



**Minutes of the Bar Council meeting  
held on Saturday 15 September 2018 in the Large Pension Room, Gray's Inn**

Present:	Andrew Walker QC	Chair
	Richard Atkins QC	Chair Elect
	Lorinda Long	Treasurer
	The Rt Hon Geoffrey Cox QC MP	Attorney General

**Apologies for absence**

Apologies for absence were received from: Robin Allen QC, Richard Archer, Efe Avan-Nomayo, Nicholas Bacon QC, Janet Bignell QC (alternate attended), Robert Buckland QC MP, Ivor Collett, Sarah Crowther, Tim Devlin, Katie Drummond, Karim Fuad QC (alternate attended), Neil Garrod, Christopher Henley QC, Elizabeth Houghton, Tom Leech QC, Samuel Main, Athena Markides, Amanda Pinto QC, Richard Posner, Christopher Rees, Ryan Richter, Alison Saunders, Joe Smouha QC, Andrew Granville Stafford, Sonia Tolaney QC (alternate attended), Jaqueline Wall, Rhodri Williams QC and Greg Williams.

The following did not attend and did not send apologies: Jennifer Agnew, India Burnett, Anita Davies, Birgitte Hagem, Fiona Jackson, Michael Jennings, Nicholas Johnson QC, Paul Mendelle QC, Neil Mercer, Michael Polak, Rehana Popal, Andrew Spink QC, Gordon Stables and Richard Thompson QC.

74 further members attended.

**1. Minutes of the last meeting and matters arising**

The Chair of the Bar welcomed back member of the Bar Council after what he hoped had been a good summer. He informed members of the Bar Council that the new Attorney General, The Rt Hon Geoffrey Cox QC MP (AG) was in attendance and would be addressing them later in the meeting. Welcoming the AG, the Chair acknowledged that he is still new in post and said that he expected that he would be fully briefed by October.

The Chair welcomed new member, Linda Turnbull, 'Subscriber appointed by Lincoln's Inn', to the Bar Council.

Christopher Henley QC was welcomed back to the Bar Council in his new role of Chair of the Criminal Bar Association (CBA). Previously as Vice Chair of the CBA, he had been a member in the category of 'Subscriber elected by the Criminal Bar Association'. He also welcomed the new CBA Vice-Chair, Caroline Goodwin QC. Paying tribute to Angela Rafferty QC, the outgoing Chair of the CBA, the Chair said that they had worked very effectively together over the last year and he wished her well in pastures new.

The minutes of the meeting of 7 July were approved.

## **2. Statement by the Chair**

The Chair said that he wished to draw attention to a few of the issues covered in his statement.

The deadline for the Bar Council subscriber elections is Friday 19 September. The Chair encouraged members of the Bar Council and those that they know, particularly members of the employed Bar, to stand.

The AGFS consultation had been launched and the Chair reminded members to read it and consider responding if they are interested. The Ministry of Justice (MoJ) genuinely wants to know of any other ideas about how best to inject the money into the system.

The deadline looms for the LASPO consultation and a draft has been prepared by the Remuneration Committee. The Chair advised members of the Bar Council not to ignore LASPO and encouraged them to contribute if asked or if they feel that they can offer input.

The Bar Council has received little feedback so far on the new ID card scheme pilot. Phil Robertson, Director of Policy, will be contacting the South Eastern Circuit to obtain this. Though there were initial 'teething troubles', most of them have been corrected and the system is believed to be working well. The Chair asked members to feedback any experiences.

There are eight slots left at the Pupillage Fair. As the Fair is light on criminal and family sets, the Chair appealed to barristers in those practice areas for support and said that reduced fees are available for smaller sets. The Bar Council wants the Fair to be as informative as possible for future colleagues.

Turning his attention to the Law Fairs, the Chair explained that he had written to all the circuits and SBAs asking for support. BACFI, LCLCBA, the Wales and Chester Circuit, Teubar and COMBAR have all offered support but others, to date, have not. Describing the Law Fairs as a good opportunity to get local initiatives involved, the Chair encouraged further involvement.

The '#I am the Bar' campaign, initially intended to run for a week only, is continuing due to its success. The Chair reported that there has been a 'massive' take up and the campaign is going to be extended to the judiciary. He asked members to continue to support it.

The upcoming Justice Week is a new iteration of what was Pro Bono Week. The idea is to expand its remit to justice as a whole. Thanking the Wales and Chester Circuit and the PBA for having already expressed their support, the Chair explained that there are many organisations beyond the Bar Council, The Law Society and CILEx, and more support is needed from the SBAs and circuits. Justice Week is taking place at the end of October.

Saying that the Bar Council's parliamentary work does not get a sufficiently high profile, the Chair highlighted the extensive list of work in his statement. So many committees work on matters that relate to justice and it is welcome that justice seems to be moving up the political agenda. The Bar Council has been producing several reports. The Chair asked members of the Bar Council to show the list of activity to anyone at the Bar who asks what the Bar Council does for them.

Drawing the members' attention to the section on services, the Chair explained that Bar Representation Fee (BRF) is crucial for the representative side of the Bar Council. Representation, Policy and Services (RP&S) costs the Bar £195 per head and the Bar Council asks the Bar for £100 each. The Chair said that he was sorry to say that there are members of the Bar Council itself and its committees who have not paid the BRF. Acknowledging that barristers have a choice to pay, the Chair emphasised that Bar Council and committee members are fully apprised of the work done by the Bar Council. Apologising for 'preaching' he said it is his hope that when a member asks him to put something on the agenda for him, they have paid.

### **3. BSB Report**

Baroness Blackstone, Chair of the BSB, presented the BSB report. She was joined at the meeting by Vanessa Davies, Director General of the BSB and Alex Skirvin, Communications & Public Engagement Officer.

Baroness Blackstone said that she intended to keep her report brief, 'in fact non-existent' in order to allow time for the Attorney General but said that she was happy to take any questions.

Martin Nelson said that he finds it difficult to keep track of when BSB consultations are published and when they close. He enquired as to whether there is an email he can sign up to in order to alert him to consultations. Vanessa Davies replied that there is.

The Chair drew the attention of the members of the Bar Council to the issue of quality assurance and the BSB strategy. He reminded members of what he had said before: that this is an opportunity for the Bar to take control of its own standards. If the Bar

does not take this opportunity, it may be forced to take steps it does not like. He appealed to the SBAs and circuits to ensure that they provide their constituents with the opportunities to keep their skills up to date as well as their legal knowledge.

#### **4. Introduction from the Attorney General**

The AG thanked the Chair and members of the Bar Council for all that they do. He said that he was ashamed to say that he had attended only one meeting of the Bar Council in 36 years of practice at the Bar and informed members that he had been as surprised as them by his appointment as AG. He recalled that he had been appearing at a trial in Southwark, along with Bar Council member Nigel Sangster QC, when the phone rang and he found himself appointed to the position. Assuring members that he intends to be an AG who 'speaks his mind on matters of relevance', he explained that after 36 years in the profession, he loves it just as much as they do.

The AG said that he is aware of the need for a 'conscious voice' to air the interests and concerns of the Bar. Reason, civility, evidence and consistency are to be prized and it is important that the government 'hears the truth in an era of non-truth'. Reassuring members that he would not hesitate to inform the government of the truth, the AG said that he is looking forward to robust dialogue with the Bar Council. Noting that as a backbench member of parliament and a member of the Bar, people such as himself are 'few and far between', he said that the briefings that had been provided by the Bar had been some of the most useful and well informed and reported that he had already met with the Chair.

Turning to his priorities, the AG said that he has only been in post two months but acknowledged that there are some pressing concerns to address. He described himself as 'keenly conscious' that access to justice 'requires help' and said that he had been pleased to see an injection of £15M into the system for AGFS. Acknowledging the Bar's view that this is a 'stepping stone', the AG reminded members of the Bar Council that there will be a review of the whole system in 18 months' time. However, he warned that politics is an uncertain business and said that he had joked with the Director General that he might be the shortest serving AG in history. The response was, 'don't worry, there was one under Henry VIII who lasted one week'. From this, the AG said that he had surmised that a) this is a dangerous job, and b) the use of the powers of King Henry VIII are to be avoided!

On the subject of legal aid, the AG said that he hoped to be a constructive and useful voice. Acknowledging that the Bar knows that judges depend on the quality of advocacy, he said that the integrity of practitioners is an important message to convey.

Describing disclosure as a 'pressing and immediate concern', the AG reported that he will be reviewing the review carried out by his predecessor and hopes to publish this shortly.

Max Hill QC has been appointed as the new Director of Public Prosecutions. The AG said that Max Hill QC is 'deeply experienced'. He is a Head of Chambers, the Reviewer of Terrorism and he is 'ferociously independent'. In addition, the new Director of the Serious Fraud Office (SFO) is Lisa Osofsky. The AG said that he hoped that the three of them can achieve important things as a team.

With regards to the Crown Prosecution Services' (CPS) new systems of governance and superintendence, the AG sought to reassure members of the Bar Council that he would be working closely with Max Hill QC and Lisa Osofsky to ensure good morale, organisation, efficiency and effectiveness within the CPS.

Turning his attention to the AG's Panels, the AG reported that they are looking thin in some areas and he encouraged members of the Bar Council to make others aware. The MoJ is keen to receive as broad a range of applications as possible. There are opportunities to be instructed by the AG and the MoJ is keen for the Bar to take them up.

One 'current and burning' question is around the terms and nature of Britain's exit from the EU. The AG said that he is acutely interested in retaining dispute resolution and will be seeking a bilateral agreement for the Bar.

The AG said that he had provided a 'brief tour' of his priorities and acknowledged that there are others. He finished by quoting Francis Bacon, 1st Viscount St Alban, PC QC, a former Attorney General and Treasurer of Gray's Inn, "I hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereunto", and said that he had long since given up hope of being an ornament but that he firmly intends to be a help to the Bar.

The Chair thanked the AG, cautioning him that the Bar would hold him to everything he had said!

Rick Hoyle thanked the AG for his speech and said that he was sure that it would be well received. He said that he had a specific and unusual question to pose. The last AG was in the process of seeking to release at least £400M from a fund that had been created when an anonymous donor supplied £500,000 in order to reduce the UK's national debt. £400M was never going to pay off this debt and Rick Hoyle said that he wondered whether, if the money is paid back, there might be any possibility of borrowing the equivalent money and paying it to the justice system to help those who require legal aid. The AG said that he had recently had a meeting on this subject and that he was looking into this question. The £400M was bequeathed by the gentleman on the basis that it would be deployed when it had grown to such a point that it would eliminate the national debt. He suggested that the anonymous gentleman had probably expected others to come in with his and said that it raises a question about honouring his wishes. The AG said that he was not convinced that it would be

possible to hypothecate the money for the justice system but that it might be worth using it as leverage.

Andrew Morgan explained that he is a CPS employee who sits on the Bar Council as representative for FDA union within the CPS. He asked that the unions are brought in to provide input when the review of superintendence takes place, saying that they can bring important experience to the review process and that CPS staff are adaptable and able to deal with change. The unions are keen to work with the AG around any review of superintendence and governance and support staff and managers should the AG decide to make any changes that he feels need to be made to restore public confidence in the CPS. The AG replied that it would be churlish to say no given the civility and courteousness with which the question had been asked. He said that he would certainly meet with the unions and informed members of the Bar Council that he is 'determined to turn a new page' with regards to the CPS. Saying that the CPS is not always perceived fairly, he acknowledged that there are many hard working people within the CPS and said that all three members of the team are going to use this as a 'fresh page'.

John Goss made the point that the appointment of Max Hill QC as DPP means that his role of Reviewer of Terrorism is left vacant as a time when it is extremely important. He asked whether the search for a replacement is high on the government's agenda. The AG replied that it is, admitting that Max Hill QC has already 'stuck a pin in my side' by raising concerns in public about the appointment not having already been made. However, it is important that a 'good spread' of people apply and he encouraged Bar Council members to give it some thought.

The Chair said that he would look forward to seeing the AG at future meetings and said that the Bar Council speaks at every panel recruitment event about the Panels. Agreeing that panel membership is a great opportunity, he noted that a 'major effort' has been made to increase the size and diversity of the pools and said that it is important that members of the Bar put themselves forward. Although there will be an interview process, it is a useful step towards widening pools of work that will get practitioners into court. The Chair asked members to take this message back to their constituents and to encourage junior members to get involved.

## **5. Statement by the Chief Executive**

Turning to operational matters, Malcolm Cree reported that the Strategic Plan will be published shortly. This time it will span 5 years.

The Bar Council is beginning to mobilise its campaign for justice which is focussed on 'fighting for what we believe in'. He noted that the Justice Campaign could be a 'thorn in the side' for the MoJ and the AG.

Malcolm Cree admitted that there are concerns about the Bar Council's finances. A lot of money will be spent on the property project for example and engagement with the Bar is a worry. The Bar Council needs to be able to reach out to the wider Bar to increase the number of barristers who pay the BRF.

Malcolm Cree explained that there are 29 members of staff on the representative side of the Bar Council. By comparison, the BSB has 80 members of staff. While there is nothing wrong with this, staffing is a concern as the representative side is 'one brick thin' and cannot afford to lose the expertise and experience that many staff members have.

Looking ahead, Malcolm Cree said that there are a number of events coming up including the Opening of the Legal Year, the Pupillage Fair, the Bar Conference and Justice Week. He appealed for support from the members of the Bar Council.

## **6. Risk Register**

Malcolm Cree reminded members of the Bar Council that the Bar Council risk register is presented to the Bar Council twice a year. He said that his key focus is on the two risks rated as 'high' (of 23 risks on the register, 2 are in the high category). One of these risks, not surprisingly, is about the BRF which is now a current issue and the other concerns compliance / regulatory requirements and arose due to some errors, which have now been corrected, in the immigration service processes. A root and branch review of all processes and services has thrown up some 'operational' risks which are being assessed.

Four risks have decreased because the controls in place are sensible and working. With regards to GDPR, the Bar Council is satisfied that it is 'more or less' compliant. For the risk around self-insurance for the BSB, the Bar Council is confident that the ringfenced reserves are sufficient.

Three risks have been retired.

The Chair noted that the Justice Campaign, when launched as a plan of action, may a thorn in the side of the Attorney General and the MoJ but 'only if they disagree'. To that end, there is a sense that none of them do disagree and the aim is for them to persuade the Treasury of the same.

## **7. Statement by the Treasurer**

Lorinda Long, Treasurer, joked that due to budgetary constraints, the Bar Council could not afford to hire a projector and therefore paper copies of her presentation slides were available! She then went on to update members of the Bar Council on the current financial situation.

The PCF collected was £391k short of original budget - £11.423m (budget) v £11.032m (actual). It will continue to be collected during the year but is unlikely to significantly

close the gap. BRF subscriptions are also £282k short of the original budget - £994k (budget) v £712 (actual). Again, this will continue to be collected throughout the year but it will not be enough to close the gap.

Current forecasts predict other income will be £123k short of the original budget by March 2019 year-end and expenditure is currently forecast to be £155k higher than originally budgeted.

Capital spend will be significantly lower than the original budget due to the planned office move no longer going ahead. Notwithstanding the shortfall in income and cost increases, the forecast cash position has improved due to the savings made in the capital spend for the current year.

Using data from July 2018, the Bar Council has amended the budget forecast. At this stage there is enough information to be able to predict the forecast year end outturn more accurately. The original budgeted deficit was £650k. In May it was thought that the unspent property budget (£1,200k) would bring the organisation back to a small surplus of £44k. However, the drop in income from PCF and BRF has been greater than originally anticipated, and when taken together with the over expenditure (including performance pay 1.5%(budget) vs 3.2% (actual)), this results in a year end deficit of £329k (forecast). Further work will be undertaken by the Finance Team together with the business to further validate and identify ways to reduce this deficit

In terms of risks, other income streams have failed to deliver current forecasts and cost overspends continue unchecked. Lorinda Long concluded by reporting that the Finance Committee will review the project spend in September.

## **8. Draft accounts**

The Chair thanked Lorinda Long. He explained that the Bar Council is required to produce accounts and present them at the AGM and said that he was seeking approval from Bar Council members to sign them. He reassured members that the accounts have been seen by the Finance Committee and approved by the Audit Committee, who are confident in the audit. The Council approved the accounts. The Chair confirmed that he and the Treasurer would sign the accounts on behalf of the members of the Council.

## **9. International Committee**

Amanda Pinto QC, Chair of the International Committee, presented the International Committee Report. She began by wishing members of the Bar Council good morning and apologised for the long length of the report.

The report outlines 23 strands of work undertaken by the International Committee and Amanda Pinto QC noted that it had been a fantastic year for the International Committee. Addressing the members of the Bar Council, she encouraged them to think about, and to encourage their constituents to think about, international work



which can represent a great opportunity to extend practice areas and engage in interesting work.

Amanda Pinto QC said that she would talk about the last year and then to look forward. She began by talking about the last Business Development Mission to Brazil which was part of a three year programme to cement relationships to introduce barristers as a concept to other jurisdictions. International work is making more and more money each year and the pool of barristers is growing. In Brazil, barristers are not well known as a profession, but the country deals with a lot of corruption and has many infrastructure programmes for which the Bar is well placed to help with advice and advocacy.

Following Brazil, the Bar Council – with the government – had missions to Mexico and Kazakhstan. Amanda Pinto QC explained that missions to these countries are in alignment with the values of the profession. Visits are made to countries where the rule of law is weak because practitioners can assist positively with the rule of law and there are work opportunities for members.

Amanda Pinto QC reported that members of the International Committee are hugely involved in Brexit, both on our own behalf, helping the government and more broadly; they are committed to ensuring that England remains a business court and alternative dispute resolution centre after Brexit. The International Committee continues to try and persuade the government to keep the recognition of judgement strand separate from other Brexit negotiations.

Looking forward, the International Rule of Law Lecture will take place on 26 November 2018, shortly after Russian Law Week. The International Committee has teamed up with COMBAR to run a session on 'International dispute resolution: An opportunity for the Bar' at the Annual and Young Bar Conference on 24 November.

Amanda Pinto QC closed by encouraging members of the Bar Council to think about whether international work is relevant to their areas of practice. She recalled that when she first joined the Bar Council, there were very few opportunities abroad for criminal barristers. The landscape is very different now and all Bar constituents should be encouraged to consider such opportunities.

Saying that he thought the International Committee would already have matters in hand, Rick Hoyle reported that the government had issued a 'No Deal Technical Notice' last week that would introduce a lot of changes. He asked whether there is an ongoing dialogue between the Civil Procedure Rule Committee, the Family Law Committee and the International Committee to ensure that the rules are in place. Amanda Pinto QC said that she expected that the dialogue is happening but promised that she will ensure it happens if not.

Nicholas Vineall QC congratulated the committee on its 'extraordinary' list of visits and number of lobbying activities. He suggested that the International Committee

might usefully be more specific about the consequences of this sort of activity if it wishes to encourage people to get involved. Sometimes when an international visit takes place, it is not clear whether it has had any effect and other times it is clear it has. If people are able to say 'it worked for me, I got work out of it', it would be valuable. Amanda Pinto QC said that every time barristers go overseas they are encouraged to fill out a feedback form which includes three work related questions asking 'Have you got any work out of it directly? Do you expect instructions imminently? Has it helped your practice?' International work opportunities are undoubtedly a promoter of practice domestically as practitioners make connections with other people from the UK as well as foreign lawyers. The possibilities for meeting people who will instruct you are great. In addition, the International Committee has figures on increased earnings to the Bar. Amanda Pinto QC explained that the narrow way in which this work is recorded by BMIF means that the figures are actually understated. She urged members of the Bar Council to sign up to the International Newsletter – 5000 practitioners already receive it directly, in addition to those to whom it is forwarded by SBAs etc.

Rachel Spearing said that she had started to sit on the International Committee about a year ago. She informed members of the Bar Council that its leadership has helped a lot of individuals, many of whom are on her circuit (the Western Circuit), but she suggested that there needs to be better visibility of information to make sure that circuits are fully updated. She finished by saying that work is having traction and there is great diversity on the International Committee. Amanda Pinto QC replied that the International Committee organises coordination meetings with the SBAs, Circuits and Inns twice a year to ensure cohesion and to ensure that everyone is informed of the work being carried out by everyone else. She said that she would be grateful to hear about any other suggestions for better visibility of information. *(NB: the Western Circuit has subsequently followed up with a note to Amanda Pinto QC regarding circulation of the International Newsletter to the Circuits for inclusion into the Leaders Briefings of their Circuiteers).*

Speaking of the missions he has participated in this year, the Chair said that crime has been a major aspect. Bribery, money laundering and corruption are examples of areas where there is real prospect of overseas work for criminal practitioners.

## **10. Any other business**

The Chair reported that this was Jenny Josephs' last meeting after seven years as a Midland Circuit representative. He acknowledged that it is a major commitment to turn out on Saturdays and thanked all of those who give to the profession.

The Chair reminded members of the Bar Council that the early bird window for Bar Conference tickets ends today. Saying that he is looking forward to seeing Bar Council members at the Bar Conference, the Chair said that although he had not attended for

the first couple of years after he joined the Bar Council, he has enjoyed it thoroughly every year since that he has been able to make, and he encouraged members to attend.