



Minutes of the Bar Council meeting held on Saturday 11 July 2015 at the Bar Council offices

Present: Chantal-Aimée Doerries QC Chairman-Elect
Rt Hon Jeremy Wright QC MP Attorney General

1. Apologies for absence

Apologies for absence were received from Mr Robert Buckland QC MP, Alistair MacDonald QC, Lorinda Long, Alison Saunders CB, Safira Afzal, Gary Blaker QC, James Burke, Alexandria Carr, Sarah Crowther, Tim Devlin, Malcolm Dodds, Jonathan Egerton-Peters, John Elvidge QC, Max Hardy, Adam Hiddleston, Thomas Jaggar, Jennifer Josephs, Hannah Kinch, Anna Macey, Stuart McCracken, Duncan McCombe, Gerard McDermott QC, Paul Mendelle QC, Gregory Mitchell QC, Benjamin Myers QC, Gordon Nardell QC, David Nicholls, Andrew O'Byrne QC, Dawn Pritchard, Laurence Rabinowitz QC, Penelope Reed QC, Christopher Rees, Robert Rhodes QC, Zoe Saunders, Geoffrey Tattersall QC and Thea Wilson.

The following did not attend and did not send apologies: Kerry Bretherton, Michael Duggan QC, Mark Engelman, Mark Fenhalls QC, James George, Richard Gibbs, Richard G Jones, Ian Lawrie QC, Nigel Lithman QC, Naomi Madderson and Neil Mercer.

The following attended as guests: Sir Andrew Burns KCMG and Patricia Robertson QC (until item 5).

60 further members attended.

2. Minutes of the last meeting and matters arising

Chantal-Aimée Doerries QC (CADQC), Chairman-Elect, chaired the meeting as Alistair MacDonald QC (AMQC) was attending the Australian Bar Annual Conference in Boston.

Andrew Granville Stafford (AGS) commented that he was recorded as absent and not giving apologies at the last Bar Council meeting on 11 May 2015, but he was in fact present.

There were no other amendments to the minutes and no other matters arising.

3. Statement by the Chairman

The Chairman-Elect spoke to a paper provided at annex 2b, which set out the actions arising from the last meeting of the Bar Council and progress against each. It was proposed that, following each meeting, GMC would consider all matters arising and agree next steps. The Chairman's written statement will, in future, contain an update as to progress against all actions.

At the last meeting, the Chairman undertook to approach the Inns with a view to revisiting the possibility of holding Bar Council meetings at their facilities at a discounted rate. As previously explained, the Inns had always been very cooperative and generous, but room availability is problematic for a number of reasons. The Inns have kindly agreed to look at the provision of rooms to the Bar Council again, following which the Executive will prepare a benefits analysis of holding meetings at the Inns instead of at the High Holborn offices.

At the last Bar Council meeting, it had been proposed to hold only seven meetings in 2016, but there were concerns about this, so the number of meetings has been reinstated to eight.

The Chairman-Elect referred to Bar Council meetings being held on other days apart from Saturdays in order to widen access. Further consideration was given to this at GMC and consideration was given as to whether to hold a survey. The consensus was that the benefit would be limited, given the low response rate which is typical of the Bar. It would also be resource-intensive. GMC discussed the use of a virtual meeting solution to allow members to attend remotely, opening up the possibility of weekday meetings. It was agreed that the meeting could not be effectively chaired this way, and that disruptions on the line would be distracting.

GMC agreed that it is important to take steps to ensure that the Bar Council is inclusive, however it was acknowledged that Saturday is really the only option for reasons given in the original paper circulated to Bar Council members.

It was agreed that consideration should be given to amending the rules about attendance in the Constitution based on exceptional circumstances relating to certain criteria e.g. religious observance. The Executive undertook to return with a proposition for approval on this basis.

It was agreed that more work would be undertaken by the Executive to share information and raise awareness around engagement with the organisation ahead of elections in September, allowing those who would not be able to attend on a Saturday to know how else they might engage. This will be subsumed into ongoing work relating to the organisation's Public Sector Equality Duties.

The Chairman-Elect reported that GMC agreed that it would be useful for Bar Council members to have a paper setting out the responsibilities of all the representative and operational committees of the organisation, in order to understand better the role of the Council. This was provided at annex 2c. Paul Stafford (PS) noted that amongst the six ex-officio members of GMC who are chairs of Specialist Bar Associations, the chair of TECBAR is not included. AGS expressed that this

particular Bar Association is one of the most important and asked members to consider for this association to be a part of GMC. The Chairman-Elect agreed to take this to GMC for discussion.

On behalf of the Bar Council, Andrew Langdon QC (ALQC) thanked Charlotte Hudson for preparing the briefing on the role of committees. He also noted that new members will now – in addition to receiving a written induction pack – be offered a meeting with the Officers and key members of the executive. This is an important step in helping new members engage.

The Chairman-Elect reported that, in addition to those new members of the Council stated in the Chairman's written statement, Christopher Rees would be joining the Council in September as a representative of the Wales and Chester Circuit and thanked his predecessor, Sarah Morgan.

The Chairman-Elect drew the Council's attention to the Chairman's written statement, in which he had expressed a hope that this meeting would be used as a forum for discussion regarding the ongoing ballot by the Criminal Bar Association, which asks: "Solicitors face an 8.75% cut to litigators fees. In support of solicitors, do you wish to go back to 'no returns' and also refuse all new work with a representation order dated from 1st July 2015 until such time as solicitors decide not to take further action in respect of that cut?"

Tony Cross QC (TCQC), Chairman of the CBA, said that this was a truly seminal moment for the Bar. He had expressed his own views to CBA members, but ultimately wished to encourage a strong turnout. TCQC expressed his thanks and support that had been received from the circuit leaders. The Chairman-Elect said that, on her own behalf, and that of the Chairman, she wished to encourage CBA members to vote and to ask others to encourage CBA members in their Chambers to vote.

3. Chief Executive's and Treasurer's report

Stephen Crowne (SCr) gave a brief update on the on the Vulnerable Witness Advocate Training Programme, responding to the government's request that all advocates defending serious sexual offences cases, 6,000 or so, should receive specialist training.

The Implementation Group chaired by SCr had met for the first time on 18 June 2015. The Group brings together the key partners - the Council of the Inns of Court (COIC), the CBA, the Bar Council, the Advocacy Training Council (ATC) and the Rook Group. Good progress has been made on the preparation of training materials, and the Group was working on practicalities e.g. availability of courts and sufficient trainers. They would need to consider a range of issues, including how to respond to the wish of the President of the Family Division for a similar training requirement for family practitioners. The Group will ensure that there is good and regular communication to the profession. It was likely that the training would be piloted early in 2016 and then rolled out during the course of that year. SCr invited questions and comments.

Andrew Walker QC (AWQC) suggested that new practitioners should receive this specialist training as an integral part of their initial training programme. SCr confirmed that this is certainly the intention for the longer term.

The Attorney General thanked everyone for the hard work done so far on the programme and said that he understood that it is likely to be a long process to get everyone trained. He asked whether there was any feedback on the s.28 pre-trial cross examination pilot in Leeds, Liverpool and Kingston-upon-Thames, and whether that was being considered as part of the training project. ALQC confirmed that experience from these pilots was being taken into account in the Programme.

SCr updated the Council on finance matters in the absence of the Treasurer. Currently, costs are in line with budget assumptions, and income is higher than predicted. The practising certificate fee (PCF) income is significantly higher than anticipated - £9.9m against the target of £9.3m - notwithstanding a reduction of 1.9% in the number of practising barristers.

The Executive is giving particular priority to achieving income targets, particularly the Bar Representation Fee (BRF). SCr thanked the Specialist Bar Associations for help in raising awareness of the activities funded by the BRF. Guy Fetherstonhaugh QC (GFQC) asked what the current BRF income figure was. SCR undertook to circulate the latest data with the minutes.

4. BSB Report

Sir Andrew Burns (SAB) apologised for being unable to attend the last Bar Council meeting.

Speaking to the BSB report at annex 3, SAB referred to QASA, which the Supreme Court had ruled lawful on 24 June 2015. The BSB will now consider next steps and coordinate with the other regulators. The BSB will engage with the Bar Council and circuit leaders as soon as it can meaningfully do so.

SAB reminded members about four consultations which are currently open: Future Bar Training; Continuing Professional Development (CPD); Disciplinary Tribunal Regulations and amendments to the BSB's powers. The one on CPD closes on 2 September 2015. So far, over fifty submissions have been received, but there is plenty of time for members to contribute.

The Future Bar Training consultation issued on 10 July is certainly a large document, but the subject is extremely important and the BSB want to do the consultation justice in order to maintain standards in the round. The BSB is entirely flexible about how to hear responses since this is a real opportunity for the Bar to help shape the BSB's response. Further consultations will be necessary as specific proposals will be developed.

Looking ahead, there will be another consultation regarding the scope of the practice of employed barristers and BSB hoped the employed Bar would welcome the discussion. Consultations about public and licensed access would also follow later this year.

Risk-based regulation was now in its next phase; all chambers that were classed as High Impact have been assessed and a full report would be available in the autumn. Overall, the response to this particular consultation has been excellent with some very positive comments.

Another report that would be issued in the autumn would concern Youth Court Advocacy.

SAB fully appreciated that everyone was extremely busy but urged members to respond to all the consultations. The timetables reflected the time needed to consult other regulators and stakeholders before action could be finally completed. The floor was opened for questions.

Louise Nye (LN) commented on the amount of consultations currently on the go and that it takes an awful lot of time to participate; one document is 123 pages long. As self-employed practitioners, it is difficult to find the time. SAB reiterated that these were topics of central importance to the Bar, so it was vital for the BSB to gather as many members' views as possible.

GFQC said that at the last meeting, there had been a discussion about 'straw juniors' and referral fees and asked for the views of both the Attorney General and the BSB on these matters. SAB said that the BSB had met with the Ministry of Justice (MoJ) on Thursday, and with the Senior Judiciary on these matters. This was an issue that both parties are not happy with and that goes against the Code of Conduct. Robin Allen QC (RAQC) welcomed the Lord Chancellor's remarks on referral fees in his speech at Mansion House and SAB agreed. It was further commented that this matter is extremely important and needs to be handled appropriately as it affects public confidence.

Patricia Robertson QC (PRQC) said that BSB and the Legal Services Board (LSB) need to discuss this subject at length. Progression has been slow as personalities have recently changed. There is a meeting scheduled between SAB, the Attorney General and LSB regarding the assessment and PRQC commented that they will continue to apply pressure where they can. Richard Atkins QC (RPAQC) was grateful about the leadership that had been shown. RPAQC asked if the BSB's discussions with the Law Society had been beneficial and if they were being accepted. PRQC expressed that the response, so far, has not been positive but BSB also need to engage with the regulators.

GFQC commented that one consultation paper took him two days to respond. All the consultations are too long and intrude upon his time during the day. GFQC suggested limiting the questions and make them more to the point. GFQC also felt that most of the consultations were not a priority and some could be done next year and that the BPTC consultation should be the main focus. GFQC asked who wrote the paper. SAB said that he too had spent a lot of time reading the paper and felt the questions were very specific and well expressed and was surprised that GFQC, amongst others, found the consultations so burdensome. The BSB has consulted people in the profession and all consultations had been led by Vanessa Davies (VLD) and other experts in the field.

Andrew Walker QC (AWQC) noted that the Bar Council had raised issues with the BSB in relation to the existing guidance on referral fees, and asked whether there might be an opportunity for the Bar Council to contribute to the BSB's further consideration of what underlies the ban on referral fees. Sir Andrew indicated that this would be welcome. AWQC also asked the BSB to bear in mind, when framing the anticipated consultation on employed practice, the potential for the misuse of varying practising methods as a way to side-step the referral fee prohibition. SAB assured that both points would be taken into account. PRQC very much welcomed intelligence from AWQC with the policy should he wish to contribute. Currently, the employed Bar consultation is looking more closely in structure with the Act itself and this is something the BSB will look at.

Lucinda Orr (LO) asked when the employed Bar consultation would be finalised. SAB advised that it would be around November. BACFI is holding a professional issues forum on 13 July at which members would have an opportunity to raise issues with the regulator.

Ruth Hughes (RH) agreed with GFQC that the consultations were too long and felt that they were not fit for purpose. RH felt that consultations did not relate enough to pupillage, training and what the course has to offer. She felt that offering a longer pupillage would be more appropriate, which would enable the Bar to offer more training skills. RH also highlighted the problems in relation to student capability and equality and diversity (E&D). The BPTC course is extremely expensive and seems exclusive for pupils who have the money. Trainee solicitors have their fees paid for them, usually by their firms. SAB reiterated that this was why the BSB have set out these consultations to see how they can be less prescriptive. SAB was aware that course fees are extremely high and the certainty of employment was low. SAB assured members that he would feed back all members' comments.

SAB and PRQC left the meeting.

5. Council of the Inns of Court: annual update

James Wakefield (JW), Director of the Council of the Inns of Court (COIC), gave an update of the work that has taken place over the last year.

JW explained that when he started the role two years ago, he had four principle objectives during those two years: to continue to put the tribunal service on a firm footing; to turn COIC in to a charity; to evolve the ATC in to a College and to press for reform of the BPTC. He explained that the tribunal service was now on a firm footing and that COIC had been incorporated as a charity. He further explained that COIC became a charity in order to give clear structure and have permanent staff on board all of which enabled it to be a force for good.

With regard to evolving the ATC in to the Inns of Court Advocacy College, JW shared with the members that the College will build on the existing work of the ATC in that there will be more research in advocacy, materials and information systems and monitoring of quality. This would be facilitated by increasing staff (including taking on professional educators) to support practitioners, who are at the top of their field, as they create teaching materials. COIC's ambition was for Circuits and Inns together to be recognised as global leaders in training and advocacy.

A few weeks ago, JW had dinner with some of the Circuit Leaders, plus the Chairman and Chairman-Elect of the Bar. It was impressed upon JW the importance of providing national resources, not just London-centric ones and future work will take this into account. It was also impressed on him that these resources should be created by practitioners from all around the jurisdiction.

It is felt that BPTC needs reforming. An external company had assisted the Inns consult with their students and new practitioners. Currently, surveys show that people are not satisfied, which is telling COIC that the current system it is not working for students. There are various ideas for

reform such as attending shorter courses which are more intensive skills “boot camp” style following learning knowledge in whatever way they choose. The reaction from students on this is very popular, particularly from those who are most likely to get pupillage.

COIC would like to enhance a system to reduce costs and offer something more flexible. This would enhance access to the profession which is something the Inns care deeply about. The Inns presently spend in the region of £5m a year supporting students with BPTC and GDL scholarships and was again considering whether and how that money might be spent so as to encourage access and influence the development of the course for the better. There was a worry at the Inns that if student satisfaction with the course is low then the £5m could be supporting an unpopular course and could in fact, in some regards, making the problem worse. It was noted that no law firm spent as much as the Inns on professional legal education and that firms would expect a discount on course fees and to be able to influence (within boundaries) the content of the course. It is important to monitor and influence content and quality and acknowledge that there are legal complexities and regulations to be adhered to. Nevertheless it is vital to promote change and the Inns should be constantly thinking ahead.

JW advised that COIC would be speaking to all BPTC providers to engage with them in order to reform and pursue new ideas to establish common ground. COIC will be keeping an open mind on what is to be done and how much involvement is required.

Over the summer, COIC will be responding to the BSB’s consultation on CPD. There are complex issues which are separate from the Inns regulations. JW thanked everyone at the Bar Council who have been a great support, in particular the Chairman, the Chief Executive and GFQC.

Max Hill QC (MHQC) offered support to COIC and what they are trying to achieve. He reiterated the urgency to reduce money being taken from young people by commercial training providers just so students can obtain a qualification and then be saddled with debt. Lord Judge recently said that he is nudging the Inns to use scholarships to support practitioners in their early years of practice which is when funds are needed.

JW responded by explaining that if fees were lower, then it might provide opportunity for the Inns to use the scholarship money differently. Again, the Inns were keeping an open mind on this. He pointed out that if fees were lower than it might increase numbers going on the course, however, it is not about numbers so much as increasing access and reducing the cost of risk of training for individuals wherever possible. The Inns are already supporting the match the pupillage scheme and will fund forty pupillages in the next cycle. A decision has to be made about money if it is to be used for funding beyond that stage. Again, discussions are on the horizon.

RH felt that COIC was very much a “white, male, aged gorilla” and asked if any E&D statistics had been collected and if not, why not. JW sought clarification as to what statistics RH would like to see; is she looking for statistics on members of COIC? He agreed that COIC will need to do further E&D work the fear being that it is not representative of society from an E&D perspective. JW and RH agreed to touch base outside of the meeting to clarify what data RH is seeking and share ideas.

ALQC repeated the importance for COIC to close the gap between the circuits and London, and for training to be available all over the country. ALQC also advised that training should be made

more visible, particularly in relation to vulnerable witnesses to ensure that it is fully engaged. Again, most of this is London based and that is also the perception. JW agreed with ALQC's comments and this is on the agenda for COIC to ensure that training was created and available nationally.

Eleanor Mawrey (EM) asked whether COIC had any Equality and Diversity Officers (EDOs) and if not, perhaps one should be appointed. JW will take this back to COIC.

Paul Stafford (PS) felt that the current system discouraged students from achieving pupillage and going on to early years of practice due to funding. He also added that he thought it disgraceful that the Inns did not allow the Bar Council to hold their meetings at the Inns at heavily discounted rates. PS asked JW if COIC could look at the scholarship funding and the issue of rates for meetings. JW said that this was something that would be looked at and pointed out that the Inns already provide lots of free rooms and that that next year, most Bar Council meetings will be held at the Inns, and reiterated what the Chairman-Elect had said earlier, namely that the Inns had in fact already been very supportive and generous.

Amanda Pinto QC (APQC) explained that her Inn may not be free to use scholarship funds for all the purposes mentioned because of restrictions on those funds, however there have been and will be discussions as to where and how monies should be allocated. AP pointed out that rooms are not given free of charge to the Bar for meetings and has offered nevertheless to talk to her Inn and encouraged other members to do the same. AP further added that COIC need to have a policy outlining how charges should be adopted. JW confirmed that this is in hand.

AWQC commented that from the outside, it seemed that the Inns were operating to a small niche concept and there appears to be a lack of coordination. Communication needs to be both ways in order to improve the relationship between each of the Inns and to look to the future to establish a commonality for the whole profession. JW agreed and explained that was why his post was created, that there was a great deal of communication as between the Inns and with the BC, but things do not change overnight.

Colin Andress (CA) agreed with members that there is an issue with how scholarships are handed out and felt that the Inns were still giving prizes to students who come from privileged backgrounds, rather than giving funds to those who have the academic ability but do not have the funds to support their training. CA also mentioned that if the pass mark were to be lowered, the exam would be more achievable. JW explained that scholars can receive the honour of a scholarship but that often the value is then determined by means and can be anything between £200 and £20,000.

Charlotte Pope-Williams (CPW) referred to her ongoing support through her scholarship and explained that after her training, she was very much on her own and there was no mentoring at the Bar. CPW mentioned that the Bank of England has a programme whereby they mentor their students and give guidance and this is what the bar needed. JW agreed this sounded like a good idea and might be something the Inns looked at in the future.

The Chairman-Elect thanked JW and commented that communication between the Inns and BC had improved greatly since JW's appointment.

6. Criminal Justice Reform Group recommendations: for report

Philip Robertson (PR), Director of Policy, highlighted work that has been done by the Bar Council in relation to the recommendations in His Honour Geoffrey Rivlin QC's report "Criminal Justice, Advocacy and the Bar". The report made various wide-ranging recommendations about the future of the criminal Bar and PR provided an update in relation to some of the Advocacy recommendations, namely Vulnerable Witness Advocacy Training, AGFS, McKenzie Friends, Entry to the Profession and the ongoing work of the Advocacy Working group. PR, speaking to annex 4, set out the Bar Council's work carried out to date and plans for future work.

LN thanked PR for the report and all his work. LN highlighted the Rivlin Report's recommendation that "The Bar Council and the BSB should identify best practice in respect of 'Third Six Pupillages', requiring chambers to make clear at the outset of any period of pupillage after the first 12 months (i) the length of the further period of pupillage and (ii) whether there is any prospect of the working pupil being offered a tenancy at the end of that period. The terms of pupillage beyond 12 months should be as transparent as possible. Ideally, a decision on tenancy should be taken as soon as practically possible. Periods of pupillage beyond 12 months should not be used as a way to extend the time during which a junior barrister is working for little money and without the security of a tenancy or any voting rights in chambers. They are not part of pupillage and are therefore currently unregulated. PR's update stated that the Bar Council would produce guidance on this by the end of September 2015 as well as designing a communications campaign on the fact that the term '3rd six pupillages' should no longer be used. LN sought assurance that any position reached by the Bar Council would apply to the whole profession and not simply the criminal Bar. PR assured LN that the Bar Council would speak to pupils and chambers throughout the profession prior to producing guidance and that its position on third six pupillages would apply to all pupils and chambers, irrespective of area of practice. PR undertook to follow this up with GFQC and Alexandra Bloom of the Education and Training Committee.

If members have any questions in relation to the report, PR can be contacted directly.

7. Equality and Diversity Committee: for report

Robin Allen (RAQC) went through the report of the Equality, Diversity and Social Mobility Committee (annex 5). The list of objectives showing policy aims disclosed that targets were being met. RAQC gave a special mention to Sam Mercer (Head of Equality and Diversity & Corporate Social Responsibility at the Bar Council) and said that she is a great leader and both the committee and sub-committee were excellent and committed to working on issues.

RAQC highlighted one point in particular. It has been two years since he became chairman of this committee and the first thing that concerned him was to understand when, in the future, the profession may become representative of society. The Bar Council commissioned Professor Martin Chalkley with the task of putting together 'momentum measures', taking current data and extrapolating it to understand what the Bar might look like in the future. The purpose of the report, which will be published shortly, is to try and identify how the profession represents the community. There is still a continuing problem of retaining women, although more women enter

the profession but seem to leave more quickly than men. There is a lot of work being done with the committee about diversity in the judiciary, and the report will be taken to General Meeting Committee (GMC) and the Bar Council for members' views.

Referring to point 2.7 in the report, Family Career Breaks Seminar (originally the 'Managing Career Breaks Seminar), RAQC highlighted the new seminars taking place, which will focus on career breaks and how to come back into the profession thereafter. If this is successful, the seminars will be repeated next year.

RAQC also expressed his delight that the Chairman attended the PRIDE march this year.

The Chairman-Elect thanked RAQC and his team for all their work.

The Chairman-Elect added that she had read essays written by the students who had just taken part in the Bar placement week in London. They were asked to write about their experiences throughout the week and it highlighted what the outside world thinks of the profession as a whole and how important the work of the E&D Committee is.

8. Education and Training Committee: for report

GFQC went through the report of the Education and Training Committee, which set out the work that has taken place over the last year, and priorities for the future. GFQC gave credit to JW and acknowledges that he has a tough job, which he does extremely well and is excellent to work with.

GFQC urged members to complete the BSB's CPD consultation as this is critical and not as lengthy as the other consultations.

GFQC raised the issue of the Pupillage Gateway. In 2014, Nicholas Lavender QC commissioned the then Training for the Bar Committee to look into the feasibility of "year early pupillage" and potential impact of bringing forward pupillage selection to a point before candidates undertake the BPTC, proposing a way forward, or vision, for pupillage recruitment and selection that overcomes some of the financial and structural barriers that currently exist.

GFQC explained that the Education and Training Committee (then known as the Training for the Bar Committee) spent some time considering that, eventually recommending that year-early pupillage should be endorsed by the Bar Council. However, the recommendation evidently raised social mobility concerns, and accordingly the matter was then referred to the Social Mobility Committee (SMC), a working group of which took a year to consider this matter and conducted an online survey with 133 responses from students, officers, career advisors at universities and heads of pupillage in chambers. The SMC working group reported to the Education and Training Committee with its conclusion that the Pupillage Gateway timetable should be advanced from April to January. Having considered the matter, the Education and Training Committee agreed, and forwarded its recommendation, conformably with that of the SMC working group, to all the relevant committees, including GMC, that the timetable for the pupillage portal be brought forward. The Gateway timetable currently runs from the beginning of April (when it opens for pupillage applications) to August (acceptance of offers) each year. The proposal is to open the

process in January from 2016. The change in timing will avoid the clashes between interviews and exams and dissertation deadlines which are a feature of the current timetable, will allow pre-BPTC candidates to know the outcome of the pupillage round before they commit money to the BPTC, and will bring the timetable closer into line with those ATOs which currently recruit outside of the Gateway, making it much less likely that candidates will be made offers in advance of Pupillage Gateway offers.

GMC approved this approach and communications were sent out advising chambers and students of the change. Subsequently, representations have been made to the Bar Council by three (in the first instance, some other sets following) commercial sets that the changes will not allow them to the time to undertake their rigorous application process (e.g. mini pupillages), and on that basis the Bar Council has been asked to reconsider the change to the timetable. GFQC opened the issue for discussion.

AWQC felt that if GFQC was satisfied that sufficient research had been undertaken, then the Bar Council should stick to its guns. The change is for the benefit of the students, which is the right emphasis. LN whole heartedly supported the proposal and research to bring the timetable forward. Her only concern was that it had been communicated too late to the profession. LO supported the change too. RH also supported the new proposal and felt that going through the pupillage Gateway it should be mandatory. CA commented that he had been in the profession for ten years and remembers all this being discussed previously and that it was unfair that students had to come to London for a week to do unpaid training, when they are already in debt. There was no dissent to the view that the Bar Council should continue with its plans to move the timetable for the Gateway.

The Chairman-Elect thanked everyone for their comments and GFQC for the report.

9. Remunerated McKenzie Friends and Solicitors' Agents Policy Reference Group: for discussion

Derek Sweeting QC (DSQC), Chairman of the Legal Services Committee, presented a report (annex 7), which sets out the Bar Council's draft policy position on Remunerated McKenzie Friends and Solicitors' Agents. A Policy Reference group, led by Andrew Twigger QC, was tasked with drafting policy positions and an information document on the statutory provisions relevant to acting as a solicitors' agent, which will be especially relevant for unregistered barristers who act in this capacity.

DSQC explained that there is going to be a judicial consultation about remunerated McKenzie Friends over the summer with a report towards end of September, so it is important that Bar Council has decided what its own position is. The Bar Council is aware of serious concerns about the negative impact that unqualified, uninsured and unregulated remunerated McKenzie Friends may have on individual litigants as well as the administration of justice. The recent decision of *Re Baggaley* [2015] EWHC 1496 (Fam), although not a usual case, provides a clear example of how these concerns have played out in the family courts.

DSQC went through various parts of the report and opened the floor for questions and suggestions.

AWQC felt that the report did not go far enough in relation to solicitors agents, although he understood why the group is being cautious. AWQC had read the decision referred to in the information document in relation to solicitors' agents. He accepted that it was a relevant decision on the topic but felt it was wrong and had no precedential value. It is his understanding that supervision is to enable junior people from solicitors to be sent out to a separate organisation and he asked whether the advocates should hold practising certificates. GMC has agreed to approve the policy position, but he wanted to express his views. DSQC explained that it is important to tread carefully given the uncertain state of the law in relation to the meaning of "conduct of litigation" (as recognised in *Re Baggaley*) and the ambit of the supervision requirement. It ought also to be recognised that some solicitors' agents are barristers, often using the role as a source of employment whilst they sought pupillage.

Elisabeth Cooper (EC) asked if it was possible to make the junior Bar aware of what can and cannot be said in court. DSQC said that the information document had been drafted to be a neutral source of assistance for the court as opposed to an argumentative statement (which would have less authority) and he hoped it would fulfil that function.

RH felt that the Bar Council ought to publicise the risk if solicitors' agents do not have practising certificates and also to notify the profession of names. DSQC said that there would be a risk in prescribing in detail what business arrangements do not comply with the rules, since it was certain to be a matter of contention particularly since it affected livelihoods; it was suggested and agreed that another document could set out the Bar Council's views in relation to particular arrangements.

David Taylor (DT) said that non-practising barristers who are acting as solicitors' agents are still subject to the Code and guidance from the Bar Council should be given, reminding them of their obligations.

10. "The Employed Bar – some thoughts": for debate

Michael Jennings (MJ) opened up the topic for debate. MJ acknowledged that his subject is the first of the debates and is conscious of the time so he would try to keep it brief.

MJ started by explaining that currently twenty percent of the Bar is employed and this figure is growing. Over the next few years, the employed Bar will play a greater role in helping to shape the Bar and the way the profession works. MJ queried if the concept of 'One Bar' was realistic. He noted that it may be better to look at the Community of the Bar. MJ asked for self-employed and employed barristers to embrace this concept and draw closer.

MJ clarified that the employed Bar notes that the interests of the employed and self-employed Bar will not always be the same, for example the employed Bar has little interest in fee collection nor taking work from self-employed barristers. The employed Bar is not, however, unique in this respect – criminal and commercial practitioners have very different priorities and interests.

Instead, both sides should celebrate their commonality within the community of the Bar. Both sides share the same values, principles and high ethical standards. MJ asked that employed members are seen as equals within the bar. Whilst there are tough times ahead, it gives everyone a good opportunity to work together and cultivate a much stronger relationship.

AWQC asked MJ how he saw the employed Bar akin with self-employed barristers, as there is an argument that employed barristers are more like solicitors. MJ understood AWQC's point of view but the vast difference is that employed barristers have an understanding of how chambers operate, how the Bar works and knowledge of pupillage. The employed Bar also has stronger links with the Inns. LN was concerned to learn that employed barristers felt disconnected. MJ stated that despite the good work of the Bar Council there were still parts of the wider Bar Community who perceived employed barristers as not being not up to the mark.

RAQC wanted to know what the Bar could do to support employed barristers more, but for them to still retain their professional independence. MJ said that more could be done but emphasised that employed barristers remain first and foremost barristers and obliged to observe the Bar Code of Conduct – the CPS and other organisations reflect this in protocols, whereby arrangements are specified to follow conduct.

James Kitching (JK) spoke as a member of the employed Bar. He shared that one of the problems is the demise of pupillage which is now restricted in the commerce and industry sectors and asked what chambers could do to help improve this. MJ suggested that some of the Crown Prosecution Service (CPS) and government pupillages offered in actual fact, cross over. The Treasury Solicitor is also keen to look at both sides and see cross over between the employed and self-employed bar.

AP said that a challenge for the International team is the inclusion of employed barristers on international business development missions; the purpose is to go to other jurisdictions to gain work for the Bar but the presence of employed barristers from large firms mean that the work is really going to solicitors and HCAs. MJ said that this was a valid concern and he will take back to committee, as there are constraints which need to be considered.

AWQC recognises the growth in employed Bar but asked if there was a profile to show similarities. MJ said that was something that could be looked into. MJ also mentioned that it may be worth considering how the employed Bar's profile could be raised amongst universities to encourage more students to consider the employed Bar as an option.

Jeremy Philips (JP) asked if E&D data had been collated from the employed Bar. LO reiterated that more self-employed female barristers fall away from the profession, so employed practice can be a better option. RAQC quoted statistics from 2014, and there were slightly more females in the whole Bar and there are more women who are now employed. MJ thanked everyone for their valuable comments.

11. Any other business

Daniel Sternberg (DS) said that at the last meeting, concerns had been raised about an email sent from the Marketing Team at the Bar Council, and how the advertising therein could be considered

inappropriate. Another example had been brought to his attention, whereby financial services for those with aged debt were offered. One of his membership felt that this was inappropriate given that it was sent the day after cuts were made to solicitors' fees.

The Chairman-Elect explained this is a legitimate service offered by one of the Bar Council's service partners, and is designed to be of benefit to the Bar. Similar emails have been sent out on a number of occasions and no complaints received, but that may be because the timing was different. The normal approach to signing off emails and tweets is that they go through the Head of Commercial Services and Development or the Director of Services. On this occasion, the email was not signed off before being sent. Steps have been taken to ensure that this does not happen again.

RPAQC promoted the Bar Conference which is taking place on Saturday, 17 October in London and if anyone is interested, there are still early bird and circuit discounts.

AWQC asked if the Chairman or Chairman-Elect had heard anything on the Lord Chancellor's thinking in terms of pro bono. The Chairman-Elect said that they were meeting with the MoJ and Lord Chancellor on Monday to discuss.

Anton van Dellen (AvD) noted that, at the recent All Party Parliamentary Group, the Minister was holding firm on cuts, but seemed open to engagement with the profession. The Minister had also mentioned breaking into the Indian market. The Chairman-Elect assured that information is being collected to ensure that it will work across the board and it will be presented to the MoJ.

Date of next meeting

The next meeting of the Bar Council will be held on 19 September 2015 at 10.00 and the AGM will follow at 11.00 at the Bar Council offices.

Judy Green
Executive Assistant to the Chief Executive
4 August 2015
JGreen@BarCouncil.org.uk