



**Minutes of the Bar Council meeting
held on Saturday 18 November 2017 in the Old Hall, Lincoln's Inn**

Present:	Andrew Langdon QC	Chair
	Andrew Walker QC	Chair Elect
	Lorinda Long	Treasurer
	Robert Buckland QC MP	Solicitor General

Apologies for absence

Apologies for absence were received from: Janet Bignell QC, William Boyce QC, Shelley Brownlee, Alexandria Carr, Melissa Coutinho, Sarah Crowther, Joseph Curl, Anita Davies (alternate sent), Marie Demetriou QC (alternate sent), Manjit Gill QC, Jonathan Goulding, Max Hardy, Michael David Jones, Rupert Jones, Jenny Josephs, James Kitching, Justin McClintock, Gerard McDermott QC, Andrew Morgan, Rebecca Murray, Grace Ong, Alison Padfield, Thomas Payne, Peter Petts, Angela Rafferty QC, Christopher Rees, Ryan Richter, Rachel Spearing, Christopher Tehrani QC, Grant Warnsby and The Rt Hon Jeremy Wright QC MP.

The following did not attend and did not send apologies: Tom Cockroft, Michael Duggan QC, Alexandra Healy QC, Richard G Jones, Anna Macey, Francesca O'Neill, Angharad Mary Price, Ben Rowe, Alison Saunders, Jessica Stephens and Brie Stevens-Hoare.

72 further members attended.

1. Minutes of the last meeting and the AGM meeting

The Chair welcomed Bar Council members to the November meeting.

He began his address by informing members that on 28 March 1915, after the start of World War 1, a German U-Boat (U-28) sunk a British steam ship (SS Falaba). There were 104 casualties, among them the first American submarine casualty of the war, the thirty-one year-old mining engineer of Massachusetts, Leon Thrasher. His death awakened American interest in joining the War and attracted a significant amount of media coverage.

On the same day in England, Jeremy Hutchinson, later Baron Hutchinson of Lullington QC, was born. Though his birth attracted nothing like the same amount of

headlines, save perhaps for a couple of lines by way of announcement in The Times, he went on to become one of the finest criminal advocates. Explaining that it could be said that Lord Hutchinson effectively engineered the birth of 'One Bar', the Chair reported that Lord Hutchinson had founded the Criminal Bar Association in 1969, chairing it for six years. He devoted his career to the preservation of individual liberty against an overbearing state. Not afraid to say what needed to be said, he nevertheless said it with style, charm and fearlessness.

Baron Hutchinson died on 13 November 2017 at the age of 102. The Chair, himself a former Leader of the Western Circuit, said that he was proud that Lord Hutchinson had been a Western Circuiter. The Chair recalled celebrating Lord Hutchinson's 100th birthday a couple of years ago and read to the members the postscript, penned by Lord Hutchinson himself for Thomas Grant's book entitled *Jeremy Hutchinson's Case Histories*.

The Chair finished his tribute to Lord Hutchinson saying that he had wished to mark his death and celebrate his contribution to the profession.

The Chair noted the busy agenda for the meeting and the minutes of the meeting and AGM on 16 September 2017 were approved.

2. Statement by the Chair

The Chair said that he hoped that members had taken the time to read his statement in advance. Saying that he would highlight four or five items from it shortly, he invited Sean Jones QC to speak about his Billable Hours Appeal.

Sean Jones QC explained that the appeal, launched two years ago, asks lawyers to donate a billable hour to Save the Children to help the charity do its work alleviating the Europe refugee crisis, which has seen hundreds of thousands of asylum seekers flee countries including Syria, Kosovo and Afghanistan. £0.3M has been raised over the last two years and £50k in the last month, when this year's campaign began. Reporting that the Bar accounts for 70-80% of the funds raised, Sean Jones QC thanked barristers for their time. More information can be found on the website for the appeal: <http://www.billablehour.org/>.

The Chair announced that Tom Leech QC has been elected to the casual vacancy position in the 'Employed Junior / QC over 7 years in practice' category. The Head of Governance, Natalie Zara, confirmed that Mr Leech will join the Bar Council from 2018.

The Chair also congratulated Athena Markides on her appointment as the new Vice-Chair of the Young Barristers' Committee. He noted that an extraordinary number of 'very eminent people' at the Bar were Young Bar Chairs and said that hopes that, in the fullness of time, we will see Louisa Nye (Chair of 2016), Duncan McCombe (current Chair), Rick Hoyle (Chair for 2017) and Athena Markides (Vice-Chair for 2018) in the Supreme Court.

The Chair reported that the Bar Council had put out a communication on the subject of sexual harassment to all Heads of Chamber earlier in the week. The communication collates all existing policy and guidance in one place and draws attention to it. The Chair said that he would hope that victims speak up anyway, but if the communication encourages them to do so then all the better.

With regards to flexible operating hours, HMCTS has issued a 'prospectus' with a number of questions which the Bar Council will do its best to answer. The Chair was clear that the Bar Council has a duty to be constructive in the way in which it answers the questions. A group, including Fiona Jackson and Kate Brunner QC has been formed and will be dealing with the response. There is a need to ensure that that evaluation process is robust and the group will next be meeting on Monday 27 November. The Chair asked members to feed through any thoughts they may have to him. HMCTS will be holding a series of roadshows about reform in cities including Manchester, Newcastle and London. The Chair said that past experience has shown that these are valuable events and a good way of getting views across.

Turning to his statement, the Chair said that the recently launched Ethics Hub is a good example of how the Bar Council can make a real impact. Members of the Bar Council made their views clear and, although it had to be justified financially, the hub now exists to bring all ethics guidance together in one place. Noting that the ethics help provided by the Bar Council is 'one of our finest boasts', the Chair encouraged feedback from members of the Bar Council and thanked those responsible.

Speaking about the issue of the exploitation of young barristers in the Magistrates Courts raised at the previous meeting, the Chair announced that a meeting has been arranged for young barristers and Bar representatives to try and pool thoughts. He reassured members that the Bar Council is 'on the case' and encouraged them to contribute if they wished.

The Chair reported that the research paid for by the Bar Council on the consequences of LASPO and immigration has been completed by Dr Anna Lindley. The research is being 'linked up' with an event at Temple Church entitled 'Refugee Tales' on Thursday 30 November. Encouraging members to attend, the Chair said that it would be good to have a big turnout for what are 'real Rule of Law issues'.

Bill Mousley QC thanked the Chair for his reference to the General Data Protection Regulation (GDPR) guidance in his statement and for directing the members to the guidance on the website. He enquired as to whether the Bar Council has any plans to deliver training as the Bar needs to react and only has until the end of May 2018. He suggested that his circuit may need to think about running its own training programmes if there is no Bar Council training available. Shobana Iyer, a member of the IT Panel, replied that the IT Panel will be running seminars linked with the circuits. Isabel DiVanna, Commercial Services Director added that a company named Riliance have been commissioned to develop a toolkit that will establish gaps analysis in

chambers. The toolkit will look at the requirements now and explore the extent to which the chambers will meet the requirements of the new GDPR. In addition, the Bar Council are planning more training sessions. The Chair asked that any members with questions speak to him or Isabel following the meeting.

3. BSB report

Before Sir Andrew Burns, Chair of the BSB, presented the BSB report, the Chair explained that as Sir Andrew is coming to the end of his three-year term at the end of 2018, this would be his last meeting. He expressed gratitude to Sir Andrew for his gracious statements he had written at the end of his report.

Sir Andrew Burns was joined at the meeting by Naomi Ellenbogen QC, Vice-Chair of the BSB, Dr Vanessa Davies, Director-General of the BSB and Wilf White, BSB Director of Communications and Public Engagement.

Current Consultations

Sir Andrew Burns wished members of Bar Council a good morning. He began his report by outlining the two consultations that the BSB has open currently. The first, on Future Bar Training, is of particular importance as it concerns the role of the Inns of Court, pupillage and the BSB's proposed new Authorisation Framework for future training courses. The BSB is conscious of the positive role that pupil supervisors play and has no inclination to change what is working well. The aim is build upon what already works well and to deregulate where the BSB feels that its rules are no longer needed. Sir Andrew Burns reported that the BSB enjoyed a well-attended Future Bar Training seminar on Tuesday 14 November.

The second open consultation is a response to the Competition and Markets Authority's (CMA) published recommendations for greater transparency about fees, services and rights of redress for consumers to which all legal service regulators must respond. Sir Andrew Burns spoke of the need to strike a balance between improving the consumer experience and the needs of barristers. Saying that the BSB is keen to hear from barristers, Sir Andrew Burns encouraged members of the Bar Council to respond and invited them to attend the Transparency Standards seminar on Tuesday 21 November. The deadline for responses is Friday 5 January 2018.

Advisory Panel of Experts - appointments

The BSB has made eight new appointments to its Advisory Board of Experts (APEX). Panel members play an important role in the work of the BSB. Meanwhile, The Chair-Elect of the Bar, Andrew Walker QC and Sir Andrew Burns have been choosing new lay members of the BSB Board.

Authorisation to Practise and public access work

On 27 October, the BSB published a number of rule changes for barristers renewing their practising certificates and for those doing public access work following recent consultations.

The rule changes regarding authorisation to practise will:

- require barristers to provide information on their practice areas, including any public access work, and the percentage of income they derive from each area;
- ensure compliance with new Money Laundering Regulations;
- oblige barristers who work in the Youth Courts to register the fact; and
- make it compulsory for barristers to provide a unique email address.

Sir Andrew Burns explained that the BSB is trying to minimise the burden on barristers but said that it needs to target its regulation. The purpose of the new rules is to:

- improve the BSB's understanding of the work of barristers, thereby helping them to target regulation more effectively;
- ensure that the BSB and barristers comply with new Money Laundering Regulations;
- allow the BSB to identify barristers who are working in the Youth Court and to promote standards in those proceedings; and
- help the BSB to communicate with barristers more securely and effectively.

The BSB has also announced changes to the Public and Licensed Access Rules, following a positive response to the recent consultation on the subject. The BSB will:

- continue not to apply the 'cab rank' rule to public and licensed access cases;
- remove the requirement for barristers who are of less than three years' standing to maintain a Public Access log;
- make a range of simplifications to make the Public and Licensed Access Rules less prescriptive and more proportionate; and
- implement a number of amendments to the Licensed Access Rules, which permit certain expert clients to instruct barristers who have not undertaken public access training directly.

Updated disciplinary tribunal regulations and parental leave rules

At the beginning of the month, the BSB published a new version of the BSB handbook including a set of new disciplinary tribunal regulations, new rules about shared parental leave, and some minor amendments to provide additional clarity.

The change to the parental leave rules also follows consultation and will require all chambers to have a policy that allows any member who becomes the carer of a child to take parental leave. The precise details of such policies are for individual chambers to decide, but the new rule will require that flexible working arrangements must be available to members during their parental leave. Both the BSB and the Bar Council will be producing additional guidance on this change, and chambers will have until November 2018 to update their policies.

Sir Andrew Burns reported that the BSB have had representations that some barristers may try to abuse the system. Saying that this would be 'a shame to the ethics of the profession', Sir Andrew Burns reassured members of the Bar Council that the BSB will be watching closely to ensure that this does not happen.

Sir Andrew Burns finished his report by bidding farewell to members of the Bar Council. He said that it had been an honour and privilege to be the Chair of the BSB during a period of profound change and radical reform. Saying that he had greatly welcomed the opportunity to tell members of the Bar Council about the work of the BSB and assess reactions, he thanked the Bar Council officers for listening and understanding and said that he had learnt a great deal. Describing his BSB staff colleagues as 'dedicated and talented', Sir Andrew Burns praised the 'thoughtful and conscientious' BSB Board. He said that he had enjoyed the Bar Council Saturday morning meetings despite not always seeing eye-to-eye with the Bar Council and expressed confidence that both the BSB and Bar Council were living up to the standards expected of them by the Legal Services Board (LSB). Speaking of the need for the BSB to remain sensitive to the needs of the Bar, he said that he had tried to convey to the public that the Bar Council is 'as good as you know you are'. A successor is due to be announced on Thursday 23 November who may, or may not, choose to attend Saturday morning meetings. Sir Andrew Burns finished by thanking members of the Bar Council and wishing them well for the future in challenging times.

The Chair said that he has had the advantage of working with Sir Andrew Burns at quite close quarters and it has been obvious that his instincts have been in favour of supporting the profession. The Chair noted that the role of the BSB Chair sometimes involves 'holding the ring between those who are overly conservative and those who exert zeal and a lack of judgement' and expressed gratitude to Sir Andrew Burns for doing this.

4. Treasurer's Report

Lorinda Long, Treasurer, said that she wished to cover two things in her report:

- 1) A brief update on the 2017/18 financial position; and
- 2) The 2018/19 budget for the Bar Council to approve.

The 2017/18 financial performance is better than planned due to higher PCF collections and increased BSB income. The total PCF income collected is £394K greater than

forecast as the numbers of barristers renewing PCF is higher than expected and growth in fees earned has led to greater numbers of declarations at higher PCF bands BSB fees and charges income will rise to £393K as greater student numbers will drive up fee receipts from Bar training course providers. However, other non-PCF income will be £248K lower than planned because Bar Representation Fee subscriptions have not increased above 2016 levels (£98K) and event bookings and affinity partner income is £140K lower.

The improved financial results will provide greater financial resilience for challenges in 2018/19. The Bar Council expects to deliver a surplus of £268K before pension charges and corporation tax. P&L reserves will increase to £3.3M from the budgeted £2.8M and higher uncommitted cash levels and reserves will increase the buffer for next year's property move spend. Trends in PCF are expected to continue and provide benefit to the 2018/19 finances.

Moving on to the 2018/19 budget, Lorinda Long explained that higher one-off costs will be met within existing financial resources and funding streams. The Bar Council is forecasting the natural growth of PCF collections. BSB fees and charges income will be higher due to an increase in student numbers. The Bar Council is capping its expenditure plans at 2017/18 levels. There will be an incremental spend in one off costs for the property move and the stronger 2017/18 results will improve the financial resources available

Lorinda Long finished by outlining the next steps. The consultation with the profession will begin shortly with the application to the LSB submitted in December. The Bar Council would hope to gain approval in January 2018.

The members of the Bar Council were asked to note or agree to the following points and recommendations:

- Agree a freeze in the level of PCF for 2018/2019.
- Note that PCF collection levels will be bolstered by reducing the PCF bulk payment discount to a single lower discount saving £140k.
- Note that cash flow constraints in 2018/2019 from the expenditure on the office move, may require the sale of parts of the investment portfolio to mitigate risk of cash shortfall. Financing arrangements are being considered as an alternative and Finance Committee will determine the optimum solution during 2018/19.
- Note the risk that, in the event of 2018 PCF collection levels being less than anticipated, an increase in PCF would likely be required in 2019.
- Approve the budget. The expenditure budget for the Bar Council will be £17.3M (£16.0M in 2017/18) including operating spend of £13.9M, £0.1M less than that expected in 2017/18; and one off spend of £1.3m to

cover the costs of acquiring and moving into new offices. A further spend of £2.1M comprises the planned £1.3M funding of the defined benefit pension scheme and £0.8M for funding LSB and legal ombudsman.

The members of the Bar Council approved the recommendations as set out above.

The Chair apologised to the Solicitor General, Robert Buckland MP QC, for not welcoming him to the meeting earlier. He thanked him for attending.

5. Chief Executive's report

Malcolm Cree, Chief Executive of the Bar Council, reported that he had completed his first 100 days in post at the Bar Council. Describing the last three months as a 'fascinating time' he said that he had been continuing his education in 'all things Bar' and he expressed gratitude to all those who have assisted him. He had attended the Pupillage Fair, Bar Conference and, most recently, the Young Bar Pro Bono Event.

Malcolm Cree said that there had been some unexpected challenges in his first three months as well as some excitement and some successes. He praised the staff for their work.

Malcolm Cree explained that while the Chair's Statement is comprehensive, it doesn't necessarily cover what is happening behind the scenes. For example, the Bar Council is in the process of developing a new Strategic Plan. A lot of planning has taken place, including SWOT analyses with officers and staff, and progress is almost on track.

At the same time, the Bar Council is also developing a Commercial Strategy and is looking to develop an Engagement Strategy. The Engagement Strategy will look at who the Bar Council is approaching and why and will link engagement and communications more directly to what the Bar Council wants to achieve.

The new Strategic Plan will set KPIs and targets and allow the Bar Council to carry out risk and performance management at a higher level. Malcolm Cree was clear that the new Strategic Plan will be requisite and he had no desire to turn it into a 'cottage industry'.

All this work is made possible by the staff, many of whom are in the Resources Group (in the Finance, IS, Facilities, HR and Project Management teams), who take pride in the work that do for the Bar. It is especially encouraging that staff turnover has decreased from 41% to 25% in the last year.

Speaking in more detail about the work of the staff in the Resources Group, whom the Bar Council members seldom see, Malcolm Cree explained that the IT Team are responsible for the new CRM and MyBar and provided support to the new Ethics Hub. The Project Management Office is overseeing the office move in conjunction with the Facilities Team. This is a major project with significant costs. Lastly, the 'small

and hard pushed' Finance Team have been working on all the finances as outlined by the Treasurer in her report.

Malcolm Cree finished his report by saying that he is looking forward to the next 100 days.

6. The Digital Courtroom. Can Just be Virtual?

The Chair introduced Professor Cheryl Thomas to members of the Bar Council saying that he had invited her to deliver a brief report on where court reform plans are heading. Professor Cheryl Thomas has been researching judges and juries at work in the criminal court and is presently carrying out research on the impact of the court transformation programme including virtual hearings. Given her expertise, the Chair said that he had thought it a good idea to invite her to speak and he thanked her for coming to the Bar Council meeting, especially as she had flown in from Australia the night before.

Professor Cheryl Thomas said that she had actually been in Cape Town but nevertheless apologised in advance should she lose her train of thought due to jet lag! She thanked the Bar Council for inviting her to speak saying it was an honour to be asked and explained that she had had a conversation with the Chair a while ago during which she mentioned her research and he suggested that she speak at a Bar Council meeting. She said that she wished to use her talk as an opportunity to raise wider issues.

Professor Cheryl Thomas began her presentation saying that although the HMCTS digital reform programme includes many benefits, she has concerns about aspects of it. There are, for example, some unanswered but crucial questions about the impact of the move to virtual and digital courts on fairness and justice.

Talking about what we already know about fairness in the justice system, Professor Cheryl Thomas explained that there is a large amount of research about what constitutes a properly functioning, just, fair court system. Work on procedural justice has identified 4 key elements a court system needs to ensure fairness and justice: Voice, Neutrality, Respect and Trust. In relation to Voice, this research shows that even where people are on the 'losing side' in cases they are more likely to feel the process was fair and to comply with court rulings when they have been given the opportunity to participate and express their views. Neutrality requires that participants believe the decision-makers are unbiased. Respect is where people are treated with dignity, and Trust in authorities is fostered by listening to individuals and clearly explaining decisions.

Professor Thomas then questioned what the objectives of the digital courtroom were and presented the seven stated objectives of the court reform programme, as provided by Susan Acland-Hood of HMCTS on her court reform blog:

Citizen-centred
Accessible
Proportionate and segmented
Just
Transparent
Sustainable
Future proof

Professor Cheryl Thomas highlighted the lack of reference to Voice, Neutrality, Respect and Trust. While the somewhat vague term “just” could be related to the requirements of fairness and justice, most of the objectives appeared to be efficiency based. She found the specific term “citizen-centred” interesting, pointing out that the justice system is not just for citizens.

Professor Thomas then addressed what she considers fundamental unanswered questions about the fairness of digital courts. Specifically, she focused on how digital courts will affect the presentation of evidence and the effects of this on perceptions of court users and decision makers.

Professor Cheryl Thomas pointed out that there is almost no empirical evidence of the effect of digital presentation of evidence in courts and tribunals in this country or elsewhere. There is, however, good evidence on the effect of digital technology on human perception and decision-making from psychology and the business world – and this is relevant to consider in assessing changes to presentation of evidence. Research on the differences in video-link versus face-to-face communication shows that when people use video-conferencing instead of face-to-face communication this results in a ‘higher cognitive load’. Research also shows that a higher cognitive load often leads to ‘short-cutting’ – ie, those receiving the information not likely to be paying as much attention to the content of what someone is saying and economizing by focusing on other factors. And we know that when this short-cutting occurs by decision-makers this often leads to stereotyping of individuals. This raises concerns about an increase in error prone judgements in correlation with an increase in the use of video link.

Other research with implications for digital presentation of evidence has focused on the type of virtual communication used. For example there is research on the effect of ‘picture in picture’ communication, which is used in criminal trials in video-link evidence for vulnerable or child witnesses. Research involving job interviews by video-link has indicated that the person being interviewed performs less well when picture in picture presentation is used and they are able to see their own image. If this is the case with witnesses, there is a need to determine whether this presentation element affects their ability to give evidence and the effect on the decision makers.

Given that the general movement is towards using virtual evidence and video screens in court, Professor Cheryl Thomas suggested that further consideration is given to

how to assess and use screens effectively. Some research has been carried out on the impact of animated reconstructions in trials, and the findings indicate that decision makers are more likely to believe an animated representation of evidence than the more common static images or verbal description of events. This, in turn, raises concerns about equality of arms in cases where one side has the funding to create high quality animated reconstructions but the other does not. Furthermore, there are some very basic questions about the type, size and location of the screens and whether or not these things matter. She provided a visual example of the same image on full-size screen and the same image on a phone. It has been proposed that jurors are given their own iPad on which to watch evidence and Prof Thomas said that it must be determined in advance what effect of this might have on juror decision-making compared to jurors all watching the same evidence on one life-size screen.

By way of illustration of where the presentation of evidence may be headed, Professor Cheryl Thomas showed an image of people using virtual reality headsets, and she explained that virtual reality evidence had already been used in court. She cited the case of Anita Krajnc, an animal rights activist facing trial in Toronto for meddling with a tractor-trailer that was transporting pigs to the Fearmans Prok processing site in Ontario and attempting to give water to the animals. Her lawyer made it clear he wanted to bring VR headsets into the courtroom to help demonstrate that, instead of causing harm, she was in fact helping the animals. The headsets, allowed by the judge, enabled the judge to view a virtual reality film from inside a factory farm and slaughterhouse and view of the conditions that pigs and other animals face by putting the judge and others in court in an immersive experience. Professor Cheryl Thomas asked the audience to consider what the implications would be if this is the direction the courts are heading in and also highlighted the physical side effects of such immersive technology.

Moving on to talk about her current project, Professor Cheryl Thomas said that she is currently conducting an empirical study of the impact of the digital courtroom and special measures on jury decision-making. She made the point that the digital court is 'not really that new' in many jury trials, as video-link and pre-recorded evidence in chief have been in use for 15 years since the Youth Justice and Criminal Evidence Act, and pre-recorded cross-examinations of children has been piloted for the last 18 months. There is already very good and reliable research that shows that special measures have been effective in giving children and vulnerable witnesses a voice which is positive, however, no one has yet studied the effect of special measures on juries. As part of this research, Professor Cheryl Thomas is testing the way different types of digital evidence affect decision making.

Professor Cheryl Thomas finished by saying that she had attempted to give an outline of 'where we are at' with empirical evidence on the impact of court reforms. She said that that good evidence is vital to ensure there is fairness and justice in any reforms. This means that along with robust empirical evidence of the effect of the court reform

programme, there needs to be a clear framework for assessing the fairness and justice of the court reform programme.

John-Paul Swoboda asked about the timeframe for the results and enquired about tentative results. Professor Cheryl Thomas said that the preliminary results are expected in the Spring. There is no sense of what the findings might be at the moment but said that she was inclined to think that issuing ipads to jury members will change the way in which the audience receives information.

Richard Gibbs said that a key point is efficiency and asked whether she had any sense of recognition that efficiency in the court system will decline. He wondered if the research would have any impact on defendants and said that, in his experience, he has encountered attitudes that suggest that the information being given by defendants and other witnesses in criminal proceedings is not treated as seriously if it is being delivered via video link. Professor Cheryl Thomas replied that her research does not cover the experience of defendants appearing remotely, but thanked Richard Gibbs for raising the point as it is an important one and she was not aware of any research that looked into the perception of defendants. Defendants appearing in court remotely also raises questions about how counsel communicates with defendants and about the perception of families when the defendant hasn't appeared in court. Does that inhibit the family having a voice in proceedings?

Richard Gibbs returned to his point on efficiency. He says that he frequently arrives at court to find the video link set up showing only an empty chair. The other day he got just three minutes for a six count indictment. He asked whether there is any recognition in the research that digitisation is not as efficient as it could be. Professor Cheryl Thomas replied that she did see this issue some research on this subject was raised in the Leveson Review which, to some extent, looked at the delays created by technological issues.

Philip Marshall QC said that he wonders whether there has been any appreciation that professional judges may have been just as affected by the matters considered in her research. Professor Cheryl Thomas replied that she is not aware of any similar research in relation to judges. She made the point that everyone is subject to short-cutting and stereotyping.

Eleanor Mawrey said that certain defendants would rather give evidence in person rather than via video link and she asked whether Professor Cheryl Thomas's research has considered the point that many defendants in prison don't want to come to court as they cannot guarantee that they will return to the same cell due to overcrowding. Professor Cheryl Thomas said that these were important concerns and reflect the balancing of efficiency needs alongside fairness and justice.

The Chair gave thanks to Professor Cheryl Thomas saying that he could understand why she is an honorary Silk.

7. Bar Human Rights Committee

The Chair introduced the next speaker, Kirsty Brimelow QC, Chair of the Bar Human Rights Committee (BHRC) saying that he wishes to set the scene as to the history of the committee as many members of the Bar Council may not necessarily understand the link between the BHRC and the Bar Council.

BHRC was founded in 1991, by the former Chairman of the Bar, Anthony Scrivener QC. It was set up to fill the vacuum of a Bar committee dedicated to human rights and its original core aims were to support judges, lawyers and others being persecuted or prevented from protecting the rule of law where it was under attack by governments. As time went on, the view was taken that it should have some independence from the Bar Council. However, the Bar Council continues to fund BHRC c£35k per year. The Chair acknowledged that this arrangement is not something that has been given much thought in recent years but he explained that he had wanted to have a conversation about it as 'times are changing'. Saying that now would be a good time to reassess the relationship, he explained that he had invited Kirsty Brimelow QC to come and speak about BHRC's work.

Kirsty Brimelow QC thanked members of the Bar Council for the invitation. She acknowledged that some members of the Bar Council would know more about BHRC than others and explained that at the time it was set up by Anthony Scrivener QC, there was no other body that dealt with Human Rights issues in relation to lawyers in other countries. The Bar was not doing enough and it was felt that support was needed.

The funding from the Bar Council covers a member of staff who carries out all the administrative work, sets up meetings and organises fundraising events. Under Alistair McDonald QC, Chairman of the Bar 2015, a trial observations fund of £5k was added.

Kirsty Brimelow QC summarised the work of the BHRC over the last two years. The BHRC has provided training, resources and guidance to support the development of human rights protections in countries where legal systems are lacking; raised awareness of human rights abuses through trial observations and fact-finding missions; and intervened in human rights cases by submitting amicus curia briefs in domestic and international courts and sending letters of concern to government officials in various jurisdictions.

The BHRC produces a bi-annual report and monthly bulletin. BHRC membership comprises some 500 barristers and law/Bar students in England and Wales. Kirsty Brimelow QC explained that she has chaired the BHRC for the last five years and during this time the membership has expanded significantly as originally it was more of a smaller 'club'. Concerned that its membership was focussed on who members

knew rather than genuine expertise, Kirsty Brimelow QC worked hard to change the make-up of its members and to expand its reach more widely to the circuits.

Kirsty Brimelow QC went on to cite examples of the work of BHRC. For example, BHRC filed an amicus to the Inter-American Court of Human Rights regarding the continued dismissal of three judges in Honduras who joined a demonstration against the coup in 2009. Although the IACHR had previously ruled that their dismissal violated the judges' rights to freedom of expression, association and judicial guarantees, the Honduran government claimed they could not reinstate the judges because the positions had already been filled. In its amicus, BHRC challenged the Honduran government's position that reinstatement was impossible and underlined that enforcing the previous judgement was essential to upholding principles of equal justice. The IACHR agreed with BHRC's position and found the only appropriate remedy was reinstatement.

BHRC has also worked extensively on the case of David Ravelo Crespo, a Colombian human rights defender who has been in prison since 2010. It has submitted two amicus briefs in his case, the most recent being in 2017 to the Supreme Court of Colombia. BHRC argued that the trial fell far short of Colombian and international legal standards and called for a swift and just end to the process. BHRC had previously submitted a brief in the case in 2013 to the lower tribunal. In June 2017, David Ravelo Crespo was released from prison after 7 years of incarceration. However, his legal battles to clear his name continue and he continues to fight to prove that the charges and conviction against him were politically motivated.

BHRC is currently working on an amicus for Guantanamo detainees calling for the military courts to consider evidence collected by torture inadmissible under international law. BHRC has also conducted extensive training on children's rights, particularly in Nigeria, with over 300 judges and magistrates trained in 2016 alone (and at least 500 lawyers, social workers, Judges, Magistrates, National Human Rights Commission, NGOs, government lawyers since 2013). The aim is to bring international and regional law to Nigeria to assist with access to justice for children. The concentration is on access to justice for children in the North East in the camps containing those displaced by Boko Haram.

Trial observations at some 15 separate hearings in the last two years have taken place in countries including Turkey, Egypt and Cameroon with some success. Although, it is difficult to assess accurately the impact these have had, BHRC has been made aware that trial observations add pressure, especially in Cameroon where a number of Cameroonian protesters were recently released from prison. Similar work is ongoing in Bahrain.

Kirsty Brimelow QC explained that while NGOs and other organisations are working on human rights issues, BHRC brings expertise in the form of a whole range of experts across Human Rights Law. Praising the International Committee of the Bar Council for its great work she claimed that there is little overlap in terms of work. There are some links with the Law Society but the work of both the Law Society and BHRC tends to complement each other rather than overlap. For example, BHRC has been able to assist with referrals from the Law Society. Similarly, the Bar Council has received complaints in relation to BHRC's work on Israel and the Occupied Territories and again the relationship has worked very well. The status of BHRC is often reconsidered but BHRC members think that it works.

Kirsty Brimelow QC finished by explaining that at present the administration is spread across some five chambers but BHRC would like to expand this and it would like to improve its communications with the Bar Council. More recently BHRC has asked the Bar Council to jointly sign letters of concern and it would hope to see more coming the other way.

Gordon Nardell QC said that he was aware that there could be potential for conflict between the Bar's business development and the work of the BHRC. A number of the jurisdictions that the BHRC works in are areas of Bar business development work. Explaining that he is not sure that the message regarding the distinction always gets through, he reported that he had recently attended a meeting where someone made a comment that demonstrated they had misunderstood and suggested the development of some protocols. Kirsty Brimelow QC acknowledged this as a great idea and said that she thinks that much more could be done to 'join up' work.

The Chair said that, for practical reasons, there may be an argument for bringing BHRC back into the Bar Council and the financial implications would also need to be addressed. He reassured Kirsty Brimelow QC that no adverse decision would be made without consultation with BHRC. Kirsty Brimelow QC replied that it would be difficult for BHRC to function without the funding from the Bar Council.

Thanking Kirsty Brimelow QC for taking the time to speak to members of the Bar Council, the Chair reported that she had received a personal commendation for her pro bono work at the Bar Conference and described her work in Colombia as 'extraordinary'.

8. Bar Pro Bono Unit

Jess Campbell, Chief Executive of the Bar Pro Bono Unit (BPBU) thanked Bar Council members for inviting her to present her BPBU yearly report. She explained that she has been in the Chief Executive role for 2.5 years and that this was her third report to the Bar Council. Speaking candidly, she said that, despite the 'wonderful training and

experience' she had gained from 5 years on the Bar Council staff team she had 'known nothing' when she took on the role and had spent the first 18 months getting to know the sector and working to become a CEO worthy of the work undertaken by the Unit and the Bar Council. She said that she is slowly progressing to that point.

Reminding members of the Bar Council that she had restructured the Unit last year, Jess Campbell explained that the restructure had changed the way in which the Unit's processes run and hired a dedicated fundraising and communications team (of two). The Board subsequently approved the decision to operate a business and plan of research and understanding throughout 2017.

The Unit saw almost a 30% increase in applications in the three years following LASPO. Much of the emphasis of the Unit's work had been on applicant management and not on volunteers or allocations. This is what led to the large-scale changes in process and a digitisation project. Inevitably there was some 'slow down' in output as staff learnt the new processes, but the 'process of discovery' also highlighted some further problems with the system used to record statistics, communications data and interaction with the Bar. However, it also led to some tangible wins including funding:

Major funders:

- £244.4k from the £30 initiative (over 50% of the Bar)
- £93k from the Bar Council for BPBU and Bar in the Community
- £60k from the Inns

In the last year, the Bar Pro Bono Unit has been able to reclaim gift aid of Gift aid: nearly £40k. COMBAR, Employment Lawyers Association (ELA) and, for the first time The Legal Practice Management Association (LPMA), have all made donations and £31k was raised by the Legal Walk.

Some 15 chambers donated to the work of the BPBU whether through quizzes, events, profits from publications or straightforward donations. In addition, 121 individual donors have made contributions and there are some grant donations, namely:

- Legal Education Foundation (LEF) to digitally future proof the Unit and for
- LEF Justice First Fellowship
- Trinity Chambers in Newcastle

The BPBU's annual budget now runs from April through to March and the Unit is careful to use its money wisely. This year, in quarter 1, the BPBU:

- Launched its first Reviewers Evening to engage with its most senior and experienced volunteers;
- Began a strategy to better serve its volunteers;

- Was the charity partner for the Employment Lawyers Association dinner.

In quarter 2, the BPBU:

- Reviewed its digitisation project in line with the grant bid for LEF to ensure that it was within scope and there was a clear direction of travel. When it became clear that this was not the case, it worked with the Berkeley Partnership to revisit and redefine the scope and need of the project and wider business;
- Hired Both Associates to do an audit and review of its brand in line with the digitisation project to ensure that the website is at its most effective visually;
- Were charity partners for the Employed Bar Awards and ABC Chambers solutions golf day; and
- Ran a pilot of the new online application form to obtain and understanding the digital literacy of applicants.

In quarter 3, the BPBU:

- Completed its development of a Litigants in Person Support Strategy three year strategy; and
- Hired a project manager through the LEF grant to complete the digitisation project.

Looking forward, the BPBU will launch a pilot of the reviewers online portal.

In other news, National Pro Bono Week proved very successful, in particular the Bar Council event on poor decision making in tribunals and a Recognition Evening for young barristers who were carrying out extraordinary pro bono work for the stage of their career. The BPBU is making a gift aid claim that will add around £20k to donations received from the Bar and is beginning its £30 initiative campaign. A Christmas fundraising event will take place at Temple Church on Monday 18 December.

Jess Campbell finished by explaining some of the outcomes of the work of the BPBU over the last year. These were listed as:

- 3,747 active volunteer counsel on its panel (44% increase)
- Another increase in applications since 2016 of almost 5%
- Between January – October 2016, the Unit received 1929 new applications, not include the numerous requests for assistance received from current applicants who seek further assistance
- Of the applications received and reviewed positively, the statistics are apportioned as below
 - 32% Family

- 17% Employment
- 10% chancery
- 4% housing
- 6% immigration

9. Bar Pro Bono Committee

In the absence of Alison Padfield, Chair of the Bar Pro Bono Committee, Phil Robertson, Director of Policy, presented the Bar Pro Bono Committee report. Pointing out that Jess Campbell had already provided a good summary of Bar Pro Bono work, he said that he had little to add to the written report attached as Annex 5. He did however say that, on behalf of Alison Padfield, he wanted to mention that the Pro Bono Hub has been created to host materials and schemes that exist. It has not been updated for a while and the Bar Pro Bono Committee is keen to include more pro bono stories. He asked that members of the Bar Council share this plea with others and encourage anyone with good stories to get in touch.

10. EU Law Committee

Tim Devlin, Co-Chair of the EU Law Committee, presented the EU Law Committee report. He began his report with the memorable words 'Friends, Barristers, EU Citizens - lend me your ears - I come to bury EU law, not to praise it! The evil that institutions do lives longer in memory, the good that they do is oft interred with their bones'. The noble Boris has told you the institutions were ambitious, and that 'withdrawing is easy to do' Tim Devlin said that we have been told that EU membership has permeated every angle of our lives and it is easy to disentangle. It must be so, 'For', he said, 'Boris is an honourable man!'

Tim Devlin said that he had nothing further to add to the EU Law Committee report, attached as Annex 6. The EU Law Committee has been extremely busy. However, by way of illustration of the exercise of leaving the EU, he suggested that it was rather like deciding to strip an old historic house covered with ivy. Asking members of the Bar Council to imagine an old house covered with ivy that has been steadily growing for 40 years, he presented a scenario in which the owner decides to restore the house to its former glory. He asks a gardener to cut back the ivy but in doing so it becomes apparent that the ivy is holding up the back wall and everything else in place. The gardener continues to hack away, after all what could possibly go wrong? However, the project becomes more of a 'patching up' exercise, replacing parts of the house itself. This, explained Tim Devlin, represents the work of the EU Committee.

Explaining that his co-Chair, Alexandria Carr, had been unable to attend the meeting due to ill health, Tim Devlin said that doing the repairs while cutting back the ivy will become an all-consuming task. Regarding the EU Withdrawal Bill, there is no doubt

that the EU Law Committee and the Bar more generally will be giving of their expertise for a long time into the future.

Encouraging members of the Bar Council to read the EU Law Committee report, Tim Devlin said that the EU Law Committee has also been responding to a number of consultations.

11. Proposals for amendments to the elections processes (Standing Orders/Constitution)

The Chair explained that he, and a number of other members of the Bar Council and staff, have held discussions about the wider responsibility of Bar Council members to vote in officer elections; ways of making the officer and member elections more efficient and modern; and, how to encourage greater numbers of votes. In addition, a proposal to allow barristers to vote across all categories has been received from the Employed Barristers' Committee. Five conclusions have been drawn from the discussions and proposal and the Chair said that he would like to discuss these with the members of the Bar Council. They are that:

1. The length of the voting period for officer elections is shortened;
2. Bar Council members should be allowed to cast their votes for the officer elections electronically;
3. The Returning Officer has a duty to chase those Bar Council members who have not voted in the officer elections; and
4. The Constitution is amended to enable the general elections to be conducted electronically; and
5. The Constitution is amended to allow all barristers to vote in all categories for member elections.

Robert Rhodes QC said that the first four proposals sounded sensible. However, he raised concerns about proposal three, arguing that a returning officer should be impartial. Members of the Bar Council all pay their subscriptions and it seems impertinent that the returning officer should chase individual members to vote. This, he said is 'just wrong'. It is up to the individual member to decide whether to vote, without any pressure.

The Chair said that there are reasons why he couldn't and should not reveal the voting figures, but they are disappointing. The counter suggestion is that someone, delegated by the Returning Officer, emails members individually to encourage them to vote.

Colin Andress argued that there is something disconcerting about the Returning Officer looking at how the voting is going. It is not appropriate. There is nothing wrong with a general reminder email to all members but individual reminder emails will give rise to suspicion. He also suggested that the Bar Council needs to give members something that is worth voting for.

Rick Hoyle suggested that one option is to use the 'big stick' approach and change the Constitution so that Bar Council can 'boot people off where they can't be bothered to vote'. However, he advised that the 'smaller stick' option, where the Returning Officer chases individuals, is better and more proportionate.

Gemma de Cordova said that it is a matter of prioritising and Rachel Langdale QC made the point that non-voting is sometimes a deliberate choice. Michael Hayton QC however, said that, in his opinion, members have a responsibility to vote though he warned that emails are often overlooked and advised that a global chaser email would be preferable to individual ones.

Derek Sweeting QC made the point that those who elect (or appoint) members of the Bar Council are entitled to know whether their elected representatives are participating by voting. He suggested that there might be something to be said for publishing the individual voting statistics afterwards and argued for transparency in this respect.

Leanne Targett-Parker said that she thought it would be better to encourage people to vote. Philip Marshall QC said that people may or may not vote, it is a choice.

ALQC suggested that it was clear that the executive should think further about this particular issue and said that it would be brought back to a future meeting. He suggested that proposals one, two, four and five are adopted.

Nicholas Vineall QC raised a concern about proposal five asking whether it is really a good idea. He explained that, as a self-employed barrister, he would not be keen to vote for employed barristers as he would rather treat them as those with their own special representation. He wondered if the 'clout' of the employed barristers on Bar Council would be reduced if cross-voting were to be introduced.

Lucinda Orr, Chair of the Employed Barristers' Committee, who had put forward the proposal explained the reasons behind it. She said that it would be more logical if barristers were restricted to voting solely in the category in which they themselves fell (i.e. an employed barrister under 7 years in practice, votes in the category for the people standing in that category) but the actual position is that all self-employed barristers can vote across all self-employed categories and all employed barristers can vote across all employed categories. She made the point that over a 3-year period and thus the term someone is voted in for, there is movement between self-employed and employed barristers and therefore a barrister could vote for self-employed representatives and become employed the very next day. She also described it as 'inconsistent' the fact that anyone can vote in a casual vacancy ballot and suggested therefore that the logical solution therefore was that everyone votes across all categories and this was more in keeping with the One Bar Ethos.

The Chair put proposals one, two, four and five to the vote. A change to the Bar Council regulations requires two-thirds of members present to vote in favour of the

changes. At the time the votes were cast, there were 47 members of the Bar Council remaining in the room. 42 members voted in favour of the changes, 2 voted against and 3 abstained. The proposals will be adopted.

12. Any other business

The Chair reminded members of the Bar Council about the important date of Monday 11 December when the incoming Chair, Andrew Walker QC, will be delivering his inaugural address in the Old Hall at Lincoln's Inn. Registration will take place from 5.30pm.

Andrew Walker QC noted that it was Andrew Langdon QC's last meeting as Chair of the Bar 2017, and asked to say a few words. He said that members of the Bar Council would recall that the last year started with a bit more of a bang than usual.

The year started off innocently enough with Andrew Langdon QC, as the new Chair, outlining a few themes from the year:

- 1) A focus on the core of ordinary practitioners and the advocacy at the core of our profession;
- 2) A call, in relation to court reform, for less evangelism and for more attention to where some of it may be leading; and
- 3) A personal plea to draw attention to the iniquities of immigration detention.

Andrew Walker QC said that while members of the Bar Council heard a great speech, and gained a personal insight into 'what makes Andrew Langdon QC tick', they should have heard the sound of senior noses being put out of joint in relation to court reform.

Listing the Chair's achievements over the year, Andrew Walker QC said that Andrew Langdon QC has continued as he started and has remained true to his initial vision throughout his year. He has captured the mood of the profession while steering the Bar Council deftly in the direction that he judges to be right. He has led from the front, challenging those in power and those with power, focussing on what he thinks right and fair. He has managed to set the agenda, not just for us, but for others. He has shown us what great advocacy looks like and how effective it can be. He has caught our attention and the attention of others we need to influence and he has argued our corner, and the corner still occupied by the Rule of Law, with passion and skill. Lastly, members of the Bar have greatly enjoyed reading the Chair's column in Counsel magazine knowing that in a few short paragraphs he will make us both think and realise what we need to be worrying about.

Directly addressing Andrew Langdon QC, Andrew Walker QC said that it had been an honour, a lesson and a very great pleasure to work with him 'in action'. Admitting that he has 'looked on with deepest admiration' Andrew Walker QC said that

whatever the circumstances, Andrew Langdon QC has acted with warmth, humour and unstinting commitment to the Bar.

Andrew Walker QC drew his address towards an end saying that although Andrew Langdon QC will always be a Western Circuiteer at heart, albeit one less simple than he would like others to believe, he has come a long way indeed to the point of having become the very best ambassador for this Council, both in what he has done and in how he has done it.

Finishing by describing Andrew Langdon QC as 'a Chair of stature, in all respects, that the Bar deserves', Andrew Walker QC thanked Andrew Langdon QC on behalf of members of the Bar Council and the whole profession, for all he has done, and for all he will continue to do until he is 'released' at the end of the year.

The Chair thanked Andrew Walker QC for his words describing them as 'embarrassing but nice to hear' though he added that it felt too early to be saying goodbye with six weeks still to go. He finished by saying that at a time when the Bar Council's relationship with the Regulator and the Inns couldn't matter more, he could not think of a better person than Andrew Walker QC to hand over to.