



The Bar Council

Meeting of the Bar Council

Minutes of meeting held on Saturday 17 September 2022, 10am via MS Teams

Present	Mark Fenhalls KC	Chair of the Bar	MFKC
	Nicholas Vineall KC	Vice Chair of the Bar	NVKC
	Samuel Townend KC	Vice Chair Elect of the Bar	STKC
	Malcolm Cree CBE	CEO, The Bar Council	MC
	Kathryn Stone OBE	Chair, Bar Standards Board	KS
	Lorinda Long	Treasurer	LL

Members in attendance (listed alphabetically)

Paul Adams; Tana Adkin KC; Christine Agnew KC; Shazia Akhtar; Stuart Alford KC; Yaa Dankwa Ampadu-Sackey; Nicholas Bacon KC, Michael Bellis; Minka Braun; Carl Brewin; Abigail Bright; David Bunting KC; Maddy Charlesworth; Ben Close; Celina Colquhoun; Barbara Connolly KC; James Corbet Burcher; Melissa Coutino; Dilpreet Dhanoa; Alexander Gunning; Birgitte Hagem; Michael Harwood; Neil Hawes KC; Max Hill KC; Isobel Hitching KC; Richard Honey KC; Sa'ad Hossain KC; Matthew Howarth; Shobana Iyer Mike Jones KC; Sean Jones KC; Susan Jones; Joanne Kane; James Keeley; Stephen Kenny KC; Kate Lumsdon KC; Timothy Manley; Hannah Markham KC; Louise McCullough; Cait McDonagh; Christina Michalos KC; Philip Moser KC; Yasmin Omotosho; Lucinda Orr; Deshpal Panesar KC; Reagan Persaud; Michael Polak; Charlotte Pope-Williams; Robert Rhodes KC; Ryan Richter; Natasha Shotunde; Jo Sidhu KC; Hannah Smith; Joe Smouha KC; Kate Spence; Gordon Stables; Heidi Stonecliffe KC; Philip Stott; Leanne Targett-Parker; David Taylor; Stephen Thompson KC; Linda Turnbull; Andrew Twigger KC; Anton Van Dellen; Sunny Virk; Gaynor Wood; Charles Woodhouse KC; Luke Wygas.

In attendance:

Sally Burnell	Director of Communications & Marketing	SB
Richard Cullen	Director of Finance	RC
Mark Ennals	Financial Controller	ME

THE BAR COUNCIL

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	Phil Robertson	Director of Policy	PR
	Isioma Onwukwe -Anyadike	Committees Governance Officer	IOA
	Wilf White	Director for Communications and Public Engagement (BSB)	WW
	Natalie Zara	Head of Planning, Strategy & Governance	NZ
Minutes	Yvonne Treacy	Executive Officer	YT

Apologies were received from

Dr Mirza Ahmad; Simon Anderson; Attorney General; Elaine Banton; Kirsty Brimelow KC; Mark Chaloner; Sydney Chawatama; Richard Cole; Ivor Collett; Kitty Colley; Faith Julian; Solicitor General; Martyn McLeish.

1. Conflicts of Interest

None were declared.

2. Minutes of the last meeting and matters arising

The minutes from the meeting of 18 June 2022 were approved.

3. Statement by the Chair

The Chair welcomed everyone to the meeting.

i) Announcements and updates

- The Chair noted that it was the first Bar Council meeting since the death of Her Majesty the Queen and that this meeting was being held during the period of national mourning. He hoped that Bar Council members will have seen his statement following her death which has been published on the Bar Council website. Following her death, he was grateful to have received many letters of condolence from bar associations around the world paying tribute to Her Majesty, often reflecting on her unparalleled public service He then paused the meeting for a moment to allow for personal reflection.
- The Chair explained that the BC meeting was online only today due the expected demands upon the transport system in London this weekend with the national mourning arrangements.

- He reminded BC members that the AGM would be held at 11am today and that the meeting would therefore need to finish just before 11am to allow BC members to join the AGM, which was also online but via a separate Teams link.
- The Chair welcomed Kathryn Stone, new Chair of the Bar Standards Board, to the meeting and who would be presenting the BSB report later. She remains the Parliamentary Commissioner for Standards until she steps down from that role at the end of the year and has been a member of the BSB Board for some time. He wished her well in her new role. He was pleased to report that from their initial conversations they see eye to eye on many issues, for example that both organisations should undertake their respective roles effectively and avoid duplication wherever possible.
- It was noted that the subscriber elections 2023 were underway and that the nomination deadline was the following week. The Chair asked that BC members encourage colleagues and members of chambers to stand for election. It was an important function and the BC needed good candidates.
- The next BC meeting is in November during COP 27 - United Nations climate change conference – in Egypt. For that meeting the Chair said that we may give some thought about what the BC should be doing and how to advise and support chambers.
- The Chair reported that since the last BC meeting, we now have a new Prime Minister and cabinet, yet our work with ministers and officials continues. In the next two weeks there will only be a few days when parliament sits before rising for the party conference season. The proposed Bill of Rights has been dropped but the issues covered may crop up next year. He would like to pay tribute to the many barristers who contributed to the work done in relation to the Bill of Rights. Major legislative issues ahead include retained EU law, the Northern Ireland protocol and the engagement needed from politicians to address the crisis in the criminal courts.
- The Chair thanked BC staff who have put in great efforts regarding the forthcoming Opening of the Legal Year at which bar leaders from around the work will be attending in large numbers. It was a timely reminder of the role the English and Welsh legal system plays in the world and the role of the Bar Council in ensuring legal services are included in trade agreements with other jurisdictions through MoU with various international bar associations.

ii) Criminal legal aid

The Chair reported that BC members will be aware that criminal barristers have declined to accept criminal instructions and that the BC and CBA are meeting with the Lord Chancellor next week. The Chair asked Max Hill KC, DPP, whether he was able to say anything about the situation in the criminal courts. MHKC said that it has been a very

stressful time for the criminal defence sector and referred to his comments in the Teams Chat where he said that the Chair had accurately stated that their position on principle is that any increase in AGFS fees which elevates defence funding in excess of the current prosecution GFS should be matched. That will need to be achieved through additional funding from HM Treasury. Therefore, he is watching closely, and was hopeful that the meeting between the Lord Chancellor and Kirsty Brimelow KC as CBA Chair on Tuesday 20 September will be a constructive negotiation leading to a good outcome for all.

Gordon Stables asked about interim arrangements, specifically will the CPS consider returning to the covid policy of allowing interim fees payments to prosecutors where sentences repeatedly keep getting adjourned due to the criminal bar action?

MH KC replied that he is not able to say anything more now about this. However, where they do have the funds, they will ensure that they are used appropriately, and that people will get paid. They try to provide a lifeline to those who prosecute and defend by continuing to instruct them and thus provide a lifeline. But they can only do what is within the budget. He referred BC members to the CPS position as set out in the Teams Chat.

iii) Bar Council meetings 2023

The Chair invited Nick Vineall KC, Vice Chair of the Bar, to talk about the BC meeting schedule for next year as set out in the Chairs Statement.

NV KC said that the pattern of Bar Council meetings for next year would be changing. First, the incoming chair's inaugural address would be held in January at the start of the chair's year and not in December as was the usual practice. The reason for this was that it was causing confusion, particularly for external stakeholders, for the incoming chair to make their inaugural address whilst the current chair was still in post. Secondly, in person meetings and online meetings had been reviewed. The challenge was to achieve a balance between in person meetings and the benefits of meeting face to face and online meetings and how they are less disruptive. Therefore for 2023 there would be three in-person only meetings on Saturdays, two in London and one on Circuit; and there would be three meetings in the week which would be hybrid, one of them to coincide with the day of the garden party. All meetings were set out in the Chairs Statement.

Robert Rhodes KC said that on Thursday of this week there were reported nearly 31,000 cases of covid. Even with the benefit of booster jabs and vaccines, the more vulnerable would appreciate therefore if the in-person only meetings next year were hybrid. NV KC said that he heard what RR KC was saying and that they would give some consideration to making hybrid meetings available only to those unable to attend in person for personal reason and come back to RR KC on this.

4. Bar Standards Board Report

Kathryn Stone OBE, Chair of the BSB, presented the report and commenced by saying that at the BSB they join the nation and the wider world in mourning the loss of Her Majesty the Queen. They offer their sincere sympathy to His Majesty the King and all the Royal Family at this time of great sadness. May the memory of her commitment to public service continue to inspire us all.

KS then took the opportunity to introduce herself as the new Chair of the BSB. She has been a member of the BSB Board since 2018 and would like to thank her predecessor Tessa Blackstone, for her excellent work for the Board over the past four years and to wish her well for the future. She hoped that the past four years, and her many previous years of working with barristers, has given her a good understanding of the challenges currently facing the Bar, particularly the publicly funded Bar. They know that their regulatory objectives can only be achieved if the publicly funded Bar is able to work effectively and they hope therefore for a speedy resolution to the current dispute.

KS said that she is currently the Parliamentary Commissioner for Standards – a post which she shall be leaving when her term of office expires at the end of this year - but before that she was the Chief Legal Ombudsman. Therefore, she already has some experience of working with the legal profession, although she would like to meet more members of the Bar. Over the next few months she will be travelling round the circuits listening to the views of the profession and talking about what we can all do to encourage best practice in promoting standards, equality and access. She is very keen to collaborate - and not just to regulate - wherever we share common objectives. But, equally, the Bar Standards Board is the regulator and it needs to act in the public interest confidently and independently. So we shall probably not always agree, but she hopes when that is the case we can agree to disagree with mutual respect.

She went on to highlight three issues:

i) She wished to assure BC members that increasing the speed with which the BSB deals with disciplinary and regulatory matters is her Board's very top priority. While the quality of the BSB's decision-making remains high, an increase in the volume and complexity of cases, staff shortages and the major cyber-attack which we experienced in April have all led to delays in their dealing with their core business, particularly in taking forward investigations. They must put this right. Her Board will be looking at proposals from the Executive to remedy this situation next week and they will be monitoring progress very closely.

ii) The BSB is very keen to hear the profession's view about the regulation of non-professional conduct and social media. This is a very tricky area where they have to balance barristers' human rights with their core duties, and they really want to know

whether the profession thinks they have got that balance right. KS encouraged everyone to respond to their consultation before it closes on Thursday 20 October.

iii)The BSB is currently seeking two new barrister members for the Board of the BSB. However, it is not possible to be a member of the Bar Council and of the BSB so KS asked that BC members encouraged others to apply. They really do want the Board to reflect both the diversity of the UK and the diversity of practice at the Bar. The closing date for applications is Monday 3 October.

The Chair thanked KS for her report and said that the whole Bar will welcome the speeding up of disciplinary cases. While it is undoubtedly in the public interest to deal with justified complaints about barristers, for those barristers who are facing a lengthy unjustified complaint procedure, the stress is corrosive and debilitating. This is the single most important thing to the Bar around regulation and the Bar Council is grateful to hear it is a top priority.

The Chair encouraged members of the Bar Council to engage with the social media consultation, saying that it is important to get the balance right. Membership of the BSB board is vital, and the Chair suggested members contact him and/or the Vice Chair if they think they know of any suitable candidates who might want information and/ or encouragement.

Regarding the roundtables across England and Wales, the Chair said that he had introduced KS to the Circuit Leaders. On this, many of the Circuit Leaders complete their terms at the end of the year although on the Western Circuit, Jo Martin KC, succeeds Kate Brunner KC in October.

Mark Neil, Director General of the BSB, said that he too would be happy to talk to anyone thinking of applying to the BSB Board about the work of the BSB and the role of a Board Member.

The Chair thanked KS and MN for their time.

5. Statement by the Chief Executive

Malcolm Cree, CEO, reported as follows.

- The Bar Council has fully recovered from the cyber-attack in April. It was very disruptive but thankfully it was stopped in its tracks. We have now received a cyber security report from consultants Grant Thornton and are well on the way to implementing improvements as recommended in their report.

- The Bar Council is now looking at budget setting and evaluating what the PCF levels should be for next year. I would therefore like to express my thanks to Richard Cullen, Director of Finance, and the finance team for their work around this.
- Following the death of the Queen we have made all the necessary changes from QC to KC at the Bar Council and the King's Counsel Appointments. The KCA needs to recruit two new barrister members to the selection panel. Applications are open.
- We are looking forward to the major autumn events, which are in person, including the Opening of the Legal Year, the Pupillage Fair, The Annual Bar and Young Bar Conference and others.
- Internally, after some post-COVID churn, the team is stable, and we have recruited some excellent staff members including an almost entirely new Communications and Marketing team ably led by Sally Burnell. Piran Dhillon-Starkings, Adviser to the Chair, is on maternity leave and Phil Robertson, Director of Policy, has taken on some of her duties but we also have an experienced PA consultant on a retainer. Finally, Natalie Zara, head of planning, strategy and governance, leaves us in a couple of weeks. We have recruited a replacement although Natalie is actually irreplaceable. I can't thank her enough and she will be sorely missed.

The Chair picked up on the cyber-attack MC mentioned and said that it was very fortunate that Bar Council staff picked up the potential hack whereas we understand that other organisations did not. It was a sophisticated attack resulting from Microsoft not releasing a software patch in time. As a result, the Bar Council is now looking to extend its IT support coverage round the clock to stop this happening again. MC confirmed that a member of staff did indeed spot unusual changes to coding, and everything was therefore taken offline immediately. We already had a programme in place to move to Cloud storage and to update our systems accordingly - we have just accelerated the implementation programme. MC said that even if the Bar Council had implemented everything as recommended, we would have still been vulnerable.

6. Amendment to the constitution – replacing references of QC to KC

Natalie Zara, Head of Planning, Strategy and Governance, explained that following the death of Her Majesty The Queen, and the subsequent change from 'Queen's Counsel' to 'King's Counsel', a proposal was being put to members of the Bar Council to approve the amendment of all instances of 'Queen's Counsel' to 'King's Counsel' in the Constitution of the General Council of the Bar.

As this had not been placed on the agenda in advance, although members had been given at least four clear days to consider the proposal, agreement was being sought from the members to take a vote on the matter. Changes to the Constitution must be put to the Bar Council by way of extraordinary resolution with two thirds of those present being in agreement for the resolution to pass.

It was therefore noted that 65 members of the Bar Council unanimously approved the proposed change to replace the words 'Queen's Counsel' with 'King's Counsel' in the Constitution, of which there are four instances, and that the Constitution would be updated accordingly.

ar Council Subscriber Attendees at Bar Council General Meetings

NZ reported that following research by the Committees Governance Officer and herself a proposal was brought to the Bar Council that the provision to allow non-Bar Council subscribers to general Bar Council meetings be removed from the Constitution. Essentially, they were concerned that, in an age where hybrid meetings are commonplace, non-Bar Council members would more readily join meetings without us being able to monitor who was on the call and/or hijack meetings to further causes aligned with their own self-interests. The proposal had initially been considered by the General Management Committee, but that discussion was inconclusive and therefore a decision was made to bring the matter before the Bar Council for consideration.

The members of the Bar Council took into consideration the comparative research that had been undertaken in relation to other membership organisations, but, decided that in the interests of transparency, inclusion, accountability and future engagement, the provision to allow non-Bar Council subscribers attend Bar Council meetings should remain.

There was, however, among members of the Bar Council, a recognition that it is easier for people to join remotely which, in turn, makes it harder to control meetings and to keep a record of exactly who is on the line. For this reason, Nick Bacon KC suggested that, should non-Bar Council members wish to attend a Bar Council general meeting, they should give prior written notice. This would mean that the Executive Office would send agendas and links only to people who have requested to join, making the meeting attendance easier to control.

Bar Council members were largely supportive of this proposal, and it was agreed that the paper be brought back to the next meeting Bar Council meeting for reconsideration.

7. Risk Register and Report

MC introduced the risk register and report which he took as read. He said that there are 11 current risks four of which are classed as high risk:

- Business continuity (post cyber-attack)
- High staff turnover (hopefully now over the post-COVID bulge)
- Inflation – cost risk
- Failure of cyber and information security.

9. Treasurer's Report

Lorinda Long, Treasurer, presented the July 2022 Management Accounts which showed that the monthly position and forecast for the year end is broadly in line with the budget.

- **Income:** Additional income from late PCF renewals and non-recurrent business partnership income has been matched against a write off of budgeted investment income
- **Staff costs:** Savings from vacancies have been matched against additional costs on temp staff and recruitment.
- **Non-staff costs:** Savings due to lower depreciation (less capital spend taking place than budgeted) and savings in the BSB exams team. These savings have been matched against additional costs from IS reviews post the cyber-attack.

The Chair thanked LL for her report and asked MC whether he wished to add anything. MC said that the overall position was relatively good in that we have a strong cash reserve and may be in a position to pay back the CIBLS loan early. However, he was worried about the BSB increased staff costings and the implications for the Bar Council. There was quite good news regarding the defined benefit pension scheme which had worked out in our favour and now looks as though we will not have to contribute the same annual amount into the pension fund, but it will be ringfenced in the reserves.

The Chair said that he and MC shared the same anxiety about the BSB raising costs and therefore he was grateful where their new Chair may take them. In the run up to the budget process and setting the PCF fee they will be mindful of these issues.

The Chair acknowledged Tana Adkin KC's comment in the Teams Chat which will be noted ie that the decrease in criminal practitioners coming to the Criminal Bar (that are needed to deal with the backlog) raising the PCF will be something that dissuades criminal practitioners either coming back or joining.

10. Draft Accounts

It was reported that the draft accounts are for approval and authorisation and will be reported at the AGM immediately following the Bar Council meeting. 59 members of the Bar Council unanimously approved the financial accounts. Voting on the accounts is done by way of ordinary resolution (over half of members must be in agreement for the resolution to pass). The Chair thanked the Treasurer and staff for compiling the accounts.

11. Any Other Business

i) Matters agreed

For the purposes of the records, it was noted:

- 59 members of the Bar Council unanimously approved the financial accounts. Voting on the accounts is done by way of ordinary resolution (over half of members must be in agreement for the resolution to pass).
- 65 members of the Bar Council unanimously approved the proposed change to replace the words 'Queen's Counsel' with 'King's Counsel' in the Constitution, of which there are four instances. Changes to the Constitution must be made by way of extraordinary resolution (two third of those present and voting must be in agreement for the resolution to pass).
- For all votes at a general meeting, the quorum is 20 members.

ii) AGM

The Chair reminded Bar Council members that immediately following the Bar Council meeting the AGM would be held at 11am and that they were all encourage to attend with the reminder to do so via the separate MS Teams link they had been sent.

iii) Thank you

The Chair thanked the staff. Extraordinary experience to come as a self-employed barrister to see how a bigger enterprise operates. Lucky to see that the CEO runs a tight ship, incredible staff, performance of staff has been exemplary. Two people in particular – Piran has been supportive and outstanding. With regards to Natalie, she has been amazing. He thanked her formally. Thank you. Natalie – thank you all. Delighted to have had some fantastic chairs to work with.

12. Details of Upcoming Meetings

- Saturday 12 November 2022, 10am – hybrid
- Tuesday 6 December 2022, 4.30pm – online only