

Minutes of the Bar Council meeting held on Saturday 12 January 2013 at the Bar Council offices

Present:

Maura McGowan QC - Chairman

Stephen Collier - Treasurer

Rt. Hon. Dominic Grieve QC MP - Attorney General

Mr Oliver Heald QC MP - Solicitor General

63 further members of Bar Council attended.

1. Apologies

Apologies for absence had been received from Keir Starmer QC, Nicholas Lavender QC, Mirza Ahmad, Richard Atkins QC, Julia Beer, Ruth Cabeza, Lord Alex Carlile QC, Charles Cory Wright QC, Nicholas Cusworth QC, John Elvidge QC, Felicity Gerry, Edward Henry, Robert Lawrie, Alexander Learmonth, Sailesh Mehta, Stephen Moriarty QC, Lucinda Orr, Robert Rhodes QC, Neil Ross, Deana Smith, Michael Soole QC, Toby Watkin (Peter Petts attended as alternate).

The following did not attend: David Anderson, Phillip Blatchly, William Boyce QC, John Cooper QC, Jonathon Egerton-Peters, Mark Fell, Manjit Gill QC, Suzanne Goddard QC, Alexandra Healy QC, Stuart Jamieson, Michael Kent QC, Fiona McCreath, Melanie McIntosh, Sarah Morgan, Benjamin Myers, Roger Quickfall, Hefin Rees, Bernard Richmond QC, Winston Roddick QC, Martin Rose, Zoe Saunders, Michael Sherry, Geoffrey Tattersall QC, Nicholas Worsley.

2. Approval of the minutes and matters arising

The minutes of the November and December 2012 Bar Council meetings were approved. There were no matters arising from the minutes of the last meeting.

3. Statement by the Chairman

The Chairman opened the meeting by wishing everybody a Happy New Year and welcoming all new members of Bar Council for 2013. She thanked the Attorney General and Solicitor General for attending and for their commitment; it is important not to forget the efforts they make on the Bar's behalf.

The Chairman explained that she is not abandoning the practice of providing a written statement in advance of the meeting, but as she has only just started there is - as yet - little to say in terms of what she has done so far.

However, she had the privilege of attending - and speaking at - the swearing-in of the new President of the Family Division and Chancellor of the High Court on 11 January, welcoming them to their new posts on behalf of the Bar Council. She spoke to Lucy Scott-Moncrieff, President of the Law Society, at the event and was encouraged by the atmosphere of goodwill. The Bar should take confidence that it provides people of such quality to high judicial office; the profession should not lose sight of what it achieves.

The Chairman announced the good news that the FSA has given authority to the BARCO scheme and the pilot is now up and running; the final product should be ready by the spring. The Bar should take pride that it is building its capacity to move and adapt with the changing business world. Although BARCO is currently largely applicable to the commercial Bar, it is hoped that eventually it will assist publicly-funded direct access practitioners.

There will be further discussion relating to QASA later in the meeting, but there is one piece of good news - changes to the proposed scheme mean that the burden on the individual practitioner will be less as they will only have to undertake two assessments. This does not, of course, mean that there are not still other problems to tackle.

The Chairman said that she was delighted that there was a healthy turn-out for the meeting, although she is disappointed that there are three vacancies for members of the employed Bar (under 7 years' call), which she hopes to fill soon. Whilst Saturday morning meetings are not always convenient, it is very important that attendance remains good as there is a lot of work to be done through the Council. The profession needs to know that they are being represented and the organisation needs to know that the work done by the Bar Council is being fed back. If the Bar Council can assist in any way to reach out further to the profession, she is happy to listen to any ideas.

The Chairman intends to send a letter to the profession shortly which will re-state the message given in her inaugural speech, namely that the Bar Council exists for the profession but it has to be a two-way process. The profession must speak up and engage. She has had some responses to the call in her article for Counsel magazine for people to contact her with their ideas; some have been less than complimentary but all have been constructive and useful.

Over the last week, the Chairman has had preliminary meetings with the Permanent

Secretary at the Ministry of Justice; the Chief Executive and Chairman of the LSB; the Chief Executive and Chairman of the Judicial Appointments Commission; the Attorney General's PPS and Mark Reckless MP. Further meetings with stakeholders will take place this month.

The message from Westminster and Whitehall is a financial one - cuts must be made. However, the Chairman does not intend to sit back and wait for announcements in that regard. It is necessary to be proactive. This is the time to go to those who formulate policy and inform their thinking; to not do so is to guarantee to fail. The Chairman is setting up a group, whose membership will include the CBA, Circuit Leaders and the Bar Council's Remuneration Committee to deal with price competitive tendering and to work with the Ministry of Justice. The Bar Council will not shoot the profession in the foot whilst others prepare to stab them in the back.

The Chairman will soon be embarking on a series of visits to the Circuits - trying to engage with the profession and meeting resident Judges. It is also an opportunity to spread the word about the activities undertaken by the Bar Council, including BARCO and Member Services, increasing awareness in how the organisation can help. She will be joined by key members of staff as she feels that it is important that those on Circuit build a relationship with them. This includes the Communications Team, who do a marvellous job but are not taken advantage of. They are always willing to assist in placing articles, arranging interviews and facilitating media training.

The Chairman assured Bar Council that the budget and other financial matters will be under constant review. An update from the Treasurer will now be a standing item on all Bar Council agendas.

Any comments / questions arising out of the Chairman's written or oral statement

There were no questions arising.

4. BSB report

The BSB had provided a [written report](#), which Baroness Deech did not intend to read aloud but would pick out some key issues.

However, there was one thing which she wanted to add which was not covered by the report. In December, she was happy to lead a debate in the House of Lords on legal regulation. She was only given three or four days' notice, but with the marvellous assistance of Mark Hatcher, they were able to brief a great many people and there was a small but incredibly supportive number of peers who were happy to speak on the Bar's behalf. The briefings which were sent out by the Bar Council and

the BSB were wholly admirable and some people who didn't sign up to speak as they were not available came to speak to her about it afterwards. The debate was a great success in putting out the message that the Bar is a great profession - considered so both domestically and internationally - and really does not need the level of regulation which has been imposed, inadvertently, by the provisions of the Legal Services Act 2007. Baroness Deech pleaded with the Government to stick with its policy that there should be less red tape; she will continue to press on this matter. Whilst it is important to drive down costs, you must not drive down quality at the same time.

Baroness Deech drew Bar Council's attention to the written report and welcomed a new barrister Board member, Justine Davidge, who fills the place vacated by Patricia Robertson QC who has now taken up her appointment as Vice-Chair of the Board.

The BSB has submitted to the LSB the draft Handbook; unfortunately it seems that the LSB is focussing on quantity rather than quality and think it is inappropriately long. The BSB is trying to persuade them that it is necessary. Approval of the Handbook will open the door for the BSB to start work on entity regulation in due course for those who want to set up ABSs. The BSB is trying to move forwards but the provisions they wish to put in place are being held back by red tape.

The Legal Education and Training Review report has arrived in draft and should be in its final form very soon; it is in the last edit stage.

The BSB continues to develop the best way forward in relation to CPD.

The BSB also continues to welcome any applications from barristers who wish to sit on any of their committees.

Baroness Deech asked Bar Council to refer to the written report for further details of the BSB's work and opened the floor to comments and questions.

Questions to the BSB

Timothy Fancourt QC (TFQC) asked whether there would still be an opportunity for interested parties to speak to the BSB about the Handbook before the final version is submitted to the LSB for approval. Vanessa Davies (VLD) said that this was still the case but it would have to be done before March.

Tim Devlin (TD) referred Baroness Deech to a situation in which a barrister had fallen gravely ill and was unable to complete their CPD hours. The BSB was informed of this and said that on receipt of £135 plus a completed form explaining the circumstances, they would be able to consider whether the individual was

indeed too ill to complete their CPD requirements. Given that the BSB is funded entirely by the practising certificate fee, are there no circumstances in which these charges can be waived? Baroness Deech suggested that TD put further details in writing to her and she would certainly look into it. It does not seem reasonable in the circumstances but she would be surprised if any BSB staff had been that insensitive. Baroness Deech thanked TD for bringing this to her attention and explained that the BSB has just set up a project to examine all charges and to make sure that they are consistent and appropriate. She apologised for any upset caused.

5. Treasurer's update

The Treasurer, Stephen Collier (SC), introduced himself for the benefit of new members of the Council. He explained that he intended to provide a short update on five matters: budget; pensions; PCF consultation; office lease and Audit Committee.

In relation to the budget, this had been approved by Bar Council in November. It had then been placed on the website for consultation and there had been 40 responses, of which two were in favour. All responses were reviewed by the Finance Committee (FC) at its December meeting which had approved the budget. From there, the budget had then been submitted to the Legal Services Board. A response has yet to be received. SC has, in the meantime, prepared the first draft of the letter which will go to the profession with their PCF renewal notice and he intends to share that letter with Bar Council well ahead of it being sent out.

The news about the DB pension scheme is that it will be closed to further accrual with effect from 28 February 2013. There were 42 staff still in the scheme, of whom four have now retired, 12 opted out of the scheme on a voluntary basis and 18 accepted a change to terms and conditions voluntarily. This left eight members of staff whose contracts were formally terminated and seven of whom agreed voluntarily to re-engagement. SC and O Delany will shortly be meeting with the advisors who drafted the documentation which led to the scheme not being closed when it should have been, with a view to attempting to find an informal resolution to the situation. The relationship with the trustees of the pension scheme is currently good. The funding level in relation to pensions was agreed between Bar Council and the Trustees in 2009, but may need to be adjusted in the light of the pension valuation currently being undertaken. SC will keep Bar Council updated.

The results of the Practising Certificate Fee (PCF) review have now been collated; of the 2,400 practitioners who started the survey only 1,930 finished it, which represents an overall response rate of approximately 13% of the profession (and a question mark over the 400 practitioners who did not manage to complete the questionnaire). The research department has completed a first draft analysis which is going back to the PCF consultation working group to decide next steps. In terms of

headlines, the results show that there is an appetite for change, but it is less clear what change that may be. Whilst a majority prefer a move to an income-based levy, not all of those who expressed that preference would agree to provide details of their income for this purpose, which makes implementation more difficult. SC explained that he has not yet shared the data as he believes that this would be more useful accompanied by an analysis and a recommendation. These will follow.

A sub-group of the Finance Committee is looking at the options available to the Bar Council in respect of exercising the break clause on the High Holborn building in June. The options are to stay, to move entirely or to split the organisation across different sites. A further report will be made to Bar Council in March when that sub-group reports on their findings.

SC reported that the Audit Committee met for the first time at the end of 2012. He introduced Michael Jeans, Chairman of that Committee, whom he described as having had excellent previous experience and who could literally be called the "the accountant's accountant and the auditor's auditor", and also someone who had already impressed as being clear headed and plain-speaking in his new role as Chairman of the Audit Committee. The Audit Committee is currently looking to appoint new members to ensure it is always quorate, but is struggling to work within the provisions of Standing Orders in this regard. Therefore, it is possible that SC will return to Bar Council to seek permission to appoint members outside of those provisions on a limited term basis.

Questions regarding the Treasurer's report

There were no questions.

6. EU Law Committee report

Michael Bowsher QC (MBQC), Chairman of the EU Law Committee, presented this item with reference to [Annex 2](#) on the agenda. MBQC said that he did not intend to repeat the report, just to draw attention to some specific points. He explained that he had been Chairman of the committee for a year and was still often surprised by the breadth and depth of issues facing the Bar which arise from the EU. He thanked all the people who contribute to the work of the committee, including the consultant Director, Evanna Fruithof.

MBQC explained that a lot of the work of the committee is lobbying, influencing, representation and "upstream engagement" - spotting any problems before they arise.

MBQC drew attention to the written report and in particular the sections on

procurement; the opt-out from criminal EU law measures; the balance of competences review and contract law.

A review of the EU representation provided by the Bar Council is underway, with a view to ascertain how to make better use of resources and maximise the benefit gained from the committee and the Brussels office.

Questions regarding the EU Law Committee's report

Michael Turner QC (MTuQC) asked if MBQC was aware of the draft charter for liberal professions which has been prepared by the Council of European Dentists; it may have an impact on the legal profession. MBQC thanked him for bringing this to his attention and said that it just goes to prove the wide range of issues which the committee has to consider!

7. International Committee report

Chantal-Aimée Doerries QC (CADQC), Chairman of the International Committee, presented this item with reference to [Annex 3](#) on the agenda. CADQC said that she did not intend to repeat the report, just to highlight some particular areas of interest.

CADQC explained the remit of the committee for the benefit of those who were not familiar with it. The committee's terms of reference are:

- To promote the standing and the interests of the Bar internationally
- To support the rule of law internationally
- To further the objectives above by co-operation between the Bar and legal professions abroad and by participation in the work of international legal associations and professional bodies so as to:
 - Keep abreast of international developments
 - Influence international legal developments, and
 - Inform the Bar accordingly

In the last three years, the activity and the interest shown in it has increased enormously and the number of those wishing to be involved in outgoing missions and domestic events has grown too. Outgoing missions are largely self-funded. There is a steady increase in the number of barristers working overseas.

CADQC touched on the "values" work which is undertaken, sometimes in conjunction with organisations such as the Bar Human Rights Committee and the Advocacy Training Council. She also drew attention to the sections of the report

dealing with the international CPD grants programme, the mission to St Petersburg and Kiev, exchange programmes with China and South Korea and the North America interest group.

CADQC said that an email is sent weekly to those on a mailing list who are interested in the work of the International Committee and any upcoming events (whether domestic or overseas). If anyone is interested in receiving these emails, please do let her know.

Questions regarding the International Committee's report

The Chairman drew Bar Council's attention to the value of the work undertaken by the Bar Council internationally in respect of the Rule of Law. This week, following the apparent refusal by the Saker Bar Association and the Delhi Bar Association to represent the men charged with rape and murder of a 23 year old student, the Bar Council and the BHRC released a joint press statement expressing concern that the suspects were being deprived of the right to legal representation due to the nature of what they are alleged to have committed. The statement urged respect for, and commitment to, the Rule of Law and called upon the associations to reflect those values by representing those accused without fear or favour.

Although the Chairman did not mean to suggest that this statement had a direct impact, it is fair to say that it shows the wider world takes notice of what the English and Welsh Bar does and its commitment to the Rule of Law is highly regarded.

Alistair MacDonald QC (AMQC) pointed out that the LSB believes the cab rank rule to be anti-competitive. Perhaps in this context they will see the value of it.

The Chairman expressed her wish to maintain the close ties with the home Bars and encouraged others to do the same.

8. QASA

Representatives of the Bar Standards Board left the meeting.

The Chairman said that there had been no further developments since the announcement in December and that the current position regarding the timetable is that there will be a further announcement at the end of January as to when the scheme will be rolled out. Arguments about the main issues of contention e.g. the inclusion of Silks and Plea-Only Advocates have been made before and are comprehensively detailed in the various consultation responses.

Andrew Walker QC (AWQC) raised the point that if the scheme is rolled out, it will

be reviewed after two years; what will happen then? Will it be rolled out to other practice areas? The Chairman said that she did not believe that the regulators were thinking that far ahead. However, a period of review is an opportunity to gather and collate factual evidence as to how the scheme works, or doesn't work, in practice. Given that there will be another triennial review of the LSB by the time a review takes place, it is difficult to know at this stage what might happen in terms of regulation and not just QASA.

It was suggested that it would be impractical to try and impose QASA (Crime) on any other practice area as they are dissimilar.

CADQC pointed out that the BSB's press statement goes much further in detailing the inclusion of Silks than the scheme does; it refers to the alignment and integration of the QC appointments process with QASA. What can be done about that?

Oliver Delany (OD), who is a Director of the QCA, confirmed that the BSB has not yet met with the QCA to discuss this. The BSB's view is that the "brand" of QC is strengthened and has more integrity if it is "refreshed". The Chairman said that, in her view, QASA tests minimum levels of competence and QCA tests excellence. There is a clear conflict.

Rick Pratt QC (RPQC) said that he will always be guided by the members of his Circuit, but the principal objection that he has heard is about the scheme being insufficiently rigorous. There is no objection to being assessed, just that the bar has been set too low.

Nigel Lickley QC (NLIQC) said that, as an advocate, one assumes that if you put across a good argument - as demonstrated in the many responses to the QASA consultation - you will win. However, this is not the case here. The most recent consultation was the 4th; there should have been more engagement earlier but that is easier to say in retrospect when at the time, one was busy with other pressing things. NLIQC agreed with the Chairman that something therefore has to be done about contracting now, before a consultation is released.

AMQC said that in this case, much of the finer detail was not released until the fourth consultation but agreed with addressing contracting straight away. It is very difficult to find the time when you are trying to do the "day job", but members of the Bar have to engage in this now. He gave the LASPO working group as an example of an excellent effort to address problems being faced.

TD said that one cannot underestimate the legally trained staff who work for the Government and who know exactly what they are doing. There is a long-term agenda in the Ministry of Justice to undermine the Bar. The Attorney General

responded by saying that the LSB was established by statute and they are the drivers of QASA, not the Ministry of Justice, who have an interest in the scheme, but are not behind it.

Amanda-Jane Field (AJF) said that she, and many others, work in the area of restraint and confiscation law and whilst there is an assumption that Plea-Only Advocates are all solicitors, there are those barristers who work in discrete areas of law - currently treated as a criminal field - who will not fit easily into QASA as they do not undertake trials. There are efforts to have them re-designated as specialist practitioners.

9. Any other business

Pupillage

Mark McDonald referred to a Council meeting at Lincoln's Inn at which they were considering a request to fund pupillages. However, he hears that criminal sets do not want to take on pupils, even if they do not have to pay for them. He asked whether anyone could assist him in understanding what they do want? The Chairman suggested that it is because there is insufficient criminal work. Guy Fetherstonhaugh QC said that COIC are undertaking work - including a survey of 40 sets - to ascertain that information. MTuQC said that he has telephoned many sets with the same question and not one has said that they would turn down a pupil if they were being funded. Another member of the Council said that the Equality and Diversity Committee are looking at this too.

Melissa Coutino (MC) said that she is aware of many people who have not been able to secure pupillage/tenancy and there is help available to give them an opportunity to pursue a career where their qualifications are still relevant. She is happy to help.

Appointment of a Chief Executive

AWQC asked for a progress report. The Chairman said that the advertisement will be placed in the online and print versions of The Sunday Times on 20 January. A start date will depend on the individual's notice period.

Induction for Bar Council members

AWQC asked if this was in place. The Chairman said that it is in development. She is concerned that the employed Bar remain under-represented as there are three vacancies for members under seven years' call; she encouraged members of the employed Bar to make recommendations. She returned to the theme of attendance and reminded members that although there will be times when one cannot attend,

there are minimum levels of attendance set out in Standing Orders. She will make contact with anybody who falls short of these levels to ascertain why they have not been able to attend and to see if there is anything that can be done to assist.

10. Date of next meeting

The next meeting will be held at 10.00 on Saturday, 2 March 2013 in the Bar Council offices.