



**Minutes of the Bar Council meeting  
held on Saturday 7 July 2018 in the Sherrard Room, Rutledge Suite, Middle  
Temple**

Present:	Andrew Walker QC	Chair
	Richard Atkins QC	Chair Elect
	Lorinda Long	Treasurer
	Robert Buckland QC MP	Solicitor General

**Apologies for absence**

Apologies for absence were received from: Robin Allen QC, Efe Avan-Nomayo, Nicholas Bacon QC, Kieron Beal QC (alternate attended), William Boyce QC, Ivor Collett, Quentin Cregan, Tim Devlin, Katherine Duncan, Guy Fetherstonhaugh QC, Birgitte Hagem, Neil Hawes QC, Rupert Jones, Jennifer Josephs (alternate attended), Eleanor Mawrey, Stuart McCracken, Cathryn McGahey QC, Paul Mendelle QC, Rebecca Murray, Martin Nelson, Francesca O'Neill, Amanda Pinto QC, Richard Posner, Benjamin Seifert, Joe Smouha QC, Andrew Spink QC (alternate attended), Daniel Sternberg, John-Paul Swoboda, Leanne Targett-Parker, Sonia Tolaney QC (alternate attended), Mark Trafford QC, Nicholas Vineall QC, Rhodri Williams QC, Jeremy Wright QC MP and Sara Wyeth.

The following did not attend and did not send apologies: Jennifer Agnew, Christopher Henley QC, Rachel Langdale QC and Rachel Spearing.

74 further members attended.

**1. Minutes of the last meeting**

The Chair welcomed members of the Bar Council to the meeting thanking them for coming on the 'super soccer Saturday'.

Noting that there had been a few leavers and joiners, the Chair welcomed the following new members:

- Eason Rajah QC – the new Chair of the Chancery Bar Association
- Nicholas Johnson QC – a subscriber elected by the North-Eastern Circuit
- John Goss – a subscriber appointed by Gray’s Inn
- Kieron Beal QC – the new Chair of the Bar European Group (not in attendance but who sent Celia Rooney as an alternate)

The Chair also bade farewell to Melissa Coutinho, a subscriber appointed by Lincoln’s Inn, as she has become a Bencher of Lincoln’s Inn.

The Chair congratulated the former Chairman of the Bar, Sir Nicholas Green, on his appointments to the Court of Appeal and Chair of the Law Commission. He said that he looked forward to working closely with him.

The minutes of the Bar Council meeting on 19 May 2018 were approved.

The Chair thanked the Solicitor General, Robert Buckland QC MP, for attending the meeting. He went on to thank Lucy Frazer QC MP, the Parliamentary Under Secretary of State at the Ministry of Justice (MoJ), for coming to speak to members of the Bar Council. He finished by welcoming the Director of Public Prosecutions, Alison Saunders, to the meeting.

## **2a. Statement by the Chair – introductory matters**

The Chair said that he wished to cover two items in his statement before turning to the issue of court ID cards.

Drawing the attention of the members of the Bar Council to the section in his statement on AGFS, Criminal Bar action and the way forward, the Chair said that he hoped that members are aware that a form of resolution has been achieved. Saying that the hopes expressed at the last Bar Council meeting ‘have come to fruition’, the Chair reported that the Bar Council is continuing to work with the MoJ to help identify where the money should go. A consultation is anticipated over the summer period which, on the one hand, is welcome as barristers should receive higher fees sooner rather than later. On the other hand, there are two longer term considerations:

1) There are some things that cannot be solved in the immediate future. For example, listings, legal aid, court catering and CPS funding. These issues will resonate with all users of the court system and they are projects on which the Bar Council continues to work; and

2) The challenge of securing more money for the criminal justice system. The MoJ receives its budget from the Treasury. The current spending settlement expires in April 2020 after which a new five-year settlement is due to be implemented. The role of the Bar Council is to ‘cajole, encourage and assist the MoJ’ to ‘win the argument’ and secure more money. This is a key priority.

On the second point, the Chair noted the relatively short timescale and appealed to members of the Bar Council to assist if asked.

### **3. Court security**

Moving on, the Chair said that he wished to discuss one other matter that he hoped would be welcomed. Referring to court security, the Chair explained that the Bar Council is in the process of producing ID cards that will secure counsel priority access into courts. The format will be that of an electronic ID card that works in a similar way to electronic boarding passes. Barristers will still need to comply with the usual security arrangements of the court but the card should allow for priority access. The ID card scheme needs to be piloted as it is dependent on its working in courts with different access arrangements. The hope is that it will be piloted in the most problematic courts but there is no confirmation of the pilot courts yet. The Chair revealed that he had spoken to Susan Acland-Hood, HMCTS Chief Executive, and gained the impression the scheme will not be solely for the Bar. The Bar Council is confident that it can move swiftly and introduce the cards via MyBar within a month. The Chair finished by saying that he would like a steer from members of the Bar Council as to whether there should be a physical, 'hard card' option.

Andrew Morgan, who works in the CPS, said that he carries a CPS government ID pass. Despite this, he is stopped and searched each time he accesses a court despite showing his pass on entry. Saying that he travels frequently to at least six courts, he reported that he has had items confiscated. He advised that, although HMCTS may have agreed to the ID cards initiative, it will be more difficult to engage locally as court security comes under a separate contract. He said that he thought the scheme will gain little traction - whilst the court do not engage meaningfully with their security contractors about the present problems face by court advocates on both sides.

The Chair said that the judiciary give high priority to court security and revealed they were nervous about the scheme. He explained that Susan Acland-Hood is aware of the problems and said that the pilot should help to reassure the judiciary. Acknowledging that there should be central clarity about what barristers may or may not take into courts, the Chair said that the ID cards would provide additional security benefits. The Director of Policy, Phil Robertson, is leading on this project and he will take comments back to the Project Board.

Rehana Popal made the point that some of the courts only have one single metal detector and, therefore, only one single point of entry. The Chair replied that he is aware of this and said that it is his understanding that the cards will allow barristers to jump queues. Phil Robertson said that the courts for the pilots will be selected on the basis that they are all different.

Richard Gibbs said that he thought the idea was a 'solid' one but asked how long the pilot will take and when it is going to start. The Chair replied that HMCTS wants to start the pilot in August for three months. The Bar Council is trying to encourage

HMCTS to start the pilot once all the technology is in place and is trying to persuade HMCTS that two months would be sufficient but there is no formal announcement as yet.

Richard Atkins QC asked what Bar Council members thought about physical or electronic cards. He said that he suspected that while many members of the Bar have an iPhone there will be one or two who do not and suggested that, although he would encourage the iPhone option, the option of a 'hard card' should be offered for a higher charge so that the Bar Council is not running at a loss.

The Chair asked whether the members of the Bar Council agreed that the cards should be electronic by default but with an alternative option of a physical card. This was agreed.

Eleena Misra asked whether the electronic ID cards would be accessible offline or whether it would require wifi. Malcolm Cree confirmed that it would be available offline and the Chair explained that it would link to the Bar Council database, therefore, if a barrister ceases to practice, he or she will no longer have access.

Rehana Popal asked whether cards would be available for pupils. The Chair replied that they would not be as pupils do not have practising certificates but agreed to raise this with the Project Board as an issue as there may be a way to achieve this with a provisional certificate.

Sydney Chawatama enquired about access for clerks but many members of the Bar Council said that, in their experience, clerks get priority access to the courts anyway.

The Chair brought the discussion to a close saying that he hopes that by the next meeting the pilot will be underway.

#### **4. Parliamentary Under-Secretary of State at the Ministry of Justice: address**

The Chair handed over to Lucy Frazer QC MP, Parliamentary Under-Secretary of State at the Ministry of Justice (LFQC) and a former member of the Bar Council. He explained that she has a portfolio that covers courts, legal aid and Brexit and that he thought she proposed to say a few words before taking questions.

LFQC began by thanking the Bar Council for work done on behalf of the Bar. She explained that she had been an MP since 2015 and that she is now a Minister at the Ministry of Justice. Saying that she had been a member of the Bar Council she noted that politics is 'really different' from the Bar and recounted the story of an encounter between Jeremy Hanley and Margaret Thatcher following his narrow election, by 74 votes, as MP for Richmond and Barnes in 1983. Margaret Thatcher had visited the constituency the day before his narrow win (he won with around 20,074 votes) and he thanked her for having come saying that he was sure that she won him the 74 votes. She replied, 'no Jeremy, you won the 74 votes, I won the other 20,000'!

LFQC said that politics is a team game – one that you can only win if you work as part of a team. She said that, having been a barrister for 17 years, her interests lay in ensuring that the Bar attracts the best people. Equality and diversity issues were cited as being of special interest stemming from her university days on the Student Council. Later, as a barrister she regularly supported people on social mobility programmes in chambers and she said that the main reason she is an MP is to work towards ensuring equality of opportunity at any stage of someone's life.

She wished to address three specific topics in more detail: AGFS, Court Reform and Brexit. Starting with AGFS she said that she understood 'where the Bar comes from'. Explaining that she had previously sat on Bar Council, has friends who are barristers and was a barrister herself, she said that she had a greater understanding of the issues due to her meetings with the Chair of the Bar, and the Chair and Vice-Chair of the Criminal Bar Association (CBA). She sought to reassure members of the Bar Council that the MoJ and government are listening and are keen to 'get it right the first time'. The MoJ has been working with the Bar Council and CBA for more than two years and the AGFS scheme came out earlier this year. Significant progress has been made but the government recognises there is more to do. Talks have taken place continuously throughout the implementation of the scheme and the government wishes to continue collaboration with the Bar Council and CBA and will be bringing amendments forward shortly. Saying that the relationship is one of transparency and honesty, she reported that the government is still committed to a review in 18 months' time as it wants to ensure that the legal aid reforms being implemented are 'just right'.

On the subject of court reform, LFQC reported that St Bartholomew's Hospital is not far from her. It has now got its first 'Da Vinci' surgery system machine and there are another 73 such machines serving hospitals across the UK. Technology is changing the way in which we live our lives and the world is going through a technological revolution with six billion messages shared on WhatsApp and Instagram per day. Comparing this to the justice system, she said that it was interesting that the judiciary first called for digitisation and she ran through progress to date including Lord Woolf's comments on the importance of introducing effective IT systems in the courts and tribunals system in the 1990s and the Civil Justice Council report in 2015 which outlined a lower cost system and an increase in access to justice.

Noting that digitisation is working elsewhere in the world, she reported that 60 million disagreements are resolved via digital arbitration programmes per day. There has been a definite step change and the government is investing £1B in our justice system. For example, 60% of people seeking a divorce do so online. The new system has proved to be better for making applications. Before this, 40% of applications had errors. With the introduction of a digital system this has reduced to less than 1%. Small claims are also to be dealt with online and trials are taking place for people to apply for probate online. In addition, a system that will allow the courts, police and CPS to share documents online is in the development stages. The MoJ understand

that the justice system needs to remain just as good and acknowledge that the buildings need to be improved. £110M has already been spent on improving the infrastructure and a further £5M was invested on small, but important, repairs to court buildings. In all, there are almost 300 projects across 250 sites and the same is planned for next year.

LFQC continued by saying that a modern, digitised, streamlined system for people to work in is the aim but the nature of the reform is challenging. Appealing to the members of the Bar Council, she made the point that they are uniquely placed to provide feedback. The trust and support of legal professionals is integral to ensuring good progress going forward. Talking about the issues in getting into courts, she sought to reassure members of the Bar Council that if the pilot is successful, the MoJ will look to streamline entry to courts countrywide and she promised to keep members updated.

On Brexit, she said that in her role as a Justice Minister, she is keen to ensure that Britain agrees the best arrangements possible given the ambitious programme. Referring to her work as an MP, she said that she finds that arguing for change is much more effective when done in conjunction with others, for example, neighbouring constituencies. She drew a parallel with this and the relationship between the government and the Bar saying that 'we can achieve so much more on all areas' if we work together.

Angela Rafferty QC spoke of the strength of feeling at the criminal Bar. She asked what the MoJ intends to do about the crisis in the criminal justice system. LFQC replied that she and the Lord Chancellor have heard many concerns which they take very seriously and said that she hopes that they are addressing them in the right way. Explaining that it is right that the issues are looked at across all broader areas affecting the criminal Bar, for example listing and ID cards), she said that it would be good to work with members of the Bar Council and its Chair to help identify what those areas are.

Richard Gibbs thanked LFQC for coming to the meeting noting that it is an important interface. However, he said that he senses a disconnect between the picture painted by the MoJ and the reality of what barristers face. He reported that he had been in Wolverhampton Crown Court recently. The CPS room is under water, as is the jury retirement room, and the CPS staff are currently working in a very small room. Explaining that this is one example only, he made the point that the Bar hear about the money being spent but do not see its effect. The fabric of the building is important and he encouraged LFQC to visit the courts to see for herself. Calling for a more 'open eye view' to be taken, Richard Gibbs said that the Bar needs reassurance about the appalling state of the court system.

LFQC acknowledged that it is important to maintain the fabric of the court buildings. She promised Richard Gibbs that she would take his point away but explained that there are 350 court buildings to maintain. The MoJ understands the need to ensure they work without disruption but there are challenges. Some buildings are listed and some are not appropriate. It costs a lot of money to maintain the courts and feedback is welcomed. She visited many courts since she was appointed and spent 17 years working as a barrister. She finished by saying that the MoJ will continue to work on the issues but asked members of the Bar Council to understand that there are 350 buildings.

Sean Jones QC said that he had some feedback on technology in tribunals. Explaining that he is a fee paid employment judge in the South-Western region, he reported that the courts have done away with physical case files. He finds it impossible to get access to the cases despite having access to an Office 365 sharepoint because the Office 365 sharepoint used by the administrative staff is separate. For example, if he is to upload a draft judgement to the Judicial sharepoint, the administrative staff cannot access it, even if a link is sent to them. Furthermore, fee paid employment judges do not have access to the drive on which the electronic case files are held and are, therefore, unable to look at the file, which contains the pleadings, at all. He asked whether this was done by design. LFQC said that she would take away his point and reminded members of the Bar Council that 'lots of exciting things' are currently happening with regards to court reform. Sean Jones QC replied that his point was that, no matter what, he is not able to see the pleadings online.

James Keeley introduced himself, saying that he has also been a practising barrister for 17 years. Raising the issue of diversity at the Bar, he said that he, along with others in the room, had very recently become a social mobility advocate for the Bar Council as part of the 'I am the Bar' campaign. Explaining that it can cost up to £100k to qualify as a barrister, he said that the Bar is still for the 'few and elite' and that the government is failing in the area of access to the profession. Going on to say that the remuneration aspect of prosecution fees is untenable, he suggested that the raising of fees would help access to the Bar.

LFQC agreed that diversity at the Bar is very important. She reported that she had attended a dinner with some judges as part of a conference about diversity in Northampton two nights earlier where they had discussed programmes whereby people from the Bar and judiciary go into schools to encourage pupils in their future careers. She said that she agreed with James Keeley's point on fees but said that it is not a problem specifically for the MoJ, rather it is an issue that needs to be explored more broadly.

Michael Hayton QC welcomed LFQC's presence at the meeting but used a household analogy to illustrate the problems at the Bar. He said that the problem is that the government is 'investing in high speed broadband at home while the roof falls apart'

and made the point that investment should not be made at the expense of the infrastructure. LFQC sought to reassure him that the issue of infrastructure is taken very seriously. There is a live consultation at the moment and the MoJ are thinking about the upkeep of the existing buildings.

Max Hardy said that he has recently been prosecuting an attempted murder case at St Albans where the victim, who is in a wheelchair, has been faced with broken lifts. For the first week, when giving evidence, he used the judges lift but thereafter he has had no choice but to hop up three flights of stairs as he, understandably, wanted to remain for the remainder of the trial. Making the point that this would not happen in the NHS, Max Hardy asked how the MoJ has tolerated the courts getting into this state in the first place.

LFQC asked how members of the Bar Council and other barrister experiencing these things report them. She enquired as to whether there is a reporting system. The Chair replied that there should be a dedicated member of staff in each court to report matters to and LFQC said that this is important that the MoJ know about as many issues as possible. Greg Williams raised concerns about the continued practice of the cross examination of vulnerable witnesses in the courts and asked whether the Prison and Courts Bill will 'ever see the light of day' again. LFQC replied that there is cross party agreement that cross-examining in these circumstances should not be. The issue is working its way up the waiting list and the MoJ is working hard to push it forward. However, Brexit is dominating discussions at the moment.

Frances Judd QC thanked LFQC for coming to the meeting and also for making the time to meet her the previous week. She noted that in the family court there have been a number of issues of concern, including the closing of the Family Drug and Alcohol Court (FDAC) National Unit. She asked whether the MoJ would be looking at further funding of problem solving courts such as this which were effective in allowing children to remain at home rather than being taken into care. LFQC agreed that these are important issues, and that she had heard that the FDACs were effective courts. She is due to visit a family court shortly and she would consider the issues further when she had had more time to do so.

Rick Hoyle introduced himself to LFQC saying that she would probably not remember but he once spent a day with her on a mini pupillage. He asked three questions. Referring to The Secret Barrister book sent to all MPs by the Young Barristers' Committee, he asked her the single biggest problem that she had identified in the book that she would like to change. LFQC replied that she had identified a number of issues and that it would not be appropriate to pick one. She made the point that the MoJ is not responsible for all of them as some fall within the remit of the police or the CPS. She also spoke of the need to work together.



Rick Hoyle then said that he had listened carefully to everything LFQC had said. He made the point that other professions providing vital public services, for example school teachers or the armed forces, are subject to yearly independent reviews and asked whether, in light of the review of AGFS in 18 months, consideration may be given to the creation of an independent Pay Review Board for publicly funded practitioners. LFQC reiterated that the MoJ has committed to a review in 18 months.

Rick Hoyle's final question was about the funding of the Family Drug and Alcohol Courts. At present, the National Centre requires £250k annually by way of assistance but will have to close in September if funding cannot be found. He asked whether the MoJ would look into continued funding, given that the evidence suggests that money spent on such Courts saves money elsewhere in the system. LFQC replied that the MoJ will be looking closely at this.

Nigel Sangster QC made the point that everything that had been discussed requires more money and said that it is his understanding that the MoJ comes 'at the back of the queue'. He asked whether the reality is that without money there will be no change. LFQC replied that the MoJ are spending £1B on court reform which is very much needed. This represents an investment in justice and the fabric of court buildings. She assured members of the Bar Council that when there is a spending review, the MoJ will make its case.

Colin Andress thanked LFQC for coming to the meeting. Referring to her earlier words about the importance of team work he made it clear that in the courts barristers get the impression that they are not considered part of the team. Offering examples of ushers turning their backs on barristers, papers that haven't made it to the judge, cases pulled at 2pm the previous day and delays with pay, he illustrated why barristers do not feel part of a team and asked LFQC to try to persuade court staff that they are part of the same team and not opponents. She replied that she was sorry to hear about these experiences but said that the courts user satisfaction survey had been positive. She did, however, say that the MoJ are looking at these points and mentioned that Fiona Rutherford, Deputy Director for Business Strategy, was in attendance to record these points. Together they have been visiting barristers across the country to obtain feedback. Saying that she was particularly interested in any views on improving communications, she promised to pass the point on.

Rehana Popal said that she practices in immigration and human rights law and the courts are not fit for purpose. She recalled sitting on a concourse to discuss a rape and torture case and said that this cannot be right. The courts do not allow empty rooms to be used but some people have young children and the spaces they are forced to use are not appropriate. LFQC asked Rehana Popal to email the MoJ about her experiences. She said that she had been to Liverpool a few weeks ago where the court

has invested in a family space and that the MoJ are looking at family and children provision.

Michael Polak thanked LFQC for speaking. Noting that she would have read about the 'innocence tax' in *The Secret Barrister* whereby people are at risk of losing their houses even if found not guilty, he asked whether she thought this was fair and what she would do if she did not. She replied that the MoJ is in the process of a Legal Aid Review and these points are being considered. Michael Polak pointed out that he was referring to people who did not qualify for legal aid and asked if she understood what he meant. LFQC stated that she did as she had read an article about it and that the review will look at issues more generally.

The Chair asked Alison Saunders, Director of Public Prosecutions, if she wished to add anything, but she said she had no more to add. The CPS is working with the MoJ and will be talking to them about more resources.

Robert Buckland QC MP said that the MoJ, the Attorney General's Office and the CPS work together on issues and will have coordinated the approach before they go to the Treasury which is important. Noting that this is the second time he is going through the process he assured members of the Bar Council that they are ready to make the case. The team have all read *The Secret Barrister* and lots of work is being carried out on disclosure with a review due to be published in the next few weeks. He assured members that this is not simply a handling exercise, the MoJ is looking at hard and fast projections and proposals. Explaining that he knows and understands the problems, he asked members to look out for the review which he hopes will be of interest.

LFQC said that there had been some very valid points raised and reassured members of the Bar Council that although they might feel they had not been answered, the MoJ are interested in hearing them. Acknowledging that it is not possible to 'solve every problem today', she said that the MoJ do want to resolve the issues but need a system to collate feedback on court buildings, in particular where things are working or not working well. Raising the need to engage with the profession, she noted that some of the issues are about money but not all of them and she promised to continue to liaise and discuss progress with the Bar Council.

Richard Atkins QC said that he and Malcolm Cree had been discussing ways in which to channel these experiences to send to the MoJ as it is important to get the information through to those who need it. Reporting that he is sometimes guilty of not reporting problems when a simple question to the right person would easily solve the issue, Richard Atkins QC suggested that ways of working with the MoJ could be discussed at a future Bar Council meeting.

The Chair thanked LFQC for coming to the meeting and members of the Bar Council gave her a round of applause.

## 5. BSB report

Baroness Blackstone spoke to the BSB's report. She was accompanied at the meeting by Naomi Ellenbogen QC, Vice Chair, Vanessa Davies, Director-General, and, Wilf White, Director of Communications and Public Engagement. Baroness Blackstone highlighted Future Bar Training (FBT), the regulation of advocacy within the criminal courts report and a BSB paper that had been published in the week.

### *Future Bar Training*

On 30 May, the BSB published a new Policy Statement setting out pupillage and other forms of work-based learning, the authorisation framework, and the curriculum and assessment strategy. Baroness Blackstone sought to reassure members of the Bar Council that the BSB has never doubted that pupillage should remain an essential element in Bar training, but they are keen to allow a little more flexibility around its delivery and want to ensure that, in light of the remuneration problems faced by the young Bar, the minimal pupillage award is at an attainable level.

Baroness Blackstone explained that nobody will be obliged to change their current practice and said that flexibility will allow the structure of pupillage supervision to be slightly more flexible for the employed Bar. The Bar Council wants these changes to be kept under review and the BSB proposes to do so. For example, the Bar Council supported the BSB's proposal in principle that the minimum pupillage award should be set at the minimum wage to make sure that pupils are not struggling to survive but would like some monitoring on the effect this may have on the number of pupillages being offered.

The BSB seeks to strike the right balance between those who want 'masses of detail' and those who want less when it comes to the authorisation framework.

A new Curriculum and Assessment Strategy will be introduced. Its aim is to ensure that prospective barristers meet the competences of the Professional Statement and that they are assessed in the most appropriate way during each training component in their route to qualification.

### *Judicial perceptions of the quality of advocacy in the criminal courts*

On 27 June the BSB, together with the Solicitors Regulation Authority (SRA), published a jointly commissioned report exploring the views of the judiciary on the current quality, provision and regulation of advocacy within the criminal courts. It takes into account the views of 46 circuit judges and four high court judges and it a qualitative report that aims to give a feel about judicial perception. The sample was drawn from all six circuits, and in terms of gender and ethnicity was broadly reflective of circuit judges as a whole.

The research found that, overall, judges regarded advocacy as competent and bad advocacy as relatively rare. Advocates dealing with vulnerable witnesses are thought to have improved. The BSB was not surprised to find that most judges felt that the advocacy skills demonstrated by those at the Bar were better than those demonstrated by solicitor advocates. More than half of the respondents said that levels of remuneration for advocacy led to low morale and affected the quality of advocacy. Poor preparation, and advocates taking on cases beyond their level of experience, were cited as examples.

Judges seemed uncertain as to where and when they should report bad advocacy to the BSB, and Baroness Blackstone said that this will be addressed. Others felt that this was not an appropriate area for regulation by the BSB, but the Baroness said that she rejected this view and she encouraged members of the Bar Council to read the report.

#### *Assuring the competence of barristers - paper*

Baroness Blackstone reported that a paper on the BSB's efforts to become more risk- and evidence-based regulators was published on 5 July. The BSB's aim is to introduce more focused regulation and to be more selective on what is looked at where concerns are expressed. The approach on assuring standards introduces some additional measures that have already been implemented. For example, the BSB's FBT reforms include a clearly defined set of knowledge, skills and attributes expected of all newly qualified barristers on their first day of practice; the CPD scheme for experienced barristers combines a bit of 'robust monitoring' with barristers deciding their own objectives; and, the BSB also needs to look at 'gripping regulation controls', ensuring that barristers do not take work unless they are competent enough to do so.

The paper also explains how the BSB uses external indicators of the profession's competence to inform its regulatory approach. Baroness Blackstone asked members of the Bar Council to let the BSB know if there are areas that the BSB should be looking at.

Nigel Sangster QC made the point that some barristers think that some judges could improve and vice versa. Rick Hoyle agreed saying that a judge commenting on the advocacy of a barrister who has previously engaged in a 'robust manner' with him or her on behalf a client can be a sensitive matter and may be undesirable.

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

Malcolm Cree began by thanking everyone who organised and attended the Bar Council's Summer Reception on 26 June, Temple Church.

A pricing review, led by Isabel DiVanna, Commercial Director, has taken place encompassing all the services, training and events that the Bar Council offers. A new Head of Marketing will be joining us next month to look at the conclusions of the review and help to set some priorities.

## **7. Statement by the Treasurer**

Lorinda Long informed the Bar Council that the group financial accounts for the year to 31 March 2018 have been completed, audited and accepted by both the Finance and the Audit Committees. She went on to highlight the main points. The full accounts will be brought to Bar Council in September for approval at the AGM and will be published on the website.

A surplus of £0.88M was achieved against a surplus of £0.68M last year. This was driven by the new funding plan for the defined benefit pension scheme which was put into effect in the last year.

The day to day operations of Bar Council and the BSB made a small loss of £64,000. The underlying financial performance was sound but some 'write-offs' were incurred late in the year associated with the decision to withdraw from the Fetter Lane lease negotiations.

Reserves have increased to £3.6M from £3.0M in the prior year as a result of recognising some historic gains made in our investment portfolio.

The Bar Council's pensions' liability, the accounting valuation of the defined benefit pension scheme at our year end, improved significantly so that a small surplus was made from the £1.3M deficit last year. This is mainly due to the new funding plan of £1M made in 2017. Stronger returns on asset investments also contributed to the surplus.

Overall cash levels have declined by £0.6M because of continued capital investment into our information management systems and other systems. However, our underlying operations generated more cash after taking into account the implementation of the 2017 pension plan. This demonstrates our capability to rebuild our cash reserves.

### **2b. Statement by the Chair – continued**

The Chair reported that Bar Council election process for new members in 2019 will start in September. Information about the process will be available on the Bar Council website from Friday 31 August 2018. The Chair asked members of the Bar Council to encourage people to stand.

The first of an anticipated series of Bills to replace the pre-election Prison and Courts Bill, as mentioned by LFQC, was published at the end of May. The Chair said that his impression is that the LFQC would like to see the Bill passed without generating debate on unwanted matters, but that she is having problems with persuading the legislators for a slot.

The Chair thanked advocacy trainers for giving up their weekends to provide the Bar with vulnerable witness and advocacy training. The judiciary believes that this training makes a difference and suggestions have been made that the same approach should be adopted by the Bar for regular examination.

Two pieces of research based on the 2017 Working Lives survey were launched in May and June respectively and can now be found on the Bar Council's website. The most recent data on bullying and harassment at the Bar was misreported. The data shows that there is an increase in reports of bullying and harassment; it is not clear whether this indicates an increase in occurrence. Members of individuals' own chambers seem to be the primary source. The BSB will be holding a roundtable on 11 July to discuss what to do about this issue and whether there is a better or more effective way to deal with such matters. The Bar Council provides training and training products on bullying and sexual harassment and the Chair said that he is hoping for more guidance from the BSB to assist.

The Chair reported that the 'I am the Bar' campaign has been very successful and he encouraged members of the Bar Council to read the stories and re-tweet them. The profession needs to showcase those involved in the campaign to challenge the male, white, middle class stereotype.

The Chair reported that he would be joining his legal equivalents at The Law Society and CILEx for the PRIDE march that afternoon.

## **8. Court reform programme – Bar Council policy priorities**

The Chair introduced the report on the Court Reform Programme which outlines what the Programme really involves and the Bar Council's policy priorities, as promised at the last Bar Council meeting on 19 May.

There are 52 different strands of the Court Reform Programme, some more relevant to the Bar than others. Ellie Cumbo, Head of Policy – Legal Affairs, Practice and Ethics, has aimed to tease out the main themes.

In addition to the paper, the Chair made the following comments:

- i. In the Prime Ministers Mansion House speech, a new London Court Centre was announced. This will have an impact on other London courts, especially Crown Courts.
- ii. Para 23 onwards includes comments from the Chair on scheduling and listing at courts. The Chair is pleased to say that messages from the Bar have been heard and there is now a proposal for legal professional engagement on scheduling and listing. It seems that HMCTS are prepared to consider engagement outside the Court Reform Programme. The Chair asked members

of the Bar Council for their engagement, saying that barristers will be sought to sit on groups and join discussions.

The Chair urged members of the Bar Council to read carefully through the paper and email him with any comments and / or suggestions that they may have.

## **9. Annual Bar and Young Bar Conference 2018**

Lucinda Orr thanked all the SBAs and committees for the content of their sessions and appealed to those with outstanding session content to send it through as soon as possible so that the conference can be marketed effectively.

Members of the Bar Council were also encouraged to attend the Conference this year and asked to bring the conference to the attention of colleagues. This year, the title is 'All Bar None' was chosen to promote the themes of equality, inclusivity and collegiality at the Bar, alongside the need to develop and diversify practice, as barristers progress through their careers, and as technology advances. The theme was also chosen to highlight that the Bar should be open as a career path to anyone with the requisite talents and commitment; and lastly, that access to justice should be open to all in need of legal redress or remedy.

Lucinda Orr reported that there is a fantastic line of speakers this year, including:

- Baroness Chakrabarti CBE, PC, Shadow Attorney General of England & Wales;
- The Rt Hon Lord Sumption OBE, Justice of the Supreme Court;
- The Rt Hon Lord Justice Hickinbottom;
- The Rt Hon Jeremy Wright QC MP, Attorney General of England & Wales; and
- Her Honour Judge Molyneux MBE, Circuit Judge at the Central Criminal Court.

The Conference this year will be held on 24 November 2018 at De Vere Grand Connaught Rooms, London.

## **10. Legal Services Committee (LSC)**

Derek Sweeting QC, Chair of the LSC, spoke to the LSC report. He thanked all of those who had written to him regarding block listing. The LSC and the Personal Injuries Bar Association (PIBA) have written to Susan Acland-Hood to raise the issue of block listing on the civil side as it is a significant problem for the Bar, witnesses and litigants. While one of the 52 strands of the Court Reform Programme focusses on listing, it specifically excludes block listing since it is a judicial function. LSC will be speaking to HMCTS about this and some other matters.

Derek Sweeting QC reported that the government does not presently direct users to sources of legal advice through the Civil Money Claims ("CMC") service, which would improve access to courts, justice and advisers. This raises the question of whether legal advice from the Bar should be available through an online service. At the moment CMC includes a drop-down box for mediating disputes but the LSC's feedback is that a lot of mediators are being asked to give advice, which is why a similar system for the Bar is clearly needed. If such a system is to be created, the support of the Bar, especially the Young Bar, will be required. He reported that he had attended a meeting with the civil servants designing the system last week and said that they had seemed interested in talking to the Bar Council about it. Nevertheless, there are technological challenges that will need to be resolved.

Reporting that work on the new GDPR is ongoing, Derek Sweeting QC said that he hoped that members of the Bar Council had found the information from the IT Panel useful.

#### **11. Bar Representation Committee (BRC)**

Fiona Jackson, Chair of the BRC, spoke to the BRC's report explaining that it represents a thorough review of the 'commercial arm' of the Bar Council.

She drew the attention of members of the Bar Council to paragraph 5 of the report. Much of the committee's work will not be able to continue unless barristers pay their Bar Representation Fee (BRF) subscriptions. There is a common misconception that membership payment to a Specialist Bar Association equates to paying the BRF, which is not the case. The committee will be writing to all members of the Bar Council soon explaining where their chambers fall short.

Fiona Jackson reported that the BRC has a lot of ongoing work, with a lot of training taking place.

In light of the possible closure of BARCO, Andrew Granville Stafford enquired as to whether a viable alternative will be put in place for those who use the service. Fiona Jackson explained that BARCO is not getting the traction that was hoped for, the level of income to the Bar Council, as opposed to the costs of running it, do not add up and this is a matter that has been under the spotlight for a number of years. BRC is now aware that there are other escrow products on the market available to barristers that were not available before. Before proceeding with the possible closure, the BRC will ensure the availability of other products for those who need them.

James Keeley urged Bar Council members to send an email after each Bar Council meeting explaining the topics that were discussed and urging them to pay the BRF so that the vital work can continue.



## 12. Any other business

A note from Amanda Tipples QC had been circulated concerning a pilot scheme for judicial assistants in the commercial courts. There is a pilot in train with three judicial assistants provided to commercial courts by their own chambers. The Commercial Bar Association (ComBar) has decided to continue the scheme for an a further year.

The scheme generated concerns when outlined at the General Management Committee (GMC) meeting on 2 July. The Chair reported that he has spoken with Andrew Spink QC and proposes in the first instance to discuss the main concerns with Andrew Spink QC and Mr Justice Popplewell. He did not consider that this meeting was the time for a full debate, as the issue had come to the fore very recently, little information was available to members and ComBar had been given little opportunity to respond. Andrew Spink QC was also out of the country.

Eason Rajah QC explained that the concern is around the pilot scheme being funded by a Specialist Bar Association. ComBar has increased their membership subscription fee by 50% to pay for the judicial assistants. The Chancery Bar Association feels that this is not a function for the Bar, it raises an issue of independence from the judiciary. There are further worries about a precedent being set, which could give the impression that the Bar is willing to assume some of the MoJ's funding responsibilities. The ChBA is very clear that, if asked, it will not fund judicial assistants in the Chancery Division.

Michael Collett QC, representing the views of the London Commercial and Common Law Bar Association (LCLCBA), having canvassed the views of his committee, cautioned that care should be taken with interfering with a Specialist Bar Association's affairs. He expressed concern as to whether this is an appropriate issue for the Bar Council to discuss. The Chair acknowledged his point but said that his personal view was that if one section of the Bar is concerned about what another section of the Bar is doing, then that would not be inappropriate for discussion at Bar Council. Moreover, the issues raised by Eason Rajah QC apply more generally to the profession and the rule of law.

Henry Webb said that he has discussed this matter with colleagues on the Property Bar Association committee, and the PBA agree with the position of the Chancery Bar Association. They feel that the proposal is divisive as between different parts of the Bar. They discussed whether the Chancery Bar Litigants in Persons Support Scheme (CLIPS) was similar but decided that CLIPS is more related to access to justice whereas this feels more like members of a wealthy part of the Bar funding a service which primarily benefits themselves.

Rick Hoyle made the point that that from a young Bar perspective, this is a fantastic opportunity for individuals to spend some time as a judicial assistant. However,

consideration needs to be given to the potential impact on the funding of the justice system. He said that he thinks this is worthy of a wider debate but advised that he would not like to see Specialist Bar Associations standing against each other, and the better way forward would be to ensure that all views can be taken into account and properly discussed when a longer term decision is being taken at the end of the pilot.

Frances Judd QC said that she is of the opinion that the provision of judicial assistance by COMBAR raises issues of judicial independence and said that this needs to be considered carefully.

Athena Markides agreed with Frances Judd QC adding that this may impact on commercial court users who weren't members of COMBAR, including barristers who are not members of Combar and litigants in person.

David Joseph QC, who attended the Bar Council meeting as an alternate for Andrew Spink QC, Chair of ComBar, sought to clarify any possible misunderstandings. He said that:

- i. The judicial assistants pilot scheme is an extension of an already existing operation run last year. Albeit the pilot scheme proposed for this year has a number of important new features designed to widen accessibility and strengthen the scheme. Really good feedback was received from the judicial assistants and now those from across the Bar, not just from ComBar sets, are able to apply for these positions and serve as a judicial assistant for a five month period. Each JA will be paid £18,000 which is set at the remuneration figures received for JAs in the Court of Appeal and Supreme Court;
- ii. A working group is also to be established as part of the continuation of the pilot to listen to contributions from across the Bar and ComBar. The aim is to make the pilot as strong as possible in particular from an equality & diversity (E&D) perspective. ComBar takes this very seriously and welcomes any constructive dialogue to help us improve the scheme in preference to open letters of the type we have seen today; and
- iii. It is also important to note there was extensive consultation on the original pilot scheme from November 2017, and on this extension all the way through to June 2018. It has received wide support from the great majority of ComBar sets which account for about 75% – 80% of ComBar membership.

Rehana Popal asked whether there would be any positive discrimination from an E&D perspective. David Joseph QC explained that the pilot scheme was designed to stop the set of the successful applicants from paying the judiciary directly, thereby creating a level playing field for all applicants. He said that he will pass this question on to the working group but the idea is to encourage as many people to apply with the relevant qualifications.

David Joseph QC further confirmed in questions that this pilot scheme is open to the Bar, not just to members of ComBar sets, and open to applicants up to 5 years' call. The question of whether it should be opened to solicitors will be examined in the working group.

Colin Andress suggested that the pilot is pushed out to law schools and Universities as this should help to promote E&D.

Phil Robertson, Director for Policy, raised a separate item of other business. He asked members of the Bar Council to send him any feedback they may have on the Better Case Management reforms.