



The Bar Council

## Minutes of Bar Council meeting

Saturday 28<sup>th</sup> March 2020, Remote Dial-in

<b>Present</b>	Amanda Pinto QC	Chair	APQC
	Derek Sweeting QC	Vice Chair	DSQC
	Grant Warnsby	Treasurer	GW
	Malcolm Cree CBE	Chief Executive	MC
	Mark Neale	Bar Standards Board	MN
	Iain MacDonald	Law Reform Committee	IM
	Rachel Langdale QC	Ethics Committee	RLQC
	Natalie Zara	Head of Governance	NZ
	Carolyn Entwistle	Head of Services to the Bar	CE
<b>Minutes</b>	Samantha Anderson	Executive Officer	SA

### Attendees via remote access:

Dr Mirza Ahmad; Robin Allen QC; Colin Andress; Efe Avan-Nomayo; Nick Bacon QC; Elaine Banton; Kieron Beal QC; William Boyce QC; Minka Braun; Ian Brookes-Howells; Sydney Chawatama; Richard Cole; Ivor Collett; Catherine Collins; Celina Colquhoun; James Corbet Butcher; Melissa Coutino; Tim Devlin; Katherine Duncan; Mark Fenhalls QC; Layla Ferguson; Emily Formby; Neil Garrod; John Goss; Jonathan Goulding; Andrew Granville Stafford; Barry Harwood; Michael Harwood; Neil Hawes QC; Michael Hayton QC; Tricia Hemans; Isabel Hitching QC; Sarah Holmes-Willis; Matthew Howarth; Susan Jones; Michael Jennings; Joanne Kane; James Kitching; Rachel Langdale QC; Edite Ligere; Lorinda Long; Kate Lumsdon QC; Athena Markides; Lee Marklew; Eleanor Mawrey; Louise McCullough; Catherine McGahey; Martyn McLeish; Christina Michalos QC; James Milholland QC; Marie-Claire O'Hara; Francesca O'Neill; Grace Ong; Lucinda Orr; Alison Padfield QC; Deshpal Panesar QC; Francesca Perselli; Alison Pickup; Michael Polak; Rehana Popal; Charlotte Pope-Williams; Eason Rajah QC; Jonathan Rees QC; Robert Rhodes QC; Timothy Sherwin; Natasha Shotunde; Joe Smouha QC; Gordon Stables; Daniel Sternberg; Philip Stott; Leanne Targett-Parker; Jacqueline Thomas QC; Steven Thompson QC; Linda Turnball; Anton van Dellen; Nick Vineall QC; Emma Walker; Richard Wright QC

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**THE BAR COUNCIL**

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## **Apologies were received from:**

Baroness Tessa Blackstone; Suella Braverman QC MP; Kane Brunner QC; David Elias QC; Michael Ellis MP; Max Hill QC; Hazel Hobbs; Cyrus Larizadeh QC; Clive Moys; Ryan Richter; Kate Spence; Ben Symons; David Taylor; Sonia Tolaney QC

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

The minutes of the meeting on 29 February 2020 were presented as a draft to members. Requests for amendments were emailed to SA and made after the meeting. The final minutes will be published on the Bar Council website.

### **2. Statement by the Chair**

APQC welcomed members to the meeting. It was the Bar Council's first remote meeting; thanks were given to everyone for joining and to everyone who helped set it up. Thanks were also extended to DSQC who offered Chambers to host a part in-person and part remote meeting.

Life has changed considerably within the last 4 weeks and the Chair's Statement seems of another world even though it was written only a week ago. To highlight a couple of points; the accelerator project is continuing though we are adapting the way things are being coordinated. It could not be more important for the profession to have sustainable practices and to encourage diverse people to the profession.

At the end of February, APQC attended the Bar Leaders' Conference in Vienna where there were meetings with other Bar Leaders as well as politicians and diplomats. The aim was to get them on side to help improve access for the profession having left the EU.

APQC invited members to look at the letter that was sent out on 27 March (around 20:00), which was an update to the profession of what the Bar Council has been doing. Thanks were given to staff, committees and members for the level of effort being put in at this time. We are dealing with government and senior judiciary very regularly. In addition, APQC has been on the phone to the MOJ between 3-4 times a day, feeding in issues across the board that we need them to hear.

Thanks were extended to those who set up and are taking part in the Covid-19 working group which is a great resource. The LPMA and the IBC are involved, and we are liaising closely with the Law Society. The Ethics hotline has been used a lot this week as everyone has worrying concerns.

There is a lot of detail on the financial support for the self-employed Bar on the Bar Council website and it is being updated regularly. We are continuing to drive for further benefits to assist the Bar. One of the strands of work that is being focussed on currently is the government package that was announced by the Chancellor on 27 March, to understand who will and who won't be able to benefit from it. who is likely to gain the most, in a

financial and career sustaining manner. APQC stated that she is very grateful to the Covid-19 Working Group, RemCom and the YBC who have been putting together a way of gathering data that we can then pass onto government to press our case in a better way. There is a survey being sent out to Heads of Chambers and Practice Manager about the effect of Covid-19 in their set.

NHQC added that it is a work-in-progress and there are a number of juniors as well as those about to start pupillage who don't have the accounts required to be eligible, so we are supporting where we can.

BH asked if the working group is also keeping an eye on Education & Training and qualifications, to which APQC confirmed that they were, in addition to liaising with the BSB.

ERQC also added that the looming issue is pupillage and pupils or future pupils and the disruption that this is going to cause. Whether Chambers are going to be able to afford pupillage awards, will they be cancelled, and will these disruptions result in people not qualifying in time. APQC assured that this subject is included within the FAQs and it is being dealt with.

APQC urged all members and members of Chambers to use the Working Group email address to flag up any issues that anyone is having or that are foreseen. It is a good way to centralise views and allows us to collate them in one place so that we can see the problem in the round. A letter has been sent by students on the subject of what is happening with their futures, to a number of people, the Bar Council is one of the addressees and we are looking into this seriously.

EW asked whether the survey would be sent to the Employed Bar as they are also going to be affected by covid-19. AM detailed that we are approaching the issue in two phases: the first step is divided into two parts. We would like to understand the impact of Covid-19 on Chambers and barristers and will be sending a survey to Heads of Chambers and Practice Managers to get an idea from them. Simultaneously, we will be looking at the CRM data to understand how many barristers are likely to be eligible for the relief and how this differs across practice sectors. We may then proceed to undertake a further survey, contacting individual barristers. These steps will hopefully allow for a targeted response that will help us identify where attention needs to be focussed.

### **3. BSB Report**

MN spoke to the report and gave apologies on the behalf of Baroness Blackstone.

Much of the BSB focus is on the implications of the health emergency and we recognise the pressures on Barristers and Chambers and want to do what we can to help. The BSB has extended the deadline for the completion of Authorisation to Practice to the end of May and we have agreed with the Bar Council to stagger payments of the Practising Certificate Fee this year, but only for those Chambers who have not already paid the block fee.

A lot of our focus is also on the consequences of the decision to move the centralised examinations of the BPTC. There is a need to reschedule the exams, possibly to August, though we are not assuming that this will be tenable. We are looking at a range of contingencies in that event. Additionally, the BSB is working proactively with the Inns for the implications of covid-19 on pupillages.

RLQC asked if the report that was sent to the BSB today would be responded to; MN confirmed that the BSB will definitely be responding.

ERQC highlighted that a number of people approaching this are likely to be terrified about their futures and so for clarity and transparency, the sooner any information can be given, the better. Thanks were given for everything that the BSB is doing. MN confirmed that the BSB are aware of the uncertainty and are working through the issues, the possibilities moving forward and will bring them out as quickly as possible.

MJ asked what the situation with disciplinary tribunals and hearings is, which MN confirmed would be staged remotely where possible, but if they need to be held in person, they will be put on hold until such a point where they can be.

JRQC stated that there is a strong feeling within the Wales & Chester Circuit that there should be a part refund of the PCF, for the restrictions in place on barristers being able to practice however MN said that this would not be possible for both economic and administrative reasons.

NVQC understands that the BPTC centralised exams are under review but wanted to record that there is unhappiness from students that the exams are being put back. If consideration is being taken as to whether the exams can be done remotely, can the BSB also consider them being done early, as August is late for those who want to know what they are doing. It will go down well if the exams can be done earlier than August. MN confirmed the BSB was looking at the full range of contingencies

BH asked if resit opportunities was also being looked into; with the timetable being changed, is the BSB considering allowing a further opportunity, above and beyond the current number, for resits for students. MN confirmed that this is being looked at.

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

MC reported that the Bar Council staff have been prioritising the covid-19 outbreak and encouraged members to look at the Bar Council website, the FAQs that have been published and to use the covid-19 working group email.

We are carrying on with normal business as best we can; we continue to respond to consultations and the committees are still working, however the most important focus at the moment is covid-19.

The Bar Council team were in their new office for just two weeks before the advice was given for everyone to work from home; the same team who facilitated the new offices have

helped us facilitate working from home and is a testament to that team that we are able to have this remote meeting.

MC made a correction to the statement that MN made under the BSB report; the General Council of the Bar is responsible for setting the PCF and collecting it and therefore deciding whether to delay the collection of the funds. We are grateful to the BSB for taking the decision to extend the Authorisation to Practice, and therefore providing the opportunity to delay the payments. About 45% of chambers will be supported with the decision to stagger payments, which will be coordinated by the finance team to provide invoices. We give apologies to those who have already paid the fee in the one block payment. In the future, MyBar will be changed to allow for split payments next year for individuals. The Bar Council predicts that there will be a decrease of income for next year (as it will reflect barristers' earnings this year) and we will be taking measures early to minimise the damage of lower PCF income.

MC was questioned whether consideration had been taken to furloughing staff members, which MC confirmed it will be considered, as well as other means of easing cash-flow such as talking to the bank and using reserves, but furlough only works for staff who are not gainfully employed: at the moment most staff are working flat out on some element of dealing with the current crisis. Opportunities to furlough are likely to arise.

APQC confirmed that she has written to the Inns; Desmond Browne QC of COIC has been contacted and responded in positive terms. Three quick responses were received and one on 27 March; the Inns are not putting in a programme of rent review of general application. They will lose enormous amounts of revenue, with their events being cancelled, but they are considering pleas from Chambers in respect of deferrals of rent or other arrangements. A conversation will be held in the coming week about the education and support of students and pupils from the Inns.

NVQC was asked if the revenue implications of Covid-19 has been filtered through to the educational elements of the Inns, which NVQC was unsure of what the Inns were doing. The Inns representatives added that the Inns are looking at rent deferrals and are holding remote meetings about how to assist students going forward. MT and GI are holding training online and GI have also conducted Qs online.

## **5. Law Reform Committee Report**

IM confirmed that the report includes the activities of the committee for the last year. At this time, the committee would normally be looking toward the arrangements of the Law Reform Lecture, for which the date of 3 December has been identified and it is hoped that this will remain a viable date. The format of the event is likely to be more of a debate rather than a lecture and may be on the topic of 'Law in the Digital Age' which wasn't the front running topic, but under the current circumstances seems more relevant.

Over the weekend of 21-22 March, the committee, along with Chambers have put together a response to the Coronavirus Bill. By 23 March, peers and MPs had access to this response.

If anyone hasn't read it and want to terrify yourselves, IM gave direction to Section 20, which allows public health officers to send us all into quarantine. We hope that we may be able to feed our response through to the Home Affairs Select Committee.

The committee have received a few queries, however IM requested that these be sent through to the Covid-19 Working Group who will pass onto the committee if needed. We are doing what we can under the current climate.

APQC gave thanks to IM and the committee for putting something out so quickly on the emergency bill and has been told by Nikita at the Bar Council that the Lords took it under consideration.

## **6. Ethics Committee Report**

RLQC had nothing to add to the report and gave particular thanks to Sarah Richardson. The Ethics team have been taking a lot of phone calls, up to 5 weeks in advance of this meeting and they continue to take calls, though there may be fewer coming through now with the generic guidance given by the Bar Council.

The committee is still dealing with things in the way we have in the past, updating guidance, though more focussed on what is happening right now with covid-19. Cathy McGahey (Vice Chair) and I are working on something this weekend. We are all doing what we can to help people.

## **7. Bar Council Modernisation Working Group: proposed changes to the Composition**

The Bar Council was asked to approve the recommendations for changes made by the Bar Council Modernisation Working Group and approve corrections to/deletions of incorrect references in the Constitution. We have been pressing, in advance, the issue of modernising the way that the Bar Council operates. These changes will allow for a broad spread of good people to be members of Bar Council.

1. Implementation of a proxy system for all members of the Bar Council;
2. An amendment to the wording regarding the frequency of meetings to enable greater flexibility with regards to the number of Bar Council meetings per year;
3. Introduction of a mechanism and system to enable electronic voting between meetings; and
4. Removal of the requirement for a barrister standing in the subscriber elections to have a proposer.

A doodlepoll was sent to those in attendance, for votes to be taken during the meeting. The question posed was 'Do you agree with the constitutional changes set out in paper BC06a/b'. NZ clarified that as a change to the Constitution requires an Extraordinary Resolution, two thirds of members at the meeting would need to approve the changes.

It was confirmed at the end of the meeting that 79 members were sent the vote. 78 members voted 'Yes' via the doodlepoll platform and 1 member voted 'Yes' via direct email to NZ. The changes to the Constitution were approved unanimously.

APQC and NZ both gave thanks to the Bar Council Modernisation Working Group for the work undertaken on this project and NZ thanked Michael Jennings especially for his help.

During the course of the discussions regarding the proposed changes to Constitution, there was some considerable discussion about the proposed wording for the paragraph on proxies. RRQC pointed out that as the Constitution states that 'the masculine shall include the feminine', the use of 'their' should instead be 'his'. Members of the Bar Council expressed different opinions and while there was some support for RRQC, the general agreement was that gender-neutral terminology was more appropriate.

## **8. Any Other Business**

During the meeting, APQC received an email from the SPJ containing guidance on custody time limits which has been sent onto the team working on the Bar Council website so the guidance can be published as soon as possible. This demonstrates that we are plugged into the right people and they are providing us information as and when they can.

LO said that if anyone wants to see open justice being done, within the Commercial Court, where everyone is at home, it can be viewed on YouTube. The case was live streamed on 27 March and worked remarkably well and included the use of translators as well as witnesses abroad. The [link](#) was sent onto NZ who distributed it to members.

AP raised that her employer, Public Law Project, is running a survey monitoring what is happening in the courts, with remote courts and tribunals. APQC asked AP to liaise with the covid-19 working group.

TD highlighted a huge inconsistency within the criminal courts, which although have technology to allow for remote hearings to take place, they are reluctant to use it as it is not considered to be secure. APQC stated that a message went out to the profession on data protection and we are aware of the issues. But, if something works, it should be being used. A message will go out to the judiciary on this.

IBH suggested liaising with the [Society for Computers and Law](#) (SCL) and its President, [Professor Richard Susskind OBE FRSE](#), who has done a lot of work with the UK MOJ and in Canada on online dispute resolution, courts and tribunals. APQC added that this would be useful; IBH agreed to put NZ in touch with the Communications Officer of SCL to start liaison with SCL.

GS also highlighted that a number of NE Circuit members have asked the question of what will be done for those who are just above the threshold of the government package and whether there is any prospect of assistance. APQC confirmed that lobbying for those affected is going on but was unable to confirm the prospects of this. MC added that daily meetings are being held with the MOJ and practitioner groups and these issues are being

raised with the MOJ then passing these issues onto the Treasury. We are hoping to achieve some relief for the Bar, certainly in the publicly funded Bar and we will continue pushing for further assistance. The CBA are also lobbying in this area.

SJ highlighted confusion with the three tiers of courts, where a hearing is due to take place digitally next week in a suspended court. There is concern over confusion for practitioners that suspended court hearings could still be going ahead, when practitioners or parties do not expect they will be proceeding. APQC added that it is at the forefront and guidance from HMCTS and the government is slow which is causing concern. We are pushing them to provide further horizon on their comms, with hearings being listed on the day rather than earlier, which isn't helpful. It is believed that the system will sort itself out, and APQC has suggested to the senior judiciary to take a couple of days off, to look at digital access possibilities, but it doesn't seem as though it has been taken on board.

Compliments and thanks were given by all members for the smooth organising and running of the meeting, to APQC, NZ and the Bar Council team.

## **9. Details of Upcoming Meetings**

Saturday 16 May 2020