



The Bar Council

Minutes of the Annual General Meeting

Saturday 12 September 2020 via Microsoft Teams

Present	Amanda Pinto QC	Chair of the Bar	APQC
	Derek Sweeting QC	Vice Chair of the Bar	DSQC
	Malcolm Cree CBE	Chief Executive	MC
	Grant Warnsby	Treasurer	GW
	Baroness Tessa Blackstone	Chair of the BSB	BTB
	Naomi Ellenbogen QC	Vice Chair of the BSB	NEQC
	Mark Neale	Director General	MN
	Suella Braverman QC MP	Attorney General (AG)	The AG
Minutes	Samantha Anderson	Executive Officer	SA

In attendance (via Microsoft Teams)

Dr Mirza Ahmad; Colin Andress; Efe Avan-Nomayo; Nick Bacon QC; Elaine Banton; Philip Bennetts QC; William Boyce QC; Minka Braun; Ian Brookes-Howells; Charles Burton; Brian Cahill; Alexandra Carr; Sydney Chawatama; Tom Cockcroft; Richard Cole; Ivor Collett; Catherine Collins; Celina Colquhoun; James Corbet Burcher; William Dean; Angela Delbourgo; Katherine Duncan; David Elias QC; Mark Fenhalls QC; Emily Formby; Neil Garrod; John Goss; John Goulding; Alexander Gunning (alt for Sonia Tolaney QC); Barry Harwood; Neil Hawes QC; Michael Hayton QC; Isabel hitching QC; Hazel Hobbs; Sarah Holmes-Willis; Elizabeth Houghton; Matthew Howarth; Nicholas Johnson QC; Schona Jolly QC; Sean Jones QC; Susan Jones; David Joseph QC; Faith Julian; Joanne Kane; Rachel Langdale QC; Tom Leech QC; Lorinda Long; Kate Lumsdon QC; Athena Markides; Clive Matthews; Eleanor Mawrey; Louise McCullough; Cathryn McGahey QC; Martyn McLeish; Barbara Mills QC; Andrew Morgan; Philip Moser QC; Francesca O'Neill; Grace Ong; Lucinda Orr; Alison Padfield QC; Deshpal Panesar QC; Francesca Perselli; Alison Pickup; Michael Polak; Rehana Popal; Charlotte Pope-Williams; Patrick Rappo; Catherine Ravenscroft; Jonathan Rees QC; Robert Rhodes QC; Ryan Richter; Lisa Roberts QC; Natasha Shotunde; Jo Sidhu QC; Jessica Simor QC; Joe Smouha QC; Robert Spicer; Jessica Stephens QC; Daniel Sternberg; Michael Sternberg QC; Heidi Stonecliffe QC; Leanne Targett-Parker; David Taylor; Jacqueline Thomas QC; Rhodri Thompson QC; Steven Thompson QC; Max Throwgood (alt for Clive Moys); Linda Turnbull; Andrew Twigger QC; Anton van Dellen; Nick Vineall QC; Emma Walker; Colin West QC; Richard Wright QC

THE BAR COUNCIL

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Apologies were received from

Tim Devlin; Mike Duck QC; Amanda Hardy QC; Michael Harwood; DPP Max Hill QC; James Kitching; Gurprit Mattu; Christina Michalos QC; Jacqueline Reid

The AG greeted everyone and acknowledged that the drive and passion for the profession and the commitment to diversity has been simply outstanding and the assistance to herself as AG has been unwavering and appreciated. The AG gave thanks on behalf of the government and herself for the excellent and devoted work of the wider profession during the pandemic; it has simply been remarkable. It has been a tough time for the Bar, especially to those who are just starting out and in the publicly funded Bar. We are seeing good progress though there is a long way to go. The Bar's unwavering professionalism has been fundamental in getting the justice system back up and running and the AG is proud and grateful to the way you have all responded to the crisis. It is imperative that all lawyers can practice, and the AG fully appreciates the sacrifices made by members of the profession.

1. Chair's Address

APQC gave thanks to the AG for agreeing to chair the AGM and paid tribute to the AG on two fronts "we may not always agree with the stance the government takes, or what appears to be the advice she has given – and this week provides such an example, but the AG has been clear in her commitment to the Bar personally by her attendance at Bar Council meetings and our one-to-one meetings, and in speaking up for the profession with government".

Two circuit visits went ahead at the beginning of the year, in-person; Wales and Chester with David Elias QC and also the South Eastern Circuit with Mark Fenhalls QC. The Western Circuit with Kate Brunner QC was meant to take place in March to coincide with the 2020 Circuit Bar Council meeting however, it was cancelled due to the pandemic. Instead, it was replaced by the first virtual Bar Council meeting which was extremely well attended. This year we were going to look at the diversity and inclusivity of the Bar and the Bar Council, in an attempt to encourage more people to be involved by thinking of creative ways to allow for meetings to be remotely accessed; we did not foresee it being vital for keeping discussions on track.

10 things that have been achieved in the past year by the Bar Council:

1. APQC's ambitions for 2020 were centred on Access to Justice with better access to the Bar and the Bar Council; to courts for people to exercise their rights; and to international markets, in the wake of Brexit.
2. Covid-19 has been the epicentre of the last 6 months where we campaigned for the closure of unsafe courts and then the safe reopening of courts and tribunals as well as the proper use of remote hearings. We have collaborated closely with HMCTS, the MOJ and many other agencies to work out what measures were and are necessary to enable

face to face hearings. We have been urging the senior judiciary to publish guidance to allow for greater and more consistent throughput of cases as well as the correct treatment of vulnerable or shielding advocates. Whilst we have not always got what we want, we continue to press for what we believe is right for the profession and the public.

3. The Covid-19 Working Group was set up very quickly at the start of the pandemic and many practitioners and chambers staff have benefited from this, to answer question on government support, MOJ and judicial updates, professional duties and ethical dilemmas. We have set up a dedicated area of resource on the Bar Council [website](#).
4. The engagement and representation of the Bar this year has been broader and deeper than ever. We now meet with many more ministers and civil servants at the highest levels, at the MOJ, AGO, CPS and HMCTS – people who make decisions which directly impact on barristers' work. We now meet with the Treasury team in charge of justice spending. We have worked with the Home Office, the Number 10 policy unit, the Department for International Trade, the FCO and BEIS. We have developed relationships with the Met Police Commissioner and her team and influential think-tanks. Our engagement and representation is promoted and supported by the comms team which is able to get our work covered in places that we have never before had coverage. It shows the growing importance of justice issues. The Bar Council now has a researcher who has transformed the way we approach evidence, data and analysis; our data is now robust, and we can make sound, evidence-based recommendations. External organisations now refer to our research and ask for our opinion on justice issues.
5. The Bar Council and others are working hard on modernising and diversifying the Bar. Covid-19 threatens the diversity of the profession and despite the lack of government help, we will continue to fight to keep the Bar diverse. We continue to make efforts at every level and the Bar Council constitution has been changed so that voting can be done online, and proxies/alternates can be enabled. The Race Working Group was set up in the wake of the terrible killing of George Floyd and BLM. The Accelerator Project is our programme for promoting ways for supporting advancement. We are about to announce the latest cohort of #IAMTheBar social mobility advocates who are truly ambassadors for the profession. The Bar Council Leadership Programme is about to open to those between 7 and 15 years in practice to broaden those who lead the profession. APQC urged members to encourage colleagues and friends to apply when the applications open.
6. Internationally, the Bar was represented in several international conferences, last year in person and this year remotely. OLY last year held a successful programme of events for over 50 foreign Bar leaders and this year, the OLY celebrations include online seminars which are free to sign-up to. Last year, we held English Law Week in Mexico, Colombia and Russia. The working group has done incredible work in liaising with government departments, judiciary and business/professional services to ensure both the Bar and the UK's needs are understood. APQC made reference to the admitted decision of the

government to renege on its international obligations 'in a specific and limited way' and has said publicly, "Someone committing a crime in a 'specific and limited way' nonetheless, commits a crime and an admitted breach of international law in a 'specific and limited way' is nonetheless, a breach".

7. We have been asking our regulators, the BSB, to take into account the significant strain that many chambers and practitioners are under and we have challenged the requirement of chambers to report to the BSB as well as the debacle of the student exams; we were pleased that the BSB agreed to hold the exams remotely and we have been pressing for the exams to be open book. Additionally, we suggested ways that the replacement exams could have been adapted to be more likely to provide fair competition.
8. On Court reform, we continue to engage on all aspects of the court reform programme to make sure that our courts and tribunals (both physical and virtual) are fit for purpose and allow for the proper administration of justice. We have been instrumental in getting courts working again. We are listened to. This is why ID cards will have been introduced in all courts and tribunals by the end of the year – because we suggested and designed a system to make your lives easier.
9. We continue to spend an awful lot of time working with decision makers on fees to ensure they understand how you work, the pressures you face, what practice is actually like and we push endlessly for the publicly funded contingent at the Bar, to be paid for the vital work you do. On criminal fees, in the last year, the CPS has increased barristers' fees and brought payment triggers forward. On defence, together with the CBA, the young Bar and the Circuits, the Bar Council negotiated with the MOJ on the 'accelerated areas' which came through only a couple of weeks ago. We are urging the MOJ to push hard across government for CLAR2 to be set up. On Civil immigration and asylum fees as well as family, we are asking the MOJ for sustainable fee structures that are easy to use, pay fairly for work done and, support a publicly funded Bar which is vital for access to justice. We are also asking for legal aid to be available for welfare benefits.
10. In Pro bono, last week, Advocate announced that barristers had given free legal advice in over 1000 cases in 2020, an astonishing achievement when you consider what barristers have been enduring this year. APQC is proud to have these altruists in our profession.

In all of these efforts, we have worked collaboratively with others; not just other Bar groups, but the LSEW, the MOJ, CPS and HMCTS. Thanks, were extended to the Bar Council staff, committee chairs, to GMC and Derek Sweeting QC, as well as everyone else for engaging with us.

Grant Warnsby is stepping down as Treasurer at the end of this year. APQC gave thanks, personally and publicly – GW has been a quietly brilliant, stalwart support to APQC, but three things in particular; 1 - As an officer of the Bar Council, you have been very heavily

involved with the finance team giving your time freely and generously, helping MC improve the team, always offering constructive questioning to ensure things the financials stay on track; 2 - you led on negotiations with the pension trustees, setting us up better for the future and; 3 - you were instrumental in organising the bank loan application. GW will be sorely missed.

The AG gave thanks to GW.

2. Treasurer's Report, including Annual Report and Accounts

GW: As the 2020 accounting period was closing, the world was changing dramatically. First, the Covid-19 pandemic; and then the related global economic downturn. Together, these factors create one of the most challenging financial environments the General Council of the Bar (GCB) and the profession it represents has faced. The leadership team are working closely together, supported by the GCB's finance team, and are have focused on strengthening the GCB's finances for the difficult years ahead which in turn enables the GCB to support the profession.

The main source of income for the GCB is the Practice Certificate Fee (PCF) income which is directly linked to a barrister's income – as that income falls, so may the PCF they are charged. There is an expected reduction in income levels across the profession and it is anticipated that the PCF will decrease as a result which will be reflected in the GSB income for 2021 and 2022. In order to mitigate the uncertainty and smooth any impact, the GSB is investigating the possibility of accessing the Covid Business Interruption Loan Scheme (CBILS). This loan would provide a source of liquidity in the short to medium term, thereby allowing the impact to be spread over several years. We have learnt from tough times that we have been through before; it is not by accident that the 2020 financial results are at the level they are.

Financial Accounts – Year Ending 31 March 2020. Although the financial year ended as the worldwide pandemic and global downturn began, we are able to report a surplus of £2,567,000 (to compare, the surplus in 2018/19 was £578,000) which combines operating results from all the various parts of the GCB and includes investment gains and actuarial & accounting adjustments. These results were carefully planned as we aimed to start rebuilding the GCB's reserves. The financial improvement plan work has already begun to pay dividends; not just in the 2020 results, but in the strengthened financial processes which will be needed in the years ahead.

Operating Income. The operating result strips out the various non-operating elements and is the 'business result' of the GCB. The operating result was a surplus of £2,514,000 (compared to a deficit of £133,000 in 2019). The organisation's operating income was up £2.1m compared with 2018/19.

Balance Sheet – Deferred Income and Cash. The Authorisation to Practice (AtP) process commences in February and ends in April each year and it is this process that raises the PCF income. Normally, the majority of the income is raised at the very end of the financial year

for the following financial year, which leads to a large deferred income figure and a cash balance. During 2020 AtP process, we took the decision to allow a deferral of payment until May 2020 with 'bulk' payments from Chambers being able to be split between May and October 2020. This has led to a difference in the year-end cash balance. This year, it was £6.5m cash or cash equivalents as at 31 March 2020 compared to £13.8m in the previous year.

We have already indicated that split payments will be planned for the whole profession in 2021 and consequently, we expect a similar (lower than average) cash balance.

Balance Sheet – Reserves. The total reserves remain positive and have improved on the 2019 position, standing at £4.8m compared to £3.1m last year. The permitted purposes reserves are now positive, after being overdrawn for the last three years in a row. This position needs to be monitored carefully, especially with the challenges ahead – the financial improvement plan was in its infancy when the pandemic hit.

Risks. The key risks are set out in the accounts and include the economic impact of Covid-19 however, there is another risk that members need to be aware of – the **Defined Benefit Pension Scheme**. The pension scheme is closed to new members though the GCB continues to retain funding requirements. In 2016, a Pension Recovery Plan was put in place with a ringfenced increase in the PCF. In 2019, following the latest actuarial report into the Pension Fund, a new repayment schedule was implemented and the annual payment into the Pension Fund was increased from £1m to £1.15m. The PCF was not increased to fund this change.

The Pension Trustees have agreed for both 2020 and 2021, the annual pension payment will be split into two equal sums to reflect the PCF collection structure.

The accounts show a surplus on the pension scheme of over £2.4m which must be compared to the triennial actuarial valuation – the latter shows a deficit and consequently, the Pension Scheme remains a risk.

The Pension valuations remain vulnerable to external influences and the GCB has little ability to mitigate this in the short term. Where action can be taken, the GCB takes it. That action is guided by the Joint Finance Committee and reviewed by the Joint Audit Committee.

The GCB is working on various initiatives to mitigate the risks to it from the Covid-19 situation. The issues which are on the horizon are not those which should be underestimated in their significance.

Thanks, were given to John Beckerleg, Chair of the refreshed Joint Finance Committee and Steve Carter, the Chair of the Joint Audit Committee, both of whom are independent members and bring a wealth of experience with them; their knowledge and wise counsel is invaluable. Thanks, were also extended to Richard Cullen, Finance Director and Mark Ennals, the Financial Controller as well as their finance team, for their support. The GCB employees were commended for the way they have responded in recent months and the

support given through working from home. The response has been outstanding and reflects a profession that supports each other.

The AG confirmed with members in attendance that they were happy for APQC to sign off the financial statements; all members agreed.

3. Chief Executive's Report

The AG introduced MC, thanking him for his work and effort in his role as Chief Executive.

The Business Continuity Plan had to be implemented in March to everyone working from home within 24 hours, and we are happy to report it was a success with support for the Bar continuing to be provided from home. This all happened 2 weeks after the new office was opened. Our focus has shifted to helping the Bar through this health emergency and we must minimise the financial impact on the Bar. Salaries have been frozen for the year and we have used the furlough scheme where possible.

We are determined that what we do now is relentlessly focussed on a strong and independent Bar. Celebrating 125 years of the Bar Council seems to be a long time ago and we have since set up the new website.

Thanks were extended to the executive team and the resources group as well as to APQC as Chair for the amazing work she has done during this year, to DSQC who has his work cut out for 2021 and also to GW who MC has worked very closely with; MC conveyed his gratitude for his efforts.

Barry Harwood added how useful he has personally found, as well as others, the user-friendliness of the website. It has made some very useful resources available and he is pleased that it has been so helpful to the profession.

4. Questions to the Attorney General

The AG took questions from those in attendance.

Schona Jolly QC as Chair of the Bar Human Rights Committee (BHRC) highlighted that the work of the BHRC requires us to encourage, persuade and take steps to get governments to uphold the Rule of Law (ROL). Lawyers and judges often count on the BHRC to assist them and this is often done with the FCO as they know our work has value and credibility to uphold the ROL internationally. How is our ROL going to have any credibility if we violate international law?

The AG highlighted the situation with the proposed bill is very clear; there is no suggestion that there is a breach to human rights law, so it is hard to see how it cuts across this. The reality is that not in an unprecedented way, there are tensions between our domestic law and international law; this bill does not propose to breach UK law. There are often tensions between our domestic and international obligations and we will always be clear in the government's commitments to resolve these tensions. The ROL is an important principle and the government remains committed to the ROL.

Jessica Simor QC as Vice Chair of the EU Law Committee and Bar European Group asked about the advice the AG sought from independent counsel in order to advise on the legality of the Internal Market Bill, highlighting that advice on such an extremely serious matter would normally be sought from Treasury Counsel, Sir James Eadie QC. However it has been sought from Professor Verderiame (who was brought into the first Miller case, is a member of various high-level Brexit Groups and has connections with Michael Gove and Dominic Cummings); Professor Ekins (who wrote a paper for Policy Exchange advocating breaching the Withdrawal Agreement and is head of the so call 'Judicial Power Project' in Policy Exchange, which advocates reducing judicial 'power') and; Richard Howell (a one-year qualified barrister who was also brought onto the team for the Prime Minister in the prorogation case, despite being a pupil barrister at the time. Additionally, he was active in the 'Vote Leave' campaign). Both professors are committed Brexiteers. None of these individuals is on the AG panels nor has any standout expertise to justify their advice being sought off-panel. Assuming the advice given was independent, it is unclear how or why these individuals were appointed by the AG. JSQC would like to understand how the AG knew about these individuals and whether anyone asked the AG to instruct these lawyers. There is extreme concern that 'preferment' or 'cronyism' may now have infected what was a well-established Treasury Counsel panel system that ensured independent advice.

The AG confirmed that it is not uncommon for the Law Officers to seek advice from specialist experts and that has happened for many years. In reaching advice on any subject, the AG does so with great reverence of her duties and the ROL. She has been straightforward in her advice about putting ROL first and politics second. There is a reliance on authority, not opinion.

Michael Polak highlighted that recently, there has been an extension on custody time limits, from 6 months to 8 months, meaning those who have not been convicted are spending longer in prison. The AG was asked if she could confirm that government has or hasn't been placing pressure on the senior judiciary.

The AG answered that this is a serious issue and is MOJ-led. The Lord Chancellor has the authority to determine these issues and the LC works closely with the judiciary. Without speaking on behalf of the LC on this matter, the AG would find it astonishing if there has been any pressure put on the judiciary; the independence of the judiciary is fiercely guarded, adding that whatever the resource/capacity/political pressures, there will be a lead from the MOJ.

Philip Moser QC, Chair of the Bar European Group asked about the focus in the press on EU negotiations; the Bar's priority is to maximise the services done in relation to UK law and international law, which should be achievable with a Free Trade Agreement (FTA); is there a remaining prospect of this in the current negotiations?

The AG confirmed that she is aware of the Bar Council's concerns of EU mobility and the negotiations. There is an overwhelming desire to secure a good FTA with the EU. There is a good deal to be had with a lot of agreement and common ground with the parties and a

hope that this will materialise with an agreement between the two parties. There is an issue with relation to barristers travelling freely following our exit from the EU and the UK is yet to make public their proposals, so the AG can't provide details of the immigration aspect, though we have been consistently clear on what we are seeking and a FTA would be based on this precedent. Ultimately, the AG believes there are contingencies if there is a no deal Brexit; a Private International Law Bill is going through the house which covers some of the other issues raised and provides a lawful basis for barristers. The AG continues to voice these concerns to the negotiating team and wants the offer to reflect legal professional services.

Rhodri Thompson QC (RTQC) asked whether it was the AG's view that the Ministerial Code no longer requires adherence to international law? The AG would not provide comment on whether she was advised or what the advice was. However, the view of the government of the Ministerial Code is that it is not enforceable by the courts; the Court of Appeal has upheld expressly that it is not binding, by means of enforceability by the courts. RTQC further asked if that included adherence to international law, which the AG confirmed that on the face of it, the reference to international law has been removed and is not relevant to Parliament. It will be for Parliament to determine whether this Bill is suitable and appropriate. The Cabinet Secretary determined that the proposed action would not constitute anything against international law. The Government has been clear in its approach to this bill and it is not unprecedented for conflicts to occur between domestic and international law. The Human Rights Act is an example whereby we have the Section 19 Statement of Compatibility which includes an alternative statement which requires a minister to say he is unable to comply with this. In 2002, the Labour government introduced the Communications bill which would violate international law. However Northern Ireland is to remain part of the UK customs area and the Good Friday Agreement is an important consideration. The Ministerial Code is not a binding document – if there is something relevant, the Prime Minister has the overriding decision over the Ministerial Code.

The AG stated she was grateful for the questions and is honoured to serve the country as the Attorney General and the nominal Head of the Profession. She welcomed challenge and thought it was important. There is acceptance that we will disagree from time to time on controversial issues but that will never be a reason, nor will it stop the AG, fighting for you and the justice system.