



The Bar Council

## Meeting of the Bar Council

Minutes of meeting: Saturday 30<sup>th</sup> January, Microsoft Teams dial-in

### Present

Derek Sweeting QC	Chair of the Bar	DSQC
Mark Fenhalls QC	Vice Chair of the Bar	MFQC
Lorinda Long	Treasurer	LL
Malcolm Cree CBE	Chief Executive	MC
Suella Braverman QC MP	Attorney General	The AG
Neil Hawes QC	Remuneration Committee	NHQC
Nick Bacon QC	Remuneration Committee	NBQC
Emma Walker	Employed Barristers' Committee	EW
Leanne Targett-Parker	Pro Bono & Social Responsibility Committee	LTP
Baroness Blackstone	Bar Standards Board Chair	BTB
Andrew Mitchell QC	BSB Vice Chair	AMQC
Mark Neale	BSB Director General	MN

### Members in attendance (listed alphabetically)

Christine Agnew QC; Dr Mirza Ahmad; Zayd Ahmed; Stuart Alford QC; Robin Allen QC; Simon Anderson; Lorna Badham; Elaine Banton; Michael Bellis; Philip Bennetts QC; Minka Braun; Carl Brewin; Ian Brookes-Howells; Alexandria Carr; Mark Chaloner; Sydney Chawatama; Benjamin Close; Richard Cole; Celina Colquhoun; Barbara Connolly QC; James Corbet Burcher; Melissa Coutino; Cecily Crampin; Tim Devlin; Layla Ferguson; Emily Formby; Caroline Goodwin QC; Laura Gould; Andrew Granville Stafford; Birgitte Hagem; Amanda Hardy QC; Michael Harwood; Michael Hayton QC; Emma-Louise Heath; Isabel Hitching QC; Kim Hollis QC; Sarah Holmes-Willis; Elizabeth Houghton; Shobana Iyer; Sean Jones QC; Susan Jones; Faith Julian; Joanne Kane; James Keeley; Stephen Kenny QC; Cyrus Larizadeh QC; Donal Lawler; Tom leech QC; Edite Ligere; Ted Loveday; Kate Lumsdon QC; Tim Manley; Athena Markides; Eleanor Mawrey; Oliver May; Louise McCullough; Martyn McLeish; Christina Michalos QC; Andrew Morgan; James Mulholland QC; Francesca O'Neill; David O'Mahony; Grace Ong; Lucinda Orr; Harry O'Sullivan; Francesca Perselli; Alison Pickup; Michael Polak; Rehana Popal; Charlotte Pope-Williams; Jonathan Rees QC; Robert Rhodes QC; Lisa Roberts QC; Zoe Saunders; Natasha Shotunde; Joe Smouha QC;

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**THE BAR COUNCIL**

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Kate Spence; Gordon Stables; Jessica Stephens QC; Heidi Stonecliffe QC; Jason Sugarman QC; John-Paul Swoboda; Ben Symons; David Taylor; Jacqueline Thomas QC; Steven Thompson QC; Linda Turnbull; Anton van Dellen; Nick Vineall QC; Colin West QC; Alex Wright; Richard Wright QC

**In attendance:**

	Piran Dhillon-Starkings	Advisor to the Chair	PDS
	Carolyn Entwistle	Director of Services	CE
	Phil Robertson	Director of Policy	PR
	Adrian Vincent	Head of Policy	AV
	Natalie Zara	Head of Governance	NZ
<b>Minutes</b>	Samantha Anderson	Executive Officer	SA

**Apologies were received from**

Ivor Collett QC; Ryan Richter; Laurie Scher

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DSQC welcomed members and especially to Shobana Iyer who has joined at the representative for the Intellectual Property Bar Association, Donal Lawler who has succeeded Charles Burton as a subscriber for the South Eastern Circuit and Laura Gould who has succeeded Gurprit Mattu as a representative for Lincoln's Inn. Additionally, DSQC welcomed any alternates who were attending for another member – this is a system we would like to encourage, for an alternate to be arranged if you are unable to attend a meeting yourself.

DSQC welcomed the AG; this will be her last Bar Council meeting before she goes on maternity leave. The AG gave thanks for the invitation and commented that it was good to see so many people in attendance at this meeting; the AG enjoys taking part in these meetings. A maternity cover replacement is yet to be determined and is for decision of the Prime Minister, though the AG is sure that everyone will all welcome her replacement. The AG has enjoyed the constructive relationship we have had; it is good to have the dialogue with everyone and appreciates the candour you all speak – she is looking forward to picking this back up later in the year. Covid has been the predominant features in meetings with both APQC and DSQC and the feedback from those meetings goes back to parliament. The next 6 months are likely to bring similar challenges. The AG commented that it is a vital part of her role to be the Bar's voice in government, to ensure the Bar is heard and government understands the pressures you and the profession are facing.

**1. Conflicts of Interest**

None were raised.

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

The minutes from the meeting of Saturday 21 November 2020 were approved. A minor amendment was requested via email – the change was made before publishing online.

## **3. Statement by the Chair**

DSQC highlighted, out of Item 6 (Communication & Marketing) the report, [Running on Empty Civil Legal Aid](#). The [Criminal Legal Aid Review](#) is about to get underway and Legal Aid is going to be a prominent feature this year for the work of the Bar Council. We are looking forward to having input on this and Civil Legal Aid.

This is a good time to reflect on the success of the online events held last year, notably the pupillage fair which was much more accessible to those who would be unable to attend if this was held in person – a decision has been made for this year’s pupillage fair to also be hosted online; attendees will appreciate it being held remotely and we will be tweaking the platform to make it more accessible. We will try to have an in-person Bar Conference this year, it is something DSQC would like to see happen in-person and it will hopefully be a good end to the pandemic. Of course, it is moveable, but we remain hopeful.

DSQC attended the Law Society of Hong Kong President’s Roundtable and has been asked about our relationship with China/HK. HK is likely to pop up on the Bar Council radar throughout this year. We have made statements and we are in close contact with the HK Bar Association. Their Chair has recently changed, and the successor has been made contact with. We will be keeping an eye on what their approach is this year, and we hope to take a steer from our colleagues in HK as to when we should react to what is happening.

A Regulatory Review Working Group has been set up with NVQC as the Chair. [The Legal Ombudsman Consultation](#) has already been responded to; we and the Law Society have pushed back to their 19% budget rise and we are in the process of responding to the [LSB consultation](#). The Bar Council will become more vocal on regulatory issues this year.

The annexes to the Chair’s Statement paper include reports from ICBET and from the QC appointment and selection panel – they suspect the profession has a limited understanding of the applications and appointments of QCs; this is something we will look into. DSQC noted it is important to have confidence in the QCA.

## **4. BSB Report**

BTB expressed thanks to Aidan Christie QC who agreed to stay on as Chair of the Independent Decision-Making Body (IDB) for a further 6 months and oversee its successful establishment.

The BSB published its [Annual Diversity Report](#) on 29<sup>th</sup> January, which shows a slow but steady progress in promoting diversity, though the Bar has a lot to do when looking at the more senior levels. The junior levels have become more diverse. However, 17% of QCs were women and only 9% of QCs were from ethnic minorities.

Pupillage at the publicly funded Bar have been hardest hit. However there are a number of commercial sets who are supporting criminal chambers for pupillages which is very welcome. The BSB continue to talk to the Bar Council and pupillage providers to see what we can do to help sustain pupillages across the Bar.

TD noted there seems to be a significant increase in the number of barristers being suspended and/or disbarred. Is the regulation stricter or are more complaints coming in? And what offences are being committed by barristers? BTB confirmed there is a variation year by year, some of which may be coincidental. We are currently unsure if the increased number of people making complaints is due to a growing confidence in making complaints or that people feel a greater need to make a complaint for misdemeanours. Sanctions are being reviewed within 2021 and the BSB is alive to concerns which have been raised on whether sanctions are strict enough.

CPW added that there have been a number of extremely concerning tweets from an individual within a set of chambers; the individual has tweeted right wing comments for over a decade and people are being dissuaded from joining the Bar as a result. There is concern from within the organisations and claims from solicitors who will not instruct others at that set. Both the BSB and the Bar Council have been tagged in some of these tweets and they are gathering a lot of attention. Is the BSB doing anything on this particular case? BTB confirmed that social media is a problem for the BSB, and it would be difficult to monitor tweets (or other platform posts) from every barrister. We rely on people making complaints or raising it with the BSB. BTB could not confirm whether this individual has been a subject of a report or whether there is much they can do. MN added that we have a standing convention that the BSB doesn't comment on whether they have or haven't received reports when they are under consideration, so cannot comment on the individual case; we made our position very clear in our anti-racism statement at the end of last year.

Via the Teams Chat, RAQC offered to speak to the individual who has been put off coming to the Bar, ensuring that this comment was not typical and is sure not typical of most barristers; he will happily talk through what has been done and what is being done to tackle these issues.

FON stated there have been numerous headlines in the last few months in the legal press about the total insufficiency of punishments handed out to male barristers found guilty of harassing or attacking female barristers at the Bar and asked what the BSB is going to do about it in light of the profound disquiet of the sentences being too insufficient and too lenient – when these crimes are committed, they are not seen to be dealt with properly. BTB confirmed the BSB is aware of the concern of some of these cases and the sanctions system will be reviewed this year, adding there is always the opportunity for appeal. MN added that the BSB is conscious of the concern which is why the review of the sanctions will be pushed to a conclusion as early as possible this year.

EM stated that the BSB and Bar Council are doing a lot of work on increasing diversity at the Bar, but many have been questioning this week, the message that the recent (very

lenient) sanction imposed on a barrister for sexual harassment of colleagues, sends out about that commitment. BTB clarified that the sanctions will be reviewed this year.

## **5. Statement by the Chief Executive**

MC stated that although the Chair's Statement covers most of the activities, it doesn't cover Resources Group which takes up a lot of his time. Internally, the staff continue to impress him with their diligence and in their support to committees, and of the committee members' support to BC staff. Everyone is still working from home – the offices have been closed since Christmas and we are reviewing plans to return.

LL will cover the finances shortly in the Treasurer's Report, however given the loss of earnings at the Bar and the consequent impact of likely PCF income, we are entering a CBILS loan with RBS which is a low-cost, government backed loan. This will mean we don't need to raise the PCF this year, which has been approved by the LSB.

We have agreed the subvention with the Inns which is slightly less than last year, because we haven't been able to do all the work we promised last year. We are developing a 5-year strategy and MOU with the Inns and remain extremely grateful to the Inns for the support, especially considering their own financial problems due to Covid.

We have set up an Equality, Diversity and Inclusion Working Group internally which is extremely helpful.

MC is a director of QCA and is in touch with Rachel Langdale QC and Andrew Walker QC in relation to governance; there is concern with transparency. MC will report to GMC and maybe Bar Council in the future, about what the QCA directors have been doing, but please be assured they are live to the concerns raised.

DSQC believes there is confidence in the QCA process.

## **6. Treasurer's Report**

LL is an employed barrister working in the financial services sector and is currently a Managing Director and Associate General Counsel at Bank of America, supporting the cash equities business. LL was previously Treasurer from 2015 for 4 years and has missed the position over the past 2 years.

A presentation was shared. The second slide shows a timetable for key dates for the new financial year. The financial year for GCB is 1 April to 31 March. In June, the Finance Committee will review the year end accounts which will then go to the Audit Committee. These accounts then go to the AGM for approval. Following this, we will look at the budget for the following year, then the PCF Consultation will happen in November and submitted to the LSB for their approval which we should receive in January, and the ATP process will begin in March.

We are expecting a significant drop in income from last year, due to the pandemic but this risk will be largely mitigated by the CBILs loan. The capital budget for the next year has

been significantly reduced with half of this saving coming from the reduction in joint BC and BSB projects.

LL explained that the Legal Ombudsman levy is based on the number of complaints received by the LOB over the past three years rather than the size of the regulated profession.

LL then talked about the Defined Benefit Pension Scheme and that the next triennial valuation will be in September 2021 and it must be agreed between the Trustees and BC by December 2022. We are negotiating with the Trustees to try and achieve a balanced valuation.

We have delivered some significant savings and as we enter the next financial year, we are in a much better position than we originally thought.

LL confirmed that the BC's share of the PCF is 30% and emphasised the importance of the BRF payments which help top this up.

## **7. Remuneration Committee Report**

DSQC confirmed that NHQC has been appointed to the panel for the Criminal Legal Aid Review.

NHQC reported on the huge amount of work the Bar Council has done so far in preparing for the work of CLAR and gave thanks to those who have worked tirelessly to produce the data that CLAR will be based on, especially to Dr Rose Holmes, MC and the BC staff working on this, Professor Martin Chalkley and Alice Chalkley as well as some individuals within this meeting. The CLAR panel is due to meet for the first time W/C 1 February and it is being approached with optimism. This review will be key for those who take on publicly funded work.

The committee is currently taking on a review of Cost Judged Decisions, which we have managed to gain access to and hope to create a database on Cost-Based-Decisions that members of the profession can draw upon through the Bar Council website. It is a significant amount of work to take on.

Work to be looked at by the committee for crime is relating to Covid and the impact it has had on multi-handed cases. Whilst there is a flow of work going through the Crown Courts, there has been a huge reduction in the number of multi-handed cases. This is something that may need to be discussed with the LAA and MoJ in the future.

DSQC congratulated NBQC for this triumph at the Court of Appeal where Bar Council intervened on Damages Based Agreements.

NBQC commented that we have a much better relationship with the government for legal aid generally; one of the major problems the committee has faced previously was the lack of ability to get in the right doors and space to make noise about reform and change, but this has changed and there are regular meetings now with important people at the MoJ and

government, which will help going forward. NBQC is more optimistic now than before on our ability to make change.

The [Civil Legal Aid Report](#) was conducted by Kathy Wong and Dr Rose Holmes and these projects go on to help send the message on civil legal aid.

The civil side of the committee was very busy during the early part of Covid; there was a massive cash flow issue that needed to be addressed early on and we came out successful.

Historically, the Bar and solicitors have not been permitted to take on contingency fee agreements however the law was changed, but the regulations were unclear as to their effect so the take up of DBAs was very low if non-existent. Our intervention in Lexlaw has changed that.

The committee will provide guidance on the use of DBAs and we hope to produce a draft DBA that can be published, so members don't get caught up with some of the difficulties of the past.

## **8. Employed Barristers' Committee Report**

EW thanked PBQC and RR for their Chairship last year and introduced Mike Jones QC as the Vice Chair of EBC for this year. The first committee meeting for 2021 is on 4th February.

EW reported that 2020 was difficult for everyone though in addition to the pandemic, whilst the Employed Bar discovered that barristers were facing reduced hours, furlough, and redundancies.

Work focussed on ethics during 2020 as this is something that employed barristers can fall into issues with; the committee worked with the ethics committee and BACFI to ensure guidance papers are available for employed barristers.

It was a successful year for the Employed Bar Awards which although weren't able to take place in person, didn't stop us from promoting and shouting about our members.

There was great attendance at the pupillage fair in 2020 and we are looking forward to being involved in this year's event.

EW attended the BACFI webinar on 27th January and has met with IBH to look at how the EBC and BACFI can work together, develop and do more. Additionally, EW and JK have met to discuss how the EBC and YBC can work together further; the committees have already worked on the 7-year project together and there is an overlap in membership, so it will be useful to look at how we can support all the members.

We have met with the Government Legal Professional Network to see how we can support our members more and ensure we are hearing their issues.

We are hoping to focus some of our energy on the Working Lives Research this year as well as preparing ourselves for the challenges ahead, as the furlough scheme comes to an end, barristers are facing significant issues of redundancies. The job retention scheme has merely

been papering over the cracks and we are asking and encouraging people to get in touch as we are unable to help if we are not aware of the issues that our colleagues are facing.

TM added (via the Teams Chat): The forthcoming civil service pay freeze and the rejection of the GLD pay business case this week has been of significant concern to employed barristers at GLD who are worried about retention and attracting the best legal staff.

## **9. Pro Bono & Social Responsibility Committee Report**

LTP verbally corrected the title of the committee written on the report; it was mistakenly written as Pro Bono & Social Mobility, instead of Social Responsibility.

LTP thanked DSQC for the coffee morning sessions prior to the meeting; it was really enjoyable and a great idea. Laurie Scher (LS) was also welcomed as co-chair of the PB&SRC; LTP is grateful that he agreed to co-chair. When the remit of the committee was expanded, LTP was holding the fort but has no expertise in Social Responsibility however LS does.

Pro Bono has changed considerably with remote hearings and is has been a very different year. There have been significant positives in pro bono than in other areas of the Bar, with an incredible uptake in barristers representing clients pro bono through many organisations especially Advocate and the Temple Legal Centre (TLC) that LTP oversees. LTP is currently drafting a paper on how the Bar can work together with Advocate and other pro bono agencies – she has met with DSQC and Mr Justice Robin Knowles CBE, Chair of Advocate – in moving this forward. The proposal is for remote hearings for pro bono when Covid-19 measures are relaxed not as alternative to in-person hearings but in addition to so that more barristers will be willing and able to continue dedicating their time to pro bono representation ensuring the Bar promotes the needs of the client and access to justice.

The committee continues work on the Regulatory Guide and Toolkit, desperately trying to get it finished and hopeful that it will be finished in 2021. It requires input from other bodies and that has slowed its completion down in 2020. The PB&SRC is positive that that project will be completed this year.

Additionally, the PB&SRC is looking at the Living Wage Campaign, to get the majority of chambers, if not all, on board.

DSQC added there has been a massive response to Advocate's call for people to join pro bono; people have stepped up to this request.

## **10. Changes to the Standing Orders concerning the EU Law and International Committees**

The changes to the standing orders concerning these two committees are considered to be a necessary step at the moment. A doodle poll vote was circulated to members via email with the result being a majority in favour of the changes being made.

NZ added that RRQC has found historical errors in the standing orders which will either be raised outside of committee or within the next set of changes. DSQC gave thanks to NZ for her diligence on keeping the Bar Council governance up to date.

### **11. Constitution Amendments – process for tied votes in Officer Elections**

The paper suggests the Chair to have the casting vote if there are tied votes for officer elections. A doodle poll vote was circulated to members via email with the result being a majority in favour of the suggested amendments.

### **12. Any Other Business**

CE highlighted the Bar Council's Covid-19 Working Group will be holding a free Covid-19 and the Courts Q&A from 17:30 onwards on 10 February 2021. The panel includes DSQC, JK, JMQC and HHJ Rosalind Coe QC. Please encourage your colleagues to sign up! The link is: <https://www.barcouncil.org.uk/training-events/calendar/covid-19-and-the-courts-q-a-session.html>

IBH highlighted BACFI with the Inner and Middle Temples, will be holding a webinar on [The Only Way is Ethics](#), on 25<sup>th</sup> March.

TD commented (via the Teams Chat): we need to discuss how we can move the criminal courts forward. Trying to operate as normal is impossible during the pandemic, as it is too easy for defendants and jurors to drop out claiming to be shielding etc. More evidence should be heard online, and smaller juries, plus more remote working may be the answer. DL responded to TD's comment; DL has been involved in a couple of multi-handers over the past few months and has had no problems with the jurors, all of whom have been enthusiastic. Getting defendants to court from prison is what derails the case due to HMP lockdowns. Having a smaller jury will not solve this issue. DSQC added that courts are being modified to deal with multi-hander cases as they take up a lot of court space. CGQC commented (via the Teams Chat) Smaller juries is the thin edge of the wedge – cost cutting is cost cutting for tomorrow. TD also added that one thing that has helped is all non-trial hearings going to CVP which has allowed a lot less people in the courthouses and also saves on travel time. MB highlighted there has been significant research (across various jurisdictions) which indicate that small jury sizes adversely affect the representativeness of juries.