



The Bar Council

## Meeting of the Bar Council

Minutes of meeting: Saturday 26 March 2022, 11am, Online via Teams & St Philips Chambers, Birmingham

### Present:

Mark Fenhalls QC	Chair of the Bar	MFQC
Nicholas Vineall QC	Vice Chair of the Bar	NVQC
Malcolm Cree	CEO, The Bar Council	MC
Lorinda Long	Treasurer	LL
Rt Hon Suella Braverman QC MP	Attorney General	AG
Mark Neale	CEO, Bar Standards Board	MN
Elaine Banton	Co-Chair, Equality, Diversity and Social Mobility Committee	EB
Jacob Hallam QC	Chair, Education and Training Committee	JHQC
Iain MacDonald	Chair, Law Reform Committee	IMcD
Rebecca Wilkie	CEO, Advocate	RW

### Members in attendance (listed alphabetically)

Christine Agnew QC; Dr Mirza Ahmad; Yaa Dankwa Ampadu-Sackey; Simon Anderson; Michael Bellis; Minka Braun; Carl Brewis; David Bunting; Mark Chaloner; Maddy Charlesworth; Sydney Chawatama; Richard Cole; Ivor Collett; Celina Colquhoun Barbara Connolly QC; James Corbet Burcher; Madeleine Deasy; Sahar Farooqi; Alex Gunning QC; Birgitte Hagem; Neil Hawes QC; Michael Hayton QC; Michelle Heeley QC; Isabel Hitching QC; Kim Hollis QC; Richard Honey QC; Shobana Iyer; Sean Jones QC; Susan Jones; David Joseph QC; Faith Julian (alternate for Amanda Hardy QC); James Keeley; Stephen Kenny QC; Kate Lumsdon QC; Ben Lynch QC; Oliver May; Louise McCullough; Cait McDonagh; Martyn McLeish; Christina Michalos QC; Yasmin Omotosho; Lucinda Orr; Reagan Persaud; Jon Rees QC; Robert Rhodes QC; Ryan Richter; Lisa Roberts QC; Natasha Shotunde; Jo Sidhu QC; Hannah Smith; Joe Smouha; Kate Spence; Gordon Stables; Jessica Stephens QC; Heidi Stonecliffe QC; Jason Sugarman QC; Ben Symons; Leanne Targett-Parker; David

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**THE BAR COUNCIL**

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Taylor; Steven Thompson QC; Samuel Townend QC; Linda Turnbull; Anton Van Dellen; Sunny Virk; Gaynor Wood.

**In attendance:**

	Piran Dhillon-Starkings	Adviser to the Chair	PDS
	Carolyn Entwistle	Director of Services	CE
	Freya Grimwood	Attorney General's office	FG
	Andrew Mitchell QC	Vice Chair, BSB	AMQC
	Phil Robertson	Director of Policy	PR
	Natalie Zara	Head of Governance	NZ
	Christian Wisskirchen	Head of International Policy	CW
<b>Minutes</b>	Yvonne Treacy	Executive Officer	YT

**Apologies were received from:**

Sasha Bailey; Sarah Fearon; Amanda Hardy QC (Faith Julien attending as alternate); Michael Harwood; Matthew Howarth; James Kitching; Charlotte Pope-Williams; Simon Regis; Philip Stott.

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**1. Conflicts of Interest**

None were declared.

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

The minutes from the meeting of 29 January 2022 were approved.

**3. Statement by the Chair**

The Chair reported that the Attorney General would be joining the meeting and that the Chair's Statement would be deferred to the end of the meeting.

**4. Bar Standards Board Report**

In the absence of Baroness Blackstone, Chair of the BSB, the report was presented by Mark Neale, CEO of the BSB.

## **i) BSB three-year strategy and business plan**

MN reported that since the last meeting of the Bar Council the BSB has been focusing on finalising their new three-year strategy and business plan for the coming year. Both documents will be published after they have been reviewed by the Board the following week, but he was able to say that they will fully reflect the feedback the BSB received during the consultation period. In particular, they do intend to make meeting their service standards for their core regulatory operations a top priority. They look forward to telling the Bar Council more about their strategy at the next Bar Council meeting.

## **ii) Research report: Income at the Bar – by gender and ethnicity**

Another key issue MN said he would like to address is the BSB report on earnings at the Bar. This complements previous work by the Bar Council and looks at a wider range of factors linked to income, for example, such as seniority and location, as well as looking at the impact of the COVID pandemic. He said that the report confirms that female barristers are likely to earn less than male barristers and that those from minority ethnic backgrounds are likely to earn less than White barristers. However, the research also shows that this is the case even when barristers are practising within the same area of law, within the same parts of the country, and with similar years of practice. The BSB also found differences in the income for barristers from different minority ethnic backgrounds – so Black barristers earn less than barristers from Asian backgrounds.

Looking at the impact of the pandemic BSB found that, while barristers in all groups have faced falls in income, the largest falls in income have been for male barristers from ethnic minority backgrounds, and barristers based outside London. And while female barristers have seen smaller falls in income overall than male barristers, ethnic minority barristers have seen larger falls than White barristers.

MN said that the BSB know from the BC's own Race at the Bar report that the BC will share their concern at these findings. They certainly illustrate the continuing importance of ensuring that all chambers and employers carefully monitor the distribution of work. One of the BSB's key pieces of work in the coming year will be clarifying its expectations of chambers and employers in overseeing the distribution of work and in promoting diversity. BSB will also be updating the Equality Rules. In the meantime, BSB hopes that the BC will be encouraging chambers and employers to implement the recommendations in BC Race at the Bar report.

The Chair thanked MN for his report and said that the BC will continue to endeavour to work in collaboration with the BSB on these issues.

## **5. Statement by the CEO**

Malcolm Cree, CEO of the Bar Council, said it was lovely to be back in Birmingham. He would like to thank the Institute of Barristers Clerks (IBC) for hosting a drinks reception the previous evening and St Philips Chambers for hosting the Bar Council meeting today, in particular Joe Wilson, Chambers Director and Richard Atkins, Head of Chambers. Their hospitality was much appreciated.

MC said that the Chairs Statement, included with the agenda paper, covered most of the issues that the BC has been undertaking since the last BC meeting. However, he would like to mention the following:

- i) The Authorisation to Practise (ATP) process was almost complete and apart from a few minor technical issues, had been a relatively smooth process.
- ii) Internally the BC has had experienced a high volume of staff turnover recently which does have an impact upon continuity but is something that is being managed. Some staff have gone on to more senior positions and it was therefore gratifying to note that the BC has been a stepping down in terms of career enhancement.
- iii) As we emerge from the pandemic, staff are gradually returning to the office with most contracted to come in at least two days a week.

Lucinda Orr asked how the figures for the ATP were holding up. MC replied that they were holding up quite well and were as expected although Bar Representation Fee donations were down slightly which was partly due to the technical problems mentioned earlier. LO asked how the BC planned to address this to which MC said that they had reached out to those barristers unable to sign up letting them know that they could now subscribe.

Finally, MC said he would like to thank his team at the BC and those barristers who provide support and assistance without whom the BC could not function effectively.

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

Lorinda Long, Treasurer, presented the latest Treasurer's report as follows:

### **i) Practising Certificate Fee update**

- The Legal Services Board approved the 2022 / 23 PCF and budget application. The application and the LSB decision are public documents and are available on the LSB website.
- The collection of the Practising Certificate through the Authorisation to Practice (AtP) process opened on 3 March 2022 and was going well.

### **ii) Pension update**

- The General Council of the Bar (GCB) has received the draft triennial valuation for the Defined Benefit Pension Fund. This currently shows a deficit of £5m.
- The GCB will be negotiating with the Pension Trustees to arrive at an agreed valuation and recovery plan by the deadline on 31 December 2022.

### iii) February 2022 Management Accounts position

- The forecast out-turn at 22 February 2022 was a surplus of £1,631k compared to a forecast surplus of £1,288k at 21 December 2021. The outturn surplus has improved by £1,227k against the original budget in March 2021. The main change this month was the additional income due to January student enrolments exceeding expectations, leading to an additional £234k of income.
- The £728k increase in income has been driven by increases in Regulatory Income, this has been further boosted by additional students in the January intake. Changes are being made to the fees charged to Authorised Education Training Organisations (AETO's) that should prevent this level of additional income being repeated in the future.
- The £101k overspend in staff salaries was due to additional temporary staff and replacement recruitment in the BSB and Resource Group.
- The £648k savings in non-staff costs were driven by one off savings in the BSB exams team and savings in the Bar Council from the cancellation of events both due to covid.

## 7. Law Reform Committee

Iain MacDonald, Chair of the LRC, presented the report. He commenced by correcting the reference at item 2(j) of the report - "The Law Commission discussion paper on Corporate Criminal Reliability"- which should read "Corporate Criminal Responsibility". He also wished to state his gratitude to his colleagues on the LRC for their expertise and support, members of the wider Bar whom they occasionally reach out to and also Eleanor Lamarque, Policy Manager at the Bar Council.

With regards to the report, which he took as read, he highlighted the following:

- The LRC's "business as usual" work was set out in sections 2-4 of the report which showed the breadth and variety of work undertaken by the committee over the last year and which was expected to continue.
- With regards to the annual Law Reform Lecture, which was held in November, the remote format allowed them to have two speakers one of whom joined from abroad – The Rt. Hon. Lord Carnwath of Notting Hill and Inger Andersen, Under-Secretary-General of the United Nations and Executive Director of the United Nations Environment Programme. 232 attendees logged on for the lecture: the highest

number of attendees in his experience. For this year's lecture they are looking at other options including a hybrid event, possibly outside of London.

- The Criminal Justice Recovery Working Group, whose membership includes circuit leaders, members from committees and the Chair and Vice-Chair of the BC, provide updates as necessary from the Legal Professionals Group meeting, the Court Safety Group meeting and briefings such as to peers, for example, on the Police, Crime, Sentencing and Courts Bill. The Working Group continues to meet although its activities have been scaled down.

In response to an invitation to ask questions, Louise McCullough asked whether it was an appropriate moment to raise the issue of pupils' travel expenses. She said that she sits on the Middle Temple Emergency Assistance (Hardship) Fund Committee and has become aware that some pupils are not being reimbursed travel expenses in accordance with the guidance. It was agreed that LMCC would write to the Chair with further information about the issue which he would then take forward.

The Chair thanked IMcD and all on his committee and working groups for their extraordinary work and ongoing efforts including their consultation responses and to the other BC committees they collaborate with.

## **8. Equality Diversity & Social Mobility Committee**

Elaine Banton, Co-Chair of the EDSM committee presented the report on behalf of the committee. She said that the committee was continuing to focus on major projects as well as expanding and consolidating other key areas and supporting a number of specialist organisations with their projects. She took the paper as read but wished to highlight some specific areas.

- They have now agreed Bar Council actions regarding the Race Summit and report and the ongoing objective now was to encourage chambers to produce their own action plans and to adopt the other recommendations in the report.
- In terms of the Accelerator programme, the BC has been aware that the allocation of work was the key area which impacted upon the retention and progression of barristers. To address this EB reported that the BC has produced two monitoring toolkits on sex and race and also developed the Fair Allocation of Work training which they will pilot in the next few months.
- The committee has supported the Inns of Court Alliance for Women initiative including their recent launch event which was focused on the allocation of work. With regards to the Women in Law Pledge, work is continuing. It now has 20 signatories and a report, tracking progress against targets, was being produced.

- The committee has set up two new working groups i) Bullying and Harassment Working Group, ii) Social Mobility Strategy Working Group. These two groups have been set up to review action and support offered and to identify gaps/areas where improvements can be made.

Over the coming year work on these projects and initiatives will continue as well as other areas including disability, the summer Pride events, social mobility and sexual harassment and bullying.

Following conclusion of EB's report questions were invited.

i) Yaa Dankwa Ampdu-Sackey asked about reverse mentoring and in particular whether this was an area that sat with the EDSM committee, and if so, could the BC expect a report on how it has worked and what the plans were going forward?

EB replied that the BSB has been operating a reverse mentoring scheme. Although there are BC mentoring programmes in development as part of the BC's Accelerator programme and which were to be implemented shortly, they were not specifically on reverse mentoring.

ii) James Keeley said he was pleased to hear that the EDSM committee had set up a working party looking into social mobility and the profession and that he would like to mention two areas regarding social mobility which concerned him – the judiciary and Benchers to the Inns of Court – both of which needed to be more socially diverse and looked into.

The Chair thanked EB for her report and for the ongoing work of the committee and JK also for his comments. He concluded this part of the meeting by recommending a book called White Debt by Thomas Harding published in January. It tells the story of the Demerara rebellion in 1823 and explores the legacy of Britain's role in slavery including transcripts of trials. It teaches us all a lot of things we need to reflect upon.

## **9. Education and Training Committee**

Jacob Hallam QC, chair of the Education and Training Committee, presented the report, which he took as read. He also took the opportunity to thank his fellow committee members for their support and efforts and also Rose Malleon, Bar Council policy analyst to the committee, for drafting the report before BC today. The report was broadly in two parts.

i) Business as usual: This included projects such as the pupillage fairs, recruitment and generally assessing the provision of education and training for those at the start of their bar careers bearing in mind the impact of the pandemic. He said that the online pupillage fairs have been popular although it would be necessary to wait until next year's event to properly compare and contrast the figures in order to make any assessments going forward.

ii) Special projects - the LSB's consultation on ongoing competence: The ETC responded to this consultation which took a great deal of time and effort and required a lot of input from other BC committees. JHQC said that the ETC was grateful for all the help received. In essence the LSB, in the consultation, was proposing a much more time consuming, expensive, continuous approach to assessment supported by little or very flimsy evidence that such action was necessary. The committee submitted a fairly robust response.

Sam Townend QC invited JHQC or the Chair to share their views on the LSB's approach to regulation of the Bar and the legal sector more generally. The Chair said that Section 3 of the Legal Services Act only permits the LSB to act when there is evidence of a problem. The Bar Council will continue to argue that there is no reliable evidence to justify a costly revalidation scheme being imposed by regulators.

The Chair thanked JHQC for his report. In Bristol the previous day he had spoken to several pupils in chambers about their advocacy training and achieving the right balance between traditional face to face advocacy training and online advocacy training. We are now in a hybrid world which will impact upon how we conduct our work in the future and we need to foster these new skills.

## **10. Advocate**

Rebecca Wilkes, CEO, Advocate, presented a report from Advocate which provided an update on their work since their last report in April 2021. The report looked at i) the Bar's pro bono contribution; ii) what is being seen across the wider advice sector; and iii) a snapshot of the cases coming through Advocate's doors.

### **i) Paying tribute to the Bar's response**

RW began by paying tribute to the Bar's readiness to volunteer throughout the past year. It has been an extraordinary contribution amidst the professional and personal pressures that many continue to face, and they feel extremely proud at Advocate to have helped to facilitate this contribution as the Bar's pro bono charity.

The pandemic and its ongoing aftermath brought home sharply how quickly health, home, job, business can suddenly be at stake. These are moments when those affected needed more than ever to be able to count on the law. It is terrifying to be without help, and that is the position many find themselves in. One way or another, a case without professional legal help can cost a home, a job, a relationship, and physical and mental health. Yet hundreds of people benefited from the generosity of barristers volunteering during this time.

In addition to this, over 100 senior barristers have signed up to mentor juniors taking on pro bono cases. 100 barristers have signed up to and completed the 25 for 25 Pro Bono Challenge.

Collectively this is, and should continue to be, a source of pride in the profession. It is a badge of the Bar's integrity, a sign of the Bar's commitment to the public and the public interest.

Not only have barristers contributed on the domestic front but internationally too in response to crises. Since November they have been working with DLA Piper to help find barristers who were immigration specialists to provide urgent assistance to help people trapped in Afghanistan find routes into the UK and they are continuing to work alongside them coordinating the response to Ukraine building on the crucial work started by the Ukraine Advice Project UK.

## **ii) Sharing what is being seen across the wider advice sector**

RW said that their written report shows Advocate's statistics. In January 2022, more than 270,000 people sought help from Citizens Advice, higher than at any point since the pandemic began. In the same month, a staggering 24,000 people helped by the charity required some type of crisis support such as food bank vouchers and charitable support. This is the highest on record for the charity, passing the previous peak only set in December 2021.

## **iii) Snapshot of cases**

Likewise, applications to Advocate have increased significantly over the past few years – 2021 saw a 24% increase from the year before and in particular we have seen a 66% increase in employment cases compared with two years ago.

The cost-of-living crises is impacting on a significant proportion of people who cannot currently afford legal representation without making an impossible choice between their right to justice and supporting the basic needs of their family and loved ones.

RW went on to say that as a larger proportion of the population faces uncertainty over their finances, more will need to seek legal advice and protect their rights and livelihoods. They are dealing with people who are more aware of their issues, but less experienced in dealing with the advice sector. They have found that their applicants are becoming increasingly stressed and anxious about the situations they are finding themselves in.

The vulnerability of their applicants is at a concerning level too. More and more of their people are presenting with mental health issues, and more are presenting with disabilities, learning difficulties, or those who cannot get documents to Advocate because they are in hospital or seriously ill.

RW said that pro bono is not, and should not become, an alternative to a properly funded system of legal aid. They support a properly funded legal system that enables access to

justice but recognise that pro bono is critical for those who are ineligible for legal aid and cannot afford to pay for help. These are people who will otherwise be on their own in the legal system. Other organisations play a critical role in policy and campaigning, their role is to draw attention to the facts about the need that is not being met.

#### **iv) Advocate plans for next three years**

RW said that Advocate is only able to play their part thanks to the ongoing funding from the Bar Council and the profession. Without it would be impossible for Advocate to carry out pro bono work and enable cases in all tribunals and courts and in all areas of law across England and Wales. Over the past two years, throughout the pandemic, they focused on responding to the crises as best they could to ensure people in lockdown could continue to access their services. Advocate have now had the opportunity to look ahead and have developed a new three-year strategy which they look forward to sharing with the Bar Council over the months ahead. Finally, RW said that she would like record again their gratitude for the different ways that the Bar Council, Inns, Circuits, SBAs, barristers and clerks have supported Advocate.

The Chair thanked RW for her report said that we have seen recently the government announcement of the extension of eligibility for legal aid. He asked RW whether Advocate had a chance to look at any of the detail of what has been proposed. RW replied that the Legal Aid Practitioners Group (LAPG) were leading on this, with Advocate support, but that any extension of legal aid funding was to be welcomed.

Yasmin Omotosho asked about Advocate's internship programme mentioned in the report. She asked RW what the demographics of those applying for the internships were and whether Advocate was planning on doing more. RW said that she did not have the demographic figures available to hand unfortunately. However, in terms of future internships, Advocate was keen to work with organisations such as Bridging the Bar who have established internship programmes and thus more expertise, with a view to sharing opportunities.

## 11. Chair's Statement

The Chair commenced his report by saying that he would like to thank the Attorney General for attending the meeting in person today and grateful that she was prepared to address the meeting. He also thanked the Western Circuit for inviting him to a dinner the day before in Bristol, and to Michelle Heeley QC, leader of the Midland Circuit, and Richard Atkins QC, Head of St Philips Chambers, for hosting today. He mentioned also that he spoke at the Institute of Barristers Clerks (IBC) annual conference earlier that morning and had thanked them for their work during the pandemic. Turning to his statement he said he would take it as read but would focus on two topics.

### i) Ukraine

The invasion of Ukraine took place a month ago and it was shocking to see the situation unfold. The ramifications were likely to be felt for a long time. The Chair said the Bar Council has been in touch with Ukrainian bar leaders to offer support and to discuss with them how the Bar Council might be able to help and have identified three initiatives.

- The Government's Homes for Ukraine scheme: The BC has received lots of offers from barristers and judges and will match up offers of accommodation to families of Ukrainian judges and lawyers. If you have not volunteered and are in a position to help, please get in touch.
- Liaising with neighbouring European bar associations: It may be that there are families who do not want to travel across Europe and would prefer to stay closer to home. We are exploring with neighbouring European bar associations on the frontline what indirect support the BC might be able to provide.
- Offer of work to Ukrainian lawyers: If your chambers or employers has an idea of a fee earning work project which could be outsourced to a Ukrainian lawyer, we would encourage them to take it forward.

The Chair went on to say that the situation in Ukraine has resulted in domestic consequences which require consideration, one of which relates to the reputation of the Bar. There has been misleading and unfair criticism of lawyers – solicitors and barristers - from politicians, for merely doing their jobs and whilst operating within the conduct rules of their professions and the legislation laid down by Parliament. The Chair said that the BC would support any barristers who come in for unfair criticism. He then referred to a paper on SLAPPs (Strategic Lawsuits Against Public Participation) published by the Bar Council before the invasion had triggered a political response.

## **ii) CLAIR**

With regards to CLAIR, the Government's response to Sir Christopher Bellamy's independent review of legal aid was published on 15 March. One aspect of the debate he would like to mention was that of timing. He said that the Government has said that it wants to bring money into the system as soon as possible but what did that mean? Does it mean fresh cases only or can it be applied to current cases? If it is the former than the reality is that there may be no significant money for practitioners until the tail end of next year. However, there are precedents available to support this approach that may permit money to be brought into current cases. These have been shared with the Government. The Chair said that this would be an ongoing debate and something the BC would continue to press.

## **12. Attorney General**

The Attorney General thanked the Chair for inviting her to address the Bar Council meeting today and also to St Philips Chambers for hosting. She said she would like to thank the profession for the work barristers did during the pandemic, and she looked forward to more opportunities to meet members of the profession around the country working on the frontline, to engage with them and to discuss their concerns. She said that there were two issues she would like to talk about today as follows – the government's response to the situation in Ukraine and the government's response to Sir Christopher Bellamy's Independent Review of Criminal Legal Aid.

### **i) Ukraine**

The AG said that we have all been struck by the fortitude of the Ukrainian people in this difficult time but also the commitment of the English and Welsh Bar in offering support. She is therefore proud of the profession and keen to support its efforts. She has developed a good relationship with the Ukrainian Prosecutor General and together they have signed a statement which reaffirms the UK's support for cooperation in criminal investigations related to the international armed conflict in Ukraine. She has appointed Sir Howard Morrison QC KCMG as an independent adviser to the Ukrainian Prosecutor General to provide independent and expert legal advice. She has also spoken to her opposite numbers in other jurisdictions, looking to corral and mobilise legal support internationally. Finally, her colleagues in government are also leading on various work streams in support of Ukraine, including the Lord Chancellor and Deputy Prime Minister Dominic Raab, who visited the International Criminal Court (ICC) in The Hague recently to offer practical support from the UK for investigating and prosecuting war crimes.

## ii) CLAIR – The government’s response to the legal aid review

As mentioned earlier the Government responded on 15 March to Sir Christopher Bellamy’s Independent Review of Criminal Legal Aid. The AG said that she is aware that members of the Criminal Bar are stretched, and that morale is low, and that the government has been listening to the BC’s representations and want to deliver swifter access to justice. The Government therefore welcomes the recommendations in the report, and which have been accepted. Key features include:

- A 15% uplift for most fee schemes as soon as possible, injecting an additional £115 million a year into the system.
- The government will hold £20 million a year for longer term investment, including reform of the Litigators’ Graduated Fee Scheme (LGFS), the youth court, and the wider sustainability and development of solicitors’ practice.
- Overall, this will increase the Government’s investment in criminal legal aid by an additional £135 million a year in line with Sir Christopher’s recommendations. Alongside investment in court recovery, it will bring total taxpayer funding for criminal defence to £1.2 billion a year – the highest level of investment in criminal legal aid in a decade.

The AG said that she was glad that there had been some welcoming of the government’s announcement but was aware that there are also some voices of disappointment. The Government want to receive frank responses to the consultation and said that she was interested in the Chair’s earlier comments about current representation orders and thus something she is keen to explore further. The Government want the system to pay more fairly for the work done. That is why she urges the profession to see it as a turning point in funding support for legal aid with a view to bringing about a stable criminal defence profession which recognises that the need for practitioners to be properly remunerated.

The AG went on to say that their modelling shows that their proposals will result in an increase in access to legal aid with an estimated 3.5m more people eligible for legal aid. She believes it is a comprehensive package which she hopes is welcomed by the profession.

Following the presentation, questions were invited.

i) James Keely said that two years ago he was on record via letters to newspapers and radio interviews begging the Lord Chancellor to recognise the independent bar as a special category e.g., to give them financial assistance whilst still attending court and putting their lives at risk to ensure that the wheels of justice kept moving during the pandemic. The Lord Chancellor did not listen and advised them to apply for loans. The upshot is that members of the profession have left the independent bar and gone to other areas of practice. The

Government needs to do more to support those at the front line and, if not, there is no other option but to go on strike to protect their future.

The AG thanked JK for his comments and repeated her earlier comments thanking the profession for everything they have been doing to support access to justice. It is a noble profession and one she is proud of. However, she said she was also proud of what the government did to support millions of people financially through furlough and which chambers were able to take advantage of. With regard to CLAIR, it was a big step forward and a good basis to start and build on and should be welcomed. With regards to strike action is it regrettable that the CBA has decided to go ahead and feels that it is misguided and will adversely affect defendants and victims and would strongly advise against such a course of action.

ii) The Chair asked the AG if the Government would do more to support legal aid funding in future years if evidence showed that barristers were still leaving criminal practice. The AG replied that she was unable to commit to any spending promises now but the government had accepted that the criminal bar has struggled and are keen to support a sustainable criminal defence profession. This was a big step forward for the Government and there would always be a watching brief over criminal legal aid.

iii) Samuel Townend QC said that certain language is often used in parliament which undermines the role of lawyers i.e., accusing them of being enablers. STQC said that barristers and solicitors must abide by strict codes of conduct and when they breach these they are, quite rightly, called to account. In terms of the rule of law there is a role for lawyers in testing limits, for example, with regards to sanctions and certain regimes. However, when the profession is accused of being enablers it is detrimental and a misrepresentation. He would welcome the AG's views.

The AG replied that the cab rank rule was clear and agrees that it is not for a lawyer to exercise their personal judgement in such cases. Personally, she does not think it has come into question but accepts the point which was made. However, she thought that these sentiments against lawyers, and in particular the notion of fat cat lawyers, had been around for years prior to the current administration. By the same token, lawyers should be mindful of the language they use, particularly on social media, and how this may reflect upon the profession.

iv) The Chair invited Neil Hawes QC to ask a question, pointing out that NHQC sat on Sir Christopher Bellamy's CLAIR panel and is a former member of the Bar Council's Remuneration Committee. NHQC said this his question was about the recommended 15% uplift in Sir Christopher's report and the Government's failure to mention i) it is a minimum, and ii) it is per annum. He would like to know therefore whether the government will be looking at this annually going forward.

The AG replied that Sir Christopher's report also recommended that an advisory board be set up focused solely on legal aid funding. It is possible that this will be the forum for such discussions also allowing the representative members of the professions to keep a watching brief over this.

NHQC replied that it is correct that an advisory panel was recommended going forward but not one that dealt with finance necessarily. He said that Sir Christopher was keen to break the annual cycle of issues around funding. It therefore ought to be an annual settlement.

v) Jo Sidhu QC said he would like to make the following points:

- With regards to the earlier discussion regarding the use of language, he said that the CBA was not proposing a strike and they are not using this word. Instead, they are proposing a no returns action i.e., exercising their right to withdraw their goodwill when covering other people's work. This was an important distinction to make to avoid misrepresenting the position.
- It was not the case that the Government has adopted all the recommendations in Sir Christopher's report as stated earlier, citing two examples:
  - Sir Christopher was keen to ensure that people are paid for the work they did and spoke of the importance of all written work being remunerated. JSQC pointed out that neither the issue of wasted preparation work or special preparation work was included in the government response and would like to know if this will be addressed.
  - The advisory board is an engagement / discussion forum and will not have any statutory authority or any binding power on the government and is not what was envisaged by Sir Christopher.
- The offer of the 15% increase is misleading and in reality, will be significantly less as it includes VAT and other disbursements and does not take account of expenses and inflation.

JSQC said that the CBA does not want to take any action but is being forced into this position as Government is not listening to its concerns. The CBA is doing everything possible to minimise disruption but is being forced to use what it has available.

vi) Gordon Stables said he would like the AG to go back to Government and be an advocate for the criminal bar. The issue of an aging demographic at the Bar is a real problem, with those of less year's call leaving criminal practice and not being replaced. He went on to say

that the profession asks the government to recognise that the criminal bar is on life support, and it needs to be saved now before it is too late.

vii) The AG thanked JSQC and GS for their advocacy on behalf of the profession.

- As said at the start of her presentation, the AG acknowledged that the Bar may have felt exhausted and unappreciated. However, the decision to accept Sir Christopher's recommendations was made carefully by government and is a turning point and a significant cash injection to the front line.
- With regards to the use of language and not referring to the word "strike", the AG said that the CBA action will be perceived as a de facto strike by the public, particularly if they are unable to get representation. She repeated her request to the CBA not to take this action and to work together to get the criminal justice system back up where it should be.
- The AG disagreed with the comment that the advisory board would not be effective, saying it was an important step forward as a forum for representations from the profession and will assist the government with its decision making.
- With regards to the junior criminal bar leaving the profession, the AG said she welcomed the focus in the recommendations on magistrate court work, police station work and youth court, as a large element of this will be undertaken by the junior bar predominantly, whom the Government is keen to attract and retain.

Bringing this discussion item to an end, the Chair thanked the AG for attending the meeting today in person, addressing members and answering questions. Having heard the profession's concerns about the criminal justice system, particularly regarding the aging demographic and long-term future of the criminal bar, he would urge the AG to go back to the Government and do what she can to have these issues addressed.

### **13. Any Other Business**

The following items were raised.

#### **i) Agenda discussion – The Cab Rank Rule and the Era of Sanction**

Due to lack of time the agenda discussion item – The Cab Rank Rule and the Era of Sanction – was deferred.

#### **ii) Announcements**

The Chair welcomed Maddy Charlesworth to the Bar Council as the FDA CPS representative and thanked the outgoing representative, Andrew Morgan. The Chair also congratulated Michael Polak, Chair of the Young Barristers Committee, upon becoming a father recently.

### **iii) Bar Council Summer Reception – 13 June, Inner Temple**

The Bar Council Summer Reception would be on 13 June at Inner Temple. Bar Council members were asked to save the date and to look out for their invitations.

### **iv) Security passes**

Yaa Dankwa Ampadu-Sackey said that the current court security passes were due to expire on 30 April and asked whether there was any information about them being renewed and what would happen after April. The Chair said he would talk to staff at the BC to see about information being made available.

## **14. Details of Upcoming Meetings**

The next Bar Council meeting would be on Saturday 18 June 2022. Time and venue to be confirmed.

Remaining Bar Council meetings for 2022

- Saturday 17 September (including AGM)
- Saturday 12 November
- Tuesday 6 December (Inaugural Address)