areas of anticipated direct income. This was mitigated by a 1.1% increase in PCF collections and cost savings gained from reducing overheads. LL expressed confidence in the projected growth in income for 2015-16.

Looking ahead, LL will return to Bar Council in May with an update on the 2014-15 financial performance, before reviewing the first quarter's results and forecasts for 2015-16 in July. In the autumn, an exercise will be undertaken to refresh the strategic financial overview.

There were no questions.

5. BSB report

Sir Andrew Burns (SAB) thanked the Chairman for his welcoming words to this, his first meeting of the Bar Council. SAB thanked the Chairman for the invitation to introduce himself to the Bar Council; it is a huge honour to succeed such a distinguished public figure as Baroness Ruth Deech. It is a tribute to her leadership that SAB inherits an organisation of increasing maturity and technical proficiency.

SAB explained that although his wife is a JP of 20 years' experience in adult and family courts, he is a diplomat with no connections with Bar. This was deemed a key qualification in his appointment. However, with the exception of Romania, his postings have been to countries deeply influenced by British law: India and US; and 3 countries where he led British missions: Israel, Hong Kong and Canada. SAB added that he has had many dealings with FCO Legal advisers and has been much involved in foreign policy since his retirement.

SAB is currently the part-time Envoy for post-Holocaust issues, dealing with education, remembrance and research; archives and the restitution of property by overseas countries. He is currently Chair of the International Holocaust Remembrance Alliance.

SAB's regulatory experience includes broadcasting (BBC), charities (Hestercombe Gardens), finance (investment trust boards), and universities (Royal Holloway, GSMD and CUC).

SAB is currently getting his feet under the table, meeting and listening to stakeholders. SAB sought to assure those present that he was "not a revolutionary, nor a bull in a china shop". However, he noted that there is a big challenge still to be met to ensure there is a regulator of the Bar whose role and existence is understood, valued and unassailable, which commands the trust and confidence of the members of the Bar and credibility and authority among the public, other regulators and parliament.

SAB noted that there are lots of interesting tasks ahead and a longer term strategy to develop. He paid tribute to a committed and talented Board, dedicated staff and an experienced Director General. SAB said that he looked forward to talking to practitioners.

The BSB report was circulated before the meeting (Annex 3). Sir A said that there had been a very encouraging start to the regime of the BSB regulating entities. To regulate ABSs will be the next step. Future work will include immigration, fixed fees, centralised assessments, the Cab Rank rule, and standard contractual terms.

SAB asked for the Council's assistance in encouraging practitioners to complete equality and diversity returns. He added that he was happy to take any questions, although in reality it would most likely be the Director General of the BSB, Vanessa Davies (VLD), who would be able to answer them!

Ruth Hughes (RH) asked what AB was planning to do, or had done, to prepare for this role and to understand the life of practitioners, particularly the young Bar. AB said that Baroness Deech QC, his predecessor, had given him an extensive reading list to go through. In terms of practical experience, he would be seeking opportunities to spend time amongst the Bar. Richard Gibbs (RG) offered AB some time with him in the Midlands; NLQC extended an invitation for AB to visit his Chambers (2 Bedford Row).

Kerry Bretherton asked AB what the BSB was doing to improve its disclosure regime following the judgment in *McCarthy v the Visitors to the Inns of Court and the Bar Standards Board*. VLD responded that the events, which took place over five years ago, were regrettable. Since this error, the BSB has produced a robust policy on the disclosure of documents in disciplinary proceedings. It is available on the BSB's website and all staff involved in BSB prosecutions are required to act strictly in accordance with it. The BSB's complaints handling processes have been regularly reviewed and independently quality assured since 2011 and these reports are also publicly available on the website.

Max Hill QC (MHQC) noted that, in relation to QASA, the Supreme Court has not yet reached a decision on whether to allow the claimants in the case to appeal against the judgment of the Court of Appeal, and asked what the BSB's plans were in relation to implementation of the scheme. VLD replied that this would be discussed at the upcoming BSB Board meeting and any updates on implementation provided thereafter.

The Chairman added, further to SAB's comment about the importance of having full and complete diversity information, the Bar Council's Equality and Diversity team had given members advanced notice that diversity monitoring forms would be available at this meeting for completion, and encouraged those present to complete them and submit them in the box available in the reception area.

Alison Padfield (AP) asked whether the BSB was in discussion with BMIF about the potential impact on BMIF, and thereafter on self-employed barristers, if insuring with BMIF was not made compulsory for barrister-only entities and BMIF became unviable, and referred to the solicitors' firms which have had to close because they cannot obtain professional indemnity insurance in the

market. VLD said that barrister-only entities would be free to insure wherever they wished currently but the BSB was considering whether this should be changed. The BSB was in contact with BMIF. SCr said that the Bar Council has concerns about the insurance of barrister-only entities and wanted to avoid unforeseen consequences.

SAB and VLD left the meeting.

6. Remuneration Committee: for report

Ian Bugg (IB), Co-Chair of the Remuneration Committee, presented the report at Annex 4, and offered some highlights of the committee's work over the last year.

September saw the publication of the Remuneration Committee's research into the effects of the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act: *LASPO, One Year On*. The Committee is particularly very grateful to Sarah-Jane Bennett for her work on the report.

Alexandra Healy QC and Mark Fenhalls QC have led the engagement with the Legal Aid Agency (LAA) to preserve the Bar's position to enable continued payment for Pages of Prosecution Evidence (PPE) in Crown Court defence Advocates' Graduated Fee Scheme (AGFS) cases, following unfavourable interpretation by the LAA of a series of recent Cost Judge decision. Significant progress has been made.

Groups have been convened to work towards alternatives to the Very High Cost Case and Graduated Fee Schemes, and this is likely to keep everyone busy for a while.

NLQC asked about the PPE position, which has been very unsatisfactory. Mark Fenhalls QC (MFQC) explained that the LAA's position has changed significantly. New guidance will be issued in due course which, albeit not perfect, is far better than it was.

There were no further questions.

7. Employed Barristers' Committee: for report

Peter Grieves-Smith (PGS), Chair of the Employed Barristers' Committee, spoke to the report at Annex 5, and offered a view of some of the committee's priorities for the forthcoming year. This will include more work to support those called to the Bar and who may not have considered a career at the employed Bar. There is also the intention to extend the provision of seminars to beyond London. One of the very successful events last year was about money laundering and this is of relevance to members of both the employed and the self-employed Bar.

Lucinda Orr (LO) added that BACFI already does a significant amount of work with students and that it would be wise to join forces.

There was discussion about whether or not there are sufficient opportunities for pupillages at the employed Bar, or whether they have been affected as they have at the self-employed Bar. There was further discussion about opportunities through secondments and internships.

Melissa Coutinho (MC) asked whether the proportion of the Bar in employed practice has changed, or if it remains around 20%. There is evidence to suggest that it is increasing; LO reported that membership of BACFI is increasing month on month.

Colin Andress (CA) offered his experience, having been in both employed and self-employed practice, and said that there remains a negative attitude towards employed barristers from the self-employed Bar, and this does not encourage practitioners to move between the two areas.

There was a consensus of opinion across the Council that the 'One Bar' message is more important now than ever, whether across publicly / privately-funded work or the self-employed / employed Bar. The enormous support across the profession in recent times for the publicly-funded Bar shows that solidarity is an imperative.

8. Any other business

Louisa Nye (LN) asked about the Pupillage Portal and whether it would be fit for purpose in time for the next round of pupillage applications. SCr noted LN's concern; there were no technical or operational issues during last year's process so there is no reason to think that this year would be different. LN was encouraged to contact SCr with any specific concerns.

Further to the earlier discussion regarding internships, MHQC drew attention to the internships available through the Kalisher Scholarship Trust in partnership with Justice, the Centre for Capital Punishment Studies (CCPS) in Uganda, the Parole Board, and the Criminal Cases Review Commission (CCRC). The internships allow real involvement in the day-to-day work, helping talented young barristers progress towards a career at the criminal Bar.

There was no other business.

Date of next meeting

The next meeting of the Bar Council will be held on 21 March 2015 at 10.00 at the Bar Council offices.