

## **Bar Council minutes 25 January 2014**

### **Present:**

Nicholas Lavender QC - Chairman

Alistair MacDonald QC - Vice-Chairman

Stephen Collier - Treasurer

Rt Hon Dominic Grieve QC MP - Attorney General

Mr Oliver Heald QC MP - Solicitor General

81 further members of Bar Council attended.

### **1. Apologies**

Apologies for absence were received from Alison Saunders CB, Mirza Ahmad, Robin Allen QC, Michael Bowsher QC, Elisabeth Cooper, Charles Cory-Wright QC, Jonathan Egerton-Peters, Tim Fancourt QC, Amanda-Jane Field, Suzanne Goddard QC, Alexandra Healy QC, Kaly Kaul QC, Alexander Learmonth, Sarah Morgan, Dawn Pritchard, Robert Rhodes QC, Nigel Sangster QC, Zoe Saunders, Geoffrey Tattersall QC, Thea Wilson and Nicholas Worsley.

The following did not attend and did not send apologies: David Anderson, Glenn Carrasco, James George, Susan Grocott QC, Edward Henry, Hannah Kinch, Ian Lawrie QC, Nigel Lithman QC, Christina Michalos.

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

The Chairman thanked everybody for attending and observed that it was the most well-attended meeting he had seen for some years. He extended specific welcome to the new members of Bar Council and hoped that today, for their first meeting, there would be some interesting discussions.

The Chairman asked everyone - for the benefit of others in the room - to state their name before speaking. He added that, as at previous meetings, members are welcome to tweet but encouraged them to do so responsibly.

The Chairman asked if there were any apologies which had not already been notified. There were none.

The minutes of the last meeting were approved. There were no matters arising.

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

The Chairman had provided his statement in writing ahead of the meeting and said that he did not intend to repeat anything therein, except to say that he hopes that the written format is useful and that any feedback is welcome.

This is the first meeting of 2014, which promises to be an interesting year. It is unfortunate that 25 January is not an auspicious date, being the anniversary of the League of Nations being founded (1919) and the marriage of Henry VIII to Anne Boleyn (1533), which did not end in divorce, but separation.

The Chairman added that he wanted to say a little bit more about legal aid. He, the Circuit Leaders and the Chairman of the Criminal Bar Association were invited to attend a presentation, given yesterday by Ministry of Justice (MoJ) officials, regarding the context of the proposed legal aid cuts. They presented details of the country's overall economic situation and set out the Department's targets as set by the Treasury. They are indeed challenging. The presentation went on to outline the anticipated effects of the legal aid reform proposals and, in particular, those relating to advocacy fees.

There was limited opportunity to study the figures and to ask questions. However, the Chairman felt sure that those Bar representatives present succeeded in making the MoJ recognise that it has not yet fully communicated why £220m in savings are still sought when crime figures have fallen since the first consultation and other savings have been realised. The Bar Council, the Circuits and the CBA will continue to hold these discussions with MoJ and do their best to challenge the proposals made.

The Chairman said that he is seeking to arrange a meeting of the whole Bar to talk, and protest, about the proposed cuts. Other protests have so far been arranged by the CBA, but it is fair to say that the cuts do not just affect criminal practice; indeed some of the largest rate cuts are in civil work. The Chairman attended a debate in the House of Lords on Monday evening - Lord Bach's motion to regret the Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2013 - and work continues to oppose those cuts too. The Chairman thanked Lord Carlile QC for his intervention in the House in respect of cuts to VHCC cases.

The Chairman sought Bar Council's approval for the co-option of Robin Allen QC, to allow him to continue his work as Chairman of the Bar Council's Equality and Diversity Committee. This was approved.

The Chairman also sought Bar Council's approval for the appointment of Geoff Payne and Jeremy Phillips to Bar Council to fill two casual vacancies which arose following the last election. A ballot was held and they received the highest number of votes. Approval was given.

The Chairman asked if there were any questions in relation to his statement.

Lord Carlile QC (ACQC) congratulated the Chairman on making such a strong start to the year. He asked the Chairman if he had any views, or had approached the MoJ, in relation to the recent advertisements for advocates to join the Public Defender Service (PDS)? These jobs are being offered with salaries in real terms well in excess of what criminal legal aid barristers earn. This is at the same time that Shailesh Vara MP, Parliamentary Under-Secretary of State, Minister for the Courts and Legal Aid, is quoting misleading figures about barristers' earnings.

The Chairman said that he had not yet been in touch with Shailesh Vara MP on this particular matter, but he had discussed it with journalists. The figure quoted by Mr Vara as an average income from public funds for a full-time barrister doing criminal work is £84k; this figure is misleading as it includes VAT, expenses, pension contributions and so on. Mr Vara gives the impression that this is a good income and that the Bar should not complain and yet the PDS roles have been advertised with salaries (plus benefits) of up to £125k. There is a discrepancy and inconsistency of approach here which must be addressed.

There were no further questions.

#### **4. Chief Executive's report**

Stephen Crowne (SCr) wished to present two items to Bar Council: the Bar Council Strategic Plan 2014-17 for approval (annex 3a) and a paper on longer term planning for consideration (annex 3b).

The strategic plan has been under development for some time and is a key part of the organisation's future governance arrangements. It is a critical document, intended to drive everything the organisation does and give the Bar Council - as a body - a stronger ability to hold the Executive accountable for what is achieved. The current draft plan is already being used on a provisional basis to guide business planning for the forthcoming year.

Following the Bar Council meeting in October 2013 when an earlier draft was presented, a consultation period took place for further comments and a copy was placed on the website. The only comments received were very helpful drafting amendments from Robin Allen QC and the Equality and Diversity committee, which have been incorporated into this final draft.

SCr invited any further comments and approval; if given then the plan will be prepared for publication and then distribution. The Strategic Plan 2014-17 was approved.

SCr then introduced his paper on longer-term planning at annex 3b. It may seem odd to be discussing longer-term planning when a three-year plan has literally only just been approved, but SCr explained that it is important to give the organisation the ability to look at longer term issues. There is a risk that there is not enough thinking about the changes to the world and the environment in which the Bar Council operates which may have a significant impact. Normal business planning processes tend to be formulated from the bottom up and involve incremental change. There is a need to also look rigorously at external developments which may have an impact.

On a practical level, the lease on the offices in High Holborn runs out in five years. It is imperative to think now about what shape the organisation will take then in order to get value for money.

SCr's paper argues that there are four steps to achieving this longer-term plan. The first is about building a picture of what the world will look like in four to five years. The second step is to look at the work the organisation is currently doing against that background and consider priorities and whether there were gaps that needed to be filled. The next is to consider how the organisation will need to work and what will ensure maximum efficiency and effectiveness. Running through all of this is the need to look at funding and how the organisation can be resourced to do what it has agreed it should do.

The outcome of these strands of work should be complete by the middle of 2014 and that will be used to provide a basis of a plan of how the organisation gets to where it wants to be in five years' time.

SCr has offered, at paragraph 15 of the paper, some imperatives for the process as it is important to start with an idea of the direction of travel. These include:

- The principle that less is more; the organisation may need to focus on undertaking fewer activities, but doing them better;
- Seeking to ensure that activities are self-funding, where possible;
- Identifying how staff are structured, deployed and developed;
- Considering different funding models;
- Being more responsive to the needs and wishes of the Bar; how does the organisation gather intelligence and how does it deliver services;
- How to do more with less and look to reduce the contribution made by barristers to fund the work of the organisation.

The last point clearly comes with a caveat in relation to the funding of regulatory arrangements. It cannot, and should not, be for this work to comment on that sphere

of work.

Work has already started internally in consideration of potential scenarios five years hence. The Bar Council will be engaged in that process and comments and suggestions are sought. SCr committed to making regular reports to Bar Council.

SCr invited comments and suggestions.

ACQC raised the matter of the Bar's relationship with the Inns of Court who, in his opinion, should be devoting their physical resources as well as their financial resources, to the Bar. He urged a new approach to the relationship with the Inns of Court. For example, as the Bar Council loses accommodation (and may lose more in five years' time), there is a significant amount of space in the Inns. They are a key resource in looking after the future of barristers. SCr agreed that a conversation with Inns and COIC is necessary. It is helpful that COIC is now a corporate entity with a Chief Executive who is interested in taking forward this sort of discussion.

Sundeep Singh Virk (SSV) asked whether there are any moves towards barristers becoming limited entities. Patricia Robertson QC (PRQC) responded on behalf of the BSB to say that they are working towards delivering a regime so that they can regulate entities. The Bar Council is working on the tax dimensions related to that. SSV asked how that would work with insurance and the relationship with BMIF? PRQC said that she is aware that there have been discussions, but she cannot speak for them. One assumes that if they do not wish to provide insurance for entities, then insurance should be sought from the commercial market.

Gregory Jones QC (GJQC) said that meeting in these circumstances, i.e. at the Bar Council offices, is deeply unsatisfactory and rather bizarre. The Inns may well end up like City livery companies.

Stephen Leslie QC (SLQC) said that, as an Inn representative at Bar Council, he finds this criticism marginally absurd. The Inns invest a huge amount of money in scholarships and education. A jaundiced, 18th century view of the Inns is wrong. There may well be room for improvement, but it is important to note that the Inns are trying their hardest in difficult financial circumstances.

GJQC said that he was not seeking to characterise Inns but does seem a bit odd meeting here where it is hot and unpleasant. While it is recognised that money has to be saved, other options must be explored.

Ruth Hughes (RH) asked what was happening in Lincoln's Inn main hall today which meant that the meeting could not be held there. SLQC said that he didn't know, he could only assume that they hadn't been asked for the room.

AMQC said that he is in favour of the contribution to education made by the Inns. However, it is unfortunate that in time of great need, the subvention has been reduced significantly. Now is the time to re-engage with the Inns; they must have room to help this Council.

Stephen Collier (SC) said that it is simply a question of money; it costs £1,500 to £2,000 to have a meeting at one of the Inns.

Gerard McDermott QC (GMQC) said, as a Middle Temple representative, that it is important that the Inns do not do things separately. In the 1980s they were encouraged to work collaboratively and at one point the Bar Council had rooms at Gray's Inn.

Charlotte Hudson (CH) explained that there is a constant dialogue with the Inns in respect of room availability. Bar Council meeting dates are set two years in advance and, even so, the Inns are often booked up with weddings or other occasions from which they receive an income. All of the Inns have shown a willingness to engage, but the cost and the limited availability is largely prohibitive.

NLQC remarked that he took this conversation as a ringing endorsement of SCr's proposals and thanked him on behalf of the Bar Council for all his work on these projects. NLQC said that in his 20 years as a member of Bar Council, he had noticed that longer term planning is not one of its strengths and he is very keen for this work to take place now.

He added that there is clearly a specific issue relating to accommodation and where meetings are held, but also a couple of wider issues in relation to the Bar Council's relationship with the Inns of Court which need to be developed. COIC is going through a constitutional change and it would be a good idea to report at the next meeting on what those changes are and on the Bar Council's plans to engage. Just as Bar Council committees report to the meetings, so it should be considered whether the Inns should be invited to update the Council on their activities as well.

## **5. BSB report**

NLQC opened the next section of the meeting by reminding those present that there may be questions for Baroness Deech QC (Hon) in relation to QASA, but that this is a separate, substantive agenda item too for which the BSB representatives will not be present. Members may wish to bear that in mind when raising any points.

Baroness Deech QC (Hon) (RDQC) opened the BSB report by remarking upon the earlier debate around accommodation. The Bar Council and the BSB have almost

come to the end of the process of handing back a number of floors to the landlord; this 'compression' has been ingeniously handled and the staff have been very resilient with a lot less space. The project has been undertaken on the basis of saving the profession money.

In relation to the Inns, RDQC noted the comparison between them and the livery companies of the past. Once companies set up outside those livery companies and nothing was done about it to bring them back in to the fold, it was the beginning of the end. The same could apply to the Inns. In relation to the subvention, RDQC remains baffled by its reduction; the money all comes out of the same pocket in the end.

RDQC said that she was happy to answer any questions about the BSB report which was circulated ahead of the meeting. The highlight of the last week was the launch of the new Handbook, which has been worked on for years and has finally come to fruition. It has been very well received. At the launch event, presided over by Lord Judge, the Attorney General made a very appropriate speech. It was marvellous to see the hard work put into developing the Handbook come to such a successful conclusion.

Andrew Walker QC (AWQC) asked about the activities planned following the Legal Education and Training Review; what is the plan in relation to developing a competency framework? RDQC replied that this is simply a modern way of saying 'doing exams'. The BSB is keen to keep up standards, and with huge quantities of students coming to the Bar, it should be possible to place an emphasis on quality. The plans will also address other issues in the modern legal services environment, like making it easier to switch between the Bar and the solicitors' profession.

The BSB has to satisfy the directive of the LSB in relation to the work post-LETR. In 2010, delivering the Upjohn Lecture, David Edmonds said that the framework of education and training was not fit for purpose. However, the LETR said quite the opposite.

Thanks to the leadership of Derek Wood CBE QC, who over the years has overseen a review of every part of training and education and reformed it root and branch, the Bar has a lot less far to go than the solicitors. Solicitors have a longer way to go in addressing the outcome of the LETR. RDQC expressed her own dislike of terms such as 'competency framework'.

Guy Fetherstonhaugh QC (GFQC) asked why, when costs are being pruned to the minimum, the BSB is spending money on business-speak.

RDQC responded that it is thanks to the Legal Services Act. She has spent six years fending off the LSB and her policy throughout has been to maintain standards at the

Bar with minimal change and expenditure of resource. The BSB has been threatened with a s162 directive from the LSB to comply and has to do what it is told. The LETR cost a lot more to the solicitors and indeed very little to the BSB.

There is currently a review of the implementation of the Legal Services Act 2007, to which the BSB has responded and RDQC is aware that many others have too. The argument continues to be that the profession requires a lighter touch in regulation but RDQC considers it unlikely that the statute will be repealed.

AWQC asked whether the wording could be amended to show that the work is about developing a framework for entry to the Bar. Vanessa Davies (VLD) replied that within the workstreams there are concerns about CPD, but the emphasis for a "competency framework" is very much upon producing a clear set of statements about what an individual needs to know and what skills and competencies they should have to be a barrister on day one. The BSB would be happy to run a seminar on the post-LETR work if it was felt that it would be useful to rearticulate the aims.

Alistair MacDonald QC (AMQC) asked why none of the materials are written in plain English? If you read the LSB business plan, it is in English but not as we know it. The Bar prides itself on being articulate and expressing itself clearly and without jargon.

VLD replied that in order to engage in a negotiation and win, you have to be able to speak the same language as the party with to whom you are selling your position! RDQC expressed her own frustration about the use of 'business-speak' e.g. 'stakeholders' and 'deep diving' and the common problem of lay people who do not understand the profession taking refuge in off-the-shelf terms which perhaps they do not really understand. The BSB continues to try to articulate clearly when communicating with the profession and only use business-speak when cooperating with the LSB and the SRA. VLD reaffirmed that she is happy to come to "translate" to any group of members of the profession who might find it helpful.

As there were no further questions to the BSB, its representatives left the meeting.

## **6. QASA**

NLQC said that the judgment was given on Monday in respect of the Judicial Review of QASA, in which the claimants were unsuccessful. He did not intend to propose anything today in respect of QASA, simply to open the floor to anybody who wished to discuss the judgment or the scheme. Although the judgment has been handed down there may be an appeal, which could make it difficult to have an open discussion on this occasion as some members of the Council will be privy to privileged communications or advice given to the claimants.



The BSB held their Board meeting on Thursday, at which they gave consideration to the judgment. Whatever they may have decided will be announced next week. In the meantime, the BSB has invited the Bar Council officers, Circuit Leaders and CBA officers to a meeting directly after this one to discuss QASA. Bearing in mind those constraints, NLQC asked if there were any comments or contributions.

AWQC asked what would happen if there is no appeal, or if there is but it fails. Will QASA therefore be imposed and are there any more avenues open to oppose or derail it? NLQC said that, as the BSB is acting as an agent of the Bar Council in carrying out its regulatory functions, it would not be appropriate for the Bar Council to 'derail' the BSB. The scheme had been found to be lawful in the divisional court and he was unsure what other option there could be to prevent it being implemented.

Andrew Langdon QC (ALQC) said that the silence in the room should not be misunderstood; it does not mean that no-one has an opinion, it is simply that there is a conflict given that the Bar Council is the Approved Regulator.

Tim Devlin (TD) said that there is a lot of discontent in the robing rooms and online at the moment in relation to QASA, specifically what happens if a practitioner decides not to register. It is clear that there is widespread opposition to QASA.

NLQC said that whilst Bar Council is the Approved Regulator, it is still a representative body and alive to the concerns and frustration within the profession. He urged those who have queries about registering for QASA and the implications under the Handbook if they do not register, to contact the Professional Affairs team at the Bar Council via the Ethical Enquiries service.

David Wurtzel (DW) expressed frustration about the way in which QASA has developed since 2006. The Bar must ask itself what it wants: no scheme at all - which is unlikely - or one which can be shaped to ensure quality. The Bar has not set out its stall as to what it would like a quality assurance scheme to look like. DW recommended providing Sir Bill Jeffrey, who is currently leading the advocacy review on behalf of MoJ, with a 'roadmap' for quality.

NLQC confirmed that the current closing date for members of the Western and Midland Circuits to register for QASA is 7 March. As the judgment suggested changes to the scheme, it may be that this date is postponed, but NLQC could not say for sure. What he could say is that the Bar Council can continue to make representations, as it has done throughout. Ultimately, the decisions about what to do belong to the BSB and JAG.

Tony Cross QC (TCQC) stressed that the reason for silence on this topic is because of advice that the claimants have received. However, he would add that as he understood it, only eleven criminal practitioners have signed up to QASA so far.

## **7. EU Law Committee: for report**

In the absence of the Chairman of the EU Law Committee, Michael Bowsher QC, the Vice-Chairs, Tim Devlin (TD) and Lorinda Long (LL), presented this item. A written report was circulated ahead of the meeting, a few highlights of which TD wanted to draw attention to. LL would then take any questions.

There will be changes arising owing to the forthcoming European election in the number of commissioners and those in post; the Bar Council will be working to maintain and develop relationships with those elected as applicable.

The committee is a very busy one. Bar Council members will have noted that the Chairman's written statement listed a number of consultations to which the Bar Council had responded in the last month and six out of the ten were undertaken by the EU Law Committee.

EU Law is by no means a minority interest; in fact, it permeates every area of the law and the Bar Council has to respond to consultations across the whole breadth of legal expertise. The written report provides a short update on the balance of competences review, which the coalition government has undertaken across all areas of policy. They are constantly asking for the Bar Council's input.

The EU Law Committee has also prepared and attended a number of presentations and meetings, including the Bar Conference, the Assises de la Justice conference in Brussels and a seminar about career opportunities beyond the Bar in EU law. A joint meeting with the CBA has also been arranged to brief them on the impact of EU law, including the possible exercise by the UK of its one-off opt-out from EU criminal justice measures adopted before the Lisbon Treaty came into force. Work is ongoing with general lobbying in EU matters.

There were no questions.

## **8. International Committee: for report**

Chantal-Aimée Doerries QC (CADQC), Chairman of the International Committee, presented this item. A written report, setting out highlights of the last six months and those in the next six months, had been circulated ahead of the meeting.

CADQC began by explaining the overarching remit of the committee, namely to liaise with other Bar associations; to promote the Bar overseas, telling people what

the Bar does and how barristers can be instructed; to educate members of the Bar about the international opportunities open to them and to promote the Rule of Law internationally.

A great deal of the work of the committee is in business development, which provides very real dividends to the Bar. The report sets out further details of projects. The International Committee holds seminars in England and Wales to inform members about international opportunities and to introduce them to overseas lawyers who may wish to instruct them. Overseas missions are advertised, the purpose of which is to advertise the Bar's services and give members the chance to meet potential clients.

The International Committee identifies and participates in conferences, organises exchange programmes and supports bilateral organisations. It also supports the international grant scheme, where one-third of the cost of a mission is paid by the Bar Council scholarship trust fund, one-third by their SBA and one-third by the individual or their Chambers.

People often think that 'international work' means working overseas; however, it is often true that there is advice and court work available in the UK for an overseas client. It is also wrong to think that the only work is for the commercial Bar.

CADQC gave four examples of practitioners in different types of practice and at different stages of experience, all of whom benefitted from involvement in international events.

The first was a junior in family practice outside London, who wanted to develop their practice in international family law. In 2013, they joined the Bar Council's mission to New York, where they had an opportunity to have a meeting at the UN and to meet lawyers, gaining a better understanding of the US market. As a result, they have been given written advisory work and have taken on clients referred as a result of that mission. They have joined the Bar Human Rights Committee and engaged in greater cooperation with an organisation in New York on human rights issues.

The second was a junior under seven years' call, who was sponsored by the Bar Council and COMBAR to attend a conference in Miami on fraud asset recovery. Their particular interest was high value litigation with a cross-border element. They not only learned a lot about the legal issues but were immediately instructed by a Cayman lawyer on a cross border insolvency issue. It does not always happen that quickly, but it does happen!

The third was a criminal QC from London who joined a Russian mission with the Bar Council, TheCityUK and Lord Mayor's office. They secured a high profile

speaking slot on bribery and in addition to meeting foreign lawyers, was able to forge new relationships with English solicitors doing work overseas, thereby raising their profile domestically and internationally. They were subsequently invited to speak on a high profile panel in London on the topic of white collar crime.

The fourth was a common law practitioner with language skills. Many practitioners have a skill or talent that makes them a little bit different; these talents should be used! This practitioner joined a mission to Kiev and St Petersburg and has been given a lot of written work as a result.

CADQC stressed that the committee helps practitioners from across all practice areas and all levels of experience gain an advantage in the market. All SBAs and Circuit should think about signing up to support those barristers under seven years' call who are seeking funding to join a mission.

AMQC asked what the insurance position is for overseas work; this rather depends on the type of work. CADQC said that the new Handbook has the new international practice rules peppered throughout it instead of all being in one place, which means it is not very clear. The International Committee is preparing a note to help people find the relevant sections and flag up any issues.

There were no further questions.

## **9. Any other business**

NLQC invited items of any other business; there were none.

NLQC said that he was glad that there had been an opportunity to have a debate even if there were no specific proposals on the agenda. Just as SCr is looking to the future, so must the Bar Council, and be proactive and not just reactive. NLQC encouraged all members to suggest items for the agenda and to make the most of the talent available in the room.

NLQC wished everybody a good Burns' Night.

Meeting closed.

## **10. Date of next meeting**

The next meeting of the Bar Council will be held on 15 March 2014 at 10.00 at the Bar Council offices.

**[Charlotte Hudson](#)**

**Head of Executive Office**

