Chairman's Statement
Bar Council 17 November 2012

This is my final Bar Council written statement. The last Bar Council Meeting was held on 20 October 2012.

1. BARCO Circuit launches

On 22 October, I spoke with Paul Mosson (and others) at a launch of BARCO to the Bar, at our offices in Holborn. That launch was one of a series we have made around the Circuits, with a view to informing the Bar of what BARCO is, how it will operate, and the uses for which it can be employed. The Western Circuit will be the final Circuit on which it will be launched. That is due to take place in Bristol on 20 November 2012. During the final months of 2012, BARCO will begin a period of user testing and refinement. This will involve only a small number of chambers which have been working closely with Member Services to refine the model. After that, BARCO will be launched to the Bar more widely in 2013. We all owe a great debt of gratitude to Paul Mosson and his Members Services team for all the work they have put into BARCO and into the launches and seminars around the Circuits.

On 23 October, Paul Mosson and I spoke at a BARCO launch in Birmingham and on 13 November, Paul Mosson, Chris Owen, and I spoke at a BARCO launch in Leeds.

2. Meeting with the Permanent Secretary to the Lord Chancellor

On 24 October, Mark Hatcher and I met with the new Clerk of the Crown in Chancery and Permanent Secretary to the Lord Chancellor, Mrs Ursula Brennan (she took over from Sir Suma Chakrabati, on his appointment in the summer to the European Bank for Reconstruction and Development). During that meeting, the following points were raised:

(a) **Key messages about the new Lord Chancellor and Secretary of State for Justice**: Ursula Brennan said that the new Lord Chancellor took a pragmatic approach to his role, he was focused on Value for Money and he was "keen to get on with things". He was numerate and keenly aware of the current public spending crisis. His previous experience, as a Minister of State at the Department for Work and Pensions (DWP), had impressed on him the need for Government not to under-estimate the challenge for the public sector (and those dependant on public funds) of operating more commercially.

(b) **"The market"**: Ursula Brennan said that, from her perspective, the market for legal services appeared to be developing very slowly. It seemed to take much longer for change to happen in the law than in other sectors. Without wishing to underplay the complexity of the issues which the legal profession faced, she thought the profession found it difficult to respond to market signals and wondered whether the Government had to send some signals much more clearly. She said that the profession needed to understand the Government's determination to move on with its strategy for introducing greater competition in publicly funded legal services.

I said that I was all for improving efficiency in the public interest but the profession was facing potentially the biggest changes in its 800-year history. It was concerned about whether the introduction of block contracting would in fact achieve the desired savings. Large areas of the country could be deprived of effective professional legal representation and there were understandable concerns about the impact of commoditising legal services provision. Access to justice courtesy of a G4S provider might appear to solve the Ministry's spending targets, but the quality of access to justice would inevitably suffer, to say nothing of the higher social costs that could be expected to follow.

I said that I understood the drivers of change in the Government's approach to funding but stressed that there was a real concern about the effect on competition of an approach that sought to maximise price, particularly on the survival of some practice areas and the Government's ability in practice to respond to cases of market failure if the supplier base became seriously eroded. Reform needed to be properly evaluated and costed. The MoJ's assessment of the impact of cuts in legal aid and contraction in the scope of legal aid in the LASPO Act was based very largely on outdated desk research materials. The Civil Justice Council's report to the Lord Chancellor on the Self-Representing Litigants showed the range and depth of the likely effects of the legal aid changes on the court system. Ursula Brennan said that the Ministry was keeping the situation under review.

I mentioned the Bar Council's Post-LASPO publication (forthcoming) and the Civil Justice Working Group which was seeking to identify efficiencies in the court system.

I also mentioned that the Bar Council was developing a good relationship with the Matthew Coats, Chief Executive of the LSC.

(c) **Regulation of legal services:** I said the profession was very disappointed by the outcome of the MoJ's Triennial Review of the Legal Services Board. There was a real concern, especially amongst publicly-funded practitioners, about the rising costs of regulation and the degree of over-regulation of the profession by the LSB in particular, a concern which several Ministers appeared to share to judge from my recent meetings.

(d) **Judicial pensions:** I referred to my correspondence with the Lord Chancellor and the Minister of State at the Foreign Office (Lord Green) about the possible effects of the MoJ's proposals on judicial pension reform by deterring quality applications to the High Court, especially from the Chancery and Commercial Bar. Drawing on her pension policy experience at DWP's predecessor departments, Ursula Brennan said there was a major problem about the sustainability of public sector pensions. She thought that, on the whole, public sector pension arrangements remained very attractive compared to those available in the private sector, some thought too much so. She thought it would be very difficult for the Lord Chancellor to do much for the Judiciary. The Lord Chancellor would be understandably sensitive to his constituents' concerns that public sector workers should have their benefits trimmed to suit the needs of these austere times. He would find it very difficult to sell special treatment for the judges to his political colleagues. She thought it unlikely the Judiciary would be able to escape from the cuts which others in the public service had to make.

I said that the City of London was a leading global centre for international dispute resolution and its attractiveness could well become diminished if the quality of our judges slipped and if perceptions gained ground overseas that the court system was becoming clogged up with cases pursued by litigants in person. Good quality people would be deterred from applying for High Court appointments, the attractions of which in salary terms were poor compared with earnings at the Bar for successful senior practitioners. To change the arrangements for pensions and make them less attractive to high quality practitioners would simply compound the problem.

Ursula Brennan said that the Lord Chancellor was seised of the problem and understood the depth of feeling at the Bar. The Lord Chancellor was managing the politics of the issue; there was an issue of fairness which it was thought it would be difficult to resolve in the Judiciary's favour.

(e) **International work of the Bar**: I said that the international work of the Bar was a huge success story and the Bar Council was looking forward to taking stock with the Lord Chancellor of achievements to date and embarking on a second stage of promoting legal services internationally. Discussions about a date for an appropriate event involving the Bar Council and MoJ, with TheCityUK and the Law Society, were continuing.

3. COIC

On that same day, we had a meeting of COIC. Nothing of note to report, we were simply there as observers.

4. HMRC

On 25 October Mark Hatcher, Adrian Vincent, Richard Vallatt (a member of the Revenue Bar) and I met with Richard Summersgill, the Director of Local Compliance at HMRC, to discuss the taskforce investigating, amongst others, the legal profession.

Mr Summersgill said that he very much regretted that his lawyers' taskforce got off on the wrong footing with the Bar Council.

We agreed a number of actions:

- HMRC would provide some details of the most common areas for non-compliance by barristers;
- HMRC would provide some anonymised examples of non-compliance by barristers;
- The Bar Council would actively drive up levels of compliance (he suggested in the first instance focusing on encouraging members to furnish self-assessment and VAT returns on time).

We also agreed that we would meet to review progress in around six months' time.

During the meeting I raised the extent to which HMRC could now accept Voluntary Disclosures from members of the Bar. He said that they are free to make Voluntary Disclosure at any time they wish, and that they would, of course, take into account whether HMRC had been approached voluntarily when considering what action they would take on any disclosure. Anyone wishing to make a disclosure can use the dedicated facility at barrister.tax@hmrc.gsi.gov.uk to make initial contact should they wish.

Common errors:

(a) The most common areas for interventions are:

- Failure to make returns (both VAT & SA);
- Failure to make payment of liabilities;.

(b) More serious, but less common reasons for interventions are:

- Failure to Notify Chargeability to one or more taxes;
- Continuing to charge VAT under a deregistered VAT number. The VAT number is often deregistered due to the individual failing to make returns.

(c) Other common errors include:

- Failure to change from the cash basis to the True & Fair basis at the correct time;
- Omission of catch up charge instalments related to the switch to a True & Fair basis of accounting in subsequent years;
- Incorrect calculation of the income figure due to work in progress errors (recognition of debts, calculation of completed work (UITF40), etc.);
- Omission of ancillary income from returns (VAT or SA) such as income from property or authorship.

5. Attorney General's speech to the BPP Law School / Middle Temple Grand Day

In the evening I went to the BPP Law School to hear the Attorney General's speech, "Parliament and the Judiciary", before going to Middle Temple Grand Day. I am very grateful to Master Treasurer, the Lord Clarke of Stone-cum-Ebony, for the kind invitation and most enjoyable evening.

6. Legal Services Commission

On 29 October, Mark Hatcher and I met with Matthew Coats (Chief Executive of the LSC) and Hugh Barrett (LSC Director of Commissioning). The meeting was the second in a series of quarterly bi-lateral catch-up meetings which had been agreed at my earlier meeting with Matthew Coats on 3 May.

The following main points were discussed:

(a) **Bar Provider Reference Group**: the first meeting (on 24 October) had gone well. Jan Luba QC had chaired the meeting effectively. Four meetings are being planned for 2013 (in Manchester, Birmingham, Leeds and London). I stressed the importance of the LSC, as well as the Bar Council, getting out of London to meet practitioners on their home ground at key regional centres.

(b) **Late payment:** I thought the earlier problems were easing, although we are still hearing of instances of late payment. The LSC continues to keep the situation closely under review. The Bar Council will notify LSC contact points of any further difficulties.

(c) **LSC Crown Court bill processing:** Fee processing times (AF1 Forms) continue to fall. The backlog in processing redetermination claims (AF2 Forms) will be addressed by National Taxing Team staff assisting with processing. If there are further problems, the Bar needs to provide the LSC with as much detail of actual examples and hard evidence as possible.

(d) **Interim payments:** the LSC had been in discussion with Ian Bugg about interim payments in family cases. The LSC would like to move to interim payments in crime in due course but cannot promise anything in advance of the outcome of the forthcoming strategic review of criminal defence services. Matthew Coats volunteered the suggestion that interim payments in crime might be offered as part of an OCOF package; he would like to update the Chairman-Elect about this in due course.

(e) **Online processing for civil claims (Integrated Delivery Programme):** this is part of a much wider initiative to deliver government services online. Matthew Coats regretted that it had taken 5-6 years to get to the current state

of readiness on civil claims. The civil pilot project in the North East appeared to be going well. Bar Council representatives and software providers looked forward to working closely with the LSC over the coming months to ensure a smooth delivery next year. Online processing for criminal claims would be more challenging, for all sorts of reasons. Matthew Coats said he thought it would be difficult to envisage a new criminal defence regime operating in 2015 without online processing.

(f) **LSC Contract Managers for the Bar:** The Bar Council welcomed the appointment of additional contract managers dedicated to servicing the Bar, taking the complement up from 2 to 5 LSC staff. The lead official is Ellis Purnell (a barrister by qualification). The roles are regarded as high profile and prestigious in the LSC. Paul Benjamin and Tracey Courtnay-Williams were commended for their work.

We then had a discussion about **general market developments** in the course of which the following points arose:

(a) Matthew Coats asked what the Bar's alternative to OCOF was. He said the LSC knew the criminal Bar's position was to say "no" to OCOF but there needed to be a viable alternative to take discussions forward. The LSC had a significant discretionary budget (its costs were not sunk). He did not know what the Chancellor's forthcoming Autumn Statement would contain but it was unlikely to be welcomed.

(b) Matthew Coats went on to comment on how he thought the Lord Chancellor would approach future funding issues. He said that Chris Grayling's first priority would be financial. He understood the public finances situation very well. Matthew Coats volunteered the thought that, unlike his predecessor, Chris Grayling would not be instinctively in favour of the Bar as a referral profession.

(c) I floated for discussion ring fencing "crime higher" work from OCOF. Matthew Coats said, that while he was unaware of the detail of earlier discussions on this issue, he thought it was an idea worth further debate and could indeed be a way forward. He encouraged further discussion between Hugh Barrett and Maura McGowan QC. Matthew Coats urged the Bar Council to meet with Catherine Lee (Director, Legal Aid Policy) and her policy colleagues at the Ministry of Justice (MoJ) before mid-December.

(d) In answer to our question about an update on the timetable for the forthcoming consultation on competition in criminal defence services, and whether there was any truth in the rumour that the timetable announced in December 2011 to Parliament by the former Lord Chancellor might be brought forward, Matthew Coats said no decisions had been taken by the MoJ. He thought the new Lord Chancellor would be interested in making an

announcement about future plans sooner than might have been originally expected. He sensed that Chris Grayling was "in more of a hurry" than Ken Clarke to make progress, not least because of the continuing appalling state of the national deficit and the absence of any signs of a sustained economic recovery.

(e) I asked about the scope for simplifying and shortening the LSC's contract specifications to which the LSC representatives appeared themselves in principle to be in favour. This should be discussed further in the future meetings which were envisaged before the year end.

It was agreed to continue with the bi-lateral meetings between the Bar Council and the LSC at Chairman/CEO level, the frequency to be reviewed.

7. Sir John Thomas

Mark Hatcher and I then had a meeting with Sir John Thomas to discuss where I thought the Bar had got to in its responses to the BSB's 4th consultation on QASA. Having read a number of responses from SBAs and the response from the ATC, I was able to inform him of those provisions of the proposed scheme which the Bar found to be unacceptable.

8. Women in the City Awards

On 30 October, I attended an event, and reception, at which I announced the winner of the legal services section of the Women in the City Awards competition.

9. Bar Council Disability Group's conference

On 31 October, I attended and spoke on the panel at the Bar Council's disability conference. The keynote speech was given by Lord Neuberger. The event was well attended. The event comprised the keynote speech, four workshops and the panel session. It was a most useful and enlightening event.

10. Bar Pro Bono Unit and National Pro Bono Week

On 2 November, I met with Rebecca Wilkie and Robin Knowles QC to talk about the work, and funding, of the Bar Pro Bono Unit. In my final column in Counsel, which will be published at the end of November/beginning of December, I have written:

> "There appears to be no problem with the profession's willingness to perform the legal services *pro bono*. Last year, a further 600 barristers signed up with the Bar Pro Bono Unit; now, nearly one-third of all silks have registered their willingness to undertake *pro bono* work. But I fear that as the pressure on the provision of *pro bono* services becomes ever more acute, so too will the financial pressures on the Bar Pro

> Bono Unit become more acute, as they require more people and resources to administer those services.
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> I have asked those at the Bar Council who are responsible for levying and collecting the PCF to provide on the invoice an optional "contribution" of £30 per head, to cover the costs of the Bar Pro Bono Unit, for the ensuing year. I know that some practitioners may be unable or unwilling to make that donation. I ask, therefore, if those better able and willing to pay more will do so.
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> I know that now is not a good time to ask the Bar for more money. But I have asked myself, when will be a good time? And to that I have no answer. What I would say, however, is that there has never been a more propitious time for us to make that investment in our Pro Bono Unit."

I would ask all of you, please, if you could take this message back to those you represent. Funding of the Unit is a matter of constant concern for those who administer it. It is, I know, a matter of constant concern for many of you on Bar Council. I would ask you to do all you can to ask those you represent, or those you know, to contribute as much as they are able to fund the Unit.

On 5 November, I attended the reception and debate which heralded the start of National Pro Bono Week, which comprised events around much of England and Wales. This was the 11th annual National Pro Bono Week sponsored by the Law Society, the Bar Council and CILEx, the purpose of which is to celebrate the contribution of lawyers through pro bono work and explore its role in access to justice.

11. Sir Sydney Kentridge QC

5 November 2012 was the birthday of Sir Sydney Kentridge. I spoke of Sydney at the Bar Conference, on 10 November. He is an inspirational figure. I said:

> "In early October, I was fortunate enough to attend the Young Bar Conference. There were many distinguished speakers. The first and keynote speaker was Sir Sydney Kentridge QC. Sir Sydney was the advocate who, as a young man in South Africa, in the Apartheid era, provided access to Justice against all the odds, and under the most oppressive of regimes. He represented those whose voices could not or would not be heard. Yet he rarely speaks of those triumphs and personal achievements.
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> Sir Sydney turned 90 years of age this last week, on 5 November. He has recently appeared in the *Prudential* case, a case concerning the extent of legal privilege. On behalf of the Bar of England & Wales, belatedly, I send Sir Sydney our congratulations for his birthday, and our very best and warmest wishes for the future.

At the Young Bar Conference, Sir Sydney addressed a packed hall on the role of the advocate, and the Rule of law. How characteristic that he should speak of the importance to effective access to Justice of the independence of the advocate, of the importance of adherence to the cab-rank rule.

Importantly, he reminded us all that the Rule of Law is not about great causes, and great and memorable cases, but is about the work of the advocate going daily about his or her work, in the criminal courts, in the family courts and in the other courts representing the vulnerable, those who have no voice, those unable to represent themselves, and he spoke of the fact that effective access to justice involves more than just "turning up."”

12. Russian Law Week (part I)

On 6 November, Lucy Scott-Moncrieff, the President of the Law Society, and I welcomed delegates at the start of Russian Law Week, at which David Wootton, the Lord Mayor of the City of London, made a speech. Russian Law Week was first held in November 2010 (there had been one event like this before in 2000). The event was the initiative of the Anglo-Russian Law Association (ARLA), one of two bilateral law associations (the other being the British Russian Law Association (BRLA).

The aim of Russian Law Week is to create, amongst the British legal community, a better understanding of the Russian legal system, to nurture and develop closer ties between the law making, judicial, commercial, and academic branches of the British and Russian legal communities, as well as providing a networking opportunity. The programme was spread over three days.

13. Crown Prosecution Service

That same day, 6 November, I went from the launch of Russian Law Week to a meeting with the DPP. Keith Milburn, of the CPS, was there, and Sarah Forshaw QC attended for part of the meeting. We discussed:

(a) CPS Panels

The DPP said that the window for level 1 applications is now open all year round. The window for new applications at 2, 3 and 4 and for upgrading is open until 30 November.

He said that an abbreviated process has been adopted for upgrading, with the approval of the Remuneration Committee of the Bar Council.

Keith Milburn said that he was aware that there had been some concerns from unsuccessful applicants not being able to apply again during the lifetime of the panel, which is three years. He said that the process had allowed for unsuccessful applicants to be considered again at the next level down and then to appeal and assessment panels had oversight from

QC representatives of the Bar, so there had been safeguards against unfairness. Later in the meeting, Sarah Forshaw QC said that this was a particular issue for level 1s who were unsuccessful but may have gained experience in the meantime.

The DPP said that the CPS was applying the rules which were agreed with all Circuit Leaders and that these individuals did have the option to strengthen their original application on appeal. He also said that he felt that the level 1 was set to an appropriate level which was not too onerous for selected. Keith Milburn reported that about 96% of applications at level 1 were successful.

Both the DPP and Keith Milburn said how helpful the Bar had been in supporting the process for the panels.

(b) Meeting with Bar Circuit Leaders

I said that the DPP's offer to meet with the Circuit Leaders had been welcomed. The DPP said that he found the meeting with the Circuit Leaders very useful and will hold one at least every 6 months.

(c) Disclosure and potential joint CPS/Bar disclosure training

The DPP said that the CPS had hoped to provide external access to the Prosecution College by September, as he advised at the last meeting, however there has been a delay and access will now be piloted in the South West from December 2012.

(d) International

The DPP said that Patrick Stevens had found his meeting with me to be very useful. He said that he wanted to look at offering international placements to the Bar and it may be particularly useful experience for juniors, although not well paid. The DPP said that the CPS will work-up a proposal with a view to putting together a list/panel who may be interested when opportunities come up. I told him that I thought this was a good idea, and would be attractive to some.

I said that we were very happy to continue discussions with Patrick Stevens with the view to joining up where possible. I said that the Bar Council's international work has been focussed on business development, but that we are now looking more at values work. The DPP asked if Patrick Stevens could talk to our International Committee to tell them about the work the CPS International Directorate are doing. I said that I thought that would be helpful, and it was left that Patrick Stevens would contact Charlotte Hudson in the first instance to arrange such a meeting.

(e) CPS consultation: Instruction of two Advocates or QC alone

The DPP said the CPS has received 27 responses from a good range of professionals, including the Bar, judiciary, Treasury Counsel team and Law Society.

Sarah Forshaw QC said concerns had been raised with her about examples of CPS under-instructing counsel in serious cases. She also said that there were concerns that the CPS in Kent are not instructing Silks. The DPP said there was absolutely no blanket policy in place not to instruct silks but the issue may be whether the internal guidance is being applied correctly. Keith Milburn said he would look at the payment data to see whether QCs are being instructed in Kent.

Keith Milburn in fact responded to the Chairman's office on 6 November. The payment data for 2012/13 indicates that silks are being used in CPS South East at the same levels as the previous two years.

Sarah Forshaw QC said another issue which had been raised with her was examples of Silks being paid at junior rates. The DPP said that this is rare but can happen because chambers come to the CPS with a late return from a level 4, advising that they have a Silk available who will undertake the trial at junior rates and this actually puts the local CPS in a difficult position.

The DPP added that individual chambers have also approached the CPS with proposals to work at reduced rates in return for instruction, but the CPS has resisted these proposals, preferring to honour nationally agreed rates. He said that he was concerned that chambers' clerks were endeavouring to keep their senior members busy by giving them lower grade work on returns, not just Silks but also returning level 2 work to 3 and 4s. This acted against the interests of the junior Bar. The DPP suggested that the Bar Council needs to have conversations with clerks about this issue. Sarah Forshaw QC asked for any instances of this behaviour to be reported to the Circuit or to the Bar Council.

(f) Breakdown of work by value between Crown Advocates and the self-employed Bar

I asked whether I could share the figures with the Circuit Leaders. The DPP said that he was happy for me to do so.

14. Lord Chancellor and Secretary of State for Justice

From my meeting with the DPP, I went with Mark Hatcher and Nick Cusworth QC, Chairman of the Family Law Bar Association, to meet with the Lord Chancellor and Secretary of State for Justice (Chris Grayling MP), the Minister of State (Lord McNally), and officials from the MoJ.

(a) Legal Aid

I opened the discussion by saying that the mood at the publicly-funded Bar was desperate**.** Barristers undertaking Crown Court cases where the trial lasted between 1 and 40 days had suffered cuts of 13.5% (4.5% cut each year from 2010-12). In October 2011, further cuts in criminal legal aid rates had been introduced. Barristers undertaking Crown Court cases where the trial lasted between 40-60 days had seen their fees reduced by nearly 40%. Rates for Crown Court cases lasting more than 60 days had been progressively reduced. The criminal Bar were not just feeling the punch, they were desperate. The cuts in criminal legal aid rates were deterring people from doing criminal work and causing others who were in a position to try to do so to practise in other areas. This was impacting on the availability of good quality advocates to undertake the most serious cases and affecting the talent pool for future appointments to the judiciary.

The Secretary of State (SoS) said the Government faced an extraordinarily difficult challenge. He said the legal aid system was by far the most expensive in Europe. It was inevitable that the legal profession would suffer pain from the cuts which the Government had been compelled to introduce. The Government would not have chosen to implement the cuts it had. The austerity measures were necessary to tackle the deficit. That was the economic reality which could not be ignored. The MoJ was no different from any other Whitehall department. He did not pretend that the measures which his predecessor had been obliged to bring forward were easy or that they would be popular at the Bar. The profession had to recognise the pressures which the Government faced. There was no simple way of scaling back a system that he thought had become too big to be affordable. He sympathised with the predicament which the Bar Council faced on behalf of its members. It was at the sharp end.

(b) Competition in legal services

I said that the Bar was preparing for the consultation exercise expected to be launched by MoJ next autumn about introducing greater competition in the provision of criminal defence services. It was, and would remain, very concerned about proposals to resurrect One Case One Fee (OCOF) which, many would argue, would bring about the death of the independent Bar.

The SoS said he recognised there was a problem of constant "salami slicing" of the funding of legal services. The time had come when everyone had to think about working differently, perhaps radically differently. The Ministry would be developing its thoughts about options in the coming months. He encouraged the Bar to participate in a round of pre-consultation discussions. He urged the Bar Council to challenge the departmental wisdom and to "think outside the box". None of the options he thought would be painless. It was best to be honest about that. He was aware of the pain which criminal practitioners faced because some of them lived in his constituency (Epsom and Ewell). He hoped the Bar would enter into a constructive dialogue.

I said that the Bar would come back to the MoJ with its principled arguments about why OCOF was flawed and against the public interest.

(c) Self-representing litigants

I summarised the concerns which the Bar had about the increasing number of self-representing litigants (SRLs). Even Judges in the Chancery Division were becoming concerned about the rising tide of individuals trying to argue their causes without the benefit of proper professional representation. The 2011 report of the Civil Justice Council had provided a thorough analysis of the problem and put forward recommendations to the Lord Chancellor and the Lord Chief Justice which the Bar supported. The Bar Council had set up its own working group to progress some targeted initiatives with recommendations which would be made to the Lord Chancellor and the Judiciary in due course.

(d) Family justice

Nick Cusworth QC described the family Bar as a resilient, public spirited body. Members of the family Bar did not expect to earn as much money as in some other areas of practice. The family Bar had a higher proportion of women and BME practitioners who were relatively poorly paid. He outlined his concerns about the development of what he described as a perfect storm in the family justice system. The introduction, in April 2013, of the LASPO changes would increase the number of SRLs, many of whom he said would be frightened of going into court and simply unable themselves to understand financial issues. For example, a wife who had been without a job during a long marriage might very well be unable to know what she should be asking without assistance. The time available for judges to help litigants in this situation was limited in practice. Waiting times were rising and cases were taking longer to determine. Meanwhile, the Norgrove recommendations were expected to be introduced in 2014 and cases to be dealt with within 26 weeks. Plainly cases involving children needed to be dealt with expeditiously but it had to be recognised that the causes of delay often lay outside the court system. The family justice system was in real danger of collapse and there was a risk, particularly in sensitive cases like *Baby P*, of serious reputational damage being caused.

The SoS asked where else in the legal aid system the Bar would have recommended making cuts.

Nick Cusworth QC said that, if it would be helpful, members of the family Bar would be only too willing to help officials properly assess the cost and other consequences of changes in family justice. The effects of the removal of the statutory charge on the matrimonial home did not appear to have been properly evaluated, producing no doubt unintended consequences. The introduction of the LASPO changes and the Norgrove recommendations, coupled with the changes recommended by Mr Justice Ryder and public law changes, were all coming together at more or the less the same time with the result that there was a serious risk of confusion. Perhaps some of the changes could be reconsidered in favour of a phased introduction.

The SoS said that the state had to take tough decisions. The family Bar was not immune from the effects of these changes. The state had to take a view on what it could afford.

Nick Cusworth QC recognised that some cases could take too long to try but the vast majority of family practitioners worked hard to achieve settlements. Mediation offered a way forward in some, perhaps many, settle-able cases but other cases (involving lying and bullying behaviour) did not. Mediation should not be regarded as a panacea.

I said that there was a concern about the MoJ's ability properly to impact assess its policy proposals. The research relied upon in support of the SRL changes was acknowledged to have been out of date.

Lord McNally said that he hoped progress could be made in simplifying court procedures in family cases and that there could be better case management. He said he would be grateful for Nick Cusworth QC's input to the implementation of the Norgrove recommendations and invited him to make contact with the Ministry separately.

(e) Civil justice reform

I mentioned the Civil Justice Working Group which we had set up to make recommendations to the judiciary about improving case management in civil proceedings, docketing of judges, disclosure and making better use of IT in court.

(f) Conclusion of meeting with MoJ Ministers

The SoS said Ministers did not have closed minds on the matters which the Bar Council had raised. They would listen to the Bar. But he said he could not change the basis of principle, which was in place throughout Whitehall, about the approach the Ministry had to take about the allocation of resources. He said the Bar was valued, and an important part of the justice system which he did not wish to damage. He knew the Bar appreciated that Government faced some very tough challenges and that there was very little room for manoeuvre in practice. The SoS added that he and his colleagues would continue the policy of Kenneth Clarke to do all they could to promote the work of the Bar, at home and abroad.

15. Russian Law Week (Part II)

On 6 November, I then attended a dinner, hosted by the Law Society at the Law Society President's residence in Carey Street, for some of the Russian delegation to Russian Law week. The next day, at the conclusion of Russian Law Week, I made some closing remarks. Overall, Russian Law Week was immensely successful. We owe a debt of gratitude to the International Committees of the Law Society and the Bar Council for organising such a successful event.

16. Inner Temple Grand Day

On 7 November, I was a guest at the Inner Temple Grand Day Dinner, a truly splendid occasion.

17. FRU Anniversary Dinner

On 9 November, I attended the FRU Anniversary Dinner, at Plaisterers' Hall.

18. Annual Bar Conference

10 November was the day of our Annual Conference. My conference speech is annexed to this written statement. The day was very successful, with Rafferty LJ giving the keynote speech in the morning, and the Attorney General giving the keynote speech in the afternoon. Many thanks must go out to them for giving up their time, and for contributing to the success of the conference.

Special thanks are owed also to the Member Services Team, and in particular to Lois Rolfe, who were responsible for organising the event, and to all of those of the Bar Council staff who helped out on the day, and before.

Many thanks also to Alison Padfield, Chair of the Organising Committee, and to the members of her committee, for putting together such an interesting conference programme.

I am also very grateful to all those who participated, in so many and different ways, at the conference. Thank you for making the day so successful.

Alison Gurden, of 1 Gray's Inn Square, won the 16th annual Sydney Elland Goldsmith Bar Pro Bono Award, which I presented to her Head of Chambers, David Malone, in Alison's absence. The award was set up in 1996 to recognise individual barristers or sets of chambers who demonstrate an inspirational commitment to pro bono work.

Alison had been nominated by her Head of Chambers, David Malone, who describes her as "a one-person pro bono unit, who undertakes seemingly every sort of challenging and worthy cause". Alison has represented pro bono clients in a variety of criminal cases, including deaths in custody and complaints against the police, and also sits as a trustee with the charity Migrant Help. She divides her time between England and Miami and, when in the US, frequently works as a volunteer lawyer with the Public Defender's Office in their Capital Litigation Unit, representing defendants facing the death penalty.

There were three special commendations this year: Manjit Singh Gill QC of No5 Chambers, Gulshanah Choudhuri of Sen Barristers, and John Eames, a pupil at Garden Court Chambers.

19. Lord Mayor's Banquet

On 12 November, I attended the Lord Mayor's banquet at the Guildhall; a very grand and enjoyable occasion.

20. BSB Appointments Panel

On 14 November, I sat, with others, on the BSB appointments panel to interview applicants to fill the place vacated by Patricia Robertson QC on her appointment as BSB Vice-Chair from 1 January 2013.

21. Dinner in honour of the Chief Secretary for Administration of the HKSAR

That evening I attended with Mark Hatcher a dinner in honour of the Chief Secretary for Administration of the Hong Kong Special Administrative Region at which the Chancellor of the Exchequer, George Osborne, and the Minister of State for Trade and Investment, Lord Green both spoke. I was pleased that Lord Green recognised the contribution which the legal system in Hong Kong makes to attracting and sustaining investment and business activity generally in this Asian power house.

Michael Todd QC
15 November 2012

27th Annual Bar Conference Speech
10 November 2012

Michael Todd QC, Chairman of the Bar

It was on my first Circuit visit as Chairman of the Bar. I had been invited by Alistair MacDonald QC, the Leader of the Circuit, to meet with members of his Circuit in Leeds. I went with Mark Hatcher, the Bar Council's Director of Representation and Policy. The purpose of the visit was to give an account as to what we had been doing to represent the interests of the Bar. But the mood was one of despondency.

I spoke with, amongst others, a criminal practitioner, a prosecutor. He wanted to know what the Bar Council was doing for him, and, in particular, what I had been doing about the successive fee cuts imposed by this, and the last, Government. I told him all that we had been doing, the meetings we had had, the lobbying we had done, the arguments we had advanced. I don't think he was satisfied with my account.

Price Competitive Tendering (PCT), One Case One Fee (OCOF), "Regulation", Quality Assurance Scheme for Advocates (QASA), Alternative Business Structures (ABSs); all additional pressures to a beleaguered section of the Bar; all challenges to the old order, to the way things were.

We can meet those challenges. The modern Bar is accessible, adaptable, and relevant to the requirements of those to whom we offer our legal services. But we will only do so in a manner which is in, and which promotes, the public interest.

The legal services we provide are of the highest quality; excellence is our byword. Our concerns are about unnecessary and over-regulation, about the costs of the non-regulatory activities of our regulators, and about the constant downwards pressure towards levels of minimum competence, not about QASA and regulatory standards. Of those, the Bar has nothing to fear.

Our oversight regulator talks about KPIs (key performance indicators); we talk about the interests of justice, the public interest, the interests of clients.

The Government is looking to make savings; we are seeking to promote the Rule of Law, to provide effective access to justice.

Our oversight regulator argues how referral fees can assist the market for the provision of legal services; we explain why they are illegal, how they work against, and are inimical to, the public interest.

We are all talking about the provision of legal services in, and for, the future. Yet my concern is that we are not all parties to the same conversation!

In my inaugural address to Bar Council, last December, I encouraged the Bar to invest in its future. I repeat that message. But much has happened since then, and I have come to realise that the Bar must do more.

It is we who provide that essential access to justice which is required by the Rule of Law. Why, then, are we not at the forefront, mapping out the agenda in the changing legal landscape, shaping our future? We have 800 years of experience. We know what we are talking about. Why, then, do we not start the conversation?

The Bar must seek to wrestle the initiative away from those who do not want to see the Bar survive, or who do not care whether or not it survives, as an independent referral profession. If the Bar does not survive, so much will be lost, and lost forever.

We cannot expect the public, Government or the media to understand and appreciate our value if we are unable to articulate, clearly and persuasively, what we do for society.

A couple of weeks ago a friend of mine asked me about my year as Chairman. Amongst her questions, she asked me what I had found to be most memorable. The whole year, of course, is memorable; glamorous to some, interesting to others.

It is hard work; seeking to represent the interests of the Bar, domestically and internationally, to judges, politicians, stakeholders, interest groups, opinion-formers, decision-makers, Bar leaders from different and diverse jurisdictions.

But it is also an honour and a privilege; an honour and a privilege, that is, to serve this profession, in its service of the public interest. And that brings me back to the question my friend asked me.

My most memorable image is <u>not</u> from my international travel, the places I visited, the people I met, important though all those were; it derives from my recent visit to Manchester. I was there to talk about BarCo, the new escrow account service established by our Member Services team.

Whilst in Manchester, we decided to go to a restaurant for dinner. Outside the restaurant was a woman in her 30s or 40s. She was dressed in a blue tracksuit, begging for money. We each gave her some money. She expressed her gratitude, and we went in to eat. By the time we left, the weather had got colder; it had started to rain. Some people were still arriving, buoyed up by the night's festivities. Standing on her own, away from that group was the woman in the tracksuit. She was sheltering under an umbrella. She was sobbing.

I still cannot get that image out of my mind; of one of the vulnerable in our society; perhaps on the edges of society; of those who need help and cannot afford help, and of those who cannot help themselves; those who have no voice and those whose voice will not be heard.

Those people to whom, primarily, the publicly-funded Bar provide representation on a daily basis, working in the public interest, not in their own personal interests, providing the access to Justice required by society, and demanded by the Rule of Law.

And where would they all be, if others, on the periphery of the provision of legal services get their way?

Over the course of this past year, so many issues have arisen. The battles which we continue to fight are often difficult and sometimes seem endless.

It's true, there are occasionally personality clashes too.

But these things are temporary. We must not and will not neglect or abandon those who depend on us the most.

In early October, I was fortunate enough to attend the Young Bar Conference. There were many distinguished speakers. The first and keynote speaker was Sir Sydney Kentridge QC. Sir Sydney was the advocate who, as a young man in South Africa, in the Apartheid era, provided access to Justice against all the odds, and under the most oppressive of regimes. He represented those whose voices could not or would not be heard. Yet he rarely speaks of those triumphs and personal achievements.

Sir Sydney turned 90 years of age this last week, on 5 November. He has recently appeared in the *Prudential* case, a case concerning the extent of legal privilege. On behalf of the Bar of England & Wales, belatedly, I send Sir Sydney our congratulations for his birthday, and our very best and warmest wishes for the future.

At the Young Bar Conference, Sir Sydney addressed a packed hall on the role of the advocate, and the Rule of law. How characteristic that he should speak of the importance to effective access to Justice of the independence of the advocate, of the importance of adherence to the cab-rank rule.

Importantly, he reminded us all that the Rule of Law is not about great causes, and great and memorable cases, but is about the work of the advocate going daily about his or her work, in the criminal courts, in the family courts and in the other courts representing the vulnerable, those who have no voice, those unable to represent themselves, and he spoke of the fact that effective access to justice involves more than just "turning up."

The Bar has an essential role in the promotion of the Rule of Law, in the provision of access to Justice.

> "Scarcely less important than an independent Judiciary is an independent legal profession, fearless in its representation of those who cannot represent themselves, however unpopular or distasteful their case may be."

Those are not my words, but those of the late Tom Bingham, in his seminal work, "The Rule of Law".

I was at a dinner at the beginning of October in Dublin. At that dinner I was talking to an American lawyer about Solicitor Advocates. The American lawyer told me that she conducts her own advocacy in arbitrations.

During our conversation, I mentioned how, from time to time, I had been instructed by law firms to act with a solicitor advocate as my junior. I commented that, often, they had been ill prepared, and on how their approach suggested a lack of independence from the client, viewing the case more from what their client wanted them to say, than what the judge would find attractive and engaging.

We agreed that much of that was due to a lack of experience and training. But I also suggested that it may have reflected our respective approaches to the way in which we practise. So I asked her, "what is the most important thing for an advocate?"

Our respective responses were, I think, instructive.

She replied "making sure you know the facts".

I replied "integrity and independence."

It is not, I suggest, simply about doing the job, it is about how we do it.

At the heart of what we are, and what we do, is integrity. I have no doubt about that. Without a reputation for integrity we cannot practise; we cannot provide effective access to justice.

All my practising career, I have heard stories of the imminent demise of the Bar. But we have survived. We have modernised our practices. The Bar I joined over 35 years ago is very different from the Bar to which I shall return at the end of this year. We have changed, carefully, recognising our role in the service of the public interest, recognising that what we do, and how we practise, affects other people's lives.

We may have changed the way in which we practise, the ways in which we deliver our legal services, but we have not changed our core values.

Recently, I was speaking to a Russian lawyer. He now works for a major law firm in London. We were discussing the reasons why the Oligarchs like to litigate their disputes in London. He told me it was because of the integrity of our legal system, the independence of our judges and of our lawyers, our incorruptibility, our thoroughness, and our professionalism.

It is these attributes that enable us to sell our legal services to foreign clients both domestically and abroad. It is these attributes which enable us to provide effective access to justice, to promote effectively the Rule of Law.

When I hear remarks about the challenges facing the Bar, I look to see what is happening with law firms in this very same market; how the City firms are making redundancies as they seek to shift some of their overheads; how the high street firms are bracing themselves for block contracting, the impact of registered will-writers, licensed conveyancers, the members of CILEx, Tesco law, and the like.

Frankly, when I do look to see what is happening to the solicitors' profession, I do see that the grass is not necessarily always greener.

And indeed, we have some benefits not shared by others.

We are a small profession. We have 15,000 subscribing members. The Law Society has nearly ten times that number. We are a small profession which provides specialist advocacy and advisory services, usually a second, and always an independent, opinion; cost effectively and efficiently providing services when, where and by whom they are required, consultants, sub-contractors, call us what you will, but never an overhead.

We are a profession which observes the highest professional, ethical and regulatory standards. And whilst we may have changed the ways in which we practise, we have continued to maintain our values of integrity, independence and excellence.

The Bar's commitment to public service is borne out daily by the work of the publicly-funded Bar. But it is also borne out by the Bar's commitment to its social responsibilities. We are accessible; we are relevant.

The Bar has long been a leader in Corporate Social Responsibility (CSR). We haven't just talked about it.

The Bar is committed to equal and fair access to the profession. In terms of diversity, in 2010/11, 35.1 per cent of the Bar, 49 per cent of those Called to that Bar in that year, and 40.8 per cent of those being awarded pupillage, were female; 10.2 per cent of the Bar, 42.7 per cent of those Called to the Bar in that year, and 13.1 per cent of those awarded pupillage were from BME backgrounds.

We are constantly working to improve social mobility through the work of our new social mobility committee.

The Bar Council runs an energetic and focused careers programme with a national reach. Barristers speak to about 500 schools nationwide each year through our *Speak up for others: A career as a barrister* programme. The Bar Council runs five annual careers days for year 12 state school students around the country. The Inner Temple's Schools Project, run in conjunction with Pathways to Law and the National Education Trust, is in its fifth year. The

Bar Council, the Inns of Court and the Circuits are among the co-sponsors of the Bar Mock Trial competition, an annual event run by the Citizenship Foundation; over 2,500 students from 175 non fee-paying schools and Further Education colleges across the UK take part. The Social Mobility Foundation (SMF) Bar Placement Week is in its sixth year, with 65 students being were placed with chambers, this year... to identify just some of the initiatives.

We are proud to announce that as from 1 January 2013, the Bar Council, through a joint venture arrangement, will be providing day-care nursery facilities, at "The Bar Nursery at Smithfield House", in premises very close to the Old Bailey, and to the four Inns of Court, in a yet further effort to address the problem of retaining, at the Bar, those with child caring responsibilities.

Just this last year a further 600 barristers signed up with the Bar Pro Bono Unit, demonstrating their willingness to undertake work on a *pro bono* basis. Now, nearly one-third of all silks have registered their willingness to undertake *pro bono* work.

The pressure on the provision of *pro bono* services becomes ever more acute with whole swathes of areas of work having been taken out of the scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). Just as the pressure on the provision of services increases, so too does the pressure on those who administer those services. I have asked the profession if it will pay just £30 per head, year on year, to cover, and to secure the costs of the Bar Pro Bono Unit.

At a time of such great pressure on fees for much of the Bar, how great a testament to the Bar's commitment to access to justice and the provision of *pro bono* services that donation would be. There has never been a more propitious time for us to make that investment. I repeat my request for your help.

Earlier in this speech I talked of Sir Sydney Kentridge, of his integrity, of his humility. The Bar is a diverse profession. There will always be those who court fame, and those who simply attract fame. And then there are those who go about their jobs largely unnoticed, fulfilling their social responsibilities, acting in the public interest.

The Bar can be proud of its commitment to its social responsibilities, and to the public interest.

So how do I see our future, the future of the Bar?

In my view, now it is time to change; not to change our values, or the quality of what we do, but to change from being reactive to what is going on around us, reacting to the ideas of those on the periphery of the provision of legal services, and to take charge of our future.

And let me be clear. If we do not change in that way, we run the risk of being consigned to the history books.

In these times of austerity, we run the risk of knowing the price of everything and the value of nothing.

So how do we convince this Government that focusing on price at the expense of quality will not achieve the savings they seek to make?

How do we satisfy our regulators that any quality assurance scheme, to serve the public interest, must focus on excellence in advocacy, and not on achieving a minimum level of competence? And how do we design that alternative scheme?

Of course, the Bar is not the regulator, it is "the regulated". But that should not prevent the Bar proactively designing or contributing to the design of such a scheme.

How will the legal landscape look after PCT and OCOF? Will it be a land of opportunity, or will it be a desert? How will the high street look for law firms as the ABSs owned by non legal interests sweep in to win the contracts; monopolist suppliers and a monopsonist purchaser? Is the driver really competition and consumer choice, or is it, in truth, all about price?

How have we got ourselves into a situation in which juniors are doing murder trials, serious sex, and terrorism trials, whilst silks are undertaking work at junior rates? Has the rank of silk become worthless; is it unnecessary even in relation to the most serious offences; has quality been sacrificed on the altar of price?

What alternative schemes can we devise to deliver the savings this Government is determined to make in the legal services market, whilst maintaining the quality of those services, in the public interest?

How can we strengthen relationship between Bar and the Inns of Court, through its education and training activities? For example, surely it should be for the Inns of Court, the Advocacy Training Council, and the Bar itself, not the regulators, to determine how, and the standard to which, we, the Bar, should be educated and trained.

What is the proper role for our oversight regulator? How many of us responded to the MoJ's triennial review of the LSB?

At the beginning of this speech, I spoke of my conversation with the criminal barrister in Leeds. I asked him whether he had completed the Criminal Bar Association (CBA) survey; he had not. I said that I assumed that he was a member of the CBA; he said he was not. I asked him if he had raised his concerns with his Circuit Leader. He had not. Just as I was accountable to him for what I am doing on behalf of the Bar, so are we all accountable for what we do, and for our failure to act.

It is an honour and a privilege to be a member of the Bar. But with privilege comes responsibility. We all are responsible for the future of the Bar. We all have our part to play. And we must all engage.

Just as the members of the Bar are servants of the public interest, so too are solicitors, and chartered legal executives. We all have an obligation to further the public interest. I ask the

Law Society, through its President, Lucy Scott-Moncrieff, and CILEx, through its President, Nick Hanning, to join with us, in working together, to seek to deliver the savings the Government tells us, consistently, it must make in the Justice system budget, whilst at the same time providing effective access to Justice and promoting the public interest and the Rule of Law.

There is much to play for, there is so much that could be lost. The stakes are high. We have a legal system which is the envy of the world; not just the envy of the common law world, of which, undoubtedly, we are the leaders, but of the civil law world also.

However, if we take control of our future, in this modern, dramatically and quickly changing, legal landscape in which we provide our services, there is much to be gained.

As I am coming to the end of my year, I want to acknowledge all the help and kindness that I have been given by those at the Bar Council, and in particular, Mark Hatcher and Oliver Delany, and at the BSB, in particular, by Vanessa Davies. I also wish to express my gratitude to our Head of Communications, Toby Craig, without whose invaluable assistance, and chiding, and that of his team, I could not have got through this year.

But special thanks must go to the Chairman's and Directors' new 7th floor team, of Sarah Riley, Victoria Carpenter, and most importantly, Charlotte Hudson. Each of you has made a real difference. Without your dedication, and commitment, and good humour, it would not have been the pleasure that it has been to serve the Bar, as Chairman of its Council.

Last, but not least, I wish to thank my Vice-Chair, Maura McGowan QC, without whose support, counsel, patience and kindness, I would have made even more howlers than I have made.

Finally, I learnt last year that a Chairman's speech is never complete unless and until it contains a quotation. When I came into office, it was on the ticket that I wanted to get things done. I thought it appropriate, therefore, to see that sentiment embodied within a relevant quotation. Well Homer Simpson has been, and is, exhausted. So I had to look elsewhere. And here it is (a quote attributed to Kurt Vonnegut, but which I first read as it was etched on to a door in a public place in Keele, North Staffordshire, where I was at University):

> "To be is to do - Socrates"
> "To do is to be - Sartre"
> "Do be do be do - Sinatra"

Thank you.