



**Minutes of the Bar Council meeting  
held on Saturday 27 February 2016 at the Bar Council offices**

Present:	Chantal-Aimée Doerries QC	Chairman
	Andrew Langdon QC	Vice Chairman
	Lorinda Long	Treasurer
	Robert Buckland QC	Solicitor General

**1. Apologies for absence**

Apologies for absence were received from: Mirza Ahmad, Steven Bramley CBE, Melissa Coutinho, Sarah Crowther, Joseph Curl, Malcolm Dodds, Guy Fetherstonhaugh QC, Rupert Jones, James K Juggapah, Christopher Kennedy QC, Paul Lewis QC, Duncan McCombe, Benjamin Myers QC, Gordon Nardell QC, Grace Ong, Angharad Mary Price, Rachel Spearing, Andrew Granville Stafford, Helen Tung, Jacqueline Wall and Jeremy Wright QC.

The following did not attend and did not send apologies: Rachel Ansell QC, William Boyce QC, Richard Brent, Simon Broomfield, Harriet Brown, Tom Cockroft, Richard Gibbs, Shiv Haria-Shah, Nathalie Lieven, Francesca O'Neill, Lucinda Orr, Charlotte Pope-Williams, Emma Price, Laurie Rabinowitz QC, Christopher Rees, Alison Saunders, Mark Trafford QC and Sundeep Singh Virk.

70 further members attended.

**2. Minutes of the last meeting**

There were no amendments to the minutes of the last Bar Council meeting (9 January 2016), which were approved.

**3. Statement by the Chairman**

The Chairman introduced two new members of staff to the Bar Council: Bev Dougherty, Executive Assistant to the Officers, and, Natalie Zara, Head of Governance.

The Chairman announced changes in the order of the published agenda explaining that item 8, 'Fixed costs and online court: for discussion', would be taken as item 5 in order to benefit from earlier input by the members.

The Chairman apologised for the late circulation of the Chairman's written statement.

### **Bar Conference and Young Bar Conference**

An error in paragraph 7 of the Chairman's written statement was corrected. The Young Bar Conference will take place on Saturday 15 October 2016, not Saturday 16 October 2016 as published. The Conference will be chaired by Gerard McDermott QC and the organisers are currently considering speakers. The Chairman asked members to contact her, or Gerard McDermott QC, with suggestions for speakers.

### **Bar Council Officer elections**

The window for nominations for Chairman, Vice Chairman and Treasurer of the 2017 Bar Council will open at 10.00 am on Monday 4 April and close at 17.00 on Friday 29 April. The Chairman announced that she is intending to hold a hustings at the Bar Council meeting following the nominations process. The purpose of the hustings is to allow members to hear from everyone that is standing, in person. The Chairman encouraged members to nominate themselves and others.

### **Bar Representation Fee (BRF)**

The Bar Council currently have a campaign going on to increase the BRF take up across the profession. The Chairman reminded those who have yet to pay the BRF to do so and encouraged members to ensure that their Chambers' have a good take up.

### **Other matters**

The Chairman said that she has asked Courtenay Griffiths QC to join the Bar Council and GMC as a co-opted member. She sought agreement from the members on the Bar Council co-option who confirmed their approval.

As part of a campaign to improve awareness of the role of barristers, the Bar Council is publishing a list of '10 things that we do' each month. The lists, which will be put out through social media, provide a sense of the breadth of the work carried out by barristers. January and February were available as hand-outs at this meeting.

Referring to the proposal for the introduction of terms of reference and a constitution for the Bar Council-appointed Editorial Board, scheduled as part of item 5 on the agenda, the Chairman provided some background context to the paper. The publishers of Counsel Magazine, Lexis Nexis, have recently dispensed with the services of the previous editor and replaced her with a new editor against the wishes of the Editorial Board who were not consulted. The Bar Council had not been consulted prior to the decision being taken. On reviewing the existing contractual arrangements with Lexis Nexis, it appears that the Bar

Council has no control over who Lexis Nexis appointments. With the benefit of hindsight, these terms do not seem to adequately protect the Bar's interests and the Bar Council is seeking to review its relationship going forward. More broadly, a recent review of relations suggests that the Bar Council should be more pro-active both in its relationship with Lexis Nexis and the Editorial Board. It is working on both. Thanking the present Editorial Board, the Chairman commended them on the 'fantastic job' that they have done. However, she acknowledged that many of the Editorial Board members have been a very long time in post and that the make-up of the Editorial Board is not reflective of the diversity in the profession. It is hoped that the new terms of reference and constitution, that are part of a wider aim to ensure fairness and transparency in appointments, will foster mutual expectations between the Bar Council and the Editorial Board.

Discussions about the introduction of a quality mark are ongoing. The profession used to have 'BarMark' but this is no longer in existence and research is being carried out into whether one, or more, quality marks are needed and the purpose they might serve. A survey has been published in Bar Talk this week and feedback is welcome.

Daniel Sternberg reported a fault with the online survey, which the Chairman said she would look into. [NB There were a number of glitches with the survey which have since been corrected]

Nina Caplin asked the Chairman if she is targeting the BRF awareness campaign to other bodies such as the Government Legal Service. The Chairman said that she would take her comments on board and confirmed that the campaign is targeted across the whole profession.

#### **4. BSB report**

The Chairman of the BSB introduced Dr Vanessa Davies, Director-General of the BSB, and, Naomi Ellenbogen QC, Vice-Chair, and drew the attention of the members to the BSB's report attached as annex 3. He said that the BSB are continuing to make good progress on their governance reforms: the Board has been refreshed and there is a clearer line of sight to policy discussions. The Chairman of the BSB emphasised that the reforms are not designed to 'cut barristers out of debate' and reported that the BSB has a good team of barristers on the Board whose views are representative of the profession.

Sir Andrew Burns commented on a number of matters as follows.

#### **Consultations**

There are no BSB consultations published at present but one on 'threshold standards' will be published next week for a period of 12 weeks. The consultation complements the work done on the professional statement and will allow leaders and providers to 'get it right'.

At the end of March, the BSB will be meeting to discuss the future of Bar Training and this will lead to another consultation. The Chairman of the BSB talked about the variety of ways, other than responding to consultations, that the profession can engage with the BSB and said that the BSB is always open to communication.

### **Risk**

The BSB are addressing the need to make sure that its work is evidence and risk based through the development of a Risk Outlook, Framework and Index. No consultation has been published in relation to this, but an open meeting was held and barrister members of the BSB have been involved throughout.

### **Women at the Bar survey**

20% of female barristers with a practising certificate have responded to the Women at the Bar survey.

### **Youth court advocacy**

Interest in the Youth court advocacy work has been expressed throughout the whole community and the Chairman of the BSB promised to report back to the Bar Council before any process is finalised.

### **Supervision work**

There has been a positive reaction to the work of the Supervision Department. Barristers have been very willing to engage with Supervision visits and have reported that they find it helpful.

## **5. Chief Executive's report – strategic planning**

The Chief Executive explained that the current strategic plan covers three years, 2014-17 and said that the Bar Council need to start thinking about its successor now. Saying that it is important, as a representative organisation, to involve the community in the process, he invited views on the process to adopt and acknowledged that lessons had been learnt from the previous approach that attracted criticism for being too rushed. This will not reoccur in this iteration.

Given the challenge of engaging the profession in this kind of discussion, there is a need to look for a range of different activities, using the natural opportunities that arise plus some specifically designed for the purpose. There are three stages to the strategic planning, which will take the best part of a year.

During the first stage, the period up to the summer break 2016, the Bar Council will aim to establish a conversation with barristers and others covering:

- the future for the legal sector;
- the title of barrister and its value to the profession, to business, to the administration of justice and to the public more widely;
- the particular issues and challenges facing the Bar;
- what the Bar Council's role should be, and how it should relate to other bar organisations;
- how the Bar Council can develop what it does to represent, promote and support all parts of the bar.

The second stage, from September to December, will involve the preparation and circulation of a draft plan, as a basis for a more formal round of consultations and discussions with key stakeholders, within and beyond the profession, to fine-tune the content. The Bar Council needs to hear and understand the voices of those outside the profession e.g. government/parliament, Law Society, regulators, media.

The third stage, January to March 2017, will be to finalise, launch and disseminate the plan, working in particular on the relationships that will be critical to its successful implementation. In parallel, the underpinning business plans will be developed to put the Bar Council in a strong position to begin implementation from the start of the 2017-18 financial year.

Proposed mechanisms for the first stage include:

- seeking views from Committees and staff on progress against the existing strategic aims; their view of the future; and, any new and emerging priorities;
- assessing existing products and services to check how valuable and relevant they are for different groups of barristers, and identifying any gaps that should be filled;
- trying to benchmark against some other membership bodies and identify best practice used to support their members;
- ensuring that GMC has the time and space to debate the emerging issues;
- providing a number of opportunities for the Bar Council itself to discuss key issues identified by GMC;
- inviting the key bar institutions to contribute;
- working in partnership with those organisations to reach out to the wider membership bar, creating local fora for discussion;
- perhaps running an on-line survey of the profession.

The government consultation on regulatory independence is likely to take place and could have implications for the direction of the strategic plan. Due to this, the planning process will need to be flexible and the Bar Council intends to proceed as outlined but

review progress once the consultation has been launched. One option may be to extend the current strategic plan and defer the exercise by a year.

The Chief Executive asked for the views of the Bar Council, its committees and staff, on the progress of the current objectives. Views on ways of engaging the membership more widely are required. He encouraged members to consider the services currently provided by the Bar Council and asked, 'have we got it right?'

Andrew Walker QC asked for an explanation of the purpose and practical use of the plan. The Chief Executive replied that the strategic plan is the Bar Council's highest level piece of governance. Available on the website, it sets out the broader aims of the Bar Council, underpinned by objectives that relate to all areas of work carried out by the Bar Council. The strategic plan applies to the representative side only and is not applicable to the BSB.

The Chief Executive finished by saying that he hoped he had raised awareness. He asked any members with ideas for the process, or any other ideas, to feed them back to him over the next few days.

## **6. Fixed costs and online court**

The Chairman said that she had previously mentioned that she is keen to identify topics and subjects for views at an early enough stage for them to be taken into account. Although the report on the online court by Lord Justice Briggs was published three days after the last meeting, the Bar Council have secured an extra week to respond and therefore the topic is up for discussion.

The Bar Council Working Group on Fixed Costs are working towards submitting a response to Lord Justice Jackson's lecture at a 'big tent' event in March. Although the two subjects are distinct, there is some overlap and the themes are interrelated. The papers for the meeting included a detailed briefing note.

Louisa Nye raised concerns in relation to the Young Bar. She made the point that an online court will deal with all the fast track cases that young barristers take to learn and develop skills. Fixed costs will also result in a lack of work for the Young Bar as solicitors are likely to keep work in house. She said that she would be interested to hear the views of other members.

The Chairman said that she has begun a programme of circuit visits and has recently been to Leeds, Manchester and Brighton. Barristers in all three cities were concerned about the lack of distinction between barristers and solicitors in the proposal for fixed costs.

Paul Stafford made the point that the cost of cases can get out of control. He listed lawyers' costs, VAT and court fees and questioned the cost of looking at costs. It would be helpful if the government could look at their own role in increasing the costs.

Gerard McDermott QC said that he is keen to look at the structure of the profession and how things are done wholly. The new generation would expect to see the Bar respond positively. It would be a mistake to cut representation out of all cases up to £25k but there is potential to service such cases for a fixed fee as part of a package. He said that, in his opinion, there are lots of opportunities for the Bar if it is willing to engage.

Andrew Walker QC agreed saying that the Bar know that the online court has the support of the Lord Chief Justice and others and is politically debatable. It may not be a complete solution but the Bar should be engaging with alternatives. The proposal may well cause lack of opportunities for the Young Bar and the Bar should be pushing for the online court to be set up in a way that will not exclude lawyers. He was less optimistic about fixed costs, saying that unintended consequences will create a risk of referral fee situations.

The Chairman reported that the Communications Team have implemented a programme of writing promotional pieces on direct access in the local press every couple of weeks. It is clear from the circuit visits that barristers are increasingly carrying out direct access work.

Robin Allen QC said that his Chambers have asked him to raise the issue of unintended consequences. He suggested trialling the online court in one area first as it would be too big a step to roll it out to the whole of England and Wales at once. In his Chambers, the barristers under 10 years all view direct access as something they need to look at constantly.

Philip Marshall QC made a plea on behalf of family law. The Briggs Report focusses on civil work for reasons that are understood but reports are often written from a civil or criminal perspective and the Family Bar comes to it too late. If the Bar is to engage positively, the whole range of civil litigation, including family, should be involved in the process. The Chairman replied that this is a valid point.

Max Hill QC observed that members are applying all the right thought processes. He asked members to focus on paragraph 22 of the fixed costs paper that talks about the lack of distinction between fees for solicitors and counsel as this is the main issue that 'excites'. The criminal courts have been battling this for years.

The Chairman said that her belief in an independent Bar as a separate profession had led her to stand as Chairman.

Sean Jones QC said that he had particular concerns around online courts. Expert systems are assumed to be easy but they are not always so. There are risks around a system that asks questions and generates an output without any human interaction. The cost implications

are high and the timescale tight, people are likely to get halfway through and stop or give up.

Richard Atkins QC raised a number of concerns. The criminal court is going through an electronic revolution but last week he attended a training session for the 'click share' programme where even the trainer could not get the technology to work. Many clients are illiterate and he questioned how they would start the process. There are equality and diversity considerations to be taken into account if the system is to be workable.

Amanda Pinto QC commented that elderly people also find technology difficult or frightening.

Andrew Langdon QC echoed worries about the timeframe, procedural implications and the effect on access to justice. However, he also raised a new point about the lack of access to a judge. Sometimes cases that appear straightforward on paper unravel in a very different way in court once the judge interacts with and assesses the parties. Removal of a judge from the procedure could result in a number of miscarriages of justice. He finished by raising the issue of international evidence and asking whether the concerns of the members are well founded or not.

Greg Williams said that he has already seen his colleagues 'hit hard' in recent years. Now with the proposed fee capping for multi-track cases, the situation is likely to worsen. He queried the origin of the 'arbitrary' costs set out at page 13 of the Jackson speech transcript.

James George raised concerns about the role of delegated judicial officers, or case officers, outlined in the Briggs Report. Officers need not be lawyers.

The Chairman said that she fears that there is a real risk of creating a two tier system in which those who bring significant claims receive a fantastic service and those who don't receive a service that assumes you do not need a lawyer from the outset.

Richard Hoyle supported the views of Louisa Nye and said that the lack of opportunity for the Young Bar will become a whole Bar issue in ten years' time. He suggested that some parties may still require lawyers to assist with writing the online application but acknowledged that these lawyers are unlikely to be barristers.

Nick Vineall QC commended the paper attached as annex 6, written by Phil Robertson, Director of Policy, saying that the point made about low value, legally complex cases is very good. He said that, in his opinion, the Jackson speech appears to suggest that the approach to all cost cases over £200k should be the same. However, where £200k may be a 'drop in the ocean' for some, for a private individual it is a lot of money. It is cynical to believe that all claims should be treated in the same way.

Andrew Walker QC made three points. First, he agreed with the worries about designing the system. Design is crucial and the speed at which it has been 'rushed through' is worrying. Secondly, he said that if the advocacy fee is separated out it is more likely to give rise to the risk of a referral fee. Thirdly, he made the point that the proposals have both arisen from judiciary concerns over the costs of litigation. If the Bar wants to be effective in responding, it needs to have something to offer.

Louisa Nye said that any responses should make it clear that most of the costs are generated by solicitors who charge an hourly rate. Trying to get across the message that barristers will work for fixed fees is difficult.

Gary Blaker QC talked about the potential opportunities of an online court. There are ways of in which barristers can continue to engage with the hearings process, for example, via skype hearings or producing written advice. Some cases will still require a face-to-face hearings. As new kinds of hearings arise, a new type of advocacy will develop.

Colin Andress said that he is worried about his job. In his opinion, fixed costs and the online court are part of a range of schemes lessening access to justice and an attack on the rule of law. Many people are unable to afford a lawyer and are not able to get an adjudication of their legal rights.

Paul Stafford made the point that the Bar as a whole contains a lot of people who are knowledgeable about the costs of their services. He questioned why costs are at the level they are and suggested that the Bar Council carry out a review and write a proposal about what can be done to reduce costs in family, civil and criminal litigation. The Bar Council repeatedly respond to the initiatives of others and there are so many levels of law. Disclosure costs can be enormous and the Bar Council should consider this in any review. The Chairman said that she would take his suggestion away and give it some thought.

Eleanor Mawrey returned to the point about people giving advice or helping others to fill in online court applications. She asked what is being done to protect vulnerable people from receiving bad advice or being manipulated. There is no way of a judge assessing whether a person is speaking freely in an online court.

Giles Powell said that it is too simplistic to look at cases on a monetary basis as many cases are not valued in this way. Monetary value is not the issue, a case turns on its complexity.

Gemma de Cordova raised concerns about those people 'in the background' being completely unqualified and unregulated.

Philip Marshall QC noted the irony in the current consultation on removing payment for McKenzie Friends while ignoring a similar potential issue for the online court.

Mark Fenhalls QC said that the system will fail as is it ludicrous to think that anything can be designed to deal with the complexity.

Andrew Morgan made the point that there is already an online system for the Legal Aid Agency that has proved very unsuccessful.

Derek Sweeting QC thanked those who contributed to the discussion describing the points made as 'very helpful' and indicated that most of the concerns aired were reflected in the discussions of the working group. He addressed two further points:

- 1) There are significant access to justice concerns that must be made clear however, the interim report is clear that the online court will happen, therefore, it is imperative that the Bar has input into its design; and
- 2) If workability concerns are justified, then a trial period should be applied if necessary although this is not mentioned in the proposal. Four years is a very short timescale and the litigant will need to develop the skills that many barristers spend years to develop in practise. Factually complex cases need judges and they underpin public faith in the system.

Ivor Collett suggested that the Bar Council should be doing more to harness judicial support. The Chairman replied that the Bar Council raises this as an issue at meetings with the judiciary.

The Chairman informed members that response to the Briggs Report will be circulated once completed and that they will be updated on any progress in relation to fixed costs. She said that she hoped this would be the first of many types of these discussions and emphasised the need to ensure that members' concerns and views are being properly addressed.

## **7. Introducing the Law Reform Committee**

Fergus Randolph QC introduced himself to the members as the Chair of the Law Reform Committee. He explained that the purpose of the Committee is to develop and consider proposals for law reform and to submit views to the Government and others where appropriate.

Last year the Committee responded to a range of consultations including those on offshore taxation and reform of Judicial Review.

The Judicial Review consultation response to Government was particularly strong given the implications for access to justice.

The Committee deal with issues of direct relevance to the Rule of Law and will shortly be responding to a consultation on 'Misfeasance in Public Office'.

A plethora of government information on surveillance and privacy has seen an increase in the workload of the Committee on this topic. A Working Group has been established to consider the issues and its work is vital in terms of access to justice.

The Committee is further involved in the consultation on a new sentencing code and another Working Group has been set up under the leadership of Paul Bogan QC. The topic, which is of importance to all criminal practitioners, was discussed in a recent meeting with Sir David Bean of the Law Commission.

The Committee are keen to harness 'any and all' support from experts in this field. It has been suggested that the Committee might want to take itself out to the circuits to publicise its work and encourage others to help. It is hoped that a member will visit each circuit with a representative from the Law Commission.

The relationship that the Committee has with the Law Commission is very helpful. The Commission is embarking on its 13<sup>th</sup> programme and has asked the Committee to think of issues that it might want to tackle. Members are asked to contact Sarah Richardson, Director of Law Reform Policy, with any suggestions.

The Committee run an annual essay competition for aimed at aimed at developing and fostering an interest in law reform in pupils, law students, CPE/GDL students, BPTC students and those aiming for a career at the Bar. The competition is sponsored by the Bar Council Scholarship Trust and the top prize is £4k. Last year there were 47 applicants and the winning essay entitled 'Rage against the machines', about drone killings highlighted the topicality of the subjects covered.

The Committee also organise an annual Law Reform Lecture. Last year over 200 people attended and Lord Neuberger has been invited to speak at the 2017 lecture in November.

Fergus Randolph QC finished by saying that although the Committee may seem esoteric, its members consider it to be of use and relevance. The Committee has always, and will continue, to seek the Bar's views on law reform.

## **8. Bar Council Standing Orders: amendments**

The Chairman said that she had forgotten to inform members that Fiona Jackson has been asked to join Richard Atkins QC as Co-Chair of the new Bar Representation Board.

The proposed revision to paragraph 46 of the Standing Orders to make it explicit that those on the Bar Council may not simultaneously sit on any of the BSB committees was approved. The reference to the 'Disciplinary Panel' will be changed to read 'Disciplinary Tribunal or other BTAS panels'.

The protocol for committee panels, designed to give greater flexibility around establishing panels, was approved.

The revision to the Ethics Committee terms of reference, allowing for a greater number of non-Bar Council experts on the Committee, was approved.

The proposal to alter the terms of reference and constitution of the Member Services Board to support the developing needs of the Bar Council was approved. It was agreed that the definition of 'Chairman' should extend to co-chairs.

The proposed terms of reference for the Editorial Board were approved subject to the rectification of a typographical error in the section entitled 'membership of the Editorial Board.

The proposal to alter the Standing Orders to include reference to the newly formed Bar Pro Bono Board was approved.

## **9. Protocol for nominations and appointments**

The Chief Executive explained that the Bar Council is trying to compile an effective mechanism for dealing with Bar Council nominations and appointments in the interests of fairness and transparency. The protocol was approved.

## **10. Treasurer's Report**

The began her report by explaining that the PCF collection process has been delayed due to the LSB requesting better particulars around the process.

At present, the Bar Council is forecast to suffer a loss of £319k this year. All budgets for this year have been approved by the Finance Committee and the Bar Council is now in a better position to monitor income and provide an earlier response to shortfalls.

It is of upmost importance that the BRF payments increase and earlier discussions on the online court and fixed costs indicate that the Bar Council has a lot of work to do. Members are asked to encourage others to pay.

The Treasurer reported that she is due to look at the latest pensions valuations and will present options to members later in the year.

## **11. Remuneration Committee**

Alexandra Healy QC introduced herself as Chair of the Remuneration Committee. She began by saying that the broad ambit of work covered by the Committee is challenging.

The Committee continue to deal with the ongoing issue in crime in relation to the service of directions evidence, though the new guidelines are proving productive. In a climate where many large cases have been taken into the Advocates' Graduated Fee Scheme (AGFS), the scheme is inadequate to deal with this and the AGFS Group continues to work with the Ministry of Justice.

Many large cases in crime are not being categorised as very high cost cases (VHCC). The Committee is working with the MoJ to put the current exceptional case payment arrangements onto a more, secure, long- term contractual basis.

The Committee currently involves itself on a case-by-case basis in relation to these particular cases. The Committee wants to propose a more structured and principled approach but are mainly focussed on AGFS at present.

The CCMS continues to be successful. There are a range of concerns raised by the Jackson speech but the Committee, especially Nick Bacon QC, are working hard in responding.

Susan Jacklin QC has now been appointed Co-Chair of the Remuneration Committee, which continues to encourage the fees service to provide a practical service to members.

## **12. Employed Bar Committee**

Michael Jennings introduced himself as Chair of the Employed Bar Committee. He reported that the Committee runs a series of successful seminars that have included topics such as inquest, money laundering and cybercrime. He encouraged members to attend as the seminars have provided helpful, positive and practical feedback.

The Committee is looking at creating greater opportunities for judicial appointments for the employed Bar and Committee members are actively engaging with the judiciary and the Judicial Appointments Commission (JAC).

The employed Bar newsletter is growing in popularity and it provides useful information for its readers.

## **13. Any other business**

Gerard McDermott QC reported that he is chairing the next Bar Conference. While he wishes to give it an 'international flavour' he is conscious of a number of national issues that should be included. He indicated that he will shortly be writing to the Circuits and Specialist Bar Associations with a view to engaging them.

The EU Law Committee are in the final stages of preparing a paper on the referendum. The paper is neutral in tone and aims to cover the areas affected by a potential exit and set out the advantages and disadvantages.

Richard Atkins QC enquired as to whether there has been any progress in securing rooms at the Inns for Bar Council meetings. The Chairman said that she would follow this up.

The Chairman recommended that those who are interested read the Master David Cook lecture entitled 'Cost budgeting and fixed costs', available online.

The Chairman thanked the Solicitor General, Robert Buckland QC, for attending the meeting.

Amanda Pinto QC said that she understands completely the stance taken on Brexit and supports the document being produced. She made the point that the Bar Council, as a representative body, needs to consider what this impact on its members will be.

*The meeting closed at 12.02pm*