



**Minutes of the Bar Council meeting  
held on Saturday 12 January 2019 in the Old Hall, Lincoln's Inn**

Present:	Richard Atkins QC	Chair
	Amanda Pinto QC	Vice Chair
	Grant Warnsby	Treasurer

**Apologies for absence**

Apologies for absence were received from: Richard Archer, Kieron Beal QC, William Boyce QC, Robert Buckland QC MP, Charles Burton, Catherine Collins, The Rt Hon Geoffrey Cox QC MP, Quentin Cregan, Sarah Crowther QC, Tim Devlin, Michael Duck QC, William East, Richard Gibbs, Caroline Goodwin QC, John Goss, Fiona Jackson, Frances Judd QC (alternate attended), Nicholas Johnson QC, Rupert Jones, James Kitching, Christina Michalos, Rebecca Murray, Alison Pickup (alternate attended), Nigel Sangster QC, Andrew Spink QC, Steven Thompson QC, Linda Turnbull, Mark Trafford QC, Anton Van Dellen, Matthew Weaver and Sara Wyeth.

The following did not attend and did not send apologies: Neil Baki, Melissa Coutino, Christopher Henley QC, Rachel Langdale QC, Paul Mendelle QC, Martin Nelson, Francesca O'Neill, Christopher Rees, Ryan Richter, Andrew Granville Stafford, John-Paul Swoboda, Rhodri Thompson QC

72 further members attended

**1. Minutes of the last meeting & matters arising**

The Chair wished a happy New Year to those members of the Bar Council who were present and thanked them for attending the meeting. Noting that there were a lot of apologies, he said that he would like to see as many members attending meetings as possible.

Reminding members that the Constitution allows for many members of the Bar Council to send alternates to meetings when they are unable to attend, the Chair spoke of the importance of hearing the voices of those in the Bar Council and the need for its members to report back to their constituents. He recalled his experiences as a circuit representative saying that at the very least, members should be telling constituents

what they are doing and changing the opinions of those who ask, 'what does the Bar Council do for me?'

The Chair wished the Attorney General, who had intended to come but suffered a minor injury, a speedy recovery.

The minutes of the meeting on 3 November 2018 were approved.

## **2. Statement by the Chair**

Referring to the long length of the Chair's Statement, the Chair reported that it had been longer a week ago before he revised it. Acknowledging that there is a lot to cover, he promised to keep it shorter in future by removing information that should be covered by committees in their reports.

Explaining that the Chair's Statement sets out all the leavers and joiners, the Chair said that he had tried to speak to all the newly appointed members before the meeting. He encouraged all members to approach him with any suggestions or concerns, saying that he is available at all times, and he reassured members that they can call the Bar Council at any time if they want to get hold of him. The door is always open. He then reminded members of the Bar Council of the promise the made at his inaugural address to hold drop in sessions and reported that the first session, the format of which is still being finalised, will take place on 11 February. The idea is that members of the Bar can drop in and ask questions.

On the subject of joiners, the Chair welcomed new members William East, who joined the Bar Council after the Chair's Statement was published. William, who was not present at the meeting, joins as a representative for the Chancery Bar Association and the Chair said that he looked forward to properly welcoming him on another occasion.

The Chair reported with sadness, the passing of Paul Randolph of Field Chambers who died on 8 January. Paul, a friend to many at the Bar Council, was a former member of the Alternative Dispute Resolution Panel, and the Chair sent his condolences to his family.

The Chair reported that most of the circuits have completed vulnerable witness training, although the South Eastern Circuit is a little behind. Introducing Mark Fenhalls QC, the new Leader of the South Eastern Circuit, the Chair explained that Mark has sent out a message to the circuiteers to encourage them to complete the training. Many have done the training but have not finished the final component.

Reporting that AGFS continued to 'rumble along', the Chair said that the Criminal Bar Association is taking soundings. Referring to item 7 on the agenda, concerning issues at the Criminal Bar, the Chair explained that Tim Devlin had wanted to raise issues but he is not in the country at present. The item will therefore be put on the agenda for the next meeting. However, the Chair went on to explain that the new Scheme 11 is a different one from the old one. He explained that there have been several instances

of people of plugging in figures and finding that their predicted earnings are ‘down massively’, without realising that they are not using the correct scheme. Unless the figures are run through the correct scheme properly, people are not comparing like for like. Reporting that one of the pupils at 5KBW has produced an app that will allow people to run the figures correctly, the Chair promised that the Bar Council will discuss the issue in more detail when Tim Devlin is present.

The Chair informed members of the Bar Council that there is now a wellbeing helpline and said that the number and website details are included in the Chair’s Statement at paragraph 17.

Referring to paragraph 21 of the Chair’s Statement which discusses Bar Council services, the Chair turned his attention to the Bar Representation Fee (BRF) and reminded members that he had threatened to write to non-payers. Admitting that he has not written to all Bar Council members who are not paid up, the Chair said that he had spoken to some who have reassured him that it was an oversight and subsequently paid. As to the others, he reported that a letter is now in draft and allowed them 7 days grace! The number to call at the Bar Council to pay the BRF is 020 7611 1329. The next target will be members of Bar Council committees who have not paid.

Talking about the Silks List 2019, which was announced on Thursday 10 January, the Chair explained that there had been a ‘minor blip’ in communications. Successful applicants had all received a letter in December which began ‘I regret to say’ which had given the impression that they had been unsuccessful. In actuality, the letter was apologising for the delay in announcing the list and its second paragraph detailed the good news. Describing this as ‘not helpful’, the Chair said that he had brought to the attention of the Queen’s Counsel Appointments (QCA) the need to put good news upfront.

Congratulating all new Silks, the Chair mentioned particularly Christina Michalos, a Bar Council Gray’s Inn Representative, Jessica Stephens, the Bar Council subscriber elected by the Technology & Bar Construction Bar Association, Tom Dumont, a long-standing member of the Law Reform Committee, Nick Craig, a long standing member of the International Committee, and the Treasury Solicitor Jonathan Jones, who has been made an Honorary Silk. Encouraging those who did not get Silk not to be too ‘downhearted’, the Chair said that if he could do it, anyone could and urged them to give it another try next year.

Describing the Bar Conference as successful, the Chair thanked its Chair, Lucinda Orr. The Bar Council is looking at a different format for the 2019 Bar Conference, in conjunction with Rachel Langdale QC who will chair it. Discussions have been held with SBA chairs about the possibility of running parallel sessions of relevance to parts of the Bar. The date is 23 November and the Chair asked members of the Bar Council to put this in their diaries.

Turning his attention to Circuit Visits, the Chair informed members that he will be visiting the Wales and Chester Circuit on 5-6 February and the North-Eastern Circuit on 13-14 March. The dates for the remaining circuits are yet to be finalised but planning is underway. As far as the South Eastern Circuit is concerned, the Chair said that he intended to attend 'any Bar Mess they want me at' and pledged to 'pay my own way!' As to the European Circuit, the Chair reported that he will be visiting Brussels on 29 February to 'sort Brexit out'!

The Chair finished his statement by welcoming Amanda Pinto QC as the new Vice Chair, Grant Warnsby as the new Treasurer and intruding Malcolm Cree, Chief Executive, to new members.

### **3. BSB Report**

Baroness Tessa Blackstone presented the BSB Report. She was joined at the meeting by Vanessa Davies, Director-General, and, Wilf White, Director of Communications and Public Engagement.

Wishing members of the Bar Council a happy New Year, Baroness Tessa Blackstone promised to be brief given that the BSB Report was circulated in advance with the papers for the meeting but said that she had a few points to highlight.

Starting by talking briefly about the CPD review, Baroness Blackstone reported that there have been high levels of awareness of compliance. However, she warned that the LSB is watching quality assurance closely. Therefore, if the current approach is not seen as rigorous enough, there will be changes. CPD is a key requirement and the BSB is working to assure awareness and evaluate its impact. To achieve this, the BSB will continue to work with the Bar Council to support barristers. She said that it is never too late to learn something new.

Baroness Blackstone advised barristers not to take fright at the 'horribly detailed' guidance on the authorisation framework. She explained that while the current providers of the BPTC course requested lots of detail, the BSB is working on something less complex for chambers and will be piloting this.

Saying that the Fees and Charges Consultation speaks for itself, Baroness Blackstone said that the key point is to what extent costs can be covered. The BSB is keen to hear the views of the profession. Assuring members of the Bar Council that the BSB is aware of consultation fatigue, Baroness Blackstone reported that the BSB is aiming to produce less consultations going forward.

Reporting that Wilf White is reviewing the pupillage awards, Baroness Blackstone said that she thinks they are justified but that the review is necessary.

Talking about the new rules governing regulatory intervention, Baroness Blackstone said that while the BSB has been given intervention powers, its use of these is likely to be extremely rare and the powers will only be deployed in exceptional circumstances.

Baroness Blackstone reported that Irena Sabic has been recruited to the BSB Board as a barrister member. The BSB welcome her appointment as it feels that her skills will compliment those of the others and are pleased to announce that she began in the role on 1 January 2019.

Guy Fetherstonhaugh QC acknowledged that Baroness Blackstone is a fan of keeping the burden of regulation as low as possible. He said under the previous scheme, barristers completed forms and a team of staff checked them and asked whether there are less staff employed to administer CPD under the new regime. Vanessa Davies replied that there are 'far fewer' staff and explained that while there were six staff employed under the old scheme, there are now two members of staff that work on CPD. Although they work solely on the basis of random spot checking, this is a small component of their roles. The costs of supervising CPD have reduced significantly.

The Chair said that he was delighted to hear the news about fewer consultations saying that he has 'banged on about' the number of consultations for a while and he now has a vested interest. He then informed members of the Bar Council that the LSB are currently consulting on the new International Governance Rules (IGRs). Saying that the deadline to respond is 21 January 2019, he encouraged members of the Bar Council to look at it and to send their views in to the Bar Council. Describing it as a very important consultation, the Chair emphasised the need to be strong in resisting complete separation from the regulator.

#### **4. Introductory address to Bar Council**

Likening the Director of Public Prosecutions (DPP) to Dr Who, the Chair reported that Max Hill QC is back on the Bar Council. In his previous incarnations, he has been Chair of the Criminal Bar Association, and, Leader of the South Eastern Circuit (2013-2016), during which time the Chair worked closely with him as he was, himself, Leader of the Midland Circuit. Now, as the DPP Max Hill QC re-joins the Bar Council as an ex-officio member following some time spent as the Independent Reviewer of Terrorism Legislation.

Noting that members of the Bar Council may have seen Max Hill QC on television, the Chair said that he is delighted when people who have 'done the day job' get the top jobs.

Max Hill QC said that he wished to begin by saying what a pleasure it was to follow Baroness Blackstone, who he met for the first time that morning, and to thank her and the BSB representatives for staying for his item. He said that it was also a pleasure to attend his friend's first Bar Council meeting. Wishing the Chair well, he wished the same for another friend, Amanda Pinto QC, saying she will make another fine Chair of the Council for 2020 and told members of the Bar Council they are in the best of hands.

Saying that he had been a committed member of the Bar Council for two lengthy spells in the past, as CBA Chairman and then as the Leader of the South Eastern Circuit, Max Hill QC explained that his Bar political work commenced in the 1990s with Bar Mess and then more junior Circuit roles. He said that he hoped that members of the Bar Council would see him now as a friend and not a stranger and made it clear that members can trust him to listen to their views and arguments, and to do whatever he can to help.

Reminding members that views and arguments must be their own, Max Hill QC said that he feels incredibly lucky to be the Director of Public Prosecutions. He explained that he is responsible for almost 6,000 staff nationwide and said that it is those staff and all of the work of the CPS that has to be his first priority now. The Bar must develop its own arguments. Max Hill QC said that he cannot 'make the running' for the Bar Council but made the point that he will always listen to what members have to say.

Max Hill QC said that it is very important to him that the CPS maintains its good relationship with the Bar Council and members of the external Bar in general and expressed his wish to work together, openly and constructively, to the collective benefit.

Max Hill QC said that he wanted to start by talking a little about his priorities for, and first impressions of, the CPS, before going on to the interaction between the CPS and the external Bar and then the issue of fees.

Explaining that, like all criminal barristers, he has interacted with the CPS throughout his career, Max Hill QC said that he had consistently been impressed by what he had seen from the perspective of trial counsel and informed members of the Bar Council that this has been further reinforced in the 10 weeks since he became DPP. Across the organisation are dedicated, enthusiastic and talented people determined to deliver justice. He said that he feels very privileged to lead them.

Acknowledging that there are things that can be improved and that mistakes have been made, Max Hill QC assured members of the Bar Council that the vast majority of work done day-in, day-out, is done well.

Setting out his aims, Max Hill QC said that he wants to build understanding of and confidence in the work of the CPS - to build recognition that the CPS provides robust legal decisions and that it successfully brings cases to court every day. To do this, Max Hill QC said that he will be focusing on the quality of casework. His ambition is to make sure that the CPS achieves the highest quality of service that is possible. In addition, he will be supporting CPS people in their work, in their careers and in their wellbeing.

Turning his attention to advocacy, Max Hill QC said that supporting CPS people does not mean that the CPS won't also be working with the external Bar, which is essential to the effective operation of the criminal justice system.

Speaking of his first hand knowledge of the quality and dedication of those at the external Bar, Max Hill QC said that he wanted to make it clear that support for those at the Bar will continue under his tenure.

The CPS relies on the Bar. It is a part of the same effort there is a continuing need to work closely together. Max Hill QC said that he wants to continue the effective balance that was struck by his predecessor in terms of internal and external advocacy, which is set out in the Advocacy Strategy.

The strategy's three principles are:

- We will instruct the right advocate for the right case.
- We will develop, support and mentor advocates, providing opportunities for career progression.
- We will maintain effective partnerships with external providers and stakeholders.

Focussing on career development, Max Hill QC reported that the CPS has recently introduced a new induction programme for its internal advocates and are developing a comprehensive training programme for every stage of an advocate's career. The CPS wants to provide members of the external Bar with access to relevant training and are adding new content to their External Prosecution College, which is available to all members of the Advocate Panels as well as solicitor agents.

Max Hill QC said that he also wants to see the CPS and external Bar work more closely together on career development.

Saying that he 'served for quite a long time' at the external Bar before making the move to the CPS (31 years) Max Hill QC was clear that he believes in individuals and thinks that the Bar Council and CPS could benefit if others moved earlier and more often between roles. He said that he had recently been asked to be told about the number of Bar secondees in the CPS and that he understands that the feedback about their experiences is very positive. He would like to see more of these secondments, as well as permanent moves, in both directions.

Another key element of the advocacy strategy is the Advocate Panels and Max Hill QC welcomed those new members who joined in December.

For anyone who not familiar with them, Max Hill QC explained that the CPS Advocate Panels provide a time-limited list of quality assured advocates to undertake criminal prosecution advocacy for CPS in the Crown Court and Higher Courts.

Following last year's application window, there is a total of 2,907 advocates on the general crime panel at levels 1-4. Of these, 48 were new joiners and 202 were upgraded to a higher level.

Max Hill QC reported that preparations ahead of the 2020 Advocate Panel refresh will continue. The CPS wrote to Panel members in May last year confirming the fee earning thresholds applicable to secure an invitation to join the next iteration of the General Crime and Rape Panel – the 2020 Panel.

Max Hill QC mentioned that the CPS is undertaking a review of its Advocacy Policy and Guidance over the coming year. This will include a review of the National Standards of Advocacy, CPS-Bar Standards and Advocate Panel Members Commitment. He promised to keep the Bar Council informed of the progress of all of this work.

Max Hill QC said that he could not talk about the external advocacy arrangements without discussing fees, which the CPS will be reviewing. Describing the 2012 scheme, Scheme C, as 'ripe for review, Max Hill QC said that the CPS already held an early meeting before Christmas to open discussions at which some of the senior members of the Bar Council were present.

Saying that he understands the request for increased fees, Max Hill QC said that he has 'fought these battles on behalf of the Bar in the past', something that some longer standing members of the Bar Council might recall. He quoted the words he spoke to his predecessor Keir Starmer at a Bar Council meeting in March 2012, on the eve of the introduction of GFS Scheme C, "It is our view that, if these fee rates are implemented, there is a substantial risk of significant harm to the public interest in that the pool of independent advocates of sufficient experience and ability willing to prosecute, at these rates of remuneration, is likely to diminish significantly".

He said that his explanation is the same as Kier Starmer's then - all of us, have to understand the financial position the CPS faces.

The CPS budget has reduced by 37% in real terms since 2010. Staff numbers have fallen 30%. By March 2012, Keir Starmer reported that CPS staff which stood at 8,800 in December 2010 had reduced to 7,100. What no one present was to know in 2012, but know only too well now, is that the CPS operating budget would continue to be squeezed hard, and overall staff numbers are now below 6,000. Any overall increase in prosecution fees would cost the CPS money that is not currently in its budget. That is the hard fact.

Nevertheless, the CPS is committed to reviewing the Graduated Fee Scheme and will do that in consultation with the Bar. He quoted once more from March 2012 – this time the words of Keir Starmer who 'sounded a warning', "Keir Starmer QC questioned the efficacy of the governance procedures within the Bar Council which allow a working group to negotiate on behalf of the Bar, but which does not appear to

represent its constituency. This is the second time since he was appointed DPP that the CPS has worked with the Bar Council on a project, a compromise is found and then it all unravels at the end (the first example being the CPS Panels)''.

Max Hill QC asked members of the Bar Council to heed the governance warning. The CPS wants to hear from the Bar Council on a truly representative basis. He suggested that this should mean the Bar Council and the CBA as one, rather than separately and asked members of the Bar Council to understand that there will be limitations on what the CPS can do. A lot will depend on the overall funding situation for the CPS that will be determined through negotiations in the next spending review that will happen later this year; timing and possibly outcomes are Brexit-affected, just like everything else.

Max Hill QC made the point that any remuneration scheme must be affordable now and in the longer term and take into account anticipated changes in future caseloads and mix, as well as the need to attract able advocates to undertake prosecution work. The 'constructive' initial meeting with representatives of the Bar Council, CBA, Circuit Leaders and the Young Bar referred to earlier will help shape the review of the GFS. The CPS will update the Bar Council on timings for that soon and will ensure that members are kept informed and engaged.

Going back to his 2012 warning for which he quoted about the quality of prosecution advocates willing to accept Scheme C, Max Hill QC said that he understands that the CPS must watch this over time but pointed out that there continues to be no shortage of applicants to the Panels, as the updated figures illustrate.

Max Hill QC said that he also wanted to mention the recent issues with the payment of fees and to apologise to anyone who was affected by a delayed payment. He explained that the CPS faced a technical software problem just before Christmas, which proved much more difficult to resolve than originally anticipated. It resulted in payments to around 50 barristers outside the normal 30-day terms. The finance team say that over many years of use they have never had a problem with the system that has not been resolved very quickly. Unfortunately, this was genuinely a first.

Pledging the CPS's commitment to the timely payment of fees, Max Hill QC said that he knows that the CPS's good record on this is recognised by many at the Bar. While very sorry that the CPS did not meet its standards on this occasion. Max Hill QC said that he hoped it would be seen within the wider context as an isolated issue outside the CPS's control.

Apologising on behalf of the CPS for not having communicated the problems to the Bar Council earlier, Max Hill QC explained that the issue arose just before Christmas. He promised that the Bar Council will receive early notification if it is ever to happen again.

Expressing gratitude to the Bar Council for getting in touch with us on the issue, and offering assistance, Max Hill QC said that he hopes that this is a way in which the Bar Council and CPS can continue to work together. He said that maintaining a constructive working relationship between the CPS and the Bar is a theme on which he wished to end and described the working relationship as 'crucial'.

And so that is a theme on which I would like to end – maintaining a constructive working relationship between the CPS and the Bar is crucial for us both. Reiterating his commitment to this, Max Hill QC said that he is looking forward to working with members of the Bar Council in the months and years ahead.

Robin Allen QC congratulated Max Hill QC on his appointment, saying that he was delighted that he had been recruited to the role. Describing the Inclusion Strategy 2020, introduced by Alison Saunders, the previous DPP, as year as 'welcome', he asked what Max Hill QC could say about monitoring to make sure that there is no disproportionate effect on women or BAME barristers, against a backdrop of diminished workloads and pressures on costs and fees. Max Hill QC said that he defers to his Equality Division and said that the CPS is likely to appoint a director. However, he said that he has been pleasantly surprised to find that the Equality Division – invisible to most – 'looks good'. Reporting that inclusivity at the CPS is 'quite remarkable', Max Hill QC reassured Robin Allen QC that, when looking at all the factors, the CPS holds up very well. The staff engagement index reveals remarkably good statistics for the CPS and even after a difficult year, the statistics are stable. He said that the CPS is 'hot' on discrimination, anti-bullying and wellbeing, and has been for at least 10 years. In his opinion, he thinks that the 2020 strategy has been successful, and the CPS is already turning its attention to the 2025 strategy. Talking about the 'headlines', Max Hill QC promised members of the Bar Council that they are looking at a department with a 'good story to tell'. However, he explained that as the CPS is dependent on its external advocates, its duty is to its internal advocates. But, the CPS remains conscious of the need to do the same for the internal Bar and he invited members of the Bar Council to look at the strategy and make their points to him.

The Chair thanked Max Hill QC and his assistant, Fran Riding, for coming to the meeting. He spoke of the need to back up arguments with evidence and explained that the Bar Council has been meeting with the MoJ and CPS, together with the Criminal Bar Association and the Circuit Leaders to make a case. The Bar Council is aware of the spending review and is monitoring the case for an increase in spending but there is a need to understand how the MoJ will make the case to the Treasury. Saying that he wished to 'scotch' the suggestion that there is 'somehow or other a cabal of QCs' who are pushing for more money for themselves and not for the juniors, the Chair explained this as 'simply wrong' and reassured members of the Bar Council that everyone who makes the case for increased funding has at heart the junior Bar. The

Bar Council will do its best to present evidence and make the case. While weak communication may have been a problem in the past, it will not be going forward.

Noting that the agenda for the meeting was fairly short and contained two items concerning crime, the Chair reassured members of the Bar Council that the Bar Council does not deal solely with crime. The Bar Council is not the CBA – it considers the bigger picture. Saying that he had received a message about issues in family as a result of a statement that was sent out concerning crime, the Chair reminded members with an agenda topic to talk to him or raise it for inclusion.

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

Malcolm Cree began by saying that it has been 16 months since he started in the role and he is already on his third Chair! He reported that the team are refreshed and in ‘good form’ following the Christmas break but outlined some changes in Policy Team. Two new posts aimed at helping make the case for justice and addressing the Spending Review have been created in the areas of crime and research. While the coverage of the Spending Review is unknown – perhaps one, three or five years – it will happen.

Turning his attention to the LSB’s IGRs consultation, Malcolm Cree said that although the LSB cannot force the legal separation of the Approved Regulator (the Bar Council) from the front-line regulator (the BSB), the Bar Council is of the opinion that is an attempt by the LSB to go as far as they can towards that position. The proposed changes to the IGRs include removing the Bar Council from BSB Board appointments and revising shared services. The BSB are being very open with the Bar Council but, nevertheless, the rules pose a threat.

Malcolm Cree reported that the Bar Council has attracted increasing amounts of press and broadcast media attention recently, which has had some success in raising the Bar Council’s profile.

Informing members of the Bar Council that the Information Management Programme continues, Malcolm Cree explained that bookings for all training and events activities are now to be made through MyBar. The programme incorporates the revision of the website, the ID card scheme and the support to BSB initiatives. Meanwhile, the Finance Team is undertaking an improvement programme.

The latest news on the Property Project is that the Bar Council will be remaining at High Holborn. However, leases need to be negotiated and the Bar Council will relinquish the 4<sup>th</sup> floor on completion of refurbishing the other floors.

The Chambers Package is due to launch in a month while BARCO will be closing. Malcolm Cree explained that while BARCO had fulfilled its purpose and benefitted some, it was not cost effective and needs to close.

Malcolm Cree finished by saying that the Executive Office have been working hard to support the new Chair and reported that this is going well.

The Chair invited members of the Bar Council to ‘come in and see us’ at the Bar Council offices and promised them that they would be amazed at the amount of work that is going on. While the tendency is for people to look after their own interests and

stay in their comfort zones, the staff at the Bar Council are working on a 'deluge' of consultations, pulling research information together and scrutinising a range of policy issues. Members of the Bar Council are welcome to drop in and can arrange this by contacting the Executive Office Team.

Referring individually to staff members who were present, the Chair explained that Natalie Zara, Head of Governance, turns up at 'the crack of dawn' to set up the Bar Council meetings. Vivien Kintu, Executive Assistant, runs the Chair's diary and ensures that the daily programme for the Chair is on track. Phil Robertson is the Director of Policy, Mark Hatcher, once the Director of the Bar Council is now the Special Advisor to the Chair who keeps the Chair 'on the straight and narrow' and 'knows everyone', and, Isabel DiVanna is the Commercial Director.

Explaining that there are staff members working 'way past the hours they should be' in an effort to make life at the Bar easier, the Chair finished by saying that it is all too easy for barristers to ask 'what has the Bar Council done for me'?

## **6. ICBET request for capital**

Nicholas Vineall QC wished members of the Bar Council good morning and explained that although he is the Vice Chair of the Education and Training Committee, he was presenting this item 'wearing a hat' as an ICBET Trustee.

Explaining that the request was not actually a request for capital, as the agenda item suggested, Nicholas Vineall QC said that it is a request for approval to spend £2M of ICBET's capital. The Annual Report from the Trustees was also included in the papers.

Nicholas Vineall QC acknowledged that members of the Bar Council would have read the accompanying paper, which also included the annual report from the Trustees, and said that he would try to fill in the background details.

The Inns of Court Bar Educational Trust (ICBET) is the successor to the Council of Legal Education (CLE). Since 1997 there has been no Bar School of Law as the Inns withdrew from providing financial training to the Bar from this date. Instead, the provision of training was opened up to the providers to provide the vocational stage of the training. When the CLE wound up, its assets went to ICBET.

Over time, money which had built up has 'sat in a pot'. ICBET has invested the money and has been permitted to create grants from funding to a number of organisations including the Circuits and the Free Representation Unit (FRU). ICBET has not touched the capital.

The Inns now wish to re-enter the training market as a provider. They have been working through the Council of the Inns of Court (COIC) and the Inns of Court College of Advocacy (ICCA) to develop a proposal to provide the vocational stage of training. They propose a new way of providing training that will comprise two parts – an

inexpensive first part followed by a second stage focussing on advocacy skills in a more formal way. ICCA thinks that, because the course is cheaper and more flexible, it will be able to deliver training twice a year.

COIC approached ICBET for funding and the Trustees want to apply £2M of their £3.6M capital to fund the set-up of the costs of the proposed ICCA course.

Nicholas Vineall QC explained that there have been/are two complications:

- 1) Some doubts as to whether amendments to the Constitution had been properly made. This issue has now been resolved and ICBET are grateful to Amanda Tipples QC for her work on this; and
- 2) Before ICBET can divest itself of capital, it must have the approval of the Bar Council and the Inns.

Seeking approval of the members of the Bar Council, Nicholas Vineall QC said that, in his view, the new course is undoubtedly a good thing. It puts the Inns back into their role as education providers and it is good for the students who take the course. It is also good for other students as, if it proves successful, it will put downwards pressure on other providers to lower their fees. He said that without the £2M, it is unlikely that it will go ahead, or, if it does, it will be more expensive.

Nicholas Vineall QC finished by noting the symmetry in the money going back to fund what it used to fund.

The Chair reported that the GMC had debated the issue and agreed to the request and opened the floor up for discussions.

Paul Hopkins QC asked what will happen to the grants for Circuits if the request is approved. Nicholas Vineall QC replied that ICBET has £3.6M which is enough for ICBET to continue to fund those activities at the same level for a long time. If ICBET were to be wound up in the future, the money would be passed to another organisation to do this.

Rehana Popal said that it was her understanding that the new course would comprise two parts - academic and advocacy – and that the costs would be separated out into £200 for the first part and a greater sum for the second part. She continued by saying that she also understood that to get through to the second part, a student would need to pass the first part. However, she said that she was aware that in recent developments that have come to light, this may not be the case. Instead, students will still have to pay large amounts upfront. The Chair acknowledged her point but said that it did not relate to the topic for discussion and promised to return to it later in the meeting. Rehana Popal replied that she is concerned that the ICBET money will go towards funding a course structure that is already in existence.

Guy Fetherstonhaugh QC said that Baroness Blackstone had been right to acknowledge consultation fatigue but emphasised the importance of Members

responding to the current consultation on Future Bar Training which closes in March. Embedded in the consultation are aspects that propose to reallocate regulatory costs between the profession (via the PCF) and students. There are arguments on both sides but the real 'sting' is that the BSB wants to front load costs onto Part 1 of the proposed new model two part BPTC. He explained that the whole attraction of the two part course is the low cost of part one. If students have to pay regulatory costs up front, this could be damaging. He suggested that a better approach may be to segment the regulatory costs so that they are borne at least equally by those in part two.

Rachel Spearing, speaking as an ICBET Trustee, reported that ICBET has spent months scrutinising the issues with regards to the application made by COIC and the cypress scheme. The latter included the top Leading Counsel's assistance in Charity Law. She raised two points of importance in this process:

- 1) Supportive representations made by the Young Bar in consultation with the Inns with regards to cost and quality; and
- 2) Scrutiny and oversight from the Inns reps as to how ICCA will run the course. There are supportive case assessments regarding the impact on diversity.

Saying that Nicholas Vineall QC had already listed the general benefits of the scheme, for example reduced costs and less saturation, Rachel Spearing explained the importance of ICBET's proposition regarding the safeguarding of funding to Circuits to ICCA which was considered important but separate to the current decision before the Bar Council.

Colin Andress asked for more detail on what the money is to be spent on, saying that he was speaking out of a sense of stewardship of charitable funds. Nicholas Vineall QC replied that this was a question for ICCA. ICCA has produced a confidential paper which outlines the staffing for the new course and contains more detail about its content. He said that a new course will inevitably involve recruiting and developing staff, for which capital is required.

Guy Fetherstonhaugh QC informed members of the Bar Council that he has read ICCA's paper. The estimated set up costs are £2M.

The Chair put the proposal to approve a transfer of funds to the members of the Bar Council who voted unanimously in favour of the transfer.

Mark Fenhalls QC thanked Guy Fetherstonhaugh QC and the ICBET Trustees saying that he thinks this is the best chance of making the Inns more relevant and that the offer improves chances for students from all backgrounds to enter the profession. The Chair noted that barristers will now be able to answer the question, 'what is the purpose of the Inns'?

## **7. Issues at the Criminal Bar**

For the reasons explained above, this item was postponed until the next meeting.

## **8. Location for the Bar Council meeting on 6 July**

The Chair explained that, for a long time, Bar Council meetings were held at the Bar Council Offices in High Holborn where members were 'jammed' into a room. In recent years, a new system has seen the meetings held in the Inns. However, there is no room available at the Inns for the July meeting this year and it is therefore likely that the meeting will have to be held in High Holborn. Highlighting that the Bar Council is the representative body for barristers in England and Wales, yet it always meets in London, he asked members of the Bar Council to consider having a meeting on one of the Circuits. Acknowledging that he has a vested interest in holding the meeting in Birmingham, as it is his home city, the Chair asked members whether they would attend a meeting there if it started a little later and included a sandwich lunch. Saying that members travel from 'far and wide' therefore Birmingham is a convenient central location, the Chair asked members of the Bar Council to think about his proposal for discussion at the February meeting. He was clear that he did not mean to rule out other options. The topic will be discussed at the next meeting.

## **9. Any other business**

Robert Rhodes QC said that, first, he had a comment to make, "those of us who read the Chair's interview with Frances Gibb in Thursday's Times, and yesterday's *Bar News*, will doubtless appreciate his having left his *gilet jaune* at home today". He then asked a question about Make Tax Digital (MTD) explaining that from 1 April, barristers will have to produce quarterly returns of their business accounts for VAT. Saying that he could not speak for the whole Bar, he confessed that he has 'no idea' of what to do and asked that the Bar Council circulate some guidance telling its members precisely what has to be done. For example, which software to buy and where to buy it, what entries to make and how to make them and which forms need to be completed for HMRC. The Chair replied that this had been covered in BarTalk in December. To this, Robert Rhodes QC replied that he thought that had been preliminary and general and the Chair promised to reissue it. He reassured members of the Bar Council that he has asked the Bar Representation Committee and Remuneration Committee to look into this and discuss issues with the providers of the software. However, he explained the complications around different sets using different software.

Cyrus Larizadeh QC, Vice Chair of the Family Law Bar Association (FBLA), acting as an alternate for the Chair of FBLA, Frances Judd QC, said that he wished to pay tribute to Rachel Spearing who has recently stepped down from chairing the Wellbeing at the Bar Working Group and to Sam Mercer, Head of Policy: Equality and Diversity and Corporate Social Responsibility. Reporting that Nick Peacock has taken over as chair of the Working Group, Cyrus Larizadeh QC said that the Working Group's plan for the year ahead inter alia is that by the end the year every Member of the Bar will have accessed the Bar Council's Wellbeing site and that every chambers will have appointed a Wellbeing representative.

Cyrus Larizadeh QC also raised serious concerns about problems with the payment of very high cost (VHCC ) events fees in family cases saying that there are very long delays in payment. The average payment time for family practitioners at the conclusion of a VHCC was 11.8 months and the longest average wait experienced by all members for a final payment was just over 2 years. In other words, the average family barrister who does VHCC work has waited at least 2 years for payment in a concluded case at some point (and many had done so more than once). The average shortest time for payment on completion was 5 months, which is still far too long. He reported that financial pressure including worries about bankruptcy is a problem at the Family Bar. He informed members that he has set up a Working Group to try and resolve this and is hoping to establish a direct contract fees scheme with the Legal Aid Agency.

The Chair assured Cyrus Larizadeh QC that the Bar Council is alive to the matters he raised and that he has asked the Remuneration Committee to look into them. Recalling an earlier pilot on this subject, the Chair said that he would try to find any materials from it. Offering further assistance, he reported that he had spoken with Frances Judd QC and informed members of the Bar Council that discussion on the topic will be on the agenda for LAA meeting and Bar Leaders' meetings, to which Frances Judd QC and Cyrus Larizadeh QC will be invited.

The Chair drew the attention of the members of the Bar Council to the Magistrates Court Protocol saying that the Bar Council is in the process of trying to sort out how people get paid. This has now been drafted and the Bar Council is chasing a response.

Paul Hopkins QC asked Cyrus Larizadeh QC whether he is still inviting practitioners to give examples. Cyrus Larizadeh QC replied that he is and reported that whereas before Christmas responses were 'scattered', he received a flood last week. He offered to provide his details and send another email out.

Sheryn Omeri, present as an alternate for Alison Pickup on behalf of the Administrative Law Bar Association (ALBA), said that ALBA is proposing to hold an event concerning judicial bullying and wanted to know whether the Bar Council have any events planned to address this issue. The Chair replied that he did not know but that he could find out and asked that she liaise with Sam Mercer. The Chair made the point that it would be useful if organisations and individuals could liaise with the Bar Council before holding events so as to avoid duplication and present a unified approach. He promised that the Bar Council will provide all the assistance it can.

The Chair thanked members of the Bar Council for attending the meeting and said that he was looking forward to seeing them at the next meeting in Gray's Inn on 9 February.