Minutes of the Bar Council Meeting held on Saturday 14 May 2011 at the Bar Council Offices

Present:

Rt Hon Dominic Grieve QC MP - Attorney General
Keir Starmer QC - Director of Public Prosecutions
Peter Lodder QC - Chairman
Michael Todd QC - Vice-Chairman
Andrew Mitchell QC - Treasurer
Oliver Delany - Director of Central Services
and Acting Chief Executive

1. Apologies

Apologies for absence had been received from William Boyce QC, Susan Grocott QC, Mirza Ahmad, Tom Bourne-Arton, Mark Bryant-Heron, Georgina Cole, Ivor Collett, Ken Craig, Charles Hale and Nichola Higgins.

2. Approval of the Minutes

The Minutes of the 12 March 2011 Bar Council meeting were approved.

3. Matters Arising

No matters arose from the 12 March 2011 meeting.

4. Bar Council Membership 2011

The meeting noted the list of Bar Council Members at Annex B to the Agenda.

5. Statement by the Chairman

The Chairman began the meeting by congratulating Michael Todd QC and Stephen Collier on their unopposed election as Chairman-Elect and Treasurer-Elect respectively. Both would make excellent Officers of the Bar Council, and Stephen's election as a member of the employed Bar was particularly welcomed.

Much had happened since the last meeting of Bar Council, not least the departure of

the Chief Executive, David Hobart. David attracted a global television audience of more than 2 billion viewers on 29 April, at a certain Wedding in his capacity as a Gentleman Usher to the Queen. Some may have noticed, with not a little surprise, David escorting what looked like Mohamed Al-Fayed to his place in the Abbey. It was in fact the King of Tonga. But the then still Chief Executive of the Bar Council looked even more resplendent with his sword and full-dress uniform. The Bar Council would miss David and his wise counsel.

The office of Chief Executive was now being held in commission by a triumvirate of Directors: Oliver Delany, Mark Hatcher and Vanessa Davies, pending the outcome of the Green Review, set to report at the July Bar Council and BSB meetings. Members would recall that the Chairman had encouraged them to provide comments and observations to the Review, and a précis of the ideas submitted would be circulated by the Review Group within the next two weeks. The Chairman was grateful to the Directors for taking on the interim arrangements at a very challenging time. Oliver would be Acting Chief Executive until the end of July when Mark Hatcher would take the reins for August-October. The Directors would continue to meet weekly to manage issues of common interest and concern to BC and BSB. Lana Locke, Assistant to Chief Executive, would support the triumvirate, and had also assumed the role of keeping the notes of Bar Council meetings. The Chairman reminded members to identify themselves when speaking at the meeting.

The Bar Council's domestic agenda continued to be dominated by uncertainty over where the reform of legal aid was going. The Government's response to the consultation launched last November had been said by a senior Whitehall official to be imminent, but nothing had yet emerged. The Legal Aid Minister, Jonathan Djanogly MP, had said in a Westminster Hall debate on Legal Aid on 12 May that the MoJ response would be made "within the next few weeks". The Government's response should give some indication of when the next stage of consultation would be launched. The timetable appeared to be slipping, reminding the Chairman of the late Douglas Adams, author of *The Hitchhiker's Guide to the Galaxy*, who said how much he loved deadlines, particularly the whooshing sound they made as they rushed by. Kenneth Clarke QC MP's officials did not appear to be in a rush.

The current policy vacuum in legal aid reform was evident at Thursday's Westminster Hall debate. We had briefed some of the participants to reflect the Bar's concerns. However, the Minister's response gave nothing away. The debate was initiated by Julian Huppert, Liberal Democrat MP for Cambridge, and touched on a range of issues: that clinical negligence disputes will suffer from a "double whammy" if the legal aid and Jackson proposals were implemented; that revoking legal aid may lead to an increase in litigants in person instead of mediation, thereby increasing court costs; and warning of the perverse incentive to make false allegations of domestic violence in order to secure legal aid. He also touched on the

impact the proposals would have on young people and the disabled, immigration law and asylum, the increased pressure on Citizen's Advice bureaux, and the negative impact that cuts to legal aid will have on access to the profession as course costs soar and legal aid incomes become untenable. Robert Buckland MP and others reiterated the Justice Committee's concerns on similar issues. Among the members of the Opposition to speak were Andy Slaughter MP, Shadow Minister for Justice; Yvonne Fovargue MP, Chair of the APPG on Legal Aid; and Jeremy Corbyn MP. In the short time he was given to respond, the Parliamentary Under-Secretary of State said very little, and indicated that the Government would set out its response to the Legal Aid consultation in the next few weeks. However, he confirmed that the definition of domestic violence was being reconsidered, following concerns expressed by a number of parties, including the Family Law Bar Association and the Bar Council.

The Bar Council continued to try to divine and influence the direction of policy travel. The Chairman and Vice-Chairman had a very useful introductory meeting on 8 April with Catherine Lee, the new Director of Legal Aid at the MoJ. She had succeeded Sarah Albon, who had become Director of Strategy and Change in Her Majesty's Courts and Tribunals Service. Catherine would play a key role in the drafting of the next consultation document, and had shown interest in the Chairman's offer of the Bar assisting in that exercise. He took the view that the closer the Bar could get to the heart of this planning, the better our chance of showing the economic and professional value of the Bar, and of ensuring that future plans recognised the importance and quality of what we provide to the Justice system. Work on alternative models/ProcureCo continued, as we identified and responded to concerns about ProcureCo and the Code of Conduct. A new troubleshooting group had been set up.

We would be restructuring the "Prepare for Change" groups to position ourselves better for the next round of MoJ consultation and more effective dialogue with the LSC. We continued to promote Public Access and were seeking to overcome problems with the current Public Access Rules (Rule 3).

The Chairman's chambers visits continued, as he sought to understand the Bar's concerns about change, as well as to hear how a number of sets were already adapting to a challenging new operating environment. Only that week he had heard from a criminal practitioner who had been invited to China to advise a company on product liability. He was heartened by the fact that a number of chambers saw change in the external environment as opening up opportunity for the Bar. The Bar Council supported the BSB's decision on 28 April to pursue entity regulation, thereby allowing practitioners, who so wished, to adopt new ways of working.

The Chairman had been keeping in close touch with the Specialist Bar Associations

(SBAs), and he and the Vice-Chairman had devoted two days to meeting SBA Chairs on 15 and 16 March.

The Chairman gave an update on CPS Panels, a matter of active concern to the Circuits and the Criminal Bar Association, particularly for those who had invested a great deal in developing their careers as prosecutors. He recognised their fears for their livelihoods, and gave assurance that all options were being examined. Both the AG and the DPP were present today and would report to the meeting. He had been in frequent discussion with them over the past two weeks and summarised some of the issues for the Bar:

1. Concern that a barrister who has been prosecuting at, say, level 4 applies and although a good and competent prosecutor is unsuccessful. There is a provision described as a cascade which will permit 5% to go into the panel below, but this is seen as too limited. However, we equally had to avoid the problem of the cascade taking too many of the places in that lower level.

2. That, save for level 1, the panels are all closed, with numbers based on "business need". This created a pinch-point at level 2, which corresponds with the preponderance of the CPS's in-house advocates, and the extension of the list across other prosecuting authorities.

Some weeks ago, the Chairman had started to receive calls from Circuit Judges (CJs), particularly Resident Judges for whom this whole process had been a complete surprise. They complained that the 31 May deadline gave insufficient time. They were also concerned about open references and that the process only applied to the self-employed advocates. A meeting was hosted by Goldring LJ, the Senior Presiding Judge, on 3 May, attended by HHJs Plumstead, Davies and Atherton for the Council of Circuit Judges, Thomas LJ, the DPP, Chris Kinch QC, and himself by telephone. The Council of Circuit Judges deferred their decision to their Committee meeting, held on 13 May, where they decided to recommend that judges should not give references for applications to CPS Panels. The Chairman was not presently aware of their reasons for arriving at that decision. He had been told that a letter would go to all CJs on 16 May outlining this recommendation.

It should be noted that the timetable had been formally extended, and applications would be accepted up until 29 July. Judges could now provide these references confidentially if they wished. Importantly for any practitioner who found that his local judges would not provide a reference, the requirement for a minimum number of judicial references had been waived - with equal weight given to all references.

The Chairman expressed the hope that judicial evaluation would remain at the core of the process. It was a vital component of QAA, which would help to maintain the

standards that the Bar had always sought in all advocates appearing in the Crown Courts, and would ultimately be in the public interest as well as the interests of the judges.

All of this said, there was still great concern about the scheme at the Bar and so for a number of different reasons, and as a result of the observations of a wide range of individuals and groups, he had decided that it was appropriate as Chairman of the Bar to seek advice on the prospects of a successful legal challenge. Instructions to Counsel to advise had been prepared, and John Howell QC would advise the Bar Council.

As to QAA (now termed QASA), pilot schemes were taking place in Canterbury and Durham, and the Chairman hoped to visit Canterbury in the next few weeks. It was anticipated that the initiative would be announced towards the end of the year, although it might not be introduced until March 2012. We were pressing for a scheme that recognised and rewarded quality.

The future of the Criminal Bar remained at the forefront of the Bar Council's agenda - as did the Family Bar. With Stephen Cobb QC, he had attended the launch of the Interim Report of the Family Justice Review, chaired by David Norgrove, at the House of Lords on 5 April. It was a detailed and impressive piece of work. Importantly, Norgrove recognised the dedication of practitioners and the low level of pay for many. Although praised by Jonathan Djanogly MP, it was particularly alarming that the Government would not wait for the final report before introducing a Parliamentary Bill to pave the way for its family legal aid reforms, which it intended to do in July, only a few months before the report's publication in October. He reported that we have briefed Rosemary Bennett, the Social Affairs Editor of The Times, who has a close interest in these issues.

The Contingent Legal Aid Fund (CLAF) working group, led by Guy Mansfield QC, continued its work. Europe Economics have been commissioned to examine alternative ways of funding the Civil Justice system. Presentation of interim findings, before an invited audience, would take place in June at a joint Bar Council-UCL seminar to which Professor Dame Hazel Genn would contribute.

The APPG for Constitutional and Legal Affairs would consider the Jackson recommendations at Westminster on 18 May, at which the Chairman would be speaking with Sir Rupert Jackson, Linda Lee, President of The Law Society, and Professor Ken Oliphant of Bristol University.

The Bar Council's engagement with the social mobility agenda continued. On 7 April the Government published Opening Doors, Breaking Barriers: A Strategy for Social Mobility. The Chairman was interviewed by Sky News at the launch event. There

was much more work to be done: as recognised by the recent publication of the Report on Judicial Diversity. He was scheduled to meet Christopher Stephens, the JAC Chairman, on 7 June.

Since the last meeting of the Bar Council, we had launched the first of our Bar Debates in Court No 1 at the Old Bailey. The topic was entitled "Bang 'em up Britain" and we considered our approach to custodial punishments. We had a lively panel debate: Peter Hitchens of the Mail on Sunday, Nicky Padfield of Cambridge University, Paul McDowell, former Governor of Brixton prison and now Chief Executive of Nacro, and Anthony Hughes LJ. There were many controversial observations to feed a really interesting debate. All expressed great enthusiasm for the event and applauded the Bar Council for providing a platform for the serious consideration of topical issues. We hoped to host another debate later this year, on a topic related to family justice.

The Old Bailey would also be on the itinerary of the Vice-President of the European Commission, Mrs Viviane Reding, who is responsible for the Justice and Home Affairs portfolio. She has accepted our invitation to deliver a keynote speech on 20 June at our "Justice in Times of Austerity" seminar. This would include a panel discussion, to be moderated by Shami Chakrabarti, focusing on the challenges facing publicly funded practitioners and the need for policy makers to take a holistic approach to policy-making which involved cuts to public expenditure in the justice system. Quick-fix solutions had a habit of incubating long-term problems.

The Chairman also gave an update on the Advocacy Training Council (ATC), congratulating Nick Green QC on his appointment as Chairman, in succession to Charles Haddon-Cave QC, who had undertaken the role with great distinction, and elevated the ATC to an appropriate level. Interviews for an interim Chief Executive of the ATC would be held on 16 May. It was important for the Bar to strengthen and develop its excellence in advocacy - the Bar's unique selling proposition, which the Bar Council continues to champion.

On the international agenda, the Chairman of the Bar was granted no respite over the Easter break but was sent off to India to open the new Alternative Dispute Resolution Centre in Kolkata on 21 April with Paul Randolph. This was a very interesting development in that it was not initiated by the local lawyers but by the Bengal Chamber of Commerce. The Chairman was treated to the sight of one of the ledgers from 1865 which contained a record of an arbitration by the President of the Chamber of a dispute between merchant members. The Chairman reported increasing frustration in India about the slow pace of litigation, which was now affecting inward investment, particularly from multi-national companies who needed the reassurance of an effective dispute resolution system. With an extraordinary backlog of cases in the High Court, it had been calculated that if no

new cases were lodged, and the present rate of disposal continued, the backlog would take 325 years to clear. It was a significant problem. The opportunity for direct marketing flowed from trips made previously by Sir Geoffrey Vos and Desmond Browne QC and the willingness of Bar Council members to help draft the rules. Whilst the support of the local Bar was not universal, when the Chairman had attended a lunch at the Bar library during his trip, one fairly young member had declared that he had no concerns, the backlog being sufficient to ensure he would have a practice for life! The Chairman also met the Chief Justice, who was very interested in our own criminal processes, and discovered that bail refusals in India are often appealed all the way up to the Supreme Court. When the Chairman explained our system of only one application until a 'change of circumstances' was shown, the Chief Justice was astonished. Until recently the Indian market was closed to us. It was now opening up a very little, and further practice opportunities for English and Welsh lawyers must be developed.

Forthcoming trips were planned to St Petersburg, Berlin (to meet with the Australian Bar), and again to the Gulf, at the invitation of the MoJ in Abu Dhabi. Opportunities for the Criminal Bar to do more international work were being pursued, and the Chairman was considering with Stephen Cobb QC how to extend this across the publically funded vista. Work continued on preparations for the 2012 World Bar Conference to be held in London next summer. The Bar Council's Member Services team was leading the organisation of this major event. The Chairman had also recently undertaken a successful visit to Brussels to meet the UK's Ambassador to the EU, Sir Kim Darroch, MEPs and European Commission officials, to press home the Bar's concerns about EU Contract Law harmonisation and related matters. The Bar and the City Group, under the leadership of the Vice-Chairman, was forging closer relationships with key City institutions, and promoting the value of the Commercial Bar to international clients and targets. A Government announcement on how the legal services sector - and the Bar in particular - could contribute to the achievement of Government's growth strategy and the UK's long-term economic recovery, was expected very shortly.

This week the Coalition Government marked its first year in office. Being a coalition meant having to compromise. Much of the work of the Bar Council involved an element of compromise, to satisfy the many different, and sometimes conflicting, interests of the Bar, self-employed and employed. Leading this great profession was an immense privilege, but a difficult challenge at the best of times. At a time of unparalleled economic austerity, changes in professional regulation, drastic and deep cuts in legal aid, combined with a febrile legal services market, the challenges were immense and sometimes seemed almost overwhelming. We did not shrink from addressing the challenges. However, change we must if we are to adapt to meet the needs of the time and secure our future.

The Chairman then handed the floor to the AG and DPP.

Report from AG and DPP

The AG explained that he thought it might be useful to update members on where we were with CPS Panels. When he took office a year ago he had made it a priority to find a long-term, stable solution for those at the self-employed Bar who felt marginalised by the work undertaken in-house at the CPS. The Panel system would guarantee a reasonable amount of work, and offer a means of future development. The Panel option was not only the best option, it was the only option, and the AG remained as committed to pursuing it as he had been 12 months ago. The self-employed Bar's work was dependent on a working system. There was no prospect of returning to the old list system.

The AG had first heard of the new, unexpected difficulties second-hand, when a colleague told him that a Midland Circuit judge had complained that there had been no consultation with the Council of Her Majesty's Circuit Judges (COCJ). The AG had been very surprised to hear this news, as he had discussed a planned consultation with the judiciary. Whilst the views of Circuit Judges were varied, and some were very willing to assist, there was an evident problem in respect of judges signing up to the scheme. However, he queried whether this was a fundamental problem, or simply a one of communication if the COCJ felt bounced into the scheme, and expectations not being made clear. He would seek to address this miscommunication, and hoped that extending the consultation period to the end of July would ensure that everyone was happy.

The DPP pointed out that the new deadline of 29 July would also give the judiciary more time to complete the references, and that there was no longer a requirement for the references to be open. The DPP was sorry not to have been able to inform the Bar earlier of the extended deadline, but he had wished first to offer the measure to the COCJ for consideration. The COCJ's position of advising members not to give references was regrettable. However, the Presiding Judge would encourage references to be given, and the DPP would write to explain the adjustments made to facilitate this. The Bar should be assured that the minimum number of judicial references needed for an application had been removed, with equal weight given to all references submitted.

The DPP said that when he took office, the Bar had impressed on him the anxieties of the Criminal Bar, and in particular concerns regarding the position of early career self-employed barristers competing for work with CPS in-house counsel. There had been constructive engagement with the Bar Council, and the DPP had expressed his openness to meeting whatever team they wished to field provided that it was representative of the Bar. Broad agreement to the Panel scheme had been reached in

the autumn of 2010. Four outstanding issues for the Bar had been brought to his attention, which he would address:

1. *Level 4s - If a limited number of candidates are allowed at level 4, can candidates cascade down to level 3?* The DPP was keen to avoid an overwhelming cascade effect whereby all failed level 4s cascaded to 3s, pushing 3s down to 2s, and 2s down to 1s. This would prevent career development for those starting out. He said that the 4s were well-protected and that a candidate could apply to two circuit panels within level 4. If they failed both panels, they could appeal. The numbers were high for level 4 as the majority of in-house lawyers were at level 1 or 2.

2. *Level 2s - Was there sufficient allocation for level 2s? There appeared to be a pinch-point.* The DPP agreed to look again at the numbers. There was a tension between undertaking to provide those on the panel with enough work, whilst not wishing to exclude those who wanted to get on it. If too many were on the panel then we would be in the same position as before the panel exercise.

3. *Level 1s - Would you consider opening up the Panel and removing the restriction on numbers for this level?* The DPP confirmed that they had agreed to an open panel at level 1, but it had to be understood that expectation of work could not then be guaranteed in the same way as for the restricted panels.

4. *Assessments - Would you consider Bar involvement?* The DPP confirmed that a compromise that involved the Bar in the assessment exercise had been agreed.

Melanie McIntosh expressed concern on behalf of the Planning and Environment Bar Association as to whether any consideration had been given to planning and environmental prosecutors, and if they would be affected in due course if not listed on CPS panels. The AG gave assurance that this would not happen. He pointed out his experience in this area, having prior to getting into Parliament done such work, and saw a continuing future for those forging careers as specialists. Work for the Health and Safety Executive and Environment Agency would not be pressured by panels, but would continue to be allocated via the AG's list.

Criminal practitioner Glenn Carrasco pointed out that if a number of judges did not give references, CPS staff would become the main alternative source for them. He was aware of a variety of excuses for not writing references, and asked the DPP whether guidance would be given to CPS staff on the desirability of writing references. The DPP confirmed that steps would be put in place.

Christopher Rose QC of the North Eastern Circuit asked whether the CPS lawyers giving references would be trained to fill out forms and give evidence-based assessments, or whether they would simply say they liked or did not like the

candidate. The DPP confirmed that 100 to 500 words would be required, and a consistent approach agreed. Nicholas Hilliard QC, South Eastern Circuit Leader saw an inherent problem in the scheme when quality assessment and business need assessment were undertaken at the same stage. The AG agreed to meet the Circuit Leaders at the conclusion of the meeting to address their concerns. The DPP said that he would be similarly happy to meet with the Circuit Leaders as soon as possible.

6. BSB Report

Baroness Deech hoped that her report would be a ray of sunshine for members, as she presented opportunities for the Bar in the straitened circumstances faced.

Entity Regulation

On 28 April 2011, the BSB had moved a stage forward and decided to regulate advocacy-focussed entities. It would not extend its remit to regulate Multi-Disciplinary Practices. The decision came after a consultation exercise 'Regulating Entities,' which flowed from the developments brought about by the Legal Services Act 2007.

They decided in principle that:

- BSB regulated entities and self-employed barristers will be permitted to apply to conduct litigation should they so wish;
- BSB regulated entities will be permitted to provide the same services as those currently provided by the self-employed Bar;
- All owners of BSB regulated entities must also be managers; there will be a 25% limit on non-lawyer owners/managers of Alternative Business Structures (ABS);
- A majority of the owners/managers of ABSs regulated by the BSB must be barristers or other advocates with higher rights of audience - which distinguishes the BSB from the SRA;
- BSB regulated entities and self-employed barristers will not be permitted to hold client money;
- All managers of BSB regulated entities (barristers, solicitors and non-lawyers) will be subject to the same conduct rules;
- Barristers will be permitted to practise as managers or employees of Alternative Business Structures regulated by other Approved Regulators when Part V of the Legal Services Act 2007 is in force; and
- Barristers will be permitted to have ownership interests in Alternative Business Structures subject to the development of rules and guidance on managing any resulting conflicts of interest.

The majority of respondents to the BSB's consultation had agreed that BSB regulation of entities would be in the public interest. Entities might have low take-up from the Bar at this stage, but this could change over the next 10 to 20 years. A further consultation on draft framework and costs would be undertaken in the autumn. It would be important for costs to be competitive with the SRA. Andrew Walker QC asked what the preliminary costings looked like. Baroness Deech said that the proposed figures were lower than feared. The set-up costs would need to be borne by the profession, but this worked out at relatively low sums per-capita. Running costs would be borne by the entities. Asked for reassurance that there would not be an extension of the powers of intervention to include barristers' chambers, Baroness Deech confirmed that only entities would be so regulated.

Education Review

Bearing in mind the new types of legal professional practice permitted by the LSA 2007, a review had been set up to look at education. It would be more overarching, as distinct from the previous BSB reviews. Concerns for the Bar would include what impact and opportunities entities might bring for the thousands Called to the Bar who were unable to obtain pupillage; and whether there should be a route to a practising qualification that does not require a university degree. Dame Janet Gaymer DBE QC (Hon.) and Sir Mark Potter would be joint chairs of the Education Review. A consortium led by the UK Centre for Legal Education (UKCLE) based at Warwick University would lead the research project, and the BSB, SRA and ILEX would be key contributors. The first meeting was scheduled for 1 July, and recommendations could be expected by next year. The review's remit was broad, and mobility and transfer between branches of the profession would be a prime consideration.

First tier complaints (chambers complaints handling)

The BSB had listened to concerns expressed by the profession in relation to complaints handling obligations, and would consider at the Board meeting on 19 May changes to make the system more flexible. Various practical methods would be offered for advising the lay client of their right to complain, including permission for direct liaison between the barrister and client, or advising the client when first meeting at court or conference. It was not enough to rely on communication via solicitor - although this was another option if the solicitor was willing.

7. Pensions

The Chairman announced that after an extensive amount of work, and a series of papers, Bar Council members were now being asked to express a view to the Finance and Audit Committee (FAC) as to how to proceed on the pension scheme. The BSB

would also express a view to FAC. The meeting was joined by Val Simpson (VS) and Beverley Alford (BA) of Bluefin, the pensions consultancy advising the Bar Council.

The Treasurer, Andrew Mitchell QC (ARM), joined the meeting directly from the airport following a working trip to Trinidad.

ARM offered his congratulations first to Stephen Collier on his election as Treasurer for 2012, and secondly to the Profession for the £5 million raised towards reducing the pension deficit.

As to the options before the meeting today, as laid out in his paper at page 16 of the Agenda, they were to either a) close the Defined Benefit (DB) scheme and offer members an alternative Defined Contribution (DC) scheme where the members bore the risk rather than the employer, or b) negotiate with staff a significantly revised "Mark II" DB scheme where staff would contribute and the cost to the Bar Council, as employer, would be brought to a par with the DC scheme.

ARM made the point that in keeping the scheme open, we rewarded members of staff who gave the profession long hours of work and longevity of service. He was concerned that a decision to close the scheme would undermine their goodwill.

The deficit that had accrued would need to continue to be reduced. If the scheme was kept open, the deficit would be addressed to the extent of the £5 million thus far raised. If we shut the scheme, there was the prospect that we would need to raise in the region of £12 million more to "pay off the scheme".

Ruth Cabeza and Kerry Bretherton showed interest in the option of "freezing" the scheme and managing the past service liabilities with the Trustees over a period of years. However, ARM asked the meeting to put the warning from the Trustees, in their letter at page 19 of the Agenda, to the back of their minds, as even if the Trustees demanded full funds to close the scheme immediately, £12 million could be borrowed from the bank if necessary, and paid back over ten years.

James Hines queried whether there was any sense in closing the scheme now and freezing it at the bottom of the economic cycle. BA explained that the investments of a closed scheme could continue to be managed, so as to optimise the timing of a 'buy out'.

Turning to the other papers included in the Agenda, ARM noted the point made by the Staff Group in their paper at page 21, on the low take-up rate for the alternative DC scheme from those members of staff not eligible for the DB scheme. The cash-balance scheme, mentioned in the Richard Salter QC group's excellent and balanced paper, was understood to be similarly unpopular in the wider world.

The Bluefin paper at page 44 outlined the Enhanced Transfer Value (ETV) proposals. An exercise to induce deferred and active DB scheme members to transfer to a DC scheme would be undertaken regardless of the decision to close the scheme or to keep it open. Pages 83-84 of the Agenda outlined the extensive revisions that would be made for a Mark II DB scheme, and the measures offered to give Bar Council greater control over future accrual.

Richard Salter QC announced that he had had a dream last night. It was a nightmare! He dreamt that he was addressing Bar Council again about the pension scheme. Or, to put it another way, he said, "My name is Richard and I am a pensions-aholic". Members were by now familiar with the subject matter. The reason that they were being asked to take a view was that they represented the profession who would pay.

The disadvantages of adopting the Mark II scheme rather than closing were outlined at para 21 of his paper. The ongoing costs would be 17% of salaries, 3% higher than for the DC scheme, or more if the staff did not agree to the desired contribution rate. The longevity risks would remain with the profession - a profession that could be smaller in the future. Whilst the DC scheme might result in a lower level of quality of life for pensioners, and demand that staff work longer before retiring, these were the same risks that the Bar faced, and the same risks that Bar Council staff who joined after 2006 faced. The DB scheme offered a perverse reason for DB scheme staff to stay at the Bar Council, and a perverse reason for the profession to wish them to leave. However, he acknowledged that the Bar Council was not an industrial or commercial company, but had more similarities with the public sector - and recent strikes had shown how fiercely protective that sector could be regarding their benefits.

Andrew Walker QC agreed that from a harsh point of view the scheme should close, but that it seemed fairer to staff to continue the DB scheme. However, we could only do so if the rules for Mark II were changed to make it easier to close if necessary in the future, without the Trustees holding a sword of Damocles over their heads, demanding immediate wind-up costs. He noted that we continued to be in a period of low investment returns and the consequent limitations of investment strategy; and that even if the levy reduced the past service deficit, the deficit could only be estimated. He felt that funds should be built up in reserve, as a measure against an underestimated deficit, which could be called upon if we needed to close the scheme in future. He posed the question to Bluefin of where the Mark II scheme would lead us in five to ten years' time. BA said that the position was not cut and dry as it would depend on how much was paid in and how it was invested. The deficit would be repaired by the levy if invested well. She confirmed that the scheme rules could be changed, with the Trustees' agreement, to make it easier to close the scheme in the

future.

Nigel Lickley QC asked whether the demand for levies had now come to an end. ARM said that a levy the following year might not be necessary. However, it was necessary to wait and see. With a better approach to investment, Mark II should demand either no levy or only a small. BA said that whilst they could not rule out the possibility that some funds might be needed at some point in the future, a recovery plan was in place and the ETV exercise would reduce the risk further. Mark II would in effect start with a clean slate.

Tricia Howse asked what negotiation with staff we would need to undertake. ARM explained that points for negotiation with staff would include the contribution rate required and rule changes. If an agreement could not be reached then the scheme would close. However, the sensible proposals put forward by the Staff Group indicated that agreement was achievable.

Glenn Carrasco suggested that in order to minimise risk, rules be adopted that permitted the Bar Council to increase the percentage contribution from staff in future if necessary.

Robert Rhodes QC voiced his support for the Mark II scheme, as did David Nicholls (DN), Vice-Chairman of the Young Barristers' Committee (YBC). DN had been won over by the staff perspective, and the desire to avoid the immediate wind-up costs closure could demand. However, he conceded that whilst his view was shared by Nichola Higgins, the YBC Chairman, the majority of their committee were in favour of closure.

John Cooper said that the Bar Council should vote with the Young Bar in mind.

Ruth Cabeza stated that it was not in the profession's interest to keep risks open-ended and she was concerned that with the advent of ProcureCo, the future burden would be placed on a potentially smaller profession.

ARM reasoned that if the Bar moved towards working within entities, then the entities would pay fees to the Bar Council.

YBC member Zoe Saunders said that she was happy to offer her support to a modified DB scheme, provided that Bar Council had the mandate to negotiate and that active steps were taken to minimise future risk.

Susan Goddard QC (SG) of the North Eastern Circuit asked what would happen to the DC scheme members if the Mark II scheme were adopted. ARM confirmed that current intention was that they would remain on the DC scheme. However, he

acknowledged Richard Salter QC's point that this perpetuated a two-tier system, and suggested that consideration might be given in the future as to whether Mark II should be open to all staff. SG could see how much better the benefits were in the DB scheme, and acknowledged ARM's point that the risk to the pensioner of a DC scheme ultimately became a risk for the state. However, she asked the meeting to bear in mind that many of the members of her Circuit would love to have a similar promise of a £20k pension.

Michael Patchett-Joyce was torn between his head saying close the scheme, and his heart saying keep it open. Staff were not well paid at the Bar Council, and their morale weighed heavily on his mind. With the measures in place to control and manage the scheme through a) the ETV exercise; b) better investment strategy; and c) the option to review and close the Mark II scheme in the future if it did not work, then his heart won out over his head.

The Chairman noted that a number of members had spoken in favour of Mark II. He therefore asked members to vote on the proposal to negotiate with staff on the basis of keeping the scheme open in its revised format.

Forty-five members voted in favour, and twelve against. The Bar Council's recommendation to keep the scheme open would be passed to the Finance and Audit Committee.

8. Bar Council Annual Report and Accounts 2010

The Treasurer referred the meeting to Annex D to the Agenda. The Annual Report and Accounts 2010 were approved.

9. Changes to Bar Council Constitution

The Chairman referred the meeting to Annex E to the Agenda. The ordinary resolution regarding the interim Chief Executive arrangements was approved. The extraordinary resolution to move the timetable for the election of Bar Council members forward by one month was also approved.

10. Any Other Business

<u>Vice-Chairman Election.</u> The Chairman reminded the meeting that there were two candidates for Vice-Chairman 2012: Stuart Brown QC and Maura McGowan QC. Ballot papers had been issued and members should vote by noon on 27 May.

<u>Legal aid.</u> John Cooper (JC) raised alarm about the growing trend of solicitors asking chambers for money in order to continue to receive instructions for legal aid

from them. Indeed, at a recent conference solicitors had actively been advised to do so. The Chairman confirmed that he had been made aware of the problem, and asked JC to pass him further details in confidence.

Green Review. Andrew Walker QC reminded the meeting that Nick Green QC's group sought provisional views on Bar Council decision-making and the role of the Chief Executive. He invited members to contact himself or Maura McGowan QC.

11. Date of Next Meeting

The next meeting would be held at 0930 hrs on Saturday 18 June 2011, ahead of the Annual General Meeting at 1030hrs, in the Bar Council offices.