



The Bar Council

Minutes of the Bar Council meeting

Saturday 25 November 2023 at 11.00 at The Parklane Plowden Chambers, Leeds

Present

Nick Vineall KC	Chair of the Bar	NVKC
Samuel Townend KC	Vice Chair of the Bar	STKC
Barbara Mills KC	Vice Chair Elect 2024	BMKC
Lorinda Long	Treasurer	LL
Michael Tomlinson KC	Solicitor General	MTKC
Jason Pitter KC	Leader, North Eastern Circuit	JPKC
Nick Goodwin	CEO, HMCTS	NG
Stephen Cragg KC	Co-Chair BHRC	SGKC
Kathryn Stone	Chair BSB	KS

Members in attendance- in person and via Teams:

Andrew Twigger KC (ATKC), Barbara Connolley KC (BCKC), Hannah Markham KC (HMKC), Heidi Stonecliffe KC (HSKC), Jaime Hamilton KC (JHKC), Jo Martin KC (JMKC), Kirsty Brimelow KC (KBKC), Michael Bowsher KC (MBKC), Neil Hawes KC (NHKC), Philip Moser KC (PMKC), Richard Honey (RHKC), Alex Matthews (AM), Alexander Gunning (AG), Ben Close (BC), Caroline Rees KC (CR), Celina Colquhoun (CC), David Taylor (DT), David Bunting (DB), Faisal Sadiq (FS), Hannah Smith (HS), Ivor Collett (IC), James Paterson (JP), John-Paul Swoboda (J-PS), John Richards (JR), Kate Lumsdon KC (KLKC), Kate Spence (KS), Leanne Targett-Parker (LT-P), Louise McCullough (LMC), Leon Kazakos KC (LJKC), Linda Turnbull (LT), Luke Wygas (LW), Maddy Haworth (MH), Mark Chaloner (MC), Michael Polak (MP), Michael Harwood (MH), Dr. Mirza Ahmad (MA), Minka Braun (MB), Natasha Shotunde (NS), Philip Stott (PS), Reagan Persaud (RP), Sarah Fearon (SF), Simon Atkinson (SA), Simon Anderson (SAn), Shoshana Mitchell (SM), Shazia Akhtar (SA), Simon Regis (SR), Susan Jones (SJ), Zoe Saunders (ZS), Wesley Eyley (WE), Sean Jones (SJ), Shobana Iyer (SI), Yaa Dankwa Amapadu-Sackey (YDA-S)

In attendance:

Sally Burnell	Director, Communications & Marketing	SB
Malcolm Cree CBE	Chief Executive, Bar Council	MC
Carolyn Entwistle	Director of Services	CE
Isi Onwukwe-Anyadike	Governance and Committees Manager	IOA
Phil Robertson	Director of Policy	PR
Jamie Shaw	Head of Strategy, Planning and Governance	JS
Nikita Feifel	Public Affairs Officer	NF
Mark Neale	Director General, BSB	MN
Jessica Greensit	Circuit administrator	JG
Denise Breen-Lawton	North Eastern Circuit	DB-L
Nicholas Johnson KC	North Eastern Circuit	NJ
Jasmine Chen	North Eastern Circuit	JC

Apologies:

Eleena Misra KC, Mary Prior KC, Samantha Singer, Maddy Charlesworth, Martyn McLeish, Sahar Farooqi, Shoshana Mitchell, Gaynor Wood, Jason Sugarman KC, Joanne Kane

1. Conflicts of interest and announcements

There were no conflicts of interest declared.

2. Minutes of the last meetings and matters arising

The minutes from the meeting and AGM held on 9 September 2023 were APPROVED as an accurate record.

3. Statement by the Chair of the Bar Council

Michael Tomlinson KC, Solicitor General thanked the Chair for his tireless campaigning and lobbying of the Home Office. He stated that it had been a constructive, though challenging year. The Attorney and Solicitor General look forward to continuing the work with incoming Chair Samuel Townend KC.

The Bar Council have been working closely with the Law Officers and have made excellent progress in their work aims for the year.

The Chair thanked Parklane Plowden Chambers for hosting the Bar Council meeting and the North-Eastern circuit for hosting the dinner the night before.

The Chair highlighted the following points from his report and looking forwards:

Deferral of call

This continued to be under discussion by the Inns. The regulator regulates all registered and unregistered barristers, at the cost of the 17,000-18,000 members who pay the practicing certificate fee. Members are called to the bar before they're entitled to exercise rights of audience. Calls received to the Bar Council's ethics helpline indicate that people often phone up confused as to their barrister status if called to the bar. Members heard that solicitors are classified as solicitors once they finish training, and there is a view that it should be the same for barristers.

CLARB (Criminal Legal Aid Review Board)

CLARB took a long time to appoint a Chair and therefore work was stalled; Deborah Taylor has now been appointed Chair. There appears to be some difference of opinion as to whether the Board is to rearrange the fixed pot of money for criminal legal aid, or to make recommendations on how criminal legal aid should be funded to make the system work. It should be the second.

The chair said that he believed the twin tasks were to ensure a sustainable overall level of funding for criminal legal aid, and to ensure that the pattern of remuneration aligned with the aims of Better Case Management in the Crown Court. Savings can be made by getting earlier guilty pleas, allowing for fewer trials and shorter sentences.

Regulatory arrangements

There has been a good relationship with the BSB this year. 18-months ago the Bar Council were unhappy with the productivity and timeliness of the BSB core business of conduct regulation, but this has since improved. More work can be done to ensure regulatory value for money. Evidence will be taken at the Select Committee over the coming weeks. The Chair's position on this, supported by the Regulatory Review Working Group of the Bar Council, is that the 2007 Legal Services Act is a good act. It created a compromise between

those who wanted the professions to remain entirely self-regulating and those who wanted to take regulation entirely away from the professions, and the compromise it reached was to make the General Council of the Bar the approved regulator, and require it to delegate its regulatory functions. The Bar Standards Board is not a separate legal entity, but a functionally separate body established to fulfil those functions on the GCB's behalf. It's important for the Bar Council not to interfere in regulatory decision making while remembering that they are the same legal entity funded through the practising certificate fee.

The Chair thanked the Bar Council, Committee Chairs, SBA's and staff for their support over the course of this year.

With particular thanks to the four Committee Chairs stepping down in 2024:

- Stephen Kenny KC, the Ethics Committee Chair,
- Lucinda Orr, the Bar Representation Committee co-chair,
- Sa'ad Hossain, the EDSM Committee Chair, and
- Michael Harwood, the Young Barristers Committee Chair.

The Chair thanked Amy Rodgers of 11 KBW, who had led him in the Court of Appeal in the case of Churchill vs Merthyr Tydfil about compulsory mediation. The bar Council was indebted to her.

The Chair thanked Vice-Chair, Samuel Townend KC who has been an excellent support and a lot of fun to work with.

Celina Colquhoun thanked the Chair for his year of work. As a member of the Planning Environmental Bar Working Group, she queried whether the gross earnings report will focus more on differentials between men and women across different practice areas. The Chair noted that the fee earnings report analysis highlighted that women earn less than men across all sectors, with 9-15 year of call being the biggest difference in earnings. The report only shows gross earnings and doesn't show how many hours people worked or the proportion of those working Full Time/ Part Time. Presenting statistics for practice areas would be difficult with BIMF returns as practice areas are determined by working 80% or more in one category. As long as individuals wouldn't be identified by having more targeted data, this could be analysed moving forward.

4. Bar Standards Board Report

Kathryn Stone OBE, Chair of the BSB took her report as read. She highlighted the following:

- The BSB have published a revised Social Media Guidance and new Guidance on the Regulation of Non-Professional Conduct. All cases are assessed by the BSB on their own merits and their own facts in line with our policy. This audience will of course understand this point better than most. This revised guidance aims to provide greater clarity about the BSB's approach rather than indicating a significant change.
- The BSB's review of authorisations to work will be published for consultation early in the new year, the end to end review of enforcement systems and processes is also progressing well and the quality of decision-making remains high. Over the last quarter the team that performs the initial assessment of incoming reports were highly productive clearing just under 500 reports over the quarter and reducing their caseload for the third quarter in succession. The Authorisations Team was also productive, closing the highest quarterly total of applications for a year, but new applications, particularly from transferring overseas lawyers, continue to outpace clearances. The Investigations Team now has a lower caseload which has enabled them to support more disciplinary tribunal hearings, the number of which more than doubled in the last quarter.
- The BSB's budget is increasing. The Board scrutinises the budget very closely and are largely maintaining current capacity in what will be the last year of the current strategy. The BSB are facing some unavoidable costs, such as covering half the costs of the Inns' Bar Tribunals and Adjudication Service.
- The BSB have published a consultation document seeking views on their regulatory expectations of barristers in chambers. The aim is to consolidate those expectations into a single online resource which hopes to be complemented by resources from others, including the Bar Council.

5. Statement by Chief Executive Officer

Malcolm Cree, CEO of the Bar Council, thanked Jason Pitter KC, leader of the North Eastern Circuit, for hosting the Bar Council for dinner on the Friday night.

Malcolm Cree presented his report and highlighted the following:

- Members were encouraged to respond to the PCF survey out now on the website:

<https://www.barcouncil.org.uk/resource/general-council-of-the-bar-2024-25-practising-certificate-fees-and-budget-consultation.html>

- There are three vacancies for the Chambers Management Panel.
- The KCA have completed their last round of selections and will be announcing successful candidates before the end of the year. The selection process was impressive and it was reassuring how thorough the panel were.
- The staff team are returning to normal levels, as Piran Dhillon-Starkings and Rose Holmes have returned from maternity leave, and the new Head of International will be joining the Bar Council staff team soon.

Malcolm Cree thanked the Chair and Treasurer for their work and support over the year.

6. Treasurer's Report

The Chair noted that the practicing certificate fee (PCF) would be increasing. One reason for this is that the Inns would now be charging half the cost of the BTAS (bar tribunal and adjudication service) to the GCB. One way or another the profession has to bear the cost of that service: members can either bear that cost through the Inns carrying it, or it can pass the cost to the practicing certificate. Barristers in London contribute more to the Inns because of rents paid for use of the premises'; those outside of London don't benefit as much and therefore are splitting more costs than use for the service.

Lorinda Long, Treasurer, highlighted the following points:

- A deficit budget for the current year was planned as part of the strategy to mitigate the impact of increases in PCF to the profession.
- The majority of the nonrecurring variances have arisen in the BSB; additional recruitment costs, recovery plan and the enforcement review. There has also been an increase in the LSB charge.
- The non recurring additional costs are funded via the Permitted Purposes reserve.
- Operating costs are increasing by £2.5m. Including the non operating cost increase from the LSB (£240k) the overall annual increase in expenditure is £2.7m. This increase is much greater than anticipated and together with the non recurrent additional expenditure in the current year has meant that the GCB is unable to use its reserves to mitigate the increase to the profession to the extent it would like. Even so it will still be utilising £1m of its reserves to mitigate the proposed increase from 13.5% down to 9.5%
- Under the IGRs the GCB cannot reject or curtail the BSB budget proposals.
- Staff costs have increased by £1.3m, a 10% increase. One of the main drivers is that this is the second year of the BSB five year plan to level up the pay of staff to the median of other regulators, driving staff retention and recruitment.
- Non-staff costs have increased by £1.1m, a 12% increase. The BSB portion of this increase represents £937k. This includes: £300k for half the cost of BTAS, estimated one off cost of £225k to implement the end to end Enforcement review, £110k to implement holiday pay for those re classified as workers.
- The PCF proposal is currently out for consultation, and we urge you to give your feedback via the online form.
- We have been informed by the Pension Fund trustees and advisers that the prospect of obtaining a buy out of the DB Pension on reasonable terms for the GCB are good. We aim to pursue this opportunity and hope to update you on progress in 2024. Being able to effectively mitigate the financial risk to the GCB and the profession will be a big win.

In the recent past the GCB was paying in over £1m annually as part of the pension deficit recovery plan. The funds released from this obligation have been used to accelerate the repayment of the CBILS loan and mitigate increases in the PCF.

- The CBILS loan taken out at the height of the pandemic has been successfully repaid early. Over the last few years the loan has provided the GCB with the flexibility it needed to help mitigate the PCF increases through the pandemic and cost of living crisis while still maintaining funds for business as usual.

7. North Eastern Circuit Leader report

Jason Pitter KC, Leader of the North Eastern Circuit presented his report and highlighted the following:

The North Eastern Circuit represents around 1,000 members and covers a large geography from Sheffield to Newcastle, about 140 miles. This generates a number of management problems, for instance difficulties in managing hyper localised and specific practices within some court centres, causing difficulties for practitioners on circuit. The circuit continue to work with the local judiciary to improve this.

The main issues impacting those on circuit on the day to day are:

- Publicly funded work which impacts workload and the disproportionate amount of work to process by insufficient numbers of local councils and the expectations placed on that number.
- Since the inception of better case management in the criminal courts there have been a proliferation of demands on court orders and also demands placed on those instructing counsel, in particular the CPS.
- Significant work has to be done and counsel are not remunerated sufficiently. There is an insufficient and decreasing number of people doing an ever-increasing volume of work. Work is not remunerated in a way that makes it as attractive as other areas of practice, including other publicly funded areas, in particular family. This creates concerns from a wellbeing perspective from or about criminal practitioners. The medium to long-term solution of this is recruitment, though a more immediate fix is also needed to improve resourcing. Early guilty pleas are also a solution, though it is important to ensure that work is not shifting less well-paid work from the back end of the case to less well-paid work at the front. The circuit is keen to work with the Bar Council to address all issues, though acknowledges that some of the pressures that will be placed on the circuits if recruitment increases is training and additional funding needs and this burden of work will fall on existing members.
- There is nervousness and concerns as regards to funding in the area of civil. Jasmine Chen has been appointed to the Board as the new Bar Council representative and is keen to engage with the incoming Chair in regard to how young practitioners on circuit may be affected by recent changes.

The circuit have quite an advanced and developed training and education programme which is dependent on the goodwill of the members of circuit. There is some nervousness about the approach of the BSB in particular regarding the management and oversight of these programmes. It's important that the training remains provided as is (free of charge to the pupils and to the membership). The Bar Council are asked to support the circuits with providing this training where possible.

The circuit have their own Diversity Outreach Group which is doing well. This work focuses on the distribution of work, recruitment, looking at fees and how fees are affected across different protected characteristics. There have been some tangible recent improvements in most areas including social mobility, gender, and race.

The circuit are interested in recruiting more high-quality pupils, and therefore are working towards creating a bespoke Pupillage Fair focused on the North of England, separate from the Bar Council's main pupillage fair which is based in London. This fair will be supported by the senior judiciary, local organisations, and the CPS. The aim is to launch November 2024.

All the circuit leaders were thanked for working closely together over the year and for their ongoing support.

8. Chief Executive Officer of HMCTS report

Nick Goodwin, Chief Executive Officer, thanked the Chair for inviting him to speak to the Bar Council and presented his report, to include the following highlights:

Courts and tribunals

There is a lot of good work happening, and progress is steady. Social security is working well, HMCTS have an excellent judiciary relationship with them. Investment is needed in tribunals, new rooms and tribunal systems are incoming.

Civil

Part of the difficulty is that county courts in London and South East have a deficit of judges; this is improving but is a difficult undertaking. Next year, the civil jurisdiction is going through change as HMCTS puts reforms into the civil jurisdiction such as digital systems.

There is a lot of activity in public family law, but the focus there is on supporting the President and the judiciary and driving a renewed approach on the public law outline, which is absolutely critical to getting case duration down.

New policy announcements are upcoming in the family law regarding new consultation releases.

Crime

Criminal jurisdictions and magistrates' courts did really well throughout the pandemic and now are nearly fully recovered.

The magistrates courts, particularly in London have been bracing themselves to respond to the various protests happening over the past few weeks and coming weeks. There is a contingency plan in place for this.

Magistrates courts and every Criminal Court in the country have the new system, common platform. The magistrates now are dealing entirely on common platform and HMCTS have significantly improved the experience of those that are dealing with it. The team will continue to work on improving the system.

Crown Court

Last year, there were over 100,000 sitting days, which was a recent record. This year, it is planned that there will be over 104,000, possibly up to 106,000 sitting days. This is good for getting ahead of the backlog.

Disposal rates are good and coming back to pre-pandemic levels as more resources have been put into the system.

Estate

There have been issues with concrete and structure within the estate, which are being actively dealt with. Of 350 courts, there is bad concrete in 10. Cases had been moved to accommodate court closures where necessary.

New court rooms and quarters have been created.

The new Lord Chancellor lent HMCTS a £220 million investment for the estate over the past two years. This allows the team to plan and build things much more efficiently, and will allow new buildings to be built in the near future.

City of London.

Courts will be on soon in the new tribunal centre in London, and Newport in Blackpool in the coming years. A new tribunal centre and commercial court will be opening in Leeds w/c 4 December.

Jason Pitter KC queried recruitment levels at HMCTS and data about adjourned trials. HMCTS are monitoring the statistics of trials that are adjourned because of the unavailability of either prosecution or Defence Council, although the team are yet to monitor statistics of trials not proceeding because of the unavailability of prosecution. These issues will be looked into and any emergent data trends would be shared with Bar Council.

Faisal Sadiq, Chair of the Disability Panel noted that there have been ongoing issues with how legal practitioners can obtain reasonable adjustments in courts, and expressed that contacting relevant people to assist has been impossible. It was agreed that Nick Goodwin would meet with the Panel to discuss how to move forward and improve this service.

Leon Kazakos KC thanked staff members Joe Towns and Lisa Killam for their quick reactions and support recently. It was noted that the conditions at Harrow court are dangerous and need urgent work, the admin staff team are undermanned, and those that are available are working too hard to plug these gaps. In particular more support and staff are needed in the list offices. Nick Goodwin noted that Harrow is getting a new roof and more resource has been allocated to improve estates. Pay of staff in London and South East is low, but pay is determined by the government. The staff that are available are excellent and appreciated for their work. The Common Platform in the Magistrates Court aims to improve services.

Yaa Dankwa Amapadu-Sackey noted that she has experienced ineffective and incompetent interpreters, which raises a concern about the general competency of interpreters in other trials. Nick Goodwin noted this concern and will raise with his team.

Kirsty Brimelow KC queried why staff aren't paid more and what work can be done to encourage more young barristers into the criminal bar. Nick Goodwin noted that salaries are set by the in public sector civil service and offer a wide pay range. With the recent budget increase, money was spent increasing the pay for lower-level staff and closed gaps with other competing departments such as DWP and HMRC. Attracting people to the profession is ongoing work, Open Days have proven successful. Encouraging people to join the profession is not the major hurdle, but keeping people has been. Previously members were brought in via agency contracts, this no longer happens, and people are hired directly which should encourage retention.

Heidi Stonecliffe KC described experiences with insufficient room space across crown courts, highlighting a view that there need to be more conference rooms and wider facility options. It was also noted that in a recent case there were insufficient jailers to bring their

clients into court at the right time for the case. Nick Goodwin noted that with the new maintenance budget, consultation rooms will be prioritised for improvement to ensure buildings are stable. Prisons are currently overcrowded so the work of support staff is valued given the pressure they are under.

9. International Committee

The International Committee report was received and noted.

10. Bar Representation Committee

Lucinda Orr, Co-Chair of the Bar Representation Committee, presented the committee report which she took as read. She highlighted the following:

- Lucinda Orr thanked the committee for all the work they do. The committee focuses on making money for the Bar Council and is comprised of Bar Council staff, chambers professionals including directors and senior clerks.
- As of the end of October 2023, the budget has been surpassed for training and events income, having generated income of £349,945 plus VAT since the beginning of the financial year. They are now currently running at a profit of £217,255 plus VAT, which is over target by £135,743 plus VAT.
- 47.2% of the bar paid the BRF over the last year, this is a slow decrease over the last four years. Over the past year more effort was put in to promote and advertise the BRF which has made an improvement. The new payment scale means you can pay what you like, with the highest payment being £5,000 generating a total of £103,000.
- The business partnership portfolio made a profit of £148,870. These partnerships include insurers and car brokers.
- The Chamber's Management Working Group have done a great piece of research on the direct access portal. There are now 402 barristers in it, up 92.
- Homes for Ukraine scheme have settled 49 people.
- Under Immigration Support Scheme for Skilled Workers, 66 barristers and pupil barristers, alongside eight Temporary Workers under Tier 5 are being supported.
- The professional users ID card scheme continues to be supported, and over 7,189 members have renewed their existing, or requested new, ID Cards, representing an increase of 2,180 users over the past 12 months.
- Pupillage Gateway is underway for the next year, now including contextual recruitment following the development of a tool in conjunction with tribepad and rare recruitment.
- The Annual Conference is being revamped for 2024. It will take place 8 June 2025, Etc Venues in Liverpool Street.

- The Training and Events team have hosted 14 events over the year ranging in disability seminars to cyber security session. On demand training will be rolled out in Q1 of 2024 for cyber security and pupil supervision training.
- The committee have approved the addition of Dr Line, which will be the availability to have private healthcare for those who pay the PCF.

The Chair highlighted that the MoJ have been extremely slow and not satisfactory with moving forward with ID Cards.

11. Bar Human Rights Committee

Stephen Cragg KC thanked the Bar Council and Chair for their support over the year, and the Committee are looking forward to continuing their work alongside the incoming Chair in 2024.

Stephen Cragg, Co-Chair of the Bar Human Rights Committee, presented the committee report which he took as read. He highlighted the following:

Work done international highlighted:

- BHRC is the only UK-based legal organisation with observer status at Guantanamo, and in early 2020, former BHRC Executive Committee members Amanda Weston KC and Jacob Bindman observed hearings in Guantanamo. In October 2022 the BHRC Treasurer attended a trial at Guantanamo, and BHRC released its second Guantanamo Bay Military Commission trial observation report of the key fair trial concerns. The report highlighted that international law requires the exclusion of evidence obtained as a result of torture and highlights caselaw and UN conventions, general comments and guidance on the rights of detainees in the context of interrogation following torture. BHRC is now preparing to send other Executive Committee members to attend further trials at Guantanamo Bay in December.
- BHRC is working with the Young Lawyers Committee of the Human Rights Lawyers Association to host a one-day virtual seminar programme encouraging law graduates to consider human rights careers, taking place on 28 November 2023. Young Barristers' Committee Chair, Michael Harwood will be a speaker at this.
- BHRC was officially granted United Nations Economic and Social Council (ECOSOC) which is a consultative state status. A special session of the Human Rights Council gives the Committee access to the UN Security Council to take part in debates and to host their own events at the UN.

Kirsty Brimelow KC congratulated the Committee on reaching ECOSOC status.

12. Legal Services Committee Terms of Reference amendment

Philip Stott, Co-Chair of the Legal Services Committee presented proposed amendments to the Legal Services Committee Terms of Reference, outlined within the Standing Orders for Committees of the Bar Council. The Committee aims to refine the Terms of Reference to emphasise its focus on the provision of services to the professional and lay clients and ensure clarity about the Committee's role for prospective future members.

On vote, proposed amendments to the Terms of Reference for the Legal Services Committee (and thereby changes to the Committee Standing Orders) were APPROVED unanimously by way of extraordinary resolution.

13. Upcoming inaugural address and a note from the Vice-Chair

Samuel Townend KC, Chair Elect, will be hosting his Inaugural Address on 9 January 2024, at Lincolns Inn, 17:30.

Samuel Townend KC thanked Nick Vineall KC for all the success he has had over the year and fun it has been working together, highlighting the following achievements:

- The success of the year leading on the Retained EU Law bill.
- Advancing the public profile of the Bar with members of the government, the Law Officers, the justice team, senior civil servants, senior judges and so on.
- Appearing on behalf of the Bar Council in the Churchill vs Merthyr Tydfil case.
- Discussing the range of views to the cab rank rule, the Jacqueline McKenzie affair case, and the intervention at the IBA on the gatekeeper's issue on the rule of law.
- Remuneration regulation work is ongoing, as is improving diversity at the Bar. The implementation of the contextual recruitment tool will support this aim.

14. Any Other Business

None noted.

The next Bar Council meeting will be held on **6 December 2023**.