



Minutes of the Bar Council's Annual General Meeting held on Saturday 17 September 2016 at Middle Temple

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| Present: | Chantal-Aimée Doerries QC | Chairman |
| | Andrew Langdon QC | Chairman Elect |
| | Lorinda Long | Treasurer |
| | Rt Hon Jeremy Wright QC MP | Attorney General |

1. Chairman's Address

The Attorney General, Jeremy Wright QC MP, Chair of the AGM, opened the meeting and welcomed both Bar Council members and additional subscribers to Middle Temple. It was established that the AGM was quorate with more than 60 subscribers present in the room.

The Chair thanked all members of the Bar Council and all those that work for the Bar Council for their work over the last year. He made the point that while it is very challenging being an advocate, it is even more challenging being an advocate for an advocate or a representative for a representative. He praised the excellent leadership demonstrated by the Chairman of the Bar.

The Chairman of the Bar, Chantal-Aimée Doerries QC, presented the Chairman's Address. Acknowledging that the majority of those present had already attended Bar Council meeting, she said that she proposed to talk about a selection of work under a small number of headings. She explained that she had been surprised by the 'staggering' amount of material about the work carried out over the last year collated to assist with the drafting of her address. The workload is phenomenal given the limited resources and she thanked both Bar Council members and the Bar Council staff for their input.

Brexit

Given the political importance, the Chairman of the Bar began by talking about Brexit describing it as 'probably the most momentous event of the last 12 months'. The Bar Council adopted a neutral position and hosted a public debate in May where Dominic Grieve QC MP and Joanna Cherry QC MP spoke to the 'in' argument and the Lord Howard of Lympne CH QC, and Martin Howe QC MP, presented the 'out' argument. In addition, the EU Law

Committee produced an extremely thorough paper on the benefits of each side. She thanked the Committee and its chairman Gordon Nardell QC for all their hard work.

A working group chaired by Hugh Mercer QC has been established since the Brexit vote. The role of the working group is to look into the impact of Brexit on the practice of those who specialise in EU law and how it might impact the practice of those that don't. For example, the impact on professional lives on issues such as taxation and immigration will be explored.

The Chairman of the Bar reported that she has recently met with the Lord Chancellor, Treasury Solicitor, Richard Heaton and Permanent Secretary, Jonathan Jones, to discuss Brexit. During each meeting she reported that she has repeatedly stressed the breadth and depth of expertise of those at the Bar in relation to EU law and wider issues surrounding Brexit. It is important that the Bar continues to offer its services to Government in this way and the Chairman of the Bar encouraged anyone interested in this work to contact her.

Court Reform and Court Fees

In relation to court fees, the Chairman of the Bar reported on the ongoing work being carried out on lobbying against increased and/or enhanced court fees, particularly where the rising fees will deter access to justice. She thanked Derek Sweeting QC and the Legal Services Committee for their work in the area. On the criminal side the Chairman referred to the earlier success in the abandonment of the criminal courts charge.

The Bar Council responded to the interim report of Lord Justice Briggs on civil justice reform and the proposed online courts and continued to engage thereafter. There has been some success with the final report recognising, in the context of the online report, at least to some extent, the need for lawyers, and suggesting some limited provision for cost recovery.

The Chairman referred to the recent joint statement by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals, 'Transforming our Justice System' on the Government's investment in the courts and tribunals and the proposals for change. The Bar Council's Legal Services Committee were preparing responses to the consultations announced in the joint statement.

On the subject of engagement with HMCTS in relation to this court reform programme the Chairman of the Bar explained that a series of engagement groups are being launched to cover topics including crime, civil, tribunals and family law. She encouraged anyone interested or with specific views to contact either Derek Sweeting QC or herself. The real challenge is likely to be around how proposals can be put into practice.

The Lord Justice Jackson proposals for fixed costs were given airtime the joint statement from and the Bar Council is continuing to prepare for a possible consultation on this front. The Chairman of the Bar thanked Nicholas Bacon QC who chairs the relevant working group.

Contingent Legal Aid Fund (CLAF)

A **Contingent** Legal Aid Fund (CLAF) Working Group has been established in recent months. For many years the Bar Council has supported the idea of a CLAF but until now it was not thought to be commercially viable. The working group will explore ways of making it work. Justin Fenwick QC had kindly agreed to chair this group.

Regulatory Reform and the Competition and Markets Authority (CMA)

Last year the Government announced a consultation on regulatory independence as well as removing barriers for ABSs. Although the latter has come to fruition, there has, as yet, been no consultation on regulatory independence. The Chairman reported that a Bar Council working group had been set up to prepare for any consultation on regulation.

The Chairman of the Bar encouraged those present to read the recently published LSB report '*A vision for legislative reform of the regulatory framework for legal services in England and Wales*'.

In addition much time has been spent responding to the CMA and its market study into legal services. She mentioned that a number of competition practitioners had given their time pro bono to assist the Bar Council for which she was very grateful. The Bar Council has had several meetings with the CMA, responded to the CMA interim report, and various written questions from the CMA, and is looking forward to a final report in January 2017.

Legal Professional Privilege (LPP)

LLP remains an important area of work, across different topics. Mention of LPP is made in the recent LSB report referred to above. It arises in the context of a recent SRA consultation, which the Bar Council has responded to. And perhaps most importantly the Bar Council has been lobbying Parliament to protect LPP in the Investigatory Powers Bill. The Chairman of the Bar gave thanks to Peter Carter QC and Gordon Nardell QC for their efforts and hard work in this area.

Education and Training

The Chairman of the Bar thanked Guy Fetherstonhaugh QC who chairs the Education and Training Committee. The Bar Council took over the running of the Pupillage Fair from a commercial provider for the first time last year with an aim to make the Pupillage Fair as wide as possible.

The Young Bar Toolkit was launched last year. Encouraging those present to take a look at it, the Chairman of the Bar explained that it provides support and help to barristers in their first years.

Finally much time has been spent responding the BSB review of this area.

Criminal justice, advocacy and fees

The Chairman of the Bar reported that criminal advocacy and fees are of huge personal concern to her saying that work in this area has taken up a significant amount of time. The

success in the postponing and abandoning of the two tier contracts and criminal courts charge has been encouraging and the Bar's AGFS Working Group are continuing to work on reform in this area. The joint report with the MoJ at the end of the last year recognised that the current regime does not allow for any meaningful career progression and was a helpful step.

Regular Bar Leaders meetings take place with the Ministry of Justice and the LAA during which the Bar Council together with the Circuits and CBA have been seeking to move forward the AGFS proposals as well as pushing for progress on the proposals consulted on last year, in particular the statutory ban on referral fees and the criminal defence advocacy panels. However, the referendum on Brexit and the political aftermath has undoubtedly led to a fair amount of delay. Nevertheless, the Bar Council remains hopeful.

The Chairman of the Bar thanked Alexandra Healy QC and Susan Jacklin QC who co-chair the Remuneration Committee for their hard work.

Vulnerable witness training

The Chairman of the Bar briefly updated on progress made in starting to roll our vulnerable witness training consistent with the commitment given to the Lord Chancellor in 2015. A longer update had been given earlier to Bar Council. Interest has been expressed from the Family Bar and the Bar Council is planning to extend the training to family barristers once the criminal bar training is well underway.

Employed Bar

A snapshot survey of the Employed Bar has been carried out over the summer, which would be published shortly. The aim was to ensure that the interests of the employed bar were properly understood and could therefore be effectively represented. The Chairman thanked Michael Jennings for his chairmanship of the Employed Barristers Committee.

International work

The Chairman praised the Chair of the International Committee, Amanda Pinto QC, for her success in delivering a 'punishing programme'. The last year has seen successful and valuable missions including to China and Korea, also attended by the Chairman of the Bar.

At the end of last year, the Bar Council signed a Memorandum of Understanding with the British Council and the Bar Council hopes to collaborate on some joint programmes to sustain the rule of law. Last year's Chairman, Alistair McDonald QC, participated in a programme run by the British Council in China and the Bar Council anticipates more opportunities in the future.

The Bar is a small profession with limited resources and it is necessary to reach out and look for partners.

In June, the Bar Council in partnership with the Cyprus Bar Association held a one-day conference in Nicosia, Cyprus. This proved very successful. Although it had a mainly criminal element, it also included other areas of practice and the Bar Council is looking forward to repeating this event next year.

Wellbeing work

The Bar Council's Wellbeing Programme, devised by Sam Mercer, Head of Policy: Equality and Diversity and Corporate Social Responsibility, is at the point of delivery. The Chairman thanked Rachel Spearing for leading on this work. Those wishing to promote the wellbeing toolkit are encouraged to contact her. The Chairman said that during her nine months in the role, wellbeing is the topic that people have discussed with her the most and it is clear that wellbeing issues need to be recognised and dealt with by the Bar.

E&D work

The Chairman of the Bar thanked Robin Allen QC, Chair of the Equality and Diversity Committee, for the substantial work carried out by this committee. She referred in particular to the successful opening of a second Bar Nursery in Leeds and the guide for Chambers focussing on how to respond to harassment has been published. The dedicated E&D helpline continues to provide confidential support and help to those who require it.

Bar Council visits

Referring to the series of Circuit visits that have taken place this year, the Chairman thanked those who have supported both her and the Bar Council staff. She talked about the importance of hearing the views of others around the country and the ambassadors' scheme, described as a way of 'reaching out' to the profession. Those chambers that are not yet signed up will be receiving a letter in the near future.

Bar Representation Board

The Chairman thanked Richard Atkins QC and Fiona Jackson, joint Chairs of the Bar Representation Board, especially for their work on BRF payments.

Bar Pro Bono Board

The Chairman briefly mentioned the work of the new Bar Pro Bono Board around collating details about the Bar's impressive pro bono work and she thanked Alison Padfield, Joint Chair of the Bar Pro Bono Board.

Elections

Officer elections took place in May. Andrew Langdon QC was elected Chairman-Elect and Andrew Walker QC, Vice Chairman-Elect. Lorinda Long continues in the role of Treasurer.

Bar Conference

The Chairman concluded her address by encouraging everyone present to attend the Bar Conference on Saturday 15 October.

The Attorney General thanked the Chairman of the Bar noting that the breadth of work outlined in her address is illustrative of the amount that has been achieved in the last year.

2. Treasurer's Report

Lorinda Long, Treasurer, introduced herself and the Director of Finance, David Botha. She explained that normally the Chair of the Audit Committee, Michael Jeans, would also be present but he was unable to attend on this occasion.

Lorinda Long began by explaining that she would first look at the 2017 outlook before focussing on 2017 and beyond. Despite early setbacks, the financial outcome is on track as a number of cost reductions have been made. The Bar Council suffered a £300k shortfall in PCF however the BSB lower fee income has partially been offset by the retention of the Bar Course Aptitude Test (BCAT) and other contingency plans are in place.

Beyond 2017, the Bar Council expects to see big changes that will reduce risks. These include new office facilities for 2018/19 and beyond, investment in the Work Smart programme, investment in the Information Management programme that will enable the Bar Council to improve data management. The remaining risks include the pension scheme and the valuation highlights a risk of significantly increased employer contribution in the short term. Unfortunately the new low yield bonds have not assisted as hoped.

Eleanor Mawrey enquired about the shortfalls, asking whether the Bar Council will be able to recover them. She raised E&D concerns about the aptitude test, cited as a source of income, questioning whether students are paying more than they need to. David Botha explained that the delay in the introduction of the aptitude test has led to a double intake in one year hence the increased income. However, the test is not designed to generate income and the BSB are careful to ensure that surplus is not produced. Stephen Crowne also clarified that the basis for charging has not changed.

Angela Delbourgo, present for the AGM, noted that the BRF income has decreased. Saying that she had experienced difficulties in registering online, she suggested that the Bar Council make it easier to sign up. Stephen Crowne explained that there are various options for barristers to pay the BRF including via the telephone, and said that the BRF can be paid at any point during the year.

Stephen Crowne clarified that the BRF shortfall is against the target set. The number has increased year on year although not as much as the Bar Council would have hoped for.

Alexandria Carr asked a question about practising certificates for employed barristers, suggesting that all employed barristers should be required to have a practising certificate. The Chairman of the Bar confirmed that work is being carried out in relation to this issue as the Bar Council had experienced a small reduction in the number of employed barristers who

have paid the PCF. She anticipated that the question as when a practising certificate was needed would be an issue of further debate going forward, noting that the Law Society has been actively talking about this in the context of solicitors and those who are not registered but able to provide legal services.

Alexandria Carr further asked whether solicitors are treated the same way as barristers. The Chairman of the Bar explained that the central issue is to do with the definition of reserved activities and in turn the extent to which an individual solicitor or barrister carries out reserved activities. Andrew Walker QC added that those providing reserved activities require a practising certificate, but those who choose not to use the term 'barrister' in their practice and who did not carry out reserved activities are not required to hold one.

The Chairman of the Bar acknowledged that there are pressures in this area and noted the temptation among some organisations, including the SRA, to try and remove barristers. Alexandria Carr said that she understood that a subscriber can volunteer to pay the BRF without holding a practising certificate and asked whether it is possible to have a practising certificate if you are not obliged to have one. The Chairman of the Bar confirmed that it is possible and Andrew Walker QC made the point that this is desirable. Alexandria Carr suggested that more could be done to promote this.

Rick Hoyle asked about the nature of the update to the Bar Council at the November meeting. He said that he is concerned about the increase to the practising certificate (PCF) fee. Lorinda Long replied that the valuation has been carried out and the Bar Council is in the process of discussing issues with the Trustees. The Finance Committee need to discuss the options and come back with 'one or two' of the most viable options in November. The Chairman of the Bar explained that last year she and Alistair McDonald QC lobbied to keep the PCF down but a small increase was applied. Acknowledging the current difficulties, especially around pensions, and explaining that current discussions taking place with the Finance Committee and Pension Trustees, she encouraged members to attend the November meeting.

Referring to the Bar Council plans to move from its present location in 2018, Guy Fetherstonhaugh QC asked if there is any possibility of staying in the current building. Stephen Crowne explained that the plans of the landlords are unknown. The issue is a live one but the Bar Council expects to move.

Talking about the 2015/16 financial accounts, Lorinda Long reported an operating loss of £670k (£27k loss in 2015) and an overall loss of £845k (surplus of £1,065k in 2015). The operating loss was caused by a drop in non-PCF earnings and an increase in spend, primarily due to staff turnover. Non-operating results include LSB related activity and actuarial changes in the defined benefit pension scheme.

Regarding the balance sheet, Lorinda Long reported that the general reserves in 2015/16 have reduced to £3.5m from £4.1m. The cash position has improved due to a timing change in the cut off of the 2015 PCF collection process.

In summary, the finances remain sufficient for Bar Council needs over the strategic plan period although there is less contingency against uncertainty due to lower reserves. The Bar

Council remains vulnerable to external influences on the pensions scheme and has little ability to mitigate this in the short term.

A question was asked about the overhead allocation. David Botha explained that the overheads are the cost of the premises and the Resources Group shared services. The allocation is based on staffing. An increase on expenditure was realised specifically for the provision of project management expertise to the BSB. The Bar Council restructure also effected the allocation of monies between the BSB and the Bar Council which has increased BSB costs.

A question was asked about the potential conflict in the annual report. The BSB shows a 2% reduction over three years but the Bar Council accounts show a year on year increase. DB explained that the Bar Council accounts compare the results between 2015/16 and the prior year 2014/15 and that the BSB Annual report compare the results between the year 2013/14 and 2015/16. He advised that both report figures were accurate.

3. Chief Executive's report

The Chief Executive began his report by acknowledging that the Bar Council can do better in terms of controlling costs and forecasting income. However, he noted that this can be 'tricky' as the PCF income stream is challenging. The Bar Council is trying to understand the dynamics, lessons have been learned and stronger controls are now in place.

Stephen Crowne drew the attention of those present to the annual report. He explained that his role as Chief Executive is to ensure that the Bar Council can deliver against a broad agenda within constrained resources. The main challenge is that the Bar Council is ambitious and this is demonstrated in the breadth of the report. This year, for the first time, the annual report is being made available online.

Stephen Crowne explained that he is keen to emphasise the importance and value of the Resources Group who deliver services with considerable efficiency. A number of the investment programmes are driven by the Resources Group, for example the Work Smart and Information Management programmes, and the Group have established a very professional approach and relationship with the BSB. He acknowledged that challenge in providing services to both sides of the organisation and thanked the Resources Group staff, describing their work as 'an important and essential part of the organisation'. One reason why a complete separation of the regulator from the Bar Council is not attractive is that the Bar Council would lose the benefits that the Resources Group provide.

The Bar Council is implementing programmes in information technology and its accommodation and those who visit the Bar Council offices will be able to see the benefits. The change is as much about cultural working practises as it is about facilities. While the Work Smart programme may be challenging for colleagues who 'like paper' the staff are enthusiastic about the changes.

Stephen Crowne gave personal thanks to the Chairman of the Bar and the Officers and praised the way in which the executive works together saying that the staff find this motivating. He also thanked all Bar Council members, particularly Committee Chairs and those carrying out

work on a pro bono basis. The Bar Council is a member driven organisation. No other organisation has this quality and level of commitment which is a unique selling point. He encouraged those present to share any concerns they may have with him.

Thanks were also given to the 'committed and enthusiastic' Bar Council staff members. Stephen Crowne said that it is noticeable that staff commitment has increased since he began in the role three years ago and said that he is confident that the Bar Council will continue to make positive changes.

Stephen Crowne finished by thanking Middle Temple for providing the accommodation for the AGM. Good progress has been made on securing rooms at the Inns for the meetings next year although it may not always be possible to house Bar Council meetings at the Inns.

4. Any other business

There was no other business reported.