



The Bar Council

Minutes of Meeting of the Bar Council

25 January 2020, Ashworth Centre, Lincoln's Inn

Present

Amanda Pinto QC	Chair	APQC
Derek Sweeting QC	Vice Chair	DSQC
Malcolm Cree CBE	Chief Executive	MC
Geoffrey Cox QC MP	Attorney General	GCQC
Baroness Tessa Blackstone	Bar Standards Board	BTB
Michael Collett QC	Bar Representation Committee	MCQC

74 further members were in attendance

Minutes	Samantha Anderson	Executive Officer	SA
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Apologies were received from

Robin Allen QC; Kate Brunner QC; Richard Cole; James Corbet Butcher; Mark Fenhalls QC; Andrew Granville Stafford; Cyrus Larizadeh QC; Athena Markides; Catherine McGahey QC; Francesca O'Neill; Marie-Claire O'Hara; Lucinda Orr; Deshpal Panesar; Rehana Popal; Steven Thompson QC; Richard Wright QC

1. Minutes of the last meeting and matters arising

The minutes of the previous meeting were approved.

Post-meeting note: amendments were requested via email following the meeting, which has been completed.

2. Statement by the Chair

APQC welcomed new members of the Bar Council as well as those who are returning for another year. The AG was welcomed, as well as Baroness Blackstone of the BSB.

People have been asking how the role of Chair of the Bar Council has been going. The overwhelming impression is: How varied and important the work we are doing is – a lot is

covered within paper *200125/BC02/CS*; How many significant doors are open to us; the dedication and desire of those at the Bar Council and the staff to ensure things are done right.

It was taken for this meeting, and will be for those throughout this year, that papers have been read in advance.

Congratulations were given to those who have been made Silks.

We are lucky to have Robert Buckland as Lord Chancellor – he understands the process and the pressures. Additionally, the AG who has a good understanding of the pressures also. The CPS are collaborating with us to improve the lives of those prosecuting in terms of fees and treatment more generally and we are working to move these in the right direction. There is extensive work being carried out with the LAA, in relation to Civil and Family fees.

Dr Vanessa Davies (who joined the meeting via FaceTime), after many years at the BSB in an executive function, is retiring. She lives in Scotland and so was not at the meeting in person, though huge thanks were expressed for the work she has done over the years.

The AG stated that he wanted to be in attendance for APQC's first meeting as Chair of the Bar Council. *"Sophisticated, steely, charming and quite convinced that she is the best means to get favourable outcomes"*. The relationship with the Bar and Government is warming up, increasingly cordial and understanding. We have a window of opportunity as a profession, as the new government is keen to bring benevolent changes to our system. As we leave the EU, the Bar will be very necessary to inform the negotiations of new arrangements. There is to be a 'light-touch' royal commission on the criminal justice system, which will be for us to report, to issue interim reports and recommendations. The purpose is to perform practical reforms.

Changes cannot be introduced without resources and GCQC is very grateful to the Bar for its constructive and valuable help in the disclosure review. The AG office is about to issue a public consultation on disclosure and would be grateful to BC members and the Bar as a whole for engagement in the consultation to improve things for disclosure.

GCQC is extremely pleased to introduce Amanda to her first Bar Council meeting; the Bar occupies a special place in the AG's office and should he still be in position, GCQC is keen to introduce changes to the AG panels. There are a great deal of changes within the Bar and the way it engages – constitutional changes that will be carefully thought out and ones that are beneficial to the Bar. Should he survive within his post, he will be in attendance at other Bar Council meetings and stated that APQC deserves to be supported.

3. BSB Report

BTB said that she is very much looking forward to working with APQC over this year.

Dr Vanessa Davies (VD) was a huge help to BTB when BTB first joined the BSB and has done an excellent job. VD will be succeeded by Mark Neale, who will be introduced at the next meeting. He is temporarily working with the Lending Standards Board.

When written, the report reflected 6 AETOs, but a seventh has now been authorised; Cardiff University.

Also, since writing, the BSB have appointed 11KBW to their new Tribunal Representation Panel. They will provide counsel to represent the BSB at the Bar's independent disciplinary tribunals. The BSB began instructing counsel from 11KBW from 1st January 2020.

Michael Jennings asked about the new guidelines mentioned within the report on determining whether someone is fit and proper to become a practising barrister; there is a change in requiring DBS checks at the time of Call. There is concern amongst the Inns of the huge financial burden for the Inns as well as students, who may not secure pupillage as well as those who never intend to practice here but could practice abroad.

APQC confirmed that this was also raised at the Treasurers' Dinner. BTB has questioned this herself and has been informed that it is a statutory requirement. It has been raised with VD as it seems a strange way to operate. The Board had gone around it before BTB's time and it was found that they would be breaking the law if they did not require people, when they are Called, to go through the checking system. It is expensive for people to go through the process and the only suggestion that can be made, is for the Bar Council, and the BSB would be happy to support this, to go to the MoJ and ask them whether there is a way through this, to do the checks when individuals complete their pupillage rather than when they are Called.

Action: The AG will get an answer to the Bar Council next week.

Nick Vineall QC voiced concerns over the appointment of 11Kings Bench Walk as it seems slightly strange to appoint a set of Chambers rather than a panel of individual barristers. It has always been important that Chambers do not take appointments and do not align themselves, so that we can all compete against each other, regardless of what set they are in.

BTB assured there was open competition for this role and that 23 sets applied, which was knocked down to 11 and then a final 3 were finalised. 11KBW came out strongly as they are a large set with a board range of experience. It was added that BTB did not know whether there was consideration for appointing an individual panel.

VD added that it is very normal practice for a public body to have an agreement with a set of Chambers and within arrangement with 11KBW, there are a series of named individuals who the BSB will be using.

APQC asked what would happen if a complaint was made about someone in 11KBW, VD responded with if there are any conflicts, someone would be instructed. APQC added that justice should be done and be seen to be being done.

4. Statement by the Chief Executive

MC began by thanking Lincoln's Inn for the use of their new facilities to host this meeting.

He continued to say that aside from the meetings in the Chair's Statement, we are going to meet with the No10 policy unit, the Home Office, the Commissioner of the Met Police, numerous parliamentary committee members and peers as well as Think Tanks such as the Centre for Social Justice and Crest Advisory.

Our media presence is much greater, and the aim is to continue keeping justice high on the political agenda.

Internally, we still have not had final agreement on the IGRs, so this remains ongoing.

The defined Benefit Pension Scheme valuation has now been agreed with the trustees and it was a compromised deal which means that the deficit has been kept low enough to avoid any PCF increase. Our PCF application to the LSB has been approved and there will be no change to fees or bands.

The LSB's Business Plan has two pieces of work which are of significant interest to us; one is the usage of PCF for permitted purposes and the other is a consultation on ongoing competence of practitioners.

5. Changes to the Bar Representation Committee's Terms of Reference

MCQC sought approval from Bar Council members of the ToRs for the BRC. The purpose of the changes is to represent more accurately the role of the committee and to future-proof the ToRs.

It was confirmed that the changes have been approved by the GMC.

The changes were approved.

6. Improving Accessibility to the Bar Council and its meetings

APQC introduced this by summarising the problems in getting practitioners representative of the whole Bar from standing to be Bar Council Members. She also said she wanted to make it easier for current members to fulfil their role. Having the Bar Council meetings on a Saturday puts some people off becoming Members; people want to be involved but don't want to make commitments to something they may not be able to keep. We need to be seen to be doing something to keep Access to Justice open to all.

A recording from Sarah-Holmes Willis (SHM), a new Bar Council member for 2020, was played:

“Hello Everyone,

I’m Sarah Holmes-Willis, a newly elected member of this Bar Council.

It is an honour to represent my colleagues and work with you. All of you listening today are there to participate, make decisions and lead our profession. For this meeting and the next two, I will be unable to participate.

As a Barrister living and working in York, I am looking forward to joining you all each month and being part of the sub-committees too. Our general meetings on a Saturday mean that I am not losing income, have family to cover childcare, and the East Coast Mainline means swift access within 2 ½ hours or less to London.

The dates of this meeting and the next coincide with major east coastline upgrade; there are no trains in and out of London on that line this weekend. There are no flights that would get me there in time, and a car journey would be an 8 hour round trip. As much as I like a stay in London, I cannot for family reasons, work reasons and disproportionate cost stay the night before or the night after this time. Friday work and Saturday childcare arrangements mean I will also miss our Bristol meeting.

Participation

If we place participation at the heart of our decisions about access to meetings, then we can find innovative ways to enable our members to join in. We need locations, venues and remote access that will promote participation for all.

If we had remote access facilities via video and audio links, with a meeting protocol that manages this; I would be taking part now. If our Bristol meeting had been in the early afternoon, to give time for travel and childcare to be in place, I would be joining you there with ease.

While meeting together in person is the ideal, if we want to see a truly diverse, engaged Council Membership, enabling access in all possible forms is necessary too.

There will be times when we simply can’t be there, and remote access will mean we are not prevented from performing our role and exercising our rights as representatives. With participation as central to our thinking, we will find ways and means of enabling members.

Collaboration

I am delighted at the move to hold some of our meetings around England and Wales. It will help raise the visibility of what we do on behalf of our profession and give us all an opportunity to meet and engage our colleagues that we represent.

Likewise, for the regional Bar Circuits, they can seize the chance to proactively support the Bar Council in that outreach by enabling this effort, and even help us build in social and education events around those meetings to deepen that outreach.

There are other ways the Circuits and the Bar Council can collaborate on access and diversity too. As a regional member of this Council, expenses to reach meetings are significantly higher than if I lived in or around London.

Regulatory and representative bodies normally would consider capped reasonable expenses of those working on its behalf as part of their good governance. The regional circuits already recognise that need; by paying reasonable expenses to their Circuit Representatives on the Bar Council.

I would like to see the Circuits promote diverse and regional participation by supporting the expenses of all of the members of this Council in their areas.

I would also like to see Bar Council representative members in the regions formally invited to collaborate with their Circuit colleagues throughout the year.

Collaboration enables greater representation and outreach; and will support the efforts of the leaders to make the work of the Circuits relevant to their membership.

I am confident that together we can find solutions.

Thank you for listening”

NZ introduced her paper saying that given that this meeting was held in the new facilities of Lincoln’s Inn, it would’ve been assumed that they would be set up for remote access, however due to a dispute with their vendors, these facilities were not available.

It was elaborated that there are a number of reasons given by members for non-attendance, such as caring responsibilities (children, elderly family etc), train strikes, not having the option of sending an alternate for elected members. Additionally, the composition itself makes it difficult to fill vacancies; at the time of the meeting, the Inns and SBA reps places were not all filled.

RRQC, I appreciate the thought and care behind the paper. Referring to point 8; Saturdays are the best day to ensure that members can attend, as Circuit members would be unable to attend weekday meetings due to Court commitments etc., while London members would have conferences and preparation for court the following day. Additionally, with relation to the time of starting, we do this willingly; if we were to start at 11am rather than 10am, it would make things more difficult domestically. Points 25-27 of the paper were referred to; it may make things more difficult to reduce the number of Inn representatives, because there would be a greater chance of their not attending if numbers are reduced from three to two. If it is compulsory for two to attend, there would be difficulties if one of the two could not. RRQC referred to what SHW mentioned, that to have remote access would be admirable.

RLQC, when committees carry out their work via email, is their work still done as efficiently as when they have face-to-face meetings? Would this Council manage to work effectively if there were half the number of meetings?

NZ believes it would make no difference – it wouldn’t make things any less efficient.

LL, given that there are 7 meetings a year, might the answer be to increase the number of Circuit meetings, possibly to 3 out of the 7

NBQC supports the approach to the paper; there should be less, maybe quarterly meetings, with a system that GMC is used to whittle down as much as possible. Apart from this item, we have spent a lot of time in this meeting, on very little.

IBH, technology, rather effectively technology is key. Cannot understand why remote facilities are not available; we need the right tech that is easy to use.

NZ, we don't get to pick the rooms with the Inns and the tech at the BC office is not up to scratch at the moment. There would be things to consider – what is the cut-off for phoning into a meeting, what would the protocol be, how many people do we allow to dial into meetings

APQC, Concern is that those on Circuit will decide not to make the journey to attend in person, that they will phone in. How do we choose how to allocate slots to individuals? I worry that we will lose something if we don't have people in the room. It is a bit more complicated than we might believe.

IBH recommended WebEx and BT remote access facilities, where screens can be shared and there is no issue with the number of participants. A lot of organisations are using these systems.

JD, the face to face meetings allow insight into what is being done that you do not get from the circulated items. Would updates be provided in between meetings if we go down the route of quarterly meetings, do things get debated via email etc.

GS, it is important to get as many people in. We have facilities in Chambers for audio conferences, but it is much better to talk face-to-face – you get to know people and have conversations afterward. If there were fewer meetings, the Bar Council could contribute toward the cost of travel.

NZ, if we reduce the number of meetings, there would be more money that we could potentially use to subsidise travel costs.

ERQC, it is a complicated problem, and also clear that any particular solution may have a consequence somewhere else. Is it sensible to have a small committee on this, who can provide informed advice? Tech is the way forward; it will make a huge difference and a point will come where we will be able to make use of it.

CMQC, would support the idea of a committee and referred to paragraph 22 of the paper on election vacancies being often undersubscribed. She said there were many different reasons why people were not interested in joining the Bar Council or why people did not stand for election. She had tried to encourage people to stand but for example some barristers felt they didn't stand a chance of being elected if they weren't supported by a Specialist Bar Association.

NZ confirmed that casual vacancies go to the Bar Council only, but for full membership, it goes to the whole profession.

Not sure when the number of meetings reached 7 per year, but the constitution states there should be a meeting before each Parliament sitting.

APQC, confirmed that standing for an election and losing is horrible and lots of people don't want to put themselves forward for that reason. The more fundamental problem is that Inns don't have the full amount of people representing them – they are struggling to find people. Many people who went to Amanda who had been approached to represent, refused because of Saturday meetings. If we were to reduce the number of meetings, a prime candidate for

this would be the February meeting; do we want to carry on as we are at the moment or see what it would look like to go two months for the next meeting.

JK, to submit emails in between meetings could prove difficult with the number of people on membership. Online polling could be an option.

EM, to bring in changes incrementally has been the best idea so far, but it would be worth piloting different ideas, so we have evidence based trials to see what works. What would be the experience of those people, what would the experience be to dial in, etc. The effects may not be what we think they will be and if piloted, we can then weigh up the benefits as against the disadvantages from an informed position.

AC, are we sure we are tackling the right problem; are we dealing with existing members not attending, or that people aren't putting themselves forward for membership?

APQC, I think the demographic of who is on BC needs to be improved. There are two different things being addressed yes. If we made things easier for current Bar Council members, then potential future members might be more attracted.

CA, been a member for 14 years. Apart from the changes to the committee ToRs, we have made no decision today. We get reports from the BSB where we are told what they have decided to do, we have no say. When first on Bar Council, there were 10 meetings per year which was then reduced to 7 and now there is a suggestion for 4 meetings. If we are no longer going to govern our own profession, should we even really have the meetings.

LTP, we need to have everyone's opinion on what the individual difficulties are, or whether they want to come to meetings. We need to look globally at the implications for not just these meetings but the committees and GMC, etc. We need to look wider than just the Saturday meetings.

CPW, would echo the view of gathering everyone's views about accessibility to the Bar Council as well as ideas about remote access. Working on the basis that Bar Council members understood what election would entail and would therefore have an expectation to attend meetings in person one would expect the use of technology to access Bar Council meetings to be more of an exception rather than the norm. Given the make-up of the Bar Council as a BAME individual, or someone else from a visibly diverse background, Bar Council may present a challenging environment at first glance but there are certainly people who want to do it. The adverts for vacancies aren't targeted efficiently – CPW found out about Bar Council from a colleague, people simply aren't getting the message.

BHF, when attending a Bar Council meeting on a Saturday, you are giving up a whole day. Even if you're based in London, you may very well have a long journey, as well as self-funded expenses of travel to and from the meetings. Equality and diversity, inclusions, making it accessible to those from other backgrounds is important. From a corporate governance view, we need to look at the number of members, the number of essential

meetings, make recommendations of how we should be performing, how best to deal with things, get a vote, understand what the expectation is – we should have a governance review. A committee on the side could be useful as would the ability to use a substitute as an elected member of council.

TD, We should have the same number of meetings, if not more, and we should have more elected representatives, not fewer. We need to do more to educate people into what the BC does and allow people who are individually elected to have more leeway. There will be 3 meetings over this year that I cannot attend, and so, according to the constitution, you'll possibly throw me off the council, but I have commitments during the summer. The Meetings don't all have to be on the same day. I know of a Lincoln's Inn member who would be keen to represent the Inn but won't come to meetings on a Saturday because he is Jewish. Elected members should also have provision to nominate an alternate, so if you think someone looks promising, who may not think to put themselves forward, you can encourage membership into the future.

JT, travelled in this morning from Manchester to attend the meeting. In terms of what has just been said about sending an alternate, would be a good introduction for new members if they could be allowed. LifeSize video conferencing is a good remote-access facility. You don't get much out of a meeting if you dial in to it, meetings are much more effective in person, although video conferencing would be useful. If we could source child-friendly venues it would help. Although JT isn't suggesting children should come all the time, and she accepts there would have to be limits, for the Inns to say, 'no children', at all makes it very difficult. She brought her children to the Circuit meeting last year, on the permission of the then Chair and NZ and the children were no trouble.

APQC, this is a venue issue. Very few people took advantage of the creche facility that was available to them when the venue was the Bar Council. It doesn't matter where we hold the meetings, it should be whatever is most convenient, to allow for as many people as possible to attend.

MJ, believes that the sittings referred to by NZ in the paper actually refers to legal year sittings rather than parliamentary sittings.

EAN, there is no straight-forward solution and any solution will have its disadvantages. The Bar Council itself may not be the best to make its own recommendations, we may need external help. These issues are not ones unique to us. We should go to an external party to do an internal governance review. A lot of charities do this.

EM, has also been on Bar Council for a long time and every time a re-election comes round, she thinks carefully over whether to reapply. Should we maybe do an exit survey for why people choose not to stand again, this might help us to understand why people leave membership.

NS, people do not know when they should put themselves forward for election. She only knew about the Bar Council through the YBC, having been co-opted via the Anglo-Dutch exchange. If she hadn't taken part in the exchange, she would not know about the Bar Council. People don't know what we do, they don't know when to put themselves forward for election and it is up to the Bar Council members to talk to people. We have a problem with people standing and people often miss the deadlines.

FP, the under 7 years self-employed category is generally oversubscribed and the possibility of not being elected puts people off standing. The entry stage of the Bar is more diverse than at later stages and involvement with the Bar Council at an early stage is likely to encourage members to stand for re-election as they will be familiar with the important work that it does. We may therefore want to consider increasing the number of members under 7 years call.

AM, the CPS, who are not big on using tech, are using WebEx. The management meetings are using this and are successful. A lot of people listen to meetings rather than take part; we could at least try it.

LRQC, the Bar Council meetings are very London-centric. We want to be at the meetings, so maybe having fewer meetings is a solution or subbing people in if we can't attend. If I contact the reps on Circuit who are involved in Bar Council meetings and take soundings as to whether fewer meetings would help, and other Circuiteers do the same, we could then provide a collective response.

It was concluded that the February meeting will go ahead, and we will see if we can bring in a couple of changes, such as a dial-in facility. Additionally, we will pull together a working group to look at the meetings and how to make them more accessible. The real point of the membership is to get the best representation of the profession and we will come up with the best solution at some point.

NZ confirmed that the option of alternates being sent to these meetings for elected members would not be possible, as that would require constitutional changes.

7. Bar Council on Circuit

On behalf of Kate Brunner QC, Circuit Leader, Kate Lumsdon QC said the Western Circuit is delighted to welcome Bar Council members to the Circuit based meeting on Saturday 28th March, which will be held in Clifton, Bristol.

The meeting will start at 11am to allow for people to arrive. Additionally, 10 places have been made available for Barristers on Bar Council, at the Western Circuit Grand Night. The details are included within the paper **200125/BC06/BCC**. Some rooms have been put aside in a local hotel, which just need to be confirmed by those wishing to take them up.

Katherine Duncan added that the YBC are organising to travel up as a group and take advantage of group train fares etc; KD welcomed people to liaise with her in accordance to this.

8. Any Other Business

Celina Colquhoun mentioned the accelerated project on mentoring and Equitable and Briefing. Sam Mercer and Rachel Kryss are moving forward with this. We are incredibly keen to start to deal with the fair allocation of briefs. This isn't a gender or BAME issue, though it is affecting those groups more than others. With the help of the Law Society, the YBC, SBAs, Circuits, Clerks, etc, we are trying to ensure there is a fair allocation of work.

David Joseph QC reminded members of the forthcoming drinks being organised by the Commercial Litigators Forum at the Royal Courts of Justice to launch a fund raising campaign for the National Pro Bono Centre on 26th March 2020. It will be a glittering evening attended by many leading solicitors, barristers and members of the judiciary. More information can be found on the Commercial Litigators' Forum website <http://commerciallitigatorsforum.com/>

KD mentioned the international professional and legal development grant programme of the YBC and gave the 31st January as the first deadline. The YBC wants more people to be involved in the International Bar Association Annual Conference and wants more members to attend that. Additionally, it was mentioned that the Anglo Dutch Exchange will be held in the Netherlands this year.

9. Details of Upcoming Meetings

Saturday 29 February, 10:00, Lincoln's Inn – Old Hall