



The Bar Council

Minutes of the Bar Council meeting

Saturday 12 September 2020 (and additional on 23 September 2020), Microsoft Teams

Present

Amanda Pinto QC	Chair of the Bar	APQC
Derek Sweeting QC	Vice Chair of the Bar	DSQC
Malcolm Cree CBE	Chief Executive	MC
Grant Warnsby	Treasurer	GW
Baroness Tessa Blackstone	Chair of the BSB	BTB
Naomi Ellenbogen QC	Vice Chair of the BSB	NEQC
Mark Neale	Director General	MN
Suella Braverman QC MP	Attorney General	SBQC

Minutes Samantha Anderson Executive Officer SA

Members In attendance (via Microsoft Teams)

Dr Mirza Ahmad; Colin Andress; Efe Avan-Nomayo; Nick Bacon QC; Elaine Banton; Philip Bennetts QC; William Boyce QC; Minka Braun; Ian Brookes-Howells; Charles Burton; Alexandra Carr; Sydney Chawatama; Richard Cole; Ivor Collett; Catherine Collins; Celina Colquhoun; James Corbet Burcher; Katherine Duncan; David Elias QC; Mark Fenhalls QC; Emily Formby; Neil Garrod; John Goss; John Goulding; Alexander Gunning (alt for Sonia Tolaney QC); Barry Harwood; Neil Hawes QC; Michael Hayton QC; Isabel hitching QC; Hazel Hobbs; Sarah Holmes-Willis; Elizabeth Houghton; Matthew Howarth; Nicholas Johnson QC; Sean Jones QC; Susan Jones; David Joseph QC; Faith Julian; Joanne Kane; Rachel Langdale QC; Tom Leech QC; Lorinda Long; Kate Lumsdon QC; Athena Markides; Eleanor Mawrey; Louise McCullough; Cathryn McGahey QC; Martyn McLeish; Barbara Mills QC; Andrew Morgan; Philip Moser QC; Francesca O'Neill; Grace Ong; Lucinda Orr; Alison Padfield QC; Deshpal Panesar QC; Francesca Perselli; Alison Pickup; Michael Polak; Rehana Popal; Charlotte Pope-Williams; Jonathan Rees QC; Robert Rhodes QC; Ryan Richter; Lisa Roberts QC; Natasha Shotunde; Jo Sidhu QC; Joe Smouha QC; Jessica Stephens QC; Daniel Sternberg; Heidi Stonecliffe QC; Leanne Targett-Parker; David Taylor; Jacqueline Thomas QC; Rhodri Thompson QC; Steven Thompson QC; Max Throwgood (alt for Clive Moys); Linda Turnbull; Andrew Twigger QC; Anton van Dellen; Nick Vineall QC; Emma Walker; Colin West QC; Richard Wright QC

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

Non-Members in attendance

Brian Cahill; Tom Cockroft; William Dean; Angela Delbourgo; Schona Jolly QC; Clive Matthews; Patrick Rappo; Catherine Ravenscroft; Jessica Simor QC; Robert Spicer; Michael Sternberg QC

Apologies were received from

Tim Devlin; Mike Duck QC; Amanda Hardy QC; Michael Harwood; DPP Max Hill QC; James Kitching; Gurprit Mattu; Christina Michalos QC; Jacqueline Reid

1. Minutes of the last meeting and matters arising

The minutes of the 14 July 2020 meeting were approved and published onto the Bar Council website after the meeting.

2. Statement by the Chair

APQC welcomed members to the 6th Bar Council meeting of the year and gave thanks to the Attorney General for attending the meeting, as Leader of the profession and agreeing to chair the AGM, taking questions at that time to avoid duplication.

Philip Moser QC has succeeded Kieron Beal QC as Chair of the Bar European Group and James Mulholland QC has taken over as Chair of the CBA from Caroline Goodwin QC.

Despite enormous efforts for the last 6 months, the Bar's treatment by the government suffers from the same mixed messages; although recognised as key workers, there are swathes of struggling barristers who have been unable to benefit, as they should have, from the government support schemes. The lack of support for the young Bar is the most bemusing and annoying of all. We must recognise that we are unlikely to get anything from the government through the routes that we have taken.

The media presence of the Bar Council has grown enormously and is like never before - tribute goes to the comms team for making the most of the opportunities to put our point across. It takes an enormous ongoing effort to get to this level of publicity. In the last three weeks, we have appeared in over 1000 media outlets, quite apart from messages being delivered to government, through less public means. The point of having this media presence is two-fold: one, is to influence government to do the right thing and, second, is to educate the public about the realities of the situation and what they risk losing if they do not support the Rule of Law or insist upon maintaining Access to Justice.

We have been liaising with the BSB, the Inns and others to support students and urge a positive way forward following the problems with the online BPTC exams. We have pressed for open book exams, for a pass/fail approach to retakes and a commitment to ensuring full support for those requiring reasonable adjustments.

Court listing guidance and protocols for listing have been at the top of our 'wish list' and although the senior judiciary have published guidance in some jurisdictions, centralised help to judges to listing remote or in-person hearings has not been published. APQC thanked all BC representatives on the Judge/Magistrate led groups on Covid-Operating-Hours (COH); it is worth remembering that HMCTS originally intended to extend hours to 9am-6pm, seven days a week, in all jurisdictions and we are currently in a position where only crime and some localised civil will have COH and not to the originally proposed intensity.

The recently published Crime Recovery Plan acknowledges the central place of upholding diversity in the profession and it is vital if we are to sustain our growing reflection of the society we serve.

Most court buildings are open again and more Nightingale Courts are being opened around the country. Plexiglass screens are being installed, allowing more use of the court estate and where it is the best option, portacabins are being installed in car parks to house socially distanced jury rooms, to accommodate more trials. By the end of October, there should be 250 court rooms for jury trials.

Through engaging in the Judicial Diversity Forum, we want to help to diversify the judiciary without putting unnecessary extra pressure on the profession to no effect. Covid-19 has undoubtedly had an extra impact on those already disadvantaged and if the judiciary really wants to change, it must support that change from the grass roots, ensuring that measures it takes are in line with encouraging diversity. This ties into the modernisation of Bar Council and the constitution – this programme is crucial to the relevance, effectiveness and diversity of the Bar Council and the Bar more generally. If we don't actively drive change, we will become a stale organisation in a profession that hasn't moved with the times. The elections for Bar Council subscribers will open in October and members are asked to encourage colleagues to stand.

The CLAR1 changes were announced in August. It was a welcome announcement with provisions coming into force in a week or so. We have repeatedly impressed on the Lord Chancellor, the MoJ and anyone of influence, the importance of getting on with the CLAR2 review, which was announced in November 2018 and has yet to get going, to have a panel or Terms of Reference (ToRs). In comparison, the Independent Review on Administrative Law was announced in February 2020, the Chair and panel were appointed in July and the ToRs published recently – a short consultation period started this week and it is due to report by the end of the year. We will be responding to that consultation too.

We are engaged with the LAA re changes to Immigration and Asylum fees structures after the MOJ backed out of a Judicial Review challenge (thanks were given to Rehana Popal and Alison Pickup). Positive changes to certificated work payments are expected to be announced soon. We don't expect regulatory change for controlled work, but we do expect positive help in getting money to Barristers quickly for doing this work.

We will be putting in a comprehensive spending review submission to urge the government to allocate money in a planned way, to justice. We have coordinated with LSEW, MoJ and CPS in sharing data and information, to help with each of our submissions.

The Bar Council Future Leadership Programme will be announced very soon.

The Annual Bar and Young Bar Conference (ABYBC) will be held remotely over 4 days from 18th-21st November. It has a range of interests for all practitioners from all areas and all circuits. There is an option to pay for a single session or to attend the whole conference. This year, the November Bar Council meeting will be incorporated.

At the end of the Chair's Statement, Robert Rhodes QC said that she had mentioned 'reasonable adjustments' by providers for exams, echoing the minutes of the last Bar Council Meeting, where concerns had been raised about that matter. RRQC said: "In the summer, there was the scandal of students being humiliated by exam providers, who refused to let them have lavatory breaks during online exams. Members of the Bar Council might consider that this is an absolute disgrace. Has the Chair made any representations to prevent this happening again?"

SJQC asked whether there is intention of an independent duty review of the exams. NVQC answered by stating that the importance of complying with statutory duties of compliance have been underlined to the BSB and they have to work with the providers. It is critical that the duties are met. Hopefully, having in-person exams in October will alleviate the issues that were experienced with the online exams.

MP raised that the problems with the exams went further than lavatory breaks – there were problems booking the exams, a problem which happened months before the exams took place. The occurrences have brought the Bar into disrepute and asked if we have any way to act against the BSB for the way they have acted. APQC confirmed the BSB were to report within this meeting and so can answer these issues, but from the Bar Council view, we have been liaising with the BSB to remedy this, for this year and to ensure these mistakes are not repeated in the future.

3. BSB Report

BTB reported that there have been two special meetings of the board to discuss the problems with the exams and a reasonable conclusion has been reached; on 11th September, a further apology was issued to students who were affected by the technical difficulties in August. It is understood that around a third of students were affected which is far more than the original estimate given by the supplier. The BSB have decided that the fairest way for students to demonstrate their competence, is to offer another opportunity to take the exams, but in-person rather than online, and arrangements will be subject to strict adherence to whatever covid-19 restrictions are in place at the time, in various locations in the UK and internationally. Full regard will be taken on for students requiring reasonable adjustments. The definitive result will be whichever is the individual's best performance. These exams are open to everyone who feels that they were unable to do themselves justice in August.

The BSB are unable to waive these exams, as they are needed to ensure students can move forward to the next stage to become a barrister. It is our duty, for the public, to ensure that they are compliant. The BSB are grateful to BPTC providers for their incredible support and cooperation and to members of the Bar who have offered help in solving this, as well as the Bar Council for their offers of a solution. The BSB will do an independent review as to what happened in August and feel that they have been let down by Pearson Vue. The exams in October will be before the results of the August exams are published.

MN confirmed that there is a rule in the Bar, exams and training, that exams cannot be resat in order to improve a score where it has been passed; the reason for the timing of the exams in comparison to when the results of the first sit come out, is that the summer exams and the October exams will count as one sitting and the more favourable result will be taken. If the student wants to know their result before resitting the exams, they can sit in December.

RP asked whether students who resit in December will have their results capped as they will know their result; MN confirmed that if a student passed in August, they would not be able to sit in December in order to improve their grade.

With relation to grading, it was confirmed that this would proceed in the normal way though the Board did consider, carefully, the suggestion of a pass/fail mark. It was decided that it would be unfair to students who has completed the exams in August and were expecting grades. Grades will be set in the normal way, covering the full range of the course content; BTB added that the grading system could not be changed halfway through the process and trying to change it would cause more problems than are already being experienced. MN gave assurance the BSB are very focussed on making sure adjustments are available to those who need them.

SJQC raised a concern on the independent review, asking whether the Bar would be represented on this and whether the panel would include people from across the Bar and be representative. MN clarified that the ToRs have been settled but the panel has not been selected. An education and training background would be helpful for the panel.

NVQC will write to the BSB asking them to reconsider their position on not releasing the results prior to the October exams as for many students, this will be as though they are taking the exam for the first time.

JTQC asked whether discussions have been held with the Inns on the knock-on effect of those who are potentially in their first six and won't be able to be called to the Bar due to these resits and potentially won't be able to start their second six. MN confirmed that the way forward has been discussed and the October exams have been set to allow students to progress, to allow students to decide if they want to sit the exams again. For those who have started their first six and decide to sit in December, it will be up to Chambers to decide whether to extend.

4. Statement by the Chief Executive

MC reported that the Covid-19 working group has continued in-house rather than with the external support that had been made use of at the beginning of the pandemic and is chaired by Carolyn Entwistle.

The IGRs are complete.

The LSB have launched a regulatory review of the BSB's performance against the 'well led' assessment criterion, following the BSB's decision to pull out of the Legal Choices website. We don't have to get involved. The timing of this may be coincidental, though the CMA have announced a market review.

Recent surveys that have been carried out have been very helpful and we have produced a report on the government spending on justice – Small Change for Justice. We have also been working on data sharing arrangements with the LAA and CPS, including our own data and combining them all to look at earnings at the publicly funded criminal bar. There have been some interesting conclusions which will be fed into the spending reviews.

5. Risk Register

There are currently 12 risks on the register which are more or less all corporate risks and so include the BSB. Risk BC006 is considered high, which has been the case since May 2020.

6. Treasurer's Report

GW spoke briefly, noting that he will give a full report during the AGM.

7. Draft Accounts

APQC asked whether anyone present didn't approve of the accounts; all members present approved the accounts, to allow the Chair and the Treasurer of the Bar Council to sign them.

8. Terms of Office for Senior Bar Council Positions

It was agreed in the meeting of 12 September to set up an additional meeting for this item to be discussed. APQC said that she is keen to get the modernisation measures in place, so that Bar Council can be driven forward.

9. Any Other Business

None were raised.

Minutes of the Bar Council meeting

Wednesday 23 September 2020, Microsoft Teams

Present

Amanda Pinto QC	Chair of the Bar	APQC
Malcolm Cree CBE	Chief Executive	MC
Mark Neale	Director General	MN

Members In attendance (via Microsoft Teams)

Nick Bacon QC; Elaine Banton; Ian Brookes-Howells; Charles Burton; Alexandra Carr; Sydney Chawatama; Catherine Collins; Katherine Duncan; Layla Ferguson; Neil Garrod; Andrew Granville Stafford; Matthew Brunning (alt for Emily Formby); Amanda Hardy QC; Barry Harwood; Neil Hawes QC; Isabel Hitching QC; Sarah Holmes-Willis; Matthew Howart; Susan Jones; Faith Julian; James Kitching; Cyrus Larizadeh QC; Lorinda Long; Kate Lumsdon QC; Eleanor Mawrey; Louise McCullough; Martyn McLeish; Andrew Morgan; Philip Moser QC; Lucinda Orr; Alison Padfield QC; Francesca Perselli; Charlotte Pope-Williams; Robert Rhodes QC; Natasha Shotunde; Joe Smouha QC; Kate Spence; Gordon Stables; Daniel Sternberg; Philip Stott; Ben Symons; David Taylor; Jacqui Thomas QC; Linda Turnbull; Andrew Twigger QC; Anton van Dellen; Colin West QC; Richard Wright QC

In attendance

Piran Dhillon-Starkings; Carolyn Entwistle; Phil Robertson; Natalie Zara

Minutes	Samantha Anderson	Executive Officer	SA
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Apologies were received from

Robin Allen QC; Efe Avan-Nomayo; Suella Braverman QC MP; James Corbet Burcher; Mark Fenhalls QC; Emily Formby; John Goss; Jonathan Goulding; Sa'ad Hossain QC; Cathryn McGahey QC; Rehana Popal; Jacqueline Reid; Ryan Richter; Heidi Stonecliffe QC; Derek Sweeting QC; Steven Thompson QC; Nicholas Vineall QC; Emma Walker; Grant Warnsby

1. Terms of Office for Senior Bar Council Positions

APQC gave apologies that this wasn't dealt with in the previous meeting and thanked members present for making time to take part in this meeting.

The aims of this item are to make Bar Council more representative of the Bar and more accessible to more people to involve themselves and have senior positions within the organisation. We need to ensure that we can bring people into the committees and therefore onto Bar Council and take into consideration the representation of the Bar Council, as well as take into considerations, the principals of public life. We need to be consistent across the senior Bar Council positions.

The proposals made in the paper were:

- a. approves** the proposal that representative Committee Chairs/Co-Chairs should serve a fixed one-year term, for a maximum of four years (in exceptional circumstances the existence of which is to be determined by GMC, five) cumulatively but not necessarily consecutively, after which the individual may not serve as a committee Chair/Co-Chair again until a period of at least 10 years has passed;
- b. approves** that the current terms of office for the Chair of the Bar (one year, exceptionally two) and the Vice-Chair (one year, exceptionally two) are explicitly stated as such in the Constitution and that individuals may not stand for office again; and
- c. approves** the proposal that the Treasurer should serve a fixed one-year term, renewable by election for up to three years (exceptionally four), after which the individual may not serve as Treasurer again.

Members spoke against point a, raising that whilst it is sensible to ensure a turnover of chairs, the current proposal could be considered draconian and whilst it is meant to encourage diversity, it could have an opposite effect and could put the Bar Council at risk of unnecessarily depriving itself of good and experienced chairs. Additionally, it was raised that the current proposal could be considered an indirect discrimination, especially toward women at the Bar as well as have an age discrimination. A suggestion was made of having a 4-year period between appointments as chairs for any one individual, which was agreed to not have any discriminatory effects. It was therefore agreed that the proposal a would be revisited and dealt with out of committee.

RR raised that if the proposal relating to the treasurer had been in place prior to the 2021 elections for officers, LL would not have been able to stand again to take the position and that this is a position voted for by members of the Bar. Putting in additional restrictions for the treasurer position, which is already not a desired post, would discourage people from standing and could ultimately see there being no treasurer. A term of one year doesn't cover a financial year of the Bar Council. It was suggested that the fixed term should be 3 years rather than 1 year.

IHQ highlighted that the Bar Modernisation Working Group (BMWG) were conscious of the considerable benefit to the Bar Council that has come from the experience built up amongst the committee chairs. The proposal has been suggested to increase the frequency of new chairs. With relation to the treasurer position, assurance was given that the proposal was not personally directed and that it would have been odd to leave the treasurer out of the consideration when looking at the terms of office. The aim of the proposals is to maximise opportunities to bring fresh experience to the posts and to broaden the spread of those who make the contributions. APQC added that the reason why people remain as chairs of the committees etc for so long is because they are so excellent, and this then makes

it harder for new people to come into the role and therefore limits the number of people who want to come forward.

The results of the votes taken during the meeting:

1. Do you agree to the proposal for the Chair's term of office: 51 yes, 4 no. This vote was carried.
2. Do you agree to the proposal for the Vice-Chair's term of office: 49 yes, 3 no. This vote was carried.
3. Do you agree to the proposal for the Treasurer's term of office: 34 yes, 19 no, 2 abstain. This vote was not carried as it did not cover 2/3rds of those present and voting.

2. BSB Report

MN joined the meeting, with thanks from APQC.

MN noted that the BSB are conscious that the Regulatory Return is a significant piece of work for chambers and it has been delayed in being sent out (originally, it was due to be sent in March, but due to the circumstances, it wouldn't have been sensitive to do it at that time). The data that comes back informs the BSB efforts and ensures that the regulatory work is focussed on the key risks in the system. There are 4 months to complete it, which should make things easier.

In early September, the BSB issued a survey on pupillage and the health emergency. The survey found that all pupillages that were underway during Covid-19 have continued and tribute must be given to the chambers involved for keeping the show on the road, but it has been at the expense of delays especially for the practical experience for the 2nd sixes. This has fed in questions on pupillages for this autumn and subsequent years, as there are knock on effects of those extensions and delays. The BSB are keeping a close eye on this and especially on the impact of diversity in the Bar. The BSB want to keep an open dialogue with the Bar Council as well as other stakeholders on this, as they continue to gather evidence.

From recent press releases, you will have seen that the BSB has reappointed Baroness Blackstone as Chair, for a further 4-year term, and have launched a Reverse Mentoring Initiative as part of promoting equality and anti-racism. It is MN's hope that many people will support this initiative.

Students have now registered for the exams at the beginning of October and MN will be receiving information on numbers by the end of tomorrow (24th September). The BSB has maintained a dialogue with colleagues at the Bar, with correspondence with Bernard Richmond QC as well as SABA, a group representing students that covers concerns raised. The BSB is unable to allow the December retakes to be the same as the October exams, to allow students to improve on their marks, as it would be a breach of the academic provisions of the providers. The BSB has sought advice on this and were advised against the breach of academic principals.

BH asked if there was anything that could be done about the October exams being around a Jewish religious festival – MN assured that advice had been sought from the Chief Rabi's office who gave assurance that it is not a religious duty to abstain from work or writing on those days, though it is personal preference of some Jewish students. Therefore, where students do wish to exercise that preference, providers have been asked to make provisions for the exams to be taken early (under confidential restrictions). When asked about the Pearson Vue figures, MN highlighted that they will hold an independent review on the events in August. MN also added that the results of the professional ethics exam have not yet been received as that exam takes much longer to mark.

3. Details of Upcoming Meetings

Saturday 21 November 2020, 10:00, Microsoft Teams