



**Minutes of the Bar Council meeting
held on Saturday 04 March 2017 in the Sherrard Room, Rutledge Suite, Middle
Temple**

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

Apologies for absence

Apologies for absence were received from: Dr Mirza Ahmad, Janet Bignell QC, William Boyce QC, India Burnett, Shelley Brownlee, Robert Buckland QC, Sarah Crowther, Anita Davies, Guy Fetherstonhaugh QC, Fiona Jackson, James Keeley, Christopher Kennedy QC, Athena Markides, Philip Marshall QC, Duncan McCombe, Gerard McDermott QC, Andrew Morgan, Benjamin Myers QC, Louisa Nye, Grace Ong, Francesca O'Neill, Amanda Pinto QC, Angharad Mary Price, Emma Price, Robert Rhodes QC, Ren Rowe, Alison Saunders, Benjamin Seifert, Andrew Spink QC, Gordon Stables, John-Paul Swoboda, Leanne Targett-Parker and Jacqueline Wall.

The following did not attend and did not send apologies: Simon Broomfield, Michael Duggan QC, Richard Gibbs, Richard G Jones, Rupert Jones, Matthew Kewley, Neil Mercer, Angela Rafferty QC, Penelope Reed QC, Christopher Rees and Brie Stevens-Hoare.

70 further members attended.

1. Minutes of the last meeting

The Chairman welcomed members to the meeting and thanked the Attorney General, the Rt Hon Jeremy Wright QC MP for attending.

The Chairman reported the recent passing of Sir Nicholas Wall, former President of the Family Division. Noting that many eminent figures such as Philip Marshall of the FBLA and Sir James Mumby, Sir Nicholas Wall's successor, have written about Sir Nicholas Wall's many great attributes, he described him as 'universally popular,

greatly respected, wise, compassionate and a leader by example' and finished by saying that Sir Nicholas Wall 'represents the best of us'.

The minutes of the meeting on Saturday 21 January 2017 were approved subject to very minor amendments.

2. Statement by the Chairman

The Chairman opened by saying that he did not wish to repeat everything in his statement but that he intended to highlight four topics (the last of which was not included in the statement owing to timing).

- 1) **Circuit visits:** the Chairman and Vice-Chairman, Andrew Walker QC, have been on a number of circuit visits accompanied by various members of Bar Council staff. To date, visits have taken place to Cardiff, Swansea, Manchester, Liverpool, Plymouth and Exeter. Topics of the moment have included new AGFS and the proposed roll-out Fixed Recoverable Costs, however, the visits enabled the Chairman to pick up on other topics of interest to the profession, including direct access. The Chairman described the visits as 'affirming' and valuable to the perception of the Bar of the work of the Bar Council.
- 2) **AGFS:** the consultation closed on Thursday 2 March and the Chairman indicated that the MoJ had reported a dramatic increase in the number of responses in the last few days – around 400. Around 65% of these responses are thought to be from the Bar. The Chairman said that he anticipates that the responses are mixed and that some may be openly hostile, others openly welcoming. It is clear is that there is support for a different structure. However, there is significant unease about the proposed level of fees and suspicion about cost neutrality. Members had been sent the Bar Council response, the Young Bar response and a short response from the Chairman in advance of the meeting.
- 3) **Brexit:** since the publication of the Bar Council's Brexit papers, a lot of work has taken place and this is continuing. On Friday 3 March, a Brexit Roundtable event took place at the Bar Council offices. It was very well attended and several government departments, including the Attorney General's Office and the Ministry of Justice (MoJ) sent high level delegates. People attended because of the currency of the papers and the Bar's expertise. The Chairman noted the quality and consistent formula followed by each of the papers. He believes the Bar Council is playing an important role in the public interest in relation to some of the challenges faced by Brexit, thereby enhancing the currency of the Bar Council itself.

- 4) **Personal injury (PI) discount rate:** the Chairman said that he wished to highlight the 'extraordinary event' that took place on Monday 27 March when the Lord Chancellor issued a statement setting a new statutory discount rate of -0.75% from the current 2.5%. The Chairman explained that for many the size of awards for compensation have vastly increased with potential significant consequences for the NHS and insurers. Those involved in PI had been asking for a change but are surprised by the proportions. There is a genuine fear that there will be a backlash given it affects many people and has a number of ramifications for PI practitioners and others.

Tim Devlin thanked the Chairman for his additional message on AGFS. He said that there is a strong feeling at the Criminal Bar that a fees increase is needed. Indexation alone is not sufficient. He explained that his set had calculated its figures and arrived at a figure of a 23% loss. Should this be the reality, the chambers would no longer be able to function.

Bill Mousley QC said that he wished to state that his circuit, the Western Circuit, is grateful for the detail and considerable hard work that has gone into designing a scheme which is fairer and better within the confines of cost neutrality. He gave thanks to those on the working group and the Bar Leaders for their time. Noting that there will be some debate, he acknowledged that some members of the Bar are concerned about cuts, whereas others see that the new scheme might result in a small increase. It is important that the process has involved positive engagement with the MoJ. This gives the Bar hope that it can influence a fair outcome and is a step in the right direction.

Richard Atkins QC acknowledged the fear that this is the precursor to a cut. He explained that he has been involved with AGFS for a number of years during which he has observed a 'sea change' in MoJ's opinion during that time. The MoJ, 'openly hostile' at the start of the process, have now assured the Bar Council that cuts will not be made. Richard Atkins QC made the point that the Bar Council has to negotiate and work with MoJ in good faith and MoJ are aware of the consequences should they renege on their assurances. Professor Martin Chalkley has run figures on a number of sets and they are not resulting in 23% cuts. One thing that is certain is that MoJ will abandon page counts as this system is no longer viable. Richard Atkins QC finished by saying that those involved are trying to improve things for the Bar and his personal opinion is that the Bar should 'run with it'.

Francis Fitzgibbon QC said that he endorsed what Bill Mousley QC and Richard Atkins QC had said. He noted that responses to the consultation will tell MoJ of a 'well of discontent' amongst criminal barristers and the MoJ will need to address these concerns. He explained that the MoJ have not 'closed their minds' to making adjustments. In this period following the consultation consideration will be given to

the responses. He finished by saying that it is not the moment for 'sharpening pikes or warming braziers' just yet.

The Chairman sought to reassure members that the AGFS scheme is not one that has been devised by leaders. He explained that a former Chairman, Nick Lavender QC, originally set up a working group comprising three representatives from each circuit to design the scheme. This group attributed scores to the easiest and hardest cases they could think of and populated those cases in between with scores accordingly. This was the foundation of the idea which the Chairman considered 'sensible, clever and fairest way of constructing a scheme which in real terms is worth 40% less than in 2007.' No other profession faces this type of problem and there is a need for the Bar to address the issues. He did not accept the suggestion made in some quarters that the new scheme was a ruse by the MoJ to inflict further cuts. The proposed scheme is cost neutral based on case data from 2014/15. Although a theme of the design of the scheme is to restore career progression, there are considerable benefits for the young Bar and the calculations indicate that barristers under seven years call will fare slightly better than under the current scheme.

Continuing by saying that he accepted that many sets will have wrestled with the figures, the Chairman remained resolute that essentially the scheme will be cost neutral. He acknowledged that when the data from 2015/16 was applied, a 3% saving was apparent under the new scheme and explained that this is due to different factors at play including cost decisions, an increase in sex cases and more cases going to trial. There is a need to design the scheme for the sake of the criminal bar but it must have index linking, regular review and cost neutrality must be based on the most recent year for which statistics are available.

The Chairman finished by saying that he had two more pieces of information to disseminate to members.

First, Stephen Crowne, the Chief Executive of the Bar for the last four years, is retiring this year, though not until the end of August. There is a lot of work to do before then and the Bar Council is grateful that he will be staying for the next six months. He resigns with some regret but it is the right time for him and his family. There is a big opportunity for his successor as the Bar Council will be launching a new strategic plan and the Bar Council is taking steps ensure that a person of considerable calibre is appointed. The Chairman praised Stephen Crowne for the extraordinary amount of work that he has carried out saying that the Bar Council 'runs itself better' under his leadership. He finished by noting that there will be an opportunity to say a proper goodbye at a future date.

Secondly, the Chairman reminded members that elections for Bar Council officers will soon be underway and he encouraged members to stand and/or to persuade others to stand. Should there be more than one person standing for one or more offices, a hustings will take place.

Robin Allen QC asked for anymore news on the Legal Services Board and the Competition and Markets Authority (CMA) report. The Chairman replied that there is nothing more that he can add. The report gives mixed messages as to whether or not there will be a consultation on regulatory independence and the Bar Council continues to 'keep its ear' to the ground. Regarding the CMA report, although there are consequences, they are not as profound for the Bar as they are for solicitors. The Chairman finished by saying that he believes the CMA report to be a balanced one with some interesting findings.

3. BSB report

Referring to the consultation on regulatory independence, Sir Andrew Burns reported that the BSB are currently awaiting new from MoJ as to whether they are going to accept the recommendations and follow through on the consultation. The deadline by which MoJ has to respond is 15 March 2017.

Sir Andrew Burns was accompanied at the meeting by Dr Vanessa Davies, Director-General of the Bar Standards Board, Naomi Ellenbogen QC, Vice-Chair of the Bar Standards Board, and Wilf White, BSB Director of Communications and Public Engagement.

Equality and Diversity

Two pieces of work have been published on diversity. The annual report on *Diversity at the Bar* shows where the Bar is now and the *Equality and Diversity Strategy for 2017-19* highlights what is being done to improve the current situation. The diversity statistics are changing, but very slowly as the press have picked up on regarding the latest round of silks recruitment. The BSB has six objectives for improvement:

- 1) Address the causes of discrimination experienced by those with protected characteristics at the Bar;
- 2) Reduce the barriers to progression and retention, and improve social mobility;
- 3) Improve our understanding of the diverse experiences of students training for the Bar;
- 4) Increase equality of access to the profession;
- 5) Improve Access to Justice for vulnerable clients, with focus on immigration and young people;
- 6) Embed Equality and Diversity best practice across all BSB departments.

The BSB is pleased that the Bar Council has welcomed proposals on shared parental leave but is disappointed that so few responses were received.

Future Bar Training

In contrast, the BSB is pleased to have received a record number of responses to its consultation on Future Bar Training (FBT). Responses have been received from the Inns, SBAs, judges, chambers and students, a large number of which have argued against the current model and in favour of the Bar Council/COIC proposal. However, other useful responses have also been received. Every response received has been made available to the BSB Board which comprises half barrister members and half lay members. They are being reviewed carefully and will be given due consideration. The Board expects to make a decision as to the FBT framework at the end of the month, however, how quickly a new system can be put in place will depend on the course providers though the BSB will try its best.

Sir Andrew Burns sought to reassure members that their views about FBT have been taken into account.

Improving advocacy standards within Youth Courts

The BSB is keen to ensure that those carrying out advocacy in youth courts have the right skills and experience and has published new guidance for barristers working in youth proceedings. This approach has been welcomed by Lord Carlisle of Berriew CBE QC and the BSB believe it is consistent with the recommendations of the MoJ review, led by Charlie Taylor. Sir Andrew Burns explained that it is a 'light touch' review. The BSB is not advocating a system of compulsory training.

New governance principles

The BSB Board has agreed a new set of governance structures designed to simplify decision-making. These confirm its commitment to independence and openness, effectiveness and its duty to promote equality and diversity.

Andrew Walker QC said that he noted from the BSB report (paragraph 4.1) that the Qualifications Committee is being wound up, thereby further reducing the involvement of the Bar in the BSB's decision-making. He enquired as to who is going to take decisions on complex waivers and asked whether there are plans further to reduce the numbers of barristers involved elsewhere in BSB activity.

Sir Andrew Burns replied that barristers have long played a key role in the work of the BSB. He made the point that barristers are very busy and the BSB is careful not to abuse their generosity. The BSB is in the process of deepening its structure so that decisions more suitably taken by the executive team can be taken by the executive team. The more complex decisions are then taken by those with more expertise. Under the new structural arrangements, the BSB Board should now have a clearer sense of difficult policy areas. The BSB is not seeking to exclude expert

assistance which is why the Advisory Panel of Experts (APEX) is in place for in-depth assistance on complex issues. The committees have a variety of experts but they may not be relevant at a particular time. The BSB considers that its new structure allows for a speedier, more efficient, system. He acknowledged that although the BSB is moving towards reducing the number of committees, it is not seeking to exclude barristers. The Qualifications Committee, led by Rob Behrens CBE, will come to an end later this year and although the BSB will monitor the new structure, it believes that it will speed up decision making.

Naomi Ellenbogen QC made the point that within the BSB's Senior Management Team and more generally there are barristers. Half of the BSB Board are barristers and the Review Panels have barrister members. The BSB will also be recruiting for more barristers.

Andrew Walker QC enquired more specifically as to who will make the decisions on waivers. Vanessa Davies replied that staff will take decisions based on a set of criteria drawn up by the Qualifications Committee as most decisions are not complex. The first incumbents of the Review Panels will be drawn from the current Qualifications Committee.

Robin Allen QC thanked Sir Andrew Burns for the BSB report. He noted that both the Bar Council and BSB have functions in relation to equality and diversity and to deal with this there was a long standing memorandum as to how their respective functions relate. Robin Allen QC said that it would be helpful for the Bar Council's Equality and Diversity and Corporate Social Mobility committee to hear the BSB publically state that it remains loyal to the memorandum of understanding (MoU).

Sir Andrew Burns replied that he could not see why not the BSB would not remain loyal to the MoU. In response, Robin Allen QC noted that the way in which the equality and diversity statements are set out in the BSB's report brought this into question. He emphasised that he wants to make sure that the BSB focussed on the regulatory side while the Bar Council deals with the development of guidance and asked that the BSB informs the Bar Council whether or not it has any issue with the current arrangements before it begins its *Equality and Diversity Strategy*.

Sir Andrew Burns described equality and diversity as a 'dynamic' area which is 'not stuck in aspic' but stated that the BSB will continue on the basis of the existing MoU. He noted that the BSB carried out some very detailed analysis on women at the Bar which the Bar Council has taken forward. Robin Allen QC, in reply, pointed to the breadth of ambition laid out in paragraph 2.2 of the BSB's report. He said that he wished to put a marker down that the BSB's role is regulatory and not policy development as some of the phraseology could lead to confusion. Referencing the detailed analysis on women at the Bar, Sir Andrew Burns explained that the more detail the BSB has, the more it understands. Both Sir Andrew Burns and Robin Allen QC agreed to speak about the MoU in the near future.

Joe Smouha QC thanked Sir Andrew Burns for his report and for the welcome response to FBT. Referring to paragraph 3.1 of the BSB report, he made the point that the report omits to say that the emails sent in response to the FBT consultation, and drafted by the Commercial Bar Association and Chancery Bar Association, follow substantive responses from these organisations. He asked whether this is an effective way of barristers to register views. Sir Andrew Burns replied in the affirmative saying that the BSB has received a lot of responses and takes every one of them seriously. Where others are picking up on the views of others, it is noted. It is understood that the views of someone supporting the position of an organisation need to be heard and that the work that the organisation has done must be given weight for this.

Eleanor Mawrey commented on the work done on equality and diversity and reflected on the 'sad statistic' that it will take another 50 years until the number of female QCs equals the number of male QCs. She asked Sir Andrew Burns whether the BSB agrees that the cuts to legal aid are likely to affect that statistic and that it may take longer. Sir Andrew stated that this was a Bar Council matter and instead of responding directly, referred the question to the Chairman of the Bar. The Chairman, on behalf of Bar Council replied emphatically that the cuts would affect that statistic. Eleanor Mawrey flagged that further cuts will affect women and therefore increase the statistic.

Referring to advocacy in the youth courts, one of the barristers said that it is his personal experience that more than 50% of the advocates are solicitors. He asked whether the BSB is talking to the Solicitors Regulation Authority (SRA) to ensure that the same standards apply. Sir Andrew Burns explained that the issues the BSB are tackling relate to the BSB as a regulator. To this, Vanessa Davies added that the SRA and the Crown Prosecution Service (CPS) have been members of a group working on this subject throughout. The BSB cannot compel them to adopt the same standards but both organisations are on board.

4. Statement from the Chief Executive

Wishing members a good morning, the Chief Executive, Stephen Crowne, thanked the Chairman and many others who have given their best wishes regarding his retirement. He reassured members that he is genuinely retiring and not moving onto anywhere else. Opting not to make a farewell speech at this early stage, he said that he has seriously enjoyed working with all the Bar Council members and that he will take away fond memories of both the members and of the small part that he has played in the Bar community.

Turning his attention to the Bar Council risk register, Stephen Crowne explained that the Bar Council looks at risk carefully. The 'main engine' is the Audit Committee and key members of staff work closely with them to implement the 'machinery' (the

risk register). Of the three highest risks, the first two - 'Risk of income from BRF falling' and 'Risk of overreliance on PCF/BRF income' – are related and the Bar Council is currently in the middle of collecting contributions. Stephen Crowne said that he was pleased to report that the Bar Council has been able to downgrade the third risk categorised as high, Risk of managers failing to adapt to the new work practices', as the flexible working arrangements implemented as part of the Work Smart programme, are working effectively. The working arrangements will be reviewed in the staff survey but, on the whole, the Bar Council is very pleased indeed.

Stephen Crowne continued by saying that a lot of time has been spent looking at staff turnover but like any organisation in London with a large cohort of young people, the Bar Council experiences high turnover. Those involved in risk management and human resources have explored ways of reducing this and improving management skills so that when staff members leave, managers are able to better manage their work and that of their teams. Stephen Crowne acknowledged that the Bar Council will never have low turnover as it positively encourages lawyers at an early stage in their careers and those seeking pupillage because of the significant benefits that they can bring to the organisation.

In terms of cyber security, Stephen Crowne reported that there is a lot of concern generally but reassured members that the Bar Council has a very good record of dealing with threats. The Chief Information Officer is due to attend the next Audit Committee meeting to present a paper outlining the steps that are being taken to further improve IT security.

5. Treasurer's Report

Lorinda Long reported the good news that better results are expected this year despite a lower PCF collection than expected in 2016. The Bar Council has reduced its spending to compensate for the lower PCF collections.

BSB Expenditure is on plan and revenue from fees and charges is higher than expected offsetting lower PCF. Operating activities are forecast to break even overall but small risks remain for income and expenditure for March in all areas of the business.

The pension scheme is revalued annually for financial reporting purposes. This valuation will be significantly poorer than that for 2016 and the current indicators show that the external factors that drive this value will change Bar Council accounts from a net asset position to a net deficit of c£2m. The Bar Council is unable to predict the outcome with any accuracy but advisors have indicated that they would be surprised if the outcome were to be any more favourable.

Lorinda Long explained that she had been asked to make the split between PCF contributions for the Bar Council and BSB clearer. Since 2011 the PCF has increased

on average 5.6% pa from £7.4m to £10.3m. BSB PCF has increased 11% pa from £3.7m to £6.9m and from 50% to 67% share whereas Bar Council PCF has dropped 10%, an average of 1.7% per year. The Bar Council share of PCF will drop by 2% to 33% in 2017/18. This is partly compensated for by Inns sponsorship and an increased contribution from commercial services.

In terms of planning for 2017/18, the operating budgets are based on 2016/17 PCF levels. The only reliable source of funding for the medium to long term is PCF and the Bar Council has sought a 12% increase in PCF, wholly and exclusively for the DB pension scheme to eliminate this risk over the long term. The defined benefit pension scheme, closed in 2013, is in deficit. This deficit will persist unless contributions to the scheme are significantly increased.

The PCF proposal and business plan provides prudent funding to meet the essential needs of the defined benefit scheme and generates cash to facilitate investment in infrastructure and into a new office facility for 2019. The budget plans enable both the Bar Council and BSB to deliver their strategies and allow for essential investment plans to continue and there is sufficient funding to allow a tight operating budget for 2017/18. Shortfalls in income will have to be met with cost reductions as there is no capacity to absorb funding reductions and large unplanned cost increases would likely require changes to current spend plans.

Referring to the slide showing the PCF split between the Bar Council and BSB, Richard Posner asked whether any comparison has been made with other similarly regulated bodies. SCr explained that the Bar Council set up is unique and that he is not aware of any other sector with the same constitutional arrangements although it is possible to find data from the Law Society. He explained that the figures are part of the Bar Council's statutory duty to provide reasonable funding to the BSB for its regulatory activities. The message is that, as banker for the BSB, the Bar Council is doing its duty slightly at the expense of the permitted purposes.

Ivor Collett suggested that the Treasurer's slide presentation is circulated to members, especially the slide on the PCF split. He asked about the proportion paid to the LSB and said that it is interesting to know how much is paid and why it is paid.

The Chairman said that the question of apportionment is a difficult one that is ongoing. The Bar Council treads a difficult path but he agreed that more visibility would be helpful and asked for any members to send him their comments.

Ivor Collett said that he was aware of talk during 2016 that the conservative government had given an indication that the LSB could not assume it had a mandate to 'go on forever'. The Chairman said that he had the same recollection and suggested that it would be a sign of success if the LSB were to wind up. The Rt Hon Jeremy Wright QC MP confirmed that the government's aspiration remains the same and that the LSB itself is of the same opinion.

Having searched the Law Society web pages, Derek Sweeting QC reported that in 2015/16 51% of the Law Society's budget went to the SRA and 13% to the LSB leaving 33% to the Law Society itself.

Colin Andress enquired as to whether the BSB staff have had a pay increase this year and Stephen Crowne explained that BSB staff are part of the overall Bar Council staff, all of whom have received 1%.

Robin Allen QC asked how the Bar Council holds the BSB to account. Lorinda Long replied that the Finance Committee keeps spending in check and SCr explained that the Director of Finance, who is very good at challenging assumptions, works closely with the BSB on their budget. In addition, Stephen Crowne reported that he discusses the budget with the BSB's Director-General, Vanessa Davies, and that ultimately the budget goes to the Finance Committee for lengthy discussions. It is the responsibility of the Bar Council to take decisions under the law but it tries to do so in agreement with the BSB. The BSB is conscious of the need to carefully manage its resources and has committed to a three year plan.

6. Remuneration Committee

Alexandra Healy QC, Co-Chair of the Remuneration Committee, presented the Remuneration Committee report. Explaining the brevity of the report, in part due to the fact that the AGFS report was not yet published at the time of writing, she said that she had two significant areas to highlight.

First, Nick Bacon QC has been in charge of the Fixed Fees Working Group which has carried out an enormous amount of work. A link to the report that was published has been provided in the papers. Impressive work looking at the clinical negligence response was undertaken.

Secondly, with regards to AGFS, a deliberate decision was taken by the Bar Council that the working party involved in the design of a new payment scheme comprise senior and junior members from each of the Circuits, rather than the Remuneration Committee. Consequently, the Bar Council Response to the MOJ consultation was the result of input, not of the original designers of the scheme, (although two members of the original working party were invited to contribute to the response), but of members of the Remuneration Committee, who inevitably represented some of the various experiences/views of their respective chambers.

The Remuneration Committee business plan for 2017/18 has been prepared and the committee continues to carry on engaging with various wide ranging pieces of work.

7. Employed Barristers' Committee (EBC)

Lucinda Orr, Chair of the Employed Barristers' Committee, presented the Employed Barristers' Committee report. She explained that two underlying themes have arisen out of the *Snapshot Report: The Experience of Barristers at the Bar*, published in 2016, namely helping employed barristers to develop their careers; and, greater recognition of the work of employed barristers.

Six areas of activity are planned for the coming year:

- 1) **Enabling employed barristers to undertake pro bono work:** employed barristers are not able to do pro bono work as there is no insurance available. It is looking very hopeful this may be resolved as initial discussions with BMIF have proved positive.
- 2) **Helping employed barristers to broaden their experience through secondment opportunities:** many self-employed barristers benefit from secondments and employed barristers would like the same opportunities. One idea is to set up a 'secondment hub' where secondment opportunities (in both directions) may be advertised.
- 3) **Helping employed barristers to develop their careers by removing barriers to judicial appointments:** there has long been a bar on this, however, it has now been agreed that GLS employed lawyers should be enabled to sit as Recorders in criminal cases, save in those rare cases when the Government Legal Department was itself a party. However, there remains an issue in relation to CPS lawyers and the EBC consider that these concerns could be adequately addressed by a simple rule implementation. In the meanwhile, the EBC will be taking a two stage approach and will initially only be progressing the lobbying work in relation to GLS employed barristers.
- 4) **Helping employed barristers to develop their careers by successfully applying for Queen's Counsel (QC):** there have been no employed barrister QCs appointed for a number of years now, despite several applying each year. The EBC is in the process of asking for statistics to get a better feel for the reasons why employed barristers are struggling to achieve this kite mark.
- 5) **Employed Bar Awards:** nominations are already open and Lucinda Orr encouraged employed barristers to apply, to nominate others and most importantly to attend.
- 6) **Encouraging the 'One Bar' philosophy:** the EBC is aware that there are still some Specialist Bar Associations and Circuits that exclude employed barristers from their membership. Lucinda Orr said that this position is becoming increasingly untenable and those SBAs and Circuits should seriously consider allowing employed barristers "into their clubs".

Rick Hoyle described the secondment hub as a 'brilliant idea' and said that he wouldn't rule out self-employed barristers. He acknowledged that Brexit will generate issues and with the Attorney General present, said that he would like to

know if there are any secondment issues related to Brexit. The Young Barristers' Committee has made attempts to meet with the Attorney General to discuss this further and would be keen to put a date in the diary.

The Chairman praised Lucinda Orr's chairmanship and persuasive skills and echoed what she had said about removing barriers. Turning his attention to the issue of young Bar engagement, he said that he is 'cautiously optimistic' about Brexit-related opportunities. The Rt Hon Jeremy Wright QC MP promised to set a date for a meeting.

8. Fixed recoverable costs

Speaking to the item, Andrew Walker QC noted the importance of keeping the topic of FRC 'on the radar'. He said that it is clear from some of the circuit visits that he has attended that certain parts of the Bar are not alive to the issues.

Monday 30 January was the deadline for written submissions and the Bar Council is now looking at alternative ways of getting points and ideas across. A number of roadshows are taking place across the country in cities including Leeds, Manchester, London, Birmingham and Cardiff. The final report is due for presentation to the Lord Chief Justice and Master of the Rolls by 30 July. By the time of this report, it may be too late to influence the proposals but there will be an opportunity to make submissions to the senior judiciary. Andrew Walker QC advised that members should not be under any illusions, a fixed recoverable costs scheme of some sort will be implemented: the only question was how widely. Although the personal injury Bar has strongly engaged with the topic, there has been less engagement from the other SBAs.

A number of suggestions have been put forward but the Bar Council welcomes new ideas. For example, a suggestion has been floated for dealing with pre-budget incurred costs, taking them into account in budgeting, as has the idea of a starting point template budget as an alternative to fixed amounts.

An opt-in pilot, which could run for up to a year, is due to take place in the Mercantile Court in London and Manchester. The idea is that the parties will agree to opt-in to some sort of fixed costs regime and the demand will be assessed.

Another idea put forward is that of an intermediate track between the fast track and the multi-track.

Andrew Walker QC explained that these ideas could lead to the introduction of FRC itself being pushed back or the proposal revised and appealed again for new ideas. He reported that a mixed response was received on circuit and said that

although he acknowledges that this creates difficulties for SBAs, he would encourage engagement. PIBA, for example, have managed to present a united front.

The Chairman thanked Andrew Walker QC explaining that he has delegated the task of addressing the London roadshow on Monday 13 March to Andrew Walker QC, and recording that Nicholas Bacon QC would also be speaking. He encouraged others to attend to roadshow which will be focussing on judicial review as well as structural issues.

9. Direct Access

The Chairman expressed his gratitude to Andrew Granville Stafford, Chair of the Public Access Bar Association (PABA), for agreeing to lead the discussion on direct access.

Andrew Granville Stafford began his presentation by providing a short history of public access. Public/direct access has been in operation for 12 years and has extended to other areas of law including family, crime and immigration. The BSB and Legal Services Board carried out a public access survey in 2016, and, although the response rate was low, 96% of respondents indicated that they had done 'some' public access work in last 12 months and 7% stated that over three-quarters of their income was derived from public access work alone. Andrew Granville Stafford noted as 'interesting' the statistic that about half of all cases come from individuals as it suggests that small and medium enterprises (SMEs) should be targeted, however, they only account for some of the workload.

Presenting a slide on percentage income, Andrew Granville Stafford explained that in the last five years there has been a six-fold increase in public access work for barristers. He said that, in light of this statistic, the answer to the first question posed 'Does the Bar Council think that Direct Access work undertaken by the Bar is likely to continue to grow?' is fairly obvious. The figures are likely to grow and he asked for responses as to whether or not this is a positive or negative thing. He also asked for responses to the following two questions:

- Does the growth in Direct Access Work (and its promotion by the Bar Council) make it more difficult for the Bar Council, in exercising its representative functions, to differentiate the services of barristers (as expert advocates and advisers) from the services of solicitors and other providers of legal services?
- Does the promotion of Direct Access work make it more difficult to demonstrate to Government and policy makers the added value which barristers provide?

Alison Padfield said that it is important to keep in mind that the Bar is a referral profession. This is a unique feature that should not be forgotten. She mentioned that she carries out a lot of insurance work and made the point that it is essential that people can get access to some level of expertise by going through a small firm. Reiterating the need to ensure that the referral system is retained, she warned of the risk of losing the promotional point of the Bar as a referral profession.

Derek Sweeting QC said that the other side of the argument is that there are whole areas where no one is going to continue to refer work to barristers. Therefore, there is an element of competing for business, especially in the case of the young Bar. The reality is that barristers are going to have to look at this.

Nigel Sangster QC said that he runs a fraud practice and has found that, in the last few years, alleged fraudsters have been coming to him for general advice. He noted that this is fine, as long as a solicitor is involved. Referring to AGFS, he made the point that many would share the view that referral works both ways. To this, Rick Hoyle enquired as to the extent that this happens. He explained that he is not direct access qualified and the closest he comes to this is pro bono work. He has observed that there are normally aspects done by solicitors where barristers are practically not as experienced.

The Chairman explained that there are mixed views as to whether or not the Bar Council should enable direct access, as it does currently, or do more to promote it. He asked whether the Bar Council has a role in 'loudly proclaiming' that barristers are able to do direct access work and noted the risks involved in upsetting solicitors. He encouraged members to think about the online solutions court and the opportunity for barristers to provide advice early on in the process.

Rachel Spearing agreed that there is clearly a need to develop public access. The CMA has a clear agenda that public access must be more accessible however, she raised the need for safeguards as direct access work can be stressful and demanding. Barristers do not always have the necessary technical skills and members need to be properly supported so that they do not face complaints.

The Chairman asked about the amount of complaints received in relation to direct access cases. Andrew Granville Stafford explained that the BSB survey did address this question and 4% of respondents said that they have received a complaint in the last year. However, it is not clear from the results of the survey how many direct access cases those barristers had carried out in the year. If it is assumed that each respondent carries out five public access cases per year then this represents about 1% of public access clients that complain.

The Attorney General, the Rt Hon Jeremy Wright QC, said that there will be cases where people will not find access to a solicitor as easy as they used to. He suggested that the Bar Council takes steps to educate MPs as to what direct access is. Then, when confronted with a constituent requiring legal assistance, they will not automatically advise them to go to a solicitor.

Nick Bacon QC said that he thinks it is inevitable that, with the introduction of fixed costs, the Bar model has to change with the times and embrace direct access work.

Nicholas Vineall QC said that part of the focus is on the question of what exactly it is to be a barrister. Are barristers defined by their function (what they do) or by where they get that work from? He argued that as long as barristers focus on specialist advocacy and advice (whether they get that work direct or via intermediaries) there is no real concern. The real danger lies with conducting litigation when the distinctive nature of what barristers do becomes lost.

Sue Jacklin QC made the point that, with regards to fusion, direct access is not the thin edge of the Bar. It enables the Bar to control the work. Solicitors may come on board but the barrister retains control. People now have less money and they want to go to the person who 'stands up in court'. They prefer to spend their money in a more focussed way.

The Chairman requested that members send him their thoughts on the subject.

Andrew Granville Stafford brought the discussion to an end with a final advert for PABA. He said that he would encourage all those who are direct access barristers to join. There are a couple of events coming up and the association regularly send newsletters. They are already established as a body to educate and inform.

10. Any other business

The Chairman thanked members for attending. There was no other business reported.