

Minutes of the Bar Council Meeting held on Saturday 12 June 2001 at the Bar Council Offices

Present:

Nick Green QC - Chairman
Peter Lodder QC - Vice-Chairman
Andrew Mitchell QC - Treasurer
David Hobart - Chief Executive

1. Apologies

Apologies for absence were received from Andrew Hillier QC, Ian Pringle QC, Mirza Ahmad, Kerry Brotherton, Mark Bryant-Heron, Lenny Cheung, Tim Devlin, Amanda-Jane Field, Rex Howling, Eleanor Mawrey, Penelope Reed, Shamran Sharghy, Steven Thompson, Kevin Toomey and Nick Worsley.

2. Approval of the Minutes

The Minutes of the Bar Council meeting on 8 May were approved.

3. Matters Arising

No matters arose.

4. Bar Council Members 2010

The Chairman congratulated the Rt Hon Dominic Grieve QC MP and Edward Garnier QC MP on their appointments as Attorney General (AG) and Solicitor General (SG), respectively, and welcomed them to their ex officio membership of the Bar Council. The meeting noted the list of Bar Council Members at [Annex A](#).

5. Statement by the Chairman

The Chairman was delighted to report that the new AG had expressed a wish to chair the forthcoming AGM in his capacity as the Leader of the Bar, and the Chairman would accept his kind offer. It was in the interests of the Bar for the AG to play an active part in its affairs, and the Chairman reminded the meeting of the considerable benefits in terms of informed Westminster dialogue that had flowed from the engagement of some previous AGs, such as Lord Goldsmith QC.

The Lord Chancellor's training scheme in this country for selected Chinese lawyers had run for more than 20 years, but was planned to end soon. Some 300 lawyers were now in senior Chinese posts, and were proving helpful to the British Council and to the Embassy in conducting seminars. The question for us was how best to continue the good communications we had built up with the Chinese legal profession. The Chairman had accompanied a joint Bar Council and Law Society visit team to China recently, and had participated in 17 or 18 varied meetings with the Association of Chinese lawyers, the Vice-Minister of Justice, the Deputy Director of the National People's Congress, and the Vice-President of the Supreme Court. The Chairman recalled the request from John Cooper QC at the May Bar Council meeting that he should raise the question of China's poor human rights record, and he had been surprised that the Chinese officials needed no prompting. The Chinese had opened the discussions on their problems with juries, police corruption, the developing practice of reviewing official decision-making, and the inconsistency of still-largely feudal administrative processes. There remained a need for greater understanding of, and adherence to, the rule of law. The scale of the problem was well illustrated by the offence of civil disruption, which happened when 100 or more people came together in protest: there had been over 86,000 occurrences of civil disruption in the past year. With a burgeoning economy, the population of 1.2 billion wanted economic rights, and a judicial system capable of a method of resolving civil grievances. A cauldron was boiling, in favour of a JR process that pushed harder at the existing boundaries between the individual and the state. The Chairman had found the whole debate fascinating and rather impressive, but the British ambassador opined that official action fell short of the rhetoric: "they talk the talk, but".

We needed to foster our relationship with the 300 increasingly influential lawyers who had participated in the Lord Chancellor's scheme, and who had spent time in our sets of Chambers. We now had a dozen or more Silks on a China arbitration panel, and there were many business opportunities for the Bar. Equally, there was a continuing need for rule of law expertise, supported perhaps by the Inns of Court. If necessary, we should try to keep the Lord Chancellor's scheme, even in name alone.

The Chairman concluded his brief statement by mentioning the recent occasions on which the continuity of leadership of the Bar had cropped up in debate, including the points made by Baroness Deech at the 10 June Symposium on the Future of the Bar. Nick Lavender QC would be discussing the importance of this continuity in the later agenda item on Bar Council constitutional change.

Sir Ivan Lawrence QC was enthusiastic that the AG and SG had both made the effort to attend the meeting. He had been appalled at the absence of their predecessors, and believed it was vital for the AG and SG to be able to talk knowledgeably to MPs about the state of the Bar. The AG and SG would be vital for any future dialogue

about the Bar, and they could contribute to raising both the profile and the standing of the Bar. More barristers should attend future AGMs. Sir Ivan hoped that we would never again permit the 'dumbing down' of the role of the AG as Leader of the Bar unless the Bar Council itself determined otherwise. The Chairman was delighted that the AG intended to continue as Leader of the Bar.

6. BSB Report

Baroness Deech spoke about her impressions of the 10 June Symposium on the Future of the Bar. She had heard no clear voice about barristers' preference for entity regulation, and it would be difficult for the BSB to plan on a single, all purpose 'advocacy' entity. The BSB's April survey had prompted 2000 responses, some of which were collective responses from Circuits and SBAs. These numbers were sufficient to be statistically significant. There had been a large majority in favour of regulation by the BSB, and a similar enthusiasm for independent self-employed practice. Some 25% of the respondents wanted to join a Barrister-Only-Partnership or ABS or advocacy-focused entity. The BSB's next step would be a consultation paper on barrister-centred entities. As an aside, she mentioned that the most interested respondents had been barristers' clerks and male barristers.

She turned to the vexed topic of referral fees, and reported that the Legal Services Consumer Panel had found no evidence of harm caused by referral fees. Such fees were anyway difficult to prevent, and the Consumer Panel believed that transparency for the consumer was the way forward. She believed that the Charles Rivers Associates' paper on the topic had used flawed empirical evidence to persuade the LSB to permit the practice of referral fees. There had been an undue concentration on the view of Personal Injury solicitors and claims agents, and only two barristers had been interviewed for their thoughts. The views expressed in Jackson LJ's costs review that referral fees were a bad thing had been ignored. It was no more than common sense to understand that the relationship between Trade Unions and the legal industry had, in the case of the miners' compensation scandals, resulted in the firms getting away with the payment of referral fees, with the Trade Unions benefitting financially as a result. She was clear that the BSB would fight to prevent referral fees.

7. Constitutional Changes - Extraordinary Resolution

Nick Lavender QC introduced this item by hoping that the new Law Officers were impressed by our commitment to constitutional change. He noted that the duties on the Bar Council Officers were becoming more onerous, and that there was now a need for continuity over a longer period. He also explained briefly that some interested candidates for Bar Council office were disadvantaged by the present electoral timescale for want of their continuity of Bar Council membership. These

flaws would be corrected by the proposals to (a) recognise the posts of Vice-Chairman Elect and Treasurer Elect and (b) to make them members of the Bar Council ex officio. A transitional provision for the elections of Officers in 2010 to the 2011 Bar Council would (c) permit a wider range of candidates to stand for election. Thereafter, the date of election of Officers would (d) be brought forward from October to May in each year, and the corresponding deadline for nominations would be brought forward to April in each year

The Bar Council approved unanimously the Extraordinary Resolution that:

(a) Paragraph 1 of the Introduction to the Constitutions of (i) the General Council of the Bar, (ii) the Council of the Inns of Court and (iii) the Inns of Court and the Bar Educational Trust be amended as follows, with immediate effect:

1. In this Introduction and in the Constitutions of the General Council of the Bar, the Council of the Inns of Court and the Inns of Court and the Bar Educational Trust, unless the context otherwise requires:

...

Except in Part IV hereof, "The Chairman", and "Vice-Chairman", shall mean the Chairman, and Vice-Chairman, respectively of the Bar Council elected pursuant to the provisions of the Bar Council Constitution.

"The Vice-Chairman Elect" shall mean the person (if any) who has been elected, but who has not yet assumed office, as Vice-Chairman of the Bar Council pursuant to the provisions of the Bar Council Constitution.

"The Treasurer" shall, in the Bar Council Constitution, mean the Treasurer of the Bar Council elected pursuant to the provisions of the Bar Council Constitution.

"The Treasurer Elect" shall mean the person (if any) who has been elected, but who has not yet assumed office, as Treasurer of the Bar Council pursuant to the provisions of the Bar Council Constitution.

"The Officers" shall mean the Chairman, the Vice-Chairman and the Treasurer of the Bar Council.

...

(b) Paragraph 2 of the Constitution of the General Council of the Bar be amended as follows, with immediate effect:

2. The Bar Council shall be made up as follows:

(a) Officers comprising:

- (i) The Chairman, who shall be a member of the Council ex-officio and not otherwise;
- (ii) The Vice-Chairman;
- (iii) The Treasurer.

The Vice-Chairman and the Treasurer shall also be members of the Council ex officio, but in their case without prejudice to their membership (if any) under another provision of this Regulation.

(b) Officers Elect comprising:

- (i) The Vice-Chairman Elect;
- (ii) The Treasurer Elect.

The Vice-Chairman Elect and the Treasurer Elect shall also be members of the Council ex officio, but in their case without prejudice to their membership (if any) under another provision of this Regulation.

(c) Members comprising, in addition to the Chairman:

...

(c) Paragraph 10(a) of the Constitution of the General Council of the Bar be amended as follows, with immediate effect:

10. (a) The Officers shall be elected by the members of the Bar Council and shall at the time of (or at any time in the period of 6 months before) their proposal for election each be a member of the Bar Council. The Chairman shall be elected not later than 31st July in each year. The Vice-Chairman and Treasurer shall be elected not later than 31st October in each year. The Officers shall hold office from the Relevant Date next after their election until immediately before the next Relevant Date.

(d) Paragraph 10 of the Constitution of the General Council of the Bar be amended as follows, with effect from 1 January 2011:

10. (a) The Officers shall be elected by the members of the Bar Council and shall at the time of (~~or at any time in the period of 6 months before~~) their proposal for election each be a member of the Bar Council. ~~The Chairman shall be elected not~~

~~later than 31st July in each year.~~ The Chairman, the Vice-Chairman and Treasurer shall be elected not later than 31st May ~~October~~ in each year. The Officers shall hold office from the Relevant Date next after their election until immediately before the next Relevant Date.

(b) Candidates for election as Officers must be proposed and seconded by persons who are members of the Bar Council at the time of their proposal for election. Proposals for the election of Officers must be by notice in writing to the Chief Executive, signed by both proposer and seconder and accompanied by a statement signed by the person proposed of his willingness to accept office if elected. Contested elections shall be conducted by postal ballot with the Chief Executive acting as a returning officer and, if there are more than two candidates, by single transferable vote.

~~(c) Proposals for the election of the Chairman must be given not later than 5.00 pm on 14th July or, if 14th July falls upon a Saturday or a Sunday, not later than 10.00 am on the next working day.~~ Proposals for the election of the Chairman, the Vice-Chairman and the Treasurer must be given not sooner than 10.00 am on the first Monday in April and not later than 5.00 pm on the ~~last Friday before the~~ first meeting of the Bar Council in the Michaelmas Term in each year.

(d) The Chairman and the Vice-Chairman shall be eligible for re-election for a second term. The Treasurer shall be eligible for re-election annually for a period not exceeding 4 years.

(e) The Bar Council may elect some eligible person to fill a casual vacancy caused by any Officer ceasing to be eligible to hold office or for any other reason. Any person elected to a casual vacancy shall hold office until the next Relevant date and shall be eligible for re-election for a second term.

Sir Ivan Lawrence QC questioned the extent of Bar Council democracy, and suggested that any member of the Bar might become eligible to stand for election, and that the electorate might become the full membership of the Bar rather than merely the members of the Bar Council. Ken Craig contrasted the Bar's position with that of the Law Society, where the relative ability of the candidates for office was difficult for the electorate to determine because the candidates had not necessarily been forced to exercise Law Society responsibilities. The indirect democracy involved in the selection of Bar Council members, who constituted the electorate for the purposes of selecting the Officers, was nevertheless democratic. It would not be wise to risk encouraging populist campaigns from unproven candidates. The Chairman believed that the General Management Committee should study the possibility of additional steps to improve the engagement between the Bar Council Officers and the whole profession.

8. Annual General Meeting Provisional Agenda

The meeting noted the agenda for the forthcoming AGM, and the Chairman raised the possibility that one or more of the Resolutions might be amended.

9. Any Other Business

Robert Rhodes QC had read the Chairman's paper on the Future of the Bar, and had been mightily impressed. He suggested it was essential reading for an understanding of the complex issues involved.

Stephen Leslie QC encouraged as many Members as possible to attend the South-East Circuit Dinner in Lincoln's Inn on 25 June.

10. Date of Next Meeting

The next meeting would be held at 1030 hrs on Saturday 17 July 2010 in the Bar Council offices.