



## **Minutes of the Bar Council meeting held on Saturday 21 March 2015 at the Bar Council offices**

Present:

Lorinda Long

Treasurer

Rt Hon Jeremy Wright QC MP

Attorney General

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

Apologies for absence were received from Mr Robert Buckland QC MP, Alison Saunders CB, Alistair MacDonald QC, Chantal-Aimée Doerries QC, Mirza Ahmed, William Boyce QC, Tony Cross QC, Gemma de Cordova, Anton van Dellen, Jonathon Egerton-Peters, Amanda-Jane Field, Peter Grieves-Smith, Max Hardy, Adam Hiddleston, Michael Jennings, Gregory Jones QC, Michael David Jones, Richard G Jones, Rupert Jones, James Kitching, Ian Lawrie QC, Paul Lewis QC, Adrienne Lucking QC, Duncan McCombe, Gregory Mitchell QC, David Nicholls, Lucinda Orr, Peter Petts (Andrew Dymond attended as alternate), Simon Picken QC, Dawn Pritchard, Penelope Reed QC, Andrew Granville Stafford, David Christopher Taylor, Mark Thomas and Helen Tung.

The following did not attend and did not send apologies: Safira Afzal, Kerry Bretherton, Ian Bugg, Alexandria Carr, Celina Colquhoun, Malcolm Dodds, Richard Gibbs, Alexandra Healy QC, James Hines QC, Sarah Morgan, Hefin Rees QC, Daniel Sternberg.

The following attended as guests: Vanessa Davies (until item 6) and Sir Andrew Burns (until item 6).

65 further members attended.

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

Andrew Walker QC (AWQC) opened the meeting. In the absence of the Chairman and the Vice-Chairman, he had been asked to chair this meeting of the Bar Council as he had also chaired the last General Management Committee meeting in their absence. Members had been asked in advance of the meeting if there were any objections to his performing this function and AWQC asked again if everyone was content that he preside. Those present gave approval to AWQC chairing the meeting.

The minutes of the last meeting had been updated to include an exchange between Alison Padfield (AP) and Vanessa Davies (VLD) on the matter of BMIF and the provision of insurance to entities.

The version on the website has been updated and a copy will be re-issued to all members with the minutes of this meeting.

There were no other amendments to the minutes and no other matters arising.

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

The Chairman, Alistair MacDonald QC, had circulated his written statement ahead of the meeting, as is common practice. AWQC said that he may not be able to answer all questions arising from it, but that members of the Bar Council executive were available to assist.

AWQC referred to the news that the Government has given a commitment to bring forward a Statutory Instrument before the dissolution of Parliament to ensure that the 'instructed advocate' in a case is the person who undertakes the main hearing. This is a welcome position, for which the Bar Council has been lobbying for some time. There may be assistance required for practitioners on the practicalities of this change, and the Bar Council will consider that once the details are known.

AWQC asked Bar Council to note appointments to the Inns of Court and Bar Educational Trust. The current trustees are Elpha Lecointe and Amanda Tipples QC; Duncan Matthews QC and David Southern have been re-nominated for additional terms.

The Chairman of the Audit Committee, Michael Jeans, has appointed two individuals to the committee to fulfil the roles of Chairman's nominees, under section 58e of the Bar Council Standing Orders. Stephen Whittle and Steve Carter were previously members of the committee, appointed temporarily when the Audit Committee was established in 2012. Following an open recruitment process started in 2014, they have been appointed for a term of three years effective February 2015.

AWQC drew members' attention to the announcement that the Bar Conference will be held on 17 October 2015. This is also the day of a Bar Council meeting. In order to accommodate the conference and to ensure that there are still meetings at the right time to approve the budget, the Bar Council meetings on 17 October and 21 November have been cancelled and the business of both will be merged into a meeting on 7 November. There will therefore be one fewer less Bar Council meeting this year, but also a free Saturday to attend the Bar Conference instead. AWQC recalled that early on during his time as a member of the Bar Council, he was sceptical about the value of attending the annual conference, but since he first attended, he had very much enjoyed every one. He encouraged all those who can to attend.

Louisa Nye (LN) commented that the Bar Council was a signatory to a pre-action protocol letter in respect of a possible Judicial Review against the Government in relation to the proposals to introduce an enhanced fee to issue money claims, and asked whether the Ministry of Justice had responded to that. Charlotte Hudson (CH) responded that a reply had been received from the Treasury Solicitors on behalf of the Ministry of Justice and that advice was being taken from counsel before any decisions about next steps could be taken.

Eleanor Mawrey (EM) commented that in the past there had been 10 or 11 Bar Council meetings per year, at which there were discussions and debates. These days, there are now only 7 or 8 and the structure has changed; there are a series of reports and the rubber stamping of proposals. She asked what purpose the Bar Council actually serves and whether this is the time to question what it is worth.

AWQC agreed with EM's point that the meetings must be a forum for debate, and that there were fewer meetings, but he did not agree that there had necessarily been fewer debates in his time on the Bar Council; these have depended on the issues of the day. There are still important debates to have and indeed there have been some recently, for example in relation to QASA.

Stephen Crowne said that he was inclined to agree with EM's point and that it is critical that the meetings are a forum for debate. The provision of reports ensures greater transparency and accountability, and the number and content of the meetings must make the best use of Council members' time. AWQC added that, at the last meeting, AMQC invited members to propose issues for discussion and debate. The need for debate does not necessarily lead to a need for more meetings, though.

Paul Stafford (PS) asked what grounds are being relied upon for the purpose of the Bar Council (and others') challenge to the Lord Chancellor on the impact of a new regime of court fees. AWQC said that he thought that the pre-action letter could be circulated. PS asked that the Government's response be circulated as well. Joe Smouha QC (JSQC) said that other signatories included the Law Society, the Chancery Bar Association, the Commercial Bar Association, CILEx, APIL and others. The position is currently being considered as to the strength of the JR challenge. A decision will have to be made in relation to cost; it is estimated that a JR will cost £90k for each applicant but that does not include the exposure to costs liability if a challenge is unsuccessful. It would be beneficial if there was a party directly affected by the changes who could join the action, but they may not be able to afford to.

PS said that just as the criminal Bar has received the support of the Bar Council while under attack, he would ask that the civil Bar is similarly assisted. AWQC recommended that anyone interested in the issues reads the debate in House of Lords<sup>1</sup> and added that any decision in respect of a JR will go through the appropriate Bar Council governance processes and will not be taken without consultation with relevant parties.

Finally, AWQC explained that owing to a recent resignation, a casual vacancy had arisen for a self-employed junior practitioner under seven years' call. The usual process would be to put this out to expressions of interest. However, given the time of year and having one fewer meeting in 2015, it was suggested that an elected member of the 2014 Bar Council who was elected for one year, and who had missed the deadline for the last election, be re-appointed for the sake of continuity. AWQC asked the Council for approval of this proposal; it was given and Jeremy Phillips' membership of the Bar Council was extended to 31 December 2015.

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<sup>1</sup> <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150304-0003.htm>

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

Stephen Crowne (SCr), the Chief Executive, began by reminding the Council that the window for the nominations for Officers (Chairman, Vice-Chairman and Treasurer) for 2016 will open on 6 April and close on 24 April. All members will be sent further details about the process and should keep an eye out for it.

SCr provided an update on the Authorisation to Practise process; as of 20 March, 82% had completed or delegated the process (1% behind last year). This is the first year of the new income-based calculation for the practising certificate fee and there is a lot more uncertainty as to how much money will be generated. The target is £9.3m and SCr is quietly confident that this will be achieved. There have been a lot of telephone calls and emails from barristers during the process, mainly about changing their personal details. Around 20% of calls relate to accessing the system. There have been seven complaints, two of which were about privacy issues and these have been referred to the BSB.

There have been one or two technical glitches, which caused a short delay in the ability to process block payments by chambers and employers. For those identified as having been affected, the BSB has agreed to extend the deadline for payment. Otherwise, 31 March remains the deadline for completion of the process.

There have been a few important internal developments. The organisation is involved in quite an array of projects concerned with information management and IT and a programme of work has been pulled together to govern it all. Being aware of the difficulties inherent in changing IT systems, the organisation is avoiding the 'big bang' approach. The programme requires investment over the next two years. Some of the change is driven by regulatory requirement, but will benefit the rest of the business.

The Bar Council will also hold a Staff Survey in April, the first for two years. It is intended to hold them regularly and the survey is being designed with that in mind so that changes in response can be captured over time. Once the survey has closed, the results will be analysed and action plans drawn up.

The organisation has also taken a long, hard look at how it rewards its staff, whether through pay or other benefits. A much more comprehensive set of policies have been introduced in order to improve staff retention. All staff will receive a 1% increase in pay from 1 April, but from 2016 any uplift will be linked to personal performance.

The representative side of the business has also turned its attention to risk management. The BSB has a well-developed approach, which the rest of the organisation has to step up to meet. The Audit Committee and Haysmcintrye, the auditors, are also involved. The process is taking both a 'bottom up' and 'top down' view of what risks need mitigation, both now and in the future. When these are identified, a risk register will be created and monitored, ensuring a much more rigorous and effective approach to risk management.

Guy Fetherstonhaugh QC (GFQC) asked what the terms of occupation are on the High Holborn building. SCr replied that this issue was near the top of the risks already identified for the register. The lease runs out in 2019 and the organisation has started to look at alternatives as well as make financial provision against the likelihood that the premises will change. It is not just a question of a change of building, but how the Bar Council will evolve during that period. SCr is thinking about other parties and how they might meet the accommodation needs. Midtown is a very expensive place to be.

James Juggapah (JJ) said that he had tried dialling in to a Young Barristers' Committee meeting by telephone and the cost was prohibitive (30p per minute). CH explained that the charge is from each individual's network provider, so may vary. Ofcom has announced that there will be changes to what providers can charge from June 2015, so calls to 0800 numbers should be free from that time, whether from a landline or mobile telephone.

#### **4. Treasurer's report**

The Treasurer, Lorinda Long (LL), provided an update on the Bar Council finances. The business had been forecasting an operating cost surplus of £500k, compared to £69k in 2013-14. However, income over the year has been a lot lower than anticipated, owing in part to less take-up of the Bar Representation Fee (BRF); 900 fewer subscribers; amendments to the treatment of VAT on the BRF; lower attendance at seminars, training and conferences and reduced income from the BSB in respect of training and education. The new forecast is c. £93k.

Expenditure has been in line with the budget. There has been an investment in the HR function and performance management across the organisation. Related costs have been absorbed through restructuring.

LL said that she would provide a full set of accounts before the summer.

There were no questions.

#### **5. BSB report**

Sir Andrew Burns (SAB) said that it was good to be back. He has spent his time since the last meeting visiting different parts of the legal landscape, talking to people and learning a great deal.

The BSB had circulated their written report (annex 3a) ahead of the meeting; SAB drew out a few highlights, including the news that the number of applications to form barrister entities is growing.

There are a number of consultations either live or about to be launched, and members are advised to look out for them.

The BSB is recruiting two new, good quality, engaged barrister members for its Board. Bar Council members are prohibited from sitting on the BSB Board, but members are encouraged to bring this news to the attention of anyone they know who may be interested.

The BSB has been energetic in its supervision visits and has had a good response from chambers as to how they are managing risk. In the course of these visits, there has been a lot of feedback about BarMark, the now defunct quality mark; many would like to see its return, or something like it. SAB said that he understood that the Bar Council had been discussing this for some time and would simply like to stress that many chambers feel that a new mark would help them tackle risk areas. SAB encouraged the Bar Council to listen to its members on this, as there really is an appetite for it.

SAB invited questions on the BSB's written report.

Robin Allen QC (RAQC) expressed concern about paragraph 12 of the report: *"All High Impact Chambers should now have been informed of the results of the Supervision Return process. Visits will be scheduled to all High Risk Chambers and undertaken over the next two to three months. So far 14 Chambers have been identified as High Risk"*. RAQC wondered if there are any reputational issues that the Bar Council should be worried about.

Vanessa Davies (VLD) responded that identification of common risk areas is part of this process. The BSB is scheduled to publish, before the summer, a thematic report on issues arising out of particularly high risk chambers and what broader lessons can be learned by chambers as a result of the supervision exercise. That report will be in the public domain and the BSB would be happy to talk to the Bar Council if there are any issues arising which can appropriately be worked on collaboratively.

Ruth Hughes (RH) referred to the 'green paper' on Future Bar Training published by the BSB. On page 11, in a box headed "Academic requirements", it says: *"We will continue to require candidates for the Bar to have knowledge of law - but we expect to place more emphasis on principles, concepts, the ability to think and research independently, and on the other skills of a lawyer"*. RH said that she could not understand what was meant by this. The standard of English is poor. While the audience for the paper is not simply the Bar, there is a risk that the BSB will not be taken seriously if no-one there knows how to write.

VLD responded that there have been many discussions at Bar Council meetings about the tone which is necessary for a professional, regulatory audience. This particular document is not actually aimed at the profession, but one which will be issued on 30 March emphatically is. In reply to what 'principles and concepts' are meant, this means academic ones. There are others in this field who would take a much more relaxed approach at how much law people need to know when they join the profession.

Nigel Lithman QC (NLQC) asked if the BSB was planning to move away from the philosophy that criminal practitioners need more regulation than any other type of barrister. He asked SAB if he was aware of the troubled history between the BSB and the criminal Bar. There has been an unacceptable spotlight on practitioners in crime. How far can the BSB go to be the catalyst to work out these problems? Why do criminal practitioners need more supervision and regulation than the rest of the profession?

Richard Atkins QC (RPAQC) added that he had read the 'QASA' section of the BSB report and not entirely understood the reference – at paragraph 10 – to the BSB trying to "understand the

environment within which regulatory arrangements are implemented” in order to “understand better the positioning of a regulatory quality assurance scheme within this developing area”. VLD explained that there have been developments – the recommendations made by Sir Brian Leveson and Sir Bill Jeffrey, for example – and these need to be taken into account as to whether the landscape has changed since QASA was last about to be rolled out.

VLD was asked to confirm whether there are plans afoot to expand a regulatory quality assurance scheme more widely. VLD said that QASA is currently the only one envisaged.

NLQC repeated that this focus on criminal advocacy is wrong. SAB replied that insofar as the criminal Bar is subject to QASA, it is in the public interest and to the benefit of the most vulnerable in society. NLQC replied that it was about time that the regulator and the Government recognised the dispute and stopped being criminal Bar-centric.

Neil Mercer (NM) said that he understood and appreciated the argument about vulnerability, but if this is part of a plan for a Bar-wide scheme then it is offensive if other advocates are not going to be regulated, which appears to be the suggestion. The problem is not with the criminal Bar but with advocates from the other profession.

GFQC said, further to RH’s point, that he has similar problems understanding what the Legal Services Board is saying. Sir Michael Pitt, Chairman of the LSB, recently made a speech on the future of regulation. What conversations has the BSB been having about that? The BSB is meeting Sir Michael soon. There is nothing to report at this stage except that the BSB is engaged in work under the LSB’s leadership to discuss the ways in which the legislation could be improved. There is not a great deal of evidence that any of the political parties have it on their agenda.

Andrew Langdon QC (ALQC) observed that SAB’s arrival coincides with what is hoped will be the end of the QASA litigation. He added that there is a great deal of goodwill to bring around a change and that he was sure that SAB would be very receptive to that. ALQC wished to reaffirm that there are people around who can be very constructive and that he hoped that they could all work together.

SAB replied that, in his view, some methodology for rating advocacy skills is a necessary step to take. What is important is how this can be done in a way where needs are met without the process being onerous. Perhaps there has been some unnecessary anxiety; he is coming to it with an open mind.

Gerard McDermott QC (GMQC) asked whether he was to infer that QASA could be rolled out only in specialist areas? This would be a backward step in a competitive field. Is it really necessary to be accredited and not simply – as in health – manage the process through CPD?

NLQC said that his point was that quality assurance might be valid across the Bar, regardless of the result in the Supreme Court over QASA. QASA is unacceptable to the criminal Bar.

The discussion moved on to the proposed amendments to the BSB’s constitution, as set out in annexes 3b and 3c. The Bar Standards Board’s constitution specifies the procedures by which members of the Board, including the Chair and Vice Chair, are appointed. The constitution establishes an Appointments Panel, which is responsible for all appointments to the Bar Standards

Board. The Appointments Panel met in January and considered that some amendments were required to the constitution. The first is a minor amendment to the way in which independent members of the panel are described.

The constitution at present requires there to be one member who is “accredited by the Office of the Commissioner for Public Appointments”. That office no longer accredits individuals so this statement is inaccurate. The suggested new wording is that there be: “an independent person with knowledge of the CPA Code of Practice or similar skills and experience in good recruitment procedures”.

In 2014, the BSB inserted a provision into the Standing Orders that allowed it to extend committee members’ terms of office beyond the usual six year maximum. This was intended to be a power used only in exceptional circumstances. The Appointments Panel considered that a similar provision should be inserted into the Constitution.

The Panel also considered that if a member of the Board was subsequently appointed as Chair or Vice Chair then a new maximum six year period of office should commence upon that appointment. Members of the Panel advised that there is precedent for this in other public bodies. However, to abide by good governance guidance, it is also appropriate to apply a cap to the number of years that can be served overall.

The Panel also thought it would be helpful to define more closely the term “casual vacancies” and the proposed new wording is “vacancies which arise as a result of a member not serving their full term of appointment.”

Finally, following discussion by the Board on the above points, the Board would like to change the Constitution so that it uses gender neutral language throughout.

The Bar Council approved these amendments.

SAB and VLD left the meeting.

## **6. Social Mobility Committee – proposed changes to the Standing Orders**

Robin Allen QC (RAQC), Chairman of the Equality and Diversity Committee, presented the proposals as set out at Annex 4. It is proposed that the Social Mobility Committee (SMC) be dissolved and the work of the SMC should be split between the Equality & Diversity Committee (EDC) and the Training for the Bar Committee (TfBC).

The Equality and Diversity Committee (EDC) will monitor and report on the progress and experience of those from a lower socio economic background (alongside monitoring and reporting other protected characteristics).

The Training for the Bar Committee (TfBC) will acquire oversight of Social Mobility Committee’s educational outreach programmes, specifically Bar Placement Week and the Bar Mentoring Service’s Scheme 3 (providing e-mentoring to those on social mobility programmes). These

programmes will comfortably sit alongside TfBC's other educational outreach work (Speak up for Others, Careers Days, Law Fairs and Careers information).

To ensure that the Bar's commitment to social mobility is not in any way perceived to be diluted it is proposed that EDC is renamed as the 'Equality, Diversity & Social Mobility' Committee (EDSM) and TfBC as the 'Education and Training' Committee (E&T) to highlight its focus on both education and on continued training (professional development).

These proposals have been discussed between the committees and by the General Management Committee, which endorses the changes. They reflect a continuing, deep commitment to social mobility.

RAQC took this opportunity to pay tribute to all the hard work and support of Taryn Lee QC who, until December 2014, chaired the Social Mobility Committee.

Bar Council approved the changes. AP suggested that the two newly re-named committees may wish to nominate a member or each to hold social mobility as a specific responsibility. RAQC gave an assurance that this was in hand.

## **7. EU Law Committee – proposed changes to the Standing Orders**

Gordon Nardell QC (GNQC), Chairman of the EU Law Committee, presented this item. The EU Law Committee wishes to make small changes to its Terms of Reference as set out in the Standing Orders as some of the terminology is now moribund. The changes were presented in annex 5.

The changes were approved.

## **8. Ethics Committee: for report**

AWQC presented this item at annex 6 as Chairman of the Ethics Committee. For the benefit of those who are new to the Council or who may have forgotten, the committee is responsible for oversight of the Bar Council's ethical enquiries service (which is known to be one of the Bar Council's services most valued by barristers), publishing documents on particular ethical topics and liaising – under the protocol to ensure regulatory independence – with the BSB on any matters arising from the Code of Conduct / BSB Handbook.

The committee has been very busy over the last year. Significant improvements have been and continue to be made to the operation of the ethical enquiries service, particularly thanks to the hard work of the Head of Legal Affairs, Practice and Ethics, Sarah-Jane Bennett. Additionally, the committee has turned its mind to a number of complex issues, publishing documents on mini-pupillage, devilling and speaking to the media about barristers' own cases, which AWQC hopes have been helpful.

At the request of the judiciary, the Bar Council, Law Society and CILEX have also been working together on a guide to lawyers' professional obligations where a litigant in person is involved in a case. Approval of the final document has been given by the General Management Committee. As

this is the product of a group involving all three professions, it will be relatively general in its terms, but it may prove possible to develop it further in line with experience.

Judges in particular want to know what they should expect from members of the Bar.

The question of judicial expectations has arisen in a number of instances in other areas, such as where counsel is expected to draft a judge's order: there is a big difference between simply putting down exactly what a judge has already ordered, and negotiating and drafting an order from scratch, for which there may be no remuneration. The committee would be grateful to hear of any examples of the courts imposing greater duties on the Bar, for example due to the involvement of litigants in person, or due to funding difficulties.

The Committee will also be meeting shortly with the Registrar of Criminal Appeals to discuss draft changes to its document concerning steps that need to be taken in criminal appeals, to reflect recent judgments of the Court of Appeal. If the CBA and the Circuits wished to be involved in that, then AWQC would be pleased to hear from them.

The Ethics Committee is also considering issues concerning privilege and confidentiality in relation to fee notes. The queries are various, but there may in particular be an emerging issue for barristers regarding the effect of privilege and confidentiality on their ability to collect fees from professional clients through litigation: including, at the most basic level, a difficulty in relying on fee notes which comply with the Code requirements by providing sufficient detail. The committee intends to seek legal advice on this issue on behalf of the Bar, with a view to publishing a document to assist barristers in how to deal with it, including whether additional terms should be included in their terms of work.

There continues to be real tension between genuine price competition and referral fees. The former is entirely permissible – indeed must be allowed freely – but the latter are prohibited. The Code is not the answer to every practice which a practitioner may find objectionable. On the other hand, there is no way to take action on referral fee arrangements without hard evidence, and the Ethics Committee would welcome being provided with any such evidence if barristers are aware of it.

AWQC paid tribute to Sarah-Jane Bennett, Jess Campbell and the whole of the Bar Council team who have stepped up and are providing a far more widespread and efficient ethical enquiries service. They deserve the thanks of the Council.

## **9. Young Barristers' Committee: for report**

Louisa Nye (LN), Vice-Chair of the Young Barristers' Committee (YBC), presented the report at annex 7, in the absence of the Chair, Daniel Sternberg.

The YBC is considering a number of new initiatives for the year, but with regard to the year just passed, it held a conference on 18 October which was well-received and attracted 90-100 delegates. The biennial Anglo-Dutch exchange, a long-standing initiative, took place 28 October to 1 November 2014, with around 30 Dutch lawyers visiting London. A return trip to Holland will take place next year.

The committee held a workshop at the annual bar conference, in conjunction with the International Committee, to provide junior barristers with practical ideas on how to develop an international practice. A joint YBC/ADRC training seminar was held on 25 February, introducing young barristers to family mediation by way of a role play and demonstration, presented by members of the Alternative Dispute Resolution Committee, to show how mediation works in practice.

LN offered a reminder that YBC covers all areas of practice and deals with all issues which affect the young Bar.

The year ahead looks busy; YBC is taking forward an initiative of providing online toolkits to fill in the knowledge gaps for those embarking on practice e.g. practice management, wellbeing and managing finances. Scoping is underway as to the viability of offering a web platform for this information. In June / July, YBC will hold an event focusing on wellbeing, following the publication of the 'Wellbeing at the Bar' research analysis.

YBC will also continue to plan for its conference, which this year will be held on the same day and at the same venue as the Annual Bar Conference, but will retain its own identity and will remain affordable for attendees.

## **10. Legal Services Committee: for report**

Derek Sweeting QC (DSQC), Chairman of the Legal Services Committee, presented the report at annex 8.

First, DSQC sought Bar Council approval to dissolve the Access to the Bar Committee, a sub-committee of the Legal Services Committee, and replace it with a 'Direct Access Panel' and to update the Standing Orders accordingly. This proposal has been endorsed by the General Management Committee. This change is proposed to reflect the changing requirements relating to this policy area, including removing the marketing function from the new Panel as this will now be covered by the Bar Council's Services team. The expertise of the sub-committee is to be retained within the Panel. The changes were approved.

The committee has approved the creation of a Policy Reference Group tasked with investigating policy issues relating to paid McKenzie Friends and Solicitors Agents. There is a lot of pressure on the judiciary as a result of the increase in litigants in person, and often someone – albeit a McKenzie Friend – is better than no-one. The problem is that a number of the paid McKenzie Friends are not only unqualified, unregulated and uninsured but also more expensive than many members of the young Bar. However, there are many who are offering a good service, so the committee needs to be careful in forming a view. All feedback – positive or negative – to assist with the formation of an informed response is welcome.

The 'Frequently Asked Questions' document about entities is now available on the website. It is not possible to offer assistance on specific structures or given financial advice, but the documents gathers together all the threshold questions. It is intended to be a living document. Those who have already formed entities or have applied to are understandably a little coy and do not

necessarily want to share their experiences or preferred model. Hopefully more detail will emerge in time.

The Equality and Diversity Committee and the Legal Services Committee recently supported an information evening provided by the JAC on the current recorder competition round. The session was oversubscribed; over 1,500 applications are expected to be received in this round. There has been a shift to an initial online screening test and only if one passes that may one get to the next stage. The increased numbers may be due to those who think that they may well try that first stage as they have nothing to lose.

It wouldn't be normal if the business of the committee did not involve looking yet again at court dress. This time the assistance will be presented in a tabular format, so that one may look up the type of court and the type of hearing to find the appropriate court dress.

It is part of the committee's terms of reference to liaise with BMIF, and the committee is doing just that in relation to concerns about the extent to which BMIF can and should insure entities. Alison Padfield is leading on that and DSQC offered an assurance that there is a lot of activity going on with regard to that topic and it is not being overlooked.

DSQC asked if there were any questions.

Susan Jacklin QC (SJQC) said that the Judiciary has prepared a report on remunerated McKenzie Friends and their concerns are not the same as the Bar's, who feel that they are cannibalising work that the Bar should be doing. DSQC said that he working group would keep an eye out for the report and confirmed that neither they nor the committee had had any input into it.

Christina Michalos (CM) asked whether it would be appropriate for Bar Council members to make enquiries of clients as to who might fall foul of the court fee proposals. If there is going to be a legal challenge, it would be best to have someone actually affected. CM was advised to liaise with CH.

Tim Devlin (TD) asked if those present were aware that some of the Judiciary have been considering the concept of value at risk as a foundation for setting court fees? The courts could make a substantial income based on risk; if court fees are going to be increased, more money could be made by doing it differently and no money would have to be paid up front.

JSQC said that one of the main points made is that the court fee will be the same for anything over £200k, which means that the litigation involving millions will cost the same as much smaller cases. One of the issues for a Judicial Review is the Lord Chancellor has a statutory duty to consider the impact on competition and that evidence in support of the changes were found to be insufficient. The Lord Chancellor commissioned research to assess whether an increase in court fees would have a negative impact internationally, but declined to publish it during consultation. That survey showed that 60% of those consulted took the view that there would be a negative impact, but he proceeded in any event.

Alternative ways to raise money have been put forward; COMBAR, for example, asked the Government to consider – in relation to heavy litigation – a per diem trial fee, and offered to discuss that during the consultation period, but that offer was declined.

JSQC said that as the next Bar Council meeting is not until May and a decision on the JR will have to be made before then, but as yet the signatories were not in a position to say what the advice is on the strength of the challenge. On that basis, it would be worth knowing the view of the Council as to whether or not to proceed, assuming that the advice is that the case is worth making.

AWQC said that there was no problem with gauging the mood of the meeting about the principle of a legal challenge, but that the appropriate governance procedures would have to be followed on the detail and any decision will ultimately be a matter for the General Management Committee.

ALQC said that the criminal Bar is very appreciative of the support given to it generally by other parts of the Bar and in principle would support funding a JR.

TD emphasised that far more could be raised by working on a risk basis. The court fee for a case with, say, £28m at risk will be the same as a little engineering firm suing for bad debt. The Government is missing a huge trick here. The Bar Council should be looking for a better structure to capture the fees and to make money out of litigation tourists. The point about competition from other jurisdictions – that parties will go elsewhere, put off by the fees – is misleading. They will still come to London as the jurisdiction is trusted. DSQC pointed out that there are plenty of well-regarded equivalent centres for dispute resolution.

RH added that, as indicated by the signatories to the pre-action letter, the fees affect private clients as well as businesses. It will be administratively burdensome to obtain remissions. DSQC said that any scheme where you then have to carve out exceptions is only more complicated.

LN warned of the unintended and unexpected consequences. If any party is paying out £10k in court fees, then that is probably money that they will not spend on counsel. This will remove work and court experience for the young Bar.

RAQC said that when the cuts in civil legal aid were made, there was a greater expectation on the profession to give support pro bono. It is imperative to be in close contact with the Bar Pro Bono Unit and others to understand the impact as they see it. Fees were introduced in the employment law field and the effect has been chilling. There are already reports of reducing them as administrative remission is so difficult to obtain.

DSQC said that there must be a contingency plan just in case the JR route is not an option.

GMQC added that there may be an impression that personal injury cases don't matter as insurers pick up the bill. However, there are cases where someone has sustained a catastrophic injury and the insurer won't pay and the individual will have to pick up the court (and all other fees). ALQC remarked that Lord Faulks considers litigation to be an 'optional' activity. In some cases, it clearly is not.

The overall mood of the meeting was in strongly support of fighting the court fees proposals, whether by Judicial Review should the advice be that the case is strong, or by an alternative route.

## **11. Any other business**

AWQC asked if there was any other business. Max Hill QC (MHQC) welcomed the Attorney General to the meeting and asked whether he would like to comment on the independent report by Her Majesty's Crown Prosecution Service Inspectorate on advocacy? The executive summary states that there has been little change in the quality of advocacy since the last report; perhaps even some deterioration. A public declaration must be made that the self-employed Bar should be used more rather than in-house advocates.

The Attorney General (JWQC) thanked the Bar Council for this welcome and for the clear message on court fees. In relation to the advocacy report, the CPS does not accept it and believe that the source material upon which it is based is that of those advocates who were of concern anyway, not all of them. However, it is a damning indictment. CPS advocates need to be diverted back to case progression, as they are in the West Midlands. Other CPS Areas should follow this example and JWQC has said as much to the Director of Public Prosecutions.

JWQC drew Bar Council's attention to changes made last week whereby appeals on an Attorney General's referral may be presented by trial counsel, not just treasury counsel. This will not be true of every single case, but many. This should start to happen almost immediately.

RPAQC made reference to the upcoming election; it is not known whether JWQC will attend any more Bar Council meetings, so took this opportunity to thank him for engaging with the Circuit Leaders and for attending these Saturday meetings.

## **Date of next meeting**

The next meeting of the Bar Council will be held on 16 May 2015 at 10.00 at the Bar Council offices.