



The Bar Council

## Minutes of Bar Council meeting

Tuesday 14 July 2020, Remote Dial-in

### Present

Amanda Pinto QC	Chair	APQC
Derek Sweeting QC	Chair Elect	DSQC
Malcolm Cree CBE	Chief Executive	MC
Grant Warnsby	Treasurer	GW
Max Hill QC	Director of Public Prosecutions	MHQC

### Present via StarLeaf (in alphabetical order)

Dr Mirza Ahmad; Robin Allen QC; Colin Andress; Efe Avan-Nomayo; Elaine Banton; Philip Bennetts QC; William Boyce QC; Minka Braun; Ian Brookes-Howells; Charles Burton; Alex Carr; Sydney Chawatama; Richard Cole; Celina Colquhoun; James Corbet Burcher; Melissa Coutino; Tim Devlin; Mark Fenhalls QC; Layla Ferguson; Emily Formby; John Goss; Jonathan Goulding; Andrew Granville Stafford; Amanda Hardy QC; Barry Harwood; Michael Harwood; Neil Hawes QC; Tricia Hemans; Isabel Hitching QC; Hazel Hobbs; Sarah Holmes-Willis; Elizabeth Houghton; Matthew Howarth; Michael Jennings; Nicholas Johnson QC; Sean Jones QC; Susan Jones; David Joseph QC; Joanne Kane; James Kitching; Cyrus Larizadeh QC; Tom Leech QC; Lorinda Long; Kate Lumsdon QC; Athena Markides; Lee Marklew; Gurprit Mattu; Eleanor Mawrey; Louise McCullough; Martyn McLeish; Christina Michalos QC; Andrew Morgan; Marie-Claire O'Hara; Francesca O'Neill; Jonathan Orde; Lucinda Orr; Alison Padfield QC; Deshpal Panesar QC; Alison Pickup; Michael Polak; Rehana Popal; Charlotte Pope-Williams; Jonathan Rees QC; Jacqueline Reid; Robert Rhodes QC; Ryan Richter; Natasha Shotunde; Kate Spence; Gordon Stables; Daniel Sternberg; Heidi Stonecliffe QC; Philip Stott; Ben Symons; David Taylor; Jacqueline Thomas QC; Steven Thompson QC; Linda Turnbull; Anton van Dellen; Emma Walker; Colin West QC

### In attendance

Natalie Zara	Head of Governance	NZ
Piran Dhillon-Starkings	Advisor to the Chair	PDS
Carolyn Entwistle	Head of Services to the Bar	CE
Phil Robertson	Director of Policy	PR

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**THE BAR COUNCIL**

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

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Ella Miller	Attorney General's Office	EM
Frances Riding	Criminal Prosecution Service	FR

<b>Minutes</b>	Samantha Anderson	Executive Officer	SA
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### **Apologies were received from**

Kieron Beal QC; Nick Bacon QC; Ivor Collett; Catherine Collins; Katherine Duncan; Neil Garrod; Faith Julian; Cathryn McGahey QC; Grace Ong; Lisa Roberts QC; Leanne Targett-Parker; Andrew Twigger QC; Nick Vineall QC; Richard Wright QC

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### **1. Minutes of the last meeting and matters arising**

The minutes of the Saturday 16 May Bar Council meeting were approved.

### **2. Statement by the Chair**

APQC welcomed members to the meeting and in particular, the DPP Max Hill QC, Heidi Stonecliffe QC who had been appointed in the category of Employed Junior Counsel/QC over 7 years in practice and Amanda Hardy QC who has succeeded Eason Rajah QC as Chair of the Chancery Bar Association. Thanks were extended to members for attending this evening meeting; whilst it had been part of an idea to decrease the number of meetings throughout the year, to reduce the burden on members, to go from May through to September without a meeting wasn't the right thing to do.

The last Bar Council was almost two months ago, and a lot has changed, though we are still waiting to see whether the government will treat the Bar as essential workers, like they say we are. Unfortunately, the only government help that has been significant is the furlough scheme as the CBILS scheme is not effective for everyone. The bounce-back loans have been hard to get involved with, especially as it adds to a person's debt, whilst the self-employed scheme has outrageously excluded people. We have argued long, hard and repeatedly to press, the government, the opposition, etc that young barristers starting off in practise, or those returning from parental leave, illness etc, should be entitled to the benefit of the self-employed scheme. For those who don't have this opportunity, the Bar Council has offered to be the intermediary, to make sure that the right people were eligible to the scheme, but we haven't got anywhere with this with the Treasury. The Attorney General and the Lord Chancellor did try, but they have also been unsuccessful. Additionally, there are issues with the 14-day isolation required where we have requested for barristers practising overseas to be exempt, however as it currently stands, only those within Formula One and astronauts are exempt.

We have tried to encourage the senior judiciary to provide guidance on listings and we have also asked them repeatedly to help with shielding barristers and guidance on how to sensitively bring these issues to the Courts. We have suggested ways that barristers might

be able to do that and we are optimistic that if the Bar Council note is used, it should be accepted by the Court.

Whilst we don't know the locations of them, 10 Blackstone Courts have been signed off and it is hopeful that these will be operating in August.

HSQC asked for further details on the Blackstone Courts and whether alternative buildings can be used as the judiciary have indicated that alternative buildings will not be suitable for custody hearings. APQC added that the main problem, for criminal cases and particularly custody cases is that there is a need for secure areas, for ways to get in via the back and for clients etc to be socially distanced. This is difficult to do in a building that has not been purposely built, though some building will be used for bail cases, where appropriate. It is likely that the existing estate will be farm out; to take out civil and family and put those into other building, to free up the buildings that have cells already built in, so in effect, move the estate around to bring it to the best effect, across all jurisdictions.

MC highlighted that shielding formally ends on the 1<sup>st</sup> August but those especially with health issues would want to attend hearings remotely and asked if there is any advice. APQC confirmed that a suggested way to deal with this had been sent out on 13 July and we are trying to get consistency and good practice across the board. The SPJ did highlight to APQC that the senior judiciary expects all judges to act with sensitivity. Prior to this meeting, APQC spoke with Susan Acland-Hood who is very clear that everybody has to get to grips with remote hearings as they are a real positive to the profession and whilst there is reluctance among some people, as the tech required gets stronger, a difference with this will be seen and people will become more comfortable with making use of it.

The CPS has worked with us and the CBA to provide financial support and it is remarkable that we have been so collaborative and working with us on a suggested template on guidance for court listings. For us, it has made a real difference to practitioners lives and if we get our wish with listings, it will help everybody who has dealings with criminal courts.

### **3. BSB Report**

The BSB did not attend the meeting; a report was included within the papers as an update for members.

### **4. Statement by the DPP**

APQC welcomed MHQC to the meeting and thanked him for his attendance.

MHQC gave his apologies for not being able to make every Bar Council meeting and hopes that members are encouraged by knowing that both Co-Chairs of the Employed Barristers' Committee provide a read-out to him of the meetings, and now Heidi Stonecliffe QC can provide an update too.

It is an understatement to say 2020 has turned out how we expected it to. We have seen court buildings closed, trials postponed and a number of cases building up. And, we cannot

underestimate the enormous impact the pandemic has had and will continue to have on both our profession and the criminal justice system as a whole. However, the pandemic has pushed us to make changes, bring forward improvements that seemed a long way off – our extensive use of technology to conduct remote hearings is a case in point.

The CPS response to the pandemic: the CPS Inspectorate, HMCPsi, released their report to the CPS response to the pandemic between March and May which highlights that a large part of our ability to respond quickly to the pandemic was the result of forward thinking and planning, not just this year but over the past 5 years through the CPS 2020 strategy. One implication of this crisis has been to bring home to the criminal justice sector, as a whole, the importance of having a robust and ambitious strategic vision of how we want to work and how we all want to work together. HMCPsi noted that the pandemic has been a catalyst for innovation across the criminal justice system and it's crucial that we build on the relationships formed with our partners and find ways to work collaboratively. The primary focus of the CPS has always been the safety of the people who work for us, including external advocates - health and wellbeing has and will continue to come first.

The way we have been working with the Bar: MHQC does not underestimate the effect the pandemic is having on everyone and the CPS were able to move quickly, early on, to mitigate some of the impact of the pandemic on the Bar. A series of immediate temporary changes to the CPS fee schemes were announced within the first week of lockdown, to bring forward payment in ongoing cases and maintain steady cash flow. Additionally the CPS created a completely new upfront Covid Fee for disrupted trial cases. As a result, pre-lockdown payment levels between March and June have been maintained. A Statement of Principals on how we can work with the Bar, through the pandemic and after was agreed at the end of April. A series of practical steps relating to issues such as safety, case progression and addressing the backlog also featured and have formed the basis for constructive conversations held locally between circuit leaders and CPS colleagues. Lawyer secondment opportunities were announced on 13 July, offering Advocate Panel members at level 1 and 2, the chance to join the CPS on fixed term appointments between 3 and 6 months. This presents a great opportunity for those at the junior end, to get first-hand experience of CPS work and will provide invaluable support over the short-to-medium term.

Away from Covid-19, the CPS has recently completed the first phase of a refresh of the Advocate Panel for General Crime and RASSO; 81% of advocates have been invited to join the new panels without the need to re-apply. This reflects the health of the panel arrangements and the positive impact of the recent fee increases. Advocates in the 19% are welcome to reapply in September, when the new online application process is launched. In support of this, a series of remote training sessions will be delivered for the first time.

On diversity, the CPS has been working jointly with the Bar Council and Women in Criminal Law (WICL). The work has been ongoing for a number of months and has been brought more in focus by the Black Lives Matter movement.

The CPS 2025 strategy was published in April and includes a clear commitment to lead the public sector, in terms of equality and diversity, to ensure the communities served, see themselves reflected in us. This is equally important for those we instruct to prosecute on our behalf. An Advocate Diversity Action Plan has been put together to promote inclusive and equality of opportunity.

It is no exaggeration that the criminal justice system will never be the same; even as more courts are opening and more trials are listed, the world we're going back to looks very different to before. We will continue to prioritise safety and that has implications on our presence in court, and we must also begin to look at the backlog. We will need to drive our capacity beyond what it was at the beginning of the year and that will only be possible through combining both remote and in-person work, to harness the benefits of recent changes whilst maintaining the space and structures we need to ensure the proper and effective functioning of justice.

MHQC stated his gratitude for the way the Bar Council, the Criminal Bar Association and Law Society have worked constructively with the CPS to plan for recovery. In relation to other criminal justice proposals (e.g. restriction on jury numbers or even non-jury trials), whilst it is recognised that there will be principled arguments across the sector, the CPS must maintain both their independence from government as well as impartiality as civil servants. The aim is to continue the cross-organisational working to accommodate and manage changes and decisions as they come along.

The past few months have been very difficult for us everyone, both professionally and personally. There remain some huge challenges, and there is a lot to still process, but there is an opportunity to move ahead effectively, to improve how we work, how we work together and how we effectively prosecute cases and deliver justice across the country.

MJ commented that the London Scheme has been a real success and was pleased to hear about the secondment scheme and asked for further details on this as the CPS website didn't seem to have details of it. **MHQC confirmed that it would be shared straight away.**

GS thanked MHQC and the CPS for all that they have done in relation to advancing payments of fees for work already done and against future work, and asked whether there is anything that can be said in relation to the briefing out of what work there is currently going to the Crown Court, as different things are being heard from CPS staff about whether this is being swung towards or away from the independent bar. MHQC stated that APQC and DSQC both approached him in the very early days of lockdown, asking whether the CPS could tilt advocacy toward the external profession. The answer is no, because CPS have an advocacy strategy which depends on a fair distribution of work, including to the internal members. The Treasury makes us account for our full-time staff, alongside making accommodation for others who are on the CPS panels. If Blackstone courts do come along, and ways to make the most of the listing day, this will enhance earning rates for the Bar and should mean plenty of work to do for the Bar. The system has learnt to come out smarter

than it went in. This is not necessarily the answer the Bar may want, but if we are going into a really productive period, it should be good for everyone.

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

The Covid19 Working Group, which has been running since the beginning of the pandemic, has shifted to become a staff working group, though we are still using the expertise of the profession where needed. MC extended huge thanks to Robin Jackson who was leading the group, first as a volunteer then as a lowish paid consultant. Through this working group, we have managed to support the Bar and provide information and advice as quickly as possible.

In relation to the Criminal Legal Aid review, we are hoping for good news on the accelerated asks, even in the short term, and the main review is being reopened. The Bar Council, working with Prof. Martyn Chalkley can link our own database with fee data from the CPS and LAA.

Thanks were extended to NZ for the work done on the IGRs, which will be spoken about in item 7.

We are currently looking at business planning for the next year and we continue to be worried about the income for the GCB and will be seeking a CBILS loan. We want to go into 2021 with as much money as possible and we continue to make use of the furlough scheme and will use whatever schemes the government introduce in order to help us with this.

The GCB office is back open and is as safe as we can make it. We aren't expecting most staff to return until September, but the facilities are there for members of staff who do want to make a return. Additionally, it is available for booking by external companies who may wish to make use of the space and is already generating income.

Work has been going on to organise and facilitate the Bar and Young Bar Conference as well as the Pupillage Fair, which are all going to be run online, in the autumn.

## **6. Treasurer's Report**

GW reported that earlier in the day, the final and audited numbers were circulated for the accounts, adding that the accounts are being finalised with a couple of tweaks and will be circulated ahead of the September meeting and AGM. The audit is being completed. GW is proud of and thanks were extended to the finance team and MC. The auditors have commented that it is one of the best set of accounts, especially under the circumstance and this is a credit to the work that has gone in.

Work is underway on how we can reduce the overhead costs and similar work is being done on reducing bank charges and some of the other costs.

The General Council of the Bar (GCB) currently has just over a month of reserves, which is critical to this update, looking at 2020-21 and future years.

The highlighted position of one month reserves is tight. In February, we were talking about the reserves policy and looking at how to slowly move it. At this stage, we know there is going to be a fall of income for 21-22 and that is because the income of the Bar will fall – surveys have been carried out to demonstrate this, and the PCF bands are based on income. At current, it is difficult to predict what that level will be, but we predict the fall will be significant and expect a fall of a couple of million, so we have to look at the liquidity position.

80% of income for the GCB is from the PCF and in terms of costs, half is for staff and the other half is the office space and pension, as well as other expenses.

Trying to conduct a drastic change at this stage, to any of those areas, is difficult. The short-term option available is the CBILS loan and we are currently in talks with RBS who think we are eligible. The finance committee has approved the application for up to £5million, though whether we need all of that will be determined at the end of the year. The loan will help us deal with things in the short-to-medium term. Cash loans don't get any cheaper than the CBILS opportunity and GW stated that the finance committee's decision to approve the application is right, under the circumstances. GW assured that the Bar Council would be kept updated of how this is progressing, either by written updates or at meetings. A reminder was given that the loan would need to be repaid and the GCB will need to look at how to make savings, accelerating the work that MC and the finance team as well as executives have been undertaking over the last couple of years. This work continues to highlight the overspends and areas where we can save costs.

DJ asked about other assets, past the liquid funds of £1.7m, and how illiquid they are. GW said that this relates to the property project in the last couple of months as well as the software developments; the laptop refresh, which was rightly accelerated, as it has helped considerably with the Covid19 necessity to have everyone working from home.

TD mentioned that he has been dealing with Chambers finances, as well as clubs, who are all in similar situations and think there is something to be said on sharing information; if there are comparable organisations, there may be common themes and we can discuss such things to see how others are dealing with this, even looking at short-term liquidity over 6-9 months. GW said that we have to try to see what other organisations we can speak best practice with, as the Law Society for example has £73m in reserves, so they are in a different position to the GCB, however we do continue to talk to 'members-based' organisations. **GW and TD will liaise offline and exchange learnings.**

APQC thanked GW for working relentlessly with MC and Richard Cullen, to sort the finances, adding that many people have been furloughed but there is a positive vibe among the staff at the GCB and we are very grateful.

## **7. Internal Governance Rules Certificate of Compliance**

Members of the Bar Council reviewed the Certificate of Compliance and the accompanying explanation of the steps taken by the General Council of the Bar to achieve

compliance. Members also noted the annexes containing the underpinning documentation. No questions were asked, and no objections were raised. Members of the Bar Council unanimously approved that its Chair may certify that the obligations are understood and that the GCB is in compliance with the Internal governance rules 2019 made under Section 30 of the Legal Services Act 2007.

#### **8. Chair's Co-options – options paper for Bar Council**

APQC provided background on this item, explaining that it was her aim when she started, to make the Bar and Bar Council more diverse and more accessible to a greater range of people. This result cannot be achieved without intervention. APQC was given the capacity of 8 co-options within her year as Chair and it has been a fantastic opportunity. In addition, by requiring only one co-chair to be a member of Bar Council has given way for a higher standard of expertise and more diversity to be amongst the committees. APQC highlighted that the GMC does a lot of work behind the scenes cohesively for the Bar Council, bringing together the circuits and significant SBAs as well as the committees and, by invitation, the IBC and the LPMA. The only way that the Chair can have any impact on what the GMC looks like is through the committee chairs, and so providing a little more leeway for the Chair to appoint those who are best suited for the roles is very effective.

KLQC added that this has been given great thought and they are very simple amendments which have been tried and tested during this year. It has helped solve the situation for the Chair and it is a simple way of improving diversity and the flexibility of the Chair. The modernisation working group have concluded these are sensible ways forward.

DPQC also commented that he had been the Chair of the Employment Law Bar Association recently and he had, when ELBA needed extra people, sought volunteers from the membership. By doing so the association had been able to significantly extend its reach and achieve things that it would not have been able to achieve otherwise. So important was that facility that at his instigation the constitution was amended last year, firstly to lift the cap on co-options, and secondly to make it one of the Association's objects that they engage with and mobilise the membership in the furtherance of ELBA's objects. Many of those who had been co-opted, stood for election, and went on to be committee members who would not otherwise have done so. DPQC added that the harnessing of the enthusiasm of members was as important a consideration in taking those steps as diversity.

AHQC concurred that the Chancery Bar Association is in the exact same position; they have extended co-options and regularly use them, adding that those who are co-opted then stand for election. It is a positive thing, to encourage people to come on board, without having the full commitment of membership. These changes have the support of the ChBA.

DJQC echoed what others said; having the flexibility to call on people who have particular expertise is extremely valuable and gives you the power to get through an agenda – a year is not a long time as Chair and this enables that person to get through the programme.



EB who is a co-Chair for one of the committees agreed that importance to have the flexibility to get the work done and it is important to have the support of a co-Chair.

NZ circulated the poll via email to everyone in attendance and confirmed that the votes would need to be submitted by the end of the meeting. It was highlighted in paper 200714-BC05-CC; *'The Constitution and Standing Orders may be amended by way of extraordinary resolution at a Bar Council meeting and require at least two thirds of members present and voting to approve them.'*

Members were asked to vote on three options about co-Chairs and whether one or both of them should be Bar Council members. 77 members voted on this item and option B (Retain the current situation – only one co-Chair need be a member of the Bar Council) had a total of 59 votes. This change was made to the Constitution and Standing Orders following the meeting.

Members were also asked to vote on three options with regards to the amount of Chair's co-options to Bar Council. The first vote on this item did not pass a result, so the poll was re-run to ensure 2/3<sup>rd</sup>s of those in attendance were able to carry majority. 80 members voted on the re-run and option C (Interim increase to 8 co-options with a review after 3 years) had a total of 66 votes. This change was made to the Constitution and Standing Orders following the meeting.

NZ circulated the poll results to members, via email, after the meeting.

## **9. Any Other Business**

RP highlighted serious concerns that are being raised by students of different providers in relation to the reasonable adjustments for exams and asked whether there is anything that the Bar Council can do to intervene. Although the students aren't Bar Council members, they are the future of the Bar and so we look after their interests. APQC confirmed that this is something that we are alive to. The BSB has put a statement on their website regarding the situation (an additional statement was added whilst the meeting was live, updating the previous statement) and we will be, if it hasn't been sent already, sending a letter to the BSB about our growing concern on this matter. It is obviously right that people should have the appropriate and proper accommodations made to them – this is something that would be expected in normal times. RP noted that she has been made aware of a student who was required to call in to book an exam, has run up a bill of over \$200, to find that when the phone was answered, the line cut off. IHQC added that she has received an email from Christa Richmond, the Director of Education at Middle Temple who has confirmed that MT are in touch with the other Inns and will be meeting with the BSB on 15 July. MT shares the concerns of everyone at this meeting and are doing what they can to support students.

## **10. Details of Upcoming Meetings**

Saturday 12 September at 10:00 followed by the AGM at 11:00

Location TBC