



**Minutes of the Bar Council meeting
held on Saturday 20 January 2018 in the Sherrard Room, Middle Temple**

Present:	Andrew Walker QC	Chair
	Richard Atkins QC	Vice Chair
	Lorinda Long	Treasurer
	Robert Buckland QC MP	Solicitor General

Apologies for absence

Apologies for absence were received from: Richard Archer, Janet Bignell QC, William Boyce QC, Sydney Chawatama, Tom Cockroft, Marie Demetriou QC (alternate sent), Katherine Duncan, Kerim Fuad QC, Manjit Gill QC, Christopher Henley QC, Elizabeth Houghton, Shobana Iyer, James Keeley, Christopher Kennedy QC, Stuart McCracken, Louise McCullough, Angela Rafferty QC, Joe Smouha QC, Rachel Spearing, Andrew Tait QC (alternate sent), Rhodri Thompson QC, Amanda Tipples QC, Jacqueline Wall, Henry Webb, The Rt Hon Jeremy Wright QC MP.

The following did not attend and did not send apologies: Jennifer Agnew, Charles Burton, Gemma de Cordova, Anita Davies, Richard Gibbs, Birgitte Hagem, Cathryn McGahey QC, Paul Mendelle QC, Martin Nelson and Angharad Mary Price.

78 further members attended.

1. Minutes of the last meeting and matters arising

The Chair welcomed members of the Bar Council, particularly the new members, to the first meeting of 2018.

A correction was made to the Chair's Statement, attached as Annex 2. Patrick Rappo is Chair of the Bar Association for Commerce, Finance and Industry (BACFI) and not the London Common Law and Commercial Bar Association as stated.

The Chair welcomed the Solicitor General, Robert Buckland QC MP, to the meeting. He expressed gratitude to both the Solicitor General and the Attorney General for the significant effort they make to ensure that one of them is always in attendance at a Bar Council meeting.

Welcoming Baroness Blackstone, the new Chair of the BSB, to the meeting, the Chair said that he was looking forward to hearing her first BSB Report.

A correction was made to the first paragraph of the minutes of the Bar Council meeting on 18 November 2017. The SS Falaba was sunk on 28 March 1915, not 28 March 1919 as written. Subject to this correction, the minutes were approved.

2. Statement by the Chair

Explaining that he would take his statement as read, the Chair said that he did not intend to go through the contents in full but said that he would highlight some aspects of it.

He began by talking about the four new ministers in the Ministry of Justice. With the exception of Lucy Frazer QC MP, the other three ministers are new to the department and will likely need some briefing time. The Chair congratulated Lucy Frazer QC MP on her appointment as Parliamentary Under-Secretary of State at the Ministry of Justice saying that, although she is a commercial lawyer, he hopes that she will understand the Bar Council's wider perspective. He reported that he had offered her the Bar Council's assistance.

Referring to the nominations and appointments paragraph in the statement, the Chair said that he is pleasantly surprised by the number of barristers who apply to such positions. Acknowledging the huge effort that members of the Bar Council put into attending meetings, the Chair made the point that the same effort is made by barristers appointed by the Bar Council to pro bono positions in external organisations.

The Chair encouraged members who are not on a committee, but would like to be, to mention it to him. There are always opportunities to get involved.

Highlighting the reference to the Silks List 2017, the Chair congratulated Bar Council member Alison Padfield. His congratulations were greeted with a round of applause from the members of the Bar Council.

The Chair said that he was very pleased to see the Director of Public Prosecutions, Alison Saunders, in attendance.

Drawing the attention of the members of the Bar Council to the to the 'in memoriam' section of the statement, the Chair noted the passing of Lord Steyn and Sir Peter Sutherland. He explained that, since the time of writing, there were sadly two more additions to make. The first of these, David Vaughan CBE QC, described as a 'tireless advocate, particularly active in the Bar European Group', died on 15 January. The second, Professor Mark Whittow, husband of Helen Malcolm QC, was killed in a car accident just before Christmas. Helen Malcolm QC is a member of the EU Committee, for which she carries out a huge amount of work. Condolences are sent to her and her family at such a difficult time.

Turning to the subject of flexible operating hours, the Chair reported that the Bar Council is expecting a revised, final prospectus from HMCTS by the end of the month.

Talking about vulnerable witness training, the Chair asked members of the Bar Council to encourage others to complete stage 3 of the training. He explained that while barristers are completing stage 2, many are not going on to complete stage 3.

The Chair then raised the subject of disclosure of unused material saying that it is a matter of real concern for the profession, the judiciary, the Director of Public Prosecutions and the Attorney General. A review, sparked by a report last year, is being led by the CPS and the Attorney General is also carrying out a review. The Chair said that he also believes it is an investigatory issue. A roundtable meeting on disclosure took place earlier in the week and some actions have been identified. The Chair said that he hopes to see more action going forward.

It was reported the Director of Public Prosecutions has written to the Bar Council suggesting that the prosecution graduated fee scheme should also be reviewed. A brief discussion about how best to react has taken place.

The Chair informed members of the Bar Council that it is clear that there are a lot of things going on in the court reform programme of which the Bar Council is unaware. This point has been made to those involved and to Susan Acland-Hood who has promised that the Bar Council will be receiving more information. The Chair said that he is worried by the 'spend first, think later' approach and concerned about who is making the decisions.

Members of the Bar Council may or may not be aware that another consultation on court closures, entitled 'Approach to future court estate', has been launched. The Bar Council will respond but has not yet had the chance to consider it. To those in London, the proposed closure of the Blackfriars Crown Court is the biggest concern.

The Chair reminded members of the Bar Council that his inaugural speech is published on the Bar Council website. He asked those who heard it, or have read it, to talk to him about anything they might wish to discuss arising from it.

Amanda Pinto QC asked whether the Chair thinks that the Bar Council is being deliberately excluded from the court reform programme. The Chair replied that he does not think that HMCTS are deliberately trying to exclude the Bar Council but lack appreciation of what the Bar Council can contribute. There is a sense that so long as questions have been asked of one or two barristers, their responses are representative of the Bar as a whole. The programme began in 2015, elements of it changed following the Briggs Report and now there are a number of strands of work. HMCTS are forging ahead without proper consideration of some of the issues. The Chair said that he had personally raised concerns about the virtual court and had pointed HMCTS to the work of Professor Cheryl Thomas.

Frances Judd QC made the point that disclosure also arises in family proceedings and suggested that it might be helpful for the FBLA to be included in discussions. AWQC agreed with Frances Judd QC saying that the concerns of the Bar Council are wider, but he explained that the review is focussed on criminal proceedings.

Robert Buckland QC MP thanked Frances Judd QC for her comments. He acknowledged the frustrations in trying to get disclosure in criminal proceedings and said that, clearly, disclosure is an investigative problem. He also acknowledged that this issue is not a new one, it has arisen time and time again. Now is a turning point and there is a chance to get this dealt with properly. The MoJ would like to get FBLA involved and sprang into action following the report in the summer. The MoJ wants to work with the Bar Council to make sure that others fully understand the issue with a view to finally resolving it.

The Director of Public Prosecutions, Alison Saunders, said that there is a protocol around family disclosure and made the point that it works both ways. She thanked the Chair for attending the roundtable discussion on Thursday and emphasised the importance of involving all parts of the Bar.

3. BSB Report

Baroness Blackstone, newly appointed as Chair of the BSB, delivered the BSB report. She was joined at the meeting by Vanessa Davies, BSB Director General, Naomi Ellenbogen QC, Vice-Chair of the BSB, and, Wilf White, Director of Communications and Public Engagement.

Addressing members of the Bar Council for the first time, Baroness Blackstone said that she was delighted to attend the meeting. Describing the role as ‘wonderful and challenging’, she said that it was a great privilege to have succeeded Sir Andrew Burns.

The BSB has recently closed two consultations. Baroness Blackstone expressed gratitude to all those who had responded and in particular to the Bar Council for its thoughtful and thorough responses. Acknowledging that there is much in the principles with which the Bar Council and BSB agree, Baroness Blackstone said that she recognised the value of the Inns in the training of barristers and said that she was looking forward to continuing the dialogue.

Since the last Bar Council meeting, the BSB has made a number of other announcements. First, it has decided to change the standard of proof applied when barristers, and others regulated by the BSB, face disciplinary findings. Subject to LSB approval, it will change to the civil standard which will bring it into line with other professions. This change will require a period of preparation time so will only be applied to alleged breaches of the code occurring after 31 March 2019.

Secondly, the BSB has decided not to implement QASA. However, Baroness Blackstone said that as the Chair had rightly pointed out in his inaugural address, the BSB is not dropping its standards. Instead it is looking to barristers to 'take back control'. The BSB aims to create a supportive regulatory framework that is designed to help barristers to manage their own professionalism and standards.

Turning to the third announcement on differential attainment, Baroness Blackstone encouraged members of the Bar Council to read the two new pieces of research intended to provide a qualitative and quantitative evidence base to help inform decision making about the future training of barristers. The first report is a quantitative analysis of high level, aggregate data in relation to the performance of students on the Bar Professional Training Course. The findings in this research indicate that BME students achieve lower than average BPTC module scores, and that BME students and candidates with lower socio-economic status are less successful in obtaining pupillage. This is a big issue to address. The BSB is pleased, however, that gender and disability do not appear to have a significant predictive effect.

The second report is a qualitative analysis designed to explore perceptions of students' participation and success in the BPTC. The study finds that students feel that there is a lack of access to information on training for the Bar. The financial costs and access to funding have also be cited as important factors. The BSB has noted the need for it, and others, to provide better information. The BSB looks forward to working closely with the Bar Council on the shared objectives.

Moving on to the remainder of the BSB's announcements, Baroness Blackstone reported that the BSB announced the appointment of three new lay Board members in December 2017:

- Lara Fielden
- Kathryn Stone OBE
- Stephen Thornton CBE

The BSB is currently seeking new members for the Professional Conduct Committee. The BSB particularly welcomes applicants with expertise in family, crime and employment law. Baroness Blackstone appealed to members of the Bar Council to encourage others to apply.

Baroness Blackstone finished her address by saying that she is passionate about her job and looking forward to working with members of the Bar Council. Stating that her 'door is always open', she explained that she spent lots of years promoting lifelong learning and appealed to members of the Bar Council to help her carry out her duties successfully.

The Chair invited members of the Bar Council to pose questions to Baroness Blackstone but reminded them that this was her very first Bar Council meeting.

Robert Rhodes QC congratulated Baroness Blackstone on her appointment, and welcomed her to the meeting noting that the profession was fortunate to have someone of her ability and standing as Chair of the Bar Standards Board. He added that he noted with regret the pending change in the standard of proof in disciplinary proceedings from the criminal, to the lower, civil standard. Acknowledging the need for the public to be protected against professional misconduct by barristers, he said that he nevertheless considered it to be a real possibility that this lower standard of proof might result in unfair damage to, or destruction of, barristers' careers or judicial aspirations.

Baroness Blackstone responded that she was not surprised to hear a division of views but said that she feels that the BSB Board has made the right decision to opt for the civil standard as this is the standard used by other comparable organisations.

The Chair agreed that views are divided. Taking this into account, he said that it is all the more important that there are active members of the Bar on the Professional Conduct Committee so that the BSB is able to utilise their expertise and knowledge of what barristers do. He reported that he has written to some SBA Chairs about this. There is an effective Tribunal system and, so long as this can also be maintained with members of the Bar on the panels, the Bar has some reassurance that decisions are being made correctly and expertly. Securing the 'best people' for the Committee and panels is key.

Richard Posner said that he is aware that the FBT consultation is closed and that many have engaged. Speaking about the next stage, he suggested that when looking at how to manage this, the BSB takes into account the fact that the Bar is not a commercial marketplace. He advised that this approach might 'water down' its relevance. Baroness Blackstone replied that she is sympathetic and agreed that timing is very important as, if the BSB gets it wrong it will be a 'mess'. She said that she doesn't see it as a move towards a more commercial approach but, instead, a move to an approach that will be more acceptable for younger people and easier to navigate.

Greg Williams said that he had read the BSB's study into pupils and training and had two points to make. First, he was surprised to hear that students find it hard to access information as, when he was a student, he was faced with a plethora of information. Secondly, financial costs and access to funding is not just an important factor, it is the *most* important factor. He asked that the BSB take this into account and streamline the process.

Baroness Blackstone replied that, sometimes, young people are not good at sourcing information and they need some encouragement. She agreed that costs are the most important factor and acknowledged that most students will have enormous debts. Describing as 'outrageous' the decision in the 1990s to increase fees from £3k per year to £9k per year, she said that the Bar is now seeing the consequences of this. An extra factor is the problem of high mortgage costs as many students will think deeply about

any additional costs. She emphasised the need for the BSB and Bar Council to work together to ensure that the costs do not significantly rise.

Alex Carr spoke of her experience as an employed barrister working with a number of solicitors. She said that many of them discounted the Bar because of the expense and because they were able to secure a guaranteed contract with firms in the second year of their degree programmes. She made the point that the early certainty of a job is very persuasive.

Francesca O'Neill said that she and other barristers can attest to the fact that cost is by far the most off-putting factor. Students currently applying for courses next year are facing fees of £17.5k for one year with no guarantee of pupillage. She appealed to the BSB and Bar Council to address this together. Baroness Blackstone replied that the proposed split programme should help.

Naomi Ellenbogen QC noted that chambers have additional ways of dealing with this. For example, some make all or part of their pupillage awards available at an earlier stage. Baroness Blackstone said that this is an example of the sort of changes that the BSB is looking to make. Exactly that kind of thing should be done on a wider scale.

Guy Fetherstonhaugh QC introduced himself as the Chair of the Education and Training Committee and a Bencher of Inner Temple which he described as 'one of the best Inns, certainly in the top four!' He informed Baroness Blackstone that he was 'loving her enthusiasm' and noted that given her admission that she was on a steep learning curve, he would like to show her what the Bar Council and Inner Temple are doing in terms of their equality and diversity and outreach work in the field of their education and training activity.

Melissa Coutino agreed that cost is important but made the point that it must be closely aligned with quality. Historically BPP reduced its costs to a particular calibre of students to ensure that they attracted quality students when first diversifying into law, showing the two could be aligned. On the other hand, commercial organisations offering cheap, low quality courses, could be a detriment to the profession but nonetheless prove popular to students already in debt/without external financial support. Baroness Blackstone agreed saying that poor quality courses shouldn't be accepted as a route.

Referring to the BSB's research on differential attainment, Rick Hoyle drew the attention of members of the Bar Council to a BSB event on race equality taking place on Wednesday 7 February at Holborn Bars. He encouraged members to attend. Vanessa Davies informed members that the BSB has already had to change the room to a larger one due to high demand. She asked members to let her know quickly if they are thinking of attending.

The Chair brought the BSB's section to an end by thanking Baroness Blackstone and saying that he hoped she had enjoyed her first visit to a Bar Council meeting.

[BSB representatives left the meeting at this point.]

4. Statement by the Chief Executive

Malcolm Cree began his presentation by acknowledging that much of the work of the Bar Council over the last quarter had already been covered in the Chair's Statement. Nevertheless, he said that he had one or two things to talk about aside from that.

The team has been focusing on corporate governance and business planning.

Work has continued on the production of the new strategic plan. Feeding into this, with a view to achieving the Bar Council's aims, are the commercial strategy which has already been presented to GMC, an updated policy strategy, the information management strategy and the engagement strategy, still in its infancy.

The Bar Council is currently engaged in setting business plans and budgets for the next financial year. A change to the established budgeting process has been agreed so that those who sponsor events are responsible for the event budget rather than the training and events team as a default. This change should achieve better oversight of events and promote greater cohesion. The idea is to achieve better alignment of authority, responsibility and accountability.

Aside from business, strategic and financial planning, the Bar Council is conducting a 'root and branch' review of all its business procedures and services to ensure legal and regulatory compliance (e.g. HR processes), effectiveness and to minimise risk.

The 'My Bar' portal is undergoing final testing before release in February in preparation for Authorisation to Practice. The information management strategy is being updated and includes a new BC website as well as other standalone items.

Referring to the BSB's differential attainment research, Malcolm Cree reported that the Bar Council has extremely valuable data available to it in the pupillage gateway. With the help of Professor Martin Chalkley the Bar Council has been analysing the data and will continue to do so. He explained that the analysis has revealed that there is far more subtlety in the results than the recent BSB reports identify.

The Chair agreed saying that those two differential attainment reports are hugely important. He explained that, behind the statistics, there seems to be a far more varied picture and sought to reassure members of the Bar Council that this is at the top of the Bar Council's agenda.

5. Statement by the Treasurer

Lorinda Long began by saying that she thought it would be helpful for new members to do a recap on the 2017/18 financial performance and the 2018/19 PCF and budget plans before discussing the forward agenda.

Regarding the 2017/18 financial performance, Lorinda Long reported that the financial performance is better than planned and the Bar Council expects a small surplus of c£200k. The PCF collections are higher than expected and the BSB fees and charges income has risen unexpectedly as the BPTC numbers have been higher than expected and the BSB have been conservative in their budgeting. However, the commercial earned income will be significantly lower than planned as there has been little year-on-year growth in Bar Representation Fee subscriptions and the Bar Council has had fewer bookings for training events and reduced earnings from affinity partners.

In 2017, the Bar Council put in place plans to address the defined benefit pension scheme deficit. The first repayment plan contributions were made, a ringfenced reserve was created to mitigate future pension deficit risk and other long-term cost reduction plans agreed with the Trustees were progressing. The Bar Council therefore expects to end the year with a small surplus of c.£200k, with increased P&L reserves of c.£3.2M (more than planned) and with a higher cash buffer for 2018/19 projects.

Regarding the 2018/19 budget and PCF plans, the Bar Council plans to maintain existing operations and fund the one-off investment in a new leased property within existing PCF fee levels, supported by reserves. 2018 PCF collection levels are expected to grow due to continued higher fee earnings within the profession, BSB fees and charges income will be greater due to sustained higher levels of students undertaking BPTC, and planned 'business as usual' spend will be the same as in 2017/18, but a total expenditure increase is necessary to achieve the property move and other small projects.

Despite this, there are some risks. For example, if the 2018 PCF collections are lower, then changes to fees in 2019 may need to be considered to sustain current operations. In addition, the BSB does not expect to sustain current student numbers through the introduction of new Bar training arrangements, leading to greater pressure on PCF. Lastly, shortfalls in the 2018 PCF collections or other funding may lead to cash constraints in 2018 but mitigation options are being considered.

Lorinda Long finished by presenting the forward view:

March = update on outturn for 2017/18

April = update on PCF collections and BRF subscriptions

May = update on 2018/19

July = year end results

September = 2018/19 update

AGM = presentation of the audited accounts for 2017/18

November = financial strategy update and 2019/20 PCF and budget proposals

Natalie Zara agreed to circulate the slides from the Treasurer's Report after the meeting.

6. Implications of yet another Lord Chancellor

The Chair said that this item had been placed on the agenda to provide an opportunity for the Council to express concerns. It is becoming rather traditional for the Chair of the Bar to welcome a new Lord Chancellor. The right sort of statements have been heard from the new Lord Chancellor, David Gauke MP, who has made a 'brave start'. It appears that he is a person prepared to stand up for what he thinks right and the Chair said that he is looking forward to him taking his responsibilities seriously. The new Lord Chancellor has a Treasury background and knows how to say 'no' to other ministers. However, the Chair made the point that the Treasury attitude is often 'no more money'. LASPO, publically funded work and disclosure will all be issues for the new Lord Chancellor to take into account.

The Chair expressed concern that the role is being downgraded, although David Gauke MP admittedly comes from two previous cabinet positions. The Bar Council is not confident that the role is seen as a significant cabinet role as it is clear that those in the position have been quick to move on which has, in turn, hampered progress in a number of areas. This may be an inevitable consequence of the 2005 changes, but the Chair was interested to hear the thoughts of members of the Bar Council. He promised to convey any messages and pointed out that the Solicitor General was in attendance to hear all comments and concerns.

Robin Allen QC suggested that the Lord Chancellor is invited to attend a Bar Council meeting sooner rather than later and asked whether the Chair had given this idea any consideration. The Chair replied that he had not thought to invite the Lord Chancellor to a Bar Council meeting but said that he would be delighted to do so when he meets with him later in the month. The Chair asked Robert Buckland QC MP what he thought of the suggestion. Robert Buckland QC MP replied, 'why not?'

Neil Mercer QC cautioned that if any more funds are removed, the system will collapse.

In reply, Robert Buckland QC MP conceded that the consequences of the 2005 act are being seen. However, he suggested that there are advantages in the post of Lord Chancellor and Secretary of State for Justice being a 'live, active member of the Cabinet' in that the person occupying the role is able to exert more influence. Though it might be attractive to have a more senior position in the House of Lords, there are fewer opportunities to influence policy if the role holder is not a member of the Cabinet. There has been a lot of churn but policy is key. David Gauke MP is the first solicitor to become a Lord Chancellor. He understands the profession and is starting in a good place. One of the main concerns to address is prisons where the bulk of the money is spent. Lucy Frazer QC MP also has significant knowledge. The position

may be imperfect but it is only right to acknowledge that the new Lord Chancellor does understand the principles and will engage. Moreover, he is the first Lord Chancellor to have been Chief Secretary to the Treasury which means that he knows how to ask questions. The department was able to secure money for prison management so are aware of the issues.

Robert Buckland QC MP finished by promising to take the views of the Bar Council back. He was clear that if the Lord Chancellor is not upholding the rule of law then he is failing in his task.

7. Hustings (and vote-chasing) for the Bar Council Officer elections

The Chair reminded members of the Bar Council of the discussion on hustings for officer elections that took place last year. He was unable to be present at the meeting during which the hustings took place, so was not as well placed as some to form a view. He was mindful of the need to make a decision as to the process, if any, to follow.

Referring to the paper attached as Annex 4, the Chair explained that the recommendations are more observations. He said that it would be fair to say that the general feeling tended towards some sort of oral opportunity which would allow people to see the candidates and find out about them. There is always a written statement which gives a flavour of the thoughts of the candidate, but an oral presentation was felt to be an advantage.

The Chair noted that the difficulty with hustings may not be so much the oral presentation but the questions posed. This, he said, is of real concern as people could be put off standing if the hustings were perceived to be unduly aggressive, difficult to plan for, or if people consider themselves disadvantaged through having had less exposure to the work of the Bar Council. Speaking personally, he said that, even as Vice-Chair, he did not have insight into everything that was happening within the Bar Council. Each member of the Bar Council has their own constituency to represent and it can be difficult to deal with a potentially invidious question, such as, 'What have you done for my constituency?' On the other hand, some questions are inevitable and the Chair said that he would be interested to hear the views of the members of the Bar Council and in particular find out what they consider is the right balance.

The Chair went on to say that he has been asked whether the hustings process is akin to what a Chair faces when in post. His honest response is 'no'. Meetings tend to be small and much of the role involves influencing in a range of situations. The Chair faces few 'cut and thrust' meetings of a more 'political' type.

Richard Atkins QC, who participated in the hustings in 2017, said that he had found the experience to be 'the most terrifying thing I have ever done', though he acknowledged the need for some oral presentation process. Describing the summing up section at the end as 'no use', he said that he would eliminate that part. He also

warned against the idea of the candidates having sight of the questions in advance. It is important that some questions are unknown so that candidates are speaking for themselves and not relying on support garnered from other Bar Council members. He also made the point that the Chair can find themselves in front of a Select Committee on occasion and hustings are good preparation for that kind of experience. He agreed that the 'what have you done for me' style question is neither easy nor appropriate but conceded that hustings do 'add something'.

Amanda Pinto QC, who also took part in the 2017 hustings, spoke of the need to be courageous if you are going to stand for an officer post. She said that candidates should be prepared to put themselves in uncomfortable positions. Often voting members of the Bar Council do not know the candidates and hustings are an important opportunity for members to hear from candidates directly. Questions are good but should be managed by the Chair. This is easily done on the day and the general rules need not be prescriptive. Amanda Pinto QC also suggested that there should be flexibility over whether to hold hustings each year but finished by reiterating that, generally speaking, it is a good opportunity.

The Chair reassured members that the requirement for the hustings will not be enshrined in the Standing Orders, but reiterated that there needs to be an agreed process.

Robert Rhodes QC said that, in principle, he agrees with hustings but said that he had been slightly disappointed to read that the General Management Committee (GMC) had thought it might deter women from standing. He had thought that the profession had gone beyond Hamlet's comment: "Frailty, thy name is woman." The Chair replied that research around people applying for silk suggests that fewer women apply because they are less confident that their application will succeed. He said that it is important that all concerns are taken into account so that the process adopted does not put people off standing.

Nigel Sangster QC described last year's hustings as 'quite brutal' but said that he found the written statements, of all candidates to the Council, as well as the Vice Chair, to be rather bland. He said that voting members often don't know the candidates very well, either personally or professionally and that hustings are a good way of seeing how they stand up to cross examination. However, he suggested that the Chair should have a veto on any 'inappropriate' questions. He finished by saying that if a candidate wishes to become the Chair of the Bar then they really should have the mettle to 'stand up' to be seen and heard.

Richard Posner suggested that themes might be considered and addressed at the Bar Council prior to the hustings. The Bar Council can then decide whether a theme is unfair or valid for the future of the Bar Council.

Tim Devlin said that he thought this was an excellent idea. Recalling previous hustings held some years back he suggested that each candidate speaks after which

they are asked the same three questions followed by three or four questions from the floor at random. This approach, he explained, leaves open some element of surprise. Anyone chairing will need to be prepared to respond to the unexpected. To this, the Chair said that he would propose to moderate, such as by re-phrasing a question.

Rachel Langdale QC said that in the Inns a proposer speaks about the strengths of the candidate. She suggested that aside from the normal written statement by the proposer, the proposer is also asked to make a short oral presentation endorsing the candidate as 'it might be better coming from someone else'.

A member of the Bar Council suggested that a topic is chosen for the candidates to speak about.

Returning to the issue of people and in particular women being put off standing, Celina Colquhoun made the point that it depends on what the purpose of the process is. If the process is simply about getting to know the candidates there is no need for hustings as such as any questions can be posed of candidates by email as has been done in the past. If it is about testing the mettle of candidates then she suggested that did not mean it had to be 'brutal' and appealed for the hustings to be 'more civilised' if they are to take place.

The Chair mentioned that the suggestion of a 'surgery' was raised at GMC but he questioned how readily this could be done and cautioned that it could be lengthy.

Colin Andress said that, in his opinion, it is a bit of a poor show if the person standing for the chair of advocates can't speak in person in a hustings. Saying that he was not keen on the idea of the proposer speaking as the outcome will be decided on who has the most 'influential mates', he suggested that a fairer system is to have the same questions addressed to all candidates and to ask them in turn.

Andrew Morgan noted that speeches are useful but suggested that a moderated panel question and answer session is more civil as it is likely to get the best out of the candidates and soften the feel of the hustings.

Jenny Josephs said that the thought of having to speak as a proposer might put people off proposing others, to which there was general agreement. She also made the point that members of the Bar Council should know better than to act in a manner that is hostile during the hustings. People who stand are standing to represent members of the Bar Council and should have an opportunity to present themselves.

The Chair outlined a possible process which included a set of pre-identified questions and there followed a discussion about the merits of this approach. Guy Fetherstonhaugh QC said that he was not sure that there had been a consensus on pre-prepared questions and said that he would be keen to hear more views.

Gordon Stables suggested that one 'middle ground' approach would be to reveal the questions to the candidates an hour or so before the hustings as this would guarantee

considered answers. Richard Atkins QC, however, said that this was the most terrifying thing he had heard so far!

Amanda Pinto QC suggested that there should be three topics, rather than specific questions, posed in advance. She also said that she felt nervous about something which had previously lasted around 20 minutes being stretched out to 2.5 hours.

The Chair indicated that he thought topics were a better idea than pre-set questions. Drawing the various contributions together, he proposed that hustings would take place at the May meeting and that the format will be:

- 1) The production of a written statement in advance of the hustings
- 2) An opportunity (time to be decided) for each candidate to deliver an oral presentation
- 3) A panel session with a series of pre-identified topics for the candidates to talk about
- 4) Some opportunity for further questions moderated by the Chair.

The hustings will not include a summing up session and its aim will not be that candidates take a 'chapter and verse' policy stance but instead use the opportunity to explain to voting members how they would approach issues.

This received general approval.

Later in the meeting, the Chair was reminded that the discussion on hustings should also have included the proposal to include an abstain box for officer elections and discussion of whether the Returning Officer should chase non-voters.

The Chair said that his own view was that members of the Bar Council should feel obliged to exercise their vote in elections, but he was not sure that an abstain box was an necessary addition, saying, 'if you can't decide then don't vote'. Richard Atkins QC however made the point that some people do not vote because they cannot choose. If there is an option to tick an abstain button, the Bar Council will learn more about the voter turnout.

Rick Hoyle said that he would support the idea of an abstain box as it would be a sensible way of avoiding any unnecessary chaser emails or challenging assumptions that people aren't voting.

Amanda Pinto QC said that it should not be assumed, nor an excuse, that people don't vote because they can't choose between candidates.

The idea of an abstain box was put to the vote. 31 members of the Bar Council were in favour and 32 members against. Therefore, an abstain vote will not be introduced in officer elections.

There followed a brief conversation about the role of the Returning Officer and the proposal that the Returning Officer 'chases' non-voters. It was agreed that a generic

email reminding people to vote and apologising to those who had already cast votes would suffice.

8. Bar Council meeting on Saturday 19 May 2018 – possible change of date

The Chair drew the attention of the members of the Bar Council to the paper written by the Head of Governance, Natalie Zara, about potentially moving the meeting scheduled for 19 May. He noted that this would have a knock-on effect on the planned hustings and explained that the issue is whether the meeting should go ahead on that date given the Royal Wedding in Windsor and the FA cup final in London.

The Chair explained that careful consideration is given to the dates chosen for Bar Council meetings. It is inevitable that they will, on occasion, clash with other events which does mean that some members are unable to attend. In this case, neither of the two competing events were scheduled when the Bar Council dates were set.

The members of the Bar Council agreed to keep the meeting as originally scheduled on Saturday 19 May.

9. Relationship between the Bar Council and the Bar Human Rights Committee

The Chair explained that the paper accompanying discussion of this item, Annex 5, was not the correct version that should have been circulated. Due to this, the question about funding was not intended.

Returning to the discussion on the Bar Human Rights Committee (BHRC), the Chair said that he was looking for a steer from the members of Bar Council. Those who were present at the November 2017 meeting would have heard a presentation from Kirsty Brimelow QC, Chair of BHRC, which outlined the huge amount of work that the BHRC does. The Chair said that the question for discussion however is whether the Bar Council is happy that the BHRC remains at arms-length or whether it thinks the BHRC should be brought closer.

The Chair explained that the BHRC focusses on international human rights issues; any issues within the UK would be for the Bar Council, if appropriate. There is a potential overlap of work where there are threats to the profession or the judiciary internationally. In such cases, the Bar Council would look to take the lead, but could work with the BHRC.

There is some thought that the BHRC and Bar Council may inhibit each other if they are 'brought under one roof'. Whereas the previous Chair, Andrew Langdon QC, was of the opinion that this would enable the Bar Council more freely to manage the work of the BHRC, others think it might be harder for the Bar Council to get access to influence abroad.

As part of the strategic planning strategy, the staff are seeking a steer from the Bar Council as to how close the BHRC should be. The Communications and Marketing Team proposed that the Bar Council and BHRC should coordinate communications.

The first question is whether the Bar Council are happy with that strategy. The second question is whether the Bar Council is content with the current 'arms-length' division.

Fergus Randolph QC raised concerns about the phraseology of paragraph 6.2 of Annex 5. The Chair explained that this should have been corrected. He clarified that the BHRC does not touch issues in the UK. Natalie Zara said that she would circulate the correct version after the meeting. Fergus Randolph QC then said that he was happy with the communications proposal and said that he had no problem with the BHRC being brought closer, saying that he is 'all in favour of bringing them in' and that he does not understand the reasons for the separation in the first place.

Nicholas Vineall QC cited the example of widespread human rights abuses in China. Some were abuses against lawyers, many had nothing to do with lawyers. He believed the Bar Council's message on the rights of lawyers and the rule of law would be blunted if the Bar Council was also closely associated with a position taken on human rights abuses more generally. He would therefore prefer to see the BRHC kept slightly at arms length, although there was nothing to be said against ensuring that it and the Bar Council knew what each other was doing.

Frances Judd QC said that she feels strongly that the Bar Council should focus on the risk to the independence of lawyers and the judiciary as that is 'so important'.

Benjamin Seifert said that he had been impressed by Kirsty Brimelow QC's presentation. However, he said that he recalled seeing her on television giving an interview and being shocked by the fact that she appeared to be speaking on behalf of barristers. He raised concerns that the BHRC is potentially representing all barristers as if they have a collective view on international issues. For this reason, he said that he favours separation.

The Chair said that the Bar Council is always careful to recognise that members of the Bar will differ on the political issues. It is also too simplistic to think that simply because an issue is a human rights one, the whole Bar will agree on it. Even with international human rights issues there are differences of opinion.

Fergus Randolph QC made a point in response to this. He suggested that there might be more control if the BHRC were brought closer. Actions of the BHRC under this model would need sign off and the BHRC would be subject to the same close control that the other Bar Council committees are.

Daniel Sternberg said that he would support the retention of the status quo as it is important that the BRHC retains its independence. He said that he could see no difficulty in improving communications.

Another member of the Bar Council said that if the BHRC wishes to be more independent then it should be more obviously so. He enquired as to the views of the BHRC. The Chair replied that the aim of today's discussion was to understand the views of the Bar Council. He believed that, in general terms, Kirsty Brimelow QC

might be comfortable with the idea of being closer, and could see potential benefits of being more closely aligned with the professional body, but it would need to be discussed. For example, historically, the BHRC's chair's chambers have accepted the burden of housing the administrative member of staff for the BHRC.

Robin Allen QC said that he wanted to pick up on what Nicholas Vineall QC had said. There is a good distinction between lawyers and individuals. The two organisations work closely together as almost inevitably lawyers will 'stick up' for individuals so the work needs to be aligned. He suggested that the development of the communications strategy is key. The advantages of the status quo work well and the Bar Council needs to avoid situations where it appears that the BHRC is speaking on its behalf, which may prove difficult if the BHRC is brought closer.

Guy Fetherstonhaugh QC said that he is agnostic on the matter of bringing the BHRC closer but made it clear that if the BHRC is 'outside the Bar Council' then it should be seen to be so. Pending any such decision, he suggested that the name of the BHRC is changed so that the word committee is removed and replaced with something less indicative of membership of the organisation.

Amanda Pinto QC, speaking as Chair of the International Committee, said that the Committee enjoys considerable liaison with the BHRC. The main problem is that, to others, they don't appear separate from the Bar Council. The Bar Council puts out a number of communications supporting legal professionals and judiciaries who are under threat and there is a real problem with perception. The name of the BHRC may be changed but if the Bar Council is funding it, it is a serious issue if the Bar Council has no control. The Chair enquired as to the right answer in Amanda Pinto QC's opinion. Amanda Pinto QC replied that the Communications and Marketing Team believes that there is a lost opportunity to illustrate 'great works' and therefore greater responsibility towards the Communications and Marketing Team is a good thing. Concerns about overlap already exist but these may be better managed through better communication between the two organisations.

Robert Buckland QC MP made the point that while the word committee is potentially misleading, it would be up to the BHRC to decide what to call itself. At the moment, the BHRC is a hybrid and the question of financing and funding needs to be addressed first.

Amanda Pinto QC explained that the fact that the BHRC is called a committee gets the BHRC greater access to and levels of opportunity in foreign jurisdictions. To this, Fergus Randolph QC said that the BHRC can't 'have it both ways'.

The Chair said that he was minded to take them back and discuss them internally before bringing the issue back to GMC and maybe the Bar Council at a later stage.

Malcolm Cree thanked the members of the Bar Council for their particularly important contributions.

10. Any other business

Paul Hopkins QC asked Robert Buckland QC MP for an update on what is happening at Westminster in relation to the continuing legal aid funding deficit in relation to private law family proceedings with the result that some unrepresented litigants subject to allegations of domestic abuse and domestic violence are still having to be allowed by the courts to cross examine complainants. There had been a white paper before the last election on addressing this unacceptable problem area which appears to have 'gone cold'. Robert Buckland QC MP replied that the intention is to legislate to prevent it but the problem lies with organising the correct vehicle to do this. MoJ is currently looking at a couple of options and for formal approval process is yet to take place. Saying this is expected fairly imminently, Robert Buckland QC MP said that he would relay concerns to make sure that they are included in any legislation in the courts.

Paul Hopkins QC then asked whether this was with a view to restoring public funding for those individuals facing allegations of domestic abuse / violence or for the creation of a special advocate scheme for them. Robert Buckland QC MP replied that this is yet to be ironed out. The principle is clear but the point is around how the court would be assisted. The Chair said that he was glad to hear that.

Robin Allen QC informed members of the Bar Council that the Rt Hon Maria Miller MP, chair of the Women and Equalities Committee of MPs, will be hosting the Fawcett Society Sex Discrimination Law Review Launch on Tuesday 23 January 2018.

Celina Colquhoun said that she wanted to make a small point on the EU Law Committee. She suggested that, if there is an appetite, a Brexit seminar or session outlining where we are to date would be helpful. The Chair said that he would take the suggestion away and informed members of the Bar Council that the Brexit Working Group already had on its agenda to look at where the negotiations are headed. He commented that the Bar Council may not know enough to have an informed view that could be communicated at a seminar at this stage.

Derek Sweeting QC reported that work is currently being carried out on block listing and some feedback has been obtained. Saying that he would be very interested to hear from anyone with information, he encouraged members of the Bar Council to get in touch with him through Natalie Zara. The Chair urged members not to miss an opportunity to provide feedback.

Rick Hoyle asked about the sort of information that Derek Sweeting QC is seeking. Derek Sweeting QC replied that he wants to find out whether there is a genuine problem. Most of the feedback has been around long waits to get on, not being reached and things being done for the convenience of the court. However, citing the example of floating trials, he cautioned against complaining too much, or 'killing the golden goose', as this could result in less work being listed. The noise from London

is that there is a significant problem as there have been examples of block lists with 20-25 cases each listed for 3 hours each. Evidence and views are needed. The Chair, encouraging members to feedback, explained that views are all the more sought after as there is no single Specialist Bar Association with responsibilities in this area.