

## **Minutes of the Bar Council meeting held on Saturday 20 April 2013 at the Bar Council offices**

### **Present:**

Maura McGowan QC - Chairman

Nicholas Lavender QC - Vice Chairman

Stephen Collier - Treasurer

Rt. Hon. Dominic Grieve QC MP - Attorney General

Mr Oliver Heald QC MP - Solicitor General

65 further members of Bar Council attended.

### **1. Apologies**

Apologies for absence were received from Mr Keir Starmer QC, Dr Mirza Ahmad, Richard Atkins QC, Kerry Bretherton, Ivor Collett, Charles Cory-Wright QC, John Elvidge QC, Peter Grieves-Smith, Martin Griffiths QC, Susan Grocott QC, Adam Hiddleston, Barnaby Hone, Taryn Lee QC, Sarah McCann, Christina Michalos, Regina Naughton, Dawn Pritchard, Robert Rhodes QC, Zoe Saunders, Deana Smith.

The following did not attend: David Anderson, Julia Beer, Phillip Blatchly, William Boyce QC, Lord Carlile of Berriew QC, Alexandria Carr, John Cooper QC, Tamsin Cox, Jonathon Egerton-Peters, Mark Fell, Felicity Gerry, James Hines, Stuart Jamieson, Robert Lawrie, Fiona McCreath, Sailesh Mehta, Stephen Moriarty QC, Stephen Murch, Benjamin Myers, David Nicholls, Hefin Rees QC, Winston Roddick QC, Nigel Sangster QC, Michael Soole QC, Geoffrey Tattersall QC and Nicholas Worsley.

### **2. Approval of the minutes and matters arising**

The minutes of the March 2013 Bar Council meeting were approved. There were no matters arising from the minutes of the last meeting.

### **3. Statement by the Chairman**

#### **New members of Council**

On the Council's behalf, the Chairman welcomed two new members, both employed barristers under 7 years' call: Amina Graham and James Hampson. Amina is a Regulatory Legal Advisor at The Football Association and James is a recently-qualified barrister at the Department for Environment, Food and Rural Affairs.

The Chairman expressed delight that Amina and James have shown an interest in the work that the Bar Council does and that they wish to be involved. They put their names forward following a request for expressions of interest owing to a shortage of members from the employed Bar on the Council. The General Management Committee considered their expressions of interest and commend them to Bar Council. Unless there are any objections, Amina and James will now be members of Bar Council for the rest of 2013. This was approved.

### **Social media**

The Chairman dealt in general terms with the use of Twitter and social media. She has never and will never prevent anybody at this meeting discussing what is said with anyone else. Sharing information is welcome and essential; it is a duty of members to take updates back to their constituents and to bring their views to this meeting. It is imperative that there is a two-way exchange of information.

However, there are difficult topics to discuss and people should feel able to stand up and make tentative, initial comments and suggestions without feeling deterred that what they say will be immediately tweeted. Please allow discussions to develop. On a separate note, it is also important to be clear that personal abuse is not a sensible way for people to conduct themselves over social media or, in fact, anywhere. Criticism is welcome, those who have been elected to their posts expect it, but bullying is not acceptable.

The Chairman apologised for the delay in circulating her [statement](#) and said that she would be happy to take questions, although she does have a few items to add.

### **FRU trustees**

Under the Free Representation Unit's constitution, trustees are appointed by the Chairman of the Bar for a period of four years. In the course of 2013 two of the current trustees are due to step down. The Chairman has been approached to approve the nominations put forward by the FRU: Fenella Morris QC of 39 Essex Street and Michael Fealy of One Essex Court. The General Management Committee commends these appointments to Bar Council. Bar Council approved the appointments.

### **Bar Mutual Directors**

In light of the recent retirement of Justin Fenwick QC as Chairman and a Director of Bar Mutual and the forthcoming retirements of Richard Anelay QC and Colin Reese QC as Directors, the Board of Directors of Bar Mutual has invited Christopher Pocock QC of 1 King's Bench Walk and Michael Horne of 3 Serjeant's Inn to become Directors of Bar Mutual. Bar Mutual's Articles of Association require Bar Council's approval of Board appointments. Bar Council was therefore asked to approve the appointments of Christopher Pocock QC and Michael Horne. These were approved.

### **Garden Party**

The Treasurer will address Bar Council on the general financial position, but the Chairman wished to update Bar Council on savings being made in areas not previously discussed. On 25 March, the General Management Committee discussed whether, in light of the current financial climate at the Bar, it would be appropriate to hold the annual Garden Party this year. Taking into account the purpose of the party - to thank those who give their time pro bono to the Bar Council and to engage with stakeholders - and the cost - it was decided on balance that this is not an appropriate use of Bar Council resources at this time.

### **Remuneration Committee's conference**

The Chairman reported that the Remuneration Committee's conference on 16 March ("Civil work at the Bar: Making it pay in 2013") was very successful; it brought together different disciplines within civil work. There are massive areas of concern elsewhere in the profession, but civil practitioners are also being hit by the combined effects of the introduction of LASPO and the Jackson reforms and this must not be forgotten. The Chairman extended her thanks to Dr Mark Friston and Jan Luba QC, as well as executive members of the Remuneration and Policy team, for their hard work in organising such a useful conference.

On the topic of LASPO, the Chairman commended to Bar Council the Guide to Representing Yourself in Court publication, which was put together by the Bar Council's Communications Team alongside practitioners from the SBAs in order to assist self-representing litigants as a result of the LASPO reforms. It is also aimed to show the public that lawyers are not all self-interested and do work on their behalf. The guide was launched on 1 April and attracted a lot of public support; the only detractors were members of the profession and not many in number. A hard copy of the guide has been sent to every MP and there have been many responses showing gratitude.

Any comments / questions arising out of the Chairman's written or oral statement

Andrew Walker QC (AWQC) said that detractors to the guide should appreciate that it is in the interests of the profession; many complaints against barristers are made by litigants in person who do not understand processes or how the system works. This guide addresses those issues and as a result there may be fewer complaints.

### **4. BSB report**

Patricia Robertson QC (PRQC) attended on behalf of Baroness Deech. The BSB's report was annexed to the agenda and PRQC did not intend to talk to each item, although she did wish to pick out two topics: the change programme and the status

of the new handbook.

The Legal Services Board requires all regulators to undertake an assessment against their framework; the BSB identified areas for improvement and subsequently launched a change programme. There are various workstreams, including one which looks critically at value for money and will inform decision-making as to what work actually needs to be done and whether it can be done more efficiently. At a time when the Bar is squeezed, it is essential that both sides of the organisation do everything they can to contain costs.

There are also plans to move to a paperless environment, which will assist in implementing the decision of the Finance Committee to compress floor space within the High Holborn offices. The move will be challenging and will add impetus to the change programme. There is a long-term saving involved but some investment will be required in the short-term to make it work.

The new Code and Handbook are nearing completion; the updates are designed to facilitate the way the Bar is changing e.g. combining advocacy and litigation services. It is important that practitioners have all options available to them to help them adapt and respond to the changing climate. There is a clear timetable for completion; the BSB expects to be in a position to authorise entities in mid-2014.

### **Questions to the BSB**

Nigel Lickley QC (NLiQC) asked how much extra money the BSB is requesting for their change programme and also what is meant by "combining advocacy and litigation services" as this sounds a lot like fusion.

PRQC said that in many ways, fusion is already happening in the respect that solicitors now also undertake advocacy work. The new Code and Handbook are designed to remove restrictions on barristers, allowing them to practise flexibly and to remove barriers to work. Vanessa Davies (VLD) said that the money for the change programme has already been approved by Bar Council and amounts to approximately £380k.

The Chairman added that a lot of work currently being undertaken is simply bringing in elements of the Legal Services Act 2007 and not instigated by the BSB or the Bar Council.

### **5. Treasurer's update**

Stephen Collier (SC) reported that he had four issues upon which he would provide an update, these being: the financial year end position, premises, pensions and the

practising certificate fee consultation.

### **Financial year-end 2012-13**

The accounts for 2012-13 closed earlier this week; a formal report will be presented at the next meeting, but the headlines are as follows. The year started with an anticipated £20k loss and due to authorised expenditure during the year this grew to a forecast £700k deficit. Due to admirable efforts, this was reduced to £400k during the course of the year and now to only £250k. This is a massive improvement. An extra £400k in income was secured due to a greater number of practitioners renewing their practising certificates and paying the MSF than expected. There were key underspends in Representation and Policy.

### **Premises**

Bar Council is asked to endorse a movement within the High Holborn offices. The Bar Council is currently spending £1.5-1.6m every year on the building. The Bar Council can terminate some or all of the leases next year if notice is given this June. The Bar Council has therefore run a process, overseen by the Finance Committee, looking at options. To stay in the building but give up floors 5-8 will save £625k per year in property costs, whereas losing 6-8 will save £435k.

The question as to whether to keep the fifth floor was discussed fully at Finance Committee and the recommendation, with Bar Council and BSB support, is to take the full saving. Finance Committee recognises that it will be hard to deliver the changes necessary and has set up a programme board to take it through. Professional advice is being taken.

There are costs involved in compressing the space; it could be up to as much as £1.2m. The organisation would still get a payback of less than two years on the activity. It also means that a negotiation can be had with the landlord to extend leases on the retained floors. There is still plenty to do. Bar Council were asked to support the recommendation to surrender the fifth floor and above to secure this process. There were no dissenters to this plan.

SC said that the compression would be a leadership challenge for the new Chief Executive. The list of candidates has been shortlisted down to three and SC is optimistic that there will be an announcement by the next meeting as to that appointment.

### **Pensions**

SC hoped that this would be (almost) the last time that Bar Council has to hear about the pension issue! The scheme was closed to further accrual in February. Since then, SC and Oliver Delany (OD) have met twice with the trustees to discuss the valuation of the scheme's assets and liabilities. There is an agreement in place which commits

£1.4m per annum from January 2014. However, that was put in place before the pension levies. The valuation has been done again and it turns out that, after allowing for the levies, the assets are now somewhere around £19m. The liabilities cannot be quantified as accurately but are somewhere in the region of £24-27m. This is clearly a gap that needs filling. In approaching the question of the size of the gap, the trustees have been fair and sensible and agreed that there is a need to discount the gap to reflect the number who might leave and take a lump sum, in lieu of part of their pension. Also, Trustees accept that the Bar Council cannot be required to fund the whole of the gap, as in the event of over-funding it would be difficult to recover any excess.

An emerging solution is that the Bar Council will pay c £41,000 a month to run off the gap over a 7-year period. At the next valuation, if the gap has reduced, the Bar Council can step down the rate of funding. SC asked Bar Council to endorse that way forward. SC assured Bar Council that taking this course of action would not be to defer problems for the future. This course of action was approved.

AWQC asked whether there will still be a separate pension levy or will it be changed through the practising certificate fee? VLD said that there might be a statutory restriction on combining the two; OD replied that the LSB has already approved subsuming the levy into the PCF. SC stressed that the Bar Council is trying to change the way the PCF is raised in the future.

Tim Devlin (TD) asked whether there is still going to be a levy added to the PCF. Bar Council was told by the former Treasurer that this would be over a long time ago. SC reiterated that there would still be a levy and that Andrew Mitchell QC's former prediction was overtaken by a market which did not move in the Bar Council's favour.

Alistair MacDonald QC (AMQC) asked what the LSB has to do with how the Bar Council imposes levies on the profession. It appears to be wild over-regulation. SC explained that the nature of what can be levied needs statutory approval; it is not a discretionary issue. It is not set by the LSB, but their approval gives the Bar Council teeth to enforce the levies.

SC also explained that those who drafted the opt-out paper in 2012 have been invited to make a contribution to the extra costs incurred by errors in the paper. They continue to consider their position.

### **PCF consultation**

This remains a work in progress; SC is running a small meeting after Bar Council for anybody who may be interested. SC has now received anonymised gross fees data for the self-employed Bar, which allows him to model approaches to the PCF on an

income-based system. SC expressed surprise at the earnings spread and distribution in the data received. However, this data is now a year old and as such may be slightly out of date. It must be handled very sensitively.

One approach is to take the data and compare it with the £8.7m raised from the self-employed Bar last year, mapping what would need to be done on an income basis to get same quantum. It is also necessary to develop a clear set of principles to adopt and a preferred option i.e. structure of an approach.

SC has already presented the data to the General Management Committee who said that they could support the direction of travel suggested, but want to see a more developed approach. The proposals are that any changes should be simple, fair and enforceable. This translated into: a banded approach; operating within the existing PCF collection framework; using the same mechanism for the employed and self-employed Bar; having a minimum PCF rate of probably £200; manageable caps on the maximum contributions; enforcement of misconduct proceedings should inaccurate information be provided and a potential rate of c. 0.5-0.6% of gross income.

SC said that OD and Vanessa Davies intend to make an early informal approach to the LSB to discuss the proposal on a 'what if' basis; there is not much time to cover all bases before trying to make the necessary changes once approved, so he is trying to get a head start.

Michael Turner QC (MTQC) said that he appreciates the sensitivity of the figures on income data but asked when it can be released. There is a continuing assault in the press, misleading the public as to what the Bar actually earns. Publishing this data might be very helpful. SC urged caution with this; it is just headline data at the moment. If some of the data is published, then the rest must be too; you cannot show one end of the spectrum and not the other.

Sarah Forshaw QC (SFQC) said that if the data is from BMIF, then it will include privately-funded work as well, so may be misleading. Nigel Lithman QC (NLithQC) said that he has seen these figures recently online, but cannot remember where. He will speak to SC outside the meeting about this.

The Chairman was asked whether the data held is subject to the Freedom of Information Act; she confirmed that it is not. The Bar Council does not want to hold that level of information and does not want to have those sorts of responsibilities under FOIA.

SC was asked whether there has been any attempt to get data on salaries for the employed Bar for the purposes of modelling, given that the intention is to charge the

same PCF. This needs to be considered carefully to avoid a position where, for example, those employed in government practice no longer pay the fee and the self-employed Bar has to pick up the shortfall.

Melissa Coutino (MC) asked when it is proposed that the changes will be made. SC said that he hoped it would be the basis of the PCF allocation next year, but the timetable is very tight. MC also asked whether, if on receipt of data about the earnings of the employed Bar, the earnings were found to be considerably lower, would that be factored in? SC reiterated that there would be a minimum payment of £200 and that the banding would be in 'clusters'.

James George (JG) said that his concern would be that the government response would be heavy-handed. They have already withdrawn practising certificates for court clerks; GLS is looking the other way.

Hannah Kinch (HK) said that it is important to take into consideration that under the current system, those who earn under £40k get a waiver and most of the junior Bar are charged £64 for their practising certificate. She would therefore urge this note of caution - if there is no waiver, the effect will be that those publicly-funded young practitioners will move from paying £64 per year to £200 per year during a time of immense pressure. The Young Barristers' Committee is in favour of an income-based levy but is also concerned about the need to protect the most vulnerable. SC said that he recognised the need to work through the impact of proposed changes and this is one of the pieces of work to take forward. An assessment needs to be undertaken to analyse the impact and consider a phasing / transition period if necessary.

TD asked whether the PCF rates for other professions had been considered; SC said that they had and this data was included in last year's consultation documentation.

Nicholas Lavender QC (NLQC) said that he is trying to push the reforms through because he is very conscious of the discussions about the budget last November and is aware that no-one wants to have those discussions again. The onus is on this Council to come up with the best possible alternative and to get it endorsed.

The Chairman said that she had no doubt that SC has the gratitude of the Council for all his hard work. To have even bad news explained clearly and sympathetically is welcome. The Chairman drew attention to the enormous pressure on staff due to the decision to give up floors 5-8. There will also be an impact on the number of meeting rooms available. The Bar Council is doing all it can to drive forward savings and force down costs.

## **6. Remuneration Committee report**



Alexandra Healy QC (AHQC) and Ian Bugg (IB), Joint Chairs of the Remuneration Committee, presented this item with reference to Annex 4 on the agenda.

AHQC said that it has been a very busy and challenging year. No sooner have the effects of one set of reforms started, but the profession is challenged with further cuts and changes. Within the committee, a number of steps have been taken to streamline as responsibility expands; there is more and more business to deal with.

There has been the introduction (with clear reporting lines) of the Civil (public) and Civil (private) panels, and the imminent creation of a taxation panel. An RTA portal panel has been set up with members of the Civil (private) panel and members of PIBA; the Fees Collection Panel meets more frequently and reporting mechanisms have been tightened. In relation to work undertaken by the Fees Collection team, there is room to introduce a charging arrangement for successful work undertaken for members.

Dr Mark Friston and Jan Luba QC organised a well-received conference in respect of LASPO reforms; documents are now on the website, including a template for CFA agreements and guidance on Damages Based Agreements. The taxation handbook has been updated. The Remuneration Committee oversees the Implementation Committee dealing with contractual terms, who are taking forward very real problems of putting the terms into effect. The Remuneration Committee has also been involved in preparing a number of responses to consultations. A remuneration update is also prepared and emailed to subscribers on a regular basis.

Remuneration Committee continues to be actively engaged in liaison with stakeholders. A recent meeting with the CPS revealed that they need to find another 10% in savings; AHQC has been clear that the Bar Council wishes to be involved in any discussions around how to implement any further reforms. AHQC gave page count as an example; the CPS has streamlined their process for page counting but the LSC (LAA) has not. This means that the prosecution still has to count pages although they do not need to. There are clearly savings to be made in the administration of payment of fees.

Remuneration Committee also meets regularly with the LSC (now the LAA).

### **Questions arising out of the Remuneration Committee report**

AWQC expressed surprise that there are only 100 subscribers to the remuneration update; IB said that the problem is getting the message out there that it is available but that you have to sign up for it. The work of the committee has become a focal point for all fees across the profession. In IB's eight years on the committee it has grown to an unimaginable size; there are a great deal of issues to deal with at any

one time and the remuneration update is very helpful for keeping people up-to-date.

IB wished to pay tribute to the members of the executive in the Remuneration and Policy team, namely Adrian Vincent, Mark Stratton, Sarah Jane Bennett, Janice Marshall and Caroline Isherwood. They have an encyclopaedic knowledge of all funding issues and are happy to be contacted.

NLiQC said that the problem with page counts would not exist had the previous, perfectly good, system not be abolished. The role of confirming counts had been the role of the court clerk but then it was moved and a base of expertise was wiped out. The CPS now has to provide paperwork for defence counsel and their time is wasted. The whole system is creaking for reasons that were utterly predictable. AHQC said that there is an electronic system for this in Family and Civil; the committee is trying to push for that in Crime too.

Suzanne Goddard QC (SGQC) asked how one signs up for the remuneration update? IB said that you just have to go to the remuneration committee page on the Bar Council website where there is a link to the update or [email](#).

The Chairman expressed her thanks to all of those on Remuneration Committee as they give an enormous amount of time and effort to a vital area of work. She encouraged people to sign up to the remuneration update and to spread the word; it is also important that practitioners check the website for information, as it is constantly updated.

## **7. Ministry of Justice consultation on legal aid**

The Chairman explained, by way of background, that up until the end of 2011, the Bar Council had a whole succession of committees working away at the issue of future contracting in its many manifestations. A paper setting out proposals from the Ministry of Justice (MoJ) was expected at end of 2011, but in fact the matter was postponed and instead timetabled for consideration in autumn 2013. However, a Written Ministerial Statement issued on 5 March announced that it was to be brought forward to April 2013. The consultation paper was published on 9 April and this is the first Bar Council meeting since the paper was published.

It is only 160 pages long; everyone is urged to read it. For many, it will determine how and if they practise. For ease of reference, the Bar Council has published an executive summary; core questions are being asked of the profession to which we must provide a response. Although the proposals are controversial it serves no purpose at all to say that they are too radical to deserve a response. The Bar Council has been given a mandate to engage with MoJ, and will continue to do so. The Chairman cannot promise success but does promise that a failure to engage will lead

to failure overall. She is not "handing anything over" to, or negotiating with, the MoJ, but is continuing to engage in discussions.

One of the headlines is that MoJ is seeking £44m worth of cuts in the cost of Crown Court advocacy. This is a lot of money, but not in government terms. The Lord Chancellor said in The Times yesterday that he will listen to other suggestions for making those savings. One suggestion is the potential for administrative savings as mentioned earlier by AHQC; savings can be made without a reduction in fees.

There are many avenues to consider; advice can be taken on competition, equality and diversity issues and the availability of insurance. However, it is just as important that the thousands of practitioners who work in the system respond to the consultation. They see the unnecessary mentions, the time wasted by exchanging documents in hard copy. The practitioners are the ones who can make constructive suggestions for savings.

The Bar Council is criticised for not engaging sufficiently and the Chairman is asked why she is not telling the profession what the organisation is doing. In fact, updates have been sent to the profession and posts put up on the website. The consultation has been out for ten days, but in fact the Bar Council's working group was up and running long before the paper was published. However, without knowing what was going to be in it, there was a limit to what work could be undertaken. Now that it is in the public domain, all help, information and suggestions are welcome. As the Chairman said in her inaugural speech, the profession are invited to engage and send in their suggestions. Information has to come in as well as go out; Bar Council members have a duty to find out from their constituents what they want us to be told.

The Bar Council, CBA and Circuit Leaders are all working very closely together, although each will be submitting separate responses. Stephen Hockman QC is presiding over the Bar Council's group and therefore acting as a bridge between the CBA and the Bar Council.

Whilst the Chairman is pleased to see that contracting for Crown Court advocacy is not included in the proposals, it is clear that the effect of tendering for crime lower will be devastating for solicitors. Paul Mendelle QC is looking into that element for the response for the Bar Council; Max Hill QC is doing the same for the CBA. The Chairman, Stephen Hockman QC, Paul Mendelle QC and Max Hill QC had a long meeting on 19 April to make sure that all bases would be covered in the responses.

This is a time to be politically and technically shrewd. The Chairman will not be drawn into negotiating through social media. She is happy to keep the profession updated and will continue to post reports on the Bar Council website. The Bar

Council, CBA and Circuit Leaders are all in contact and sharing information; Bar Council members are encouraged to engage with their constituents and do the same.

The Bar Council's consultation response group is divided into workstreams and includes CBA members, Circuit Leaders, members of the Young Bar, Family Bar, Remuneration Committee, clerks, Equality and Diversity Committee and experts in particular areas e.g. fee schemes.

The Chairman said that she cannot over-emphasise the importance of practitioners responding and not just leaving it to their SBA, Circuit or the Bar Council. The arguments against the proposals must be made in the public interest.

Rick Pratt QC (RPQC) said that he entirely agrees with the Chairman that it is the duty of a Circuit Leader to feed into the process. This is why he, as Leader of the Northern Circuit, has listened to the committee set up on his Circuit who said, as soon as the paper came out, that the significance of it was such that it required all members of the Circuit to get involved. The short timescale for response (eight weeks) made that position urgent.

The committee held a meeting after which representatives went back to the membership to consult on next steps. It was reported back that virtually every member wanted a meeting to discuss the issues arising. That meeting should take place during court hours on 22 April.

It is not uncommon for Crown Courts not to sit on certain days and sometimes it is necessary so that the judiciary may attend seminars or hold their own meetings. Sometimes, courts have not sat due to industrial action brought by court staff.

As a result of the overwhelming indication from practitioners, RPQC notified the presiding judge by telephone over the weekend that a meeting might go ahead and gave assurance that this genuinely was a circuit-wide view albeit pending the result of a secret ballot asking whether (a) the meeting should take place in court hours and (b) all relevant practitioners wished to attend. Therefore, a request was made in anticipation of the outcome of the ballot for the courts not to sit. Mr Justice Holroyde wrote back on Monday (15 April) to say that it was not possible to close the courts. RPQC notified the Circuit accordingly; on Wednesday (17 April), the ballot result was overwhelmingly in support of the meeting.

RPQC, with full backing of Circuit, sent out the results and with them expressed the view that each individual member of Circuit had to make an individual decision as to whether they attended the meeting or attended court. This resulted in a flurry of applications to vacate, which were met with differing success. Yesterday (19 April), RPQC sent a further memo emphasising each practitioner's professional

responsibilities and clarifying that the purpose of this meeting was not to declare action but to do the very thing that the Chairman has identified today. In other words, to educate, share views and gauge the mood of the Circuit. Two weeks have already gone by since the consultation was published; the meeting has to go ahead soon and be effective in order to inform thinking for the consultation responses.

It is only following that meeting that RPQC will have the confidence to say that the response he puts before MoJ is genuinely the mood and the wishes of the Circuit. This is not a day of action. This is not a strike. This is the members of one Circuit getting together hoping that they can inform one another. The Circuit is trying to cause the minimum disruption, which is why advance notice was given. It is fair to say that the balance is exercised in favour of going to court; each practitioner who has a hearing that day has a difficult decision to make (which is entirely a matter for themselves) and whatever that decision is, they will be supported. If the balance is in favour of going to court, the barrister should go to court.

RPQC urged everybody to be under no illusions as to the mood on the Circuit. Feelings are running very high.

MTQC said that he supported what both the Chairman and RPQC had said, and underlined the importance of educating all practitioners about what is going on. Those who have read the consultation will know that it is the death of the legal profession; it will wipe out two-thirds of solicitors and it will become uneconomic for chambers to exist. Everyone has to understand what the consequences are and MTQC applauds the Northern Circuit for trying to do that. MTQC emphasised that everyone has to stick together through this.

NLiQC said that there are similar sentiments on Western Circuit. There is unprecedented emotion and anger at what the criminal Bar are facing. Futures are now uncertain. Small businesses will disappear; experience and client bases will be swept away. All that will be left will be ABSs. This process began with cuts; more and more cuts. It is now not just about the cuts, but how they make them. There is an implied assertion that barristers deliberately waste time in court, as evidenced by the suggestion for 'tapers' in cases and this is insulting. Practitioners are looking for leadership and the Western Circuit is holding its own meeting on 22 April at 16.00. NLiQC wants this Council to understand the very real concerns that exist; the criminal Bar may be seen to be complaining all the time but this is very serious.

Bernard Richmond QC (BRQC) said that most of those who become lawyers do so because they believe in integrity. The profession needs to look to those in parliament who are lawyers and ask them to demonstrate their integrity and advise the Lord Chancellor who is not a lawyer.

BRQC continued that the Bar must now stand up for itself in negotiating with the courts. There is a breed of judge who does not consider economic consequences for the Bar when they make decisions. The reason the Bar cannot do its job efficiently is because material is not being served (thanks to CPS cuts), because there is too much in the lists, police cannot deal with witnesses and everyone in the system is exhausted. The Bar is the cement that keeps the system together and it is time to start showing this in public; invisible savings are made due to the integrity and professionalism of the Bar (working when ill, cancelling holidays etc) so perhaps it is time to stop doing that.

The Chairman said that she has been liaising directly with the senior Judiciary and is about to touch base with the Council of Circuit Judges. She believes that there are blindingly obvious savings to be made. However, she would urge caution - and this is a purely personal view - about using the Crown Court as a forum for political negotiations.

AMQC stressed that if judges are well-disposed to the Bar it is because they recognise the extra effort e.g. working when ill. There is a concern that the denigration of the profession will result in the goodwill of the Bar being lost and the cost of that to the justice system. The MoJ has the data about fees at its fingertips but still talks about 'fat cats', which is wholly inaccurate.

Jennifer Josephs (JJ) asked that caution be given to what people say or what gossip is spread. She overheard that her Chambers was going to cover returns from the Northern Circuit on 22 April; this is not true and is malicious. Now more than ever there needs to be a united front. JJ thanked everyone who had spoken for their eloquent arguments.

Max Hardy (MH) said that the consultation is silent on prosecution advocacy; if chambers no longer exist in the future, where will the prosecution advocates of the future come from? The Chairman said that it was unfortunate that the DPP was unable to attend the meeting but that she would be speaking to him soon.

NLithQC addressed the Attorney General, with whom he once shared a pupil master; he would have been horrified by what is happening now. Lawyers in Government should be speaking up against the consultation proposals.

The Chairman drew attention to her statement, which sets out all the meetings she has had with parliamentarians since the last Bar Council meeting. There are more appointments in the pipeline. She finds that goodwill and sympathy are expressed at these meetings, but little action is taken.

SFQC said that the South Eastern Circuit will be holding their meeting on 18 May

and both the Attorney General and Solicitor General are invited. It is quite difficult to arrange due to the sheer volume of practitioners on the Circuit. It is important not to underestimate the strength of feeling; this is not just about cuts but the dismantling of an entire profession.

Ruth Cabeza (RC) said that in Family courts, they have to record why there is a delay in any case and statistics are generated from this. Could this not be introduced by the criminal courts? The Chairman said that there is a similar system already, but she is unsure how well or to what extent it is used. The Chairman said that she is minded to open a mailbox to receive suggestions for the consultation paper, in the same way as one has been created for examples of problems arising out of the implementation of LASPO.

Edward Henry (EH) asked whether the Government has considered the unintended consequences of the proposals and the potential impact on society. Cuts in personal injury cases led to an enormous insurance burden. If the proposals go ahead, the country will end up with a degraded prosecution arm. Where are the judges going to come from and how will they be trained?

MMQC said that she felt that MoJ are very conscious of at least some unintended consequences, and quoted, paragraph 2.8 of the consultation:

"We are also conscious that any competition which included Crown Court advocacy would effectively amount to 'one case one fee', with the contractor (likely to be the solicitor) deciding how much to pay the advocate. This would likely affect the long-term sustainability of the Bar as an independent referral profession. The Bar is a well-respected part of the legal system in England and Wales, and we will have due regard to the viability of the profession in reaching our final decision on the model for competition".

That is a stated aim. The Bar is therefore entitled to match the consequences of the proposed cuts against that stated aim.

Neil Ross (NR) said that at least the Government has been able to unite solicitors and barristers! He urged caution when looking at the figures quoted by MoJ as they are from 2011-12 and there has been a vast reduction in the number of cases (and fees) since then.

Christopher Rose (CR) gave a personal perspective but one which he felt was indicative. He could not survive what is being proposed; all of those who instruct him do not have the wherewithal to bid. All instructing solicitors will be replaced. This applies to everyone he has spoken to. Perhaps the message to Lord Chancellor should be that if his desire to maintain the long-term sustainability of the Bar is

sincere, these proposals run entirely contrary to them.

Nick Cusworth QC (NCQC) referred to chapter 6 of the consultation, which includes a nugget of what happens if the Bar sets out to implement a programme to help the Government achieve cuts. Family justice is being restructured to be more efficient and the Bar has gone along with it, trying to engage. However, in the consultation it says that once this is done, further cuts will be made to litigation fees. Therefore, the family Bar has done what it was told to do by way of reforms but now has to make cuts on top of that.

The Chairman invited the Attorney General to speak. He said that it was important to start with the premise that there is a consultation; the problem is that most take the view that the decisions have already been taken. He would venture to suggest that there is enough in the preamble to provide something on which to be consulted. The Lord Chancellor, who is considered the bogey man in this scenario, is a Minister in Government. He is in a difficult position; all departments have savings to absorb and where savings are ultimately made is where the priorities are.

On the whole, the service provided by the legal profession is taken for granted. The general view is that the edifice will continue to function; it is apparent now from this meeting that many others take the view that this is when the edifice will collapse.

The key therefore must be to explain why this is felt to be the case rather than it just being a question of absorbing cuts which are being made across the board. He has spoken to the Lord Chancellor and will continue to do so, undertaking to feed back comments made at this meeting both in general and in detail. If the argument that this is a cliff edge is to be convincing, the generality will have to be backed up by facts.

He is perfectly aware, as is Keir Starmer QC, of the knock-on effect of these proposals on the CPS delivering a prosecution service.

Beyond that, he did not think it was useful to say more. His task is to deliver the message. If he were asked to comment on the events in Manchester on 22 April, he would probably say that this is the sort of thing that can only be done once.

Stephen Leslie QC (SLQC) said that in his Chambers (of about 70 tenants), people are fearful. It is not just a question of money. With fear comes consequences for those who create the fear.

## **8. Any other business**

The Chairman closed the meeting, expressing hope that those who have attended



felt the value of it and will feed back to constituents. All of those on the General Management Committee are also urged to attend; now more than ever the profession needs the support of its representative members.

The Chairman reminded members that nominations for the officer elections end on 26 April.

Personal thanks were sent to Stephen Moses and Furnival Chambers for putting on such an incredible charity event - Strictly Furnival - the previous evening. It is admirable that so much effort was made even in these difficult times.

Lastly, the Chairman drew Bar Council's attention to the case of Beatrice Mtetwa, who was arrested in Zimbabwe whilst in the process of trying to represent her client, and then held in custody before being released on bail. She cannot leave Zimbabwe. The judge who granted her bail is facing impeachment as a result of that decision.

In Sri Lanka, with whom the Bar of England and Wales has strong links, the Chief Justice has been impeached for criticising the government. The Chairman asked for approval from the Bar Council to endorse support for lawyers and the independence of the judiciary in both jurisdictions. Bar Council approved this action.

#### 9. Date of next meeting

The next meeting will be held at 10.00 on Saturday, 1 June 2013 in the Bar Council offices.