

Meeting of the Bar Council



The Bar Council

Minutes of meeting

Saturday 12 November 2022, 10am
via MS Teams and in person at the Bar Council offices

Present

Mark Fenhalls KC	Chair of the Bar	MFKC
Nicholas Vineall KC	Chair Elect (Chaired meeting)	NVKC
Samuel Townend KC	Vice Chair Elect / Co-Chair, Legal Services Committee	STKC
Malcolm Cree CBE	CEO, The Bar Council	MC
Michael Tomlinson MP	Solicitor General	SG
Kathryn Stone OBE	Chair of the Bar Standards Board	KS
Mark Neale	Director General, BSB	MN
Hugh Mercer KC	Co-Chair, International Committee	HMKC
William Dean	Vice Chair, Bar Representation Committee	WD
Stephen Cragg KC	Chair, Bar Human Rights Committee	SCKC

Members in attendance (listed alphabetically)

Paul Adams; Dr. Mirza Ahmad; Shazia Akhtar; Stuart Alford KC; Michael Bellis; Minka Braun; Carl Brewin; David Bunting; Mark Chaloner; Maddy Charlesworth; Sydney Chawatama; Ivor Collett; James Corbet Burcher; Barbara Connolly KC; Melissa Coutinho; Madeleine Deasy; Susan Grocott KC; Alex Gunning KC; Birgitte Hagem; Jacob Hallam KC; Michael Harwood; Neil Hawes KC; Harriet Holmes; Richard Honey KC; Sa'ad Hossain KC; Shobana Iyer; Faith Julian; Joanne Kane; James Keeley; Stephen Kenny KC; Dilpreet Khoa; Kate Lumsden KC; Ben Lynch KC; Hannah Markham KC; Jo Martin KC; Louise McCullough; Cait McDonagh; Martyn McLeish; Christina Michalos KC; Barbara Mills KC; Francesca Perselli; Charlotte Pope-Williams; Ryan Richter; Hannah Smith; Joe Smouha KC;

THE BAR COUNCIL

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Kate Spence; Jason Sugarman KC; Leanne Targett-Parker; David Taylor; Andrew Twigger KC; Gaynor Wood Luke Wygas.

In attendance:

	Sally Burnell	Director, Communications and Marketing	SB
	Carolyn Entwistle	Director, Services	CE
	Nikita Feifel	Public Affairs Officers	NF
	Ella Morrell	Private Assistant, Attorney General's Office, MoJ	EM
	Kyasat Nadeem	Policy Assistant	KN
	Isioma Onwukwe-Anyadike	Committee Governance Officer	IOA
Minutes	Yvonne Treacy	Executive Officer	YT

Apologies were received from

Christine Agnew KC; Yaa Dankwa Ampadu-Sackey; Simon Anderson; Elaine Banton; Ben Close; Michael Collett KC; Celina Colquhoun; Kim Hollis KC; Michael Jones KC; Lorinda Long; Yasmin Omotosho; Lucinda Orr; Simon Regis; Robert Rhodes KC; Gordon Stables; Heidi Stonecliffe KC; Philip Stott; Steven Thompson KC; Linda Turnbull; Anton Van Dellen; Charlie Woodhouse KC

1. Conflicts of interest and announcements

No conflicts of interest were declared.

Nick Vineall KC, Chair Elect of the Bar Council, said he would be chairing the meeting from the Bar Council offices in London, as Mark Fenhalls KC, Chair of the Bar, was currently in Egypt attending COP 27 although he would be attending online.

NV KC welcomed Michael Tomlinson MP, Solicitor General, to the meeting and invited him to say a few words. The SG thanked the Bar Council for inviting him to the meeting. He said that he had already had some constructive and frank discussions with the Chair and Vice Chair of the Bar and that he and the Attorney General looked forward to working with the Bar Council when NV KC becomes Chair next year.

2. Minutes of the last meetings and matters arising

- i) The minutes from the meeting of 17 September 2022 were approved.
- ii) The minutes from the AGM held on 17 September 2022 were approved.

3. Statement by the Chair of the Bar Council

MFKC began his Statement by welcoming the new Solicitor General and the Attorney General into post. He congratulated the SG on his reappointment and the AG on her appointment. Victoria Prentis KC MP is a barrister with a wealth of experience in the Government Legal Department.

With regards to his Statement, he took this as read but wished to highlight the following issues since the last meeting.

i) Party Conferences: He attended both the Labour and Conservative Party conferences. Attendance at the party conferences was an opportunity to engage with all political parties to raise rule of law issues with those who influence policy. They are interesting and valuable experiences.

ii) Opening of the Legal Year: Over 100 bar leaders from various international jurisdictions visited London in early October over the course of two/three days to attend OLY. This illustrates the strength and influence of England and Wales as a jurisdiction. Those he spoke with said how much they value the standards, quality and traditions of the law of England and Wales. He is grateful to the Bar Council staff for their part in organising OLY and the other events around it.

iii) Criminal legal aid: With the introduction of the new Government the Bar Council is seeking to build relationships with the new ministers. Happily, the last Lord Chancellor engaged with the Bar Council and the Criminal Bar Association to address the issues that drove the CBA action. The Criminal Legal Aid Advisory Board, as recommended by Sir Christopher Bellamy in his report, met for the first time recently. The Bar Council has convened a group of barristers including representatives from the CBA, Young Bar and the Circuits, which will make submissions to the Advisory Board. There are still capacity issues with the criminal courts but it is hoped that things will become more settled in due course. We wait to see what happens with the upcoming spending/budget review and will continue to do our best to engage with the Government to repair the justice system.

iv) International: The data shows international work is increasing significantly, providing opportunities around the world for the profession which the Bar Council will do its best to support. In terms of recent trips, MFKC reported as follows.

- He attended the International Bar Association (IBA) conference in Miami in late October. He held many meetings with overseas bar associations discussing matters of mutual interest, more often than not about regulation, work opportunities and respect for lawyers from political attack. The MoJ was in attendance also and was grateful to the help the Bar Council was able to provide in opening up discussions

and relationships for them with Bars from around the world and in particular some US State bars. It was a helpful and valuable experience.

- He is currently at COP 27 in Egypt – enroute to a Bar Council business development mission to Kenya and Tanzania later that day. Conversations at COP 27 have been interesting, and we will need to consider what we can/ should do as a representative body regarding climate change. There will be no area of practice which will not be affected by the Paris Agreement, for example, employment contracts, labour law, free trade missions. Climate change is going to be mainstream in every area of practice. He would like to thank Ben Cooper KC, Estelle Dehon KC; Wendy Miles KC and Nina Pindham for their work on climate change and COP27.
- As mentioned earlier he will be going to Nairobi that day to attend a business development mission in Kenya and Tanzania for a series of events and meetings with the judiciary and Bars in both jurisdictions to discuss development opportunities. Thank you to the Bar Council staff who helped to organise the programme and the barristers who helped set up these working relationships.

v) Announcements:

- The Annual Bar and Young Bar Conference would be on Saturday 26 November and would encourage Bar Council members to attend and to bring a colleague from Chambers.
- He would like to pass on his condolences and those of the Bar Council to the BSB and staff for the sad loss of one of their colleagues who died suddenly earlier in the week. Our thoughts are with you.
- Congratulations to all those recently elected to Bar Council. This year we saw a record number of votes and those generally engaged in the process.

James Keeley said he would like to raise two issues regarding the state of the criminal bar. First, the criminal bar is under even more pressure at the moment, and he is extremely worried about his colleagues at the criminal bar in terms of stress, burnout and anxiety. He would therefore like it on record that this is a very worrying situation. Secondly, when are rates of pay going to be looked at for prosecutors at the independent Bar? We are seeing a shortage of criminal prosecutors with people leaving the criminal bar. This is now becoming acute.

MFKC thanked JK for raising these issues. Regarding the pressures on the criminal bar he would remind everyone of the resources and services available at the Bar Council including helplines. We should all do what we can to support each other. With regards to remuneration the Bar Council has been in constant discussion with CPS throughout 2022. He is aware they are speaking with the Treasury but have been made no promises. MFKC said the Bar Council has been vocal in making representations on behalf of the criminal bar

and the Remuneration Committee has been doing what it can to get the CPS to address this issue quickly.

4. Bar Standards Board report

Kathryn Stone, Chair of the BSB, presented the BSB report. She thanked MFKC for his condolences regarding their colleague Al Tucay, Head of the Contact and Assessment Centre at the BSB, who sadly died this week leaving behind a young family. She took the report as read but wished to add a few additional points as follows.

KS began by assuring Bar Council that the Board's top priority remains improving their performance in handling core regulatory work, particularly picking up the pace of investigations. She wished to emphasise that they have seen no fall off in the volume of investigations they have completed this year but have seen more cases referred for investigation as they have tackled the backlog of reports. This has coincided with real difficulties in filling vacant posts; the market for experienced lawyers is particularly tight. The Board has agreed to a short-term plan which will involve outsourcing some aspects of the investigative process. Meanwhile, they are bringing the team up to full strength. They have also established a new Board committee to work with the executive on performance issues.

KS also mentioned their roundtables looking at how chambers and employers can be encouraged to share best practice - in terms of promoting standards, access and equality. The two meetings they have had so far were well attended and raised some interesting issues. They plan a second meeting in London next week followed by one in Bristol on 29 November. There will then be a further four meetings around the circuits over the next few months.

The BSB is already picking up support for the idea of some consolidated source of advice for chambers and that the needs of smaller chambers may differ from those of larger chambers. Some speakers have favoured looking again at the old Bar Mark scheme while others have been more sceptical. Everyone agrees that this is an area where collaboration can achieve more than regulation alone and that the single source of guidance for chambers might be either the Bar Council or the BSB. There was also some support for pro forma model policies and for "bite-sized", pre-recorded training videos. Everyone also agrees that the BSB needs to do all it can to reduce regulatory burdens when chambers' resources are already stretched.

KS said that she is finding these meetings really useful, and she will look forward to meeting more Bar Council members as they continue. If you are invited to one of their roundtables, do please come. The Bar Council are also being invited of course.

Finally, a few updates:

First, Bar Council members will have heard about their digital comparison tool pilot. KS said that she would just like to emphasise once again that they have an open mind as to whether these tools might be in the interest of consumers or not. However, they do need evidence to decide the matter so she hopes that more members of the profession will participate in the pilot. It focuses on employment law, but you don't have to be an employment lawyer to take part.

Secondly, KS said that she hoped that Bar Council members would read their report on Addressing Bullying and Harassment, and their Wellbeing Statement. The BSB is really keen to address the current problem of underreporting of bullying and harassment, and to do what they can to stamp it out. She hopes the Bar Council will also welcome their recognition that wellbeing is an interest that we must share. They believe that the wellbeing of barristers is in fact essential to the achievement of the BSB's broader regulatory objectives.

Finally, they will be interviewing the candidates for the two barrister vacancies on the BSB Board later this month and she hopes very much hope that they will be able to announce their chosen candidates soon afterwards

MFKC thanked KS for her report and said that the Bar Council welcomes the BSB's emphasis on dealing with the backlog on complaints and delighted that they think it should be a priority. He stressed that the Bar Council is keen to work with the BSB collaboratively and seek to avoid duplication and cross over where possible. He thanked KS for the way these discussions have begun.

5. Statement by the Chief Executive

Malcolm Cree, CEO, said the Chairs Statement was quite comprehensive and that there was not much to add other than the following.

Following the cybersecurity breach earlier in the year the Bar Council was now looking to install 24/7 protection coverage and move most systems and services to the Cloud. Such measures do not give 100 per cent security but it makes it easier to work with our cyber security partners.

The Bar Council was looking at setting the budget for next year. Whilst there are some areas where the Bar Council and the BSB disagree it is hoped that these will be settled shortly as the PCF consultation with the profession needs to start next week.

He is pleased to report that the services, training and events are doing well and are above budget.

The Bar Council is negotiating the pension investment strategy with the trustees and will be appointing a new investment manager.

Natalie Zara, Head of Planning, Strategy and Recruitment, has now left the Bar Council and he is pleased to report that her replacement is due to start next month.

The Pupillage Fair was held on 15 October and was a huge success. Thank you to all members of the Bar and staff who volunteered their time and expertise on the day.

The Ethics Helpline is an incredibly valuable service dealing with around 6,000 calls a year (including 30 in one day recently). Thank you to the Ethics Committee for their assistance in providing training to the staff who run the service.

With regards to regulation, the Bar Council is monitoring the situation regarding CILEX and its regulator and will be keeping abreast of any lessons learnt.

6. Treasurer's Report

MC presented the September 2022 management accounts. The forecast out-turn at Sep 22 is a deficit of £494k compared to a budgeted surplus for the year of £103k. This is a decrease of £597k against the original budget. The Pension Fund triennial valuation has been agreed with the Pension Trustees on a date of signing basis. Due to changes in the market this has resulted in the Pension fund moving from a deficit to a surplus. Therefore the £1.3m charge for the DB pension will not be required for the pension scheme. This will result in an overall surplus despite the increase in non-budgeted costs through the year.

7. Non-Bar Council Subscriber Attendance at Bar Council meetings

NVKC reported that at the last meeting Bar Council was invited to discuss whether to restrict non-Bar Council subscribers attending Bar Council meetings. For reasons of transparency, it was agreed that subscribers should still be entitled to attend meetings but that they should give written notice. The Bar Council was therefore invited to agree the following revised wording to Schedule II, para 7 of the Bar Council constitution:

"The Bar Council may at any time invite any person to attend in an advisory capacity at any meeting or meetings of the Bar Council. All meetings of the Bar Council shall be open to Subscribers on prior written notice to the Bar Council unless the Bar Council resolves to the contrary in relation to any meeting or part of any meeting."

Following a vote by show of hands the Bar Council agreed to the revised wording of the Bar Council constitution as set out above.

8. International Committee

Hugh Mercer KC, Chair of the International Committee, presented the report which he took as read although he wished to mention a few specific aspects of the IC work.

- The work of the committee is divided into various regional subgroups so that everyone on the committee, has the opportunity to contribute, including the Asia subgroup, the Africa subgroup and Middle East subgroup. There is also scope for those outside of the IC who have a particular interest or expertise to get involved with the work of a subgroup.
- The IC is looking to coordinate their efforts across the Bar and with other UK stakeholders, for example, the Opening of the Legal Year included a successful seminar with members of the judiciary and judges from international jurisdictions.
- The IC has been involved in the organisation of successful events including the Common Law in Europe Conference in Limassol, Cyprus in June. The IC was also represented at the IBA Conference in Miami in October.
- The international market access project funded by the MoJ has led to more formed links with various other Bars ie the Sri Lanka Bar, Ghana Bar and Guyana Bar. The New York Bar has contacted them with a view to signing an MoU. They are looking at other possible connections.
- With regards to Ukraine, around 200 barristers have so far offered sponsorship and accommodation to the Bar Council. The IC has received around 100 requests from Ukrainians and have matched around 30 of these.
- This year's International Rule of Law Lecture is scheduled for 1 December. This year's speaker will be Salieu Taal, the President of the Gambia Bar, who has taken great personal risks to defend democracy and the rule of law in his country and setting up court structures to achieve accountability for members of the previous corrupt regime.
- HMKC thanked Christian Wisskirchen, Head of International Policy at the Bar Council and currently in Kenya for an international trade mission, for all his efforts on behalf of the IC and the BC and for going over and above what he is required to do.

MFKC said he agreed with HMKC about the work undertaken by CW and the Bar Council team in opening up new opportunities for the Bar internationally and fostering good relations. He also wished to thank Evanna Fruithof the work she does in Brussels on behalf of the profession.

9. Legal Services Committee

Samuel Townend KC, Co-Chair of the Legal Services Committee and Vice Chair Elect of the Bar, presented the report and began by thanking the Phoebe Sarjant who helped draft it. He took the paper as read but enhanced on three issues.

- ***The court backlog and court opening / closures (item 6a):*** “The effects of LASPO 2012 continue to have a massive detrimental impact upon rates of representation most starkly in the Family Courts which now suffer from a structural backlog.” STKC said that the LSC understand this to mean that public law work is coming in above pre covid levels, but cases are being cleared at 20 per cent below. With regards to private law the outstanding case load is well over 100,000 with output also about 20 per cent down on pre covid levels. However, sitting days have increased overall by 20% and there is not, therefore, a problem of judicial capacity and yet the average wait time is just under a year. We are seeing longer hearings, more hearings per case, greater numbers of expert reports and more adjournments. There are clearly structural problems in the system and this is something that needs to be addressed.
- ***Litigants’ experience in the small claims courts:*** There have been a number of changes that have gone through the Civil Justice Council and the Civil Procedure Rules Committee over the last few years which has had an impact upon the litigant’s experience in the small claims court. Looking at the litigant’s journey there are more stages than ever to get to a final hearing: pre-action protocol, issue and payment of fees, case management processes, in some cases mandatory dispute resolution hearings, compulsory mediation and potentially at least at the end of it all a paper only determination. The Bar Council has joined up with the Law Society to see what can be done to address concerns about the various processes litigants are required to go through. The LSC continues to make representations to HMCTS regarding various projects and issues that have arisen through the Court Reform programme, including its opposition to the Small Claims Paper Determination Pilot, a scheme by which District Judges may dispense with the need for a final evidential hearing and decide the matter on the papers only. The LSC, in conjunction with members of the Young Barristers’ Committee, have set up a discussion channel with the Law Society to address concerns about the Small Claims Paper Determination Pilot, in addition to taking the above stated and other actions.
- ***Expressions of gratitude:*** STKC said he would like to thank the members of the LSC for their hard work and support and in particular his Co-Chair, Caroline Goodwin KC, and the Vice Chairs, Shobana Iyer and Anton Van Dellen. He would also like to thank the Chairs of the three sub panels – Spenser Hilliard (ADR Panel), Jacqueline Reid (IT Panel) and Andrew Granville Stafford (Direct Access Panel).

NVKC thanked STKC for his report and said that he would like to respond to the reference to the Small Claims Paper Determination Pilot. It is important that claimants understand the process, even if they are ultimately disappointed in the outcome, and that they come away satisfied that their views have been properly taken into account. He is not persuaded that this is possible under the current proposals.

10. Bar Representation Committee

William Dean, Vice Chair of the Bar Representation Committee, presented the report on behalf of the two Co-Chairs, Michael Collett KC and Lucinda Orr, who sent their apologies. He also wanted to thank Carolyn Entwistle and her team for the report.

He took the paper as read but wished to highlight three matters from the report.

- i) **Income and work of the BRC:** Training and events team generated just under a quarter of a million of pounds this year and are therefore likely to exceed last year's income. It was also noted that the Bar Council's Appointment Service has become an additional income stream with the chance to grow and become more significant in future.
- ii) **Bar Representation Fee (BRF):** There has been a slight decrease in the number of people paying the BRF. However, this has been offset by the implementation of higher voluntary subscriptions resulting in an actual increase in income overall. In addition, WD mentioned that:
 - There were problems with the Authorisation to Practice (AtP) process when it went live and some could not make BRF payments at the time. However, next time the Services Team would ensure that there was adequate pretesting to identify any issues.
 - It is likely that the BRF will increase next year from by £10 to £160. The Management Team has agreed to an uplift of £10 per annum once every two to three years, depending on the rate of inflation, to avoid the sort of £50 increase of a few years ago.
- iii) **Partnerships and services:** With regards to partnerships and services, WD reported:
 - The Bar Council has entered into a new partnership with Mitigo, a cyber security company.
 - Use of the Direct Access Portal has increased with over 700 enquiries.

- About 750 people attended the recent Pupillage Fair with a record number of people attending the online fringe events. Thank you to the 400 volunteers who supported the event.
- A new platform, The Pupillage Gateway, was launched in October. At time of writing the paper they had received requests to advertise from only 10 chambers but were expecting to see a significant increase in numbers, perhaps shortly before the deadline.
- They continue to support the Professional Users ('ID Card') Access Scheme. There is work to explore extending the scheme to high security courts, but further discussions are required with HMCTS and the Ministry of Justice.

Finally, the BRC is looking for new members to join the committee. If anyone should be interested, they are invited to contact the Co-Chairs, Lucinda Orr and Michael Collett KC, for further information.

11. Bar Human Rights Committee

Stephen Cragg KC, Chair of the Bar Human Rights Committee took the report, which sets out the BHRC's work, as read but wished to highlight a few aspects of their work.

i) He was pleased to report that they have restarted much of their in-person work; many projects were delayed as a result of the pandemic.

ii) The first page of the report sets out their key strategic priorities:

- **Upholding** the rule of law and internationally recognised human rights norms and standards.
- **Protecting** and supporting practising lawyers, judges, and human rights defenders.
- **Promoting** knowledge and interest in human rights law and practice through training programmes, workshops and events.
- **Supporting** and collaborating with other organisations and individuals working for the promotion and protection of human rights and the rule of law.

iii) Much of what they do is in conjunction with other groups. For example, in October they issued a joint statement with the Bar Council on the persecution of lawyers in Iran following recent protests.

iv) Their Edge of Law report was published and launched at the end of September. This was the culmination of their dialogue series with the American Bar Association Rule of Law Initiative on human rights and rule of law challenges in Asia. Project funded by the Foreign and Commonwealth Development Office.

v) The BHRC hosted a high-level panel on 19 October 2022 on human rights and rule of law challenges in Sri Lanka.

vi) BHRC is the only British legal organisation which has observer status at Guantanamo. Shortly before the pandemic lockdowns in early 2020, two BHRC executive committee members observed hearings in Guantanamo. Their report has been published and advocacy and further written work has continued.

vii) On 15 November 2022, BHRC will host an 'In Conversation with Mary Lawlor' Keynote & Panel Discussion, 'The Criminalisation of Human Rights Defenders: What can lawyers do?'. This hybrid event will be held at Garden Court Chambers and livestreamed on Zoom. SCKC said that he would urge everyone to book a place.

Finally, SCKC said he would like to thank Bar Council members, the Chair and staff for their continued support. If anyone would like to join the BHRC please do get in touch.

NVKC thanked SCKC for his report and said that the IBA International Division is developing guidance for lawyers in their role as gatekeepers about being careful in terms of vetting suspect clients. It would be helpful therefore to have a BHRC view on this as it requires careful handling.

STKC said that to complement this the MoJ has just published a Bill setting out a new regulatory objective in the Legal Services Act 2007 focusing on promoting the prevention and detection of economic crime and that the Regulatory Review Working Group was looking at this.

12. Any Other Business

i) Next Bar Council meeting / Inaugural Address

The next meeting would be held on Tuesday 6 December. It would be a short online meeting only to approve the appointment of the new committee chairs and vice chairs. The incoming Chairs Inaugural Address would now be held on 10 January 2023 at Middle Temple. Bar Council members would receive invitations in due course.

ii) Benchers

JK made the point that the makeup of benchers at the Inns needed to be more representative of the members of the Bar and society in general and that they ought to reach out and be more diverse. Christina Michalos KC said that she was one of the Gray's Inn Bencher representatives on the Bar Council and that Gray's Inn had introduced an application process to become a bencher which was open and transparent. She said that no one would

disagree with JK’s point that the Bench should be compliant with principles of equality and diversity. NVKC replied that maybe representatives of the Inns should be invited to a future Bar Council meeting and set out their stalls and let us know what they are doing in terms of being more representative. We will reach out to them accordingly.

13. Upcoming Meetings

The next meeting would be held on Tuesday 6 December 2022 at 4.30pm via MS Teams.

Bar Council meetings 2023

Saturday 4 February 2023	In-person only meeting at Gray’s Inn, 10am start
Tuesday 25 April 2023	Hybrid meeting at the Bar Council offices with dial in option, 4.30pm start
Tuesday 20 June 2023	Hybrid meeting at the Bar Council offices with dial in option, 4.30pm start (to be followed by the Bar Council Summer Reception at Inner Temple)
Saturday 9 September 2023	In person only meeting at the Bar Council offices, 10am start. This is followed by the AGM, in person only at the Bar Council offices, at 11am
Saturday 25 November 2023	Bar Council meeting on Circuit (Leeds), starting at 11am. In person only.
Wednesday 6 December 2023	First meeting of the Bar Council 2024’, online only for the purposes of announcing committee chairs and co-options, 4.30pm start