



**Minutes of the Bar Council meeting
held on Saturday 21 April 2018 in the Parliament Chamber, Inner Temple**

Present:	Andrew Walker QC	Chair
	Richard Atkins QC	Vice Chair
	Lorinda Long	Treasurer
	The Rt Hon Jeremy Wright QC MP	Attorney General

Apologies for absence

Apologies for absence were received from: Dr Mirza Ahmad, Jennifer Agnew, Robert Buckland QC MP, Melissa Coutino, Marie Demetriou QC, Kerim Fuad QC, Christopher Henley QC (alternate attended), Fiona Jackson, Sean Jones QC, Frances Judd QC (alternate attended), James Kitching, Rachel Langdale QC, Samuel Main, Eleanor Mawrey, Bill Mousley QC, Rebecca Murray, Rehana Popal, Alison Saunders, Benjamin Seifert, Andrew Spink QC, Amanda Tipples QC (alternate attended), Sonia Tolaney QC, Grant Warnsby and Henry Webb (alternate attended).

The following did not attend and did not send apologies: Tom Cockroft, Tim Devlin, Michael Jennings, Paul Mendelle QC, Neil Mercer, Angharad Mary Price and Sara Wyeth.

83 further members attended.

1. Minutes of the last meeting and matters arising

The Chair greeted members of the Bar Council. Apologising for the meeting cancelled in March due to the snow, he thanked members of the Bar Council for their patience and pointed out the very big difference in the weather which was especially sunny and warm for April.

The Chair explained that, due to the March meeting being cancelled, the Chair's Statement from that meeting as well as the current Chair's Statement for this meeting were included in the papers. He said that there were one or two 'meaty' things on this agenda for the members of Bar Council to discuss.

The minutes of the meeting on 20 January 2018 were approved.

2. Statement by the Chair

The Chair said that he did not intend to go through the March statement but invited members of the Bar Council to ask questions about any of its content if they wished to. He did, however, draw the attention of the members of the Bar Council to section 3 which congratulated Nicholas Bacon QC, current co-Chair of the Remuneration Committee and Bar Council member, and Kama Melly QC and Paul Keleher QC, both of whom have assisted the Bar Council in the recent past, on their recorder appointments. He also congratulated Susan Jacklin QC, a former Chair of the Family Law Bar Association, member of Bar Council and co-Chair of the Remuneration Committee on her appointment as a Circuit Judge.

Pointing to the report by Ruth Hughes, a Bar Council representative on the JAC Advisory Group, the Chair explained that such involvement with the Group is important as it allows the Bar Council to provide input into the JAC.

Reminding members of the Bar Council about the officer elections which are currently in train, the Chair encouraged members of the Bar Council to put themselves forward and urged them not to miss the deadline of Friday 27 April 2018.

Talking about his visits to the circuits, the Chair said that he has now visited each of the circuits with the final visits taking place to Woolwich and Maidstone on the South Eastern Circuit this week. Both visits included lively discussions in the robing rooms and useful conversations with the judges. The Chair recorded the strength of views about the current Criminal Bar action in Woolwich and that Maidstone had been 'pretty much the same'. At Maidstone, the Chair had been treated to a tour of the advocates' part of the court building, including all of the toilets. Describing the state of the court as 'shocking', the Chair explained that the Bar in Maidstone have paid for the painting of the communal areas themselves, one of the two lifts is not working, no one can remember the last time both lifts worked, the jurors lift has been out of action and the gents' urinals are out of use as they were leaking through to the jury room below.

On the subject of flexible operating hours, the Chair said that he was unable to tell members of the Bar Council any more at this stage. The Evaluation Group is still working but there is no final prospectus at the moment. A meeting with Susan Acland-Hood is arranged for early May and the Chair said that he was hoping for an update.

The new General Data Protection Regulation (GDPR) has proved to be the 'hottest topic' on circuit apart from the criminal justice system. Many concerns have been raised and lots of training is planned with one session next week Friday. Shobana Iyer of the IT Panel who has been involved in the planning of the training, would very much like to hear questions in advance and the Chair appealed to members of the Bar Council to let Shobana, the IT Panel or the IT Panel Executive, Mel Mylvaganam, know of any particular issues that their chambers or circuits might be experiencing. For

example, there are questions around the treatment position of papers in court. Can barristers leave papers in the robing rooms?

The Chair announced that Rehana Popal has joined the Bar Council as a representative of Inner Temple.

As it was the day before the London Marathon, the Chair informed members of the Bar Council of three of its 'mildly insane' number who would be taking part: Sean Jones QC (running for his Billable Hour charity), James Keeley running for the Heads Together and Middle Temple Scholarship Fund Appeal charities, and Christopher Henley QC.

The Chair finished his statement by telling members that, on 4 April, the Attorney General announced the recruitment process for the new Director of Public Prosecutions.

3. BSB Report

Baroness Blackstone 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.

Saying that she would try not to take too long, Baroness Blackstone said that the BSB has recently published five items all of which are included in the report attached as Annex 4. These are:

- A new consultation document seeking views on the final phase of the Governance Reform outlined in the BSB's 2016-19 Strategic Plan focussing on modernising regulatory decision making;
- A report on the BSB's recent race equality seminar;
- A policy statement setting out the BSB's approach towards the role of the Inns of Court in future Bar training;
- The BSB's annual business plan; and
- A consultation document seeking views as to whether to remove certain restrictions on the reporting by the profession of sexual orientation and religion and belief data.

Talking about the first consultation document, Baroness Blackstone said that the BSB is keen to hear views about the BSB's proposals to modernise regulatory decision making and said that the consultation ends on 31 May 2018. A seminar attended by Aidan Christie QC, Chair of the Professional Conduct Committee, was held on 18 April to discuss the proposals.

Baroness Blackstone said that she hoped decisions on the role of the Inns of Court in future bar training will show that the BSB does listen to consultation responses. The BSB is committed to continuing the constructive dialogue with the Inns. The next

topics for discussion are the regulatory arrangements for pupillage and the draft of a new framework to enable training providers to develop training programmes.

The consultation on sexual orientation, religion and belief is asking whether it is appropriate that every member of chambers must give their consent before aggregated and anonymised data on sexual orientation, religion and belief can be published. Every individual would still have the right to tick a 'prefer not to say' box. The closing date for responses is 5 July 2018.

- The BSB published its annual business plan for 2018-19 on 26 March 2018. It sets out the BSB's main priorities which are:
- To continue to implement reforms to training for the Bar as part of the Future Bar Training Programme;
- To consult on the necessary rule changes to foster increased transparency about barristers' services in line with the CMA recommendations;
- Subject to consultation, to continue modernising regulatory decision making; and
- To publish an updated Risk Index and Risk Outlook for the market for barristers' services in early 2019.

Baroness Blackstone noted that press reports do not always accord with reality. She said that she had been wrongly quoted in her interview with The Times on 12 April on instances of harassment at the Bar. Though she pointed out that there are a number of types of harassment, she was clear that she never said that the Bar as a whole finds harassment acceptable.

Baroness Blackstone finished by saying that she had enjoyed some recent visits to courts including Wood Green Court and the Rolls Building, though she had not been offered any tours of the men's toilets! She ended by saying that she is looking forward to getting to know more so that her understanding of the legal profession increases.

4. Bar Pro Bono Unit

Jess Campbell, Chief Executive of the Bar Pro Bono Unit, presented the Bar Pro Bono report. She thanked members of the Bar Council for allowing her the opportunity to present the report.

Jess Campbell began by explaining that the Unit is coming to the end of a ten year strategy. Therefore, the time is right for the Unit to properly assess what has been achieved and what has been learnt in such a changing landscape. It is also an opportunity for the Unit to anticipate its future role within the social welfare legal sector. With this in mind, the Unit has spent the last year assessing its service and making changes to ensure it can operate consistently and to greatest effect.

Primary findings relate to how many cases are placed with volunteer barristers. Whilst the Unit has seen an increase of around 5% in applications from people seeking access to justice, the allocation rate has fallen. To explore the reasons for this the Unit launched its 'Find a Barrister' initiative (otherwise known as FAB February) during which allocation tactics were monitored.

During FAB February 70% of cases were allocated and the number of cases that the Unit was unable to allocate fell significantly. This was mainly because caseworkers picked up the phone and spoke to people. Jess Campbell also reported that she had met with a number of Heads of Chambers, CEOs and senior clerks.

The conversations proved useful and the preliminary findings show that many chambers:

- Are committed to pro bono and have willingness to take on work
- See the value in taking pro bono cases to gain relevant experience for junior practitioners or those seeking to develop their practice
- Would like the Unit to be clearer in its case categorisation and wish the Unit to highlight the nuanced legal points
- Think the year of call should only be treated as a minimum (some senior silks took on a case requiring 2 years' experience)
- Do not completely understand how the Unit works and what benefits the work can bring
- Expect that the majority of applicants get a barrister to provide legal expertise

Jess Campbell explained that it is the last finding, a presumption that pro bono is taken care of, that has prompted the Unit to launch new initiatives. The first initiative is 'pro bono champions', which is a scheme by which all chambers over 20 members have now been invited to appoint a member of chambers to lead their pro bono involvement. Jess Campbell appealed to members to ensure that their Head of Chambers, or Senior Clerk, or Director has appointed a champion or responded.

The second initiative is 'pro bono patrons' - a donor relation scheme. 21 chambers already financially support the Unit to the tune of either £1k, £3.5k or £8k. This is in addition to 160 individual donors, 2 SBAs, the Bar Council and the Inns of Court, the Legal Education Foundation and Worshipful Company of Information Technologists. Funding is fundamental as it allows the Unit not only the resources to administer applications but to properly engage with its volunteer base to place cases.

Jess Campbell said that the Unit is incredibly grateful to those practitioners who have kept the box ticked to donate £30 to the Unit during Authorisation to Practice. The Unit appreciates that this is a very pressured time for a large proportion of the Bar. This donation is another way of demonstrating commitment to access to justice. Overall the donation level reports indicate that the number of barristers who have

donated has fallen, and while the Unit does not have the final figures it has budgeted the reduction to be at least £20k. The Unit understands that it is reliant on the Bar. When the data is received it will be analysed and the Unit will engage with the profession further to understand the reasons for it.

Referring to GDPR obligations, Jess Campbell reported that as a result of FAB February, the Unit has analysed its data and will soon email active panel members to update their details to ensure contacts are accurate. In analysing the data, the Unit has segmented cases and barristers by circuit and specialism. Although there are nearly 4000 barristers on the pre-registered volunteer list, the Unit has noted that across a large number of circuits and specialisms the engagement rate of counsel is under 10% of those who have volunteered. This further emphasises the importance of engagement with the Bar and the need to make volunteer experience an easy one. Jess Campbell said that she would be meeting with circuit and SBA leaders to address this.

The Unit is contributing to the LASPO review as part of the Advice and Third Sector consultative group. The Unit is happy to share any statistics it has with Bar Council to aid its discussions.

As part of its new strategy, the Unit is undertaking a change programme that will include moving its service online. Work with front line agencies has taken place to increase understanding and move this forward.

The Unit is also assessing the quality, impact and purpose of its current brand as part of its aim to become a more front facing charity to the people it serves. There is a desire to ensure that the brand is accessible to members of the public and reflects the quality and commitment of the Bar.

In line with many Chambers the Unit has undertaken a wellbeing audit to understand how its workforce copes with the stresses of the work and to assess how happy staff members are at work. Jess Campbell said that she was pleased to report that the staff feel as happy in work as they do in their general life and that the sense of team and support is very strong. It has been identified that an improvement in internal communications will help the staff to feel even more valued and the Unit has a new policy and communications initiatives to address this.

Jess Campbell reported that tomorrow Ed Francis of Enterprise Chambers and Ginny Bicciole, a student volunteer for FRU and the Unit, would be running the marathon on behalf of the Unit and she encouraged any Bar Council spectators to cheer them on.

Jess Campbell reminded members of the Bar Council that the London Legal Walk takes place on Monday 21 May 2018. In addition, a new initiative, the London to Paris 'Legal Wheel Appeal' for cyclists will take place on 21-24 September 2018.

Jess Campbell finished her presentation with a 'good news story'. She told the tale of an applicant who was attacked in 2009 when trying to protect a friend from being mugged. He was seriously injured and subsequently offered around £2.5k in compensation from the Criminal Injuries Compensation Authority. His injuries were so severe that he has been unable to work and has struggled with day to day life. After four years of pro bono support, the final hearing happened two weeks ago, and he has been awarded over £300k in compensation, which will make an incredible difference to him. The two barristers responsible for this are David Massarella of Cloisters and Genevieve Reed at Red Lion Chambers.

Rick Hoyle reminded members of the Bar Council of the availability of pro bono cost orders for those who take a case and are successful. Cost orders can be applied for under Section 194 of the Legal Services Act 2007.

5. Statement by the Chief Executive

Malcolm Cree said that he would keep his statement brief in light of the very full agenda,

Over the last couple of months, authorisation to practice has been a main area of focus. The new portal, MyBar, which replaces Barrister Connect, experienced a few 'gremlins' but overall the process has been fairly smooth and the Bar Council is now looking at the levels of PCF and BRF raised.

Malcolm Cree touched on the office property project saying that the details are commercially sensitive.

The Information Management programme is in 'full swing' and the Bar Council has appointed a new Data Protection Officer, updated its policies and trained a dozen staff members to deal with the GDPR changes.

In other news, the Commercial Director has conducted a full review of the Bar Council's pricing structures and has established a focus group to explore the possibility of creating a chambers package. The Head of Governance is in the process of conducting a 'root and branch' review of the Bar Council's services and activity to ensure risks are identified and mitigated.

The HR Director is conducting a review of the performance related pay system and the Bar Council is looking to improve recruitment and retention. Malcolm Cree finished by saying that there are a number of internal wellbeing initiatives that should assist with this.

6. Statement by the Treasurer

Lorinda Long said that she had one item only to present, an update on Practising Certificate Fees (PCF). She explained that she had previously highlighted the risks around the level of PCF to be collected due to the uncertainty around the number of barristers and bands of income. £13.1M has been collected so far but it appears that the Bar Council will be around £300k short of its target.

The Bar Council is unable to do an analysis until the authorisation to practice process has closed for this year but Lorinda Long reassured members of the Bar Council that GMC and the Finance Committee will be presented with a mitigation plan after this.

BRF is around £140k short. The Bar Council is not clear about the reasons why but would be carrying out an analysis once the ATP process has closed.

Lorinda Long said that the Bar Council would look at a range of financial options by way of mitigation and they would be discussed with the BSB. These include possibly reducing the investment portfolio, carrying vacancies, deferring expenditure and setting up an overdraft.

The Chair urged members to take the message back to chambers that the Bar Council is unable to carry out its work and 'do what it wants to do' without the money raised by Bar Representation Fee (BRF) contributions. Less BRF funding means that the Bar Council can't do work that will benefit the future Bar. Saying that the Bar must 'come together' the Chair explained that there is currently no Bar Council research facility because it does not have the funds to support one; and without BRF money, the Bar Council is unable to pay for the involvement of outside experts. There are members of Bar Council whose chambers have low numbers of BRF payers and the said that it is crucial that those members take the message back.

7. Criminal Bar action and revised AGFS

The Chair said that the Bar Council now knows in what areas of work barristers were practising in 2016-17. Some 5900+ barristers are criminal practitioners with a further 4,286 carrying out some criminal work. This is a large percentage of the Bar's 16,000 barristers. 57% of criminal practitioners are based in London – a significant constituency and one that is probably most in the public eye.

Acknowledging that Bar Council members would be aware of the action of the Criminal Bar, the Chair explained that the revised AGFS came out in late February and there has been a lot of consultation since then. Reactions are not just about the scheme: they also concern the lack of investment in the Criminal Bar and justice system over the last 20 years. The result of this is not simply the reductions of more than 40% in fees but more systemic failings in the justice system. Increasingly the

goodwill of barristers is being relied upon to 'make trials work' so that a just and fair conclusion can be reached.

In addition to the lack of funding, practitioners feel a real lack of respect. They deal with excessive workloads and unsociable working hours in courts which are crumbling and in which it is not possible even to get a cup of coffee. While the roof at Cardiff Crown Court, which previously had a net under it, has been fixed at last, the recent visits to Woolwich and Maidstone illustrate that the problems are widespread and it is simply not good enough.

On 29 March 2018, the Criminal Bar Association (CBA) issued a statement with proposals and suggestions for criminal barristers. Across the country, individual barristers who do criminal work have made their own decisions not to take work where a legal aid certificate has been granted under the new scheme. The consequences will take a while to become widespread but the message from judges is that they are starting to see cases with no counsel. Discussions continue at the Bar level.

The Chair reported that both he and the CBA had met with Lucy Frazer QC MP and with the Solicitor General and that he has kept judges aware of developments. Another meeting with the Ministry of Justice (MoJ) is due to take place in 10 days when the Bar Council will meet with the Minister again. The Chair said that he expected the problems will be more evident then. Reminding members of the Bar Council of his joint statement with the Vice-Chair, Richard Atkins QC, he invited members to pose questions to either himself or the Attorney General.

Angela Rafferty QC, Chair of the CBA, said that the message is that no one wishes to engage in action but the situation is close to desperate. Those at the criminal Bar are all trying hard to come to a resolution but they need some movement from government. The CBA is listening and would like to meet to discuss the situation. The consequences of the action will not become clear for a while so there is a window of time, however, there is an appetite for escalating action among members of the criminal Bar who feel the desperation.

The Chair made the point that there are some very strong feelings deriving from a situation that has been going on for too long. This was put off in 2014 at the time of the last action and yet the courts continue to crumble.

Richard Gibbs acknowledged that the umbrella complaint is about the AGFS but said that he felt that the Chair had 'hit the nail doubly on the head' both in his statement and today when he said that the aggrievement is not just about money but about respect. Saying that from the second a practitioner arrives at court he gets the sense that the Bar is not respected, Richard Gibbs explained that lunch is a mere concept, security is ludicrous and bordering on theatrical, and barristers are expected to do more and more work for no remuneration. To be treated in this way erodes morale and this attitude 'runs through the courts like a stick of Brighton rock'. He said that

there is a genuine desire to resolve the situation but warned that the message is that the way barristers are treated has a clear impact on how they carry out their work which impacts others.

Rachel Spearing said that she echoed the sentiments of those who had spoken. She reported that the Wellbeing survey, carried out in 2015 and the Barristers' Working Lives survey had both contained 'hard core' data about health and safety risks for those who work in such an environment. She reiterated that the issue is not just about money and cautioned that the situation in the courts is impacting retention and causing exhaustion. The support for leadership taking action is evidenced by this data.

Max Hardy made the point that the prosecution is also drawn from chambers. He argued that if the government wants to see terrorists and rapists of the future to be properly convicted then this should matter equally to them.

Reflecting on his 42 years at the Bar, Nigel Sangster QC reported that the Circuit Leaders, CBA Chair, Chair of the Bar and Vice-Chair of the Bar had met over dinner the night before to discuss the situation which had reminded him of the importance of talking.

Gordon Stables encouraged any members who are not criminal barristers to read the joint statement put out by the Chair and Vice-Chair of the Bar. He also urged members of the Bar Council to read the recent publication 'The Secret Barrister' which reveals much wider spread problems within the criminal justice system which effect the Bar. It is not simply the scheme that is the problem but the investment in the Bar and the criminal justice system. Listing Derby, Grimsby and Hull Crown Courts as examples of courts where the heating systems don't work, he recalled instances where the jury sit in 'freezing' 14 degree conditions in the morning in a room that reaches 28 degrees by the end of the day. This has led to trials being adjourned or abandoned as jurors are unable to concentrate.

Recalling a recent sensitive case that he had prosecuted, James Keeley said that he had been forced to take four days off work with no remuneration to make sure that disclosure had been dealt with properly. He warned that the profession is becoming one for the rich due to gross underfunding over 25 years and finished by saying that the 'them and us' situation is an 'appalling state of affairs'.

The Chair reported that the issue of communications had been raised on circuit, more specifically about how to get our messages about justice across to the public. The general public needs and understand the health service and education, but there is a lack of understanding about the justice system and its importance, despite the fact that without the justice system nothing else is reliable. Acknowledging the difficulties in spreading this message more widely, the Chair encouraged members to read *The Secret Barrister*, and asked why is it not on every book club list or and being recommended or lent to friends? He informed members that one of the barristers he had met the day before in the visit to Maidstone had kept a six week diary of her daily

life at court earlier in the year. It recorded a daily diet of difficult sex cases and consistently unacceptable court conditions horrible'. This needs to be communicated beyond the Bar.

Francesca O'Neill said that although she does not practise crime she had read a series of tweets on twitter from @crimegirl who had described her experiences in a case where a boy at university had been accused of rape. She said that it perfectly illustrated the importance of the criminal justice system to those who might not have considered themselves a 'client'.

Michael Hayton QC said that there have been many moments during his 24 or 25 years at the Bar when barristers have said they are not happy but cautioned that more than ever the current feeling represents a 'sea change'. Those he talks to on the Northern Circuit say with 'weary fury' that they just want to be paid for what they do. It is a question of respect, fees and funding for the infrastructure. These things, which are essential for the situation to be rendered fine, are in the grand scheme of the government budget, a 'drop in the ocean'. Justice is important and it would not take a huge amount of money to get the system back on track.

Agreeing with Michael Hayton QC, Christopher Rees said that he wished to raise two matters. First, the new GDPR represents a 'massive expense' for chambers that do nothing but crime and is particularly onerous. Secondly, the courts rely on barristers to provide their own technology in serious sex cases. He explained that he had had to bring in his own computer when one was not available in the court and made the point that at a time when fees are being cut, it is not acceptable to expect barristers to subsidise the requirements of the system.

Angela Rafferty QC said that the lack of respect results in a feeling of shame. Barristers feel ashamed of the system. Describing many people as 'voiceless victims', she expressed regret that she often has to tell the most vulnerable people that a case has been put off for another six months because of problems with the system. Barristers are the only ones with a voice yet are unable to publicise this. The only option is to take action that no one wants to take.

The Attorney General sought to reassure members of the Bar Council that he had heard all their messages and said that he would take them back to the MoJ. Saying that he hoped for an ongoing dialogue, he said that he understood that the problem is not solely about money or the AGFS and that the basis of the argument is that the government is relying on the Bar to sort out cases when they have gone wrong. Citing the Liam Allen case as a good example of this, he suggested that the Bar already has good evidence of its role in making the system work and needs to get this across. He finished by promising to do his best to relay messages and to do anything else that the MoJ can to open channels of communication.

The Chair said that, even before this happened, it had been his intention to present MoJ with a clear picture of what the lack of investment and cuts have resulted in.

There is a need to arm MoJ with material to take to the Treasury that will illustrate this point. The Bar Council has sent a survey to criminal chambers to collate information about the effects on juniors over the last 10 years. To date, there have been 39 responses, including nil returns, but the Bar Council is still waiting on 70 chambers. The Chair encouraged members, where applicable, to encourage their chambers to respond.

8. Attorney General's Disclosure Review

Inviting the Attorney General to speak to the item, the Chair reminded members of the short summary provided at Annex 5. He informed members that the Attorney General had asked to hold this discussion under 'Chatham House Rules', to which Bar Council members agreed. He also appealed to members of the Bar Council to tweet carefully and reported that the Attorney General is looking to make his report in the summer.

The Attorney General introduced this item, members of the Bar Council made contributions to the debate, and the Attorney General responded. The Attorney General thanked members of the Bar Council for their input and encouraged them not to limit their contributions to this discussion, inviting them to contact him with further thoughts and suggestions. He appealed for their thoughts as soon as possible.

Record of points/views

In the course of the discussion, various contributions were made and views expressed by various members of the Council, including the following:

- Two problems are dominating at the moment:
 - 1) Issues raised in 'acquaintance rape cases', where disclosure is an afterthought and those involved don't understand their responsibilities; and
 - 2) More systemic issues: e.g. large amounts of digital material needing to be progressed that could not have envisaged or anticipated in 1996.
- There is a need to find smarter ways of increasing resources.
- Key issues are funding and resources.
- Although data clogs the system, the problems start with officers who are not trained and do not do the job properly, though some officers are very good.
- Many prosecution agencies are 'snowed under', some don't understand the issues, and some choose not to. As a result, problems get 'dropped in the Bar's lap'. A barrister may ask for a disclosure junior, but all too often the answer is 'no'.

- Barristers are now expected to do so much more for nothing. Everyone is trying to do their best but without funding, the system falls down. Disclosure is also far bigger than the cause itself.
- There should be early liaison with the prosecution and defence to agree the correct search terms for a disclosure exercise. This will require training.
- A fundamental problem is the wait for material to be examined at all. There are backlogs and huge delays, and this inevitably comes out later in the system leading to obvious risks of miscarriages of justice.
- More and more often, large cases are being split into three trials and listed one after another. Disclosure can be 'massive', and staff are always 'on the backfoot' as no one has enough time. The judiciary needs to understand how long this takes counsel to do. Disclosure should be part of case management in a pragmatic way.
- The amounts of digital material in RASSO cases may have pulled the issue of disclosure back into focus, but the problem is not limited to RASSO cases. There are problems with cases all across the criminal justice system and it is unusual to have a case with no disclosure problems. The problems lie in the lack of training. One barrister spoke of turning up to defend a case on a Monday, finding six phones that no one has looked at have been brought to court, which are inevitably all dead, and no leads to charge them. Despite this, the judge wanted him to state categorically that the case would go ahead.
- Money is not just needed for the Bar. One barrister recalled a case that was adjourned for a year while 11 juniors went through the data. This was partly an IT problem. It is possible to deal with disclosure with the right software and search terms but money is needed for whoever is prosecuting. The disclosure work should all be done before the case gets to court. Currently, it is costing a fortune and money could be saved with the right timing and right IT. The 1996 Act never intended to deal with this. Today every defendant has a mobile phone and a laptop.
- No disclosure officer is available for smaller cases and in larger cases no one wants to be the disclosure officer.
- None of the unused material is uploaded to the DCS. Not only are barristers unconvinced that they are in receipt of all the unused material when working on a case, but they are also bombarded with emails. It would be better if unused material could be uploaded.
- It is all too easy to blame parts of the system when all professionals who are involved in the criminal justice system rarely take the time to read the disclosure guidelines properly. It is a systemic issue that is as much an issue

with those defending seeking to review unused material as it is to do with the police and prosecutors.

- The CPS all work hard to ensure that disclosure is undertaken properly but have very little time to deal with each case. Since the introduction of the streamlined disclosure certificate at first hearing, it is common to see defence case statements in almost all cases which add to the volume of work required in each case. What was intended to speed up the system has just been slowed down again. Resources for the CPS are an issue.
- The high volume of data is addressed in large scale commercial cases, in which someone reviews a certain number of documents and artificial intelligence takes this further. However, training is key. If the most junior person is the critical reviewer this impacts on the rest of the review. For this reason, there would be a need to consider the right level of counsel. How to audit what people have done would also require consideration as commercial cases are different. There may be a need to look at whether disclosure is being considered early enough in criminal cases.
- Senior prosecution authority leaders should be asked to appear in cases where there have been failings, to explain the issues.
- Artificial intelligence is the way forward.
- The problem with uploading unused material to the DCS is apparently that it is not secure enough.
- Better descriptions of material are needed.
- There needs to be some reassurances around and complementary training on GDPR and disclosure for criminal barristers (both prosecution and defence).
- There should be independent disclosure officers, for both state and private prosecutions.
- The move to a more flexible appointment of investigators/legal reviewers means that there is no nominated case ownership by the police/CPS, which leaves lacunas and problems being detected later at court which are then late to be remedied. Costs and more flexible options for working are blamed but these problems are systemic.

9. Law Reform Committee

The Chair noted that the next three agenda items took the form of important committee reports and invited Fergus Randolph QC, Chair of the Law Reform Committee (LRC), to present the first – the LRC report.

Fergus Randolph QC said that he did not believe his LRC report was nearly as important as the discussions that had been taking place. Saying that some members of his committee 'stand full square' with the CBA, he acknowledged the need to avoid a 'them and us' situation. Informing members of the Bar Council that he works abroad a lot, Fergus Randolph QC said that those abroad are 'looking aghast' at what is happening with the justice system in England and Wales which is very close to breaking point.

Fergus Randolph QC explained that the current situation and Brexit are the 'perfect storm' and he raised the O'Connor case where Ireland's supreme court has declined to extradite a company director wanted for fraud to London because by the time he finishes his prison sentence the UK will have left the EU. The issue is that practitioners not being able to do what they may need to may impact on the way justice is carried out. While we have the best Bar in the world, its work is being impacted by a sense that this is not the case abroad.

Turning to the committee report, Fergus Randolph QC noted that members of the Bar Council will have seen the paper attached as Annex 6. The good news is that the Law Reform lecture in December 2017, at which Baron Koen Lenaerts, President of the Court of Justice of the European Union (CJEU) spoke on "The role of the Court of Justice in European Integration", was very exciting and the room at Gray's Inn was full to the brim. This year's lecture will be delivered by Sir Brian Leveson and the committee is awaiting his choice of topic.

The Law Commission of England and Wales have been conducting a long project into codification of criminal law. The Bar Council responded to the consultation on the draft sentencing code (the final consultation of the two-year project) with the help and expertise of a number of criminal barristers outside of the LRC and the Sentencing Working Group members who face some of the problems that have been aired during the Bar Council meeting, namely, Dominic Lewis and Alexandra Robson who led this piece of work on behalf of the Law Reform Committee, Anthony Hucklesby, Carolina Bracken, Andrew Johnson, Elaine Freer and Chris Jenkins of 5 Paper Buildings, Sophie Murray, Bethany Condron and Rose Slowe of Foundry Chambers, Charlotte Glaser of the FCA, Tom Cockroft of 3TG and Abigail Bright of Doughty Street. As a result of this work, the Bar will now see a move from the present system to a codified system which will be of benefit. This is a good example of where the Law Reform Committee has been able to assist with important work and demonstrates how well the Bar Council is able to work with the Bar and others.

Peter Carter QC chaired a successful breakout session at the Bar Conference in which he interviewed Max Hill QC about his role as Independent Reviewer of Terrorism Legislation and the Law Commission delivered a plenary session, chaired by Robert O'Sullivan QC, a member of the LRC. that focused on the Law Commission's new

strategy and the sentencing code project which David Ormerod has presided over. The LRC is planning a joint session with the Personal Injury Bar Association for the 2018 Bar Conference.

The LRC runs the Law Reform Essay Competition, which is an annual event aimed at developing and fostering an interest in law reform in pupils, law students, CPE/GDL students, BPTC students and those aiming for a career at the Bar. Fergus Randolph QC said that the competition is enormously well received. This year it attracted 83 entrants hoping to win the £4k prize. However, mindful of the need for transparency he informed members of the Bar Council that there are questions around the continued funding of this competition. These issues are, hopefully, resolvable but if not, the competition will come to an end. Explaining that the competition is total open with entrants from a wide variety of backgrounds and a 'blind' marking scheme, Fergus Randolph QC emphasised its importance saying that it made a real difference; 'we cannot go back to a time when the Bar was from the landed gentry'.

Fergus Randolph QC reported that he will be retiring from the LRC after 15 years as a member and, subsequently, the Chair. He said that it had been an honour and privilege to work with the LRC members and that he hoped his successor will be in a position to talk about the good health of the essay competition this time next year. He finished by saying that the LRC has successfully delivered all its activities set out in its business plan.

10. Equality and Diversity & Social Mobility

Robin Allen QC, Chair of the Equality and Diversity & Social Mobility (EDSM) Committee spoke to the EDSM report, attached as Annex 7. He said that he intended to cover the main headlines only.

Robin Allen QC drew the attention of members of the Bar Council to the aims of the EDSM as set out in Annex 7: 'As a committee, we are working on behalf of Bar Council to create a profession 'representative of all and for all'. Activity involves identifying and seeking to address barriers and assumptions that inhibit (i) the progression of those with a protected characteristic or those from a non-traditional background into and within the profession; and (ii) individual access to justice.' He said that, in light of the discussions at Bar Council, he felt it was important to emphasise that the EDSM is completely committed to its aims which it carries out through its six panels and working groups.

- . Retention Panel
- . Disability Panel
- . Training Panel
- . Legislation & Guidance Panel

- . Wellbeing at the Bar Working Group
- . Pre-Application Judicial Education Working Group

Thanking Rachel Spearing and Sam Mercer, Head of Policy: EDSM, for their work on the Wellbeing Programme, Robin Allen QC reported that wellbeing activities are going 'from strength to strength'. Saying that he hoped to have an update on the pre-application judicial scheme, he asked members not to enquire further about this topic at present.

Robin Allen QC said that most of the other matters 'speak for themselves' but sought to highlight a few matters that had been either touched on in the meeting or glossed over.

First, referring to the BSB's consultation on sexual orientation, religion and belief, Robin Allen QC said that the Bar Council is concerned that it does not know what the Bar thinks about this. He encouraged members of the Bar Council to look at the consultation and share their thoughts so that the Bar Council will have a clearer picture.

Secondly, harassment is a huge issue talked about by barristers, particularly women and BAME. A session on this is planned for the 2018 Bar Conference.

Robin Allen QC reminded members of the Bar Council of the 'shocking' pupillage statistics which illustrated the difference between successful white and successful BAME applicants. He explained that the Bar Council has done its own work on this with the help of Professor Martin Chalkley. Though there are undoubtedly problems, BAME covers a huge range of individuals and the issues are more nuanced than would first appear. For example, Indian women are as successful as white men and women but Indian men are not. Research is continuing and the Chair of the Bar and Robin Allen QC have put out a statement to urge people to 'get to grips' with this in recruitment.

Robin Allen QC encouraged members of the Bar Council to 'dig out' and read the 'Equal Treatment Bench Book'. Emphasising the need for step change improvement, he said that this should be the first point of reference for those dealing with E&D issues. It was produced by someone who has worked long and hard with the EDSM Committee.

Referring to Annex 10 and the upcoming discussion item, Robin Allen QC urged members of the Bar Council to approve the proposal on maternity leave for Bar Council members.

Robin Allen QC finished by thanking his 'terrific' committee. He said that he appreciated all the members of the EDSM Committee but mentioned in particular his vice-chairs Sa'ad Hossain QC and Fiona Jackson and the Committee's executive, Sam Mercer.

The Chair said that the two items in relation to harassment and sexual harassment training covered in the EDSM Committee's report are especially welcome from a practical ethics point of view.

11. Education and Training Committee

Guy Fetherstonhaugh QC, Chair of the Education and Training (E&T) Committee, spoke to the E&T Committee report, attached as Annex 8. Describing his committee as the 'top committee', he said that a major part of the Committee's work was responding to BSB consultations, which were many and various, and some of which were in respect of things which already work well.

Saying that he wanted to keep his presentation short, Guy Fetherstonhaugh QC picked out three main items from the report all of which relate to pupillage, and which he urged members to take back to their Chambers with a view to asking them to sign up. He began by saying that the Pupillage Gateway to which 99 sets have signed up this year, is a 'thoroughly good thing'. Secondly, Bush House has been secured free of charge, and with fantastic facilities, for the Pupillage Fair this year. Thirdly, he mentioned the Pupillage Supervisor Network, which allows sets to share best practice.

12. Proposed changes to the Standing Orders for Joint Committees – recruitment processes

Members of the Bar Council approved the proposed changes to the Standing Orders for Joint Committees, attached as Annexes 9a and 9b, allowing:

- a. The Chair of the Audit Committee to be involved in the recruitment process for the Vice-Chair of the Audit Committee and the two independent members of the Audit Committee by acting as the third panel member in place of the Treasurer;
- b. Alternates to be permitted for all positions on Selection Groups for roles on joint committees as long as the same three people are involved in a process throughout; and
- c. An exception clause to be included which allows the remaining members of a Selection Group to make a decision as to whether

interviews should go ahead if one of the members is unexpectedly unavailable on the day.

13. Proposed amendment to the Bar Council Constitution: Parental Leave Provision

Members of the Bar Council unanimously approved the proposed maternity leave policy, as outlined in Annex 10, allowing members up to 12 months leave of absence for parental leave and requiring nominating bodies to provide alternates in the case of non-elected members, and the subsequent changes to the Bar Council Constitution to reflect this. The following paragraph is to be added to the Constitution (Part 2, paragraph 8).

“All Bar Council members are permitted up to 12 months leave of absence for parental leave. In the case of members referred to in Regulations 2(b)(i)-(vii), the relevant nominating body must provide an alternate.”

[Bar Council members should note that the insertion of this paragraph will change the numbering of the Constitution and that the numbering of the Constitution will be changed throughout as a result. It also has a ‘knock on’ effect on the regulations under which the Standing Orders are issued. Under the new numbering, the Standing Orders for Committees of the Bar Council and the Standing Orders for Joint Committees of the Bar Council and Bar Standards Board are now issued under the authority of Regulation 14 of Part II the Bar Council Constitution. Any references to the constitution contained within the Standing Orders that have changed as a result of the re-numbering will also be changed in the Standing Orders.]

14. Any other business

There was no other business.