



## **Minutes of the Bar Council meeting held on Saturday 7 November 2015 at the Bar Council offices**

Present:	Alistair MacDonald QC	Chairman
	Chantal-Aimée Doerries QC	Chairman Elect
	Lorinda Long	Treasurer
	Mr Robert Buckland QC MP	Solicitor General

### **1. Apologies for absence**

Apologies for absence were received from Rt Hon Jeremy Wright QC MP, Rachel Ansell QC, Harriet Brown, Ivor Collett, Elisabeth Cooper, Joseph Curl, Peter Grieves-Smith, Susan Grocott QC, Ruth Hughes, Thomas Jaggar, Michael David Jones, Rupert Jones, James K Juggapah, James Kitching, Naomi Madderson, Eleanor Mawrey, Justin McClintock, Duncan McCombe, Neil Mercer, Christina Michalos, Gregory Mitchell QC, Stephen Morris QC, Benjamin Myers QC, Peter Petts, Amanda Pinto QC, Hefin Rees QC, Zoe Saunders, Paul Stafford and Thea Wilson.

The following did not attend and did not send apologies: Safira Afzal, Mirza Ahmad, Colin Andress, William Boyce QC, Kerry Bretherton, Ian Bugg, Simon Clements, Gemma de Cordova, Anton van Dellen, Michael Duggan QC, Jonathon Egerton-Peters, Mark Engelman, Katherine Goddard, Ruth Henke QC, James Hines QC, Richard G Jones, Sean Jones QC, Hannah Kinch, Taryn Lee QC, Nigel Lithman QC, Lorinda Long, Paul Mendelle QC, Peter Moulson QC, Jeremy Phillips, Dawn Pritchard, Christopher Rees, Andrew Granville Stafford, Mark Thomas, Helen Tung and Sundeep Singh Virk.

The following attended as guests: Patricia Robertson QC (until item 6) and Vanessa Davies (until item 6).

51 further members attended.

### **2. Minutes of the last meeting and matters arising**

There were no amendments to the minutes of the last meeting and they were approved.

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

The Chairman welcomed everyone to the meeting. He thanked the Solicitor General and the Director of Public Prosecutions (DPP) for attending; the DPP had arrived at 08.30 to attend a

meeting with the Chairman, the CBA and the Circuit Leaders and they were all very grateful for her time.

The Chairman's written statement was circulated ahead of the meeting, but he wished to add a few points.

This Bar Council meeting marks the passing of Sir David Penry-Davey and Geoffrey Howe, Baron Howe of Aberavon, CH, QC, PC.

Turning first to David, the Chairman said that in many ways, far more important than his multifarious accomplishments, is the fact that he was one of the most loved figures in the law. He was a modest, kind and generous man who lit up the life of everyone he met. He battled chronic illness over the last few years of his life but this never diminished his indomitable spirit and he said grace at the South Eastern Circuit dinner earlier this year in Middle Temple Hall. He will be long remembered with great affection.

Geoffrey Howe's career took a different path after initial practice at the Bar. In his written remarks, the Chairman paid tribute to Lord Howe's political skills but there is one additional fact about him that the Chairman said that he found both very moving and a model to all. His love of his initial profession was so great that he continued to pay his Bar Representation Fee until 2012. The Chairman invited those present to recall that Geoffrey Howe sat as an MP continuously from 1970 to his retirement in 1992. During that period, he served as deputy Prime Minister, Foreign Secretary and Chancellor of the Exchequer, before stepping away from the House of Commons and in to the House of Lords, only ceasing to attend in 2015. The Chairman thought it was fair to say that his payment of the BRF for over 40 years - when he was a non-practising barrister - was exemplary.

The Chairman used this opportunity, whilst the example was in mind, to ask Bar Council members to do everything they can to convince those colleagues who do not pay the BRF - whether because they say they are too busy to do it, or on the basis that they believe that the Bar Council does nothing for them - to pay. It is valuable not just to the Bar Council, but to the practitioners.

The Chairman moved on from terminal farewells to some 'passings-on' as opposed to 'passings-away'.

Firstly, he thanked Patricia Robertson QC (PRQC), who was attending her last Bar Council as Vice Chair of the Bar Standards Board. PRQC has served for three years; while from time to time there have been tensions between the Bar Council and the BSB - and long may that continue - PRQC has always had a wonderful capacity to communicate effectively and to help people understand the different roles of the bodies. She will be sorely missed.

Second, the Chairman spoke of Charlotte Hudson (CH), the Head of Business Performance and Governance, who will be leaving the Bar Council to go to pastures new in the early part of January. The Chairman said that he found it impossible to believe that she had been at High Holborn for only four years and added that it is a tribute to the absolutely central role

she has played in the affairs of the Bar Council that she appears to have been with the Bar Council for much longer.

The Chairman spoke of CH's astonishing ability to remember details of everyone she has ever been in contact with professionally. He warned that if that makes people afraid, they are right to feel that way: "she knows more about you than your mother". She has, for instance, an encyclopaedic knowledge of the Chairs of the many Bar Council Committees, those eligible for chairmanship, the constitution of every committee and their supporting staff and a complete understanding of the constitutional nuances of their interlinking functions. It is CH who does the donkey work on co-options and elections, all of which have, in this Chairman's experience, progressed with utter smoothness. It is CH in whom those on Bar Council with difficulties confide and who is ever a source of comfort and help in getting through those difficulties.

The Chairman added that CH is able to do all these things because she is a wonderful human being, albeit not without her faults (she supports Tottenham Hotspur, for example). No-one, in the Chairman's experience, serves the Bar Council with such devotion. She knows so much about the Bar Council and each one of its members not through some form of osmosis but because she has put in the late nights and early mornings to learn her job and so do it supremely well.

The Chairman thanked CH for everything she has done for the Council, and, on their behalf, wished her great happiness and satisfaction in her new role, asking that she keep in touch and not forget the Bar Council, as it will not forget her.

Finally, the Chairman turned to the fact that this was his own last meeting of the Bar Council and it will soon be time for him to go too. He finds it impossible to believe that the year has gone with such speed.

The Chairman's term of office started with the Global Law Summit preparations. There is no doubt in his mind that the juxtaposition of LASPO and the coalition Government's keen desire to link the summit with the achievements of Magna Carta was a toxic recipe for the Bar of England and Wales, but he remains convinced that we were right to be involved. In the Chairman's view, the event at the Rolls Building provided by COMBAR, the Chancery Bar Association and TECBAR was a highlight of the summit, as were the sessions in which a diverse range of barristers from Tony Cross QC to Lord Pannick QC excoriated the Government on their withdrawal of access to justice in so many areas, all in the year when the 800<sup>th</sup> anniversary of Magna Carta was celebrated. Paradoxically, the summit allowed the Bar to make its points on an international stage. It would have been folly to pass that opportunity by.

Next came a final act of the coalition Government: introducing a Statutory Instrument changing the definition of the instructed advocate (IA) so that those who do the hard work on a case are rewarded in a timely fashion. This may seem to some to be a small point, but in the Chairman's mind, it was a highly significant outward sign of what was happening within the Ministry of Justice, namely a shift in the way in which the Bar was viewed by Ministers and senior officials. Gone were the days when the Bar was seen only as

troublemakers and a burden on the state. It came an era in which there was, at last, a recognition of the invaluable role the Bar plays in the administration of justice.

The Government changed in May and the new Secretary of State for Justice announced that the threatened cut in advocacy fees would not be implemented. In the dark days constituting the aftermath of the publication of the *Transforming Legal Aid* consultation, such an announcement was inconceivable. That outcome did not happen by chance; it represents the success of a policy, adopted and refined over the last years with the invaluable help of the CBA and the Circuit Leaders, to firmly, politely and utterly persuasively make the case for the survival of the independent Bar as an indispensable resource for a system of adversarial justice. In recent months, the Government has published another consultation, *Enhancing the Quality of Criminal Advocacy*, whose tenor and substance could not be further removed from that of *Transforming Legal Aid*.

The Chairman wished to record his thanks to everyone on the CBA, the Bar Council, serving the Council and the Circuits, who have brought this transformation about. The new consultation could have also been called *Transforming Legal Aid*, just in pretty well the opposite direction from its predecessor.

The Chairman wished to say a few words about the Chairman Elect, Chantal-Aimée Doerries QC (CADQC). She has demonstrated, as all civil practitioners in the Chairman's experience do, a mastery of the issues affecting the publicly-funded Bar even though that is not her practice area. Despite many positive events in recent months, the Chairman warned against being complacent and said that there will be many difficult times ahead; he has no doubt that CADQC, expertly assisted by Andrew Langdon QC (ALQC) with his deep knowledge of the minutiae of the world of the publicly-funded Bar, will make a formidable team to represent the Bar in uniquely difficult times.

The Chairman concluded by saying that it has been a huge pleasure and privilege to serve as Chairman of the Bar in 2015. He hoped that people recognise that it is, at times, a non-stop, highly challenging post in which events, travel and decisions take place without respite. On the other hand, he had to confess what a delight it was to see, for the first time in 800 years, the four extant 2015 Magna Carta documents together in one place and the declaration of Independence signed in Jefferson's own hand.

The biggest privilege of all, for the Chairman, has been to represent to the world the profession that he loves so much. It is a profession of which everyone should always be proud. As he said at the Bar Conference, the Bar has stood as the last bastion between the power of the State and the rights of the citizen for hundreds of years. It continues to do that whenever barristers appear in JR cases, in crime and family work, amongst others. The baton simply cannot be dropped now. The Bar must do everything in its power to ensure that the independent Bar survives, not for its own sake, but for the sake of society as a whole and, in particular for those whom are given a voice when otherwise there would be silence.

The Chairman invited questions; there were none.

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

The Chief Executive, Stephen Crowne (SCr), gave a brief report on strategic and operational developments.

First, at their meeting last Monday, the General Management Committee (GMC) took a report on the organisation's progress against the activities and objectives set out in the corporate plan for the Representation, Policy and Services Group (in other words, the representative arm of the Bar Council).

At the half year point, good progress is being made. 71% of the objectives and activities planned at the beginning of the year have been delivered. There are a number of reasons why particular objectives and activities have not been delivered as planned, some outside the control of the Group. The most important factor is the need to deal with new and emerging priorities; if the representative body cannot do all the things it wants to, it is critical that it at least does the most important.

There is a systematic process of reviewing progress every month, and adjusting priorities and resources as necessary. The team is working pretty much flat out, and SCr said that he is confident that the Group has the mechanisms it needs to ensure that the most important things are delivered.

Secondly, SCr noted that the work of Resources Group – the part of the organisation that manages common services like finance, human resources, IT, facilities and projects - often falls below the radar, and was pleased to be able to report on two important developments.

SCr reported that the new online HR system has been live for some weeks now, and is already helping to make the organisation more efficient and give greater transparency around key processes, such as absence management and performance appraisal.

Secondly, the new 'Work Smart Programme', dealing with issues arising from the lease on this building running out in 2019, has been launched. The landlord's intentions are not yet known and it may be that they are not known until very near the time. Therefore, the organisation has to plan on the basis that it will have to move. Clearly this will be a big decision, both financially and for the way that work is undertaken.

The programme is designed to look at three critical aspects. The first is about people and culture, building a vision of the kind of organisation the Bar Council wants to be by 2019 in terms of size, working practices and so on. This will help build a clear specification for the accommodation that is needed. The second is about understanding what technology will be needed to provide the necessary underpinning; the ambitious and ongoing Information Management Programme is aligned with this. The third element is the property search itself, including all the options for location and financing. Any creative thoughts or feedback on any of these points are welcome.

The aim is to deliver a range of benefits for the organisation and individuals:

- Improving the effectiveness and impact of Bar Council activities
- Creating an environment that supports modern, flexible working practices and collaboration
- Meeting the aspirations of staff for more flexible working and better work/life balance
- Reducing running costs through more efficient use of space
- Reducing the environmental footprint

SCr emphasised that a key point is how the Bar Council interacts with the profession and the very many barristers who give their time to support representative work; this will have an impact on any decision-making as will the need to deliver a solution which is affordable and right.

The Work Smart Programme will be reporting to Finance Committee and GMC, with updates provided at Bar Council meetings.

SCr went on to give some reassuring news about staff turnover. There have been concerns for some time that staff turnover has been running at a high rate – around 30% per annum for the whole organisation. A detailed analysis shows that, stripping out restructures and departures on performance grounds (all designed to deliver greater efficiency and effectiveness), the underlying voluntary turnover is about 15%. This is around the London average. Senior management are not, however, complacent and have put in place a range of measures which will help, including better staff selection and induction processes.

As at previous Bar Council meetings, SCr provided an update on the vulnerable witnesses training programme. A commitment has been given to the Government to ensure that all barristers who deal with serious sexual cases have appropriate training. A detailed course specification has been developed, which aims to achieve the desired standard and provide a practical proposition to deliver at scale. The next stage is to share this specification with Circuit Leaders. The next meeting of the Implementation Group – which brings together all the partners who have a responsibility for delivery - will be before Christmas.

Finally, SCr wanted to offer his thanks to two people from his perspective and that of the staff. Much has been – and will be – said about Alistair MacDonald QC's achievements as Chairman of the Bar, as there have been many. However, SCr wanted to add to that by stressing how much fun it has been to work with the Chairman. He is enormously approachable, likes to be challenged and gets involved in debates with indefatigable good spirits. SCr gave his personal thanks to the Chairman.

SCr also wished to add to the remarks by the Chairman about Charlotte Hudson, who was leaving the Bar Council in the New Year. The Chairman had referred to her immense contribution in to the work of the Council and to key committees. But there was another side which is less visible to Officers and Bar Council members. Charlotte had been a driving force amongst the staff to promote more efficient and effective ways of working, and to ensure a culture of high performance and impact. He was immensely grateful for this contribution and for her personal support over the years, and wished her well the future. She would be sorely missed.

## 5. Treasurer's Report

The Treasurer, Lorinda Long (LL), gave a presentation to support the 2016-17 budget proposals as circulated with the papers for the meeting.

LL explained from the outset that there is an expectation that practising certificate fee (PCF) collections will continue to increase. 2015-16 was the first year of the income-based PCF collections; early forecasts understated the earnings profile of the Bar and as a result more income was collected than expected. Research shows that fees in the sector have grown again in the last year, so there is an expectation that the level of fees collected will increase as individual barrister's earnings progress through the bands.

The proposal is to increase the PCF by 1.25% in 2016. This is a modest rise, and the first since November 2012.

The Legal Services Board (LSB) levy and the PCF levy will be merged into a single levy. This simplifies the fee structure and has no impact on the total fee payable by any practitioner. The separate levies result from the time when the LSB and Office for Legal Complaints were first established and it was convenient to see them separately. The costs of the LSB and OLC are now more stable than they once were. Both are compulsory; technically, they arise from the Permitted Purposes legislation. They will now be combined operationally but separated in the financial accounts.

Total income is set to rise 1%, £141k of which will come from the PCF. Spending plans are broadly flat; operating cost reductions are being made and the savings reinvested in new and better systems. The organisation is expecting a deficit budget and it is important to consider that in the context of the next three years.

In September, LL had explained that the organisation (Bar Council including the BSB) was underperforming against income targets and that there were cost pressures arising from staff turnover. These factors remain and the spend positions have in fact worsened. An operating loss of £314k is anticipated. There are, however, some additional items that will improve the overall bottom line in the accounts. These relate to historic accounting activities, including the PCF "windfall" which arose from an increased collection from the PCF last year.

Direct Regulatory Income is significantly lower than forecast, owing to a much smaller interest in entity regulation, fewer qualification waiver applications and fewer students undertaking training. This reduction has cost £446k in income.

BRF subscriptions are significantly lower and fewer training and events places have been sold leading to a reduction in contribution of £469k. This has been highlighted before and it is a major part the team's focus this year to improve the subscription levels for the BRF.

Regulatory, representative and project spend is on target but with little opportunity for savings.

The organisation is experiencing high staff turnover at present and this impacts on operational costs e.g. temporary staff and recruitment fees, and is seeking to mitigate these costs ongoing.

LL paused to open the floor to questions; there were none.

LL explained that the plan is to achieve a balance between competing factors that will allow the Bar Council to manage the business and keep PCF levels steady. That plan involves rebuilding BRF subscriptions, generating new income in the Representation and Services areas and good cost control to offset the counteracting pressures. The detail of that includes:

- Diversifying income away from the PCF to improve financial resilience and reduce the burden of representational PCF to the profession;
- Continuing to bear down on costs and investing in the business to improve systems, making processes more efficient and to reduce the cost base further;
- Utilising reserves. There was around £4m in reserves at the end of last year, and it is intended to use part of these reserves towards the costs incurred by the pension scheme and the property move in 2018/19. Over the next three years, reserves will drop below £3m towards £2m and then climb again after 2019. In practice, use of the reserves means there is a little more available on an annual basis so the business has more to work with, provided a long-term view of funding and the cost position is taken to manage a deficit.
- Receiving the latest defined benefit pension scheme valuation in early 2016 and building that into future planning. It is expected that this will require the business to extend current annual commitments for a longer period.

The combination of these factors means that there is an expectation for PCF collections to rise naturally (as a result of growth in the sector), and with small fee increments being needed over time (rather than applying one large increment).

Income in the next financial year is expected to be only slightly different in total than last year:

- PCF collections will rise due to increased earnings within the profession (estimated c.£275k) and the 1.25% fee rise (£112k)
- Inns' subvention reduced as expected: down £323k
- Implementation of regulatory policy on training and education means that income will be down £482k
- Increase in BRF subscriptions and continue a slow build of Services income

It will cost £220k less to operate next year than this, but the organisation is reinvesting that saving into its operations. BSB costs are reducing 5%, around £200k. Cost reduction contingencies will be built into plans, allowing the business to react to changes in income faster and so protect the bottom line in-year.

Louisa Nye (LN) asked how much of the 2016-17 budget is contingent on meeting BRF targets, given that there have been problems in getting practitioners to pay it? DB explained that the timing is helpful; most pay the BRF at the point that they renew their practising



certificate, which is before the financial year starts. This means that if there is a shortfall, activities and plans can be taken out of the agenda and the risk is reduced.

Alexandra Healy QC (ALQC) said that an increase in the PCF will no doubt be a trigger for people not to pay the BRF, and the downturn in take-up will continue. LL said that it is important to try to educate practitioners what the BRF supports; most do not realise what the two different fees pay for. The Bar Council could have decided not to worry about the BRF and just increased the PCF way above 1.25%, but is trying to make it as painless as possible and in line with inflation.

Gregory Jones QC (GJQC) asked about the drop in income coming from the BSB. VLD explained that this refers to direct regulatory income i.e. non-PCF income, including that from students. This has dropped. The Inns' subvention represents £330k of the fall. There has been less income from entity regulation than was anticipated, but now the BSB is able to forecast that income more accurately.

Andrew Walker QC (AWQC) expressed concern about running a deficit budget and the impact on reserves, plus the assumptions that have been made in this budget (especially BRF income). He added that he did not get the impression that the cost of the PCF is the reason for people not paying the BRF. AWQC said that in his view, to run a deficit budget and to use reserves which have been built up over the last few years, means going backwards and the reserves will be run at less than the current liability on the pension fund. It is a significant risk to take, especially when investing £500k in order to make cost savings, which presumably cannot be realised quickly and it is not clear what they are for. AWQC expressed disquiet that this can be done; the level of risk does not seem right.

LL explained that each part of the business has looked at the risk, as has Finance Committee, and all are comfortable with it. There is not a total reliance on BRF income and, as DB explained, if that income is not realised there are contingencies in place. The result of the revaluation of the pension scheme won't be known until next year and although it is unlikely to have reduced, there will be an option of an extended period over which it can be funded.

DB added that the £500k investment is in being able to automate processes – to remove laborious, manual tasks done by staff – and also to be able to collate data for the Bar Council to represent members more effectively and efficiently. In relation to the risk around BRF income, a target for BRF growth has been set, and if it has not been met by 31 March, then costs will be scaled back. That is implicit in the budget proposals, and not a casual assumption. With regard to the pension scheme, it is very likely that, as a result of changes in pension liabilities, the balance sheet will show a net deficit position at several points during next few years, but what is critical is to make sure that there is sufficient cash coming through to meet the pension scheme liabilities. DB explained this at the last Bar Council meeting.

SCr said that he could understand concerns but ultimately it comes down to either increasing the PCF in line with inflation (and very carefully managing income and costs) or simply cutting representative activities now. The BSB has been through long and detailed

process, delivering a 5% cut; all of the organisation is doing what it can to cut back. The process is being put in place to pull back if the money is not there. The balance of risk is right, but not necessarily comfortable.

LL recommended this budget as part of a three-year plan which allows more efficient use of reserves, allows the Bar Council to continue to build a stronger organisation through growth and reinvestment, and keeps PCF at the lowest prudent level possible, and asked if anyone did not agree the budget. No-one raised their hand.

LL thanked Bar Council for their support in her first year as Treasurer, and extended her thanks to the Chairman and to Patricia Robertson QC, who have both been great contributors to the Finance Committee.

## **6. BSB Report**

Patricia Robertson QC (PRQC) spoke to the BSB report provided at annex 4.

PRQC said that there was a theme in the report which was worth emphasising, namely that the BSB is changing and modernising as a regulator. As part of that, they have cuts their costs and are doing more with less money. The BSB aims to regulate well while recognising the challenges that the profession faces.

PRQC went on to give some headlines from the BSB report. Informal feedback on the BSB's performance against the Regulatory Standards Framework as assessed by the Legal Services Board has been positive. An initial response is anticipated by the end of 2015.

PRQC spoke about the ASPIRE ("Accessing Staff Potential to Inspire Regulatory Excellence") initiative, which includes significant upskilling of staff in the context of the new governance plans (see below). Since the creation of the BSB, the level of skills and knowledge amongst staff has continued to grow and this initiative is designed to continue that trend. What is required of any regulator has become more complex. The BSB cannot rely on pro bono contributions from practitioners to deliver the core functions of a regulator. The project also improves staff motivation as they are involved in meaningful, interesting work.

Consumer engagement training has been launched for all staff. There is an acknowledgement that it has been weak in the past; historically, it has been difficult to engage with consumers and staff have had little experience of doing so.

Work is ongoing to increase awareness of risk and evidence-based regulation, which means identifying what really matters and focusing on that.

The BSB has revisited its governance structure. There are internal changes and some reform of the committee structure. When created, the BSB inherited a mirror of the Bar Council committee structure but over time this has not proved to be efficient. There have been too many committees, which – apart from the efficiency point – carry a lot of expense. The proposal is to reduce the number of committees and to create a panel of experts to draw on

in particular areas. Policy development will be driven by staff but use external expertise. The changes will make the organisation more lean, but will not throw the baby out with the bathwater: the contribution from the profession will still be evident and vital, simply drawn upon in a different manner. An official announcement will be made on 9 November (*post meeting update - announcement was delayed to 24 November*).

The BSB, with the other regulators, has launched a narrow, technical consultation on QASA based on the recommendations arising from the JR, following the Supreme Court's judgment from June 2015. The closing date is 24 December 2015.

The BSB fully intends to respond to the current consultation from the Ministry of Justice on preserving and enhancing criminal advocacy; the BSB particularly welcomes the Government's engagement on the matter of referral fees.

The BSB's immigration thematic review shows again how the BSB is adapting the way it works in order to get the best results. They are using new methods to collect information and viewpoints – not just traditional written responses to consultation documents – having listened to feedback concerning information collection.

The BSB is working collaboratively with the other regulators on Equality and Access to Justice.

A report has been published following the assessment of 170 high impact chambers identified through the supervision process<sup>1</sup>. PRQC emphasised that “high impact” does not mean “high risk”.

It is acknowledged that the number of those signing up for entity authorisation is quite low, but there have been 162 initial applications, which would suggest that there is interest but it takes people a while to convert their initial interest into a full application.

PRQC thanked those who responded to the Future Bar Training consultation; there were 66 returns in total and clearly a lot of work was involved. The responses will be gone through in detail with a view to the overall analysis going to the BSB Board in January 2016.

PRQC also thanked those who responded to the Disciplinary Tribunal Regulations Review, whether in writing or in one of the workshops. It is quite a technical piece of work and the responses were very helpful.

PRQC added that the deadline to apply to be Vice Chair of the Bar Standards Board closes at noon on Monday, and encouraged anyone in the room who may be interested to apply. The regulator of the Bar should not be faceless; it should be someone who can serve as a ‘bridge’ to the profession. PRQC said that regulation is too important to leave to the regulators and

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<sup>1</sup> <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/high-impact-chambers-enthusiastically-engage-with-regulator-to-assess-risk,-says-new-report/>

any practitioner who does not apply but could make an important contribution will only have themselves to blame if they are not happy with the regulator!

Guy Fetherstonhaugh QC (GFQC) thanked the BSB for the wording of the Future Bar Training consultation, which was far more readable than previous consultations.

GFQC asked for clarification regarding the new governance arrangements; education and training is not included in either of the two standing committees. VLD replied that it is envisaged that an Education and Training Committee will remain for the 18 months – 2 years that it will take to develop the new Bar training system, and that the Committee itself will advise the Board when the time is right for it to stand down and policy expertise required in the area to be drawn primarily from the Advisory Panel of Experts (APEX).

The experts on that panel will likely cover a broad range of subjects e.g. both practitioners and academics. Recruitment to APEX will start with priority areas, such as education and training.

VLD confirmed that members of the panel will not be remunerated for simply being a member, but there may be a fee payable if there is a discrete piece of work completed. Implementing a panel will significantly broaden the base of practitioners who advise the BSB in terms of practice area as well as extending it beyond London.

GFQC asked whether membership of APEX is open to Bar Council members. VLD said that this is a very interesting point; at the moment one cannot be a member of both a Bar Council and a BSB Committee, but if, say, one were advising the BSB in a professional capacity as part of APEX, then it could be as an independent practitioner, so technically there might not be an issue. This, however, remains to be decided by the Board, who will need to address perception as well. The more detailed arrangements for APEX will be signed off in the spring.

AWQC sought clarification of what was meant in paragraph 11 of the report where it says: "...we must be mindful that we demonstrate our independence from the profession". Surely the BSB's independence is from the Bar Council, not the Bar as a whole? PRQC agreed to an extent but reiterated that there must be a balance. AWQC added that the plans are to remove all of the members of the Bar who currently contribute, except for those on the Board who will continue to have involvement in making decisions and evaluating evidence. PRQC agreed that it will be a much slimmer structure, but in any event the current committees comprise lay members as well, and they will be stood down too. The current structure is too cumbersome, inefficient and costly. However, the barrister component is extremely important and marks the BSB out as a regulator in terms of engagement with the profession.

AWQC added concern that there is a limit to what seven barrister members of the Board can do, and that a host of decisions will be presented and approved without due consideration by practitioners. PRQC responded that the BSB does not want a Board which simply rubber stamps decisions and that must not happen. The Bar is not being pushed out, just used in a more efficient manner. There will continue to be open consultation on major policy matters.

Alexandra Healy QC (AHQC) asked whether the BSB would consider extending the deadline for applications for the BSB Vice Chairmanship as she was not sure that it was widely known that recruitment is underway. VLD pointed to where the advertisements could be found and said that she would be prepared to extend the deadline to 17.00 on Wednesday 11 November 2015.

Tim Devlin (TD) asked about the BSB's plans to extend their powers (as discussed at previous meetings). The response was that following the consultation on that point, the Board is pursuing it and Orders are being drafted, as part of the ABS licensing process. TD asked whether that includes a compensation scheme; PRQC clarified that while compensation *arrangements* are required for ABS licensing, the BSB is not proposing a fund.

There were no further questions for the BSB. PRQC and VLD left the meeting.

Max Hill QC (MHQC) asked – as he had to leave the meeting at this stage – whether he might delay the next item for a moment to offer his thanks to the Chairman. He paid tribute to AMQC, who became Leader of the North Eastern Circuit while he, MHQC, was Chairman of the CBA. The Chairman came to the table when there was not the same cohesion amongst the CBA and the Circuits as there now is; ever since he co-chaired the CBA conference in Newcastle and emerged from the pack, that cohesion has lasted and he must take a slice of the credit. AMQC has been a superb Chairman of the Bar.

## **7. Bar Pro Bono Unit annual report**

Jess Campbell (JC), Chief Executive of the Bar Pro Bono Unit (BPBU), attended to deliver their annual report 2013-14.

2014 was the second year of the “£30 initiative” as part of the Authorisation to Practise (AtP) process. £130,000 was raised from the Bar that year; in 2015 this rose to £231,480. It is very difficult for the BPBU to budget in advance when it is unsure what collection will be made from the initiative, but each year they are delighted by the support. The increase this year has allowed them to expand their services.

Overall, the BPBU gets its funding from the Bar Council (£63k per annum), the Inns (£60k per annum) and from individual donations, as well as the £30 initiative. A grant from the Access to Justice Foundation (from pro bono costs awarded in court) will fund visits by the BPBU to Circuits during the next year.

JC reported that costs are increasing. The rent on the building in Chancery Lane is coming to the end of its fixed period and going forward its affordability will depend on how many charities are based in that centre. Staff costs have also risen, owing to the recruitment of a Head of Casework, a casework administrator and IT investments. In 2014-15, they also hired two more caseworkers. A “break-even” budget has been prepared for 2016-17, based on the level of commitment from the Bar via the AtP process remaining steady or, hopefully, increasing from 57% of the Bar contributing to 60%. However, the BPBU is very aware of the

pressures on the Bar and recognises that it can be hard to contribute. The BPBU also needs to add Gift Aid to the donations, which will add 25%; forms will be issued for donors to complete and JC asked that Bar Council members warn their constituents to expect them.

The BPBU currently has 3,670 barrister volunteer panel members, plus 145 reviewers, who “safety check” the processes of the unit, including making sure that services are only provided to meritorious applicants.

In 2013, 1,673 applications were made to BPBU. By September of 2015 – only 9 months into the year – 1,703 applications had been received. There is a year-on-year increase of 30%. Family law referrals have increased, while employment law referrals have dropped dramatically. The source of referrals has also changed since the cuts to frontline agencies. There has been a 17% increase in referrals from MPs as a result of potential litigants in person seeking help from somewhere other than an advice centre.

The challenge to the unit is not just the volume of applications, but how they are placed; there will be a bigger focus on regional development of the BPBU over the next year in order to increase support on the Circuits. JC has already spoken to the Circuit Leaders and will be going on “tour” to try and find out why there is less practitioner support outside London. Another development will be to increase use of IT, as the process is currently exclusively paper-based, which may help.

There are other support networks available to support litigants in person, from the very popular CLIPS duty scheme from the Chancery Bar and the Employment Lawyers Association Litigants in Person scheme (ELIPS). There is support available on the Circuits (in Bristol for example, there is a family support scheme) and it may well be that local initiatives are the reason why the BPBU struggles to achieve Circuit support as practitioners are already giving their time elsewhere.

There is also the Litigants in Person Support Strategy – a combined scheme with LawWorks, Law for Life, the Access to Justice Foundation, the Personal Support Unit and RCJ Advice, which puts the litigant at the heart of the process. The BPBU is also educating the Ministry of Justice on the litigant’s journey and where pro bono fits in with that.

Bar in the Community is an initiative run by the BPBU which helps to channel the interest of barristers and other legal professionals wishing to serve the community by using their skills in a different way e.g. acting as a trustee for a charity. The BPBU helps match barristers to voluntary organisations.

JC reported that the literature on the BPBU website is being updated to make it more accessible; all feedback is welcome.

JC thanked the Chairman and Chairman Elect for the time they have spent meeting applicants and learning how they have been affected both by lack of funding for their cases, and by using the BPBU. The stories that litigants can tell illustrate the challenges so much better than numbers.

JC opened the floor to questions.

Susan Jacklin QC (SJQC) wished to emphasise that there is no shortage of willingness from the family Bar to assist, but the size of the problem of unrepresented litigants is so large that even with a considerable number of volunteers to work pro bono, the need cannot be met. In addition, family practitioners are struggling to make a living in any event.

Attention was drawn to the Attorney General's speech opening Pro Bono Week, during which he said: *"I am aware that there is still a common misconception about pro bono, but let me be clear that pro bono is an adjunct to, not a substitute for legal aid funding"*<sup>2</sup>

The Chairman stressed what JC had said about meeting litigants in person; there is a belief within some quarters that as a rule the general public are perfectly capable of representing themselves. This is plainly not true and the vast majority are adrift on a sea of complexity. This is where the work of BPBU – and others – is vital.

## **8. Law Reform Committee report**

Fergus Randolph QC (FRQC), Chairman of the Law Reform Committee (LRC), presented the report at annex 5.

The election in May 2015 had an obvious impact on the committee insofar as there was a lull in new and proposed legislation from Government, however the committee remained very busy responding to consultations from other sources, most particularly the Law Commission.

The LRC and the independent Law Commission have fostered a relationship over time and now work with great synergy. The Law Commission is very keen to engage the Bar Council through the committee, and very much appreciate its input. Sir David Lloyd-Jones, until recently the Chairman of the Law Commission, will be delivering the annual Law Reform lecture on 2 December at 17.30 at Inner Temple Hall. All are welcome.

The committee is also running its annual essay competition and 47 entries have been received this year. An enormous amount of effort is put in by committee members to mark them.

Government legislation on surveillance and privacy has increased the workload of the committee to the extent that a specialist working group has been set up to consider and take forward this absolutely vital work. FRQC paid tribute to the members of that group, to whom the Bar should be grateful, for pressing to ensure that fundamental freedoms are not eroded by heavy-handed legislation.

The committee's sentencing working group is working with the Law Commission on its consolidation of sentencing project.

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<sup>2</sup> <https://www.gov.uk/government/speeches/attorney-generals-speech-at-the-opening-of-national-pro-bono-week>

The committee continues to be concerned about the ever-shortening periods for responding to consultations. Where once there would be a 12-week minimum, the timescales given now are often much shorter and do not allow for proper consideration of the issues.

Andrew Langdon QC (ALQC) noted that – in the context of the earlier discussion about the BRF and what the Bar Council does for its members – the work undertaken by this committee, for example, should be advertised more widely. FRQC volunteered to look into publishing a summary of its work in *Counsel*, or to go out on Circuit.

## **9. EU Law Committee report**

Gordon Nardell QC (GNQC), as Chairman of the EU Law Committee, presented the report at annex 6, adding what a privilege – and how much fun – it is to lead this work. He paid tribute to the Vice Chairs, Tim Devlin and Alexandria Carr.

The committee has been very busy with an ambitious and often highly technical agenda, which has required active support and engagement from its members.

GNQC chose not to speak to all the points in the report, but to focus on some headlines. In the first instance, he wanted to do some myth-busting about the EU Law Committee, which can often be misunderstood. Most importantly, he wanted to stress that the committee's work is of direct relevance across the Bar, and practitioners from a diverse range of practice sit on the committee. Activities are focused across practice areas including criminal, commercial and family and that they work with both the employed and self-employed Bar.

GNQC turned to the EU referendum strategy. The Bar's voice is at its most effective when it speaks as an independent profession, committed to the rule of law. The EU Law Committee, on behalf of the Bar, will demonstrate that the profession can - and wants to - help Government on these complex issues, but will not take a position of "in" or "out". The Committee will identify the key legal issues arising and what the implications might be. This applies as much to the Government's proposed areas for negotiation of reforms as it does to the eventual in/out decision. A draft position paper will be circulated amongst the SBAs and taken to the General Management Committee in due course.

GNQC encouraged anyone who has an interest in the sort of work outlined in the report to consider getting involved with the committee.

The Solicitor General remarked that contributions from the Bar Council on these matters will be very useful, to him and to Downing Street, and requested that the committee provides what it can to inform the discussion.

## **10. International Committee report**

Amanda Pinto QC (APQC), Chairman of the International Committee, was unable to attend to deliver the International Committee report but Hugh Mercer QC (HMQC), a Vice



Chairman of the committee, kindly attended on her behalf and spoke to the report at annexes 7a and 7b.

HMQC explained that the International Committee tries to support every practitioner at the Bar in their international endeavours; every area of practice has an international element or potential, if only one can find it.

The work of the committee is broadly split between rule of law work and business development, although the line between the two is often permeable insofar as the former often leads to the latter.

HMQC wanted it to be known that the Bar Council executive does an excellent job, often above and beyond the call of duty.

Work by the committee in priority legal markets has led to missions to Kazakhstan, Brazil and China in the last year. 22 alumni of the Bar Council China Training Scheme (an exchange programme run solely by the Bar Council) returned to celebrate the scheme's 25<sup>th</sup> anniversary, which is testament to the high regard in which the scheme is held.

The committee has been working increasingly with the Foreign and Commonwealth Office (FCO), which gives the Bar Council an opportunity to be part of something bigger in terms of the rule of law in a global context.

The Chairman of the Bar has also signed a Memorandum of Understanding with the British Council; the two will work together on rule of law initiatives globally. Only 20% funded by government, the British Council carefully builds strategic relationships and it is encouraging that the Bar Council is one of them.

The International Committee has been assisting barristers by providing networking opportunities, an example of this being the recent launch of the Young Professionals' Network, coinciding with the 70<sup>th</sup> anniversary of the UN, giving the Young Bar, Young Diplomats and UN Association of Young Professionals an opportunity to plug into networks.

This year's international Rule of law lecture – given by Chief Justice Geoffrey Ma – was very popular. The next, in February 2016, will be given by Judge Yasmin Barrios, one of the Presidents of Guatemala's two high risk court tribunals, who was also the presiding judge in a case of genocide against former Guatemalan dictator Efraim Rios Montt.

HMQC opened the floor to questions.

Richard Atkins QC encouraged a pan-England and Wales approach to international work. HMQC concurred and Gerard McDermott QC (GMQC) emphasised that an international practice can definitely be run from the Circuits.

The Chairman thanked the International Committee. In relation to the China exchange scheme, he wanted to add that these are not just "any" Chinese lawyers; they are young

lawyers who will become leaders of the profession in the future. These programmes build a reservoir of goodwill and the Bar is contributing enormously to UK plc.

## **11. Any other business**

### **Jackson Reforms**

Louisa Nye (LN) raised two queries. Regarding the post-Jackson reforms, she asked whether the Bar Council is taking any steps to collate information as to their effects. A lot of work was done prior to the reforms to argue as to the impact that they would have, and the increased costs to parties that would result, but is there any supporting evidence? Is the Law Society doing anything as far as the Bar Council is aware?

AMQC said that he would respond in full after the meeting.

The response provided was that the LASPO: One Year On report covered the impact of the Jackson reforms<sup>3</sup>. In scoping a LASPO: Three Years On project (as referred to at the Annual Conference) it would be possible to consider them again. It is not known whether the Law Society is undertaking any work in this area.

### **Pupillage Fair**

LN queried the cost to Chambers to exhibit at the Pupillage Fair and expressed concern that the previous National Pupillage fair providers had produced publications in addition to providing a stall and this represented value for money, where the Bar Council is asking Chambers to print out their own inserts (at management time and cost) to be included in the “pack” that will be given to students/prospective pupils – this is not being seen as value for money. There is also a strong concern that the costs are prohibitive for legal aid sets.

AMQC undertook to respond in full after the meeting.

The response provided was that the costs to attend are substantially less than those charged by the previous provider; the Bar Council had received feedback that they did not provide value for money and sought to offer better value. The Bar Council has also staggered charges to make it more affordable for all sets to attend if they wish to do so. There are higher costing packages which include properly constructed stands for any sets who wish to pay more, but that is their choice. A number of free stands have also been offered and six sets have taken that up that offer.

A full programme has been put together, listing all chambers in attendance and including key details or messages, logos and contact details. This is being printed for all in attendance and will be included in the pack. If any chambers/organisations wish to include additional information, they would need to print that themselves, but it is the Bar Council’s understanding that this is the same requirement as with the previous provider.

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<sup>3</sup> [http://www.barcouncil.org.uk/media/303419/laspo\\_one\\_year\\_on\\_-\\_final\\_report\\_september\\_2014\\_.pdf](http://www.barcouncil.org.uk/media/303419/laspo_one_year_on_-_final_report_september_2014_.pdf)

### **MoJ consultation: criminal advocacy**

John Elvidge QC (JEQC) encouraged engagement from across the Bar in the MoJ consultation *Preserving and Enhancing the Quality of Criminal Advocacy*.

### **Pupillage Gateway**

Laurie Rabinowitz QC asked when the consultation regarding the changes to the Pupillage Gateway timetable would be launched. SCr confirmed that it would be in the next two or three weeks.

### **Chairman of the Bar 2016: Inaugural meeting**

The Chairman reminded members of the incoming Chairman's inaugural meeting, which will take place on 7 December at 18.00 at Inner Temple Hall.

### **With thanks**

The Chairman Elect (CADQC) closed the meeting with thanks to Alistair MacDonald QC, Chairman of the Bar 2015. CADQC reminded those present that the Chairman said earlier in the meeting that it had been a privilege to serve as Chairman, but it seemed to her – having worked with him - that it had been a privilege for the profession. His commitment to the profession combined with energy and a persuasive, straight style of advocacy has garnered – for himself and the profession – a lot of respect.

The best example that CADQC can think of in that respect was the four days she spent with the Chairman at the Labour and Conservative Party conferences. Often it is only when one see someone in the job that you appreciate the full extent of their work and dedication. The Chairman has shown every quality that the Bar needs.

CADQC said that it has been a complete pleasure to work with the Chairman, and perhaps more importantly it has been, as the Chief Executive already mentioned, a pleasure for the staff at the Bar Council too. He has always operated an open door policy and engaged with the executive, upon whom a Chairman's success also depends.

The Chairman has been particularly committed to the role of the independent advocate in society, which he is quite passionate about and which we heard a little about earlier in today's meeting. The public interest has been at the forefront of everything he has done and been central to the work of the Bar Council.

CADQC singled out four of his many achievements. (i) It is important to recognise the Chairman's role in continuing to improve relations with the Ministry of Justice and the impact that this has had. The criminal Bar is in a quite different position to a year ago; cuts have not been implemented and the current consultation is welcome. (ii) The Chairman has also worked tirelessly to represent the profession overseas, which is not always as easy as it sounds to some. He has signed a Memorandum of Understanding with the British Council, which will stand the Bar Council in good stead. In his very first week, he had to manage the challenges of the Global Law Summit. In the end, the Bar's sessions proved to be very good and a valuable stage for the benefit of the Bar. (iii) Most recently he has overseen a very successful Bar Conference. (iv) As had already heard from MHQC, the Chairman has been

committed to working more closely with the Circuits and has demonstrated a commitment to the importance of One Bar.

CADQC once again thanked the Chairman, on behalf of the whole Bar, adding that he will be missed and presenting him with gifts from the Bar Council to remember his chairmanship by.

The Solicitor General asked if he could add a coda on behalf of the Law Officers. It is the function of a great representative to speak to truth to power, and Alistair MacDonald QC has certainly done that.

## **12. Date of next meeting**

The next Bar Council meeting will be the incoming Chairman's inaugural meeting on 7 December at 18.00 at Inner Temple Hall.

**Bar Council**  
**November 2015**