Minutes of the Bar Council Meeting held on Saturday 22 January 2011 at the Bar Council Offices

Present:

Peter Lodder QC - Chairman
Michael Todd QC - Vice-Chairman
Andrew Mitchell QC - Treasurer
David Hobart - Chief Executive

1. Apologies

Apologies for absence had been received from Stephen Cobb QC, Malcolm Davis-White QC, Susan Grocott QC, Christopher Kinch QC, Ian Pringle QC, Mark Wall QC, Catherine Addy, Mirza Ahmad, Jade Allen, Tom Bourne-Arton, Nicholas Burn, Georgina Cole, Jaime Hamilton, Nichola Higgins, Fiona Jackson, Christina Michalos and Zoe Saunders.

2. Approval of the Minutes

The Minutes of the Inaugural 2011 Bar Council meeting held on 8 December 2010 were approved.

3. Matters Arising

No matters arose from the Inaugural 2011 meeting.

4. Bar Council Membership 2011

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

5. Statement by the Chairman

The Chairman noted that when George Bush Junior had been told by his doctors that he needed a urine test, he was reported to have asked if he could write the answers on his hand. There were some things you could not prepare for. This was a job in which you had to expect the unexpected.

23 December 2010 found this new Chairman in York as a guest of the North Eastern

Circuit, with 300 members of the Bar and Bench. The Masters of Revels were conducting a very funny review, interspersed with some festive singing. A glance at the running order for Good King Wenceslas showed 1st verse, Leeds Chambers; 2nd verse, the Judges; and 3rd verse, the Chairman of the Bar. For whatever reason the Chairman was elected, it was not for his singing, but the audience was generous enough to applaud.

Some surprises turned out better than expected, but others turned out far worse; he would turn to public funding later. In marking a number of new arrivals, he welcomed Dr Vanessa Davies as the new Director of the BSB. She was a barrister, and her career had followed an interesting path from starting as an academic linguist at King's College London. She had worked at the FCO for 10 years, first as Director of the Diplomatic Service Language Centre, and then as Group Director. Latterly she had been the Director of Operations at the Refugee and Migrant Justice legal aid charity. Her wide experience and great energy were already apparent in her first few days, with firm correspondence with the LSB over their less well judged interventions on the topic of lay majorities.

The Chairman welcomed the new members of the Bar Council, and emphasised their importance in the leadership of the profession and in communicating with their constituents. They were in a position to give positive answers to the question: "what does the Bar Council do for me?" He welcomed the three new Circuit Leaders: Rick Pratt QC for the Northern, Greg Bull QC for Wales and Chester, and Nick Hilliard QC for the South Eastern. Finally, he welcomed Nichola Higgins as the Chair of the YBC, and Michael Todd QC as the incoming Vice-Chairman, with whom he had already developed a strong and friendly bond.

He notified the meeting that David Hobart would be moving on in May to become the first Chief Executive of the City of London Law Society. Formal farewells would take place another time, but he observed that David had been a tower of strength, and his judgement and analytical skills had seen the Bar Council through many challenges during a momentous period in our history. We were grateful. The Chairman had been informed of David's decision late last year, and thus had been reassured that the resignation was not an early exit poll on his chairmanship!

This move provided a timely opportunity to review the structure of the Bar Council as appropriate to the modern age. Much as members of the Bar needed to prepare for change, so must the Bar Council be well prepared. Nick Green QC had agreed to chair the review, for which the TORs and composition of the group were work in progress for report to the next Bar Council meeting. The review itself would be thorough, taking some 6 months to complete, and would be considered by the Bar Council and the BSB.

The review would take us beyond David Hobart's leaving date, and the Chairman did not expect to able to make an informed and proper appointment for a year or more. The Emoluments Committee would advise the Chairman on interim arrangements, and would avoid any action that might prejudice the integrity of the review. We would look to a solution that made the most of our in-house talents.

The Chairman and Vice-Chairman had met with most of the chairs of Representative committees, and each would provide information on what they were doing, on what they expected to do in future, and on the skills and experience available on each committee, e.g., some committees had former journalists, and members with IT and business qualifications. This should give us reference material to meet the many likely future demands we faced, not least of which would be the Government's proposals to reduce public spending.

Public spending was a topic on which Chris Hancock QC would be reporting shortly. At this stage it was sufficient to say that the consultation documents contained many unworkable, contradictory and counter-intuitive proposals that created perverse incentives. Far from leading to cost savings, the proposals seemed more likely to increase costs and to cause irredeemable damage to access to justice in the process.

The Chairman made a strong plea for help from the Bar. The working group needed positive contributions, particularly on the Jackson implementation paper. And individuals should themselves respond to the MoJ. Of course there would be cuts but we might lessen the worst effects. The problem reminded him of Moses coming down from the mountain to tell the assembled audience: "well I got him down to 10, but I am afraid adultery is still there."

OCOF remained on the horizon. We had always opposed it but the Green Paper proposed a single payment for those cases where jurisdiction is accepted in the Magistrates Court but the defendant elects and then pleads guilty in the Crown Court. This low fee of £565 would be shared between barrister and litigator. It was a clear sign of government intention, but we would continue to fight the Bar's cause. We would press for mechanisms that ensured a proper proportion of the fee for advocacy. We had recently discussed alternative schemes for Crown Court advocacy with the MoJ, and the Chairman had spoken to the AG on the matter. But it would a dereliction of the Chairman's duty not to encourage members of the Bar to prepare for the eventuality that might arise if the MoJ maintained its intention to move to end ring-fencing for the advocacy fee.

The broader programme to change our way of operating continued. In Birmingham last week the Chairman had been impressed by those chambers which had developed their plans for new methods of operating. He had even been harangued

by one set for not pressing the MoJ to advance their timetable. We sought to meet the hopes and assuage the fears of as many members as possible, but there was no single line on the issue of future working practices.

The Chairman turned to another important topic: letters setting out complaints procedures. Hitherto it had been satisfactory to send this to solicitors, but there was now an LSB proposal that Chambers must send it to each and every client. In the Chairman's line of practice it was not uncommon to be representing a juvenile charged with serious crime who had significant mental health or behavioural problems, who had reading difficulties, and who was pre-disposed to regard any advocate as an establishment figure to be disliked and not trusted. Indeed, the police often did not know where his client was. In similar vein, it was not unusual for a family law practitioner to be representing someone in an advanced state of anxiety; such as an ex-parte application for someone whose child was about to be abducted to a foreign country.

In these circumstances, the notion of presenting a document or, still worse, having to read out the detail of how chambers' complaints procedures worked, was ludicrous. This was the LSB's latest initiative in the public interest, i.e., in the client's interest. Similar considerations would apply in other practice areas, and the Chairman would be arranging a meeting of chairs of SBAs to make it clear to the BSB why these proposals were not sensible.

Finally, the Chairman congratulated Natasha Foy, Mark Hatcher's PA and one of the organisers of today's meeting, on her very recent engagement to Jack White, a former Bar Council employee.

6. BSB Report

Baroness Deech remarked on flourishing romances at the Bar Council, and welcomed the Attorney General to the meeting.

Her update on BSB activities started with the Entity Regulation consultation, to which 50 responses had been received. It was likely that opinions were polarised, but this would become clearer when the analysis had been done. She echoed the Chairman's earlier comments on the complaint process dilemma, and she recognised the practical difficulties. It should be possible to marshal the arguments to persuade the LSB, and to find a way through this problem.

She was keen to make QAA happen as best as possible, and she was sure that judicial assessment was a non-negotiable element of the method. She questioned the wisdom of the LSB's suggestion, before the end of the public consultation process, to talk of enforcement action to hasten QAA. She was grateful that the judiciary were

proving remarkably co-operative in accepting the need for this additional task. On the subject of getting to a lay majority for the BSB, she was clear that we would get there quickly. This would preserve the necessary regulatory independence from the Bar, and would be achieved by the early recruitment of lay members. She saw no logical reason why the BSB should be forced to do this earlier than the Law Society, for whom a different timescale had been agreed by the LSB.

The forthcoming Education Review needed to address the tragedy of the bright young people who cannot get pupillage. It was time to get a grip on the career paths available to talented 22 year-olds with big debt, and to ensure that they did not become enemies of the Bar. The transition arrangements between the two branches of the profession was a challenge, with the Inns of Court addressing the needs of solicitors seeking to join the Bar. She had no desire to amalgamate the two branches of the profession. She pointed to the three consecutive studies on the BVC, pupillage and CPD, conducted by Derek Wood QC which set education standards for the Bar for the foreseeable future. She compared the relative benefits of law degrees with and without the core qualifying subjects, and opined that law was a good subject in its own right. The Review would be an interesting project, and would be welcomed by worried parents. It would be relevant to the skills required in ABS, and to the role of future paralegals. It would also be important to be sure that the Review team members were free of conflicts, and she undertook to report back to the Bar Council.

The Chairman supported Baroness Deech in noting that generally the BSB lay members were pro-Bar, and that barrister members were more likely to be hostile to existing standards. He also agreed that it was unacceptable for the LSB to seek to impose different timescales as between the Bar Council and the Law Society for achieving a regulatory lay majority.

7. MoJ Green Paper on Legal Aid and Jackson

Christopher Hancock QC introduced this item by noting that some progress had been achieved in drafting the responses to the two papers. The legal aid paper was up to Version 5, but there was still a need for fresh inputs from practitioners. The Chairman added his plea for assistance with this enormous task.

Max Hill QC gave some details about the legal aid response, for which contributions had been received from most, but not yet all, of the Circuits. First, the asymmetry in percentage cuts between, on the one hand 24% in crime, but on the other, 100% in some areas of family and civil work, made the relative impact difficult to assess. But a unified response would work when considered in terms of relative access to justice. Second, it would soon be our last opportunity to incorporate the Bar's views. Third, in some areas there was a danger of arguing a self-interested response, inasmuch as poor professional behaviour by a barrister might lead to more, rather

than fewer trials. Finally, both the CBA and FLBA draft final responses would be circulated to get responses from practitioners.

John Cooper QC followed up the access to justice theme by doubting the ability of lay clients to get face-to-face qualified legal advice at police stations. Max Hill QC agreed, but the danger went further: the implications of the absence of qualified legal advice would become clear at every stage in the process leading up to trial.

Christopher Hancock QC reiterated the need for more responses, as soon as possible, and particularly to improve the latest draft of the Jackson response.

8. Pensions

The Treasurer expected the outcome of the Bluefin work to come to the March Bar Council meeting for decision, and for final resolution in the summer of the way forward on future accrual for existing Defined Benefit (DB) Scheme members. Richard Salter QC summarised the future accrual story so far. A perfect storm of increased longevity and reduced investment returns had resulted in two distinct problems. First, the past service liabilities had grown far faster than Scheme asset values, and this problem was being addressed by the Treasurer. Second, there was a need to identify an affordable basis for the future accrual of pension benefits for those staff who had joined the Bar Council before 1 July 2006, and this problem was being addressed by the Salter group. He expected a report from Bluefin by 1 Feb for his group to digest, and to report to the Bar Council with options and recommendations. The BSB would also need to agree the recommendations, via the Finance and Audit Committee which would make the final decisions. It would be for the Bar Council as employer to negotiate with the staff, and the Trustees would also need to agree with the eventual solutions. The cost of the Bluefin work would be some £14,000.

The Chairman thanked Richard Salter QC and his group for their efforts.

9. Amendments to Standing Orders

The Chief Executive introduced the two-fold proposal to amend Standing Orders. The first strand was to update some paragraph numbers and cross-references in the text. None of these minor changes had any substantive effect, and the Bar Council approved the proposed changes.

The second strand was to amend Part 3 sub-para 51d of the text to remove the constraint that no more than two of the three barrister members of the FAC nominated by the Chairman of the Bar could be Bar Council members. The amendment as proposed would have the effect of permitting the Chairman of the

Bar to appoint all three barrister members without regard to their Bar Council membership.

Andrew Walker opposed the proposal. First, he noted that the existing text of Standing Orders had been a compromise reached with the BSB to avoid a possible in-built barrister majority on the FAC. Second, he argued that the proposal was unnecessary if the objective was as stated; namely to permit the Chairman of the Bar Council to appoint appropriately skilled barrister members to the FAC. The existing text already permitted the Chairman to appoint three appropriately skilled barrister members, subject only to the constraint that no more than two could be Bar Council members.

The Chairman agreed that the proposal did not achieve its objective. He confirmed that there was no pressing urgency to settle the matter, and agreed to reconsider how best to appoint barrister members to the FAC.

10. Report on the NMIF and TfBC

David Pittaway QC updated the meeting on the Neuberger Monitoring and Implementation Group's (NMIG) priorities for 2011, and he summarised progress on the 57 recommendations.

The Group had taken stock of the achievements since 2008, and has prioritised the outstanding recommendations for their importance to the Bar, in collaboration with the Equality and Diversity, and Communications staff. The focus now was on implementing monitoring systems for Bar Council initiatives, and to gauge their effectiveness. The NMIG would be renamed and rebranded ahead of a new website in 2011.

There was an increased awareness that schools (Recommendations 1 to 7) should be targeted in the drive to raise interest in the Bar, at the time of key choices such as A-level subjects and university applications. Ongoing work involving the Bar Council and the Inns included the Social Mobility Foundation chambers placement scheme which was expanding from 43 to 75 students annually; working with Aim Higher in careers conferences for state school students, with the next conference in Newcastle in Spring 2011; Inner Temple's work with the National Education Trust for 6th form state school students; the Magistrates' Courts Mock Trial Competition and the Bar Mock Trial Competition in the Crown Courts; an initiative with the Bromley LEA working with A-level law teachers and students in 8 schools, with the possibility of wider application; possible collaboration with a proven consultancy to produce a publication on Entry to the Professions, aimed at school students; and the utility of the Bar Council's new website to host a podcast on becoming a barrister, targeted at school and university students. More broadly, the new website could serve as a hub

for the several ad hoc schemes presently run by chambers, individuals and Circuits, such as the Circuit Diversity mentor scheme, the AG's civil panels, the Association of Women Barristers, and the Inns of Court secondee scheme.

Moving on to universities (Recommendations 8 to 15), representatives from the Bar Council and the Inns had attended 29 career fairs in 2010, throughout England and Wales. The NMIG had supported a scheme by which liaison officers in law schools and universities, and court centres and Circuits, would formalise existing arrangements where they existed and encourage the development of new contacts where none were in place. The aim was to pair each court with a law school to follow up initiatives such as marshalling, mentoring and Q&A sessions. The scheme would be neutral as between solicitors and barristers, to gain the widest possible support, particularly from the judiciary. The Senior Presiding Judge Goldring LJ had indicated support for the scheme, and the NMIG would work with the Law Society and ILEX for their approval. We hoped the existing network of Diversity and Community Relations judges would complement the NMIG's work.

Turning to BPTC and pupillage issues (Recommendations 16 to 39), all new students had been able to take part in the aptitude test pilot in late 2010, which should help to determine which particular groups would be impacted by the test. The Bar Loan Scheme had been suspended in November for 3 months for HSBC to review the administrative burden of the applications. Subject to the outcome of the review, the NMIG would consider approaching alternative providers. The Scheme had been praised in the Milburn Report and in the Gateways to the Professions collaborative forum in June 2010, and retaining such a facility would be a high priority. There had been considerable interest from employed barristers in working with the EBC and others in increasing the number of employed pupillages.

Guidance in selection and retention factors (Recommendations 40 to 49) had been improved by the BSB Equality and Diversity Adviser's Equalities and Recruitment Toolkit, which guided chambers in best fair practice; the toolkit included examples of written and oral merit-based selection procedures. Guidance on managing career breaks and maternity leave had been published by Bar Council and BSB staff. Twenty diversity training courses would be delivered to members of Inner and Middle Temple in 2011.

Research statistics (Recommendations 50 to 57) should start to improve with individual level data, including socio-economic data, being centralised in the Bar Council Research department. 'Bar Barometer' statistics relevant to entry to the profession should improve in 2011. Further work may be possible to develop the study by Dr Anna Zimdars, entitled 'Profile of pupil barristers at the Bar of England and Wales 2004-2008', to inform recruitment both from lower socio-economic backgrounds and of older pupils.

The TfBC had continued to take responsibility for the online Pupillage Portal application system, with a sub-group working with chambers to improve functionality. We offered all pupils a pupil advice line, for confidential advice from any of 20 volunteer practitioners on any aspect of pupillage. Finally, the TfBC had been considering whether a greater distinction should be drawn between formal mini-pupillages and less formal work experience. It was important to ensure that a formal application process was in place for any pre-pupillage event that might affect eventual selection for pupillage. David Pittaway QC reminded the meeting of the apt comment by Julian Fellowes (of Downton Abbey fame) : "those that start at the top tend to finish at the top". It was important that mini-pupillages should not become a back-door entry to the Bar. We still had a real need for statistics to show where we were, who we were, and what we did. We must avoid accusations of an unwillingness to change, and we needed a firm evidential basis of where we were.

In the context of the forthcoming education review, Andrew Walker expressed doubts about the LSB's agenda in seeking a single path into the profession. David Pittaway QC believed that diversity would remain an important feature of entrants to the profession, and the Chairman reinforced the point that we had made significant progress in developing a diverse profession, and he believed that the looming funding cuts risked hindering our social advances.

11. Any Other Business

The Chairman invited the Attorney General to speak.

The AG emphasised just how important were the mid-February responses to the Legal Aid Green Paper. It was important that communication paths should stay open between all of the key participants. He reminded the meeting that, just as the MoJ had suffered a 24% funding cut over four years, so also had the Law Offfcers' department. Room for manouevre in the MoJ was in short supply: serious cuts to the prison budget would be particularly challenging, and this left the supposedly softer options of the Courts Service and Legal Aid. In reality the jewel in the crown of the cost drivers was the relationship between the numbers of cases dealt with in the Magistrates' Courts and the Crown Courts. To protect the right to trial by jury required an absence of perverse incentives for defendants to move from the Magistrates' Court to the Crown Court. There was a perception in the MoJ that the present funding arrangements led to an increased incentive for cases to move to the Crown Court, and that the introduction of 'one case, one fee' (OCOF) would ameliorate that incentive. The AG took the view that the OCOF debate had little to do with the incentive to move cases to the Crown Court. He was clear though that the Government had an obvious incentive to keep cases in the Magistrates' Court: for the CPS, the cost of a plea in the Magistrates' Court was £90; but in the Crown Court

it costed £1100. The implications of this were compelling. The AG confirmed again that he would facilitate dialogue with the profession. The Chairman expressed his thanks that the AG was willing to attend and speak at Bar Council meetings.

Major David Hammond RM spoke of the need for the Bar to join the online community. It was essential not to be left behind, and avoid any hostility to change. Bar Council members should be leading representatives of change to become involved in professional groups such as LinkedIn. He felt that the Bar Council should send out a more collegiate message to the wider business world. The Chairman invited Mark Hatcher and Toby Craig to prepare an item for the next Bar Council meeting. The Chairman also agreed to invite the IT panel to consider the relevance of professional networking to today's barristers. Robin Tolson QC, the Chairman of the Access to the Bar Committee, was also interested in the theme, and expressed a wish to become involved. Charles Hale suggested that a presentation by some of the providers might shed light on the new social media.

Sailesh Mehta questioned whether the Bar Council was doing enough in presentational terms to counter the 'fat cat' arguments that periodically caught the public eye. The Chairman believed that we used our in-house PR capability to correct any false impressions, and we regularly fielded public speakers on all topical interests. Occasionally, our speakers were bumped off the air by changing media priorities, and we certainly needed to keep up the pressure. Remuneration surveys were thought by some to be the answer, but in practice there was a marked reluctance by practitioners to give us the raw data.

12. Date of Next Meeting

The next meeting would be held at 1000 hrs on Saturday 12 March 2011 in the Bar Council offices.