



The Bar Council

## Meeting of the Bar Council

### Minutes of meeting: Saturday 10 July 2021, Microsoft Teams dial-in

#### Present

Derek Sweeting QC	Chair of the Bar	DSQC
Mark Fenhalls QC	Vice Chair of the Bar	MFQC
Nicholas Vineall QC	Vice Chair Elect of the Bar	NVQC
Lorinda Long	Treasurer	LL
David Abbott	CEO, FRU	DA
Baroness Blackstone	Chair, Bar Standards Board	BB
Bernard Brady QC	Chairman of the Bar of Northern Ireland	BBQC
Celina Colquhoun	European Committee	CC
Roddy Dunlop QC	Dean of the Faculty of Advocates, Scotland	RDQC
Rt Hon Lucy Frazer QC MP	Solicitor General	SG
Susan Grocott QC	Ethics Committee	SGQC
Joanne Kane	Young Barristers Committee	JK
Philip Moser QC	European Committee	PMQC
Iain MacDonald	Law Reform Committee	IM
Maura McNally SC	Chair, Bar Council of Ireland	MMSC

#### Members in attendance (listed alphabetically)

Christine Agnew; Dr Mirza Ahmad; Shazia Akhtar; Stuart Alford QC; Simon Anderson; Nick Bacon QC; Michael Bellis; Philip Bennetts QC; Minka Braun; Carl Brewin; Ian Brookes-Howells; Matthew Brunning (alternate for Emily Formby QC); Alexandria Carr; Mark Chaloner; Sydney Chawatama; Ben Close; Richard Cole; Ivor Collett; Barbara Connolly QC; James Corbet Burcher; Cecily Crampin (alternate for Harriet Holmes); Layla Ferguson; Andrew Granville Stafford; Birgitte Hagem; Neil Hawes QC; Isabel Hitching; Sarah Holmes-Willis; Kim Hollis QC; Ruth Hosking; Matthew Howarth; Faith Julian; Sean Jones QC; Susan Jones; Amanda Hardy QC ; Shobana Iyer; James Keeley; Donal Lawler; Tom Leech QC; Edite Ligere; Ted Loveday; Kate Lumsdon QC; Tim Manley; Athena Markides; Eleanor Mawrey; Oliver May; Martyn McLeish; Christina Michalos QC; Andrew Morgan; Grace Ong; Lucinda Orr; Michael Polak; Charlotte Pope-Williams; Jonathan Rees QC; Simon

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THE BAR COUNCIL

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

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Regis; Ryan Richter; Zoe Saunders; Natasha Shotunde; Kate Spence; Gordon Stables; Jessica Stephens QC; Philip Stott; Jason Sugarman QC; Ben Symons; Leanne Targett-Parker; David Taylor; Jacqueline Thomas QC; Steven Thompson QC; Linda Turnbull; Colin West QC; Camila Zapata Besso

**In attendance**

Malcolm Cree	CEO, The Bar Council	MC	
Piran Dhillon-Starkings	Adviser to the Chair, Bar Council	PDS	
Carolyn Entwistle	Director of Services, Bar Council	CE	
Mark Neale	Director General, Bar Standards Board	MN	
Phil Robertson	Director of Policy, Bar Council	PR	
Steven Rudaini	Director of Comms & Marketing, Bar Council	SR	
Christian Wisskirchen	Head of Policy, International, Bar Council	CW	
Hannah Williams	Communications Officer, Bar Council	HW	
Wilf White	Director of Communications and Public Engagement, Bar Standards Board	WW	
Natalie Zara	Head of Governance, Bar Council	NZ	
<b>Minutes</b>	Yvonne Treacy	Executive Officer. Bar Council	YT

**Apologies were received from**

Lorna Badham; Elaine Banton; Emily Formby QC (alternate Matthew Brunning); Laura Gould; Michael Harwood; Max Hill QC; Harriet Holmes (alternate Cecily Crampin); Nick Johnson QC; Stephen Kenny QC (alternate Susan Grocott QC); Louise McCullough; Andrew Mitchell QC; Francesca O'Neill; Alison Pickup; Robert Rhodes QC; Joe Smouha QC; Heidi Stonecliffe QC; Anton Van Dellen; Emma Walker; Richard Wright QC

**1. Conflicts of Interest**

None were declared.

**2. Minutes of the last meeting and matters arising**

The minutes from the meeting of Saturday 24 April 2021 were approved.

**3. Statement by the Solicitor General - The Rt Hon Lucy Frazer QC MP, Solicitor General**

Lucy Frazer QC MP, Solicitor General (SG), thanked the Bar Council (BC) for the invitation to address them today and also DSQC for his continued engagement on a variety of issues.

This was not her first time attending a BC meeting. She has attended Bar Council meetings previously in a number of capacities, for example, when she was BC member in practice, as Solicitor General, and as a justice minister.

At the Attorney General's Office, they are responsible a wide variety of matters but in particular for advising the government and superintending the work of the CPS and SFO. However, she wanted to talk today about their interactions with the Bar and how the Bar supports the government in its legal work.

First, the SG mentioned the Attorney General's Panel (Panel) which represents the government in court and for which specific expertise is required. The SG said that she was once a Panel member which she found extremely rewarding as the work was interesting and varied. Membership is not limited to a few select Chambers or public law specialists but is open more widely to the profession as the government require a range of expertise and experience. She would encourage anyone to apply to join the Panel and benefit from the opportunity to work on more complex cases than they are probably used to and develop their expertise. Panel membership can also help with future applications for Silk. Last year the government appointed 21 Silks from the Civil Panel. She also mentioned the employed Bar and the variety of work undertaken by the Government Legal Department (GLD).

Another aspect of collaborative working is the court recovery process. While this falls mainly within the remit of the Ministry of Justice (MoJ), the Bar and the AG's Office are important stakeholders. The SG mentioned that she had been the Prisons Minister during the pandemic, and said that she was concerned about ensuring the continuation of justice. She went on to say that we were one of the first countries to re-open its courts through the introduction of cloud video platform and Nightingale Courts. She thanked the Bar for its continued work, in challenging circumstances, in ensuring that the courts operated - thus furthering access to justice. While the government has invested a quarter of a billion pounds in the court recovery process it was accepted that there is still more to be done as we emerge from the pandemic.

Finally, the SG spoke about the lack of reliable end-to-end data. She explained that this is something that the government is seeking to address and would, in future, be bringing all data into one place and publishing regular scorecards and metrics.

The Chair thanked the minister for giving up her time to join the meeting today. He echoed what the SG had said about encouraging members of the bar to apply to join the Attorney General's Panel and also noted the need for reliable data in the justice system.

#### **4. Chair's Statement**

The Chair's detailed statement was included with the agenda papers, but the Chair said that he wanted to take the opportunity to highlight some specific items.

Following the Officer Elections 2022 in which Mark Fenhalls QC was elected as Chair 2022, Nick Vineall QC was elected as Vice Chair 2022 and Lorinda Long as Treasurer 2022, the Subscriber Elections will be held in September. It is important to have as much participation as possible and therefore he asked members to encourage you're their colleagues to stand to ensure we have a diverse and representative Bar Council.

As an addendum to the Chair's Statement, the Chair reported that he had just returned from Wales having visited the Wales and Chester Circuit. This visit followed an earlier visit to the North Eastern Circuit in June. He thanked both circuits for their hospitality and making the necessary arrangements in difficult circumstances. An interesting feature of these visits was that they included, for the first time, meetings with members of the local judiciary. It was interesting and informative to get their perspective on matters and compare them with that of the local Bar.

The BC continues to work on the outcome of the China sanctions and are extremely grateful to the support received from other Bar associations around the world in supporting our stance and in issuing joint statements condemning the sanctions, for example, the other UK bars and Ireland, the CLA, ASIALAW and due shortly, the ABA. There is a limit to what Bar associations can do but it is important that the legal community around the world stand united on this. It is gratifying to see that it started here and in Ireland and that it gathered momentum with the other Bars and lawyer associations coming together.

On 16 & 17 September the BC is hosting the Bar Race Summit – a two-part event focused on encouraging the profession to take action on race and equality work. Invitations will be sent out later this month. We are grateful to Middle Temple for the use of their premises for part of the event. We also continue to support the 10,000 Black Interns Bar steering group (planning to offer at least 10 internships to 10KBI applicants) and are looking at how we actively support the Black Talent Charter.

The Bar Annual Conference and Young Bar Conference will be held in November and will have in-person and remote attendance options. Bookings are now open, and we would encourage you to sign up and attend.

## **5. BSB Report**

BB said that she would like to highlight a few items from the BSB report and also to mention a recently published research report which was too late to be included in the BSB report.

The Bar Tribunals and Adjudication Service (BTAS) published their first consultation document proposing revisions to parts of the sanctions guidance relating to cases of proven professional misconduct. The consultation document was prepared by a working group made up of representatives of BTAS, lay and barrister members of the BTAS Disciplinary



Tribunal panel and the BSB. It received over 40 responses. Following that consultation, the full guidance will be re-drafted, and a second consultation document published in September as opposed to July as previously planned.

The LSB's performance review of the BSB has been published. The BSB accept their recommendation that the BSB could do more to engage with consumers and make their strategic objectives more explicit. They stand by their decision to improve their governance and as such they have commissioned their own independent review of the BSB's governance and developed their own comprehensive plan to refresh the BSB's governance for the decade ahead.

Too late for inclusion in the BSB report was the research on the statistical analysis of the outcomes of complaints about barristers. This looked at the likelihood of barristers being subject to a complaint between January 2015 and October 2019. The research focused on gender, ethnicity, outcomes of complaints and whether they were internal complaints or external complaints i.e., by a third party.

Some of the key findings were that i) male barristers were more likely to have complaints referred to disciplinary action than female barristers and ii) white barristers were less likely than minority ethnic background barristers to be subject to internal complaints.

The BSB will use the analysis to identify trends regarding complaints handling with comparisons between the old system which operated until October 2019 and the current system.

In conclusion, BB reminded committee members that it is two years since the BSB transparency rules were introduced and that most barristers are compliant. However, they would be prepared to take enforcement action if necessary although they do not expect this to be necessary in most cases.

IHQ asked a question on behalf of Middle Temple regarding the ethics exam for pupils and the lack of clarity regarding the syllabus. On behalf of the BSB, MN replied that he understood the concerns regarding this issue, that discussions had been held with COIC and that an announcement was expected in the coming weeks. For the purposes of clarity IHQ sought confirmation that it would be acceptable to report back that an announcement was due soon. This was confirmed.

LT asked two questions. First, with regards to the statistical analysis report could BB confirm that the findings showed that male barristers were three times more likely to be subject to internal complaints rather than external complaints. BB confirmed this to be accurate according to the analysis. Secondly, LT said that some chambers had been approached to complete the regulatory BSB returns and wondered when they would receive the results. MN replied that the BSB was undertaking the analysis at the moment and should be ready

to report in the autumn and that the BSB's supervision team would be in touch with individual chambers in due course.

The Chair informed members that the report was now available on the BSB website and made the point that unregistered barristers were not included within the analysis. An appreciation of the extent to which BSB resources were used to regulate unregistered barristers would be helpful. The BSB said that they could provide statistics on this if required.

Finally, with reference to the LSB report, the Chair said that he felt that the instigation of the report was influenced by the BSB decision to withdraw from funding Legal Choices. BB thanked the Chair and the BC for their support in relation to this.

## **6. Bar Leader Guest Speakers**

The Chair introduced the leaders of the Bars of Scotland, Ireland and Northern Ireland. He said that the order in which he had asked them to speak was chosen at random. The first leader to speak was Roddy Dunlop QC, Dean of the Faculty of Advocates in Scotland.

RDQC thanked the Bar Council for the invite to speak at the meeting. He spoke of the extremely collaborative approach between the four Bars which has been exemplified by two recent collaborative statements on the China sanctions and administration for justice post-Covid.

RDQC said that, unlike in England and Wales, those in Scotland will need to wait a little longer than 19 July. Issues at the Bar in Scotland relate to plans for life once Scotland is fully unlocked. The Scottish Courts and Tribunal Services see the merit in some hearings continuing online. The concern, however, is to what extent.

The views of practising advocates, with regards remote hearings, have been canvassed twice. Most recognise that there is a place for remote hearings, but the majority agree that reverting to in-person hearings for complex matters is crucial. These views are also shared by the solicitors and judiciary in Scotland, but it appears that these voices are not being heard by the civil servants. These concerns have been encapsulated in the statement. Simply put, online hearings are simply not as satisfactory as in-person hearings. Aligned to this are the wellbeing issues, for example, zoom fatigue and the challenges of working from home as home has essentially become a permanent office. One in three practitioners in Scotland have said that working entirely remotely has had an effect on their mental health. RDQC raised the impact of remote working on the training of devils and juniors. He said that if impaired training is allowed to continue, the profession and all those that it serves will suffer. The Bar in Scotland has seen a 'trojan horse' of measures introduced, purportedly for Covid, for remote hearings in criminal cases. Citing Lord Justice Flaux CHC, who said that we must 'seize the good things that have come out of this terrible

crisis.... and jettison the bad' including the erosion that working from home has caused to our lives, RDQC said that he could not agree more. Of course, remote hearings will continue to play a valuable role, but they cannot be the default otherwise virtual justice becomes just that – virtual – which means 'nearly or almost'. We need a robust and healthy justice system. The Chair said that he has talked to practitioners on circuit about these matters. There are no easy answers. He then invited Maura McNally SC, Chair of the Law Library of Ireland to speak.

MMSC thanked the Bar Council for the invitation and the opportunity to address the meeting. She said that she feared her speech would be rather dark as the Bar of Ireland feel that they are under attack. The Court Service and Civil service are using Covid to effect cost savings and she cited the abolition of the requirement to bring prisoners to court, due to the fact it saves time and resources, as an example. Civil Servants, who are now working three days from home per week, are pushing for a continuation of remote hearings. However, this has a significant effect on juniors who are not being given effective training or afforded the opportunity of seeing trials in-person. Instead, access to the court is being limited to journalists. The knock-on effect is that in five or 10 years' time, the Bar will be presented with-a new tier of barristers who are not properly trained. This, in turn, has an impact on the rule of law. People are entitled to choose their barrister, but if barristers are poorly trained, it will lead to delays, inefficiencies, and complaints. Practitioners won't know how to file documents or which documents to file and this will all cost the system more in the end.

In respect of the attack, MMSC said that the enactment of the Legal Services Regulatory Authority Act has caused problems. The Bar of Ireland does not allow multi-disciplinary practises, yet this is being foisted on the Bar for reasons of cost saving. The biggest purveyor of criminal services and personal injury services is the state, so the state benefits on both sides. The effect of this is that the junior Bar practising attrition rate for years 1-6 shows that criminal practitioners are leaving twice as fast as civil practitioners. In a few years' time, there won't be a sufficient pool of barristers.

Elsewhere, the Bar was promised that the cuts to fees would be reversed, which has not happened, and is instead on hold, and now, due to Covid, there will be insufficient funds. Suggestion of reversal of cuts on hold. The criminal fee rate still the same as in 2002.

From the perspective of the civil Bar, the net result of the new Personal Injury Guidelines (PIGs) is a reduction in awards. MMSC gave an example of the reduced amounts awarded in a whiplash case. Cases are now limited in number post-PIGs and are pushed back down without any assessment. Personal Injuries Assessment Board has asked for submissions and will be looking at this.

Talking about the backlog in court cases, MMQC said that the population of Ireland is 5M but there are 100,000 summons in the backlog. That is one summons per 50 people in the

country. Now the Bar is seeing cases being forced from the circuit to district courts as there is no funding.

MMSC reported that the Law Library is also making submissions on the fees structure. The Family Law Bill proposes to take divorce cases out entirely and push them down to the district court in their entirety, which will cause problems. The Department of Justice and the Court Service are using the opportunity to force through cost savings without taking the UN declaration, the Constitution or the European Convention on Human Rights.

Against this backdrop however, people are, to a degree, feeling upbeat about the future. The Bar has not lost members, although fewer are joining, so there remains some faith in the system. However, the Bar needs the government to show the same faith regarding in-person hearings. People are entitled to their day in court. Justice is not served if people cannot properly see how a defendant is behaving. Those in the case need to have the benefit of visualisation. In some cases, remote hearings do result in a saving but, for actual trials, if the parties want an in-person hearing, one should be provided.

MMSC finished by saying that the Bar in Ireland faces an uphill struggle, but it has always survived.

The Chair said that it is important to bear in mind that the Bar Council has not, at any stage, opposed the use of technology. However, there is a need for some consistency in approach regarding what is likely to be remote and what will be in-person going forward. He said that he had recently spoken to a practitioner in Wales who dealt with a remote case in which a child was being taken away from its parents. The parents were forced to attend remotely. This should not happen. The government needs to think twice about certain things.

Bernard Brady QC, Chairman of the Bar of Northern Ireland, was the third speaker. He thanked the Chair and the Bar Council for their kind invitation to the meeting.

BBQC began by saying that, when you are the third speaker, there is always a risk of repeating the same speech. Much of what RDQC and MMSC had said mirror the experiences of the Bar of Northern Ireland. However, he said that he wanted to elaborate on digitisation and wellbeing.

With regards to digitisation, the Bar of Northern Ireland was happy to participate in the statement on positivity for business with the other Bars. The Bar of Northern Ireland are also discussing the appropriateness of remote hearings where unavoidable and the effects on junior members. By and large the position shared by members is the same as those of the other Bars. There is a desire to get back to more in-person hearings. The Court Service launched a modernisation 'Digital First' plan which includes remote hearings digitisation. BBQC stressed that while the experiences of the pandemic should not be dismissed, there is a need to look at how digital hearings have fared. There have been positives and negatives

and we should not catastrophise. Instead, we should take an evidential approach taken to digitisation. The Bar of Northern Ireland is not afraid of technology, and had introduced some technology prior to Covid, but the pandemic is being used as a cover to close courts and to move to a digital first approach to justice.

One feature that this has created is the enormous impact on the wellbeing of members. The Bar of Northern Ireland's key priority is to raise awareness of wellbeing aspects. There was a Wellbeing Committee before the pandemic, but it didn't deal with the sheer increase in complaints and issues about the working environment created by the new remote hearings. The vast majority of practitioners who contacted the service were young females. The Bar of Northern Ireland is working towards a response, trying to enhance the master pupil scheme and looking at a mentor scheme.

BBQC concluded by saying that the Bar of Northern Ireland were enormously grateful to take part in the statement on digitisation and work in a post pandemic world and are keen to continue to do so.

The Chair noted that there had been many comments in the chat. He acknowledged that there are two sides to the argument: one is around the ease of remote working and the other relates to areas in which many feel a line is being crossed. There is a great deal of common understanding about where the lines are across the four Bars but trying to explain that to civil servants is difficult.

The Chair said that he would like to pose two things. First, single justice magistrates are dealing with speeding and fines remotely. This seems appropriate as they are largely administrative cases and reasonably trivial. Secondly, though, at the same time, the employment tribunal has conducted hearings where, due to lack of judges, they are forced to find a judge further afield and conduct the hearing remotely. This seems much closer to the line. While it is cheaper, the matters involved are of real significance for the participants. There is a risk around making the wrong things attractive to government. The four Bars need to be proactive about this and must not be passive.

The Chair invited the leaders of the other Bars to make final comments by way of summing up the discussion.

RDQC said that he agreed with many of the comments in the chat. He asked that members did not misunderstand his plea as a luddite approach, explaining that he absolutely accepts that what has been forced upon the Bar and justice system has brought benefits. Forcing the profession into accepting electronic filing has brought benefits and the days of jumping on a four-hour train journey for a 20 minute hearing have gone. Moreover, for those who have to balance family life there are benefits which should be embraced. However, he was clear that the profession must seize benefits but not to the detriment of the justice system and those involved in it. For hearings involving witness elements, there are many

downsides to remote hearings. While they might help balance family life, people are becoming increasingly isolated. The issue is not black and white, but we cannot contemplate being forced to remain entirely online.

MMSC said that she absolutely saw the benefits of remote hearings for procedural issues, but was clear that when it comes to trials, if people want their day in court or are advised that the hearing ought to be in court, in-person hearings should be allowed. However, the options being presented are working as they prioritise cost saving before access to justice. Access to justice is a constitutional entitlement which should be public. Instead the government are using the veil of Covid for the purpose of 'waving this stick'. Of course in-person hearings are a waste of time in some cases, for example where there is no need for the plaintiff to be there. When it comes to the 'cut and thrust' though, for example land disputes, being able to witness the behaviour of participants is key. In a court room, the judge sits at a height for a purpose – so they are able to visualise proceedings. This is not possible with Zoom. Naturally practitioners are happy to be at home some of the time, but the option of in-person hearings should be allowed and the Bar should not be dictated to.

BBQC spoke of the issue being a matter of balance between the clear benefits demonstrated by the experience of the past 18 months and the need for an evidential approach to working out the implementation for further changes. For a lot of procedural business and minor administrative work, remote hearings much less hassle. However, if all hearings are digital, there is a greater risk that most of what we understand about remote working will be lost.

The Chair said that the discussions had been fascinating and noted that they had ignited a fulsome response in the chat. He reminded members of the Bar Council that those making presentations are in representative and leadership positions and cautioned that the Bar must not make the issues all about itself. It is important that the Bar is seen to be putting the interests of litigants and those it serves first. Issues differ according to the case and the jurisdiction. The Bar Council has been clear in stating that things must not be imposed on the Bar.

The Chair said that it had been delightful to have the other Bar leaders present at the meeting each of the Bar leaders thanked members of the Bar Council in turn.

## **7. Statement by the Chief Executive**

Owing to the time constraints, there was no oral report presented at the meeting. It was explained that any matters normally covered by the Chief Executive would be covered elsewhere in the meeting.

## **8. Treasurer's report**

A report was shared via Teams and explained by LL.

With regards to the finance update it was reported that the draft financial statements have been prepared, the auditors have completed their review and there have been no adverse audit findings. The final version of the accounts will be reviewed by the Audit Committee in early September 2021 and the finalised accounts will be brought before the AGM on 18 September 2021 for approval.

The year-end management accounts position as at 31 March 2021 showed that there has been additional income due to more PCF and BRF than originally budgeted and additional Regulatory Income due to higher than expected student registrations. Furthermore, the General Council of the Bar (GCB) has delivered significant savings in 2020/21 due to the salary freeze, the furloughing of staff, the senior staff pay cuts, the recruitment freeze, and the non-staff savings owing to events not happening. The cost savings of £1.481m consist of £826k Bar Council costs, £287k BSB costs and £368k Resources Group costs.

As mentioned previously, the GCB is negotiating with the Pension Trustees to improve the expected return from the Pension Fund Investment Strategy. Every three years the Defined Benefit Pension Fund has a triennial valuation, and the next triennial valuation is due on September 30, 2021. The last valuation showed a Pension Fund deficit of £5.3m and the GCB agreed to pay in £1.15m annually as part of a pension recovery plan to recover the deficit. The valuation in September 2021 is expected to show a higher deficit. The Trustees and the GCB will have until the end of December 2022 to agree the valuation and any pension recovery plan.

## **9. Free Representation Unit (FRU)**

DA thanked the Bar Council for the opportunity to present a report to them today and to talk about the work of the FRU. By way of a summary, DA said that their work over the last year had been dominated by the impact of covid-19 but that they had adapted well to the challenges. For example, their volunteers quickly adapted to video and telephone hearings and, through the high-quality supervision they receive, maintained good success rates, particularly in employment related cases. Being a FRU volunteer has also had a positive impact upon obtaining pupillage.

Going forward they are working on a return to office working and have adopted the Bar Council Chambers roadmap. In addition, they have moved into new premises in Gray's Inn and wanted to thank each of the Inns of Court for their assistance in the accommodation search.

By way of observation on their clients and the types of cases they deal with DA said that social security clients find hearings intimidating and remote hearings work better for some than others and it is the first opportunity for many to have their medical condition independently assessed, so face to face hearings are beneficial. It would be helpful therefore for independent research on the outcome of some hearings.

DA also offered his thanks to the BC for its financial and practical assistance and to the Bar and chambers for their continued support for which FRU is very grateful. Finally, DA informed members that in 2022 the FRU would be celebrating its 50th anniversary and that it would be looking to mark this significant milestone.

The Chair thanked DA for his presentation and for his interesting insight into remote hearings. He said that it was good to hear that FRU was thriving despite all the recent challenges. It was noted that FRU receives funding from the Community Justice Fund and are currently waiting to hear the outcome of their latest funding application. The Chair said that he regularly promotes FRU, and the need for additional resources for FRU, with the various people he meets.

## **10. Constitutional Amendments – Delegation of Authority**

NZ spoke to her paper on the 'delegation of authority'. She explained that she was proposing changes to the Constitution of the General Council of the Bar in order that the powers afforded to the CEO to enter into contracts and financial arrangements on behalf of the GCB are explicitly captured in the GCB Constitution and to delegate the power to enter into contracts and financial arrangements relating to regulatory functions to the Director General of the BSB.



The proposals as set out below were put to the BC by way of Extraordinary Resolution and were unanimously approved by all members present at the meeting:

- that the power of the CEO to enter into contracts and financial arrangements on behalf of the GCB is explicitly referenced at Paragraph 19(c) of the Constitution of the General Council of the Bar
- that the limit to which the CEO may do so is £0.5M, after which GMC approval is sought
- the amendment to Paragraph 1(d) of the Constitution to delegate the power to enter into contracts and financial arrangements relating to regulatory functions to the BSB's Director General.

#### **11. Change to the Standing Orders – removal of/amendment to the word 'Lobbying'**

NZ explained that the Bar Council is currently removing all references to the words 'lobby' or 'lobbying' in its documentation.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, placed a prohibition on organisations carrying out consultant lobbying without being registered. Specifically, the Act, Paragraph 1(a) says 'A person must not carry on the business of consultant lobbying unless the person is entered in the register of consultant lobbyists'.

More recently, in light of the Greensill lobbying revelations, lobbying activities are back in the headlines which has prompted the Bar Council to review the wording of its documentation.

The activity and representation carried out by the Bar Council is a small part of the Bar Council's day to day activities and is not therefore required to be entered into the register of consultant lobbyists.

The constitutional documents have been checked and the word 'lobbying' appears once in the Standing Orders, in the ToR for the Remuneration Committee at Paragraph 23(b). NZ therefore explained that the proposal was to replace the word 'lobbying' with 'making representations to'.

This change, put to the BC by way of Extraordinary Resolution, was unanimously agreed by BC members at the meeting.

## **12. Ethics Committee (EC)**

SGQC, Vice Chair of the EC, reported that the EC was on track to deliver on all its targets set out in the business plan. One feature of the report is that the ethics enquiry service has become busier due no doubt to the pandemic and the fact that barristers can no longer easily pop into a colleague's room and discuss a particular matter with them.

It was reported that there was a well-attended session at the Annual Bar Conference last year and one of the issues to come out that was the paucity of employed barristers on the EC. However, following a positive recruitment drive there is now more representatives of the employed Bar on the committee.

SGQC invited committee members to note the range of planned activities set out in the report including the production of new guidance documents, covering for example, clients recording proceedings and conferences, whistleblowing and privilege whilst employed, and doing pro-bono work whilst employed.

The Chair asked what the topic of the moment was with regards to the ethics helpline. SGQC replied that it was mainly the lack of availability of senior colleagues in chambers to ask advice from. However, there is a superb team who deal with most of the queries and who are briefed on particular issues.

The Chair took the opportunity to thank the EC and the ethics helpline volunteers who provide a valuable service and also SGQC for his detailed and through advice whenever he has approached him about a particular issue.

## **13. Young Barristers Committee (YBC)**

JK, Chair of the YBC, said that she would like to thank Lesley Orero of the BC who is their executive and works hard on their behalf and is very patient. Some of their current activity in the report is inherited from her predecessor Katherine Duncan, which she and MP are progressing.

With reference to the earlier discussion with the Bar leaders, JK said that members of the young bar here have felt the impact of covid in a different way than those in the other jurisdictions. For example, the recent YBC young barristers survey showed that they felt supported by their chambers in terms of training but regretted the lack of networking opportunities and the ability to interact with others. She then thanked 20 Essex Court Chambers for hosting an online networking session with them although looking forward to holding networking events in person in due course.

In conclusion JK reported that she had reached out to BC members asking them to look out for information coming soon on the YBC Wellness in Law project and to help promote it; to bring to the attention of the YBC any issues that they ought to be aware of as they wish to become more reactive; and, to get in touch if anyone needs any assistance from young barristers with social mobility initiatives as this is an area they wish to develop and support. Thank you also to MP, YBC Vice Chair, and to the Chair for their continued support.

The Chair said that he was pleased to hear the positive feedback about the event the YBC held with BACFI and the Employed Barristers Committee earlier in the year and took the opportunity to promote the forthcoming Annual Bar and Young Bar Conference in November which will include a one-day programme focussed on the young bar.

#### **14. European Committee Report**

PMQC introduced the European Committee update by thanking Evanna Fruithof of the Bar Council for drafting the majority of the report. He went on to say that much of what is in the report is essentially national news but that he wished to draw the committee's attention to some items, firstly, the state of play on the UK-EU relationship and the implications for the profession following the ratification of the Trade and Corporations Agreement and the end of the Brexit Withdrawal Agreement transitional arrangements. The implications are far-reaching in that any rights that we had to supply legal services in the EU/EEA have lapsed along with free movement rights. However, the committee is working on mutual recognition agreements which is helped by solid connections built up over the years. In addition, the UK has retained observer status on the CCBE which is a great success and thank you to Hugh Mercer QC and Evanna for their work on this. Helpfully there is an FAQ section on the Bar Council website which covers EU Brexit issues which PMQC said he would recommend visiting.

Another issue PMQC raised included the Lugano Convention where the committee has been active in seeking solutions to facilitate civil judicial cooperation, including through collecting evidence in support of UK accession to Lugano and disseminating our messaging, including through influencing the Council and the EP, as well as national bars in EU Member States.

In conclusion PMQC said that it was business as usual for the European Committee although they were now interestingly looking at more issues as a result of Brexit, withdrawal and TCA related law than previously. Finally, he thanked his predecessor Rhodri Thompson, for his work on behalf of the European Committee which they took over at the beginning of the year when he stepped down as chair. PMQC then handed over to CCQC to address the remainder of the European Committee report.

CC thanked PMQC and said she would like to pick up on a couple of points beginning with a more general comment that the European Committee and Bar Council have been meeting

with and attempting to influence as well as provide input to those who make the law and that it is a highly valuable part of the Bar Council's work. She also felt that it is was recognised by such individuals who welcome hearing from the Bar Council from time to time on these matters.

More specifically CC mentioned that the EU-UK Partnership Council (and Specialised Committees under the Trade and Co-operation Agreement) met on 9 June, but we do not yet know what they discussed so matters are still rather opaque to some extent. However, it is understood that the Partnership Council is proceeding with setting up some specialised committees and therefore it would be helpful if there were opportunities for barristers to participate.

CC invited committee members to read Brussels News. If you feel that you don't need it then let us know as feedback is important although she thought that as it is such a well-produced, information packed newsletter that negative feedback is unlikely.

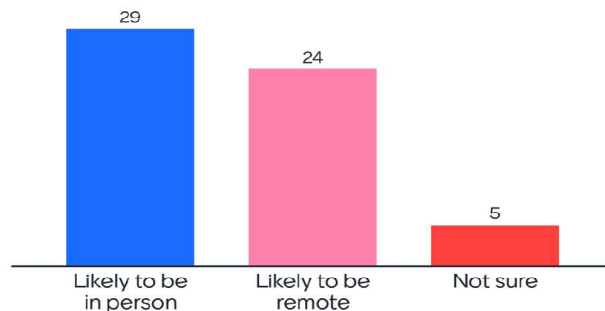
Allied to keeping the wider Bar informed about EU matters, the BSB is reviewing the EU law element of the Bar Practice Course which is currently a mandatory module. We feel that it is vital that it is maintained and will be making representations to the BSB to this effect as there is still a need to understand EU law even though we have left the EU.

The Chair thanked PMQC and CC for their report and for the work of the committee which impacts upon so many other areas of law. He has observed them at meetings with senior government officials where their knowledge and expertise has helped to influence a change in direction.

## 15. Any other business

The Chair posted MentiPolls to the membership:

**How will you attend the BC Meeting on Saturday 18 September?**



## 16. Details of upcoming meetings

Saturday 18 September 2021, at 10.00am, Bar Council Offices (289-293 High Holborn) with the option to join remotely.

NB: This meeting will be directly followed by the Annual General Meeting (AGM)