



Minutes of the Bar Council meeting held on Monday 7 December 2015 at the Inner Temple

Present:	Alistair MacDonald QC	Chairman
	Chantal-Aimée Doerries QC	Chairman-Elect
	Lorinda Long	Treasurer
	Rt Hon Jeremy Wright QC MP	Attorney General
	Mr Robert Buckland QC MP	Solicitor General

1. Welcome to the first meeting of the 2016 Bar Council

The Chairman-Elect welcomed those present.

2. Incoming Chairman's Inaugural Address

The Chairman-Elect delivered the following address.

Tradition has it that the last Bar Council meeting of the year is the occasion when the incoming Chairman gives what is perhaps a little too grandly called an inaugural speech. The purpose is to set out their aims for the year ahead. Bar Council meetings are open to all subscribers although others may be invited to attend. Many of you are barristers, employed and self-employed, who currently serve, have served, or will serve next year, on Bar Council. This year I have also invited a number of others with whom the Bar Council regularly engages to join us. I have invited you because I believe it is important not to take these relationships for granted and because of the need for continued open dialogue between us. We will not always agree, indeed at times we may fiercely disagree, but I would hope that we will be able to continue to communicate effectively, and from time to time, identify those areas where we have common interests and we can, and should, work together. We all share a common interest in promoting effective justice and sustaining a legal system of which we can be proud.

The Bar Council, and its officers, represent the profession as a whole irrespective of region, status or practice area, whether the barrister is from Leeds, as the current Chairman Alistair MacDonald QC is, or Bristol, like the Vice-Chairman Elect, Andrew Langdon QC, or from London, like myself. It represents barristers in self-employment, like I am, and those in employment, like the current Treasurer, Lorinda Long. It does so across all practice areas from crime to commercial, family to EU law and personal injury to landlord and tenant.

My own professional background is as a barrister practising for some 20 years in infrastructure and energy disputes in courts across England and Wales, and in international arbitrations, both in

London and overseas. I have represented this profession in a number of capacities including as chairman of a specialist bar association, the Technology and Construction Bar Association, as chairman of the Bar Council's International Committee and as a Bar Council representative for my Inn, Middle Temple.

Like other incoming Chairmen before me, I have been asked - what are my aims for 2016? Our modern governance structure means that I, and those who preceded me, to a large extent have bought into plans and strategies for the profession that stretch beyond 12 months. As Vice-Chairman Elect and Vice-Chairman I worked closely with my immediate predecessors Nicholas Lavender QC and Alistair MacDonald QC. In 2016 I will build on the work which they, and others before them, started.

To return to the question against this backdrop, my goals are to leave the profession and its representative body, the Bar Council, stronger. These objectives may not seem radical, but they are both very important.

Tonight I am going to focus on three themes: the Bar, the role of the Bar Council, and the Bar in society.

The Bar

I want to start by touching on my profession, the Bar, and who we are. At its core this is a profession of advocates. I choose both these words carefully. Sidney and Beatrice Webb in a *New Statesman* article in 1917 described a profession as *"a vocation founded upon specialised educational training, the purpose of which is to supply disinterested counsel and service to others, for a direct and definite compensation, wholly apart from expectation of other business gain."* This seems today as good a definition as it was almost 100 years ago and this approach was reflected in the Benson Royal Commission on Legal Services 35 years ago.

Many of the challenges this profession faces today, and how we respond to them, are about preserving what is valuable in the Bar. The more one encourages the professions to see themselves as purely businesses, or simply leave everything to market forces, the more we attenuate the idea of being a professional.

The Bar is a profession. It is not simply a job. In many areas of publicly funded work there is no certainty of economic security and for many the rewards are relatively modest.

Barristers earn their livelihoods primarily through advocacy, written and oral, whether in courts, before tribunals, in mediation, or in board rooms. Many of us also provide specialist advice to our clients, but advocacy is at the core of this profession. Some of us may be employed by businesses, or be involved in an entity, or may be employed by the Government Legal Service. A number of us engage with commerce, for example, by representing commercial clients in the courts, but we remain at heart a profession, and not a business. This does not mean that we are not a modern profession, to the contrary, but it does mean that we abide by, and are required to abide by, professional standards. Our primary aim is not, in contrast to most businesses, to make money, or to increase our profit margins. As well as owing a duty to the Court, and complying with our professional Code of Conduct, we are required to act in our clients' best interests. In doing so, we

may well act against our own best financial interests. This is not a purely theoretical situation, but one that barristers face regularly. In my own area of work, a good example would be advising a client to accept a decent settlement offer shortly before the commencement of trial, when the barrister's own immediate financial interests would be better served by fighting the case and being paid for the hearing.

Another example, of how our professional obligations determine how we deliver our services, is the cab rank rule. As long as a barrister is sufficiently competent to conduct the case, is available and has been offered a proper fee, a barrister is obliged to take the case as a referral. The rule exists to ensure that anyone can access a barrister no matter how unpalatable the case. I first saw this in practice when, as a pupil, I was working on a case where the silk I was assisting was representing a religious sect in judicial review proceedings. His own feelings, or beliefs, did not come into play – they were simply irrelevant to his approach to the case.

This strong and ingrained commitment to representing clients irrespective of their beliefs is at the core of why our justice system is admired across the world. It is taken for granted too easily here at home. Only recently, I was speaking to a group of young lawyers from North America about the cab rank rule when one of them asked me whether I was saying that a barrister who was Catholic could not refuse to represent a client whose religious beliefs, or lack of them, were offensive to the advocate. To her evident surprise, I answered yes. In short the rule reflects the profession's belief that every client, however unpopular, deserves representation and that it is the client who chooses the lawyer, and not the lawyer who chooses his or her clients.

In the words of Erskine: *"I will for ever, at all hazards, assert the dignity, independence, and integrity of the English Bar, without which impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end."* Although the words may sound a little archaic to a 21st century ear, the sentiment holds good.

While some of our rules and ethics are based on a long tradition, the Bar in 2015 is a modern profession – it is a profession of excellence, independence and flexibility. It has survived not because of protectionism, or elitism, but because it has continued to perform, and it has, where necessary and appropriate, adapted.

A question often asked is: is there one Bar today, or are there in reality two Bars or even more than two Bars? It is fashionable among some to argue that the profession is fragmented, focusing on the increasing specialisation and earning differentials at the Bar. I disagree. I should also say that if my profession ceases to believe that it is one Bar it will find it much more difficult to justify its continued existence. I have met barristers from different parts of the country and from different practice areas in the last 11 months as Vice-Chairman and I am absolutely clear that we are one Bar, a unified profession. By way of example only, the health and future of the criminal and family Bar are essential to the whole Bar, and are understood to be so by the whole Bar. The majority of our citizens who come into contact with the profession do so with criminal and family practitioners, whether through the media, through jury service, or through involvement with criminal or family court proceedings. And the Bar as a whole recognises the challenges faced by these practitioners.

Justice is precious and is something which Government, and society, must be prepared to pay for. It is not a luxury, or something which should only be available to those who are able to afford it. Government has a particular responsibility as the dominant funder or purchaser of legal services in the criminal field. There are many who criticise the concept of ring-fencing budgets for government departments, but in a climate where this exists, it is strange indeed that the Ministry of Justice, responsible as it is for the provision of the justice system, and hence for ensuring that citizens are protected from the state, does not have the benefit of such protection. This country has had the benefit of a justice system of which many other jurisdictions are envious. We will have to work at ensuring it does so in the future. Where a central motivation in reforming the provision of legal services is the reduction of price, there will be a substantial risk that quality is reduced, and reduced below an acceptable standard. The Bar Council has consistently voiced its opposition to the Government's Two Tier contracts.

In my previous role as Chairman of the Bar Council's International Committee I engaged frequently with lawyers and judges from different jurisdictions around the world. Often we would have lively debates and indeed disagree on matters. Two themes, however, were largely constant: first, a firm shared belief that the state has a responsibility to ensure access to justice for the poorest, and secondly, a strong appreciation of the British justice system. I do not suggest that our justice system has not had its difficulties, or that it is, or indeed was, in any way perfect. It has had its share of challenges, and serious miscarriages of justice. But a system which at its heart supported the notion that every client had the right to independent and excellent representation, and representation of the client's choice, was admired. This notion of justice, combined with highly qualified solicitors and barristers, and specialist and independent judges, is what has largely sustained the influx of international work to the British courts, leading to earnings as a nation of over £20 billion a year from the provision of legal services.

The cuts to legal aid fees which the Bar, and solicitors have endured, together with the withdrawal of legal aid for most social welfare and family cases, the introduction of criminal court charges on a non-discretionary basis and the increase in civil court fees have severely affected our justice system. I should acknowledge that the Lord Chancellor last Thursday announced that the Government has abandoned the criminal courts charge, and we welcome this.

The strains and challenges are particularly evident in family courts. It is difficult to understand how it can be acceptable for someone accused of child abuse to cross-examine the alleged victim in the context of family proceedings, when they would not be allowed to do so in criminal proceedings, where the state would ensure that an independent advocate carried out this cross-examination. The real hardship being faced in the family courts is reflected in the recent Bar Pro Bono Unit statistics: family case applications increased by 31.9% in 2013 and a staggering 60.2% in 2014. In this regard, we welcome the Opposition's review into legal aid.

In 1966, Robert Kennedy, the former US Attorney General, when speaking to the Johannesburg Bar Council in South Africa, began a speech which commended the exceptional courage and dedication to the fundamental tenants of the law demonstrated by the Johannesburg Bar, by noting that lawyers have not always been highly popular. And perhaps this is something which we need to remember. As lawyers, we are obliged to remind others of the importance of the rule of law and the need for a legal system which protects the rule of law for the citizens of the country. I was

delighted to hear Michael Gove recently acknowledge the important role which the judiciary, barristers, and solicitors play in ensuring that England and Wales is “*the best place in the world when it comes to resolving matters by law.*” He also highlighted the “*importance of a healthy independent bar*” to ensure high quality advocacy is available.

The Bar Council

The Bar Council is the representative body of the profession as a whole. It is also the Approved Regulator of the profession, but it has delegated the regulatory function to the Bar Standards Board. Last week the Government announced that it will consult on making legal services regulators independent from their professional bodies. The stated aim is to create a fairer, more balanced regulatory regime that encourages competition. We look forward to studying the proposals and responding in due course. But I cannot resist a personal comment at this stage. The current framework of regulation has only been in place since 2007 and I query whether it is the right time to consider reform. The Bar’s front line regulator is well able to regulate the profession in the public interest and to meet the statutory objectives. It does so, as Nicholas Lavender QC said a year ago, because the Bar Standards Board has a good understanding of the particular environment in which this profession operates, but their decision-making is independent of the Bar Council. The current arrangement allows regulation to be carried out in a relatively cost-efficient manner and is no less independent in its decision-making. I have not always agreed with the regulator’s decisions, but that, perhaps, only serves to demonstrate the independence of the decision-making process.

But what of the Bar Council’s representative role? As Derek Wood QC, a former Middle Temple Treasurer, put it, it is the “*political mouthpiece*” of the profession. It acts in this way by lobbying Government, and opposition parties, on matters affecting the Bar and the justice system. Recent examples include campaigning for the criminal courts charge to be dropped, challenging changes to judicial review aimed at restricting citizens from holding the executive to account, campaigning against the planned further cut of 8.5% to criminal advocacy fees, which in the event was not implemented, resisting the introduction of increased civil court and tribunal fees, campaigning for a replacement to the AGFS and calling for the protection by statute of legal professional privilege. The Bar Council also represents the profession on the international stage, for example, at the European Commission, International Bar Association and the Council of Bars and Law Societies of Europe.

The Bar Council is at the heart of the Bar’s representational activity. There are of course other organisations which play an important role in representing the profession – the Circuits and the Specialist Bar Associations ensure that their members’ voices are heard and the Bar Council works closely with them. There are also the four Inns of Court, and the Council of the Inns of Court, which have an important part to play particularly in education and training, and in assisting the next generation of barristers to qualify and practise through their substantial scholarship funds. We need to work together to ensure that we make the best use of our collective resources and speak, where we can, with a united voice. And I would like to thank Inner Temple in particular for once again hosting us here tonight and for agreeing, generously, to waive the usual fee. Finally, the Bar Council must have a strong relationship with its members, whether in Chambers, sole practitioners or in employment. It will be an important part of my year to ensure that all of these relationships are maintained and strengthened.

For the Bar Council to become stronger it needs to engage more effectively with its membership, by ensuring it represents members' interests. The membership also need to understand the breadth and depth of the Bar Council's activities and the services available to them.

Through the Bar Council, the profession influences the development of public policy and legislation affecting the provision of specialist advocacy and advisory services and affecting the justice system and our constitutional arrangements more widely. It does so in the profession's interest and in the public interest. The work of the Law Reform Committee and our other committees is impressive, as Sir David Lloyd-Jones (a former Chairman of the Law Commission) acknowledged the other day in the Bar Council's Annual Law Reform Lecture in this very hall. In the first 11 months of this year we reviewed 121 consultations and responded to some 40 external consultations. To give a flavour of the breadth of this work I want to flag four areas:

- We responded to two Home Office consultations on Communications and we shall be campaigning for greater protection for legal professional privilege.
- We responded to two Bar Standards Board papers on the Future of Bar Training.
- More recently, we responded to the MoJ's consultation on Enhancing the Quality of Criminal Advocacy, supporting the proposals for a statutory ban of referral fees, the introduction of a panel scheme for publicly funded Crown Court defence advocates and stronger measures to ensure client choice in selecting advocates.
- Our EU Law committee led on our response to the European Commission's Questionnaire on Contract Rules for Online Purchases of Digital Content and Tangible Goods, a further attempt to implement a European contract law.

These are just a few examples of the Bar Council's responses to public consultations on behalf of the profession as a whole.

The Bar Council also engages on topics which could more properly be described as political, where its members' interests and beliefs are diverse. Examples of topics likely to feature in 2016 include the Government's proposals concerning the Human Rights Act, the debate surrounding Brexit and the ongoing debate on devolution. On these the Bar Council will engage constructively with all parties and stakeholders, making use of the real expertise which the Bar has to offer. Two recent examples include an all-party debate in Middle Temple on devolution and the Bar Council's detailed responses to the Coalition Government's consultation on the EU and UK Balance of Competences. The importance of this work, and its value to the profession and the UK more widely, was evident during my visit to Brussels earlier this year.

As the representative body for the whole profession, the Bar Council is also best placed to offer practical and ethical assistance to barristers – it does so on a daily basis – a few examples:

- The Ethics Committee oversees an Ethics helpline for the Bar – over 12 months this responded to some 6000 telephone enquiries and to over 500 emails.
- In addition we run a special helpline to support pupils who encounter problems during pupillage.

- The Remuneration Committee and various Policy and Service teams provide assistance on remuneration covering, for example, queries on conditional fee agreements, VAT and fees collection.
- On the international side, the International Committee produces documents highlighting issues for practitioners – a recent example being the note on Perceived Conflicts in International Arbitration.

It is also at the forefront of supporting the profession where demand arises as a result of changing circumstances. Examples include:

- Investing in the Direct Access Portal set up by members of the Bar to facilitate barristers who want to offer their services to the public directly.
- Setting up BARCO, a third party company owned and operated by the Bar Council, which operates an escrow service receiving funds from clients for legal fees, alternative dispute resolution costs, disbursements and settlements.

These relatively recent projects reflect the Bar's, and the Bar Council's, willingness to adapt.

These are but a small number of the activities the Bar Council carries out for its membership. But they demonstrate the value for the profession of a unified and strong representative body. In addition to a committed staff and the valuable input on a pro bono basis of many members there are two essential ingredients: first, the increasingly important voluntary Bar Representation Fee of £100 paid by individual members which funds a significant element of the representative work; and, secondly, an understanding in the profession of the extent of the Bar Council's work. I well remember a particular QC, who became involved in the Bar Council as his SBA's representative, saying to me that he had had little understanding of the Bar Council's role until he got involved and that it was only then that he realised how important this overarching representative body is to the health of the profession.

Next year, I, together with the Bar Council will work towards increasing the Bar's take up of the voluntary subscription and increasing the awareness in the profession of what we do. As part of this drive, I will tomorrow write to all Heads of Chambers inviting them to nominate a member of Chambers to act as the liaison with the Bar Council. These representatives will obtain feedback from our members and act as ambassadors for the Bar Council. I will also consult with the employed Bar on this.

The Bar in society

The legal profession, and in particular the Bar, has always been, and continues to be, committed to pro bono work. This commitment to helping the neediest in our society to have access to justice is part of our DNA. Using our skills, both for those clients who are able to afford to pay for our services and for those clients who are not, is perhaps one of the aspects of a vocation or a profession. Of course the professions cannot, and more importantly should not, take the place of

what a Government in a civilised society should ensure is available to citizens, but this does not mean that the professions should not, and do not, make a substantial contribution.

This last year as Vice-Chairman has afforded me the opportunity of meeting barristers from wide range of different practice areas and from across the jurisdiction. Most engage in some form of pro bono, be that offering legal services for no payment through the Pro Bono Unit, or by simply not charging an impecunious client. Others have set up new schemes – there are many – but I am thinking, for example, of the Pro Bono advice scheme launched in Bristol this summer, offering free legal advice for people in Family Court cases about arrangements for children, or the Chancery Bar Litigant in Person Support Scheme set up in December 2013, providing barristers, pro bono, on applications day. Many others contribute financially so that others may provide legal services.

Many barristers also contribute to their community by using their professional skills, on a pro bono basis, for the benefit of others, by, for example, becoming trustees of charities. But as a profession, perhaps understandably, we are reluctant to talk about what we do. We simply get on and do it.

Like many barristers I was involved in the Free Representation Unit many years ago and have I have never forgotten one of my first cases, a pro bono employment tribunal case. My client had lost her job as a result of her pregnancy. We were able to get a good settlement on the eve of the hearing. Understanding the difference that lawyers can make for their clients, and how overwhelming the legal experience can be for those who don't have the benefit of lawyers, is one of the things that keeps me interested in the job. Alistair MacDonald QC, the current Chairman, started a series of meetings, which I have been involved with and which I will continue, with people who obtained representation through the Bar Pro Bono Unit, with the aim of understanding first-hand their experiences and the value they saw in the assistance they received.

For the Bar, next year will see the 10th anniversary of the Bar's Pro Bono Unit. Our Unit receives no government funding. Funding comes almost entirely from the Bar with contributions from the four Inns and from many private donations from barristers. In addition the Bar Council collects an annual donation of £30 per head from just under 60% of the profession. Over 3600 barristers offer their services through the unit.

The Bar needs to be prepared to tell its story. As part of this, I will set up a Bar Council Pro Bono Board whose remit will be first, to gather information about the Bar's pro bono activity, secondly, to review from time to time the Bar's activities and to consider solutions where necessary, and thirdly, to engage with others in the pro bono community, and elsewhere. The creation of the Board will reflect the Bar's existing commitment to pro bono, and I will be asking the Bar Council to amend its standing orders to recognise this Board permanently.

One of the cornerstones of a democratic society is access to justice: the ability of citizens to have access to the courts, to have their case heard by an impartial tribunal and to have access to proper legal representation. There is no doubt that the legal aid cuts of recent years, particularly under LASPO, have had a serious impact on the ability of citizens to have such access. The challenges are not to be underestimated. The number of applications to the Bar Pro Bono Unit increased by nearly 30% year on year since 2012, although figures to date for 2015 suggest that this may level this year.

Pro bono cannot replace what we have lost. In September 2014 we published our one year on review of LASPO. We will be setting up a working group to carry out a three year review.

There has been much press coverage recently concerning diversity in the profession and judiciary. No serious profession can survive and thrive in the 21st century and attract the best and the brightest, without being concerned about diversity throughout the profession, and access to the profession across society. One of the most memorable events for me this year was standing in for the Chairman at a Bar Council Bar Placement Week where high-achieving Year 12 students from non-traditional backgrounds were taking part in a three-and-a-half day placement with a barrister, and were given training on developing interview skills, and participated in a workshop, led by the Advocacy Training Council, on how to argue like a barrister. Meeting the students and hearing their ambitions was inspiring, but it also highlighted how some of the challenges we face, in common with others, are influenced by matters outside our control. The profession, and the Bar Council, continues to be committed to its work promoting a Bar of all and for all, as is evident by the very active Equality & Diversity and Social Mobility and the Education & Training Committees. A good example of the Bar's engagement with society as a whole is the investment we make with the Citizenship Foundation in the Bar Mock Trial Competition.

In conclusion, there continue to be real challenges ahead. We, the Bar, and indeed those who value us, should not underestimate those challenges. However, the Bar has survived over many centuries because of its ability to adapt to changes in society, its commitment to the highest professional standards and to excellence in advocacy.

That is why I am confident that, with your help, the Bar will continue to survive, and thrive.

3. Appointment of Committee Chairs 2016

The Chairman-Elect announced the Chairmen of representative committees for 2016 as follows:

Bar Representation Board	Richard Atkins QC
Education and Training Committee	Guy Fetherstonhaugh QC
Employed Barristers' Committee	Michael Jennings
Ethics Committee	Andrew Walker QC
Equality, Diversity and Social Mobility Committee	Robin Allen QC
EU Law Committee	Gordon Nardell QC
International Committee	Amanda Pinto QC
Law Reform Committee	Fergus Randolph QC
Legal Services Committee	Derek Sweeting QC
Remuneration Committee	Alexandra Healy QC and Susan Jacklin QC
Young Barristers' Committee	Louisa Nye

Date of next meeting

The next meeting of the Bar Council will be held on 16 January 2016 at 10.00 at the Bar Council offices.