



**Minutes of the Bar Council meeting
held on Saturday 21 May 2016 at Inner Temple (Parliament Chamber)**

Present:	Chantal-Aimée Doerries QC	Chairman
	Andrew Langdon QC	Chairman Elect
	Lorinda Long	Treasurer
	Rt Hon Jeremy Wright QC MP	Attorney General

Apologies for absence

Apologies for absence were received from: Gary Blaker QC, Richard Brent, Alexandria Carr, Simon Clements, Tom Cockcroft, Elizabeth Cooper, Diana Deju, Michael Duggan QC, Francis Fitzgibbon QC, Manjit Gill QC, James Hampson, Max Hardy, Shiv Haria-Shah, Max Hill QC, James Hines QC, Richard Hoyle, Susan Jacklin QC, Michael Jennings, Rupert Jones, Michael David Jones, Jenny Josephs, Anna Macey, Justin McClintock, Duncan McCombe, Stuart McCracken, Gerard McDermott QC, Benjamin Myers QC, Gordon Nardell QC, Thomas Payne, Giles Powell, Alison Saunders, Daniel Sternberg, Christopher Tehrani QC and Grant Warnsby.

The following did not attend and did not send apologies: William Boyce QC, Simon Broomfield, Robert Buckland QC, Anita Davies, James George, Richard Gibbs, Katherine Goddard, Courteney Griffiths QC, Ruth Henke QC, Paul Mendelle QC, James Juggapah, James Keeley, Francesca O'Neill, Charlotte Pope-Williams, Richard Posner, Angharad Mary Price, Emma Price, Christopher Rees, Sundeep Singh Virk, Victoria Caroline Yates and Neil Mercer.

58 further members attended.

1. Minutes of the last meeting

The minutes of the last Bar Council meeting (9 April 2016) were approved.

The Chairman welcomed Bar Council members to the meeting and to Inner Temple. She thanked the Attorney General, Jeremy Wright QC, for attending.

Following the discussion led by the JUSTICE Working Party, covered in item 6 of the minutes of the previous meeting on 6 April, the Chairman reported that the *'What is a*

Court? report has now been published. It is available to view on the JUSTICE website at: <http://justice.org.uk/wp-content/uploads/2016/05/JUSTICE-What-is-a-Court-Report-2016.pdf>.

2. BSB report

Strategic Plan and Risk Outlook seminar

Sir Andrew Burns, Chair of the BSB, presented the BSB report. Also present from the BSB were Naomi Ellenbogen QC, Vice-Chair; Vanessa Davies, Director-General; and, Wilf White, Director of Communications.

Sir Andrew Burns reported that the BSB's 'Strategic Plan and Risk Outlook Seminar' held on 12 April had been well attended. The debate focussed on three key themes covered in the BSB's Risk Outlook:

- a) Failure to meet consumer needs;
- b) Lack of diversity in the profession; and
- c) Commercial and financial pressures on providers.

Those present at the event were in general agreement about the first two themes but the third theme stimulated livelier debate. It is clear that referral fees remain essential to ensure that commercial pressures do not compromise the public interest. Sir Andrew Burns explained that the BSB's main concern is with high impact risks. As a regulator, it is the role of the BSB to horizon scan and take measures to mitigate risk. He acknowledged that the discussions had been very useful and reassured Bar Council members that the BSB will continue to listen to their views.

The LSB's Regulatory Standards Report

Sir Andrew Burns reported that the BSB are pleased with the LSB's report, published on 10 May, that notes the 'significant progress' made by the BSB since 2012-13. Following the last report, the BSB welcomed the ambitious programme that included a commitment to the regulatory objectives, outcomes-focussed regulation and governance changes.

The LSB have formally commended ABS regulation by the BSB to the Lord Chancellor, thereby furthering freedom of choice for the consumer and adding financial strength.

The BSB have published the responses to the consultation of the proposed new Continuing Professional Development (CPD) scheme. CPD is an important part of the regulatory toolkit and the new scheme aims to ensure that knowledge and training remains relevant.

Joint LSB/BSB survey of public access barristers

Sir Andrew Burns noted that the barrister responses to the survey made for interesting reading.

The Bar Professional Training Course (BPTC)

The statistics published by the BSB on student performance at the Bar attracted interest from the media and the profession.

The Immigration Thematic Review/Youth Court Advocacy Review

Both reviews were reported at the last Bar Standards Board meeting. The vulnerability of clients remains a concern and those who are experts in these areas are keen for the BSB to take action. Regarding the Immigration Thematic Review, the BSB are developing a framework and continuing to work with other regulators to produce joint guidance. In order to raise the status of Youth Court Advocacy Work, the BSB are setting out competencies, providing evidence, sharing examples of good practice, and, looking into enforcement actions.

Open consultations

Sir Andrew Burns drew to the attention of the Bar Council members the open consultations on Future Bar Training and the Licensed Access Scheme.

Louisa Nye said that with regards to the Youth Court Advocacy Review she is concerned about the lack of clarity around whose conduct needs to be addressed: barristers or solicitors. She sought clarification from the BSB that it is clear about where the problems lie and she suggested that the Young Barristers' Committee (YBC) would be happy to be involved.

Sir Andrew Burns welcomed the input from Louisa Nye and said that while the BSB are confident that there are problems, it is in the process of determining where those problems lie. He acknowledged that the review deals with extremely vulnerable people.

Vanessa Davies invited the YBC to the next roundtable discussion. She reported that the Solicitors Regulation Authority (SRA) are now working with the BSB and said that the YBC will provide further assistance.

Andrew Granville-Stafford raised concerns regarding a key finding in the Public Access Survey. He noted that the survey finds that there have been relatively modest beneficial impacts for consumers, and suggested that this untrue. Saying that the survey reads as if public access as a whole has been of little benefit, he was clear that this finding does not reflect his personal experience. He asked if the BSB would be willing to revisit this aspect of the report. Sir Andrew Burns and Vanessa Davies agreed to do this.

Richard Atkins QC asked whether it is necessary for the BSB to send so much information out about the new CPD system before it has been implemented. Vanessa Davies reported that the new regime comes into place in 2017. While she listened to his concerns regarding 'information overload', she noted the difficulty in striking the right balance when disseminating information.

Returning to the Public Access Survey, Andrew Walker QC commented that the survey is a joint one with the LSB and emphasised the importance of drawing the right conclusions. He

enquired about the reasons for the LSB's interest in the survey. Vanessa Davies replied that the LSB interest is twofold. First, there is an interest in the interplay between public access and the cab rank rule, and, secondly, the LSB co-funded the report.

Rachael Spearing raised a point about the *'Women at the Bar'* survey, carried out by the BSB. She said that she has spoken to a number of women barristers who responded to the survey and are not aware of the distinction between the BSB and the Bar Council. They have concerns about how the data will be used. She asked when the report will be published and how the data will be used.

Sir Andrew Burns replied that the report is due to be published by July and reported that the BSB is in the process of carrying out qualitative analysis. Vanessa Davies confirmed that data will only be published in an anonymised form and that it will not be sent to either supervision or enforcement. She said that the BSB is happy to send an email of reassurance to those who answered the survey.

Continuing on the topic of the survey, Rachael Spearing said that she would take the email suggestion back to those she had spoken to. She asked if there would be dialogue between the BSB and Bar Council about what is reported. To this, Sir Andrew Burns confirmed that dialogue is ongoing and he noted the importance of being able to properly account for what is said in the report.

Robin Allen QC mentioned that the E&D Committee will want to work closely with the BSB about the messages that arise from the publication of the survey report and are looking forward to doing so. He asked that the Committee are given enough notice of the timing of its publication as it is inevitable that some parts of it will make uncomfortable reading for the profession. He emphasised the importance of doing what is 'proper for the regulator and the regulated body'.

The Chairman reported that she and the Chief Executive, Stephen Crowne, had been invited to, and had attended, the recent private session of the BSB meeting at which the draft report was discussed (leaving after the discussion of this report). The point about a dialogue between the regulator and regulated body was flagged at the meeting.

Sir Andrew Burns finished by saying that 'things are getting better' as there is now little tolerance for discrimination amongst the profession.

3. Chairman's statement

The Chairman congratulated the officers for 2017 following the officers' elections in April/May 2016. Andrew Langdon QC was elected unopposed to the position of Chairman Elect and will become Chairman of the Bar from January 2017. Andrew Walker QC has been elected Vice-Chairman for 2017 and Lorinda Long will continue in the role of Treasurer.

EU referendum

A full complement of speakers has been confirmed for the Brexit debate at Lincoln's Inn on 13 June. Dominic Grieve QC and Joanna Cherry QC will speak to the 'in' argument and Lord Howard of Lympne QC and Martin Howe QC will address the 'out' argument. The Chairman asked members to encourage others to attend and to publicise the event more widely.

Lord Justice Briggs' Interim Report

The open forum session attended by Lord Justice Briggs' on 10 May to discuss the Interim Report proposals was successful. The Chairman reported that she has asked Derek Sweeting QC to set up a small working group to investigate the possibility of making proposals, to ensure that the Bar Council has given the report its full consideration.

Consultation on regulatory independence

The Chairman updated Bar Council members on progress. There had been few recent developments and hence little discussion at Bar Council as the consultation has not yet been published. The Chairman explained that she is keen to give members an opportunity to raise any issues. When a consultation is published on this it will be scheduled for discussion at the next Bar Council meeting.

Ten things the Bar Council did in April

The Chairman noted the list attached at Annex 3b.

The Chairman spoke about three further items not included in the Chairman's statement:

- a) **Counsel magazine:** the Counsel Editorial Board has been refreshed following three advertisement campaigns. A selection panel comprising the Chairman of the Bar, Andrew Langdon QC, Steven Rudaini, Louisa Nye and Mark Hatcher selected the new Board and Michael Todd QC has agreed to remain as chair for the year.
- b) **Membership cards:** 3000 barristers have received two membership cards due to an administrative error. The Bar Council are aware of the situation and are exploring the cost ramifications.
- c) **Scam email:** a scam email regarding PCF payment and purporting to be from the Chairman of the Bar was sent to members of the Bar on 20 May 2016. The Bar Council are investigating and the Chairman of the Bar has sought to alert the circuits, specialist bar associations and barristers.

4. Chief Executive's report

Stephen Crowne presented three slides to the Bar Council members by way of report (see attached).

The first slide illustrated the numbers of registered and unregistered barristers from 2012 onwards. He noted that the Authorisation to Practice (AtP) process has just been completed and explained that the numbers for 2016 are likely to fluctuate throughout the year. The conclusion is that the number of barristers are broadly level year on year with no obvious upwards or downwards trend. The picture is similar where barristers are divided into employed and self-employed categories.

The second slide illustrated total numbers of barristers who have paid the BRF this year compared with last year. While the number of self-employed barristers paying the BRF has increased considerably, there has been a decrease in the number of unregistered barristers and the Bar Council are continuing to work with and target this group. Unlike the PCF, barristers sign up for BRF payments throughout the year and the Bar Council is continuing in its efforts to encourage more barristers to pay.

The final slide showed percentages of barristers paying the BRF in comparison with last year across the categories of employed barristers, self-employed barristers and dual capacity barristers. There has been an increase from 60% to 65% in the number of self-employed barristers paying the BRF this year. Although the increase is encouraging, the Bar Council acknowledges that there is scope for improvement and more work to be done, especially with unregistered barristers.

Melissa Coutino asked about the work being done to target unregistered barristers. The Director of Services, Paul Mosson, explained that the Bar Council is taking steps to engage with those who employ unregistered barristers, particularly in the financial market. There are 21,000 unregistered barrister contact details on the database but the accuracy of the data is questionable given that unregistered barristers are not obliged to provide contact details. Nevertheless, the numbers are increasing and the Bar Council expects to see another 50 unregistered barristers, on average, per month registering to pay the BRF.

Andrew Walker QC said that a number of enquiries are received from finishing legal training asking what kinds of work they can do as an unregistered barrister. He asked if the Bar Council is collecting their contact details. Paul Mosson replied in the affirmative explaining that the Bar Council is currently working with a company to provide advice and guidance around BRF for these barristers.

Amanda Pinto QC asked if a follow up email is sent to those barristers who sign up. Paul Mosson confirmed that follow up 'thank you' emails are sent and reported that an email requesting feedback was sent to those who have previously paid the BRF but declined to do so this year. Despite the responses and the work being done by the Relationship Managers to speak to some of these barristers directly, no specific trend has been identified. In addition, another group of barristers who never pay the BRF have been contacted, though the focus has

mainly been on the employed Bar. This approach has been successful in changing the minds of some barristers.

Stephen Crowne commented that repeat business is over 85%. The Bar Council is looking at sign up by chambers as informing those chambers that are in the bottom percentile for BRF payments about their payment status has proved to be a persuasive mechanism.

Lucinda Orr asked about the numbers of dual capacity barristers, asking which category they belong to. She questioned whether they have been 'counted twice' in the statistics. Stephen Crowne replied that, logically, they are likely to fall into the employed category and agreed to check the statistics.

Ivor Collett asked whether it is possible to provide a breakdown of chambers by practice area, funding status and geographical location. Stephen Crowne replied that efforts have been made to do this but the Bar Council has been unable to provide a firm answer. Paul Mosson explained that the information is not available in the database, however, the Relationship Managers are in the process of carrying out qualitative analysis. Data is being collected and stored but it will be a long process.

Stephen Crowne thanked Inner Temple for allowing the Bar Council to hold the meeting in the Parliament Chamber. The Chairman thanked Guy Fetherstonhaugh QC for his role in securing the accommodation.

5. Treasurer's report

Lorinda Long, Treasurer, apologised for the lack of an annex 4 saying that she decided against a full report for the meeting.

The Bar Council is unfortunately operating at a loss of 676k against projections of £353k. There are a number of reasons for the loss, including VAT liabilities and QASA prosecution costs, and although cost reduction activity has achieved savings of £135k, the biggest problem is high staff turnover that has cost £100k more than predicted. In addition, the staff head count has been reduced by seven FTE at a one-off cost of £152k. It was clarified that the one-off cost related to redundancies, all if which were by agreement.

Andrew Walker QC asked whether high staff turnover is common to all three groups (Representation, Policy and Service; Bar Standards Board; and Resources Group) and enquired whether the Bar Council is able to make any offsetting savings owing to the gaps it creates. Stephen Crowne confirmed that staff turnover is a problem across all three groups and explained that the Bar Council is currently making it 'the norm' to carry vacancies for up to three months where possible.

Andrew Walker QC further enquired about the steps being taken to reduce the high turnover. Stephen Crowne explained that the Bar Council has identified particular 'hotspots', for example Information Services, where staff turnover is particularly high. More specifically, the Bar Council is taking measure to: recruit the right people; improve management and

induction processes; and, restructure in a way that encourages people to stay. If the numbers of staff who left as a result of voluntary redundancy are removed from the figures, the underlying turnover is only a little higher than similar organisations.

Andrew Walker QC asked whether there is any research being done into aspects of job roles that are 'loathed' and that may discourage staff from staying in the organisation. He cited repetitive calls to the ethics helpline that take up unnecessary amounts of time and resources, as an example. Stephen Crowne conceded that such calls can be disheartening for the dedicated policy team who work hard. However, the recent staff survey indicates that staff are more positive about their work/life balance and about management.

Stephen Crowne noted that it is difficult an organisation the size of the Bar Council to offer career progression to staff. To some extent, there is no choice but to accept that where good and ambitious people are employed, they are likely to leave after a couple of years.

Andrew Morgan asked what the staff head count at the Bar Council is. Stephen Crowne replied that it fluctuates between 160 and 165, of which BSB staff account for just over half.

Lorinda Long continued her presentation saying that AtP 2016 has been very successful operationally with good compliance levels, despite an LSB-related delay at the start of the process. However, the PCF and LSB collections are under budget by £175 and the Bar Council is looking at ways of increasing income with several control processes in place. For example, the Finance Department meet with managers on a monthly basis to analyse spend with results put to the Finance Committee; and recruitment only takes place where necessary with the use of external agencies avoided where possible. In order to support these processes, the Bar Council is bringing forward developments in the finance system.

There is positive news regarding BRF payments which appear to have improved in comparison with last year although subscriptions are currently £65k lower than the budget. Marketing plans are in place to secure c400 new subscriptions by September and to close the income gap this year

Further controls have been introduced to mitigate the risk of shortfalls. For example, in 2016/17 all PCF funded areas are seeking cost reductions and Resources Group overhead costs including project spend have been reduced.

Amanda Pinto QC asked how the Bar Council decides which area or department is subject to cuts. Stephen Crown explained that each area/department produces a business plan and all plans are reported to the GMC and Bar Council. The business plans undergo regular review with any proposals for changes made to the Chairman and BSB, if appropriate. Inevitably some planned activities fall away enabling the Bar Council to make necessary adjustments to expenditure but the process is a balancing act and sometimes there is a need to 'push back' on expectations.

Robin Allen QC asked what the current situation means for the reserves and asked whether the reserves could be used to cover the deficit. Stephen Crowne replied that it is necessary for the Bar Council to take into account big liabilities such as the defined benefit pension scheme.

It looks likely that the Bar Council will be required to increase its contributions which will reduce the amount held in reserves.

Stephen Crowne reported that the lease for the Bar Council offices comes to an end in 2019 and a project has been launched to look into accommodation options. Consequently, there is a need for the Bar Council to calculate, as accurately as possible, the amount of accommodation space required and flexible working options for staff are being explored.

Saying that she had touched on regulation in her report, the Chairman said that she wished to make it clear that much of the representative work depends on the PCF. The Bar Council takes a third of PCF payments and the remaining amount goes to the BSB. A complete separation between the Bar Council and the BSB could put the representative body in financial difficulties especially if the representative body is prevented from collecting any PCF monies and/or is not permitted to use PCF monies under s51 of the Legal Services Act. For this reason, the Bar Council is looking closely at its present and future financial situation.

6. McKenzie Friends: for discussion

Derek Sweeting QC opened the discussion. In February, the Judicial Executive Board published a consultation on the approach courts should take to McKenzie Friends and the Bar Council's Remunerated McKenzie Friends and Solicitors' Agents Working Group is in the process of finalising its response. He drew to the attention of those present a series of questions at paragraph 3 of annex 5 and outlined two central points to consider during the discussion:

- a) The possibility of removing the regulation of McKenzie Friends from the current model and incorporating it into the rules so that McKenzie Friends become a part of the court system; and
- b) The potential issues arising from the Judicial Executive Board's proposal that McKenzie Friends should not be remunerated for exercising rights of audience, conducting litigation, or providing 'reasonable assistance' in court. For the first two categories, it would seem sensible to remove the possibility of fee payment. However, it is acknowledged that support and assistance in court from someone appearing as a McKenzie Friend can be important to litigants in person and the Bar Council's Remunerated McKenzie Friends and Solicitors' Agents Working Group were considering the ramifications of supporting the removal of any right to payment for the latter category.

Derek Sweeting QC concluded his introduction by reporting that the University of Cardiff has been commissioned to carry out some research into the precise nature and value of services carried out by McKenzie Friends. The research is a 'vital step' as it is important that the Bar has a more detailed understanding of the situation.

John Elvidge QC asked a question about the scale of the use of McKenzie Friends and the distinction between a friend offering support and those making a business out of providing

assistance. Derek Sweeting QC admitted that the scale of the issue is unknown although it has been possible to identify those courts where McKenzie Friends are a more regular feature.

To this, John Elvidge QC suggested a McKenzie Friends' register. Derek Sweeting QC explained that the response paper includes the proposal that someone using a McKenzie Friend obtains a CV. However, he made the point that a register could result in the creation of another tier of lawyer - something that the Working Party is keen to avoid.

Louisa Nye said that the YBA has concerns about McKenzie Friends and supports the proposal for non-remuneration. There are specific worries about the advertising of rates online by McKenzie Friends that give the sometimes inaccurate impression that they are cheaper than a barrister. This is not always the case and, more importantly, young barristers come with insurance.

Derek Sweeting QC asked Louisa Nye about her thoughts on remuneration in relation to assistance in court. Louisa Nye replied that in due course, the Bar Council should push for regulation on that point. The real problem is McKenzie Friends providing bad advice.

Robin Allen QC said that, in his opinion, it is not sustainable to allow no remuneration at all, especially in complex trials where no legal aid is available. He suggested that it might be better to propose no remuneration without court permission. To this, the Chairman made the point that usually a young barrister is available and sometimes at cheaper rates. She asked why more young barristers are not doing the work when, if the Bar Council is right, they are available. The Bar Council needs to find a way of educating young barristers about these opportunities.

Philip Marshall QC said that he frequently encounters the problem of judges being desperate to have anyone available in court to provide assistance. He suggested that if it were compulsory to make an application for permission, judges would grant permission anyway. On the subject of rights of a McKenzie Friend in court he asked where the line would be drawn, making the point that it is difficult to define legal advice and court support. Those McKenzie Friends that are more inclined to charge are likely to be the type of people who will manipulate the system and drift into giving advice. Derek Sweeting QC agreed that the three rights are ill-defined.

Richard Atkins QC made the point that agreement of payment of McKenzie Friends by the Bar Council, a governing body, does not send a good message to the profession. He said that those going into court and giving advice should be qualified. A hybrid system should not be accommodated. Derek Sweeting QC said that he understands this viewpoint but the reality is that McKenzie Friends exist and against a background of legal aid cuts, it is vital that people have assistance.

Athena Markides made the point that in drawing a distinction the Bar Council is effectively endorsing the idea that advisory services are of value. She suggested that the Bar Council waits for the outcome of the research. In reply, Derek Sweeting QC said that the real question is that although we can say firmly that McKenzie Friends should not exercise rights of

audience or conduct litigation, we are less clear about the issue of providing advice where we know that some McKenzie Friends add value.

Guy Fetherstonhaugh QC put forward the argument that although McKenzie Friends are not insured, regulated or qualified, they are good tradespeople with good marketing skills and they encourage the misconception that the Bar is a closed shop. The Bar simply needs to be better than them and market better than them. It will appear unfair to approach them through regulation.

Melissa Coutino said one of the issues is about competition and standards as sometimes McKenzie Friends provide 'appalling' services. She suggested that it would be useful to find out who uses McKenzie Friends and whether this is the sort of work that the junior bar would want to do.

Andrew Morgan said that he feels that the Bar is being 'too fair' to McKenzie Friends. Barristers need to be supported to compete in the market and to be more upfront about their fees about the fact that they [McKenzie Friends] are not needed.

Alison Padfield made the point that as some McKenzie Friends are in breach of the Compensation Act by providing regulated claims management services, consideration should be given to the recoverability of fees as currently fees charged by McKenzie Friends are not recoverable. Derek Sweeting QC replied that this is an allied issue. He was clear that the Working Group is not suggesting that they want McKenzie Friends but they realise that there is not necessarily a choice and are responding to changes.

Jeremy Wright QC MP, Attorney General, advised that legislation will be a lengthy process that could result in an outcome that goes further than that intended by the Bar.

Rachel Spearing QC reported that she is aware of a number of universities developing 'clinical' regulation programmes. Large numbers of graduates are leaving legal institutions with law degrees and they are increasingly more skilled. Whether the Bar likes it or not, these graduates are in the marketplace.

Andrew Langdon QC said that it is important to take the public interest into account. He was clear that he understands the hesitation about prohibiting payment for the provision of advice but is non-supportive of McKenzie Friends. He addressed the need to operate more successfully in the marketplace but conceded that this approach does not appear to be working and suggested that the Bar Council takes a risk and supports the judicial argument as they experience the problems first-hand.

Andrew Walker QC raised concerns about following the legislative route and ending up in a worse place.

Derek Sweeting QC said that his impression is that the Bar Council should agree with what it proposed. Those present agreed with Robin Allen QC proposing a small deviation and Andrew Walker QC saying that it is better to reinforce the current situation under the rules.

Greg Williams said that McKenzie Friends shouldn't be entitled to charge but asked how the Bar will know if they are charging and who will take enforcement action. Derek Sweeting QC replied that the rules state that the question will be asked and people will be expected to be honest. To this, Greg Williams said that, in his experience, once a McKenzie Friend is involved they will continue to push the boundaries and he cited a case in which a McKenzie Friend interpreted for a client.

Nick Vineall QC made a point about nomenclature and suggested that if the term 'McKenzie Friend' is to be changed, the word 'friend' should remain in the title as it makes the Bar Council position easier to explain.

Colin Andress commented that, in law, a litigant in person is entitled to have a friend to help them in court but that friend is not entitled to carry out reserved legal activities. The recommendation is that permission to do this should not be given by the judges but the real issue is the lack of access to justice. Derek Sweeting QC replied that this is a point that is made repeatedly but the courts have discretion to allow it and some judges feel that they have no choice but to grant permission in order to get the work done.

Amanda Pinto QC suggested the term 'Litigant's Friend' but said that the litigant should be given the opportunity to instruct a barrister at the junior Bar.

Robin Allen QC asked if there is anything that can be done to strengthen controls on those who have been struck off or disbarred acting as McKenzie Friends. Melissa Coutino informed the members that Australia has a list of those who cannot be a McKenzie Friend where the Bar of England and Wales does not. Derek Sweeting QC thanked Melissa Coutino for the information and replied that the Working Group will look into it.

Gemma de Cordova asked whether the Bar should be using this as a commercial activity and promoting activities that the junior Bar can carry out. Lawyers are not as commercially savvy as they ought to be and there may be a need for a piece of work focussing on access to justice and the role of the junior Bar. The Chairman said that this is a good point and reported on the work being done currently in explaining pro bono work and promoting direct access.

Derek Sweeting QC said that there may be some value in asking litigants in person using McKenzie Friends whether they have sought an alternative.

Penelope Reed QC reported that the Chancery Bar Association runs a pro bono scheme. She explained that it has been found that many McKenzie Friends try to retain clients who are paying them and advocated taking a 'hard line'.

Dr Mirza Ahmed welcomed the requirement for the provision of a CV but said that it is more important that the person is suitable for the role. He also raised concerns about sub paragraph 1.13 of the Judicial Executive Board consultation, which describes a 'court supporter' as an 'officer of the court':

“Where an individual is authorised to act as a court supporter, that individual in respect of those proceedings is deemed to be an officer of the court and thereby owes such duties to the court as if they were a solicitor.”

Derek Sweeting QC replied that he does not think that the phraseology is designed to enhance the role of the McKenzie Friends, rather it is included to ensure that McKenzie Friends are held to account and are subject to the same controls as anyone conducting litigation though he agreed that the issue should be looked into.

The Chairman thanked Derek Sweeting QC and the Working Party for their work.

7. EU Law Committee

Tim Devlin explained that he was standing in for Gordon Nardell QC, Chair of the EU Law Committee, in his absence.

Last year it became apparent that the UK will be having an EU referendum and the EU Law Committee began to think about the implications of this as there is no common Bar opinion on Brexit due to differing political views across the profession. It was subsequently decided that the best approach would be to provide expertise on a neutral basis and address the underlying issues on both sides.

The EU Law Committee have produced three papers that have grown out of work undertaken as part of the Government’s *‘Coalition’s Balance of Competencies’* review. The EU Law Committee has drawn on a wider scale of expertise in order to fill those gaps for which expertise was not immediately available within the EU Law Committee.

The original document produced was very lengthy and detailed and the Committee are aware of the need to produce a readable text. Therefore, the document has been broken down into three manageable papers:

- a) Paper 1 is an introduction to EU Law. It includes an analysis of the *Settlement for the United Kingdom within the EU* and attempts to look at what Brexit might look like.
- b) Paper 2 mainly looks at finance and business, free movement and the single market, and, explores those policy areas linked to the reforms where the UK’s relationship with the EU are likely to have a significant impact on legal rights and obligations.
- c) Paper 3 focuses on those other areas that will impinge on UK citizens, for example crime and family law.

An executive summary has been produced to summarise the potential benefits and disadvantages of Brexit.

The document has been approved by the GMC and the UE Law Committee is now focussing its attention on the media strategy for which two launches are planned, the first of which is the debate taking place at Lincoln’s Inn on 13 June.

Tim Devlin said that this work could not have been completed without the deep wells of expertise available, within the EU Law Committee and the wider profession, and he thanked all those who have contributed. He said that the collaborative effort demonstrates that 'we are one Bar, one profession'. Thanks were also given to Evanna Fruithof, Gordon Nardell QC, Alex Carr and Jodie Blackstock.

Tim Devlin said that he did not intend to speak about the other activities of the EU Law Committee but noted that the EU Law Committee was involved in the very useful visit of the Vice-Chairman to Brussels.

Congratulations were given to the EU Law Committee for its set of very useful papers that are 'exactly what is needed'.

John Elvidge QC asked when and how the papers are to be published. Tim Devlin replied that the papers will be published in the next week and the Chairman confirmed that they will be circulated to Bar Council members.

A question was asked about whether the Bar Council is making itself available to the media for fact checking purposes on points of law. Tim Devlin confirmed that those involved in the writing of the papers will be available as back-up for the Chairman.

8. Law Reform Committee

In the absence of the Chair of the Law Reform Committee, Fergus Randolph QC, the Chairman asked members if they had any questions about the report at annexes 7a and 7b. No questions were asked.

9. Introducing the Director of Services

Paul Mosson introduced himself as the Director of Services saying that he has been at the Bar Council for eight years. He outlined the complexity of the services function explaining that it partly supports the Policy Team.

Services is led by the Director of Services, who is supported by Lois Clark, Head of Commercial Services and Development, and, Carol Harris, Head of Financial and Member Services, who has been with the Bar Council for 25 years. BARCO was launched in 2013 and is used by approximately 50 sets of chambers.

The Member Services Team was introduced 18 months ago. It is a front line support team that barristers speak to directly and, amongst other things, the Team is responsible for provide an overflow service for the ethics helpline, taking BRF payments, dealing with immigration support queries, administrating the Joint Tribunal service and processing BARCO applications.

The Training and Events team plan and organise training courses and events. For example, the annual Bar Conference (combined with the Young Bar Conference), taking place on

15 October, is the flagship event and the Bar Council hopes to see as many members there as possible.

The services function also promotes the direct access portal and works with the Citizens Advice Bureau and small businesses. Two Bar Nurseries have been launched in London and Leeds and the department is continuing to look at other collaborative opportunities in other cities.

The Bar Representation Board is led by Richard Atkins QC and Fiona Jackson, The Bar Council is keen to develop this as there is a need to engage more with barristers in order to identify other services and maximise opportunities.

10. Any other business

YBC Workshop: The Specialist Advocate

Louisa Nye asked Bar Council members to read her flyer about the workshop that is taking place on 4 June and thanked all those who have helped with its organisation. There will be some very good speakers at the event which is open to all barristers. She announced that the Welsh Circuit are paying travel expenses for those wishing to attend while the Junior Chancery Bar are paying all expenses for up to ten members, and she encouraged other circuits and bar associations to follow suit.

Speaking to Witnesses at Court: CPS guidance

Richard Atkins QC raised concerns about the draft CPS '*Guidance on Speaking to Witnesses at Court*' that has caused some consternation throughout the Criminal Bar. He asked if it could be included on the agenda for debate at the next Bar Council meeting with Alison Saunders, Director of Public Prosecutions, invited to attend. He explained that although the guidance may be well intentioned it will create unmanageable consequences, particularly with regards to thanking witnesses after they have given evidence.

John Elvidge QC made the point that no Counsel should see a witness without the CPS rep being present. Robin Allen QC said that the guidance sets out the need to have a CPS representative in court at all times which is not always possible.

Andrew Morgan said that there have been no objections raised by the courts as a result of the guidance so far. He acknowledged that the guidance has yet to go live but reiterated that, to date, no difficulties have been raised.

11. Date of next meeting

The next meeting of the Bar Council will be held on 16 July 2016 at 10.00 at Lincoln's Inn (Old Hall & Crypt).

The meeting closed at 12.20pm