

Minutes of the Bar Council

02 November 2019, Rutledge Suite, Middle Temple

Present	Richard Atkins QC	Chair	RPAQC
	Amanda Pinto QC	Chair Elect	APQC
	Malcolm Cree CBE	Chief Executive	MC
	Baroness Blackstone	Bar Standards Board	ВТВ
70 further members attended			
Minutes	Samantha Anderson	Executive Officer	SA

Apologies were received from:

Dr Mirza Ahmad; Robin Allen QC; Colin Andress; William Boyce QC; Kate Brunner QC; Charles Burton; Sydney Chawatama; The Rt Hon Geoffrey Cox QC MP; Tim Devlin; Michael Ellis MP; Francis FitzGibbon QC; Jonathan Goulding; Max Hardy; Barry Harwood-Ferreira; Tricia Hemans; Max Hill QC; Hazel Hobbs; Rupert Jones; David Joseph QC; James Kitching; Cyrus Larizadeh QC; Eleanor Mawrey; Cathryn McGahey QC; Eleena Misra; Andrew Morgan; Francesca O'Neill; Vedrana Pehar; Christopher Rees; Ryan Richter; Benjamin Seifert; Joe Smouha QC; Daniel Sternberg; Derek Sweeting QC; Steven Thompson QC; Sonia Tolaney QC; Anton Van Dellen; Grant Warnsby

Not in attendance with no apologies received:

Michael Duck QC; Rachel Langdale QC; James Mulholland QC; Martin Nelson; William Paynter; Rehana Popal; Nigel Sangster; Rhodri Thompson QC

1. Minutes of the last meeting and AGM and matters arising: for approval Paper details 191102/BC01a/MINS and 191102/BC1b/MINS

The Chair welcomed members of the Bar Council to the meeting and thanked everyone for permitting the later start time to accommodate the viewing of the rugby world cup final.

THE BAR COUNCIL

RPAQC said it had been a privilege to Chair the Bar Council for 2019.

Thanks were expressed to Mark Hatcher; although he officially retired from his position within the Bar Council on 31 October, he has gone beyond the call of duty in attending the meeting today.

No comments were given to the minutes annexed, nor were any matters arising notified.

2. BSB report: for report Paper details 191102/BC02/BSBR

Baroness Blackstone spoke to this item, providing detail against the report annexed within the papers.

Through September and October, key changes have been adopted in decision making and an Independent Decision-making Body has been appointed. The IDB will help to assess risks more consistently and sufficiently. Appointments for the IDB will be for an initial period of up to three years, starting from September 2019. The IDB will replace the Professional Conduct Committee (PCC) and the Authorisations Review Panel (ARP).

Coinciding with this, a new Independent Reviewer has been appointed – Velia Soames whose key responsibilities will include carrying out requests for the review of individual decisions and periodic audits of cases, assuring that the BSB's regulatory decision-making is operating fairly and effectively and in line with agreed policies and procedures.

On 15 October, the new BSB website was launched and has been designed to be better accessible to barristers and the public, allowing them to find what they need quicker and easier. The BSB Handbook has been uploaded to allow easier downloads of relevant sections for Barristers, as well as the option to download the Handbook in its entirety. Comments on the revisions to the website are welcomed; please send to Wilf White, Director of Communications; <a href="https://www.www.needs.com/www.needs.com/www.needs.com/www.needs.com/ww.needs

Possible changes to pupillage which are being proposed will need to be discussed with key stakeholders; the outcome of the engagement programme and any dates by which implementation would be required, will be announced in due course.

Confirmation was given that the Inns of Court College of Advocacy (ICCA) was the first provider to achieve authorisation for courses starting in 2020. Since the report was written, BPP had also been authorised. One of the key objectives of the review of AETOs is to ensure that training for the Bar is more accessible and more

affordable. The BSB are pleased that providers are bringing the costs of the courses, down.

Applications for a new Tribunal Representation Panel (TRP) have been received; the panel will start operating from January 2020. Interviews will be taking place for those shortlisted chambers (of 23 who have applied) in mid-November and the new members of the panel will be announced thereafter.

It was confirmed that Mark Neale is the successor to Dr Vanessa Davies, as the BSB's Director General. Mark will be taking over the position from February 2020.

BTB thanked RPAQC for his time as Chair of the Bar and stated that she has enjoyed working with him this year.

3. Bar Human Rights Committee: for report Paper detail 191102/BC03/BHRC

Schona Jolly QC spoke to this item; an extensive report was provided within the papers, so a brief report was given during the meeting.

A strategic decision was taken at the beginning of the year to start work on long-term projects and in particular, are focussing on China and Central Asia, and, South Asia. The BHRC continues work on other areas and countries in which it has been operating. In light of recent events, the Chilean Bar Association is being worked with at the moment as well.

Successful funding bids have been made from the FCO for the Kazakh training project and for Network for Social Change – an observation project of the military courts in Palestine.

There is a long-standing relationship with Turkey, which has been particularly acute and intense in the last three years. The BHRC has been conducting trial observations and SJQC confirmed that she will be visiting Turkey within this week to observe a trial in partnership with Article 19, who fund BHRC for such observations.

Vulnerable Witness training, in partnership with the National Law University in Delhi, India is progressing and funding from ROLE UK has been secured. The training will commence in November.

It was confirmed that the BHRC has been granted observer status by the USA to send trial observers to the Guantanamo Bay Military Commission in Cuba. The BHRC is currently organising observers to attend hearings beginning in January 2020.

The committee continues to put on events, all of which are highly successful. There was a panel event on 30 October in relation to Kashmir, considering human rights, legal and constitutional challenges. The panel included Mirza Waheed (journalist raised in Kashmir), Nitasha Kaul (Kashmiri academic) and was moderated by Andrew Whitehead (former BBC correspondent and former Editor of BBC World Service News). The Kashmir panel also included reference to Gautam Bhatia, one of the lawyers involved in the Indian Supreme Court constitutional challenge.

SJQC expressed her appreciation for the support of the Bar Council; for the funds as well as for a place for our staff member to sit in the Bar Council office. The Committee is very grateful for the support.

SJQC added that she welcomes any questions, to be emailed to her in Chambers.

4. Bar Representation Committee: for report

Paper details 191102/BC04/BRC

Fiona Jackson spoke to this item; the report that has been provided within the papers is short and does not cover the full activities of the committee.

There have been structural, and staff changes within the Services Department at the Bar Council, to reflect the aims of the organisation's Commercial Strategy. They are in the process of recruiting a new Training and Events Manager, Senior Coordinator and Coordinator.

The Annual Chambers Management Package has had a good response from those chambers who have signed up, with them reporting that they are finding it immensely helpful for staff members as well as Chambers themselves. Presentations can be given on the packages available and for chambers to find out more information.

The Direct Access Portal is important to a lot of people and it will be brought inhouse very soon; a survey has been taken and the results of this and subsequent focus groups are being used to inform the current business planning process.

It was noted that this would be FJ's final meeting as Chair of the BHRC; RPAQC thanked FJ for the hard work that she has put in over the years of being Chair.

5. Statement by the Chair: for update

Paper details 191102/BC05/CS

The CPS fees have been increased; it has not been by as much as we would have liked, but it is far better than what we have had in recent years. Credit must go to Athena Markides, Caroline Goodwin, the CBA team and Malcolm Cree; it has been a combined effort. The work that has gone in this year has paid off. The first increase was in September 2019 with more to come in February 2020. The engagement will continue.

Whilst exact figures and percentages of the increase cannot be provided, MC confirmed that it has been a significant increase. Assurance was given that if the figures could be found out, these would be circulated to members.

Via the Monday Message, Caroline Goodwin has indicated that some fees are increasing by 25/30/35%.

Professor Stephen Mayson presented his interim Independent Review of Legal Services Regulation report on 10 October, following which a meeting was held between a Bar Council team and Professor Mayson, where concerns about overregulation, paid McKenzie Friends and the cost to the Bar Council of some of the proposed changes were raised. It is expected for the final report to be published in February/March 2020.

Legal advice has been sought in relation to new Internal Governance Rules (IGRs) and whether it was worth challenging them by Judicial Review. Conclusion was reached that a successful challenge to the amended IGRs would be unlikely. As such, the decision was made not to seek to judicially review the final IGRs. The position will though be kept under constant review as the changes are implemented.

A huge amount of work was put into this by many at the Bar Council for which RPAQC is grateful. The Bar Council fights to keep the regulators at bay and the Bar Representation Fee is used toward this. It is viewed that if the Bar Council didn't exist, the profession would be in a worse position, even if they are currently oblivious to what the Bar Council does for them.

We are about to have 30 more courts enrolled into the ID cards scheme. There have been a couple of issues with this, but they are with the court equipment not being updated rather than the cards. The aim is for the scheme to cover all courts by mid 2020. The general feedback received is that it is making a huge difference.

It was noted that the DPP, AG and SG have all been very supportive over this year.

Considerable travel has been on the agenda this year for RPAQC; it has been an aim to spread the Rule of Law.

Recently, there has been a visit to the Western Circuit which was productive. RPAQC commented that he is happy to drop into robing rooms in order to speak to individuals.

A huge thank you was given to the three Circuit Leaders who will be stepping down from their posts at the end of this year; Michael Hayton QC (Northern Circuit), Nigel Sangster QC (North Eastern Circuit) and Paul Hopkins QC (Wales and Chester Circuit). They will be succeeded by Lisa Roberts QC, Richard Wright QC and David Elias QC, respectively.

All new members of Bar Council in attendance were welcomed.

RPAQC commended the success of the pupillage fair on 26 October which was excellent. Guy Fetherstonhaugh QC was assisting with the CV workshop and it is believed he helped over 300 students with theirs. Thanks were given to all those involved in the pupillage fair.

It was confirmed that Amanda's Inaugural Address will be on Monday 2 December at 17:30; all members are invited and should attend.

RPAQC also promoted BarTalk to members, asking them to ensure that they are signed up to receive this. In addition, the Bar Conference is something that all members should sign up to.

Michael Polak congratulated those who have achieved the increase in the CPS fees. He highlighted concern about the cuts in Crown Court sitting days. He asked that if anyone is aware of any relevant cases, to get in touch with the details as he is considering judicial review.

6. Statement by the Chief Executive: for update

It was very encouraging to see well over 800 students attending the BC Pupillage Fair this year. There were 725 students in attendance in 2018. More Chambers exhibited this year and it was confirmed that KCL will be hosting the Pupillage Fair for the next 2 to 3 years.

Confirmation was given that the Bar Council offices are still being refurbished and so meeting rooms across the city are still being used by the team.

7. Changes to the Bar Council Constitution and Standing Orders for Committees of the Bar Council: for approval

Paper details 191102/BC06/CSO, 191102/BC06a/CSO and 191102/BC06b/CSO

It was recommended that the Bar Council:

1. **Approves** the proposed changes to remove references to ICBET and its old constitution.

The Constitution of the Bar Council, for historical reasons, includes ICBET's Constitution at Part III. However, ICBET is now a separate organisation governed by a Scheme established by the Charity Commission on 3 December 2018. The ICBET constitution was changed earlier in 2019 in light of this and, therefore, any references to ICBET need to be removed from the Bar Council constitution. The proposal is remove ICBET's Constitution from the Bar Council's Constitution alongside any references to it. Vanessa Davis of the BSB confirmed that reference to ICBET will remain in the BSB constitution.

The proposal was approved.

Action: Amend the Bar Council Constitution to remove reference to ICBET and its old constitution.

2. **Approve** the proposed changes to ensure compliance with the new IGRs. This was approved.

Action: Make amendments as detailed within paragraphs 15-24 of the paper 191102/BC06/CSO

3. **Approves** the proposed changes to allow GMC full responsibility for amending Standing Orders for Committees of the Bar Council of England and Wales.

NZ suggested that it might be better governance for the GMC to take over the responsibility of amending the Standing Orders (SOs) for Representative Committees of the Bar Council given that the SOs refer entirely to the Bar Council representative committees and all committee Chairs are members of GMC. This change would allow for smoother transition and for items to be dealt with quickly and within the time frame that is sometimes required.

Michael Jennings stated that he sees the practicality of this; the GMC is a good body and they are not infallible. SOs have in the past, been changed with alterations being requested by GMC and then improved by the Bar Council members. Constitutionally, he understands the point of expedition and getting things dealt with in a timely manner, but the BC are the elected representatives and are here to represent the interests of the Bar. It should be considered seriously to permit GMC to take over the amendments.

Nick Bacon QC added that he would agree to GMC being permitted to take over the responsibility of amending SOs, under the caveat that significant changes should still be referred to Bar Council. There should not be a whole-sale delegation.

Michael Hayton QC added that both points raised are valid; the GMC contains a lot of good people and that smaller items should be able to be dealt with by GMC, but if there was something substantial, it should go before Bar Council.

Nick Vineall QC added that the greatest delay there would be in changes to be made would be 2 months between meetings.

As a decision was not reached, more information was requested, and it was suggested that this be revisited the next meeting of the Bar Council.

Action: Add this item to the agenda of the next Bar Council meeting on 25 January 2020 for further discussion. Further detail is required before approval can be given.

4. **Approves** the proposal to increase the amount of Bar Council co-options. This would be a practical, interim, solution as currently, the Chair-Elect may have problems trying to fill the positions of committee chairs from within the BC membership. With exception of the Law Reform Committee, all chairs must be BC members. There are a number from this year who are co-

options, however the current constitution allows for four co-options only and it is looking likely that this will not be sufficient for 2020.

APQC would like to be able to find suitable people to be chairs of the committees and such expertise may not always be found from those on BC. This discussion can continue at a future meeting within 2020, however this is an interim proposal to allow APQC to choose her chairs for 2020.

By agreeing to be on Bar Council, a person has to be willing to take on the responsibilities of BC, which includes being members of the committees. Chairs need to be announced at the Inaugural address on 2 December and it is important that APQC is able to appoint the right people for the right committee. The BC members already have a huge amount to offer and this is above and beyond what they already do. It was confirmed that there are 12 committees, however one doesn't have to have a BC member as Chair, so 11 chairs need to be appointed.

NZ confirmed that the choosing of the committee chairs, as well as having co-options, is a gift bestowed to the Chair, so they can bring in those from the profession whom they believe will bring something to the BC.

APQC explained that there are members of the Bar who are not members of BC for understandable reasons, who have incredible expertise. It is these people who she would like to be able to approach for the Chair roles. The expertise of these individuals would be invaluable to the committees. Diversity is also important - any person, of any type, if they are good enough, can get to the top. This can be demonstrated by having them head the committees.

If a Chair is elected via a co-option, it takes up one of the Bar Council cooptions; if a co-chair is elected, this still takes up on co-option allotted to the Chair as part of the gift.

APQC answered Gordon Stables' question of whether this was about picking someone with the right experience, or wanting to increase diversity, or whether there is an issue with getting people to volunteer; APQC doesn't believe it is right to get someone who doesn't have the right experience, expertise or background to chair the committees, whether or not they would be willing to take on the role. More co-options are required in order to be

able to tick such boxes. APQC believes that 5 or 6 may be required for the co-options under the basis that the casual vacancies may not be appointed. It was confirmed that there is no desire to 'parachute anyone in' and that this is about bringing people who are on the committee, but not members of Bar Council, to the top. There are obvious candidates, but they may not want to take on the extra burden. NZ added that some of those on committees have been BC members in the past; they have done their Saturdays.

A vote was taken with those members still in attendance at the meeting, for the provision of having 8 co-options made available to the Chair for 2020, and for having no change. A majority of two-thirds (or more) would be taken as the winning vote.

No change: 3 votes

Allow up to 8 co-options: 49 votes

Abstention: 9 *votes*

In the past, if there have been co-chairs for a committee, convention has been that both should be elected members of the BC as the Standing Orders are silent on this. APQC's aim is to have as many chairs or joint chairs to be members of the Bar Council. If there are co-chairs, at the moment, both should be members or co-opted members of BC.

There was a proposal that only one co-chair would need to be a member or co-opted member. This is so that the burden of Chair of the committee can be shared, without taking on the requirement of having to attend Bar Council meetings. Robin Allen QC opposed this; it is critical for the chairs to attend Bar Council; you can't have a chair who doesn't know what is happening with BC.

A vote was taken for having one co-chair to either be elected or co-opted, for a period of one year only. At the time of the vote, it was agreed that two-thirds of those in attendance would have the majority vote.

In favour of the proposal: 54 votes

No votes were taken for against the proposal, or in abstention.

It was assured that this would be revisited at a future meeting. Governance is required on this. APQC was in agreement that this is an odd way of doing things and she wouldn't normally be recommending such a way forward.

Action: Add as an agenda item for a future meeting, the number of cooptions permitted to a Chair for Bar Council members and the discussion as to whether, in the case of Co-Chairs, both need to be Bar Council members.

8. Statement by the Treasurer (given by CEO): for report

Defined Benefit Pension Scheme Deficit – trying to limit the deficit; there are various assumptions that we are questioning. An extremely cautious approach by the trustees has pushed up the deficit whereas a more standard approach would lower the assessed deficit.

9. EU Law Committee: for report Paper details 191102/BC07/EU

Confirmation was given that Brexit has taken over much of the report, especially given that there was an extension until the 31 January 2020 decided earlier within the week. It is understood that the UK will leave the EU on either 31 January or when the Bill is agreed by Parliament. If the withdrawal agreement bill goes back to parliament and is agreed, the extension will be until 31 December 2020 and can be extended, once, for up to two years. EU Law remains directly applicable in the UK and will continue to do so during the transition period post-Brexit.

The UK will be required to implement EU instruments that come into force during the transition period. The EU Law Committee will continue to monitor national implementation and application of EU secondary legislation.

The next five years are expected to be busy at EU level and this could have direct or indirect implications for the UK and our law.

RPAQC and APQC visited Brussels at the start of October for a 2-day visit. Thanks were given to them both for going. It was important to maintain our profile.

An MoU was signed with the Brussels Bar, at the Opening of the Legal Year in London.

A visit for APQC is being planned for February. A programme of meetings with EU politicians and officials will be put together, focussing on advancing our Brexit

priorities and reinforcing the message that we will be engaged and share our expert insight and experience of EU law and practice.

10. Pro Bono and Social Responsibility Committee: for report Paper details 191102/BC08/PBSR

Leanne Targett-Parker spoke to this item.

Apologies were expressed at the beginning of this item for the error of the name of the committee on the report; where it reads Pro Bono and Social Mobility Committee, it should be Pro Bono and Social Responsibility Committee. The name of the committee was changed recently and the remit has changed as a result.

Three new committee members have been recruited. They are not barristers, but they are important people with regard to social responsibility and their experience is imperative to the committee and its work.

The greatest achievement of the committee is the significant progress it has made this year to the Regulatory guide and a Toolkit to encourage pro bono volunteering. This has been assisted by the Ethics committee. It has been an ongoing project for the committee since it was established. It is hoped that it will be published within Pro Bono week, held between 4-8 November.

With pro bono week being next week, it was asked for those in attendance at the meeting to make a contribution; it is very rewarding.

A Social Responsibility (SR) network has been set up to develop CSR/Social Responsibility across the Bar. A quarterly newsletter will begin from January 2020 to the members of the CSR/Social Responsibility network.

The Pro Bono Awards are on Wednesday 6 November; LTP and others on the committee have been on the judging panel for this.

RPAQC thanked LTP for taking on the Pro Bono and Social Responsibility project.

11. Any Other Business

Paul Hopkins QC, Wales & Chester Circuit Leader confirmed that the Lord Thomas Commission on Justice in Wales has published its report to the Welsh

Government. It is easily accessible via google. There are some fairly dramatic recommendations made within the report. A possible recommendation for the creation of a separate Bar of Wales had been explored by the Commission. This would potentially have had major implications for this Council, but there is, in fact, no such recommendation to change the profession.

RPAQC confirmed that he has read the summary of this report.

Athena Markides spoke about RPAQC on behalf of the YBC.

Whilst strange to be talking about the end of Richard's year with still two months to go, AM stated that Richard has been a remarkable Chair of the Bar. His commitment to the promotion and accessibility of the Bar Council has been as unwavering and enthusiastic throughout the last ten months, as it has been over the 16 years that you served on the Bar Council prior to becoming Chair.

He has worked tirelessly to bring the Circuits into everything we do; he presided over the first Bar Council meeting outside London, repeatedly held town halls – inviting barristers, pupils and students to pop in and have a chat, despite one of those meetings involving someone shouting at him for 30 minutes about why they hadn't obtained pupillage.

This is all in addition to solid months of ceaseless work which he has put in on criminal fees, court reform, legal services reform and Brexit.

AM iterated that she is continually impressed by his energy, enthusiasm and commitment. She has been especially impressed that he has done all of this with unflagging determination and good humour, especially against the backdrop of disruption which must have followed his relocation to London and away from his family.

AM has been extremely grateful for RPAQC's support of the Young Bar; he has bent over backwards to ensure that they have been seen and heard at all levels, from ministerial meetings to the Pride parade.

This is not the end, so thanks were not given for everything yet; keep up the good work.

Amanda Pinto QC spoke about RPAQC.

Richard's ambition which was delivered in Gray's Inn about a year ago, was to make the Bar a happier place. It was believed that throwing sweets at BC members wasn't going to cut it, but APQC has been proved wrong.

Five important tips for success in office from RPAQC to APQC:

1. Have an Open-Door to your members.

Richard has held 3 open evenings at the Bar Council. The first had one person attend and two phone calls; the second, no people and one call; the first, no one called nor attended.

Numerous Circuit visits and Chambers visits have been undertaken over this year to find out what is bothering the profession. Additionally, a BC meeting was held in Cardiff within this year.

Richard has also gone to far flung places in search of a barrister to quiz in his quest to make the Bar happier; Brussels, Dublin, Vienna, Zambia, Seoul, Mexico, Colombia, St Petersburg, Moscow, etc.

- 2. Talk to everyone else too.
 - From the AG to the LAA, from the LC to the judiciary, from the LSB to the BSB, to politicians, foreign lawyers, to the City of London, from solicitor groups to civil servants.
- 3. Gather groups of excellent practitioners, including BC members, SBAs and Circuit Reps to push our cause together, and involve your successor in meetings and negotiations.
 - APQC is incredibly grateful to this; not just because she will be beginning 2020 with a head start, but as a way to make the most of the great expertise of a colleague's life when Chair of the Bar. It is obviously an excellent way to forge continuity and the best for our profession across the years.
- 4. Give quotable sound bites about things that matter.
 - In his year, the Bar Council has brought forward new agreements with the CPS and MoJ for criminal fees, the Legal Aid Agency for call legally aided payments, he has been a huge supporter not just of the legally aided bar but those with international practices. He has celebrated 100 years of women in the legal profession and 125 years of the Bar Council. He has spoken repeatedly and loudly about court closures, about criminals rubbing their hands with glee, the reduction of sitting days, the curse of McKenzie Friends, 80% of the PCF going to the BSB, barristers not paying the BRF and he has persuaded people, one by one, to pay their voluntary contribution, by well-placed arguments, with visits and by the threat of public shaming.
- 5. Go to as many evening receptions and dinner as you can, and drink more than your colleagues.
 - Whilst training was already underway whilst he was Circuit Leader, he has upped his game this year. So far, he has attended at least 136 evening events, showing astonishing dedication, honing the skill of drinking everyone under the table. It is impressive to see how seriously and successfully he has taken on this challenge.

So, how did he do in terms of his ambition? Over the year, APQC is delighted to say that there is no doubt that the Bar is a happier place. RPAQC and APQC have been counting; until the 26 October when at the Pupillage Fair, there were at least 36 barristers happier than they were at the start of 2019, and for that, we are all extremely grateful. RPAQC is not slacking as his year ends; he still has another 20 evening do's in the diary.

Gifts, on behalf of the Bar Council members were presented to Richard Atkins QC as tokens of pleasure, esteem and gratitude.

RPAQC concluded the meeting; he said that before he joined the Bar Council in 2003, he didn't know what the BC was or what it did. He was asked to join by the then Midland Circuit Leader and probably wouldn't have joined if she had not asked him. He has attended over 100 BC meetings since joining and only missed a meeting when he stopped being the junior rep and became the Silk rep for the Midland Circuit.

His recommendation to others – get involved. The Bar doesn't understand how much of a difference everyone on the Council makes, how much they contribute, and it has been a pleasure working with everyone and developing friendships.

Working with you all, people at the top of their game, people who want to and who do make a difference, has been wonderful, an honour and a privilege. Thank you to you all.

12. Date of next meeting:

Monday 2 December (Inaugural Address), 17:30, Middle Temple Hall