



**Minutes of the Bar Council meeting
held on Saturday 22 April 2017 in the Sherrard Room, Rutledge Suite, Middle
Temple**

Present:	Andrew Langdon QC	Chairman
	Andrew Walker QC	Vice Chairman
	Lorinda Long	Treasurer

Apologies for absence

Apologies for absence were received from: Simon Broomfield, Shelley Brownlee, Chris Bryden, Robert Buckland QC MP, Alexandria Carr, Celina Colquhoun, Melissa Coutinho, Joseph Curl, Marie Demetriou QC (alternate attended), Katie Drummond, Guy Fetherstonhaugh QC, Kerim Fuad QC, Manjit Gill QC, Fiona Jackson, Michael Jennings, Michael Jones, Jenny Josephs, Christopher Kennedy QC, Anna Macey, Paul Mendelle QC, Gordon Nardell QC, Louisa Nye, Francesca O'Neill, Grace Ong, Lucinda Orr, Thomas Payne, Peter Petts (alternate attended) Angharad Mary Price, Laurie Rabinowitz QC, Ryan Richter, Ben Rowe, Alison Saunders, Gordon Stables, Brie Stevens-Hoare, Derek Sweeting QC, John-Paul Swoboda, Leanne Targett-Parker, Christopher Tehrani QC, Amanda Tipples QC (alternate attended), Nicholas Vineall QC, Greg Williams and the Rt Hon Jeremy Wright QC MP.

The following did not attend and did not send apologies: Alexandra Healy QC, Susan Jacklin QC and Angela Rafferty QC.

69 further members attended.

1. Minutes of the last meeting and matters arising

The Chairman opened the meeting by informing members that he had received an email from Bar Council member, Greg Williams, who sent his apologies as his son, Johann, was born last night. The Chairman noted that it was unlikely that, at less than 12 hours old, Johann had grasped flexible operating hours but explained that it was Greg Williams who had asked for this subject to be put on the agenda.

A change was made to item 6, paragraph 2 of the minutes of the meeting on 4 March 2017. The last sentence will be amended to read 'Impressive work looking at the clinical negligence response was undertaken'.

2. Statement by the Chairman

The Chairman said that he wanted to begin the meeting with a quote from Jean-Jacques Rousseau, “The people of England regards itself as free; but it is grossly mistaken; it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing.” He noted that if Rousseau is right, freedom beckons as parliament will be dissolved next week until the general election on 8 June. The Chairman asked Bar Council members what should be done with this month of freedom.

The Chairman advised members that the agenda of the meeting was substantial. He explained that the piloting of flexible operating hours, item 4 on the agenda, has drawn a certain amount of ire. As to the Bar Standards Board (BSB) report, item 3 on the agenda, he informed members that this will include an update on future bar training (FBT) which is significant with regards to the future of the profession. Moving to item 6, online court reform, the Chairman informed members that they could look forward to Professor Richard Susskind providing a glimpse of the future.

Drawing the attention of members to the Chairman’s statement, item 2, the Chairman said that he hoped it had been read by everyone present. The Bar Council is now in a position where cuts to government departments and Brexit combined have resulted in the disappearance of any meaningful flow from government on matters of importance to the Bar. The Prison and Court Reform Bill has been removed from the immediate agenda and the fate of AGFS, the Green Paper on the family courts, and the Lord Chancellor herself are not known. The Chairman said that although some may say no government is better than an ineffective government, there are serious policy decisions to be taken and it is frustrating not be able to make progress. Returning to the issue of what the Bar Council should be doing in the lead up to the general election, the Chairman suggested it presented an opportunity to develop our own policy objectives.

Announcing that the Bar Council will be producing a manifesto for the general election, he talked briefly about the manifesto produced for the last election saying that it brought into play some important thoughts. There are two obvious topics for a new manifesto:

- 1) What are the minimum asks for a Brexit deal; and
- 2) What should be the priority/focus on domestic issues?

The Chairman said that he wishes to cover three other topics, the first of which was direct access. Following discussions at the last Bar Council meeting, thoughts have been collated and the General Management Committee (GMC) will be asked to give a steer as to whether the Bar Council should a) retain the status quo with regards to its approach to direct access; b) recognise direct access as a growing area and opportunity and invest more time and money in its promotion; or, c) accept that the profession is

still essentially a referral profession and enable direct access but do no more. The views of Bar Council members, aired at the last meeting, have been taken into account.

Turning to the second topic, the continuing pace of reform, the Chairman said that he has concerns that busy practitioners are not seeing the whole picture. Describing the pace as 'quite amazing', the Chairman said that there are four main headings: flexible operating hours, virtual hearings (and all that goes with them), open justice, and, the authorisation of Case Officers. On the subject of virtual hearings, the Chairman referred to the roll-out of cross examination pre-trial of witnesses who had given pre-recorded evidence in chief, and informed members that in many places including on the Western Circuit where he practices, barristers will be asked routinely to cross examine police officer witnesses via a virtual link.

Open justice refers to the possibility of members of the public watching court proceedings via a screen and, with regards to Case Officers, the trend is to be more delegation of judicial authority so that more pre-trial decisions will be made by people who are not judges. The Chairman said that the Bar Council is doing what it can to challenge where appropriate but he cautioned against being constantly reactive. Some of the thinking is clever and should be embraced. He finished by encouraging members to pay more attention to the pace of reform, to contribute where possible and to email him with ideas, thoughts and suggestions.

Concluding the Chairman's statement, the Chairman reminded members of the date of the annual Bar Conference – Saturday 4 November 2017. The line-up of speakers includes Lady Justice Hallett, Sir David Bean, Professor David Omerod and Lord Kakkar. The list of speakers has not yet been published as the Lord Chancellor has also agreed to speak but the general election has slightly unsettled this. The Chairman said that the Bar Council will assume that she, or if she is no longer Lord Chancellor her successor, will honour the commitment.

Richard Posner, referring to the Chairman's earlier remarks on the pace of court reform, said one of the changes he has noticed concerns the way in which witnesses give evidence via a link into a court. While he recognised it might be good for the witnesses, he questioned the impact that it has on the jury and fact finders who are in the court and their ability to assess properly, over a screen, the credibility of the witness. The Chairman suggested that this topic is isolated and perhaps some research done into it and Rachel Spearing informed members that Professor Cheryl Thomas of UCL has done research into the impact on juries of special measures for vulnerable witnesses. She suggested that the Bar Council may wish to liaise with her if a study is to be carried out.

Noting that that the enabling legislation for the online court has been put on hold, Philip Marshall QC enquired as to whether the professional interest groups (PEGs) are still going ahead in the interim period. The Chairman confirmed that they are and the meetings will continue unless he hears otherwise.

3. BSB report

By way of introduction, the Chairman said that members will have seen that the BSB have welcomed the COIC/Bar Council FBT proposal - a two-part model for vocational training. At the same time, other pathways are to remain in place. There is a lot of work to be done to achieve authorisation and it will not happen overnight. Nevertheless, it is hoped that this is the start of a path leading to vocational training that is less expensive for students and results in better prospects of a career for those who complete it. Acknowledging that others have concerns about the number of pathways, the Chairman said that rather than criticising the decision, he wished to welcome the BSB's position and thanked the BSB for listening to the profession. He also paid tribute to those who have pressed the argument and explained that this is a good example of why the Bar Council needs to work constructively with its regulator and to acknowledge the work of the BSB. The COIC/Bar Council model was a contentious, far reaching idea but it now has a chance of reality, and, if it works, it will be fairer and better able to promote social mobility.

Future Bar Training (FBT)

Sir Andrew Burns, Chair of the BSB, who was joined at the meeting by Vanessa Davies, Director General of the BSB, Naomi Ellenbogen QC, Vice-Chair of the BSB, and, Wilf White, BSB Director of Communications and Public Engagement, thanked the Chairman for his opening comments. He explained that the BSB has given FBT a lot of time and attention and is glad to hear the positive reactions. Saying that he agreed that too much choice is not a good idea for students or providers, Sir Andrew Burns talked about current Bar Professional Training Course (BPTC). It remains a pathway, albeit one that requires changes, and he explained that it while it offers some significant advantages it is deficient in terms of cost. There will be changes and providers must justify their submissions.

Continuing the theme of pathways, Sir Andrew Burns said that the BSB thought it important to grow the pathways that are more linked to university qualifications and the possibility that there might be schemes more appropriate to the employed Bar has been left open.

Sir Andrew Burns reported that the BSB did like the COIC/Bar Council proposal which is cheaper and has its attractions, but he advised members that it will take time. The BSB are waiting to see whether the Inns will put forward a proposal either alone, or in conjunction with others. By 2018, the BSB hopes to be able to authorise proposals but it is unlikely that any providers will be able to move as quickly as they will likely have their own accreditation procedures to contend with and they will need to think about changes, the recruitment of staff and marketing. While the BSB should be ready by 2018, it is not known at this stage whether there will be proposals in place. It is likely that it will be some time before anyone knows whether the COIC/Bar Council model will produce all the 'goods' that it promises. The set of pathways are open for

reasons of choice and to allow room for future innovative changes. The BSB believes that the structure should be durable and resilient and have authorised three, possibly four, pathways.

The BSB is clear that the Bar should remain a graduate profession and the aptitude test has been retained. There are proposed changes to the pass mark and the BSB believe that there is a need to review the way in which ethics is taught and assessed.

The next stage will be the development of an authorisation framework and a consultation. There are four criteria against which proposals will be considered: flexibility, accessibility, affordability and sustaining high standards.

The BSB will continue to work with the Solicitors Regulation Authority (SRA) to ensure compatibility as this will make training more affordable and less risky for students. Sir Andrew Burns encouraged members to read the policy paper attached as an annex and announced that some events will be held as well as the usual summer conference with the providers. He finished by expressing gratitude to those who had contributed and said that he hoped the process will be 'as quick as possible'. Those with any questions or concerns were asked to get in touch with Vanessa Davies and her team.

The Public and Licensed Access Review

In other news, the BSB has published the results of its review into the Public and Licensed Access schemes. Sir Andrew Burns reported that both are working well but some 'rough edges' remain. Therefore, the BSB will be reviewing training for public access and revising the information provided to the public.

BSB's Business Plan for 2017-18

The BSB has published its business plan for 2017/18. It is the middle year of the BSB's strategic plan and the BSB's priorities include responding to the recent market study by the Competition and Markets Authority (CMA) into the supply of legal services and England and Wales, and, continuing to implement recommendations

Licensing Alternative Business Structures

On 3 April, the BSB is now able to license Alternative Business Structures – legal services businesses which are owned jointly by lawyers and non-lawyers.

BSB Handbook

A new edition of the BSB Handbook has been published which reflects the licensing of Alternative Business Structures but several other amendments have been made including the introduction of gender-neutral language throughout the document.

Robert Rhodes QC noted that paragraph 3.2 of the BSB report mentioned a consultation about the possibility of changing the standard of proof used in disciplinary trials. Saying that he appreciated that the public needs protection against

dishonest or hopelessly incompetent barristers, he urged the BSB to be slow in making any changes as there is a need to guard against the risk of a professional person being unfairly deprived of the opportunity to earn his living by practising at the Bar. Sir Andrew Burns reassured members that the BSB is not 'peddling' a certain position. At the moment, the criminal standard is only used in certain disciplinary context – the Bar and the Veterinarians. The solicitors are split in their approach. The BSB needs to do some work into this to determine what it thinks. Extensive work carried out by a working group some years ago will be picked up to explore where and how views might have changed.

Duncan McCombe commended Sir Andrew Burns and the BSB for the result of FBT and thanked the BSB for listening to the views of the profession. Saying that that there appears to have been a large number of responses for individual barristers and chambers that are endorsing SBA or Bar Council responses, he made the point that this should not have been necessary as SBAs and the Bar Council represent their members. He asked whether, in future, SBA and Bar Council responses can be taken as responses by their members. To this, Sir Andrew Burns explained that the BSB is not in the business of censoring responses to its consultations. He said that there was a mood to express views and the BSB listened, to which Duncan McCombe countered that the mood arose from the profession believing that they had not been listened to.

Duncan McCombe then raised a point about the review of public access training. He asked that an eye is kept on the costs of training to those who attend as he has had members of the Young Barristers Committee inform him that £450 is expensive and prohibitive. The Chairman pointed out that, given the training is provided by the Bar Council, this may be more of a matter for the Bar Council rather than the BSB. Vanessa Davies said that, nevertheless, the BSB will bear the potential cost of training in mind during the review.

Andrew Granville Stafford asked a question about the public access review. He said that the review appears to include two radical proposals including the possible application of the cab rank rule to public access work. He made the point that there has been no consultation to date and while a survey was carried out, it did not contain questions on these two areas. He enquired as to whether it is the BSB's intention to consult about these proposals, and, if so in which form. Vanessa Davies replied that the review is a research review. If significant changes were to be made, the BSB would definitely consult as it would not be able to go ahead without consultation.

4. Treasurer's report

Lorinda Long greeted members of the Bar Council and explained that her presentation would be in two parts with the first part comprising an update on the year and focussing on the PCF collection. Acknowledging that there were questions raised at the last Bar Council meeting in March about how the PCF collection is used and

apportioned and said that she hoped that part 2, which contains more detail about future PCF planning, will clarify this.

Part 1 – Update and PCF Collections and Subscriptions

Lorinda Long explained that the overall 2016/17 financial results are better than anticipated but there are still challenges. The annual defined benefits pension scheme valuation, which is different to the triennial valuation, is due in May and will likely show a deficit of around £7m, consistent with earlier predictions. Details of the results will follow in July and the final accounts will be presented at the AGM in September.

Lorinda Long reported that a total of £12.7m PCF has been collected against the £12.4m target, thereby allowing the planned pension reserve of £1.3m to proceed as planned. The first annual contribution of £1m has been made and the Bar Council can contribute to the long-term objective of eliminating the pension liability and provide contingency against future PCF risk.

Turning to the BRF collections, Lorinda Long explained that the BRF collections are lower than hoped but further subscribers are expected in April and changes to budget plans are being considered to offset the shortfall. In terms of statistics:

- 84% of barristers have renewed their subscriptions
- 22% of 2016/17 non-subscribers joined in 2017
- 398 retired or unregistered barristers subscribed

Part 2 – PCF Planning to 2020/21

The Chairman explained that, at the last meeting, a question had been asked about how the PCF money is spent. For the benefit, mainly, of the large number of new members, he explained that most of the income from the PCF funds regulatory activities, although, confusingly, some of the PCF funds the Bar Council's wider work where it falls under the definition of 'permitted purposes' in the Legal Services Act 2007. That being said, the representation and promotion work is often outside the definition. The Chairman clarified that while Lorinda Long would be focussing on the PCF collection in part 2 of her presentation, this is only part of the picture.

Beginning part 2 of her presentation, Lorinda Long reported that a financial strategy for the organisation for the period to 2021 was presented in November. She explained that today's presentation would seek to highlight the Bar Council and BSB's PCF requirements and describes the anticipated changes over the next three years. It is the Finance Committee that has responsibility for reviewing these forecasts annually and the next review is due in the autumn.

In 2017/18, £10.3m of the £12.7m PCF collected will fund the Bar Council and BSB. The balance will fund the Legal Services Board (LSB), the Office for Legal Complaints (OLC) and the legacy defined benefit pension scheme.

The BSB budget includes £4.3m staffing, £0.9m other expenses and £3m of shared overheads. Broken down into departments, the figures are:

Professional Conduct = £1.3M, 16%
Strategy and Policy = £1M, 12%
Regulatory Assurance = £1.7M, 20%
Contribution to Resources Group = £3M, 37%
Communications and Public Engagement = £0.4M, 4%
Corporate Services = £0.6M, 7%
Office of the Chair and Director General = £0.4M, 4%

Bar Council budget includes £2.4m staffing, £1.2m expenses and £1.9m towards overheads. Broken down into departments, the figures are:

Legal Affairs, Practice and Ethics = £0.4M, 8%
International = £0.4M, 7%
Communications = £0.4M, 7%
Remuneration and the Employed Bar = £0.2M, 4%
Equality, Diversity and Corporate Social Responsibility = £0.2M, 4%
Regulatory Issues and Law Reform = £0.2M, 3%
EU Law = £0.1M, 1%
Corporate Office = £0.4M, 8%
Donations = £0.3M, 5%
Services = £0.9M, 17%
Contribution to Resources Group = £1.9M, 34%

Other sources of income are used to offset requirements for the PCF. The BSB's total costs of £8.2m are partially met by £0.9M of fees and charges income and the Bar Council's total costs of £5.5M are partially met by £2.4M income from BRF subscriptions, contributions from the Inns and income from services to the profession.

The Bar Council anticipates that the PCF requirements will peak in 2018/19 with the office move. It is likely that underlying costs will reduce from 2019 as new IS systems go live and property costs reduce, however, property costs are dependent on the market at the time.

The Bar Council is planning for the BSB's PCF requirements to reduce by 1% between 2017/18 and 2020/21. Inflationary pressures will add £195k to staffing costs and there will be less fees and charges income to offset PCF (£110k). IS systems changes will reduce BSB costs and shared overheads to £171k and the smaller property footprint will save £203k.

Simultaneously, the Bar Council is planning for a reduction of 9% in the Bar Council's PCF requirements. Inflationary pressures will add £107k to staffing costs and there will be better margins on non-PCF sources (£184k), allowing activity levels to be maintained without PCF. IS systems changes will reduce shared overheads to £124k and property costs will fall to £80k.

The relative proportion of PCF requirements shift is slightly driven by changes in other funding and lower overhead requirements and current PCF collection levels will rebuild financial resilience from 2019. To ensure this, reserves will be rebuilt where the PCF collected exceeds planned spend and the Bar Council will seek to insulate the profession from year to year changes and to keep the PCF level stable.

Lorinda Long concluded by saying that the Bar Council does not expect to change PCF levels for Bar Council and BSB operations until after 2019. However, she advised that:

- This decision will be dependent on financial outcomes and PCF collections between now and 2019;
- The pension element of the PCF is to be considered separately at the time of the next triennial valuation in 2019 and market forces will strongly influence that decision; and
- The optimum level of reserves will be determined in 2019, in light of organisational needs at that time, in order to achieve long term stability.

5. Chief Executive's statement

Stephen Crowne began by announcing the good news that the Bar Council has collected enough money from the PCF collections to confirm its operating budgets. He said that he thought it would be useful to say something about how the Bar Council operates for the benefit of any new members.

The Bar Council delegates its day to day management issues to the General Management Committee (GMC). The main mechanism for executive accountability is the weekly Chairman's meeting which brings together the Officers, Chairman of the Young Bar and senior executives to review progress against plans and make smaller adjustments.

Beneath that the Operational Management Board (OMB), chaired by Stephen Crowne, tracks the detailed business planning process. The operational plan is the control document against which progress is checked and this is used to report to the GMC on a quarterly basis. In every year, it is inevitable that there will be changes to the business plan. This year, for example, has seen the unanticipated topics of Brexit and Court Reform added to the plans. The governance mechanisms outlined therefore become the media through which those responsible make sure that decisions are taken.

Each member of staff has agreed objectives related to the operational plan. At this time of year, the Bar Council appraises the performance of every member of staff against their objectives for the year and the competencies they are expected to demonstrate. The performance of staff members is rated on a four-point scale: needs development, good, very good and outstanding. Decisions on pay are then made by the Emoluments Committee in June.

Stephen Crowne said that he wished to clarify that staff management and pay arrangements are common to the whole organisation, including the BSB, however, the BSB is responsible for its own performance and management.

Stephen Crowne explained that, this year, the Bar Council decided not to launch a new strategic plan, despite one being due, because of the uncertainty surrounding regulatory independence. A new strategic plan to start next year is being discussed internally at present and further discussions will take place with GMC shortly. After that, the Bar Council will be presented with proposals.

Finishing his statement, Stephen Crowne talked about the Authorisation to Practice (AtP) process which generates the vast amount of the Bar Council's money. This is a major team operation and the Bar Council's performance has improved year on year with this year being 'remarkably good'. Only one or two complaints were received about policy issues but there were no complaints about the Bar Council's operational performance. He thanked staff and Bar Council members for their assistance.

6. Online Court Reform

The Chairman informed members that he had recently had the pleasure of meeting Professor Richard Susskind at an event and he introduced him to the members.

Professor Richard Susskind has a first class (hons) degree from the University of Strathclyde in Glasgow. He gained a doctorate in law and technology from Balliol College, Oxford, in the mid-1980s and is an Honorary Bencher at Gray's Inn. A renowned international lecturer, he has addressed more than a million people and he is the author of ten books, translated into 15 languages, of which the Chairman described 'Transforming the Profession' as a 'gripping read'.

An IT Advisor to the Lord Chief Justice since 1998, Professor Richard Susskind has advised 5 Lord Chiefs. He the President of the Society for Computers and Law, he chaired the CJC Advisory Group on online dispute resolution that originally proposed online and he holds professorships at Oxford, UCL, Strathclyde, and Gresham College. The Chairman finished his introduction by saying that, last year, Lord Justice Briggs described Professor Richard Susskind as a 'voice crying in the IT wilderness'.

Professor Richard Susskind began his address by explaining that he thought that he would take the opportunity to provide members with a 'wider sweep' across the world of technology. He explained the outline of his presentation:

- 1) An illustration of technological changes;
- 2) The impact of changes on the legal market;
- 3) An outline of the online court proposal.

Technological changes

When he and his son, Daniel Susskind, first started writing their book, they often asked the question 'what should we be doing?' Underpinning technologies are growing at an exponential rate, systems are becoming increasingly capable and, as human beings, we are communicating with one another more.

Gordon E Moore predicted that the processing power of computers will double every two years (Moore's Law). Using this calculation, by 2050 the average desktop will have more processing power than all of humanity. Eric Schmidt, Chairman of Google, has argued that 'every two days now, we create as much information as we did from the dawn of civilisation up until 2003'.

Professor Richard Susskind said that another fascinating idea is that when each of us uses our systems, the data that is produced as a by-product is, in itself, useful. A whole field has emerged of specialists analysing large bodies of data. For example, Lex Machina, a research company that develops legal analytics data, has claimed to be able to use technology to predict the outcome of patent disputes better than any lawyer. The machine knows nothing about patent law but it holds a huge amount of data about past cases. Using the quote, 'if you are a hammer, everything looks like a nail' to illustrate his point, he noted that it is interesting that machines can be more accurate. The same sort of technology has been used in the field of skin cancer where the machine contains a vast body of data of past images. In other medical fields, it is clear that these systems are outperforming the best doctors.

In the USA, IBM Watson was able to demonstrate the power of technology when it built 'Watson', a supercomputer that beat two of the best ever contestants on the game show Jeopardy in 2011. Ironically, the day after, the journalist John Searle wrote an article entitled 'Watson Doesn't Know It Won on Jeopardy!'

Today, 'affective computing', the study and development of systems and devices that can recognise, interpret, process, and simulate human affects, is being used to detect human responses. A machine can now more accurately detect fake smiles or the voices of people who are related.

Humanity is becoming increasingly connected using state of the art technology that is getting progressively better. There is 'no finishing line'. The speed of change is accelerating at such a speed that by 2025 technologies that will change our lives have not yet been invented.

Impact of changes on the legal market

Turning to the legal profession, Professor Richard Susskind informed members that his interest is in whether computers can solve complex legal questions. He explained that he had been involved in the development of the world's first expert system in law and that he had written his thesis on this subject. He also stated that 'artificial intelligence (AI) has 'come home now' saying that four magic circle firms (Slaughters, Linklaters, Freshfields and Clifford Chance) have announced their support for it.

Talking about AlphaGO, a narrow AI, computer program developed by Alphabet Inc.'s Google DeepMind in London to play the board game Go, Professor Richard Susskind informed members that AlphaGO has more permutations than atoms in the universe. In 2016 it beat the GO World Champion, Lee Sedol, four games to one and, in one instance, with a winning move that no human being had ever thought of before. Machines are able to come up with things that have not been thought of by humans.

Since 2011, machines have been able to outperform paralegals when reviewing large bodies of documents in legal cases. Allen and Overy is an example of a firm using AI in place of lawyers. Similarly, JP Morgan is using software to carry out tasks that would have taken humans thousands of hours. In Uganda, BarefootLaw is using technology to offer free legal information and assistance.

Professor Richard Susskind informed members that when he and Daniel Susskind co-wrote their book, they looked at eight professions and analysed the impact of technology on them. Technology is streamlining and improving old processes but it is also replacing some human functions and it will continue to replace more and more. He quoted from his book 'Tomorrow's Lawyers', which lays out his thinking 'the future for truly exceptional senior trial lawyers and barristers looks rosy for some time yet, therefore, but junior civil trial lawyers may need to rethink their prospects and prepare to engage in virtual hearings and online courts if they wish to prosper beyond 2020. In England and Scotland, those barristers and advocates whose practices are devoted to the writing of opinions on complex areas of law will also be less affected by the changes anticipated in this book than most other areas of legal practice, because there is no alternative sources for the genuinely bespoke work.'

Online courts proposal

Referring to the issue of online courts, Professor Richard Susskind drew a distinction between the physical courts and the virtual courts. In the medium term, the snapshot is that there will be a state-provided online dispute resolution service where parties do not need to congregate physically. A new, highly simplified set of rules and procedures will be developed and this 'affordable, quick, intelligible, proportionate' service is likely to become common practice across Civil, Family, & Tribunals. However, this will not be suitable for all cases and all parties. The 'market' will be comprised of the represented, the self-represented and the latent legal market.

Professor Richard Susskind said that he has always had an interest in how to reach people who cannot afford lawyers or who don't have access to the law. He reassured members that he was not 'on a mission to get rid of lawyers'.

In 2015, he was asked by the Civil Justice Service to chair a group, which included a solicitor, barrister and a government representative, to explore the potential of online dispute resolution for low value civil claims. Four problems were identified:

- too costly
- too slow
- unintelligible
- out of step in the Internet society.

The team focused on claims less than £25000 and anticipated future developments. The findings were published in February 2015 and a companion website set up. Professor Richard Susskind said that he had been 'stunned' by the numbers of people who had been unable to attend a court room and explained that online dispute resolution is not a new field. Ebay, for example, settles 60 million disputes between small traders each year and the Financial Ombudsman solves half a million cases per year. In the wider sense, lawyers should be concerned with dispute containment and not just dispute resolution.

Professor Richard Susskind asked members whether the court is a service or a place. Is there a need to come together or physically congregate? He suggested that there is not in all cases.

The group put forward a recommendation for the establishment of an online court with a three-tier service. The first, and bottom, would be an online evaluation aimed at dispute avoidance. In the second-tier case officers would provide a more inquisitorial role in online facilitation and in the third-tier judges would decide suitable cases online, but this would only be plausible for certain categories of case. The benefits of this scheme are that fewer cases will reach judges, those that do will cost less and the top two tiers will increase access.

For litigants, this scheme offers a route to resolution where today many have none and a more convenient, less costly, speedier, more understandable route for many who currently litigate without lawyers and for some who are represented.

The Lord Chief Justice came out in favour of the scheme and the then Lord Chancellor, Michael Gove, then did the same. The Autumn 2015 Spending Review made a financial commitment and the idea gained traction. It was then endorsed in the recent 'Transforming our Justice System' policy paper.

There have been a series of objections. For example, some have argued that the idea promotes economy class justice but Professor Richard Susskind said that he would question this on the basis that a more affordable, quicker service cannot be described as 'economy'. Others have concerns about 'open justice' but there is an argument that an Internet-based court service is likely to be more transparent and visible and so public to larger numbers of people. To those with concerns about face-to-face justice, face-to-face interaction is a symbol but it is not an empirical claim that needs to be tested. On the topic of concerns about digital exclusion, the level of internet users is far higher than expected. Although authority, respect and relevance are vital components of a system that is authoritative and commands respect, it should be noted that an effective, popular, authoritative, respected, online court will underpin and help maintain the rule of law. Lastly, some people have described the system as over ambitious, especially in terms of the monetary value of the cases, and Professor Richard Susskind recognised their concerns as valid, however, he argued that it would be naïve to talk about value. The system is aimed at isolating those types of cases where it makes sense to help people. Similarly, the system might be ambitious in terms of IT requirements, and IT projects do fail from time to time, however, Professor Richard Susskind, who does not advocate a blueprint, said that the scheme should be treated 'like an experiment' and open modestly with a pilot.

The challenge to the Bar

Addressing the members, Professor Richard Susskind said that he wanted to make it clear that he was not talking about these systems replacing lawyers. Instead his focus is on making services available. He is not suggesting that some systems are better than the best lawyers but not all people have access to the best lawyers. He then asked members directly 'who is thinking about the long-term future?' Explaining that none of the British universities are carrying out relevant research, he said that it cannot be assumed that anyone is thinking about the future beyond the Bar itself and he cautioned against holding out until retirement in the hope that it will not happen beforehand; pretending that it is not happening; and/or, build barriers to protect barristers. Instead, he suggested that barristers expose the Bar to future possibilities; provide tools to help with long-term planning (as the Canadian Bar Association are doing), and engage in as well as challenge the reform process.

Inviting members to put together a team for a 24 'Hackathon' in July, Professor Richard Susskind said that he had spoken to the courts who are very supportive. This is an opportunity to contribute.

Professor Richard Susskind finished by quoting Alan Kay 'the best way to predict the future is to invent it'. The future is malleable and the Bar Council has an immense connective influence. It may challenge but it should also be involved in shaping and designing.

The Chairman thanked Professor Richard Susskind for a fantastic presentation describing it as 'just what we needed'. He noted the irony of the enhanced impact on the audience of Professor Richard Susskind's addressing us 'face to face'.

Professor Richard Susskind replied that he has addressed over 50 Bar Associations by video. He conceded that it is not as good but that it is better than nothing. Drawing an analogy with the online court scheme, he acknowledged that online courts may not be as good as 'the real thing' but where it is practical or affordable, it is needed.

7. Flexible Court Operating Hours

Referring to his opening statement, the Chairman noted that it had, ironically, been Greg Williams who had asked for this item to be placed on the agenda. A lot of concerns have been addressed to the Bar Council, Criminal Bar Association (CBA) and other interested bodies about flexible court operating hours. Explaining that he and Francis Fitzgibbon QC, Chairman of the Criminal Bar Association, had met with the people responsible for rolling out the pilots, the Chairman said that that he is in the process of trying to think about the responsible way to respond and he emphasised that the evaluation criteria and what it is going to be is important and needs careful designing. Pilots are taking place in Newcastle, Blackfriars, Brentford and Manchester and the Bar Council is watching carefully while continuing to listen and gather thoughts.

Robert Rhodes QC shared his experiences of an earlier pilot he had participated in over eight years ago in Croydon Court. He explained that the split morning and afternoon court sessions had some advantages. The morning courts were good for jurors who had the afternoons free, and for barristers who were able to get back to chambers by 3pm. The afternoon sessions were ideal for pleas and directions. Afternoon sessions were not appropriate for trials because if a trial collapsed at, say 5.30 pm, it would be too late for counsel to get another case for the following day. He acknowledged that neither was suitable for a case where a defendant was in custody. He finished by making a point about standing costs being reduced if two sessions are run per day.

Andrew Morgan of the-FDA Crown Prosecution Service Section said that this will be the third time that the FDA has been involved in negotiations around a flexible court pilot and argued that the extension of the day into longer sessions will put prosecutors under considerable strain. He specifically raised concerns about the impact of barristers acting as agents to the Crown Prosecution Service (CPS) and being expected to do the full and extended day. This extended court pilot is being politely opposed by the FDA on the grounds creating of an unacceptable work/life balance. He explained that, from the information that has been received by the FDA, it is clear that the funding will not be adequate and is extremely unlikely to allow for

two prosecutors to undertake the AM and PM sessions. The Ministry of Justice (MoJ) have tried similar extended court schemes twice already and they didn't work. The FDA do not believe that flexible court operating hours will be an effective use of resources and remain of the opinion that they will negatively affect the work/life balance of prosecutors.

Francis Fitzgibbon QC reported that he has had many conversations with judges and said that it would be fair to say that the judiciary regard the scheme with a degree of scepticism. The impact on judges and practitioners needs to be included and it will be extremely important for chambers to keep records so that evidence about the work/life balance is collated. However, Francis Fitzgibbon QC advised that it would be counter-productive for the Bar to take a completely negative view at the start. To some extent, the profession needs to 'suck it and see' in the first instance.

Robin Allen QC said that he did not think that others appreciate the extent to which the Bar has engaged with this from an equality and diversity perspective which he said was "madness on wheels' and the profession should say so. Those with childcare and caring responsibilities find it hard enough to cope with the existing degree of flexibility and further changes will be bad for the profession and will be particularly so for women at the Bar. An 8am morning start where a barrister is expected to arrive at court some 1.5 hours earlier, will require barristers having to leave home very early in the morning. A single carer would not be able to arrange cover. He finished by emphasising the importance of the Bar saying loudly and clearly that the profession must work towards equality towards men and women.

The Chairman asked Robin Allen QC whether he had a view on engaging with the pilots. Robin Allen QC replied that he thinks there will be a distortion. He asked how it will be possible to capture whether a clerk has sent a barrister with caring responsibilities or not to the court.

Rachel Langdale QC raised concerns about how flexible court operating hours will impact the geographical aspect. Barristers travelling from outside of the larger court centres may have to content with overnight stays to be in court in time and this causes completely difference implications.

Gemma de Cordova, echoing the words of Robin Allen QC, said that she could not see how the hours will work for those with caring responsibilities. The Bar talk about equality but that fact that that flexible court operating hours are being piloted demonstrates that no one is thinking about it. She advised that the engagement points should be taken on board but cautioned that the 'dramatic and disastrous' impact should not be overlooked.

The Chairman thanked the contributors to the debate and indicated that he was prioritising this issue at present and would keep Bar Council updated.

8. Law Reform Committee report

Eleena Misra of the Law Reform Committee presented the Law Reform Committee's report. She highlighted three points:

- 1) The work of the Committee is affected by the current political climate;
- 2) Although the Committee's annual essay competition and lecture are well publicised and recognised, beyond that not much is known about the work of the Committee. As a result, its members are looking to increase general awareness about what it does and any assistance would be welcome; and
- 3) The mainstay of the Committee's work is in either responding to, or engaging with, consultations. However, although Committee members span a broad range of expertise, they cannot cover all topics. Again, anything that members can do to increase awareness or assist would be helpful.

9. Equality and Diversity & Social Mobility Committee report

Robin Allen QC, Chair of the Equality and Diversity & Social Mobility Committee, spoke to the Committee's report. He started by acknowledging the useful and important work of Sam Mercer, Head of Policy: Equality and Diversity & Social Mobility.

The BSB have been consulting on shared parental leave and the Equality and Diversity & Social Mobility Committee has responded to this.

On the subject of Wellbeing, Robin Allen QC asked members to engage with ongoing work and with regards to training and mentoring. He also encouraged new members to talk to him or Sam Mercer if they have not completed equality and diversity training.

The EDO network is very important and Robin Allen QC explained that the Committee is keen to make it stronger.

In terms of career progression, the Committee is carrying out work to ensure that there are more opportunities for women and BAME barristers.

Robin Allen QC finished by reporting that much has been going on at QC level and with the recorder competition. Member may be aware that it has been a difficult process but the Committee are fully engaged with the Judicial Appointments Commission (JAC).

10. Chairman's title

The Chairman thanked Mark Hatcher, Special Advisor to the Chairman, for his paper on the title of the Chairman of the Bar. He introduced Amanda Pinto QC, who had instigated the proposal for change.

Amanda Pinto QC explained that she is a criminal barrister who is in her third year as Chair of the International Committee and a representative for Middle Temple. She argued the title of Chairman of the Bar should be gender neutral and put forward her suggestion of 'Chair'. Explaining that she feels strongly that the Bar should be forward looking, relevant and open, she made the point that the Bar Council's image should mirror this. A title is a signal by which the Bar Council can choose how it wishes to be seen and the title of 'Chair' would signal that, regardless of gender, anyone can aspire to the position. It would demonstrate that consideration has been given to the title used to government and to the Bar Council's European neighbours & international colleagues for whom the title of Chairman has caused embarrassment and anachronistic problems. Speaking about the Chairman of the Bar 2016, Chantal-Aimée Doerries QC, she said that the International Committee witnessed overseas hosts struggling to know how to address her which is an unnecessary problem. She suggested that a title that is suitable for everyone is chosen because the incumbent changes annually.

Amanda Pinto QC continued that the title Chairman is no longer appropriate using a range of examples. More than 50% of pupillages are awarded to women, 50% of tenancies are held but women yet there is a problem with women leaving the Bar and falling numbers of female QCs. She argued that any small thing that can be done to encourage members to remain and aspire to the highest positions, should be done. GMC unanimously agreed to bring this matter to the Bar Council but reached no consensus on the new title. Amanda Pinto QC said that she doubted that the title Chairman would be chosen now if the Bar Council was being established for the first time.

Turning to Mark Hatcher's paper, Amanda Pinto QC said that it demonstrates two things: 1) that the title of Chairman is a historical term; and 2) that all other professions have ceased to use it. She said that she could see no cause for confusion between the head of the Bar and the head of the Law Society if the term 'President' (used by the Law Society) was adopted. Noting that Mark Hatcher's paper had suggested that the term 'Chair' is lacking in gravitas, she suggested that it is more about getting used to change than about the title itself. The Chair of the IBA had not suffered a lack of credibility. Amanda Pinto QC acknowledged those who have said that the title of Chairman of the Bar is not the most important thing to discuss, but she made the point that by changing the title, the Bar Council seeks to support, rather than undermine, the Bar's aims.

Finishing her address, Amanda Pinto QC drew the attention of the members to Mark Hatcher's point on resources saying that if the title is left up to the incumbent, this will cause more resource implications in the future and less certainty. Referring to

Police Officers and Firefighters, she illustrated the point that similar issues will have been raised when those titles changed but there are no concerns about them now. If the title of Chairman is changed to one that is gender neutral, future generations will simply be pleased that the change was made.

Richard Posner said that he agreed with Amanda Pinto QC. He argued against 'Chairwomen' for a female head saying that those who don't take the matter seriously may still not take the title of 'Chairwoman' seriously. He said that his preference was for 'Leader of the Bar'. While he appreciated that this could cause some difficulties, he was certain that these could be resolved.

Max Hardy expressed support for 'Principal' or 'Speaker'. He did not wish to have the same term, 'President', used by the Solicitors'.

Robert Rhodes QC said that he could see no problem with the term 'President' as he did not think that anyone would confuse the Bar and the Law Society.

Rachel Spearing spoke against the term 'Chairwoman' saying that the term should be gender neutral as otherwise the Bar Council is positively asserting that the Head is female.

Rachel Langdale QC said that she could find no difficulty in allowing those in office to choose their own title each year. She made the point that she signs herself off as 'Chair' of the Ethics Committee and she suggested that, in the short term, rather than rush to choose an alternative, the Bar Council allows the role holder to decide for themselves.

Colin Andress made the point that, technically, the title 'Chairman' is already gender neutral, however, he acknowledged differences in opinion with regards to this and suggested that 'Chair' is probably a better option. He noted that the term 'President' tends to be used by medical or training bodies, whereas the representative bodies appear to prefer 'Chair'. He continued by saying that he did not like 'Leader' as a title, nor 'Speaker' which sounds too parliamentary.

Richard Atkins QC said that, if the title is to change, he would prefer that it is left in the gift of the person in the chair to decide. Saying that he would like to know more about the cost implications, he, like Rachel Langdale QC, suggested that the position could be reviewed in the future.

Richard Hoyle voiced his support for Amanda Pinto QC saying that it would be an important statement if the Bar Council was to make a change. He said that the idea of leaving the title in the personal decision of the role holder is not particularly helpful and noted that an official, single, agreed mutual title will avoid future resource costs. He described the title of 'Chair' as 'perfectly good' and acknowledged that 'leader' would also 'do the job'.

Although he noted that there will be issues, Philip Marshall QC favoured Mark Hatcher's alternative option of allowing those in the role to choose their title.

Eleanor Mawrey made the point that, as the Chairman of the Bar changes each year, there are cost implications anyway. She suggested that the title, and the choice to change it, is more about how the media perceives and contacts the Bar Council. To this the Chairman acknowledged that the media frequently use the term 'Chair' anyway.

Richard Jones made the point that it does not signal a positive message to those outside the Bar Council if the Bar Council is unable to decide on one title.

Mark Trafford QC asked about the way in which to proceed saying that he thought it should go to some sort of a vote. Speaking personally, he opted for 'President' as 'everyone knows what it means'.

Richard Gibbs suggested that the fact that the Bar Council is debating the title means that the decision best sits with the incumbent. If the Bar Council is comfortable in electing a head, then it should be equally comfortable in allowing them to choose their title. He advised that the Bar Council may be overthinking the issue.

Gemma de Cordova put forward the view that the present title of 'Chairman' is off-putting to those wishing to stand for election. Saying that this cannot be overstated, she advised that it ought not to be assumed that everyone is eligible to stand will do so.

Sydney Chawatama spoke in support of Amanda Pinto QC, saying that the cost will be a one-off.

Rachel Langdale QC stated that female judges are now being allowed to decide their titles for themselves. She advised that people have strong views as individuals.

It was agreed that there were two issues for resolution:

- 1) Should the title change at all; and
- 2) If so, should the title be left to the discretion of the incumbent?

It was suggested that the first issue could be resolved by a show of hands while the second question would be better dealt with via email.

Robin Allen QC was firm that a decision on whether to make a change to the title should be decided at the meeting. To this, the Chairman suggested that people will only vote to change if they know what the change will be. Robin Allen QC then suggested a vote on whether to change the title in the first instance. This was agreed as members considered that the mechanism for deciding what to change the title to, for example a survey to members, could be determined outside of the meeting.

A majority of 48 members of 72 present voted for a change to the title of 'Chairman'. Further consideration will be given as to how best to decide what to change the title to.

11. Any other business

The Chairman informed members that James Keeley would be running the London Marathon the following day. He encouraged members to sponsor James who is raising money for two charities: The Middle Temple Scholarship Fund and The Royal Society.