

Minutes of the Bar Council meeting held on Saturday 26 April 2014 at the Bar Council offices

Nicholas Lavender QC Chairman
Stephen Collier Treasurer
Rt Hon Dominic Grieve QC MP Attorney General
Mr Oliver Heald QC MP Solicitor General
Alison Saunders CB Director of Public Prosecutions

65 further members of Bar Council attended.

1. Apologies

Apologies for absence were received from Alistair MacDonald QC, Mirza Ahmad, Gary Blaker, Richard Brent, Lord Alex Carlile QC, Alexandria Carr, Simon Clements, Gemma de Cordova, Tony Cross QC, Malcolm Dodds, Malcolm Frost, James George, Manjit Gill QC, Edward Henry, Thomas Jaggar, Gregory Jones QC, Rupert Jones, James K Juggapah, Hannah Kinch, Alexander Learmonth, Natalia Levine, Gerard McDermott QC, Simon Phillips QC, Simon Picken QC, Hefin Rees QC, Neil Ross, Muhammad Saley, Zoe Saunders, Geoffrey Tattersall QC, Helen Tung and Nicholas Worsley.

The following did not attend and did not send apologies: David Anderson, Colin Andress, Lesley Bates, Michael Bowsher QC, William Boyce QC, Alex Carington, Glenn Carrasco, Celina Colquhoun, James Hampson, Adam Hiddleston, Barnaby Hone, Ian Lawrie QC, Sarah Morgan, Nigel Sangster QC and Sundeep Singh Virk.

The following attended as guests: Vanessa Davies (until item 7), Baroness Ruth Deech QC (Hon) (until item 7), Geoffrey Rivlin QC.

2. Approval of the minutes and matters arising

The minutes of the last meeting were approved. There were no matters arising.

3. Statement by the Chairman

The Chairman welcomed everyone to the meeting. Once again, he apologised for bringing everyone together on such an inauspicious day, 26 April being the anniversary of the founding of the Gestapo in 1933 and the Red Baron's brother leading the Luftwaffe in an attack on Guernica in 1937.

The Chairman invited members to think about those members of the profession who have passed away since the last meeting; two were identified in his written statement, one of whom had a traditional life at the Bar and one less so.

The Chairman welcomed Alison Saunders CB to her first Bar Council meeting since her appointment as Director of Public Prosecutions.

The Chairman announced that nominations had been received for Officer posts in 2015; in each category one person stood unopposed and has been duly elected. He therefore offered congratulations to Alistair MacDonald QC (Chairman-Elect), Chantal-Aimée Doerries QC (Vice-Chairman Elect) and Lorinda J Long (Treasurer Elect).

The Chairman also asked that in addition to sparing a thought for those members of the Bar who had passed away since the last meeting, a thought should also be given to those who are unwell. Greg Bull QC, former Leader of the Wales and Chester Circuit, has been taken seriously ill and the Chairman sent best wishes to him for a speedy recovery.

The Chairman paid tribute to two long-serving and senior members of Bar Council staff who are leaving the organisation, Simon Garrod and Toby Craig, both of whom will be sorely missed.

David Wurtzel (DW) added that Toby Craig's contribution to Counsel magazine has been fantastic; it has been wonderful to watch Toby and his column ('Westminster Watch') grow and mature.

DW then asked when the final version of the Bar Barometer would be published. Stephen Crowne (SCr) confirmed that it would be in the next week.

Richard Atkins QC (RPAQC) reminded the Council that at the last meeting he asked the Attorney General for confirmation of the level of remuneration made to the amicus appointed in a VHCC case at Southwark. The Attorney had responded in writing and confirmed that the amicus is being paid at the rate for Junior Treasury Counsel on the Attorney's A Panel, namely £120 an hour.

4. Chief Executive's report

Stephen Crowne (SCr) provided an update on the Authorisation to Practise (AtP) process. 99% of practising certificate payments were collected by the deadline (end of March). The number of outstanding applications at that point was significantly lower than in previous years and the process was noticeably smoother. £9.8m has been collected through the process, which is just above the budgeted target. In total, 15,200 barristers have registered, which is slightly fewer than last year.

At the last meeting, a request was made for a full Bar Council contact list to be made available for members to use and SCr undertook to look into the feasibility of doing so, given requirements under the Data Protection Act. A note (at Annex 3) was circulated, setting out the issues relating to DPA compliance and proposing that, given the disproportionate amount of work involved in complying with the DPA against the envisaged benefits, the Bar Council should maintain and circulate generic contact lists for the SBAs and Circuits, where those addresses are in the public domain. This does not cover the whole membership, but wider requests can be dealt with on an ad hoc basis as there has only been one request in the last three years for the contact details of all Bar Council members.

Tim Devlin (TD) said that Bar Council used to provide a full register before and that it would be very helpful. All contact details can be found on Chambers' websites in any event, so there is no breach of the DPA. It is not difficult and other institutions do it, including governing bodies of which he is part. TD suggested that the Bar Council just don't want to do it because it is onerous.

Eleanor Mawrey (EM) said that the CBA has such a list. All new members of Bar Council can simply be asked if they mind for their details to be shared. It isn't hard.

Christina Michalos (CM) supported these comments and suggested that new members can be told that data is shared unless they choose to opt out.

SCr said that he had taken the sense of the meeting and would see if he could come up with another proposal.

5. Treasurer's report

Stephen Collier (SC) presented a series of slides in order to illustrate the Bar Council's financial position at 2013-14 financial year-end, what the budget looks like for 2014-15, and what is happening to the Bar as a whole.

The year-end position at 2013-14 was better than budgeted. The organisation had budgeted for 'break even' performance, but even allowing for the poor performance from BARCO, a modest surplus had been generated. SC presented a graph showing income from 2013-14, including practising certificate fee (PCF), Bar Representation Fee (BRF) income, and the subvention from the Inns, which had fallen by £300K on the prior year.

On the expenses side, over the last 12 months the organisation's footprint in the High Holborn building has been reduced through the SPACE project at a revenue cost of £750,000, which will be recouped in savings over the next five years. The pension situation has finally been resolved. In addition, every department in the organisation has spent less than it had budgeted, showing that belts are being

tightened across the board. These savings have allowed funds to be spent on the SPACE project. SC undertook to present the final accounts to Bar Council before the summer.

Last year, a decision was reached to move to an income-based collection of the PCF and action will be taken this year to implement a timetable for that. BARCO is also being watched very carefully.

Jolyon Maugham (JM) said that at the end of the financial year 2012-13, he noted that the entirety of the budget deficit was traceable to BARCO's losses. At the time, he asked what the process was for taking BARCO forward, or taking a decision to close it. He had been told then that a decision would be made shortly and asked for an update on that.

SC reported that there had been an expectation for BARCO to end 2013-14 with a modest surplus, but in fact there was actually a loss of c£130k. This is a serious and significant position and one which Finance Committee is keeping a close eye on, as if left uncontrolled, further losses would impact on the reserves. Finance Committee has decided not to provide any further funding to BARCO until its results have improved materially. Its position will be reviewed again at May's Finance Committee meeting. The intention is for BARCO to move from a cash neutral position to a cash positive position by the middle of the year.

JM asked for specific details on the level of financial commitment made to BARCO. SC asked David Botha (DB), Head of Finance, to respond. DB said that over a two-year period, a £240k investment had been made - to cover systems, set-up, and operating expenses.

TD asked why the term 'investment' was being used instead of 'waste'.

SC replied that whether the commitment made to BARCO was a 'waste' could only be determined when a final decision is made about its future. Although the BARCO Board is under no illusions that BARCO's financial performance must improve, SC suggested that it would be dangerous to think about BARCO solely in terms of the money it brings in, or its payback of the set-up costs and working capital. BARCO's primary purpose is as an amenity for the benefit of the Bar. As more practitioners move into direct access work, BARCO will become a more vital service. Therefore, a balance must be struck between gauging success by financial performance and by the service opportunity that BARCO provides to the practising Bar.

RPAQC reported that his Chambers has now signed up to BARCO so that all direct access work will go through it. To them, it is "no-brainer," as BARCO deals with the complicated financial authority regulations. It would be a disaster for the Bar if

BARCO were to fold. More practitioners and Chambers need to sign up to it. It is of enormous benefit, but will only become effective financially if people sign up to it.

Andrew Walker QC (AWQC) said that, as Chairman of the Professional Practice Committee, he will soon be writing to Chambers to offer guidance as to what practices they may undertake which could be in breach of the Handbook as they indirectly involve handling client money. This potential issue has been identified as a result of BARCO staff visiting Circuits and seeing working practices. There is a chance that some Chambers are breaching the Code without realising it. In these cases, BARCO is not just an amenity but a necessity.

SC gave an overview of the Bar Council's budget for 2014-15. In broad terms, income will remain static. Crucially for practitioners, the PCF has been held at the same level as last year. It is anticipated that expenditure will go down by 3.5% despite the reduction of the subvention, owing to major efforts at cost management across the organisation. There are two big decisions to make in this financial year: the timing of the move to an income-based PCF, and the future of BARCO.

Overall, the picture is that stability is returning to the organisation's finances. SC said that this is largely owing to the recruitment of SCr and DB, who are taking a robust and long-term view.

SC presented a slide showing what the profession has been paying over the last nine years, broken down by regulatory and representative activity. The conclusion is that up to 2011, there was a period of significant increase in what the Bar was paying, but since then there has been more stability, despite some major 'bumps' such as the pension levy. The current position of improved long-term stability and good budget control does not mean that there are no challenges, but it is a good position to be in.

SC's final slide showed the demographic of the "average" self-employed practitioner, who pays £750 to the Bar Council per annum, is 65% likely to be male, is 80% likely to be self-employed and has gross earnings of c£160k.

The Chairman said that an update on BARCO would be brought back to Bar Council soon, as the organisation had a previous history of generating white elephants and it was important to set the record straight over BARCO.

6. BSB report

Baroness Deech QC (Hon) (RDQC) thought that she would dispel unhappy memories of 26 April past by drawing to Bar Council's attention the fact that a campaign is underway to find her successor. The BSB Board is also looking for new

barrister members. If practitioners want to play a part in the regulatory landscape, this is their chance.

The new Handbook appears to have been well-received and there has been no increase in telephone enquiries. The BSB continues to inch towards regulating entities. RDQC wished to emphasise that BARCO will play an important part in that.

The current Chair of the LSB, David Edmonds, steps down on 30 April. RDQC has met his successor and looks forward to working with him.

In relation to QASA, the BSB awaits the oral hearing on 9 May and, while some progress has had to be suspended pending the outcome of that, planning continues behind the scenes to roll out the scheme.

The new, proportionate approach to CPD via spot-checking is underway.

RDQC conceded that the BSB's post-LETR plans are expressed in gobbledygook, but essentially what they are trying to do is to make training more affordable without making it less rigorous. The BSB is working with the profession and interested parties on this. There is a meeting of the Bar Briefing Group on 1 May.

Finally, the BSB Business Plan 2014-15 has been posted on the website.

Guy Fetherstonhaugh QC (GFQC) asked what was meant at paragraph 16c of the BSB's report, where it says that the BSB is considering "future interests in the Academic Stage of training". Vanessa Davies (VLD) confirmed that this is simply identifying the BSB's locus at the academic stage and asking whether it is something that they should be involved in. This will not only avoid duplication but also prevent the BSB from using resources unwisely.

There were no more questions.

7. Legal Aid Reform: for discussion

The Chairman remarked that there have been significant developments since the last meeting. It is fair to say that the discussion at the last meeting about legal aid reform was very valuable. Both he and the Attorney General reported on it to the Lord Chancellor.

The Chairman wished again to offer this thanks to the Vice-Chairman, Nigel Lithman QC, Tony Cross QC, Andrew Langdon QC, Sarah Forshaw QC, Paul Lewis QC, Mark Wall QC, Andrew O'Byrne QC and John Elvidge QC for their

determination, unity and leadership. The profession should be very grateful to have them.

TD said that the Attorney General should be added to that list, as it is obvious that he and the Solicitor General support the Bar. The Chairman said that the role of the Law Officers is not an easy one and certainly not one you would invent. He is very grateful to them.

TD added that he hoped that the CBA is getting ready to tell a new government that they expect to see remuneration increasing, not being frozen or cut. The Chairman replied that it would be ambitious to demand index linking in the current climate, but that the idea that the basis upon which the Government should work is that there ought to be annual increases is one that the Chairman raises at every available opportunity. However, if he were ever to forget to mention it, Sarah Forshaw QC would remind him!

Nigel Lithman QC (NLiQC) said that, although he is not known for his politeness or sycophancy, he wanted to thank the Chairman for his leadership in taking the Bar to a position where constructive negotiation was possible.

The Chairman drew the Council's attention to the work plan for the Criminal Justice System "think-tank", which the GMC has commissioned. Given that there is a lot going on, he thought that it would be a good idea to set up a body to coordinate the efforts of this Council, the CBA, the employed Bar, the Circuits, the young Bar and others. The Chairman expressed delight that Geoffrey Rivlin QC has agreed to chair this group.

The Chairman said that there are four important questions for consideration:

- What proposals should the Bar Council be making to the Leveson review?
- What in practice should the Bar Council be doing to prevent what might become a slide towards all Crown Court work being conducted by in-house advocates?
- Is there a business model which would work better for the Bar than self-employed practise in Chambers?
- What proposals should the Bar Council be making to this Government or any future government?

The Chairman introduced Geoffrey Rivlin QC (GRQC).

GRQC said that he counts it as a privilege to assist the criminal Bar at this difficult time. His working group has held their first meeting and are working on a way forward, deciding how best to manage a review.

The group has agreed to adopt the proposed terms of reference which, in their more simple form, are:

Having regard to the interests of justice and the current state of public finances, to consider and formulate proposals for the future of the criminal justice system and the role of barristers in that system. In particular:

(a) to consider and formulate proposals for the more efficient and effective conduct of the work of the Crown Court;

(b) to consider both the current state of, and any suggestions for change to:

(i) the arrangements for providing representation to individuals; and

(ii) the manner in which barristers provide their services; and

(c) to formulate proposals for:

(i) improving, and removing any obstacles, to the efficient and effective functioning of a system for providing representation to individuals; and

(ii) improving the manner in which barristers provide their services

(d) to make representations to GMC by the end of September 2014.

These terms were agreed on the understanding that it will not be possible to tackle everything and that the group must choose the topics which will be subject to review and recommendations. The group will need all the help it can get.

The criminal Bar currently feels badly bruised - understandably and justifiably. Given that they are in a vulnerable state, it is important not to consider change just for change's sake. The group will have to look at some things which will be uncomfortable. The appalling cuts to fees will be a major factor. Another aspect is competition from solicitors. There are some people who appear in court who are incompetent; some are not even lawyers. The impact on the quality of justice should be the group's overriding concern. This is not just about pounds and pence. The group will concentrate on the value of the criminal Bar in the Criminal Justice System and the dangers of 'dumbing down' (and the abuses that encourages).

GRQC said that he awaits with interest the outcome of the Jeffrey Review, which is bound to have some effect on the way forward. In his opinion, anyone who sits trying crime in the Crown Court will say the same thing, namely that - allowing for exceptions - the Bar produces incomparably better advocates. The Bar needs to reinforce that perception. Far too little notice is taken of the role of responsibility in a barrister's work, where lives and liberty are at stake.

The group recognises the importance of engaging constructively with the Leveson review, identifying areas where change can and should take place to create an efficient and credible CJS.

The group will be taking soundings and campaigning. This will include surveying the criminal Bar for views and arranging meetings on Circuit. There will be engagement with the judiciary, the media and parliamentarians. It will be important to emphasise that the independence of the bar is critical.

Robin Allen QC asked what the mechanism will be for reporting the work of the group back to GMC and Bar Council. GRQC said that the group would report regularly and urged anyone who feels that they could make a useful contribution to get in touch.

Andrew Langdon QC (ALQC) said that he spoke for everyone when he thanked GRQC for undertaking this important piece of work. He, and others, are very grateful.

Geoff Payne (GP) asked what sort of engagement with political parties is envisaged, given that at least one of them is already working on their manifesto. GRQC said that it was too early to tell yet.

8. BSB consultation on returning instructions: Bar Council response for approval

The Chairman explained that the deadline for responses to this consultation had been the previous day, but he had felt that it was so important that the Bar Council's draft response needed to be discussed at this meeting. An extension to Tuesday 29 April was therefore sought.

The publication of this consultation has given rise to a lot of concern. The basis for the consultation arises out of the issue which arose in November/December 2013 when the Government changed - via statutory instrument - the terms of remuneration in VHCC cases. There was concern that members of the Bar would be caught by the cab rank rule and would be unable to return the brief. The BSB issued welcome guidance which said that the Bar was not prevented by the Code from returning the case.

However, the BSB felt that there could also be an undue risk to clients where, through no fault of their own, they find themselves without representation because of funding issues from a third party, e.g. the Legal Aid Agency. The Chairman remarked that this concern may well be well-founded, but the question is whether there is any obligation on the Bar to do anything about it, and he quoted paragraph 108 of the draft response: "Barristers are not, and should not be made, responsible for

providing their own personal resources in order to make good an inadequacy in public resources, whatever the circumstances in which that arises".

The Chairman commended the draft response and thanked its authors, notably Andrew Walker QC. Max Hardy (MH) said that the Young Barristers' Committee has also drafted a response, in which they make clear that in the future there won't be any barristers whose standards the BSB must uphold if there is no way for anyone to make enough money to remain at, or join, the Bar.

Robert Rhodes QC (RRQC) said that the Bar Council owes a debt to AWQC for all his hard work and this excellent response.

Suzanne Goddard (SG) asked what the Bar Council's strategy is for the possibility that the BSB takes no notice of what is said in this response, given their record for ignoring consultation responses.

AWQC said that he met VLD and Ewen Macleod (Head of Professional Practice at the BSB) and was confident that they do not have a concluded view in relation to this consultation, but were genuinely open-minded. They are, however, under some pressure to conclude this issue at their Board meeting in May and that is one of the reasons that - unfortunately - this consultation spans the Easter holidays. The BSB has offered to meet with anyone who has concerns and the final paragraph of the Bar Council's response also encourages a meeting.

Tim Fancourt QC (TFQC) said that a number of SBAs have also submitted responses, making similar points. If there is a meeting, he would volunteer a representative of the Chancery Bar Association to attend.

NLiQC offered to share the CBA's draft response. The Chairman said that any response prepared by any body would be gratefully received.

9. Law Reform Committee: for report

AWQC, as Vice-Chair of the Law Reform Committee, presented this item, apologising for his lack of voice owing to illness. AWQC drew Bar Council's attention to the supporting paper provided at Annex 7 and reminded those present of the Annual Law Reform lecture which takes place this year on 18 November.

There were no questions.

10. Remuneration Committee: for report

Alexandra Healy QC (AHQC) and Ian Bugg (IB), Joint Chairs of the Remuneration Committee, presented the report at Annex 8.

AHQC said that she would not speak to the whole report, but drew particular attention to the involvement of the Remuneration Committee in the analysis of VHCC contracts following the Government's unprecedented decision to significantly reduce the contracted rates, even in live cases. The Committee sought and obtained expert advice and subsequently advised those barristers affected by the changes, making forceful representations against the Government's complacent assumption that the changes would not have an impact on representation in VHCC cases.

These representations succeeded in achieving interim measures which saved a large number of ongoing VHCC cases from fee cuts. There are, however, cases which could not be saved and defendants remain without effective representation. There is an abuse of process application for one of those cases in court on Monday, where a leading QC is acting pro bono for the defendants.

AHQC reflected that the majority of VHCC cases are graded at category 3. Even before the 30% cut, some barristers would not take these cases as the fees were too low, the current rate is £42.70 an hour for a led junior and £49 an hour for a junior alone. The rate for a barrister on the Treasury Counsel A list is £120 an hour.

IB described the Remuneration Committee as big, industrial, reliable and like a workhorse. He paid tribute to the incredible Bar Council team behind it: Adrian Vincent, who stepped into the considerable shoes of Simon Garrod but, unlike David Moyes, stayed the distance; Sarah-Jane Bennett and, until recently, Mark Stratton. Mark has moved to a new post but his work has benefitted the committee enormously.

IB also thanked the Vice Chairs of the Committee: Susan Jacklin QC, Jan Luba QC, Dr Mark Friston and Tom Little. The various consultative groups - civil, criminal, family, publicly-funded, privately-funded - undertake a huge task on behalf of the Bar.

The Remuneration Conference ("Getting Paid: Practical Advice") will be held on 12 July and members are encouraged to attend.

IB said that he is aware that the relationship between the Bar and the MoJ and LAA has become increasingly strained, but that the Remuneration Committee discuss issues with both on a regular basis and tries to maintain a cordial relationship, which is not always easy. For the most part, those people who undertake the day-to-day roles within those agencies understand the plight of the Bar, even if they do not feel that they can assist.

A member of Bar Council pointed out that for those in Chancery sets, £120 an hour for a Treasury Counsel A Panel is less money than a second year junior tenant receives. It is not enough for the complex work that they do. AHQC replied to say

that this is a fair point. Those at the publicly-funded Bar do tend to forget how much commercial barristers can earn, even at the very junior Bar. It may be that £120 is too little for very complicated commercial work.

The Chairman picked up on the comments by IB about working relationships with MoJ and LAA officials and echoed the need to remain cordial while recognising differences of opinion or approach.

The Chairman also reminded members that a feature of the new VHCC contracts is that if you sign up to them and the MoJ amend the rates again, you are stuck with the amended rates. This is something for individual barristers to think about.

The Chairman stressed that the 27 March 2014 announcement included the words:

- Whilst it is an individual choice for any barrister as to what they choose to do, there is no objection, in principle to barristers undertaking VHCCs.
- There is no reason why barristers who want to work on VHCCs should not do so.

The Chairman commented on the recent high profile case where an MP was prosecuted and chose not to use legally aid representation as he felt that this would not have given him the level of representation that justice demanded. This is worth thinking about.

There were no further questions.

11. Any other business

No other business was raised.

12. Date of next meeting

The next meeting of the Bar Council will be held on 14 June 2014 at 10.00 at the Bar Council offices.

[Charlotte Hudson](#)

Head of Executive Office

26 April 2014