**Minutes of the Bar Council Meeting Held on Saturday 23 July 2011 at the Bar Council Offices**

**Present:**

Rt. Hon. Dominic Grieve QC MP, Attorney General
Peter Lodder QC, Chairman
Oliver Delany, Director of Central Services and Acting Chief Executive

**1. APOLOGIES**

Apologies for absence had been received from Michael Todd QC, Andrew Mitchell QC, William Boyce QC, Stuart Brown QC, Malcolm Davis-White QC, Suzanne Goddard QC, Martin Griffiths QC, Andrew Hillier QC, Stephen Nathan QC, Robert Rhodes QC, Anthony Shaw QC, Michael Soole QC, Mirza Ahmad, Jade Alan, Amanda-Jane Field, Tricia Howse CBE, Jennifer Josephs, Rebecca Major, Eleanor Mawrey, Christina Michalos and Nicholas Worsley.

**2. APPROVAL OF THE MINUTES**

The Minutes of the 18 June 2011 Bar Council meeting were approved.

**3. MATTERS ARISING**

No matters arose from the 18 June 2011 meeting.

**4. BAR COUNCIL MEMBERSHIP 2011**

The list of Bar Council Members at Annex B to the Agenda was noted. The meeting approved the appointment of two new members, to fill casual vacancies arising: Susan Jacklin QC in the Queen's Counsel category; and Professor Anthony Lavers in the Employed Over 7 Years' Call category. Both would serve until the end of 2011.

**5. STATEMENT BY THE CHAIRMAN**

Peter Lodder QC (PL) thanked members present for attending, whilst noting that the apologies list bore an uncanny resemblance to the guest list for the Western Circuit's Grand Night, which PL had attended the previous evening in Winchester. It had been an enjoyable event, shattered this morning by the news of the terrible events in Norway. On behalf of the Bar Council, PL expressed shock and sympathy for those affected, and invited the meeting to observe one minute's silence.

PL wished also to mark the sad passing of two notable members of the Bar: Sir Anthony Ewbank, Chairman of the Family Law Bar Association (FLBA) 1978-1980, and later a judge in the Family Division; and Sir Desmond Fennell, who had chaired the public inquiry into the 1987 fire at King's Cross Underground Station, was Chairman of the Bar in 1989, and served as a High Court judge from 1990 to 1992.

Turning his attention to someone shortly to become a former member and presently the "Father of the House", PL noted that today was Ken Craig's (KC) last Bar Council meeting. KC had come on to the Bar Council in 1994 and now recorded the remarkable achievement of serving continuously for more than 16 years. He had now been appointed as a Judge of the Upper Tribunal, assigned to the Immigration and Asylum Chamber. PL recalled the anecdote of Henry Kissinger once asking the Chinese Premier Zhou Enlai how the world might have been different if Nikita Kruschev had been assassinated rather than John F Kennedy. Zhou Enlai thought for a moment and replied, "I do not believe that Mr Onassis would have married Mrs Kruschev".

PL wondered how might the Bar Council have been different if we had not had KC? The Finance Committee, now the Finance and Audit Committee (FAC), would have been quieter. Similarly the Member Services Board, where he represented the FAC's interests zealously: if the Member Services Department managed to persuade KC about a proposition it was felt the rest of the Bar would almost certainly go with it.

Moreover, we might also never have encountered Toby Craig (TC). TC used to get introduced as "Ken Craig's son", but since Toby became our Head of Communications, Ken began to be introduced as "Toby's father". Indeed, perhaps it was because of this that KC decided it was time to move on.

PL offered KC many congratulations, and presented him with some small gifts as a token of the Bar Council's affection and gratitude for his long service. The Bar Council would not be the same without him.

KC thanked PL and the Bar Council. He had served a long time but would not prompt along speech. Having witnessed 17 Chairmen of the Bar, 5 Attorney Generals and 7 Solicitor Generals, KC was heartened by how seriously the current AG and SG took their roles as Leaders of Bar, as some of their predecessors had not. KC was content that he was leaving the Bar in good hands.

Continuing on the theme of pride for our profession, PL noted the significant recent attack on the Bar when Jeff Samuels QC represented Levi Bellfield in the Milly Dowler case. Whoever the defendant and however appalling the crime, the trial process, supervised by a judge, was the strength of our system of justice. No barrister should face death threats for carrying out their work.

PL noted that the case had been prosecuted upon the hypothesis that it cannot have been a coincidence that Milly disappeared outside a serial killer's home. However, for various reasons the police initially had cause to suspect her father, and this formed the basis of a proper and legitimate allegation. The cross-examination of Milly's family was not aimed at pursuing that allegation but at investigating whether she might have had reasons for choosing to run away, and that it was thereafter that she was murdered. The jury rejected the defence case, but the questioning in support of it, considered by the judge before it commenced, was relevant and admissible, as anyone who was there, or who read the transcript, could testify. Those questions were asked in a careful and sensitive way, and the judge noted so in his summing up.

PL continued that Bellfield was sentenced on Friday 24 June. Overnight and into the morning on Saturday 26 June, the press appeared on the doorstep of Jeff Samuels QC's family home. They also visited his ex-wife (divorced some 16 years before) to enquire of her the details about his character; and rang various mobile 'phone numbers, one of which was used by his 15-year old son.

Some newspapers (from that stable of journalistic integrity News International) set up comment columns on their websites. The contributions of their readers were 'gifted and thoughtful'! The threats to Jeff and his young family left little to the imagination. Threats were also left on his chambers' answer 'phone. These threats were serious enough that the police attended his home and enhanced security was fitted.

PL observed that there were two important points to note: first, the principle: we may care to reflect upon how often British newspapers disapprove of jurisdictions where lawyers are the subject of criticism, or worse, for defending unpopular causes; second, the important practical support and public defence from his profession: over that weekend there was round-the-clock support to Jeff, and close liaison with David Anderson in his chambers.

The Bar Council's Press Office had briefed the Sunday newspapers and broadcasters and a range of speakers were fielded to explain and defend the advocate's role in the adversarial system. We also placed high-profile comment pieces supporting this position, including in The Times and on The Guardian's website. We handled a substantial volume of interview requests on Jeff's behalf, which were passed on by him and chambers. The situation remained a demanding one until the biters were themselves bitten when the 'phone hacking story broke.

PL gave particular thanks to Christopher Kinch QC, Paul Mendelle QC and John Cooper QC, who assisted PL in appearing a number of times in the media to make

the case for the Bar; and especially also to TC who pulled it all together by working non-stop over that weekend.

Speaking personally, PL had never seen such a post bag as had flowed from those articles.

**Legal Aid Bill**

Moving on, PL advised that the excellent working group on the Legal Aid, Sentencing and Punishment of Offenders Bill, led by Stephen Cobb QC, would report later in the meeting. A summary note of the media round up was included in the Agenda at Annex E. Such extensive cover was testament to our Communications department. It was a difficult task to get newspapers to focus on legal aid, and to keep them interested.

On 11 July PL had met with Andy Slaughter MP and Anna Soubry MP, prominent Justice Select Committee members; and on 12 July Robert Buckland MP, and Tory and Labour backbenchers.

A Memorandum of Evidence had been submitted to the Bill Committee in the Commons; followed by PL's oral evidence on 12 July, which he was pleased to learn had been described by Ministry of Justice Ministers as "very adversarial and robust". There had been a noticeable division between those who cared about what was in the Bill and those who did not, and sadly the Government side appeared to fall in the latter category.

There would now be detailed, line-by-line scrutiny of the Bill in the Commons. The first group of amendments, including those tabled on behalf of the Bar Council, were considered on 19 July. The Commons was now in recess, returning to the fray on 5 September. With a Government majority, it seemed that revisions to the Bill were unlikely to make much headway in the Commons. However, it was hoped that more progress could be made when the Bill reached the House of Lords in the autumn.

**Referral fees**

PL reiterated the surprise and disappointment expressed at the June Bar Council meeting, at the LSB's decision not to come out against referral fees. We would continue to call for a ban on these fees, which represented an unwarranted and unjustifiable threat to the efficient and effective provision of legal services to the consumer public. The choice of lawyer should not be influenced by who paid what to whom but should be made purely on the quality and skills of the individual and their ability to act in the client's best interests.

Referral fees were becoming more prevalent in criminal cases. The effect of the

Unified Contract Standard Terms 2007 and the 2007 Funding Order made it clear that both the payment and the receipt of any referral fee, and the practice of becoming an "Instructed Advocate" in order to exploit the fund-holding position, were prohibited. This was not a case of 'fee sharing' or 'marketing spend': referral fees were a form of bribe. We had instructed Leading Counsel to advise us on the pertinence of the Bribery Act 2010.

PL was gratified to note that our calls for prohibition were beginning to be heard. The Prime Minister was supportive of a ban. He had been drawn into the debate on fees by a question from Liberal Democrat MP David Ward during Prime Minister's Questions on 13 July 2011. In response, David Cameron MP said that the former Justice Secretary, Jack Straw MP, had recently made a very powerful case for an outright ban on referral fees. This position was further reflected in debates in the House of Lords. The Ministry of Justice's Minister of State, Lord McNally, indicated that he too was 'sympathetic' towards a ban. More recently, in the Commons Committee stage of the Legal Aid Bill (on Tuesday, 19 July) the subject was touched on by the Opposition Justice spokesman, Andy Slaughter MP.

We were considering promoting an amendment to the Legal Aid Bill specifically to incorporate a ban.

**CPS fees**

PL gave some background on the history leading up to the current position on CPS fees.

In April 2007, a restructured Advocates' Graduated Fee Scheme ("Carter") had been introduced, redistributing money from top end cases towards lower end cases, to support the junior Bar. There had also been an increase in payment for serious sexual offence cases.

In December 2007, the Bar Council met the CPS and invited the CPS to harmonise the prosecution scheme with the defence scheme, for reasons of equality. The CPS had said that if they mirrored the defence rates they would have to increase CPS spend by 30% and they did not have the money to do so. Thereafter, meetings had continued but not terribly successfully, culminating in concern that a defence-style redistribution from the top to the bottom might result in the CPS increasing the number of its in-house advocates and that most junior self-employed barristers would no longer be offered instructions for those type of cases. Negotiations then broke down.

Discussions resumed in February 2010, based on Professor Chalkley's 2008 paper. Certain concerns had been lessened as the Bar Council were in parallel discussions

with the CPS over Panels, which would address equality of employment opportunity as between the employed and self-employed Bar. The key objective remained to provide work for the junior Bar.

When the Government announced that the CPS budget would be cut by 24%, the CPS asked for the Graduated Fee Scheme (GFS) to be removed from the consultation because they had to rethink it. However, the Bar Council's approach continued to be to find a way that the GFS could be restructured so as to bring about efficiency savings for the CPS and thereby reduce the need for fee cuts.

The CPS had identified significant administration costs arising from trying to maintain an accurate count of the number of pages of prosecution evidence, as GFS was, in part, predicated on the basis of the volume of work involved. The Bar Council had therefore offered a simplification to the GFS whereby page count would be incorporated within the basic fee for the case. There would be a different basic fee for each category of case, based on historic page count data for that category of case, plus a threshold whereby the most paper-heavy cases would get an enhanced basic fee.

At a meeting on 1 July 2011, the CPS had advised that the budget cuts, which began in April this year of 6% for 4 years, meant that across the next 2 years they would have to make a 12% cut. As to Very High Cost Cases (VHCCs) they proposed to make a percentage fee cut (the percentage had so far not been specified). Regarding the GFS, the CPS accepted that the efficiency savings in the Bar's restructuring proposals could achieve a saving, and they were prepared to factor that in.

The options we had been presented with on GFS for the next two years were either to:

(a) Keep the current GFS Scheme, but with an immediate 13% fee cut; or

(b) Move swiftly to the Bar's remodelled GFS Scheme, but with a 5% fee cut.

The CPS were now working on the details of the revised GFS and would come back to the Bar with a final proposal in August. There would be a proposed 4-week consultation period, with implementation to follow as soon as possible afterwards.

In the meantime, Circuit Leaders had been provided with the proposed structure of the new GFS and were consulting experts within Circuit to provide feedback, which would be shared with the Bar Council ahead of the final proposal being presented. Whilst we did not find the new structure attractive, PL was heartened by those negotiating on the Bar's behalf, including Professor Martin Chalkley, to make it better than it would otherwise have been.

**QASA**

Ahead of the Director of the BSB's update later in the Agenda, PL stated that the Bar Council had supported QASA for good reason, and that the latter had been endorsed by the Council of Circuit Judges (CoCJ). However, he acknowledged practitioners' concerns. In the climate of the Bar's work base eroding and fees reducing, the requirement for assessment, and associated costs, had not been welcomed. Assessment centres were seen both as a 'soft option' and a contributing factor to the financial burden. A meeting, to discuss matters of concern, would be held on 1 August between the Bar Council, Circuit Leaders, and the BSB.

**Pupillage Portal**

There were currently 113 chambers enrolled in the Bar Council's Pupillage Portal scheme, as managed by GTI Recruiting Solutions since 2009. GTI's strapline was "Making recruitment easier", but they had not lived up to it in recent weeks. An error had arisen of which GTI may have been more aware than first conceded. The Bar Council had only discovered the extent of the problem when users experiencing difficulties started to complain to us directly.

For the current pupillage round, 26,738 applications were made by 2,811 candidates. While applications were fully visible in electronic form, an error occurred, on a random basis, in the failure to print one section of the pdf application form. The system produced two versions of the form for each application: one with candidate details and one anonymous. Therefore, a total of 53,476 files (or forms) were produced.

Calculations suggested that the errors occurred in 1,076 files (2%), affecting 311 candidates (11%). GTI confirmed on 5 July that the number of files with errors had been reduced to 931, the others having been fixed when reported to us by chambers. These 931 files related to 527 applications (2%), 243 candidates (8%) and 95 chambers (84%). On 19 July GTI sent an email to these 95 chambers asking them to check the applications reported as having an error. PL sent a message in tandem to those chambers to reiterate the importance of conducting the checks.

By close of business on 21 July, GTI had replies from 60 chambers. GTI reported that 55 chambers confirmed this issue had not caused a problem in their processing of the candidates; and 5 said they were still in the process of checking. These 55 chambers related to 266 applications, leaving GTI to check 261 applications (1%) with the remaining 40 chambers.

The Bar Council reported the matter to the BSB as soon as we became aware of the potential seriousness of the problem. We worked closely with GTI to remedy what was plainly a very serious situation. On behalf of the Bar Council, PL apologised

unreservedly to the chambers and candidates who had relied on the portal scheme operated by GTI.

A decision would be made shortly as to whether to ask the BSB to defer the date that chambers could start announcing pupillage offers, scheduled for Tuesday 2 August. The BSB would need to review whether such a measure was needed to enable chambers, where appropriate, to have sufficient time to ensure that their pupillage decisions had been fairly processed.

We had reserved our rights against GTI and would be conducting a thorough review of what went wrong in this case. Potentially, our relationship with GTI would end.

**Bar Council Strategic and Business Plan**

PL emphasised the message to members that their elected Officers were determined to ensure that everything the Bar Council did was relevant to the needs of the profession. The Council must be cost-effective and deliver value for money, especially in these strapped times. As part of our programme of modernising the Bar Council, we had asked the Director of Representation and Policy to draw up a 3-year Strategic and Business Plan for the Bar Council (2011-13). The draft had been considered by the General Management Committee on 27 June and 4 July, and would be put before Bar Council at the October meeting, as a precursor to the Bar Council's proposed budget for 2012-13.

The Officers very much hoped that the Plan would help to ensure consistency and continuity for the Bar Council over the 3-year period covered, and address some of the challenges arising from the fact that the Chairman of the Bar changed year-on-year.

**Judicial Appointments**

PL reported that a constructive meeting on 12 July had taken place with Chris Stephens (CS), Chair of the Judicial Appointments Commission (JAC). The latter had listened to the Bar's concerns about the lengthy and bureaucratic processes which had led to a form of "planning blight" for those who wished to be appointed but did not wish their intentions to be known until they had succeeded. CS described the current situation as an outrage and wished to introduce simpler, quicker processes. In some instances, candidates had to wait 3 years for their appointments to come through. CS was keen to hear from the Bar about possible candidates for forthcoming Commissioner posts, which would become vacant early in the New Year. The Bar's views would be considered very seriously.

PL would be contributing the Bar's perspective on the judicial appointments processes to the Lords' Constitution Committee on 26 October.

**Joint Bar Council and Criminal Bar Association (CBA) National Meeting**

PL reported that a national meeting had been scheduled for 26 July on the future of the Criminal Bar to consider Legal Aid Bill responses. Video-links had been set up with each of the Circuits. The Attorney General would be in attendance for the first half of the meeting to offer the Government's perspective and take back our concerns. He would then withdraw so that the meeting could speak candidly and decide on next steps. A similar event for the Family Bar would take place on 17 September.

**Conclusion**

As many looked forward to the summer break, PL advised that he would shortly be writing to the profession to give a round up on what had been happening recently. This was a time for the Bar to be united in the face of so many forces that have sought to overwhelm us; a time to demonstrate the virtues and values of professionalism in all that we did; and a time to stand up for excellence in advocacy and all that we believed in.

**Questions**

John Cooper QC, representing the South Eastern Circuit, said that concern was increasing regarding the late payment of legal aid fees. He asked what action the Bar Council was taking to address the situation.

PL confirmed that he was very aware of the situation, and had sent out messages to the Bar on the subject. Marie Bray, Remuneration and Policy Officer had been appointed as the Bar Council contact point. She was speaking regularly to the LSC and the two relevant payment processing centres. She had transmitted the detail of specific cases that had not been paid, and asked the LSC to track where cases were being held up. This had helped the LSC to identify where things were going wrong, and it was understood that there had since been some small improvement. The LSC had also appointed two individuals responsible to the largest sixty sets of chambers (thirty each). This allowed those chambers to liaise directly with a specific individual. PL also spoke frequently to the LSC Chief Executive. One problem was that enquiries delayed the process further. Whilst the LSC had moved additional staff in to address the problem, PL invited enquiries from the Bar to be channelled through Marie Bray for the time being, to leave the LSC to get on with the job of processing payments.

Bernard Richmond QC (BR) expressed how pleased he was for the sixty largest sets to be allocated named payment officers. However, he queried whether this would imply a worse service for the remainder of the profession. PL said that the policy had been implemented by the LSC as the most effective way of addressing the

backlog. If it worked, then it was hoped that it would make payments swifter for everyone. Naturally, PL was in favour of any measures that would help chambers, big and small, to receive the payments they were due.

BR was also particularly concerned for the Young Bar, as the delayed fees had implications for individuals' ability to honour their tax and National Insurance obligations. When attempting to speak to the tax authorities about the problem at the LSC, they denied any knowledge of it. PL confirmed that there had been many communications from barristers to the tax office to say that they had difficulty paying, and that they certainly knew about the problem - even if individual members of staff claimed not to. Sadly the Bar Council had no particular muscle with HM Revenue and Customs. He advised those facing problems to seek an individual arrangement with their local tax office.

**6. BSB REPORT**

Vanessa Davies (VD), Director of the BSB, offered Baroness Deech's apologies, and addressed Bar Council on her behalf.

VD noted the colourful culinary imagery used by Sir Geoffrey Nice in his report to the last Bar Council meeting. Whilst she would not attempt to keep up his use of metaphor in her report, she noted some delectable items on the BSB menu for Bar Council's degustation.

**Entity Regulation**

The consultation document on entity regulation was scheduled for publication in October. In advance of the consultation, the BSB would shortly be inviting views on the question of a Section 69 Order should this prove necessary.

**CPD Consultation**

Of wider interest might be the CPD consultation - now available in full on the BSB website. The deadline for responses had been extended to 31 October, and the BSB was very keen to hear from Bar Council members and their constituents. Some 40 substantial replies had been received so far, but they sought as wide a response as possible.

VD asked members to look beyond the proposed doubling of CPD hours required as it was not that straightforward. Whilst it was proposed that the number of hours be expanded to 24, the nature of eligible activities had also broadened considerably.

As a true consultation, the BSB would take time to analyse the responses received, and look to understand what changes might need to be made in BSB policy. Any

new system would come into force only in 2013. The existing system of accreditation and compliance would continue until any new scheme was put in place.

**Public access work**

VD advised that the BSB had recently issued guidance to clarify their rules about accepting public access work from clients who were eligible for public funding. The rules currently stated that a barrister could not accept direct instructions from, or on behalf of, a lay client in, or in connection with, any matter or proceedings in which it was likely that the lay client would be eligible for public funding. Several representations had been received from barristers as well as the Bar Council itself, and the BSB was now reviewing the rules. A letter had been sent to the profession seeking comments on the current rules by 12 August. If the BSB was able to determine from the views received that there was no impediment to accepting instructions, then they would be able to take a decision at their October meeting as to amending the rules. However, evidence from the profession would be crucial. The BSB remained especially concerned to ensure appropriate protection for potentially very vulnerable clients.

**Referral Fees**

VD stressed that it was well known that the BSB was not in favour of referral fees. However, the document issued by the LSB had been more nuanced than press accounts would suggest. The BSB's response would therefore need also to be reasoned and nuanced, and not simply a cry of moral outrage. VD was quietly confident that the argument could be made and won.

**Pupillage portal**

The BSB was naturally very concerned about the current problems with the pupillage portal. VD observed that best recruitment practice was an important aspect of BSB policy and rules, and they were dismayed to see Chambers' efforts undermined by the recent technological errors. The BSB had received frequent updates from the Bar Council, and would shortly seek assurances from chambers directly that their recruitment exercises had been completed fairly ahead of the scheduled pupillage offer date of Tuesday 2 August. The BSB would need to balance the concerns of those possibly affected, against the vast majority that were not, when considering whether the offer date should be deferred.

The BSB had already taken the decision to review the pupillage recruitment timetable as well as whether or not to have an online portal. Recent events would be taken into consideration.

**Questions**

Esme Chandler asked how the CPD consultation would fit in with the overarching legal education and training review currently taking place, which would not report until the end of 2012. VD said that whilst CPD might be a small factor in the overarching review, it would not be central to its scope. She agreed that the timetable represented a potential problem, but pointed out that the BSB's CPD consultation had been well underway before the overarching review was announced. Moreover, the latter was owned the three regulators, and it was up to the BSB to accept or reject any recommendations put forward. If the proposals were in conflict with those of their own consultation, they would not be obliged to accept them.

Steven Thompson (ST) took on board VD's point that the proposed CPD changes did not represent a straightforward doubling of hours, but nonetheless it was an increase. He noted that at the heart of the Derek Wood QC's (DW) consultation document was the question of what evidence there was that the CPD scheme was achieving its aims and ensuring quality of service. DW had gone on to say that this was difficult to measure and had suggested that the best means of doing so was the through the questionnaire appended to the consultation, which asked practitioners, as users of CPD courses, to assess whether the stated goals were being achieved. ST was concerned that such thin evidence might be relied on when considering whether or not CPD was fit for purpose. VD welcomed SD's views and encouraged him to respond to the consultation in writing.

Asked what advice VD could give candidates affected by the pupillage portal problems, VD explained that the Bar Council owned the portal rather than the BSB. PL advised chambers to make sure that all printed applications were actually complete. If any sections were missing from an application, they should look it up on screen and see if the missing information would have made a difference to their decision. The difficulty would be if chambers came to the conclusion that yes, they would have offered the applicant an interview if they had seen the missing information. Many chambers had told the Bar Council that they had noticed the error for themselves, and said that it had not influenced their decision-making.

Nichola Higgins (NH), Chairman of the Young Barristers' Committee (YBC), asked when a resolution could be expected on the Pupillage Portal. VD said that a decision should be made by close of play on Tuesday 26 July. If chambers were able to provide a level of assurance that they had either not been affected, or that the errors had been dealt with, then they would stick to the scheduled announcement date of Tuesday 2 August. If a deferral was required, VD hoped to be able to announce by Wednesday 27 July the revised offer date. The BSB were aware that a large number of people were organising their lives around these dates and decisions, so did not wish to defer the date unless strictly necessary.

VD confirmed that the BSB would in due course revisit whether or not there should be a compulsory timetable for pupillage.

On public access, NH recorded, on behalf of the young Criminal Bar, the distress of those who had been encouraged by the Bar Council to undertake the public access course and diversify their practices, only later to be told that they could not conduct public access work.

VD reiterated that views on the public access rules were being sought by 12 August. Staff were in place to process responses ahead of the BSB sending a submission to the LSB. Whilst VD could not predict the LSB's response, she hoped that they would be in favour of any measure that allowed greater access for consumers. If the LSB took the submission through their 28-day procedure, then an announcement could be made by November.

PL confirmed that evidence submitted to the BSB by practitioners would need to be persuasive, and should explain the particular ways in which the Bar was able to assist the consumer, how and why.

Maura McGowan QC (MMc), Vice-Chairman Elect, pointed out that the course had been open to all practitioners so this was not only a concern for the Young Bar. Whilst changes to the rules were being considered, in anticipation of their approval, a client care letter should be drafted about the availability of legal aid. If we drafted the letter now, we could avoid further delay once permission was granted. We would then be able to say that we were sending out letters to clients from the outset, and perhaps put pressure on solicitors to do the same. VD agreed, and invited MMc to suggest wording.

**7. QUALITY ASSURANCE SCHEME FOR ADVOCATES (QASA)**

VD directed members to the briefing note included at Annex D to the Agenda. As the meeting was running behind schedule, she offered brief highlights:

The LSB had approved QASA in principle on 13 July. Extensive detail about the scheme was now available on the BSB website, including an FAQs section. On 15 July the CoCJ had approved judicial involvement, and a tender exercise would be undertaken for provision of training for the judiciary on how to assess practitioners.

Pilot schemes had taken place in Canterbury, Durham and Birmingham, with a more significant pilot to take place at Snaresbrook in the autumn.

The specification for assessment centres was in development. The BSB sought to bring in the ATC to help with training evaluation and remedial training for those who needed it.

A meeting would take place with the Circuit Leaders on 1 August. Roadshows on the Scheme would commence in November.

Assessment levels 3 and 4 would open in December, and levels 1 and 2 next spring. QASA would operate in full from 2013.

**Questions**

BR, Middle Temple representative, said that he had taken part in the judges' training for the Canterbury and Birmingham pilots. It was clear that the judges had no idea about the assessment process. He asked how the tender process for training provision would ensure that advocacy standards were maintained, and be of a sufficiently high quality to uphold the training provided by the Inns.

VD expected to see a significant amount of training time being spent on the principles of assessment and on considering examples and reaching agreement on what constituted a common standard. VD could not speak on behalf of the Inns, but hoped that they would seize the opportunity to build on the training they already provided, and see QASA activity as complementary rather than divergent.

Asked how QASA would tie in with the CPS Advocate Panels, VD said that the two schemes were moving towards harmonisation, and that she was reasonably confident that an independent regulatory scheme would take over as a single scheme in due course. She hoped that we would reach that point sooner rather than later.

PL pointed out that although the CoCJ had refused to take part in the CPS scheme, they had agreed to QASA. It was also worth noting that the QASA documentation was much simpler than for the CPS Advocate Panels. The Attorney General (AG) exclaimed that if the Bar Council could solve his difficulties with the CoCJ he would be a very happy man. Whilst the AG remained curious as to why the CoCJ had approved the one and not the other, he too hoped to see the two schemes merge.

Richard Salter QC, Inner Temple representative, pointed out that there would be several thousand assessors all judging us separately. If such vast assessment were taking place in an academic setting, procedures would be put in place to ensure consistency.

VD confirmed that there would be independent assessors to assess the assessors. Such evidence would be reviewed before they looked at any extension of the scheme to other areas of law. It was important to keep an eye on costs. The sort of systems in place in an academic environment would not necessarily have direct applicability for QASA, but the requirements for processes which ensured consistent application of the standards were understood.

MMc queried the cost and the principle of assessment centres, given that they would only serve a small number of people. Could not those returning to the profession after a career break simply be given a 6-month provisional licence, and then be assessed in the normal way? And if not, would the Inns and the Circuits not be a sensible alternative, given that they were both experienced in this area and likely to be cheaper?

VD said that it might be possible to permit a 'green plating' scheme for those returning to practice. However, each practitioner would have different circumstances - in some cases judicial assessment might be appropriate, but others would need to be seen at an assessment centre. VD agreed that the Inns and Circuits were well placed to assist with QASA and urged them to take every opportunity to contribute, whilst pointing out that the BSB could not require them to do so.

**8. LEGAL AID BILL**

Further to the update given in the Chairman's address, Stephen Cobb QC (SC) reported on the work of the Bar Council's Legal Aid, Sentencing and Punishment of Offenders Bill Group.

The membership of the Group included Specialist Bar Association (SBA) representation from himself as Chairman of the FLBA, Max Hill QC, Vice-Chairman of the CBA, Chris Hancock QC, immediate past Chairman of COMBAR, and Charles Cory-Wright QC, Vice-Chairman of PIBA; Circuit representation from Stuart Brown QC, Chairman of the North Eastern Circuit; Young Barristers' Committee Representation from Nichola Higgins, David Nicholls and Georgina Cole; and Bar Council representation from the Chairman and Vice-Chairman of the Bar, Mark Hatcher, Director of Representation and Policy, and Toby Craig and Harriet Deane from the Communications team. Together, they coordinated the Bar's interest in the shape and content of the Bill, through considering proposed amendments to the Bill, briefing key individuals, and lobbying directly and through the media. It was very much a team effort from a few players on a very sizeable pitch. SC hoped that they represented the interests of the whole of the Bar, but said that if Bar Council members wished to contribute directly, their help would be welcomed.

The first reading of the Bill had taken place on 21 June, and the Group had met weekly since then. Short briefing papers were sent to MPs to inform their contributions ahead of the second reading on 29 June.

More attention was focused on the Committee stage of the Bill. The SBAs prepared their own briefing papers for key MPs, brought together in a composite Bar Council briefing paper circulated to the Public Bill Committee. Drawing on the briefing papers, they considered proposed amendments to the Bill. Once these had been

identified they were put into a form by Gordon Nardell QC (to whom the Group was immensely grateful) and readily tabled.

PL gave oral evidence to the Bill Committee during the week of 12 July.

Line-by-line scrutiny of the Bill began on 19 July. The Committee envisaged reading through Clauses 1-7, but they only reached Clause 1. Our own amendment was tabled but not specifically debated, but a very similar amendment was. This proposed amendment included an obligation on the Lord Chancellor, in providing legal aid, "to promote and ensure access to justice by- (a) providing legal services to those unable to afford it; (b) ensuring equality of arms; and (c) delivering services in the most effective and efficient manner." This amendment was moved to a division but was voted against.

Contributions from the Bar Council and the Law Society were disparagingly received by some quarters of Government, with Andy Slaughter MP in opposition expressing dismay that the Government did not pay greater heed.

The Parliamentary Under-Secretary of State for Justice, Jonathon Djanogly MP, indicated a possible Government concession on immigration.

The Committee had now stopped work for the recess, and would recommence from 6 September until 13 October. The Bill would reach the Lords stage in late November or early December, and then go back to the Commons in 2012. At all stages, the Bar Council would continue to seek to influence the debate.

The Group endeavoured to keep the Bar's message in the press, and the Communications team had achieved articles in The Guardian and letters in The Times. Frances Gibb had highlighted the letter in The Times signed by 428 members of the Bar, condemning the Government's proposals to cut legal aid.

On 13 July, the MoJ had launched a 4-week consultation on the funding orders to bring about the changes to the remuneration of the civil and criminal legal aid schemes on which the Government had recently consulted. It was noted that some 88% of consultees on the cuts opposed the Government's position. It was reasonably plain from the consultation that we must now examine the text of funding orders themselves, to ensure that they delivered the stated objectives of the Government. It was proposed that each SBA would respond separately, and that the Bill Group would then endorse those SBA responses.

A large section of the Bill dealt with sentencing. The Bill Group would resume in September to look at the sentencing provisions, and revive and refresh the Bar Council's submissions for the Committee.

**9. CRIMINAL AND FAMILY LEGAL AID MEETINGS - 26 JULY AND 17 SEPTEMBER**

The Bar Council noted the dates of the forthcoming meetings.

**10. PREPARE FOR CHANGE**

PL explained that the Prepare for Change initiative had been instituted last year. Although it had come to be identified in some minds with ProcureCo, its purpose was in fact more wide-ranging. As titled, it was an opportunity for the Bar Council to look at future areas and methods of practice.

An extremely successful, sell-out seminar called "Building for the future" had been held at the Bar Council on 20 July. Within 24 hours of announcing the event it was overbooked, and we continued to be flooded with requests to attend, even in person on the day.

We had specifically chosen sets from out of London to speak about their practices: St Philips Chambers, Birmingham, St John's Buildings, Manchester, and Civitas Law, Cardiff.

There was clearly a considerable appetite for information and insight into chambers' experiences. This had also been in evidence at the well-attended Annual Remuneration Conference on 9 July, which had focussed on contracting. The Bar Council would organise further seminars both on Circuit and in London to inform and stimulate interest on the subject.

PL reminded Bar Council members that this was a service that we must provide for those who wished to have it. The changes would not be compulsory. However, for those sets that wished to move forward, the programme would assist with how to move forward in our profession. PL was happy to receive the support of the Circuits, the CBA, the FLBA, the YBC and other individuals at a recent meeting on the initiative.

In so far as Prepare for Change involved ProcureCo, PL said that we had paused, awaiting further information from Government. However, gains had been made below the radar in terms of fighting off One Case One Fee (OCOF), and the working groups continued to meet on a smaller and quieter basis. Whilst it had been helpful to have a range of expertise, the groups had grown too large. The Vice-Chairman, Michael Todd QC's troubleshooting group included 8 people drawn from the constituencies best placed to address the issues. The Strategy Group were now limited to 18 to 20 people, including 6 Circuits Leaders, with satellite groups selected on an individual basis to deal with the issues that arose. We hoped that this would bring a tighter focus and greater agility to our responses.

Prepare for Change was definitely back on the Government's agenda, as they continued to seek to introduce significant changes to the way legal services are delivered.

**11. REVIEW OF BAR COUNCIL DECISION MAKING**

PL expressed regret that the Green report was not available for decision at today's meeting. He had received a strong steer that the review group were likely to recommend that there should continue to be a Chief Executive. However, there remained differences of view as to what the reporting lines might be, and how those reporting lines might or might not compromise the independence of the BSB. There was also a minority pushing for the Chairman of the Bar to serve for longer than one year.

Andrew Walker QC (AW) gave a brief report. He explained that the group were agreed in principle on a number of issues, but that their views had not yet been finalised in writing. It was hoped that they would be able to do so at their next meeting. They were alert to the fact that the Bar Council was currently operating without a Chief Executive and that the decision should be made sooner rather than later so that, if their recommendations were adopted, the recruitment exercise could proceed. AW said that it was a matter of personal regret that they would not now be able to present the report to Bar Council until the October meeting.

The interim report would confirm the group's view in relation to the Chief Executive role and some related financial matters, but a more detailed paper would follow. There would then be a third stage when the processes of the Bar Council itself would be the subject of a separate consultation.

PL said that although he had made the decision to proceed without a Chief Executive, there had been many occasions when he had regretted the absence. This did not in any way demean the significant contributions made by the Directors in the interim period. PL was keen to reach a resolution as soon as possible, and felt that the appointment of a new Chief Executive would make a profound difference for Michael Todd QC. He noted that whilst it was important to commence a recruitment process as soon as possible, we would be limited until the nature of the role had been established. PL said that he had considered scheduling an additional Bar Council meeting to follow the publication of the report, but had decided that it was better to wait for the next meeting on 1 October, when a fuller attendance could be expected. He emphasised that the reason for the delay was that the review group were wrestling hard with the issues.

**12. ELECTIONS TIMETABLE**

The meeting noted the timetable at Annex F to the Agenda.

**13. ANY OTHER BUSINESS**

Ken Craig announced that he had bought along champagne to celebrate his last Bar Council meeting, and invited members to join him for a drink after the meeting.

**14. DATE OF NEXT MEETING**

The next meeting would be held at 10am on Saturday 1 October 2011, in the Bar Council offices.

Lana Locke
Assistant to Chief Executive
August 2011