Minutes of the Bar Council meeting
held on Saturday 20 May 2017 in the BPP Lecture Theatre

Present:	Andrew Langdon QC	Chairman
	Lorinda Long	Treasurer

Apologies for absence
Apologies for absence were received from: Robin Allen QC, Colin Andress, Rachel Ansell QC, Nicholas Bacon QC, Robert Buckland QC MP, Alexandria Carr, Melissa Coutinho, Anita Davies, Gemma de Cordova (alternate attended), Marie Demetriou QC (alternate attended) Michael Duggan QC, Richard Gibbs, Susan Jacklin QC, Michael Jennings, Jenny Josephs, James Kitching, Samuel Main, Athena Markides, Neil Mercer, Eleena Misra, Rebecca Murray, Peter Petts (alternate attended), Charlotte Pope-Williams, Emma Price (alternate attended), Benjamin Seifert, Joe Smouha QC, Andrew Granville Stafford, Mark Trafford QC, Andrew Walker QC, Rhodri Williams QC and the Rt Hon Jeremy Wright QC MP.

The following did not attend and did not send apologies: Tom Cockroft, Sarah Crowther, Alexandra Healy QC, Paul Mendelle QC, Alison Saunders and Jacqueline Wall.

75 further members attended.

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

The Chairman opened the meeting saying that he was impressed by the distances that some of the members had travelled to get to the meeting. Gerard McDermott QC, for example, was on the 6.45am train from Manchester and his Circuit Leader, Michael Hayton QC on the 6.55am train. The Chairman explained that he had himself been in Cardiff the night before with a number of other members where he enjoyed a terrific night at Cardiff Castle hosted by the Wales and Chester Circuit. Reporting that he was on the 6.26am train from Cardiff, the Chairman congratulated all members of the Bar Council present for attending the meeting.

Addressing the members, the Chairman said that he hoped that they had all seen the Bar Council manifesto and that they approved of it and its core values. He asked that members take some time to read it and reported that it has been well received.

With reference to item 10 on the agenda, the Chairman said that he was confident in predicting that he would no longer be 'Chairman' after the meeting and said that he was excited about the likely title change to 'Chair'.

The Chairman drew the attention of the members to the Sitting Hours Protocol proposal at item 6 and explained that before that, Sir Geoffrey Vos would be talking about the new Business and Property Courts. He went on to explain that after the meeting, a hustings would be held to enable the two candidates who are contesting the Vice-Chairman 2018 election to address the members.

The minutes of the meeting were approved subject to two minor typographical corrections.

Tim Devlin said that he had asked about a potential manifesto at the previous meeting and was pleased to see that a manifesto has been developed.

2. **Statement by the Chairman**

The Chairman said that he hoped that members had taken the time to read his statement attached as annex 2. Explaining that he expected the members to take the statement 'as read', he said that he wanted to deal with two matters orally: an update on Fixed Operating Hours; and, the English-Polish Law Day in Warsaw.

English-Polish Law Day

The Chairman reported that he had been privileged to lead a delegation of 20 barristers at the English-Polish Law Day in Warsaw on 15 May. He noted that there are 1 million Poles in this jurisdiction, some of which require the services of lawyers from time to time.

The Chairman reported that he had spent a fascinating day debating matters of bilateral interest and spoke of a worrying development with the populist Polish government who are installing political appointments into constitutional courts. He informed members that, as they might expect, the Bar Council are standing 'shoulder to shoulder' with and offering support to the Polish Bar. However, Poland is not the only country experiencing this kind of interference, there are similar problems in Hong Kong, Malaysia and Turkey and the Chairman advised that the Bar Council needs to be vigilant at home and abroad.

Fixed Operating Hours

The Chairman reported that he had received a reply late the night before from a from Susan Acland-Hood, Chief Executive: Her Majesty's Courts & Tribunals Service, in

response to his letter of 10 May 2017 in which he outlined concerns about the impact of flexible operating hours on diversity within the profession. He promised to circulate the response which contains nothing 'dramatic' and no suggestion that the pilots will be abandoned. However, the Chairman did say that the letter contained a tacit admission about budgetary problems and while Susan Akland-Hood accepts that there will be challenges to diversity, she does not accept that there are insuperable problems.

Although the Chairman acknowledged that it is tempting to think that the idea might 'die off' he made it clear that the Bar Council will continue to engage and explain. He reported that only the day before he and staff members including the Director of Policy (Phil Robertson) and Head of Policy: Legal Affairs, Practice and Ethics (Ellie Cumbo) had attended a meeting with HMCTS to where they had explained the details of problems faced by those with caring difficulties. Describing the issue as a 'circle than cannot be squared' with regards to improving diversity at the Bar and within the judiciary, the Chairman told members to 'watch this space'.

Andrew Morgan reported that negotiations have been concluded within the Crown Prosecution Service (CPS) for the extended courts pilot. There will be three shifts in a court day, early, mid and late, in the Magistrates Courts. CPS prosecutors will only be required to undertake any two of them over two days. He said that concerns have been raised about how this will affect CPS Agent Prosecutors, many of whom are at the Bar but no answer has been forthcoming. The plans represent a considerable additional draw on existing resources. If the system were to be rolled out nationally the CPS would likely require significant further funding to meet the demands of the new arrangements.

Richard Hoyle referred to the Pro Bono event which was mentioned in the Chairman's update. Speaking from a personal perspective he said that he has learned that not all people view pro bono work as positive, as there are concerns about the effect on legal aid funding and a view that the Bar will simply 'plug the gaps'. He informed members that he had run a "straw poll" on Twitter, which asked "Do you think Pro Bono disincentivises adequate Legal Aid funding" and received 118 responses. 66% of those who answered thought it did, 22% thought it did not, and 12% were not sure. He stated that whilst this was not a particularly large sample in the grand scheme of things, it was something to be aware of and was worthy of wider debate. With this in mind there are discussions taking place as to whether it would be possible to run a session on this at the Bar Conference. To this, Alison Padfield, Chair of the Pro Bono Board reassured members that the Board are already aware of the concerns.

The Chairman thanked Richard Hoyle for his point and suggested that the issue of whether or not pro bono work is positive for the Bar is debated at a future Bar Council meeting.

3. **BSB report**

Sir Andrew Burns, Chair of the BSB, spoke to this agenda item. He was joined at the meeting by Vanessa Davies, Director General of the BSB, Naomi Ellenbogen QC, Vice-Chair of the BSB, and, Wilf White, BSB Director of Communications and Public Engagement.

Sir Andrew Burns said that he wished to highlight four issues: the standard of proof review, the review of the role of the Inns, the pupillage pilot and recruitment to the BSB's Advisory Panel of Experts (APEX).

Standard of Proof

The BSB is reviewing the standard of proof for barristers facing disciplinary proceedings and a consultation was launched on 2 May. The current standard of proof used is the criminal standard and the BSB is seeking views as to whether this should be changed to the civil standard to bring it in line with the other legal professions. The Solicitors Regulation Authority (SRA) has also called for change. In principle, the BSB Board believes that the civil standard is more appropriate in the public interest but wishes to carry out a public consultation.

Review of the role of the Inns

The Inns are responsible for defining what it is to be a barrister but under the Legal Services Act, the process by which Inns call individuals to the Bar is part of the regulatory arrangements of the General Council of the Bar as defined by the Act as are a number of other functions of the Inns including:

- Applying the requirements for admission to an Inn;
- Approving pupil supervisors and providing pupillage supervisor training;
- Providing training courses during pupillage;
- Providing "qualifying sessions" and waiving/monitoring the requirements; and
- Student discipline, including the Inns Conduct Committee.

The new Authorisation Framework will assess Bar training against the principles of accessibility, affordability, flexibility and sustaining high standards will apply to the role of the Inns.

The BSB will be issuing a public consultation in September 2017 but before that, the BSB has a strategic responsibility to ensure that any rules are desirable from the perspective of meeting the regulatory objectives under the Legal Services Act.

The BSB intends to consult with the Inns and the Bar Council and discussions have already begun, but under the Act, any changes must be proposed independently.

Pupillage pilot

The BSB is launching a pilot to ascertain whether there should be greater flexibility in the way pupillage supervision is done. Sir Andrew Burns said that he wished to make it clear that that the BSB is not seeking to embark on a review of the pupillage system but explained that there is a need to understand how pupillage maps across to the outcomes on the Professional Statement and fits into the framework so that everything is properly aligned. For this reason, the BSB will be asking the Pupillage Training Organisations to have regard for the Professional Statement and to demonstrate that they meet the outcomes of the Statement and that their programmes meet the required standards. As a regulator, the BSB needs to be satisfied that there is an element of consistency. It seeks to work with the profession to ensure this without imposing barriers on the providers.

Advisory Panel of Experts (APEX)

Sir Andrew Burns explained that sections 4 and 5 of the BSB report set out the areas of expertise that the BSB is looking for with regards to members of APEX. Describing the work of APEX as 'relevant to the Bar', Sir Andrew Burns said that he hopes that barristers will put their views forward. The BSB hopes to attract good quality applicants.

The BSB's Education and Training Committee is looking for a senior legal academic with experience of vocational training. He encouraged anyone interested to apply.

Duncan McCombe enquired whether members of APEX are paid. Sir Andrew Burns informed members that they are but said that the question of payment is more general. Vanessa Davies confirmed that specifically membership is paid but there is a cap on the number of days. Half day and full day rates are remunerated at £150 and £300 respectively and no distinction is made between barristers and lay members.

Duncan McCombe asked whether it is really necessary to have paid APEX members under such heads of expertise as "providing services as a barrister" when this is expertise that the BSB has already or that it can ask for from the members of the Bar Council. Sir Andrew Burns spoke about the tension between reducing the number of heads (the BSB has received criticism for having too many people before) and ensuring access to those with up-to-date expertise. It is important that the BSB has 'people who really know their stuff'. The cost will not be extravagant, and APEX will focus on the kinds of areas that the BSB knows it will need. To this, Vanessa Davies made the point

that APEX has been constituted under new governance arrangements which are less costly than those they are replacing.

Amanda Tipples QC asked how the BSB envisages that the pupillage pilot will work in practice. The BSB's report says that this pilot is due to be launched in October 2017 alongside the 2017-18 intake of pupils. However, there are no participants yet and any changes as a result of the pilot are apparently to be rolled out in 2018-19. She made the point that the timescale is extremely tight to find participants in the pilot, and this was a matter of concern in relation to any proposed changes to the pupillage system, given that the pupillage structure is already well established.

Sir Andrew Burns explained that there is a lot of work going on but said that he did not consider the timescale too tight. The BSB needs to ensure that it has aligned its oversight of pupillage to ensure that what needs to be delivered is delivered. This is the final stage of the Bar training and it is important that any gaps are covered.

Amanda Tipples QC asked about the areas of practice of the, as yet unidentified 6-10 people, for the pilot scheme. Vanessa Davies replied that they are volunteers representing a cross-section of the Bar including the employed Bar. The BSB is in discussion with some of them already and the pilot is more about the BSB's understanding and oversight. The volunteers will be starting this Autumn. September 2018 is general date for the first availability of any new opportunities under the whole future bar training structure.

The Chairman reported that he has already had a brief discussion about who those entering the pilot might be and pledged to discuss this further. Vanessa Davies explained that the BSB is already in touch with the Pupil Supervisor Network and will be holding a public event at which Simon O'Toole, Chair of the Bar Council Pupillage Supervisor Network, has been invited to speak.

4. The Business and Property Courts

The Chairman introduced Sir Geoffrey Vos and thanked him for coming to speak to this item. Sir Geoffrey Vos, a former Chairman of the Bar, is the Chancellor of the High Court. He was called 40 years' ago, took silk in 1993 and was appointed as a Justice of the High Court assigned to the Chancery Division in 2009. Ten years ago, as Chairman of the Bar, Sir Geoffrey Vos noted that "The press seems to focus on publicising the highly paid barristers, as this provides the sensational stories. The truth of the matter is that 99 per cent of barristers carrying out publicly funded work are on a wage no higher than is available in other publicly funded occupations. I don't think the public realises how much work the Bar does for underprivileged parts of the community." The Chairman said that he had considered what the current issues are and noted as 'interesting' the fact that this was a quote from ten years ago.

The Chairman said that something else that had caught his eye was an interview that Sir Geoffrey Vos gave to The Guardian during which he said "The fact that we operate in these beautiful surroundings – in acres of listed buildings in central London – is our biggest handicap. We would have much less trouble with public perception if we moved the Bar to Streatham". The Chairman then asked the members of the Bar Council live in Streatham and every one of them raised their hand!

Sir Geoffrey Vos laughed at the show of hands saying it was 'obviously fixed'. He said that he had attended his last Bar Council meeting about nine and a half years' ago. At that time meetings were always in Inner Temple and always contentious. He said that it was good to see the Bar in 'good fettle' and thanked the members of the Bar Council for their kindness in inviting him back.

Beginning his address, Sit Geoffrey said that he wished to focus on two things: Brexit and the Business and Property Courts. He explained that Brexit is something that affects us all and warned that the legal profession and judiciary need to 'keep an eye on things' in order for things not to go wrong. The Business and Property Courts are connected to this as they bring together specialist jurisdictions, all of which use, internationally and nationally, a court resolution service. Consequently, there is a need for court structure which acts as a single umbrella for business specialist courts across England and Wales. The new structure was approved in March 2017 and announced via a press release. It was due to launch on 7 June 2017 but the general election has pushed the date back to 4 July 2017. The government is surprisingly supportive as it believes that the time has come for an outward facing approach to specialist dispute resolution.

The advantage of the Business and Property Courts is the connection with the regions. The current set-up has a disparate offering across five regional centres: Manchester, Leeds, Bristol, Birmingham and Cardiff. Newcastle, for example, has no specialist judge. Sir Geoffrey Vos explained that the new structure will change all that as the idea is that under the umbrella of the Business and Property Courts, there will be a critical mass of judges in each of the main regions so that cases don't have to be brought to London. No case will be too big to be tried in the regions as there is nothing special about London. The reason that there are not many centres is that there is not enough work therefore there is a need for the Business and Property Courts to attract public and barrister confidence. In time, it is hoped that there will be regional centres in Newcastle and Liverpool but judge power is required first.

Sir Geoffrey Vos cited intelligibility as another advantage. He said that he is dispirited by the blank responses he received when he says that he is a chancery barrister. The term has been around more than 200 years and those who have read Charles Dicken's Bleak House will be familiar with it but it is hardly of the 21st Century. Chancery

barristers need to be known by a name that is understood. They carry out business and property work and there for the 'Business and Property Courts' title means something to people and is a user-friendly name for the work that is carried out. Sir Geoffrey Vos said that he hoped that the change in terminology will enhance the reputation of the Commercial Court. It is little understood that chancery work encompasses work internationally and if barristers continue to talk about the Chancery Court they are not accurately describing the work that chancery barristers do.

Sir Geoffrey Vos continued by saying that the regional joined up thinking between London and the regions is long overdue. The important thing is to get judges into the regions. The new structure will allow better cross-deployment of judges so that limited resources can be used to the best effect.

Seeking to reassure members that familiar procedures and ways of litigating will not be lost, Sir Geoffrey Vos maintained that it will be 'exactly as it was'. This is an advantage for insiders (e.g. lawyers and solicitors) but trying to persuade the wider world of this will be harder.

The Bar faces huge international competition. Sir Geoffrey Vos informed members that he had recently seen a German Law brochure of some 30 pages which sought to persuade readers that German Law is more certain and more user friendly than common law and that it is better to arbitrate in Germany. He described the brochure as looking 'impressive' and warned that the Bar is facing similar 'attacks' from others who are saying that English Law is dead, dying or uncertain due to Brexit. New York describes itself as 'more certain', Singapore bills itself as a 'new litigation hub' and there are others in the Middle East, Far East and Australasia that pose a threat. It is important to persuade clients that English Law is certain but the risks need to be understood so that we can present England and Wales as the best arbitration dispute centre in the world.

Addressing members about what is going to change, Sir Geoffrey Vos talked about the following:

- C file electronic filing is now mandatory for people in the Rolls Building and the greeting will now read 'welcome to the Business and Property Courts of England and Wales'. Users will view the same drop down menu but it will be slightly more broken down. From next year, users will be able to choose the region in which to litigate.
- The mercantile courts and judges will now be known as Commercial Circuit Courts and Commercial Circuit Judges. The word 'mercantile' is meaningless today and has 'overtones of old gentlemen in Edwardian/Victorian collars in buttoned up suits and trading in Manchester squares'.

- The electronic filing that has been rolled out to the High Court will be created in the regions next year to match the Rolls Building. IT is always a problem a problem with government resources but funding has been secured for this.
- With regards to country work lots of what is business and property type work will be called business and property work (for example what is now the Chancery Business list). There are plans to increase the limits so that more work goes back down to the County Court.
- Cross-deployment is an important advantage. At the moment, judges tend to sit in silos. The courts don't have the manpower for administrative work and it is hoped that this will change and that the changes will prevent cases migrating to London when they should not. Good appointments have been made in Manchester, Leeds, Bristol and Birmingham.

Sir Geoffrey Vos went on to explain that, for the international community, CityUK is very active in promoting business and the reaction to the changes amongst barristers has been very positive as they feel that things are more understandable and befitting of a modern and outward facing system.

On the subject of Brexit, Sir Geoffrey Vos said that he is promoting the Brexit Law Committee. Comprising representatives from the Bar Council, COMBAR, the Law Society, The City of London Solicitors Company, GC100, CityUK and MoJ amongst others, the Committee's task is to consider what Brexit means for the legal community as a whole. It is exploring what we should be saying to government about what will need to be achieved if the legal system of the UK is not to be damaged. Sir Geoffrey Vos explained that the Committee is working on making sure that the government is properly informed by the legal community on the issues that need to be tackled. No advice is being provided, instead practical solutions to problems such as the enforcement of judgements are being put forward.

He continued by explaining the need to ensure that the government understands why it is so important to present solutions, "if we do not, the business community will punish us". There are innumerable fields where this is applicable - Family Law for example – and consumer law is greatly affected by European legislation. Other fields include transport, insolvency and pharmaceutical law. Sir Geoffrey Vos noted that the government's solution for each of these fields is the Great Repeal Bill, he questioned how this can be done when, looking at the Treaty, it is clear that more thought needs to be given to the issues. The Committee therefore is not a political or advisory body but is has done some admirable work to date including the production of many good papers, which is a good start.

Sir Geoffrey Vos said that he had wanted to inform members of the Bar Council that something was being done. There are big questions about what the Court of Justice role will look like going forward and the solutions are 'hideously complex'. It is not

possible to create a 'one size fits all' general approach for everything if we are to protect the legal services of this country.

Sir Geoffrey Vos finished by acknowledging that "sometimes we are depressed about the future." Talking about the Bar Council's manifesto he said that he was pleased to read that the first thing it asks the government to do is uphold the rule of law and that it makes it clear that UK citizens should be able to continue to obtain judgments and enforce them across borders. The independent judiciary is a great advantage of the legal system of England and Wales. Incorruptible judges are something to be proud of. Where broadly we espouse and follow the rule of law and what it means, other countries don't and we have something to sell. People will prefer this to a country in which you never know when the government's interests are concerned.

Duncan McCombe asked a question about where he would find how to head his particulars of claim and whether there was likely to be a practice note or something similar. Sir Geoffrey Vos said that there will be a practice note in due course. The process will be incremental and users will be told of changes.

Nigel Sangster QC enquired as to whether there is a role for part-timers in the new structure. Sir Geoffrey Vos confirmed that there is. Noting the point as 'extremely important', he said that the new structure will use part-timers more than the current one.

With regard to the points made about the consequences of Brexit, Gordon Nardell QC said that the message that barristers involved in this area are trying to spread among our sister professions is that it is not a "zero sum game". If issues such as the Brussels I regime are not sorted out, work leaving London will not go to Frankfurt or Paris but to New York, Singapore and Hong Kong, leaving Europe entirely. So we and the EU27 have a common interest in resolving these things, and barristers would hope to hear the same message being spread by the Brexit Law Committee. To this, Sir Geoffrey Vos confirmed that this is the exact message that is given and said that the Committee has received great support from judicial colleagues.

Guy Fetherstonhaugh QC noted that when Sir Geoffrey Vos had mentioned the new titles for the drop-down menus, he had not mentioned 'property'. He said that he assumed that this is because such work is covered by 'business', but made the point that a lot of property work does not fit into the 'business' category and asked where that type of work can be found in the electronic filing system. Sir Geoffrey Vos replied that the title 'property, trusts and probate' had originally been suggested but the consultees did not like it. He reassured Guy Fetherstonhaugh QC that most of the cases will fit into the business category as there are relatively few of the other types.

5. **Chief Executive's Statement**

Stephen Crowne began by thanking the members of the Bar Council for coming to the meeting and BPP for allowing the Bar Council free use of the lecture theatre. He said that he had three quick updates:

Strategic planning

The Bar Council is now 'getting on' with the strategic planning process and intends to 'kick this off' by seeking views about priorities and future issues across the Bar Leadership. He informed members that their views will be sought following this and the whole profession will be consulted at a later point in the process.

Staff survey

This years' staff survey focussed on the Work Smart Programme which enables the Bar Council to work more flexibly so that less accommodation space is required. This is necessary as the Bar Council needs to move from its current property in 2019. The contents of the staff survey are currently being analysed but indications are that the feedback is broadly reassuring. There will, however, be some issues to pursue and these will be discussed by the Senior Leadership Team next week.

Future accommodation

In the next few weeks, the Bar Council will be inviting GMC to take a firm view on the location for its future accommodation. It is important that the decision is taken relatively quickly as there are a number of complexities to deal with. The Bar Council will be aiming to reach an agreement with the BSB as to the location of the future accommodation.

6. Sitting Hours Protocol

The Chairman introduced Fiona Jackson to speak to the item and said that he hoped that the members had had the time to read the paper.

Fiona Jackson began by saying good morning to the members, thanking the Chairman for his introduction and explaining that there was a short paper at Annex 4 to support the item which is the consideration of a new courts Sitting Hours Protocol for all hearings in courts and tribunals below the Court of Appeal.

Saying that she was more than happy to answer questions, Fiona Jackson explained that the Protocol has been borne out of work done by the Equality & Diversity and Social Mobility Committee and Retention Panel as well as other SBAs for some months. She emphasised the importance of stressing that it is not a knee-jerk or

petulant reaction to the government's Flexible Operating Hours pilot which has now been postponed at least until after the general election and may never happen and she said that if we are still asked to participate in that pilot in particular courts, the Bar may do so if that is what is wanted.

The Protocol is designed at paragraph 3.2 from p3 to take account of the fact that simply noting how many hours a court sits on a case bears no reflection to the preparatory and other work which is going on in that case behind the scenes, whether at or away from court, and all of the other cases that barristers are also working on to keep the justice system moving.

The Protocol seeks to set out the parameters of general court sitting hours whilst also acknowledging that some courts and tribunals have well-established alternative sitting hours that have been set weeks or even months in advance of a particular hearing with the agreement of all parties, and that sometimes courts and indeed the advocates will want to sit earlier or later ad hoc to deal with a particular issue such as an over-running witness.

At the request of COMBAR, the Protocol also notes that some specialist courts and arbitrations may need greater flexibility on occasion. It does, however, bring within the listing arrangements at paragraph 3 on p4, an acknowledgement that for ad hoc decisions to sit earlier or later, in a case where an advocate upon accepting the brief was not on notice that the type of application meant that it could easily run over (for example freezing order applications or emergency care applications), the court should take into account the family or other caring responsibilities of counsel and other court users.

Fiona Jackson argued therefore that the Protocol gives barristers, however senior or junior, the ability to be consulted by the court and essentially permission to advance to a possibly hostile judge that extended sitting will place them in personal difficulties. The idea is that it should encourage members and indeed judges to resist difficult or impossible demands on barristers and others involved in the court process to work extended court hours. Though it will provide a ready justification for challenges to such imposition, it is not designed to stop barristers meeting reasonable requests from a court to sit late. In publicly-funded work, morale is seriously impacted as longer sitting hours mean even less remuneration for fixed fee work that has suffered decades of severe cuts. In other areas of practice, although remuneration may be very significantly higher, feedback to the Bar Council indicates that, for example, there are still very real problems with retention of women in commercial and chancery practice, who believe that even though they may be able to afford private short-notice childcare, the increasing norm of unpredictable court hours is very damaging to their ability to stay at the Bar.

Fiona Jackson drew the attention of member to the paper explaining that the recognition of the Bar is a profession and not a fixed-hours job is clear. Our pprofessional standards are such that we can react as flexibly as possible to issues as they arise in court. The paper does, however, suggest that the time has now come to adopt a sitting hours standard for the profession, that is both appropriate and practical permitting flexibility in the right circumstances.

Fiona Jackson explained that the paper sets out a 'flavour' of the reasons why a Protocol is a good idea for all barristers and court users, reflecting for the profession best practice in working together, recruiting and retaining excellent barristers, and getting the best out of barristers. It is deliberately designed to be flexible whilst at the same time ensuring equality of opportunity.

Fiona Jackson informed members that she could provide hundreds of examples over many hours of informal feedback that the Bar Council has received in recent years detailing how unexpected sitting times have a very negative impact on female and male barristers, particularly at the junior Bar, and particularly for retaining parents (especially women) who wish to return to work after having children. She pointed out that the letter sent by the Chairman to the Chief Executive of HMCTS about the Flexible Operating Hours pilots appended many examples of the difficulties that even the current sitting hours cause for members of the Bar, whether parents or not.

Fiona Jackson continued by saying that general feedback, and indeed the minutes of the last Bar Council meeting in April, reflect that on this issue, particularly when seen through the prism of responding to the announcement about Flexible Operating Hours. She explained that the proposed Bar Council Protocol will also reflect the views of many civil servants, court staff, prosecuting lawyers, solicitors and judges who feel they have little voice in the increasing pressure to sit ever longer hours.

This Protocol sends a strong message that the Bar Council takes very seriously the equality and diversity of all those involved in the work of the courts in administering justice. It provides certainty and fairness for all court users and it underscores the Bar Council's principle aim of ensuring that all barristers can maintain their professional duties to their clients and the court, whilst at the same time properly balancing their work commitments and personal caring responsibilities. It ensures that all barristers can enjoy genuine equality of opportunity whatever their practice area, retention of barristers for a successful career and progression into Silk and the judiciary, and that the legal system and judiciary is capable of better corresponding to the community it represents. It also sits very well with all of the work being carried out on Wellbeing.

Fiona Jackson informed members that, unfortunately, and ironically, due to a late-sitting case in Northern Ireland, Robin Allen QC, the Chair of the Equality, Diversity & Social Mobility Committee had been unable to attend the meeting but said that he

had asked her to indicate his full support for the proposal. The Protocol was debated at GMC two weeks ago received strong support. She finished by asking that, following the ensuing debate, the Bar Council approves that it promotes its general application and adoption.

John Goss spoke of the Magistrates Court, where many young barristers start out, where there is a particular consideration in respect of matters going part heard and the difficulties in trying reconstitute the same bench. He said that he had heard of one pupil barrister expected to stay until 9pm for a decision and suggested that this is indicative of a wider problem.

Francesca O'Neill said that she would endorse any move the Bar Council makes to address the problem. Explaining that she is recently back from maternity leave herself she made the point that the cost of childcare is prohibitively expensive it is impossible to arrange or rearrange childcare at short notice. For this reason, something must be done. She also shared her experiences of five of her female peers, all called in 2012 as she was, who have stopped practising as barristers either because they have had children and find the demands to difficult or because they anticipate problems once they choose to have children in the future. Of these five, three have left the Bar completely. She warned that the Bar will experience further 'brain drain' unless the problems are resolved.

Rachel Spearing said that she had assisted with a review of the New South Wales, Australia, court protocols, which had been in place for some time. These had not had the impact they had hoped due to poor implementation, awareness and application of them by practitioners and the Judiciary. Work was being done in the UK by some of the SBA's to use this research seeking to extend the criminal procedure rules with regards to the ordering of skeleton arguments, preparatory overnight directions which impact working life & caring issues. To this, the Chairman said that he was aware of connected topics.

Francis Fitzgibbon QC reported that the South-Eastern Circuit and Criminal Bar Association were independently working on ways to improve the quality of life for all court users and not just for lawyers. Saying that the public interest is at the heart of the matter he argued that it is no good having people making decisions at 9pm after a long working day. Nor is it in the public interest to have good lawyers leaving the profession. The CBA's proposals for change went even further as the chief motivation has been that a significant amount of people feel increasingly put upon by the demands of list officers and judges. A Protocol that has the backing of the whole profession would protect barristers, especially juniors. He finished by saying that he was firmly in support of the Protocol and that he hoped the Protocol will be the first stage of a series of reforms to make working conditions better.

Laurie Rabinowitz QC said that he applauded the Protocol for those who need it and welcomed its of objective of retaining women at the Bar. However, he was clear that COMBAR has a different perspective as experiences in the High Court - and in particular the Chancery and Commercial court - are completely different. In the High Court earlier or later sittings are almost always a consequence of the parties requesting this because this is in the interests of their clients who are incurring substantial expense and want the hearing concluded as efficiently and shortly as possible. The problems that people identify about sitting late and late decisions simply don't arise in the courts in which members of COMBAR practise and that it why COMBAR has identified 'carve outs'. Laurie Rabinowitz QC said that he would be happy to support the Protocol but he is concerned about applying it where it should not be applied. The choice of English law and jurisdiction is in a dangerous position and it is important that we be able to fight off claims by competitor jurisdictions that it is 'going to the dogs'. He advised caution about the message that the Bar is sending out and warned that there is a real risk that if the Bar is not careful with the wording about the Commercial Court, this could be used as a weapon by those competitor jurisdictions that wish to take work away from the English courts and English practitioners.

The Chairman made the point that paragraphs 6 and 7 of the Protocol state that the wishes of the parties should be taken into account. Laurie Rabinowitz QC acknowledged this but described the inclusion of arbitration in the Protocol as 'absurd'. The Chairman asked how COMBAR would feel if arbitration were to be removed and Laurie Rabinowitz QC replied 'delighted'.

Amanda Tipples QC explained that the Chancery Bar Association has 1,300 members and covers a large range of work. She said that members of the ChBA appear in a large range of courts and tribunals, and not just the High Court. She said that she was supportive of the initiative but also that she took on board the points made by Laurie Rabinowitz QC. She reported that the Chancery Bar Association had recently held a whole session on well-being at its Annual Conference. One of the points to arise from that session was that practitioners found timetables imposed by judges that failed to take account of the other responsibilities/commitments of court users was particularly stressful. She said, from the perspective of members of the ChBA, a Protocol which requires judges to take account of the caring responsibilities of others is important, particularly for more junior practitioners.

Shobana Iyer said that she totally supported the Protocol for the wellbeing of the bar and public interest but also that she agreed with what Laurie Rabinowitz QC and Amanda Tipples QC had said. With regards to arbitrations she agreed that they should not be included in the Court Sitting Hours Protocol as arbitration is a form of alternative dispute resolution chosen by the parties hence not within the ambit of the courts litigation jurisdiction. However, she also made the point that the wording may need to be slightly changed in relation to the Business and Property Courts to reflect

business from commercial and chancery (including IP) practice from the concerns raised by the respective SBAs.

Eleanor Mawrey said that she had recently spoken to three women in their early thirties who each said that they do not know how they will cope if they start families. The Protocol is one small step to ensure that time and resources invested in training barristers is not lost. She noted the irony that the Family Courts ask people to have consideration for children in cases yet judges give no consideration to the children of those working in the courts when asking barristers to sit until 9pm.

Christopher Kennedy QC said that he applauded the spirit of the Protocol but found it a little rigid. He provided an example from the previous day in which it became clear, late in the day, that a case wasn't going to finish at 4.30pm. He noted that it would have taken some time to ask people if they were willing to stay but instead that time was saved by the case overrunning a little until 5.15pm.

Robert Rhodes QC expressed sympathy with the principle of the Protocol however, he made it clear that he thought arbitration should be excluded. He stated the need for the Bar to be attractive to foreign businessmen who want to spend as little time as necessary in England, and who will not be appreciative of arbitrations being stopped short because counsel have domestic commitments.

Frances Judd QC explained that the Family Law Bar Association (FLBA) has not yet debated the Protocol but many members had voiced concerns about longer sitting hours particularly in cases involving children. She made the point that the issues very much affect family barristers and juniors, many of whom have caring responsibilities, and that accordingly she felt the FLBA would support the Protocol. She also said that she could understand the points of others, particularly those who wished to exclude arbitration proceedings. Referring to the hours of 10am – 4.30pm stated in the Protocol, she said that some family judges conduct telephone hearings earlier than 10am, and wondered if there could be a distinction between hearings conducted in this manner and those where counsel appear in person.

Ben Rowe said that when he was practising at the Criminal Bar, the actions of one judge who repeatedly listed hearings as early as 7.15 over a two-week period, coupled with impending fatherhood, was a significant factor in his decision to leave and go to the Employed Bar. He advised that it is important that senior barristers do what they can to support pupils and junior barristers if the Protocol is implemented, as it is very difficult to stand up to single-minded Judges.

Ryan Richter introduced himself as an employed barrister with the Crown Prosecution Service. He welcomed the 'timely' Protocol and said that his local crown court centre regularly sits at 9.15am and often lists cases as not before 3.45pm. Often

cases are not listed until 5.30pm the night before. He raised a point about short adjournments explaining that some judges are happy to sit until 1.30pm and others to start at 1.45pm. If a barrister is then going between two courts this presents difficulties. In addition, it is not uncommon for people to want to list telephone hearings during the adjournment period. He suggested that the Protocol should acknowledge this.

Kerim Fuad QC, Leader of the South-Eastern Circuit, said that he would expect members to contact their respective Circuit Leaders to let them know if any judges did not adhere to the Protocol, as it must be applied nationwide, to be effective. He queried whether the Protocol ought perhaps to be limited to the publicly funded Criminal and Family Bar. He asked members after what time in the evening, during a trial, does it become unreasonable to send or receive emails/documents to or from a trial judge and, he made the point that this out of hours' work greatly impinges on family life for the Bar and the Judiciary. When does one ever switch off? Kerim Fuad QC was clear that if a barrister is expected to carry on working, almost always unpaid when they are at home after a full court day this is not acceptable and is a further insult to badly paid barristers at the Criminal and Family Bar.

Fiona Jackson thanked Laurie Rabinowitz QC and COMBAR for the useful feedback but said that she would suggest that a 'one Bar' message is the most important principle. She noted that she had heard what Sir Geoffrey Vos had said about Brexit but made the point that he did not say that working from 'dawn until dusk' would solve the problems and suggested that he would consider the Protocol 'a good thing'. She acknowledged that arbitration could be removed from the Protocol but sought to persuade the members of the Bar Council that 'now is the moment to strike'. Implementation of the Protocol will represent a move forward.

The Chairman suggested taking a vote based on the understanding that arbitration is taken out of the Protocol. He was clear that careful thought should be given to the steps to take with regards to the approach the judiciary and spoke of the need to be intelligent and cooperative.

90% of members of the Bar Council present at the meeting voted for the Sitting Hours Protocol (with references to arbitration removed). The Chairman thanked members for voting.

7. Legal Services Committee report

Derek Sweeting QC, Chair of the Legal Services Committee, spoke to the Legal Services Committee report. He explained that the report was longer than usual as the Committee has been busy with a number of things. Asking members of the Bar

Council to take the report 'as read', he said that he wished to highlight the work on Court Reform and the Online Court.

Derek Sweeting QC reported that on Tuesday of that week he had attended an HMCTS workshop with Andrew Walker QC, Duncan McCombe, Phil Robertson and Ellie Cumbo to 'have a go' at the Civil Money Claims prototype that they are working on. Describing it as 'nothing like what was detailed in the Briggs Report', he explained that it is effectively a way of filling in small money claims online and said that, at present, the prototype is very embryonic with no decision trees and appears 'fairly underwhelming'.

Whilst continuing to move the claims process online was to be welcomed the general view is that the claim form prototype is "surprisingly undercooked" for something due in July and that, as predicted, many of the expected features are not present or are not working. He cautioned that although barristers started off being told by Lord Justice Briggs that a carve out for advice was very much what the designers had in mind, it might be that they find themselves occupying the 'value added' slot at their own instigation.

On the subject of decision trees, Derek Sweeting QC reported that he had sat with Judge Latham who had talked to him about the difficulty in producing decision trees for holiday claims which are designed to guide the litigant without providing advice. It seems likely that a system with working decision trees is some way off.

In other news, Derek Sweeting QC reported that McKenzie Friends research from Cardiff University is due to be published soon and told members of the Bar Council to 'watch this space'.

The Solicitors' Agent Guidance continues to be promulgated and it is important that others, including Bar training providers are aware of it.

Acknowledging that the Guidance on Court Dress is a relatively minor matter but one that continues to cause confusion, Derek Sweeting QC said that the Committee is seeking to have a definitive statement signed off.

The IT Panel has carried out a lot of work on data protection and what to do when data security is breached. A new sub-group has been established to look at the impact of the European Union General Data Protection Regulations (GDPR) coming into force in May 2018. Derek Sweeting QC noted that there is something of a revolution in terms of data protection work.

8. International Committee report

Amanda Pinto QC, Chair of the International Committee, spoke to the International Committee report and the various aims of the Committee. She noted that the report is long this year as the Committee has been extremely busy and said that she would aim to pick out highlights.

Drawing the attention of the members to the calendar included in the report, Amanda Pinto QC said that it was illustrative of the fact that the Committee has covered a lot, over a wide range of issues. The big issue this year has been Brexit but, in addition, four exchange programmes have taken place. Where possible, the Committee has tried to link these exchange programmes to other events, such as an outgoing mission or visit by the Chair of the Bar as this is a great way of including the young Bar and promoting the wider Bar. So, in a few weeks, the mission to Brazil and the young practitioner exchange programme will coincide. She also cited the example of the IBA Conference in Washington, also attended by the Chair of the Young Bar, Duncan McCombe, which helped to broaden the reach of the Bar Council and the Young Bar. The administration of the Grant Programme has been transferred to the Young Bar, but the International Committee continues to support it and barristers attending missions overseas more generally.

The International Committee works hard to publicise its different work strands. At the IBA Conference, International Committee members including the former Chair of the Bar, spoke on panels. The IBA demonstrated the overlap between all the Committee's aims including promoting the rule of law internationally, promoting the Bar overseas, presenting international opportunities to barristers and liaising with other bar associations.

The International Committee has made a number of interventions this year where it has had joint platforms in promoting those who stand up for or support the rule of law. Recently, the Chair of the Bar and the IC Chair encouraged the Malaysian Law Minister to stop interfering with the structure of the Malaysian Bar and several letters have been written to foreign Heads of State over the year.

Amanda Pinto QC finished by saying that the International Committee continues to build on past work in accordance with its three-year plan. Two recent examples: the first English-Cypriot Law Day was successful last year and will take place again this year; the first English-Polish Legal Seminar has just taken place and will be replicated next year.

9. Bar Representation Board

Richard Atkins QC and Fiona Jackson, Co-Chairs of the Bar Representation Board (formerly the Member Services Board), spoke to the Bar Representation Board report and distributed chocolates and jelly babies to grateful members of the Bar Council!

The Bar Representation Board oversees commercial activities of the Bar. Among its number are members of staff, members of the Bar and Bar clerks but the Board continues to seek more members and Richard Atkins QC encouraged members of the Bar Council to get involved if they wished. He continued by saying that the Board works hard to ensure that the Bar Representation Fee (BRF) is collected.

In other news, the new Online Bar Directory is in the pipeline and the Board has just approved the establishment of a new Training Panel focussing on 'soft skills' training such as business development skills, presentation skills and effective marketing. The Xexec website has been revamped and Richard Atkins QC encouraged members of the Bar Council to look at it.

The Bar Council has lost its insurance provider, Arthur J Gallagher, and a new provider is currently being sourced. The Direct Access Portal will be reviewed in 2017/18 as the Board aims to build awareness about it within the Bar as well as with the public and businesses.

Key forthcoming events for the Board include the Employed Bar Awards on Friday 30 June, the Pupillage Fair on Saturday 21 October and the Annual Bar and Young Bar Conference on Saturday 4 November.

In terms of planned activity for the next quarter, the Board will be reviewing the Chairman's Arbitration Service at its next meeting in July.

Richard Atkins QC finished by announcing that Paul Mosson, Director of Services, has decided to move on after nine years at the Bar Council. Describing him as a "loyal supporter", Richard Atkins QC said that he will be missed.

10. Chairman's title

The Chairman explained that, following discussion at the previous meeting where it was decided that the title of Chairman should be changed, views of the members of the Bar Council had been sought about which title to choose. The Chairman announced that members had "overwhelmingly" indicated a preference for 'Chair' and he asked members present to vote that the title of Chairman be changed to Chair with immediate effect.

Members of the Bar Council present at the meeting voted unanimously to change the title of Chairman to Chair.

11. Any other business

Duncan McCombe drew the attention of the members to the flyers about the Specialist Advocate Workshop organised by the Young Barristers' Committee on Saturday 1 July 2017. He asked those present to encourage members of various organisations to attend. Very few continuing professional development (CPD) events focus on advocacy and the idea of the workshop is to build on this and provide a specialist and bespoke event.