



The Bar Council

Meeting of the Bar Council

Minutes of meeting: Saturday 18 June 2022 at 10am via MS Teams

Present

Mark Fenhalls QC	Chair of the Bar	MFQC
Nicholas Vineall QC	Vice Chair of the Bar	NVQC
Samuel Townend QC	Vice Chair Elect of the Bar	STQC
Lorinda Long	Treasurer	LL
Malcolm Cree CBE	CEO, The Bar Council	MC
Alex Chalk QC MP	Solicitor General	SG
Baroness Blackstone	Chair, Bar Standards Board	BB
Mark Neale	Director General, BSB	MN
Stephen Kenny QC	Chair, Ethics Committee	SKQC
Michael Polak	Chair, Young Barristers Committee	MP
Philip Moser QC	Co-Chair, European Committee	PMQC
David Abbott	CEO, Free Representation Unit	DA

Members in attendance (listed alphabetically)

Dr Mirza Ahmad; Yaa Dankwa Ampadu-Sackey; Sasha Bailey; Elaine Banton; Minka Braun; Mark Chaloner; Maddy Charlesworth; Sydney Chawatama; Ben Close; Richard Cole; Ivor Collett; Celina Colquhoun; Barbara Connolly QC; Sarah Fearon; John Goss (alternate for Christina Michalos QC); Andrew Granville Stafford; Jacob Hallam QC; Michael Harwood; Neil Hawes QC; Harriet Holmes; Richard Honey QC; Shobana Iyer; Mike Jones QC; Sean Jones QC; Faith Julian; James Keeley; Henry King QC (alternate for Alexander Gunning); Kate Lumsdon; Oliver May; Louise McCullough; Cait McDonagh; Martyn McLeish; Yasmin Omotosho; Lucinda Orr; Reagan Persaud; Jonathan Rees QC; Simon Regis; Robert Rhodes QC; Ryan Richter; Natasha Shotunde; Hannah Smith; Heidi Stonecliffe QC; John-Paul Swoboda; David Taylor; Linda Turnbull; Anton Van Dellen; Charlie Woodhouse QC.

In attendance:

Sally Burnell	Director of Communications and Marketing	SB
Giles Clifton	Head of Public Affairs	GC
Piran Dhillon-Starkings	Adviser to the Chair	PDS

THE BAR COUNCIL

www.barcouncil.org.uk

289-293 High Holborn, London WC1V 7HZ DX: 240 LDE Tel: 020 7242 0082 Fax: 020 7831 9217

Carolyn Entwistle	Director of Services	CE
Ella Morrell	Attorney General Office	EM
Phil Robertson	Director of Policy	PR
Wilf White	Director of Communications, BSB	WW
Natalie Zara	Head of Governance	NZ

Minutes Yvonne Treacy Executive Officer YT

Apologies were received from

Shazia Akhtar; Michael Bellis; David Bunting; James Corbet Burcher; Sahar Farooqi; Alexander Gunning (Alternate Henry King QC attended); Birgitte Hagem; Isabel Hitching QC; Kim Hollis QC; Ben Lynch QC; Christina Michalos QC (Alternate John Goss attended); Kate Spence; Steven Thompson QC; Gordon Stables; Jessica Stevens QC; Philip Stott; Leanne Targett-Parker.

1. Conflicts of Interest

None were declared.

2. Minutes of the last meeting and matters arising

The minutes from the meeting of 26 March 2022 were approved.

3. Statement by the Chair

The MFQC said he would take his statement as read and that the detail of the report is a tribute to extensive work of the Bar Council staff. He did however make particular reference to the following items.

i) Cyber-attack: In early April the Bar Council and Bar Standards Board experienced a cyber-attack. It presented a big challenge to both bodies and in particular those dealing with online operations such as the Authorisation to Practice and MyBar. Thank you to those staff who helped to reinstate the systems and to everyone for their patience whilst these issues were being resolved.

ii) Equality and Diversity: MFQC congratulated the North Eastern Circuit for producing their remarkable equality and diversity film, aimed at encouraging students from diverse backgrounds to consider a career at the Bar. He was pleased to have been invited to attend the premier in Leeds last month and would commend the film highly. He also wished to congratulate Combar, TECBAR and the Chancery Bar Association on publication of their joint report – The Specialist Commercial Bar & Black Inclusion: First Steps.

iii) Ukraine & Afghanistan: MFQC was pleased to report that the matching scheme was now moving forward in that we have started to accommodate lawyers and their families from Ukraine. He would like to thank all the volunteers and staff for making this possible. He has met Ukrainian Bar leaders before and since last BC meeting and their bravery during this time is remarkable. The Ukrainian National Bar Association has set up a donation page to help their fellow lawyers which is being matched by Lexis Nexis and which he would commend to BC members. The link to the fundraising page can be found in the Chair's Statement. MFQC also brought to the BC's attention the continuing work of the IBA in sponsoring Afghan refugees and referred to the relevant section on this in his report.

iv) International: Since the last BC meeting, MFQC has made a number of trips abroad including Vilnius, Warsaw and Brussels. He is currently in Cyprus having attended the Common Law in Europe conference organised jointly by the BC and the Cypriot Bar Association and attended by the common law Bars in Europe.

v) Latest updates this week:

- MFQC said that he gave an interview to The Times on Thursday whilst in Cyprus in response to the Prime Minister's remarks in cabinet earlier in the week where he accused lawyers of abetting criminal gangs. The BC and the Law Society issued a joint statement condemning the PM's comments and his use of certain language which was unacceptable. These comments were made in context of the legal challenge to the government's plans to send asylum seekers to Rwanda which may be touched on later in the meeting.
- With regards to the Criminal Legal Aid Independent Review (CLAIR), MFQC said that he had put out a message this week in response to questions from criminal practitioners asking for his views. He also mentioned that an article was printed in the Law Society Gazette the day before in which Minister James Cartlidge was interviewed about CLAIR. The article said that the government hopes to lay secondary legislation shortly that would see criminal legal aid fees increase by the end of September. MFQC said that this should give effect to the 15% increase across all fee schemes as indicated in the CLAIR consultation. He went on to say that the certainty of having a statutory instrument seems attractive and should bring about greater clarity. However, he does share the feelings of those who say it is not enough, but it is a first step in the right direction. In the meantime, they will continue to push as hard as they can for further concessions.

vi) Alex Chalk QC MP, Solicitor General

The MFQC reported that the Solicitor General was in attendance and was invited to address the meeting. The SG thanked the Chair for the opportunity to speak and commenced by saying how pleased he was that the Chair was in Cyprus at the Common Law in Europe

conference and to hear about the cooperation between the other common law bars. With regards to the issues raised by MFQC just now he would wish to make the following points.

- He recently met his counterpart in Ukraine, Iryna Venediktova, Prosecutor General of Ukraine. She told him how much she appreciates the support she has been offered by the legal professions in the UK and that the amount of goodwill means a great deal to her.
- Noting the reference earlier to the recent comments by the PM about lawyers abetting the work of criminal gangs, the SG said that the core principle of lawyers acting in the best interest of their clients regardless of their personal views, was not always fully understood by non-lawyers. It is what lawyers are meant to do. It can mean therefore becoming a professional nuisance, potentially including towards the state. Throughout the ages good lawyers have frustrated governments and these are principles he is happy to restate.
- The SG said that he did not have very much to say about CLAIR other than his observation that recent government announcements about fee increases and monies going into representation orders by September are positive, bearing in mind the series of Treasury, legal, procedural and practical hurdles that need to be overcome first.

MFQC raised a further issue regarding the European Convention, and in particular how being a party to the Convention was of fundamental importance to the profession and that there are concerns about potential withdrawal. He therefore asked whether the SG was in a position to say something about the government policy in relation to the Convention and whether there had been any changes?

The SG replied there were no changes and that we should and will remain a party to the Convention as to do so was in the UK's interest. It was part of the Good Friday Agreement and also underpins the UK/EU trade cooperation agreement. This remains the position of the government which he hoped would continue.

MFQC thanked the SG for his comments and made the final point that this issue was of critical importance to lawyers on both side of the Irish border and uncertainty around the Protocol and the Convention was cause of concern for many.

4. Bar Standards Board report

Baroness Blackstone, Chair of the BSB, presented the report and commenced by saying that the most important items in the report were the BSB's strategy and business plan. She hoped that BC members would have had a chance to read these documents as the BSB are trying to be as transparent as possible in their work. In particular she wished to mention two matters:

First, they really have listened to those who responded to their consultation about their strategy, and they absolutely agree that their very top priority must be to ensure that they deliver their core regulatory operations as efficiently as they can. While the Independent Reviewer assures them that the quality of their decision-making remains high, they entirely accept that they must improve its timeliness. It was controversial at the time but that is precisely why they sought to increase their resources for the coming year. Although the recent cyberattack has been a serious setback, the BSB knows that it can and must do better.

The second point she mentioned and which she wished to emphasise is that the BSB also mean what they say when they stress the importance of collaboration in achieving what are often shared objectives. They are very conscious that the Bar Council is doing excellent work in the field of equality, diversity and inclusion – like the *Race at the Bar* report, for example - and they must always seek to complement that work and not to compete with it.

BB referred to the Bar Course Aptitude Test and said that they recognise that the BC argued that the test should be retained and that the BSB disagreed. However, where the BSB and BC do agree is that the BSB must monitor training providers carefully to ensure that their own selection of students is fair and rigorous and that the results achieved by students demonstrate that their ability to succeed has been properly assessed.

BB urged BC members to encourage their chambers or employers to take part in the roundtables which the BSB is planning in the Autumn. They want to discuss how best, in partnership with the BC, they can promote good practice by chambers and employers in terms of promoting high standards, ensuring equality and inclusion, countering bullying and harassment; and facilitating access for consumers. Again, this is very much an area where they want to collaborate rather than regulate if they can.

Finally, BB reported that this will be the last time that she attends the BC as she is stepping down as Chair of the BSB next month. She concluded by saying that it has been a great pleasure to work with the BC all over the last few years. Even though the BSB and the Bar Council don't always agree on every issue they do share an appreciation of the vital role that barristers play in our society and of the many challenges which the Bar currently faces. She passed on her very best wishes for the future.

MFQC thanked Baroness Blackstone for the tremendous personal efforts she put in and the work she has done during her time at the BSB and wished her all the best for the future.

The following points were raised:

- Robert Rhodes QC said that he was sure he was speaking for all members of the Bar Council present in endorsing the Chair's tribute to Baroness Blackstone. He then had a question about paragraph 7(9) of the Explanatory Paper relating to the proposed amendments to the BSB Constitution (item 5 of the agenda). That paragraph said,

“we take enforcement action other than disciplinary action”. He queried what ‘other regulatory hearings’ might entail if they do not concern disciplinary matters. Mark Neale, Director General of the BSB, replied that that the phrasing was unclear. He would therefore seek clarification of the paragraph and report back to the Bar Council.

- Samuel Townend QC echoed his thanks to BB for her work over many years and also asked a question regarding the Legal Services Board. He pointed out that the LSB was currently consulting on the proposed regulatory performance assessment framework which would have implications for the BSB. He said that there was no obvious need to change the current regime, particularly when the profession and the BSB were still in Covid recovery mode. He therefore asked MN for his thoughts on the suggestion that there was demand for change. MN replied that, just as it was right for the LSB to emphasise the importance of evaluation as part of regulation, such evaluation should also be undertaken of the impact of assessment framework. The LSB ought to be able to demonstrate that the framework had had a positive impact on the performance of regulators, but such evidence was currently lacking. That said, regulatory performance was important and the BSB executive considered itself primarily accountable to the BSB board in this respect.
- MFQC said that at the last BSB board meeting, the Vice Chair of the Bar, Nick Vineall QC, asked whether the BSB had a recovery plan in place for dealing with complaints against barristers. Was MN in a position to provide an update on this? MN replied that the development of a recovery plan was progressing well and that they would be presenting an action plan to the BSB board at their meeting in July. They accepted that they needed to turn around investigations more quickly than they do now.

5. Proposed amendments to the BSB constitution

GMC was invited to consider proposed amendments to the BSB constitution, presented by MN. MN said that the general point he wished to make is that the BSB is tidying up its constitutional documents and that the paper outlines no substantive changes. The intention was to streamline the constitutional documents and bring them together in a governance manual for ease of reference. MN said that the BSB had wished to fulfil its obligation to consult the Bar Council and hence the reason for putting the proposed changes before the BC now and inviting discussion.

MFQC asked members of the Bar Council to take a look at the paper and to put any comments they may have in writing to Natalie Zara or Yvonne Treacy as soon as possible.

6. Statement by the Chief Executive

Malcolm Cree, CEO, said that the main item to report was an update on the cyber-attack from a few months ago. As BC members will be aware the BC experienced a major cyber-attack in April which affected BC and BSB operations. In agreement with the BSB the Authorisation to Practice deadline was extended to the end of July; MyBar was now up and running again; Grant Thornton and Deloittes have been commissioned to undertake a review of the cyber-attack in terms of what happened, and lessons learnt; and existing plans to move to Cloud storage have been brought forward. The cyber-attack was very disruptive, but MC was pleased to report that no data was lost, and no ransomware demands made. The BC was back on track although it needed to ensure that steps would be taken to ensure it did not happen again. In response to a question from the Chair, MC confirmed that it was indeed a ransomware attack which could have been devastating. He is therefore extremely grateful to staff for spotting the signs quickly and shutting systems down. It was to be noted however that other organisations had been similarly targeted, including solicitors' firms and chambers, with some giving into ransomware demands. The Chair said we need to inform the SBAs and chambers on how to protect themselves from cyber-attacks and asked whether the BC would be providing any guidance. MC said that the BC would be providing guidance pending the outcome of the consultants' report. In the meantime, the BC has published advice from the National Cyber Security Centre on the BC website.

In terms of other matters, it was reported that the new CEO of the Queens Counsel Appointments would be starting in November. MC also attended a meeting, along with the Treasurer, of the Council of the Inns of Court chaired by the new COIC president, Sir Nick Green, former Chair of the BC. One of the items discussed was the Inns of Court College of Advocacy (ICCA) bar course.

7. Treasurer's report

Lorinda Long, Treasurer, presented the Treasurer's report as follows.

i) Audit update

- The annual audit has been delayed due to the cyber-attack and will now take place in July.
- The accounts preparation timeline will be tight but we still aim to have the accounts ready for approval at the September AGM.

ii) Pension update

- The GCB is engaged in ongoing negotiations with the Pension Trustees to arrive at an agreed pension valuation by the deadline on 31 December 2022.

iii) Authorisation to Practice update

- The AtP process has been extended until the end of July due to the cyber-attack. This will have no significant effect on the GCB finances as the majority of barristers had already completed the process by the end of March.

iv) Year End 2022 Management Accounts position

- The year End out-turn at March 22 is a surplus of £1,720k an increase of £1,316k on the budget. The Bar Council surplus was £811k the additional surplus was mainly due to the ongoing effects of Covid and the cancellation of events. The BSB surplus was £909k the main changes being due to additional regulatory income.
- The £759k increase in income has been driven by BSB Regulatory Income. Changes are in hand to reduce the fees charged to AETO's preventing this level of additional income in the future.
- The £183k overspend in staff salaries is due to additional temp staff and replacement recruitment in the BSB and RG.
- The £330k savings in non-staff costs are due to one off savings in the BSB exams team and in the Bar Council due to the cancellation of events (covid restrictions).
- The £410k saving is due to a decrease in the holiday accrual (£434k) back to pre-pandemic levels being partially offset by the increased LSB charge (£24k).

8. Ethics Committee report

Stephen Kenny QC, Chair of the Ethics Committee, presented the report. He said that he would take the report as read and highlight the more significant matters for the last 12 months. He said that it has been an interesting year. At the start of it, the Ethics Committee had no idea that so much of its work would be internationally focused – the China sanctions on British lawyers, the invasion of Ukraine, own sanctions regime and now SLAPPs. On SLAPPs, currently it does not appear that the government will be amending the professional rules of engagement, but the Ethics Committee will keep a close eye on developments. The Ethics Committee has given confidential advice on all of these matters under conditions of strict confidence.

SKQC reported that he occasionally gets a letter from a judge disappointed with ethical advice that has been provided by the Bar Council. One judge last year had complained that his trial had had to be adjourned for several months because counsel withdrew from the case at the last minute on the basis of ethical advice from the Bar Council. SKQC explained that, on investigation, it appeared there was some substance in that complaint. He drew a parallel with the recent case of Daniels (R v Daniels [2021] EWCA Crim 44) in which the Court of Appeal had concluded that counsel had not been professionally embarrassed and should not have withdrawn from the case. SKQC said that, as a result of this, he had been persuaded that matters of withdrawal from imminent criminal trials should be automatically escalated to the barristers on the Ethics Committee, and no longer dealt with

by Bar Council ethical advisers. He had assumed that the members of the committee might receive one or two enquiries a week; but, in fact, the numbers were up to three per day, placing a heavy burden on the committee members. This suggests a worrying degree of the uncertainty around the rules of withdrawal. Consequently, the Ethics Committee has now published advice on withdrawal when professionally embarrassed, has sent it to Heads of Chambers, and is holding a free, online seminar on professional ethics in criminal cases, which he recommended to all members of the Bar Council.

SKQC said that members will have seen mention of a survey in the Ethics Committee report about the use of the ethical services. 49.6% of respondents had made use of the hub or the ethical enquiries helpline. Therefore, the ethics services are, by a considerable distance, the most widely used of the Bar Council services. Breaking that down, 40.7% had used the ethical enquiry helpline directly, the other 8.9% having used the hub. This shows that people prefer to call rather than look at the hub. SKQC said that he would like to see this reversed. He asked that members become familiar with the hub, as almost every ethical dimension is addressed there. He urged those with ethical concerns to start enquiries online, which will reduce the burden on the Bar Council advisors and make time and costs savings. He explained that the advisors are staff who have other roles, but who have to prioritise ethical enquiries.

MFQC thanked SKQC and said that he hoped that the members appreciated the burden of the past few months. Saying that SKQC's comments about staff were well made, MFQC suggested the need to work on a project to get the message out (partly through pupillage, partly through refresher training and partly through discussions in chambers).

MFQC asked SKQC about sanctions licences. He said that he understands that the numbers granted to solicitors are small and that the number to barristers are 'vanishingly small'. Some solicitors say that they don't apply for a licence as it takes four or five days unpaid work to do so, and often there is no reply. When Britain left the EU insufficient thought had been given to this matter and the Office of Financial Sanctions Implementation (OFSI) appears significantly under resourced to meet its obligations.

SKQC agreed that OFSI is understaffed and that waiting times can be very lengthy. Cases have even been adjourned because of this and proceedings are being stalled in those cases where lawyers cannot get a license.

MFQC said that he had written to OFSI 10 days ago and reported there has been no answer. He thanked SKQC for everything he and his colleagues have shouldered over the last year.

9. Young Barristers Committee report

Michael Polak, Chair of the Young Barristers Committee, gave an update on the work of the YBC, focusing on the following projects.

- Life at the Young Bar Report: This was published in January and has been the main focus for the YBC with the recommendations used to inform its work, particularly around the fair allocation of work and bullying, harassment and wellbeing.
- Ukraine and the Baltic states: The YBC has been working with the wider BC on assisting Ukrainian refugees, including a scheme whereby Ukrainian lawyers in London can be taken on as a paid intern to experience life in chambers. The pilot of this scheme is now underway, and this will open to chambers across England and Wales soon. Please get in touch if your chambers are interested in getting involved. In addition, the YBC is looking at the possibility of setting up an exchange between the junior bar and the three Baltic states and will be meeting with the young bars of these countries soon to take it forward.
- Four Jurisdictions Conference: The YBC recently organised and hosted a Young Bar session with the junior Bar Associations of Scotland, Ireland and Northern Ireland at the Four Jurisdictions conference in Middle Temple. The event appeared to be received and as such they hope to make this an annual feature of the conference.
- International Weekend: They are working with the European Young Bar Association and the Law Society's Junior Lawyers Division on a programme for the International Weekend at the end of September, where the aim is to host lawyers from across to Europe to offer new networking opportunities and consolidate existing links.
- Anglo-Dutch Exchange: They met recently with their Dutch counterparts to plan the exchange, which will take place this time across three cities in the Netherlands in early October. The aim is to offer new networking opportunities for junior barristers and consolidate existing links.
- Outreach: The YBC is working with the Kalisher Trust on a programme of sessions for young people to introduce them to a life at the Bar. This will include a mock advocacy session, a visit to the Royal Courts of Justice and lunch at an Inn. The programme will commence in July and run into the Autumn. If anyone has any suggestions or ideas regarding the programme they are welcome to get in touch.
- Small claims in civil cases: The YBC had recently become aware that some County Courts were determining small claims applications on paper without evidential hearings and that this practice could be detrimental to young practitioners if they were not able to undertake small claims trials as well as access to justice. He went on to say that STQC, as Co-Chair of the Legal Services Committee, was looking into this on behalf of the BC and maybe the SG would like to be briefed on the issue. The SG confirmed that he would be happy to be briefed.

MFQC thanked MP for his report and for all the work that he and his committee are doing. He also asked BC members to consider identifying colleagues in their chambers who could engage with and take a particular interest in junior barrister matters and feed into the YBC.

10. European Committee report

Philip Moser QC, Co-Chair of the European Committee, presented the committee report and commenced by clarifying what the committee does. He said that the committee essentially deals with UK and EU relations and EU law where there are implications for UK trade. It engages with stakeholders, primarily around EU/UK trade agreements, and produces consultation responses as well as Brussels News which he commends to BC as it is a very useful resource. All these activities are led by Evanna Fruithof, the BC representative in the Brussels office. It is so important to have someone in situ in Brussels. In terms of specific activities / issues PMQC touched on the following.

- i) They have noticed the continuing difficulties surrounding the implementation of the Withdrawal Agreement's Protocol on Ireland and Northern Ireland which make gaining access to the Commission on EU-UK relationship issues extremely challenging. As the main avenues of engagement are blocked, they have been looking at other options available including direct engagement with the Bars of the member states.
- ii) The committee continues to be actively engaged with various committees and advisory groups on which it has representation. These include the Civil Society Forum (CSF), the Domestic Advisory Groups (DAG), the European Services Forum and various UK/EU profession-based stakeholder groups.
- iii) The committee has set up a new working group to manage and coordinate the ongoing work the Bar now faces in tracking and commenting on government plans to revise retained EU law. Its first action of the was to draft the BC response to the House of Commons European Scrutiny Committee's call for evidence: - "Retained EU Law – where next?" - the link to which can be found in their report.
- iv) In terms of upcoming consultations, they will be responding next week to the House of Commons' European Scrutiny Committee inquiry into the workings and objectives of the UK's Brussels-based EU Mission "UKMis", post Brexit. It was noted that there may be some pressure to reduce the size of the UK's formal representation in Brussels although the main view of those working in this area is that proper representation is essential as it is about being on the ground and making personal connections.
- v) In May the Chair of the Bar paid a successful visit to Brussels with a series of meetings organised by Evanna. It was to be noted that the English Bar has long enjoyed an excellent reputation, batting above its weight, both in Brussels and before the ECJ in Luxembourg.
- vi) With regards to business as usual the committee still does EU law, for example, the planned UK Bill of Rights and a response to the recent MoJ consultation on the review of the Human Rights Act. PMQC said that he welcomed the earlier words of the SG in relation to the HRA and the European Convention.

vii) International travel was now starting up again with several members of the committee attending the Bar European Group's Annual Conference in Salzburg in May. PMQC said he thought it might be helpful to have more of a link up with the YBC regarding any overlaps between some of their respective international projects and that he would contact MP to take this forward.

MFQC thanked PMQC for his report and wished to make the following observations.

i) Based on his recent trips abroad he said that there is a strong desire from European counterparts to continue to work with the UK bars and foster the best possible links. However, this is proving difficult because of tensions around the Northern Ireland Protocol.

ii) The immense amount of work produced by the committee, including Evanna, is to be commended. The SLAPPs paper produced in response to an EU consultation predated the government consultation and being able to send it to them was extremely helpful.

iii) There is a risk of accidental divergence in terms of data protection whereby we may unwittingly diverge from European standards. The committee's ongoing dialogue with EU colleagues will, it is to be hoped, reduce that risk.

11. Free Representation Unit report

David Abbott, Chief Executive of FRU, presented the report from FRU. First, he wished to thank the Bar Council for its continued support of FRU and to other groups within the profession. He took the paper as read but wished to highlight a few points as follows.

DA said it has been a busy year for their services which have seen changing patterns of referral as a result of the pandemic. It was interesting to note that their work has actually become harder in that some cases, particularly employment cases, come to them in a relatively poor state of preparation and where inappropriate claims have been submitted which all takes time to address before they can be resubmitted. It increases the amount of work that they need to do and impacts upon their capacity to take on other work. This situation is as a result of the lack of legal aid for early advice to litigants in person.

In the past year they have trained 850 volunteers and strengthened their partnership with law schools. It was noticeable that being a volunteer had a positive impact on helping students to secure pupillages.

FRU's financial position is challenging, and they continue to manage that situation although they have recently benefited from additional funds. This year FRU is celebrating its 50th anniversary and to mark that occasion they have launched a fund-raising campaign. He would therefore like to take the opportunity to encourage BC members to do what they can to support the appeal.

Overall, FRU benefits from good relations with the BC and BC staff and the various opportunities where FRU is able to extend its profile through events such as Justice Week (which was taking place next week) and through their blogs for Bar News.

MFQC said that he recently met a solicitor who runs a legal advice clinic for students at Leicester University and he wondered therefore whether it would be useful to have an audit of similar services run by universities which may be helpful to FRU, particularly if it results in additional volunteers. It was suggested that they discuss this further offline to which DA said that he would be happy to but, in the meantime, it was worth noting that the Clinical Legal Education Organisers (CLEO) and LawWorks tend to maintain details of the legal advice clinics although in his experience most of them tend to provide advice as opposed to advocacy but all support was indeed welcome.

MFQC thanked DA for his report and the good work that FRU does and echoes the comments by SJQC in the Teams Chat that DA is a star.

12. Committee Co-Options Process

Before she began, Natalie Zara addressed a question from Celina Colquhoun as to why the proposal did not include Working Groups (as it focused on Committees and Panels). NZ said that she had given thought to this but decided that as Working Groups are time limited and formed for one purpose only, it would make no sense to include them. If those on Working Groups wish to invite committee members to be on the group, they are free to do so as the appointment rules around Working Groups are more flexible.

Turning to her paper, written with significant assistance from the Committees Governance Officer, Isi Onwukwe-Anyadike, NZ explained that the idea of co-opting people onto committees (and panels) had arisen as a) there is a mistaken belief that there is already a co-option system in place and b) some of the committees have asked to co-opt members. Although initially sceptical, NZ said that she had been persuaded that, for the reasons set out in the paper, there is a valid need in certain cases. However, she said that she did not wish to overburden members, dramatically increase the size of committees or undo the good work that has been done in creating a fair and transparent committee appointments process. Therefore, the proposal is that each committee/panel may co-opt up to two people at any one time, for a term of one year, renewable once, and that no one person may be co-opted more than once at a time.

James Keeley raised a point about democratically elected members of the Bar Council, saying that these members should be prioritised for committee places. NZ explained that there is a system in place for placing all new Bar Council members onto committees, panels or working groups. She further re-iterated that no co-options system currently exists and while committees may 'invite' other people to attend meetings once in a while (with their attendance noted in the minutes), this is not a formal co-option for a specified length of time.

Members of the Bar Council, who were quorate with well over 20 members, unanimously approved the proposal and consequential changes to the Standing Orders.

13. Sanctions, the Cab Rank Rule and the Reputation of our Profession – discussion

By way of introduction MFQC said that a lot has evolved since this item was put on the agenda for discussion. The focus of the discussion then was about the invasion of Ukraine and how the introduction of sanctions had affected the profession. However, the Rwanda litigation earlier this week has brought the reputation of the profession even more to the fore. The cab rank rule protects the profession, enabling barristers to represent all clients – even those we may find distasteful. A risk to the profession generally may arise when barristers appear to identify themselves with their clients. Leaving aside the criticism that individuals may then attract, it is arguable that such conduct ultimately undermines the protection afforded by the cab rank rule. He would therefore be interested to hear BC members views.

NVQC said he would like to stress that point that it is important that the profession did not breach sanctions. Whilst they were under the impression that only one barrister has applied for a licence to give advice to a sanctioned entity, at a recent meeting with the LSB, the LSB was clearly of the view that there were barristers acting for sanctioned individuals without a license. For clarification NVQC said that you can give advice to a sanctioned person – you just cannot take money for it. Therefore barristers, need to be careful about inadvertently giving advice to sanctioned individuals and accepting payment and to ensure that their chambers and clerks check their internal systems to minimise any risk.

Responding to the issue of barristers and OFSI applications, SKQC said that this was not how the system worked. It is solicitors who take instructions from sanctioned clients and who are therefore applying for licenses – not barristers, unless they are taking direct access instructions. Therefore, the notion that the low number of barrister applicants means that barristers are working outside of the rules needed to be firmly squashed.

NVQC add that the cab rank rule applies to everyone and not an excuse not to take on a particular client, and it is not appropriate for lawyers to associate with their clients and their causes, as said earlier, and therefore a little more caution is required from all of us.

SKQC wished to reiterate previous points made that lawyers should seek to avoid being associated with their clients causes. Lawyers are not professional campaigners. There are rules and guidance in the Code of Conduct which set out how, if at all, barristers should comment on a client's case. The profession should tread carefully.

14. Any other business

i) Proposed action by the CBA

Minka Braun raised a question about the proposed CBA action. She asked whether the criminal bar could expect to receive public support from the Bar Council should the CBA vote in favour of action and those participating in the action are put at risk of professional disciplinary action.

MFQC replied that the CBA guidance for its members on this issue says that anyone who fails to attend court when they are instructed to do so, causing disruption to a trial or hearing, is at risk of being reported – for example, by a judge or the CPS - to the BSB. In such circumstances it would be difficult to see a defence, particularly if they have made a commitment. However, on a personal level he would give advice and support any member of the Bar if approached and able to do so.

SKQC said that the Ethics Committee and BC's ethics advisory service are intended to help barristers avoid disciplinary proceedings; and they give advice to members of the Bar to that end. However, if the issue is about the implications of missing a hearing that one is obliged to attend, which one has been briefed on and have committed to, there is little advice to give: it is likely to be a breach of regulatory and ethical obligations. Furthermore, there may be a regulatory obligation to report apparent breaches by others under the code of conduct as it applies to the reporter. The stakes are therefore relatively high but there are other options available to those looking to take part in the CBA action. For example, barristers could refuse new instructions on the basis that the fees being offered were inadequate. However, if this approach was taken it was important to ensure that it was applied consistently and not used as an opportunity to cherry pick cases.

MB said that criminal practitioners are well aware of the risks involved and the potential breach of the regulations. The question is: If action does go ahead, what can the profession expect from the BC? Is the BC likely to say that it sympathises with the criminal bar and is supportive of what it is seeking to achieve?

MFQC replied saying that much of his time this year has been spent trying to persuade government to increase criminal legal fees as quickly as possible and the sympathy he has for the criminal bar has underpinned everything the BC has done and will continue to do. It is not limited to the issues in the consultation, but about engaging in meaningful future discussions in order to build a sustainable Bar that can service the criminal justice system. He went on to recommend that BC members read the recent speech by the Lord Chief Justice on capacity in the Crown Court and the problems amongst practitioners and the judiciary. MFQC also said that the CBA has representation on the BC's Remuneration Committee which had input in the BC's CLAIR work. Therefore, it is not correct to think that there is a divide between the BC and criminal bar.

ii) Promotion of the Ethics and Practice Hub

Yaa Dankwa Ampadu-Sackey referred to the report of the Ethics Committee by SKQC and agreed that the Bar Council's ethics and practice online hub is an incredible valuable and

useful resource but queried why it was not highlighted more to the profession as a first point of reference rather than the telephone ethics service. For example, the online service could be referred to within the voice prompt that members hear when they call the ethics helpline and also the link to the hub could be pinned as a notice on the Bar Council's main/home page.

In addition, YDAS suggested that it would be helpful if the Chair adopts the practice of sending a welcome letter to new barristers to include information on 'Talk to Spot, the Ethics Hub and any other resources dealing with mental health and wellbeing which is supported by the Bar Council. This was an approach adopted by many other professions and would no doubt be appreciated by those who have just started out.

MFQC thanked YDAS for these very helpful suggestions and would look to take them forward in consultation with YDAS.

iv) Employed Bar Awards 2022

Mike Jones QC, Chair of the Employed Bar Committee, wished to notify Bar Council that the Employed Bar Awards were currently open for nominations but would be closing the following week. If any members of BC knew of someone deserving of the award, they were asked to encourage them to apply.

15. Details of upcoming Bar Council meetings

- Saturday 17 September 2022 (followed by the AGM)
- Saturday 12 November 2022
- Tuesday 6 December 2022 (Inaugural Address)