

Minutes of the Bar Council meeting held on Saturday 14 June 2014 at the Bar Council offices

Present:

Nicholas Lavender QC- Chairman
Stephen Collier - Treasurer
Alistair MacDonald QC - Chairman-Elect

51 further members of Bar Council attended.

1. Apologies

Apologies for absence were received from Rt Hon Dominic Grieve QC MP, Mr Oliver Heald QC MP, Alison Saunders CB, Safira Afzal, Mirza Ahmad, Robin Allen QC, Gary Blaker, Michael Bowsher QC, Kerry Bretherton, Ian Bugg, Alex Carington, Alexandria Carr, Simon Clements, Elisabeth Cooper, Tony Cross QC, Tim Devlin, Malcolm Dodds, Chantal-Aimée-Doerries QC, Jonathon Egerton-Peters, Amanda-Jane Field, Malcolm Frost, Suzanne Goddard QC, Peter Grieves-Smith, Susan Grocott QC, James Hampson, Edward Henry, Barnaby Hone, Hannah Kinch, James Kitching, Ian Lawrie QC, Taryn Lee QC, Natalia Levine, Paul Lewis QC, Jolyon Maugham, Kevin McGinty, Sarah Morgan, Benjamin Myers QC, David Nicholls, Lucinda Orr, Alison Padfield, Geoff Payne, Jeremy Phillips, Simon Phillips QC, Dawn Pritchard, Hefin Rees QC, Robert Rhodes QC, Neil Ross, Nigel Sangster QC, Paul Stafford, Mark Thomas, Toby Watkin (Peter Petts attended in his place), Thea Wilson and Nicholas Worsley.

The following did not attend and did not send apologies: David Anderson, Melissa-Louise Coutinho, Mark Engelman, Alexandra Healy QC, Susan Jacklin QC, Thomas Jaggar, Nigel Lithman QC, Gregory Mitchell QC and Zoe Saunders.

The following attended as guests: Vanessa Davies (items 1-5), Baroness Ruth Deech QC (Hon) (items 1-4).

2. Approval of the minutes and matters arising

The minutes of the last meeting were approved. There were no matters arising.

3. Statement by the Chairman

The Chairman welcomed those present to the meeting, which was taking place on a happy day; since in her official birthday Honours List, the Queen has conferred a Knighthood upon Robert Francis QC, to whom the Chairman offered his and the Council's congratulations.

The Chairman submitted a written statement before the meeting, which he hoped members had had time to read. He wished to add to that statement his best wishes - and those of the Council - to Gemma de Cordova, who will shortly be taking a break from the Bar Council as she is going on maternity leave. He also thanked Victoria Carpenter, PA to the Chairman and Vice-Chairman, who is leaving the organisation to take up a job at the House of Commons. She has been a great help to Chairmen over the years and will be missed.

The Chairman referred to the section of his statement about attendance at Bar Council meetings. He said that he was probably talking to the wrong people, given that those present were at least in attendance, but the issue of poor attendance at meetings comes up every year. If there is anything that Bar Council members think can be done by the organisation to help improve attendance, then they are encouraged to contact [Charlotte Hudson](#).

The Chairman asked if there were any questions on topics other than legal aid, a topic which he would return to.

Gerard McDermott QC (GMQC) said that he was interested in the issue relating to solicitors' agents, as referred to in the Chairman's statement. He is aware that the Bar Council is taking this forward and that the Legal Services Committee will be assisted by the Young Barristers' and Training for the Bar Committees, but in his view it is important to tread carefully. A number of those who undertake this work are those who have undertaken the BPTC but not secured pupillage. GMQC has got to know some of the people who do this work and they are very able. There is at least one firm which is trying to provide this service properly. While the concern is about regulation, it is important not to alienate the providers of these services. It may be a better idea to embrace them. There are fewer and fewer pupillages and this type of work is an option for those who do not secure one. It may be sensible for Chambers to consider recruiting people to fulfil these roles.

The Chairman replied that this issue and that of fee-paid McKenzie Friends is being

covered by the Legal Services Committee and that he has requested that a working group is set up to look at this specific issue. He will ask that they get in touch with GMQC. The Chairman entirely agreed that in this day and age, qualified advocates find themselves working in all types of environment. While this particular issue about solicitors' agents has so far been dealt with on a narrow point of law in a particular case, the working group will look beyond that. The Chairman has requested a meeting with the Master of the Rolls to discuss the practice of using solicitors' agents. He has also spoken to the Legal Ombudsman, whose view is that, as these people are not authorised by an Approved Regulator, the ombudsman scheme does not extend to them.

The Chairman explained that there is a limit to what he can say in public and during an open meeting in relation to the legal aid negotiations, but that he had said what he could in his written statement in terms of the process. It would not be right or productive to go into further details.

The Chairman was in court when Leveson LJ gave his judgment in the Operation Cotton appeal, and noted his encouragement to both the Bar and the Ministry of Justice to resolve the impasse between them. Since then, he and a number of others have met with the Lord Chancellor and MoJ officials to try to take forward negotiations about representation for defendants in VHCCs currently without defence counsel. The Chairman extended his thanks to the CBA leaders and the Circuit Leaders for their involvement, and also to Mark Hatcher and Adrian Vincent at the Bar Council.

The Chairman reported that the original VHCC Advisory Group has been reconvened and all barristers who were instructed (or were about to be instructed) in VHCCs affected by the 30% cut have been invited to join. The group has met many times and there have been regular reports to GMC about progress. The Chairman said that he hopes to be able to make an announcement very soon about next steps.

Sarah Forshaw QC (SFQC) said that she wanted to pay tribute to the Chairman. She has witnessed first-hand the way in which he has taken the discussion forward, which has been measured and sensible. It is quite superb how he has dealt with this.

The Chairman moved on to the supporting papers (annexes 3a and 3b) dealing with the incorporation of COIC. Those involved in COIC have made many changes and the new Director, James Wakefield, has been a force for good. The project to incorporate COIC will conclude shortly and this means that the Bar Council must look at its own Constitution (as available on the website) with a view to making

revisions. It is proposed that the Introduction of the Constitution, which contains what were considered to be important agreements in the 1980s will be replaced by a new Memorandum of Understanding instead. A draft of this will be brought to the Council for the July meeting, which James Wakefield is due to attend.

There were no questions.

4. BSB report

Baroness Deech QC (Hon) (RDQC) said that she wished to pick up on some of the points already raised. In relation to paralegals working in solicitors' firms, the BSB is very aware of this from a regulatory perspective. The growth in this area was one of the reasons for the Legal Education and Training Review (LETR), which has now reported and work arising from the recommendations is ongoing. One does not want extra regulation, but this area must be taken care of. RDQC said that she welcomes the modest scheme initiated by COIC to create additional pupillages. Despite initial resistance, it has really worked and means that at least a few dozen more people can say that they are really qualified members of the Bar, even if they do not secure tenancy.

The BSB report was circulated ahead of the meeting (annex 4). RDQC said that she did not intend to go through it point by point, but would flag some headlines. RDQC said that she was particularly thrilled that the BSB has finally put in its entity regulation application to the Legal Services Board. Those not involved have no idea how intellectually demanding this process has been. The BSB has relied extensively on a team working pro bono on this; one Board member has stayed on for years past their initial term as their expertise has been so valuable. It has been a mammoth undertaking. The application was put in on Friday 13th, which RDQC hopes is not an omen.

The BSB will be meeting with Bar Council officers next week to outline the application. As yet, the BSB has no idea what the take-up might be from the Bar. There have been two or three consultations on whether practitioners might be interested in joining or creating an entity, but on each occasion the response is "don't know". Therefore, it is somewhat of a leap into the unknown. RDQC suspects that there will be a move to entities over time. It is a facility for those who want it. She has been approached by some barristers who think that the formation of entities will lead to the end of the world. That is fine; they do not have to join or start one.

RDQC said that the word QASA will not pass her lips as parties are awaiting the

outcome of the JR appeal, which is expected in July. RDQC has confidence in the integrity of the judges to make the right decision.

Paul Mendelle QC (PMQC) asked whether RDQC could provide more detail about the entity regulation application. Vanessa Davies (VLD) replied that 10MB worth of material was sent to the LSB on Friday, so there is quite a lot. The application should appear on the LSB's website within ten days. The BSB is briefing the Bar Council officers next week and after that, they anticipate making full public announcements in mid-July. VLD added that if any Bar Council member is aware of a practitioner or practitioners who are particularly interested in forming an entity, they should be encouraged to contact her early. The BSB is looking for people to pilot the initiative (possibly October - December). VLD said that it would be fair to say that the BSB will be giving timeline priority to any entity which is considering public sector contracting.

Andrew Walker QC (AWQC) asked when the Bar can expect a response from the BSB in relation to their consultation on returns. VLD said that they had received several hundred responses to the consultation and that the Board has requested that more work be undertaken as a result of some of the emerging themes. The Board are due to be updated at their July meeting. VLD recommended that AWQC ask her again at July's Bar Council meeting and she will be able to be more specific.

Guy Fetherstonhaugh QC (GFQC) asked RDQC whether she could comment on the BSB's relationship with the new Chair of the LSB. RDQC said that he is not quite in post but that she has had a number of informal meetings with him. She said that she is optimistic as he seems well-disposed to the Bar and willing to listen. She and Patricia Robertson QC are due to meet him formally when he takes up post. RDQC referred to the Lord Chancellor's recent speech in which he encouraged the new Chair to work towards one day winding the LSB up. This is therefore a very different relationship.

The Chairman referred to the work of the Bar Council's Criminal Justice Review Group, led by Geoffrey Rivlin QC. One of the sub-groups, led by Alistair MacDonald QC (AMQC), is looking at different business models and whether they offer any solutions for the Bar. The Chairman's own view - supported by the Jeffrey Review - is that what matters is not the form of the entity but the form of the contract. If there is a form of contract that works for the Bar, and the LAA agrees to use such a contract, then that is the time to think about setting up an entity to support it.

The Chairman encouraged anyone who has any ideas about what sort of contract

would be best for those who specialise in criminal advocacy to please send them to AMQC. At the moment, the contracts include litigation, which is primarily the role of the solicitor and it is important to have contracts which are appropriate to the specific type of legal service provider. The Chairman is reminded of the line from Orwell's Animal Farm: "The creatures outside looked from pig to man, and from man to pig, and from pig to man again; but already it was impossible to say which was which."

AMQC said that the consideration of business models is one of the most difficult tasks that the group is facing, but also one of the most important. He repeated the Chairman's request that anyone with any ideas should get in touch.

5. Treasurer's report

Stephen Collier (SC) opened his report by updating Bar Council on the move to an income-related practising certificate fee (PCF) collection from the current year-of-call based method. He explained that he had asked VLD to remain for this item in case there were any specific questions which she could respond to on this topic.

Bar Council will recall that a decision was made to move to an income-related method but that the implementation date was put back owing to a lack of confidence in the IT system's capability and the uncertainty arising out of the Hemming v Westminster case. Bar Council delegated the decision-making as to when to implement the new approach to the General Management Committee (GMC). GMC has now decided to reinitiate the plans for the 2015-16 subscription year.

There are critical follow-ons arising from this decision, including an extensive communications plan. The Chief Executive will be undertaking Circuit visits in the autumn and there will be regular updates to Bar Council and the profession. However, the Council has to support collectively that process by communicating with their constituents and feeding back to the Council. It cannot be said that the decision to move to the new methodology for collecting the PCF was wholly unanimous. While for most the change will be modest, there will still be those who oppose it or claim to know nothing about it. Bar Council members are asked to work with the organisation to ensure that the profession is informed. SC reminded the Council that the organisation does have LSB approval and BSB endorsement for this change.

VLD left the meeting.

SC presented a second proposal (annex 5) for how the organisation may be able to compile a list of Bar Council members' contact details to share, which ensures that data protection duties are observed but which provides more than simply generic SBA and Circuit email addresses. The previous proposal was rejected at the last meeting. Advice has been given that members must opt-in to sharing their details, which is slightly more bureaucratic than an opt-out system. SC asked for approval of this approach. Approval was given.

SC said that he would present the financial accounts at the next meeting (July).

6. BARCO update

RPAQC said that before he talked about BARCO, he would like to mention the Bar Conference which takes place on 8 November 2014, and for which he is sure all Council members have booked their tickets. RPAQC has negotiated discounts for Circuiteers to attend so that, including travel, the cost is on a level playing field with their southern counterparts. There are twenty discounts available on each Circuit, except the South-Eastern Circuit.

The keynote speaker for the conference is the Rt Hon Lord Hughes of Ombersley and the Rt Hon Lord Justice Moses will deliver the closing address. The latter will have retired by the time of the conference, and should be particularly entertaining. Bar Council members are asked to encourage attendance at the conference.

Moving on to BARCO, RPAQC referred to the report at annex 6. RPAQC said that he is aware that a number of people have concerns that the scheme is a black hole that money is being pumped into, never to be retrieved. However, the investment has been made in the belief that BARCO is a useful and important tool for the Bar and which will, in time, be profitable.

For those who are not aware, BARCO is an escrow account which can hold client money so that a barrister does not breach the code of conduct, allowing the Bar to secure new business that it otherwise would not be able to secure. Annex 6 refers to a class action involving 242 clients which is being paid via BARCO.

BARCO protects the consumer and is supported by the financial regulators. It prevents practitioners falling foul of the ban on holding client money and ensures that no-one breaches the Code without realising it. It offers assurances that all money is being handled appropriately. For those who have turned to direct access work, it is invaluable. St Philips Chambers is now putting all direct access work

through BARCO, and others are joining in.

There is light at the end of the tunnel in terms of BARCO's financial performance. It has been a slow burn, but chambers are now signing up and BARCO will break even in the not too distant future.

Tim Fancourt QC (TFQC) asked whether, as BARCO develops (which he hopes it will), there is a prospect of the fee being reduced. He has been trying to draft new contractual terms which include solicitors not taking responsibility for the fee, and therefore trying to weave BARCO in, but the difficulty is the 2% fee. Barristers won't want to submit to this. RPAQC said that the more business there is, the greater the chance of being able to reduce the fee. The BARCO Board is mindful of this and is open to how it can be more flexible in the future. The fee can, of course, be set off against tax and he is aware that some clerks may negotiate an uplift to cover it.

7. Equality and Diversity Committee: report

Eleanor Mawrey (EM) presented this report on behalf of Robin Allen QC (RAQC), Chairman of the Equality and Diversity Committee, who was unable to attend.

EM set out the Equality and Diversity (E&D) Committee's vision, striving towards "a profession representative of all and for all". To achieve this is enormously difficult in the current climate; the impact of the cuts to legal aid on E&D cannot be understated. Sir Bill Jeffrey stated in his report that, to his mind, there is a realistic fear that a lot of good work will be undone and there will be a reversion to a less ethnically diverse but more privileged profession.

The E&D Committee has contributed to both recent legal aid consultations and continues to press the E&D agenda in relation to the Leveson Review. The committee is an active participant in the Bar Council's Criminal Justice Review Group.

It is clear that issues of remuneration contribute to diversity-related problems at the Bar. Other contributory factors include listing, case ownership and areas of practise.

The E&D Committee has recently launched the EDO (Equality and Diversity Officer) Network and a forum through LinkedIn so that EDOs can share experience and knowledge. Another initiative is the Wellbeing at the Bar project, to which all four Inns have contributed. The research stage will start this summer and the committee is asking Bar Council members to encourage members of the profession to

participate.

The E&D newsletter will launch in June and is designed to inform the Bar more widely about E&D issues.

Bar Mentoring service is underway and if members would like to mentor or know anyone who would like to be placed with a mentor, they are asked to get in touch.

The committee is also looking to do more to promote diversity within this Council. Questionnaires will be sent out in due course and members are asked to participate. The results will help to identify under-represented groups at Bar Council and assist with addressing any issues when the elections take place.

There is also a need to improve data on the profession. Various attempts have been made to collect and monitor this data but the returns stand at only 20%. The work of the committee can best be done by understanding how the Bar is structured. Bar Council members are asked to encourage their members to complete the monitoring questionnaire when they renew their practising certificate. If anyone has any other ideas about how to improve data collection, the committee would be delighted to receive them.

Andrew Langdon QC (ALQC) asked what liaison there is between the committee and their equivalent at the Law Society. The changes in legal aid for solicitors have had a disproportionate impact on small firms and, therefore, BAME practitioners. In parts of the country, that impact will be felt throughout the criminal justice system. EM replied that the lines of communication are open. The committee is very aware of the impact on the diversity of solicitors and the knock-on effect for the Bar. When the committee responds to consultations and reviews, it always expresses concerns about the impact on solicitors.

Ruth Hughes (RH) asked what the Inns are doing to improve their diversity profile. EM said that their initiative to pay for a number of pupillages will help increase diversity. The recent Neuberger report stated that the greater the pool of people able to secure pupillage, the greater the chance of diversity within the profession. RH asked what the Inns were doing to ensure that their Benchers are representative? EM said that, as with any body, it is important to undertake proper monitoring so as to understand the profile better. However, it is really a matter for each Inn to consider the diversity of their Benchers.

AMQC asked for more information about the wellbeing project. EM said that it is

designed to identify health issues at the Bar, particularly mental health issues, which are often not openly discussed and people do not know how to handle it. Once the research shows where help could or should be provided, the committee will look at how people can be better supported by chambers and by the Bar as a whole.

AMQC expressed concerns that there will be reluctance for any practitioner to put forward what may be considered evidence of them being incapable to do their job although he is confident that there are people who need help. EM explained that this is why the initiative has been launched i.e. to better understand the issues and how can they be best addressed. The committee is working with Lawcare and the Bar Benevolent Society as part of the research stage.

David Wurtzel (DW) told RH that if she is interested in what the Inns are doing, she should ask them. He then asked EM what evidence she has to support her assertion that legal aid cuts have had an impact on the diversity of the publicly-funded Bar. Presumably she has conducted an exit survey? Presumably those who have left the Bar have been identified and asked to assist?

EM responded that the outcome of the Exit Survey has been considered and there is a move to collect the data on a monthly basis so that it is easier to chart leavers and any correlation with the cuts. DW said that EM had implied that the cuts were already having an impact but has no evidence. EM said that the statement is borne out by those who have already left and by the Bar Barometer and the Exit Survey. It is clear, for example, that there is a greater proportion of women at the publicly-funded Bar than at the privately-funded Bar and that a number are leaving owing to remuneration issues.

Christina Michalos (CM) asked whether an incentive could be offered in order to encourage completion of the data monitoring questionnaire, perhaps in the form of a discount on the PCF. EM undertook to take that idea to the committee.

Greg Jones QC asked whether it is in the Bar Council's remit to lobby for tax relief for parents and childcare arrangements. EM replied that there has already been lobbying in these areas, for example in relation to childcare vouchers (to which the self-employed are not entitled and discussions about tax relief given the ebb and flow of money coming in.

The Chairman said that he felt that the diversity of Benchers is an important issue and that a concern for all. Anyone who is a Bencher can help to ensure that the composition is representative.

8. Social Mobility Committee: for report

Guy Fetherstonhaugh QC (GFQC) presented this item (annex 8) on behalf of the committee's Chair, Taryn Lee QC.

GFQC emphasised that the committee's initiatives are designed to make sure that diversity is represented at the Bar, not to encourage people to come to the Bar in swathes and fail.

GFQC referred to the programme of Bar Placement Weeks, during which people from low income backgrounds are placed in Chambers. The total student numbers for BPW were 60 in 2012-13 but that has been doubled to 120 in 2013-14 across London, Birmingham, Leeds and Manchester. The committee hopes to offer 12 places in Birmingham this year, but still need 4 more placements (14-18 July). If anyone is able to assist, they are asked to contact Oliver Williams (OWilliams@BarCouncil.org.uk).

Supporting the Bar Placement Weeks, the committee has launched an e-mentoring service for those who have come through previous Bar Placement Weeks. It is designed to help them to develop and take forward their interest in joining the Bar.

There were no questions.

9. Training for the Bar Committee: for report

GFQC presented this item (annex 9) as Chairman of the Training for the Bar Committee. The committee is involved in a lot of promotional outreach activity in conjunction with the Social Mobility Committee.

One of these is "Speak up for Others", which raises the profile of the Bar among people who would otherwise not think of it. The Bar has been helping out for years with this initiative and the committees are very grateful.

GFQC recalled being "pinned to the floor" by AMQC last year owing to the poor performance of the Pupillage Gateway. Lessons were learned and this year the system has worked superbly well and there have been no negative comments. The number of chambers using the Gateway has dropped from 109 to 88; following investigation, only one of those who stopped using it did so owing to last year's poor performance. It seems that the others are not offering pupillages.

The Bar loans scheme is now moribund as HSBC refused to renew. However, Barclays (which runs BARCO), are making very positive noises about taking it over and a meeting is scheduled with them to take place shortly.

The new Bar Council / BSB protocol makes it quite difficult for GFQC to know what is going on in relation to education and training, but from what he can tell some of the ongoing work raises concerns and he is keeping tabs on it. He will provide an update when he knows any more.

The BPTC has been a topic of discussion at COIC, within the BSB and TfBC. The proposal is to split it into two parts: an online learning resource administered by the Inns, followed by an advocacy module with on-site training. The total cost will be greatly reduced.

Muhammad Saley asked if the committee has been in contact with the GLS Secretariat about their placement scheme, which sounds quite similar (but is remunerated). It may be worth getting in touch as they may be able to assist.

AMQC congratulated the committee for sorting out the pupillage gateway.

Alex Carlile returned to the BPTC point. He understands that there are various versions of the same scheme around. The relevant committee considering the ideas at one of Inns received proposals without any numbers. If a change is going to be suggested, given the collapse of Kaplan, it must come with the numbers involved.

DW asked why anyone would want to make the BPTC shorter and more cost effective when it will attract more students and an even higher percentage won't get pupillage. If you cannot artificially cap the numbers, then it seems wholly irresponsible to continue with this piece of work. DW asked what TfBC and COIC have done about going to the Office of Fair Trading to find a way to limit the numbers of people doing the BPTC to something sensible without breaching E&D and social mobility initiatives.

GFQC pointed out that it is the LSB who say that numbers cannot be capped. It also seems perverse not to do something to assist those who are going to undertake the BPTC in any event i.e. make it better and more cost efficient for them anyway.

The Chairman said that he was one of the 11 people who voted against validation in 1994/95. It is a great shame that so many people spend money qualifying when they

cannot practice and there is a fear that nothing can be done unless the Legal Services Act is amended. Given that the current situation has to be dealt with, the cost of the course should not be used as a tool to keep the numbers down. That way, you could risk losing the talented candidates from less well-off backgrounds.

10. Any other business

There was no other business.

11. Date of next meeting

The next meeting of the Bar Council will be held on 26 July 2014 at 10.00 at the Bar Council offices.