

Minutes of the Inaugural Meeting of the 2011 Bar Council held at 1730 hrs on Thursday 2 December 2010 at the Bar Council Offices

Present:

Edward Garnier QC MP - Solicitor General
Nicholas Green QC - 2010 Chairman
Peter Lodder QC - 2011 Chairman
Andrew Mitchell QC - Treasurer
David Hobart - Chief Executive

The 2010 Chairman offered a warm welcome to the Members of the 2011 Bar Council, and to a number of guests.

1. Apologies

The following Members of the 2011 Bar Council sent apologies: Attorney-General, James Dingemans QC, Chantal-Aimee Doerries QC, Malcolm Davis-White QC (represented), Martin Griffiths QC, Maura McGowan QC, Stephen Nathan QC, Richard Atkins, Tom Bourne-Arton, Kerry Bretherton, Ian Bugg, Nicholas Burn, Glen Carrasco, Tom Crowther, Amanda-Jane Field, Philippe Freund, Peter Grieves-Smith, Taryn Lee, Melanie McIntosh, Lucinda Orr, Deana Smith and Nick Worsley.

2. The General Council of the Bar 2011

The meeting noted the Bar Council membership for 2011, at Annex 1 to the Agenda.

3. Bar Council Meeting Dates For 2011

The meeting noted the dates for the 2011 Bar Council meetings, at.....Annex A

4. Bar Standards Board Report

Baroness Deech was minded not to give an update on BSB affairs. That could wait until the January 2011 meeting. However she had some observations to make about the Chairman of the Bar.

One year was too short. A new man, very occasionally a new woman, every year was not an ideal model of governance. Nick Green QC had been an exemplary Chairman. Much as it had been lovely to work with his predecessor, Desmond

Browne QC, it had been his successor who had had to deliver in 2010 the independent BSB. That this process had been successful was in large part thanks to Nick Green QC. The context had been novel. A new Coalition government with its need to make legal aid cuts had tested everyone. The Chairman had simply got on with the task, and had not just held his head in his hands in despair. He had travelled the UK and the world on the Bar's behalf, and he still had hair to show for it. He had been terrific to work with, and the BSB wished him well for the future.

The new Chairman, Peter Lodder QC, was a new man at a different time. The Times' article had referred to the 'Bar down to earth'. We hoped for a successful year, and expected the new Chairman to be safe and courageous.

5. Inaugural Speech of the Chairman of the Bar for 2011

The 2010 Chairman introduced his successor with Liam Byrne's post-election quip: "there's no more money - good luck".

Introduction

There was no legal tradition in my family. In so far as there was any tradition it was to be connected to the sea.

In 1876, the ship my great-great uncle (then in his twenties) was serving on was being loaded. He stood with both arms resting on a handrail surrounding a hatchway. The rope broke and a load plunged down, it missed the hatch but crushed his hands and wrists, which were amputated. He was fitted with two metal hooks and discharged with a minimal pension.

He took his telescope and stood each day on the seafront in Portsmouth renting it to passers-by to look at the fleet.

He became known as "Hooks", and he was a great favourite of my paternal grandfather, who, then a boy, would occasionally go with him to the pub. Hooks was highly skilled at sliding a pint glass across the bar with one hook so that it dropped into the middle of the other hook without spillage.

No doubt much practice had made him perfect.

As a child I was equally fascinated, especially by the story of the youth who thought it would be easy to snatch the pouch in which Hooks kept his takings. To his terror he found himself lifted off his feet with the point of a hook pressing uncomfortably under his chin.

The pouch was quickly released.

This was an object lesson to me in facing up to significant challenge.

It is also a part of my heritage of dealing with adversity, which I hope will guide me in my leadership of a changing Bar in these uncertain times.

(Although I acknowledge that for a family to take over 100 years to move from hooks to a horse hair wig doesn't appear to be a speedy change.)

In a different way we face major challenges as professional lawyers concerned for justice.

Those challenges are:

1. Access to justice
2. Continuing recruitment
3. Providing a realistic future

1. Access to Justice

The Government is conducting the most radical review of legal aid and the provision of legal services in the history of legal aid.

All lawyers, particularly those who are publicly funded, are fearful of the effect of the cuts proposed by the Ministry of Justice in the Consultation Paper issued on 15 November. The proposals are wide-ranging and they are brutal.

It goes without saying that we are aware of the enormity of the fiscal problems and that the justice system has not been singled out for this excision, many other areas of public spending have been identified for severe reduction. But for justice these are the latest in a series of progressively deeper acts of surgery that commenced many years ago. There never was a time, in recent memory, when a government pledged to invest more money into our system; instead we have had a litany of reviews which, whatever their title, and regardless of political hue, have always been euphemisms for slashing the budget.

One reminded of Zsa Zsa Gabor:

"I am a marvelous housekeeper. Every time I leave a man I keep his house."

In his ministerial foreword Ken Clarke is perhaps more candid than most in describing the current consultation as "*an opportunity for fundamental reform*".

Our concern is that fundamental reforms do not damage more than they achieve. We are concerned about the impact of recent proposals on access to justice:

i. The withdrawal of legal aid from vulnerable families with matrimonial and social welfare issues;

ii. the risk that further reductions in criminal legal aid payments will drive away good quality practitioners;

iii. the effect of funding cuts on the fabric and functioning of our courts: Justice is severely compromised when it is delayed as a result of an insufficient number of courtrooms, insufficient numbers of staff, or inadequate resources; and

iv. finally when dealing with the wider consequences to justice - the adverse impact on the real achievements in the diversity profile of the Bar.

And may I dwell for a moment upon what has been achieved by the Equality and Diversity Committee, and pay tribute in particular to the work done by Ingrid Simler QC, who has been the chair for some years. The Bar's first equality and diversity code was drafted in 1995. The Bar was in the vanguard of the development of these policies in the professions. These principles are an integral consideration in everything we now do. The results of this open-minded approach were recognised in the 2010 BSB report finding that:

"The Bar shows higher ethnic minority participation than the economically active population with higher qualifications."

and

"The Bar shows higher female participation particularly among new entrants, than the professional employment sector at large."

We can be proud of these achievements. We must also be vigilant to ensure that these advances do not become the collateral damage of the cuts.

We will continue to strive to be a profession that not only serves but also reflects the society it represents.

I have mentioned the implementation of Jackson. I appreciate that there are differing views on this topic. Some reactions remind me of the sign outside a Spanish wine bar - *Try our sangria you won't get better.*

In responding to Jackson, the Bar Council knew it could speak with one voice on

case management and cost management but not on CFAs. So a separate consultation on funding was suggested and this is what has happened. CFAs have provided a means of access to justice where there has been an absence of funding. Those practising in this area have made a good case for their continuation but recognise that changes may be needed and the Government appears to see that some flexibility may be necessary. We have appointed Stephen Cobb QC to chair the group responding and we have welcomed contributions from PIBA and PNBA and other interested groups.

2. Continuing recruitment

By continuing to encourage high calibre applicants regardless of background. The issues we will have to address are:

- i. Enormous student debt - likely to become worse with the increases in university tuition fees, so this will become a serious problem;
- ii. pupillage opportunity - pupillage numbers have been steadily declining;
- iii. uncertainty of future based exclusively on publicly funded practice; and
- iv. by upholding and developing the quality and standards of professional performance.

This will be a significant challenge and I am re-assured that when working on it I will have the assistance of Nichola Higgins, the new Chair of the YBC.

3. Providing a realistic future

It is becoming an increasingly difficult struggle for barristers who have an exclusively publicly funded practice and they will have to diversify in order to continue to be able to practise in this field. I know that many do not want to change.

"Because things are the way they are, things will not stay the way they are" - Bertolt Brecht.

However, there is a clear overlap of interest in how we may meet these challenges, I am convinced that the public interest is served by ensuring the successful future of the Bar.

So my objective is to invigorate all of the Bar in the pursuit of new and better opportunities to provide legal services, at home and overseas by:

- i. Finding and developing new opportunities for those who practise at the publicly funded Bar;
- ii. taking up and expanding the current international opportunities for criminal and family work; and
- iii. extending and strengthening the existing international networks for chancery and commercial practitioners.

Traditionally barristers, within reason, have turned their hands to different areas of practice. It is the skill set and the training which define us as much as the practice area. These qualities will always be in demand and we have to adapt them to market circumstances.

The policies I will pursue in order to develop these markets will focus on the intrinsic strengths in the service we provide:

- i. **Good Quality** - in all that we do and particularly in our core function of advocacy - both written and oral;
- ii. **High Standards** - both educational and professional required of the Bar both at the point of entry and throughout practice;
- iii. **Integrity** - upholding our code of conduct, our professional status and maintaining the authority and dignity of the Rule of Law in our courts; and
- iv. **Value** - providing a cost-effective and efficient service to our clients at economic rates.

These strengths are reflected already in our high international standing. Because we uphold the Rule of Law, so foreign nationals and corporations have faith in us. Because our court system is seen to be reliable and trustworthy. And because we have a long history of assisting other jurisdictions.

An example is the support given by the Bar Council to Chinese law students, as an active participant in the Lord Chancellor's Training Scheme. This scheme began 20 years ago. Year after year the best students have come to this country to study at our universities and spend time in our chambers. That group has grown to be a powerful influence in that burgeoning world economy. The Chinese value long-term relations; those alumni are now in the top firms and senior government positions where the value of those relations may be reaped.

And our assistance continues to be sought - only last week I met the Russian

Minister of Justice and his Deputy when they visited London. They wished to discuss the regulation of their fledgling legal profession, and have invited us to assist. By these invitations the Bar Council can open doors, and the profession can follow with their business cards. Of course developing such markets takes time, as Lao-Tzu (the father of Taoism) observed:

"A journey of a thousand miles starts with one step."

Another great strength is the range of vehicles available to deliver our service. We are all familiar with the cost-efficient traditional chambers structure and for some there may be no need to change. But now we have the new models. Many chambers in both public and privately funded work have a ProcureCo and, subject to the Bar Standards Board's consultation on entity regulation, they may move on to SupplyCo. These vehicles are all part of the "Prepare for Change" revolution steered so masterfully and with such vision by my predecessor, Nick Green QC.

He has applied the maxim of the Californian IT guru Alan Kay:

"The best way to predict the future is to invent it."

And that is what we will continue to do, as we will with our Direct Access programme. Direct Access is not new but the increased opportunities to use it are. In April of this year the BSB amended the rules to permit Direct Access in criminal, family and immigration work. We decided that the time had come for the Bar Council to run its own Direct Access training course and I attended the launch of that course in Manchester on 25 November. Other courses have been, or are about to be, run in Leeds, Liverpool, Birmingham and London.

That great thinker Homer Simpson said:

'People can come up with statistics to prove anything. 14% of people know that.'

Nevertheless, I will read you some of the findings in very recent research in this area:

- i. Almost one-third of respondents have instructed a barrister directly in the last two years (32%), more than twice the number in the 2008 research (15%) which doubled the 2006 figures (6%);
- ii. Almost nine out of ten respondents felt that they understood sufficiently (87%) how to access the Bar direct, compared to four out of ten in 2008 (40%); and

iii. Some six out of ten respondents (60%) disagreed with the stereotypical notion of barristers being out of touch with the commercial world.

We are getting somewhere.

Finally in considering vehicles available to the Bar for future expansion, I mention Mediation. Again this is not new but it is about to become much more widespread. It is clear from the Green Paper that this Government intends to place great focus on mediation as an alternative to litigation. There will be a need for mediators in new areas. I have tasked Member Services to draw up a scheme for training and we will also look at the possibility of Bar Council accreditation of mediators.

I remind you that all of these courses carry a discount if you pay the Members' Services Fee.

The mere fact that we can consider alternative models of practice is largely to do with the Bar Standards Board. Over the course of this year I have been impressed by the common sense and practicality with which the BSB has approached its task. We each have our distinct functions, but it is beyond doubt that the good working relationship that we enjoy has been of great mutual benefit. I am especially grateful to Baroness Deech and Sir Geoffrey Nice QC.

Indeed it is a source of great confidence to me that we have the calibre and drive of people and organisations within the Bar Council who will make things happen. I mention in no particular order:

The International Committee and my profound thanks to James Dingemans QC who has devoted a huge amount of energy to making sure that the Bar's voice is heard around the world. In October he helped me to run a seminar entitled "*Practical tips on how to develop an international criminal practice.*" The event was hugely over-subscribed and we will run further seminars in the New Year. At this year's Bar Conference the International Committee sponsored a workshop setting out the growing opportunities that exist in the international legal market. The speakers had experience in China, USA, Russia, Middle East and the International Criminal tribunals - again it was an extremely popular event.

I am very pleased that Chantal-Aimée Doerries QC has agreed to accept the challenge to be James' successor. She brings the experience of practising in a major international set which (in 2005) was the first UK chambers to receive The Queen's Award for Enterprise in the International Trade Category.

It is appropriate to recognise the pioneering work of the chancery and commercial

Bars in seeking out and establishing new markets. Nodding again to Homer, the results are impressive:

A recent survey of international in-house counsel found that 40% use English law to govern their contracts (by way of comparison just 14% favoured New York, the closest competitor) and the numbers of arbitrations and mediations in London rose from 20,000 to 34,000 between 2007 and 2009.

There has been a significant increase in the numbers of chambers marketing their services abroad; some sets reporting currently 20% of turnover from international work, with a target of 30% in the next few years. Pursuing these initiatives some chambers have established permanent international bases in the offices of law firms in the Middle East and USA and are looking now to offices in Asia.

The Access to the Bar Committee: Peter Arden QC has been a magnificent Chair and a difficult act to follow but I am delighted that Robin Tolson QC has agreed to take over that job. Robin is well known as the energetic former leader of the Western Circuit. He is a family practitioner, who played a prominent and influential part in developing ProcureCo and is a member of Outer Temple Chambers where so many new initiatives have been launched. This is a committee whose time has come. I have spoken already of the relevance of Direct Access work. I have asked Robin to come onto the General Management Committee so that we will always have these opportunities in our minds.

The Bar Conference 2011: we all know Taryn Lee as a "can do" and determined member of the Bar Council. She will also be the chair of the Bar Conference for 2011. She is another family practitioner, in her case from Leeds. I have every confidence that she will organise a fantastic conference which will be a show case for the development of these initiatives.

And yet another of these initiatives will be the joint conference of the Criminal Bar Association, the Bar European Group and the European Circuit. Organised by the indefatigable Evanna Fruithof in the Brussels office, "*Justice in an Age of Austerity*" will be a conference in London, to be held in May, to explore the effects of severe cuts on different European jurisdictions. It will bring practitioners up to date with European law developments and will introduce them to opportunities and contacts within the European Union.

The Advocacy Training Council is at the core of the Bar's advocacy training. Set up by the Inns of Court in London, it is world-renowned for excellence. The acclaimed annual International Advanced Advocacy Course at Keble College, Oxford is but one illustration of the work it performs. Another is that many countries look to the ATC for guidance and assistance in their own advocacy training programmes. The

reputation it enjoys abroad cannot be over-estimated. The Bar is the home for quality advocacy, and the ATC is a flagship example of the Bar at its best. A business plan has been drawn up under which the Bar Council will increase support for the ATC.

We owe a huge debt to Charles Haddon-Cave QC who has devoted so much time to developing the ATC and turning it into an export of which we may justly feel proud. It is planned that the ATC in its new form will be up and running by April 2011.

A significant part of the work of the ATC has been in developing Quality Assurance for Advocates (QAA). On this topic it is necessary to make a few things clear. Obviously it is in the public interest to require high standards in advocacy. In privately funded work market forces continue to play that role but the market has less influence in publicly funded practice. But no practitioner would welcome a costly system. Assessment must be conducted in the most cost effective manner possible. On the other hand the assessment must be of sufficient rigor that it commands credibility and will satisfy the public interest.

The Joint Advocacy Group (comprising the BSB, SRA and ILEX) has just finished consulting on a proposal which has judicial assessment at its core. Some, barristers as well as other advocates, have expressed concern about this proposal. But I consider that this is the best way forward - judges are the consumers of advocacy. They can perform the assessment task alongside their existing duties. The cost to the cash-strapped practitioner will be significantly lower than for peer review or role-play (hundreds rather than thousands of pounds) and integrity can be enhanced by an effective appeal structure. Weaker systems will not be acceptable to those who regulate the regulators. It must be better to have a system which all can live with, than have an alien and costly one that is imposed upon us.

I must mention some significant additional activities which uphold and advance our professional values, and do so much for the public image of the profession.

The National Pro Bono Centre opened last month in new premises on Chancery Lane. It is a highly professional operation, with dedicated and effective staff who can call upon an impressive array of barristers who are willing to give their time and services to the many ordinary people who cannot get public funding. They are bracing themselves for an increase in workload.

The Social Mobility Foundation and the Bar National Mock Trials Competition do so much to encourage school children from deprived areas who would never ordinarily consider a career at the Bar. I had the privilege to be at the prize giving which followed the week the SMF students spent with us in the summer. The simple encouragement and the sense of self worth that is created by these projects is truly heart-warming.

The Bar Human Rights Committee and in particular its report published this year on the Rule of Law in Zimbabwe entitled: A place in the Sun. This was prepared after a visit by Desmond Browne QC (Chairman of the Bar in 2009) and members of the Committee. Occasionally at personal risk to themselves, the group produced an extraordinary and hard-hitting report on the state of justice in that country. The authority of this document is such that it has been closely regarded by our Government.

The Bar Debates - next year we will launch the Bar Debates. A series which will examine important topical issues, with the Bar acting as facilitator of these discussions. The first will be on sentencing and will consider the purpose and effect of prison sentences and the balance between custodial and non-custodial disposals. In my view it is right that a respected profession such as ours should be at the heart of debates such as these. I very much look forward to this initiative.

Conclusion

I have spent my practising life in Crown Courts up and down the land: Newcastle, Bristol, Liverpool and Wolverhampton to name but a few. I have known bad-tempered judges and awkward list officers. I know what it is like to travel for a day to find that prison security takes so long that you only see your client for half an hour. I have practised at the real Bar, not simply seen it through the prism of the Bar Council offices in Holborn. But I do see total commitment and purpose among the secretariat, led by the Chief Executive, David Hobart, and his fellow Directors, who work in this building, and I thank them for it. We have a tough year ahead, I have no doubt that they will rise to that challenge and serve our profession well.

I began by talking about my great-great uncle.

My father also joined the Navy as a boy sailor - eventually becoming an officer. When he was only 44, and my sisters and I were still at school, he was diagnosed with terminal cancer. He surprised his doctors by living for three more years, with remarkable dignity.

He also showed incredible bravery. Whilst painfully ill he agreed to participate in uncomfortable medical trials which could not save his life but could help others.

Years later a professor from the hospital wrote to my mother to tell her of a significant breakthrough in treatment. Now few people die from his type of cancer.

I am motivated and inspired by these thoughts. But I am not unique. The Bar, self-employed and employed, is full of people who have led challenging and eventful

lives, formed by character as well as intellect and training.

Many of our clients are in state of acute anxiety: they may have suffered catastrophic injuries, or have been bereaved in dreadful circumstances, they may risk losing their children or their liberty or their homes. The Bar deals with such distressing situations with its special professionalism. It is that professionalism which defines what we are; all of us. We recognise the importance of what we do, and occasionally we can also see the humour. All life is here.

Although I have mentioned a number of people by name, there are many more whom I could name. There are three names I cannot leave out:

It has been fascinating experience to work with Nick Green QC. He has been an extraordinary Chairman. We come from very different parts of the Bar, but we share a dedication to this profession. His commitment to the task has never faltered.

I look forward to next year with confidence, knowing that I will have Michael Todd QC as my Vice Chairman; his vigour and his skill will be invaluable assets in what is now my task.

Finally, Andrew Mitchell QC remains as Treasurer at my special request - he is a rock and a good friend.

For me, it will simply be a privilege to be your Chairman.

David Steel famously told Liberal Party members to go back to their constituencies and prepare for Government. It took a little time but look where they are now.

On his election Boris Johnson said go back to your constituencies and prepare for breakfast.

I ask you as Bar Council members to go back to your constituencies and prepare for change.

Thank you very much.

6. Date of Next Meeting

The next meeting will be held at 1000 hours on Saturday 22 January 2011 in the Bar Council offices.

[Annex A. Bar Council Programme for 2011](#)

