



**Minutes of the Bar Council meeting  
held on Saturday 3 November 2018 in the Large Pension Room, Gray's Inn**

Present:	Andrew Walker QC	Chair
	Richard Atkins QC	Chair Elect
	Lorinda Long	Treasurer

**Apologies for absence**

Apologies for absence were received from: Dr Mirza Ahmad, Robin Allen QC, Efe Avan-Nomayo, Kieron Beal QC (alternate attended), William Boyce QC, Shelley Brownlee, Robert Buckland QC MP, Charles Burton, The Rt Hon Geoffrey Cox QC MP, Quentin Cregan, Anita Davies (alternate attended), Tim Devlin, Max Hill QC, Richard Hoyle, James Kitching, Louise McCullough, Cathryn McGahey QC, Paul Mendelle QC, Eleena Misra, Rehana Popal, Eason Rajah QC (alternate attended), Robert Rhodes QC, Benjamin Seifert, Andrew Granville Stafford, Leanne Targett-Parker, Rhodri Thompson QC, Grant Warnsby and Henry Webb.

The following did not attend and did not send apologies: Jennifer Agnew, Chris Bryden, James Keeley, Neil Mercer, Shareena Nobeen, Francesca O'Neill, Christopher Rees and Andrew Spink QC.

81 further members attended

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

The Chair explained that, to enable the BSB to stay for the budget proposal discussions, he would change the order of the agenda so that he would cover only a small part of his statement first and then return to it later after the budget proposal discussions.

The minutes of the Bar Council meeting and AGM on Saturday 15 September 2018 were approved subject to a couple of changes to the apologies list.

**2. Statement by the Chair**

The Chair reported that the election process for the Bar Council 2019 had been completed and informed members that a list of successful candidates was available in the room. The Chair congratulated those successful candidates and expressed consideration for those who were not elected. He also informed members of the Bar

Council of the two casual vacancy positions in the elected employed junior counsel or QC over seven years in practice category.

With regards to leavers and joiners, the Chair noted a significant leaver that had not been included in his statement. Alison Saunders ceased being Director of Public Prosecutions (DPP) on 31 October 2018 and is therefore relieved from Bar Council meetings. The Chair said that, leaving aside issues with the Crown Prosecution Service (CPS) organisation, he has enjoyed personal constructive dialogue with Alison Saunders over the last year and he thanked her for the improvements she was able to make and for her contributions to the work of the Bar Council. The Chair welcomed Max Hill QC, (previously a Bar Council ex officio member as Leader of the South Eastern Circuit) who has succeeded Alison Saunders as DPP, back to the Bar Council and said that he hoped he would be attending occasionally.

Referring to his statement, the Chair noted the passing of Sir Louis Blom-Cooper saying that the Bar Council always acknowledges the work of 'titans at the Bar'. Acknowledging that Sir Louis Blom-Cooper will be much missed by those who knew and respected him, the Chair said that he hoped that Sir Sydney Kentridge QC, another 'titan at the Bar', will be attending as a guest at the Bar Conference.

The Chair reminded members of the Bar Council that Richard Atkins QC's inaugural address will take place on 3 December 2018 and said that it would be a good opportunity for them to find out how he sees the year ahead.

Turning his attention to FBT at paragraphs 6 and 7 of his statement, the Chair advised the members of the Bar Council to 'watch this space' with regards to the format of the new BPTC but said that he is hoping for positive news by the end of the year. There are ongoing concerns about the BSB's approach to pupillage, and the Chair hoped that one to one training would at least be kept as the default position, even if not an absolute requirement. He said that the Bar is keen that pupils should be paid at the living wage rate, but that he understands the difficulties this may cause some sets and he asked anyone with issues or concerns to contact the Bar Council.

Vanessa Davies said that the BSB has been in direct contact with those sets who may be affected but acknowledged that there may be others and encouraged those sets to get in touch.

### **3. BSB Report**

Baroness Tessa Blackstone presented the BSB Report. She was joined by Naomi Ellenbogen QC, Vice Chair of the BSB, Vanessa Davies, Director General, and, Wilf White, Director of Communications and Public Engagement. She began by saying that she had sat next to Sir Sydney Kentridge at an event during the week and described him as being in 'full fettle'.

Noting that the members of the Bar Council would already have read the BSB Report, Baroness Blackstone said that she had a few issues to pick up on. First, since the last

report, the BSB has published two consultations, one on the proposed new rules for transparency standards and one on the BSB's Strategic Priorities for 2019-22. Both are open for comments until December 2018.

Baroness Blackstone said that she had discussed transparency at the last Bar Council meeting in September and therefore wished to focus on the strategic priorities. She explained that there are three areas of risk and three strategic aims. The BSB is currently coming to the end of a three-year period and the consultation suggests the programme for the next three years which will be a period of implementation and consolidation.

The BSB is keen to hear views on new technologies, court reform and legal aid funding as well as what the Bar thinks the BSB's regulatory role and priorities should be.

Turning to the BSB's Enforcement Report, she said that it contains detailed statistics about the volume, trends and outcomes of complaints about barristers, including disciplinary proceedings. She reassured members of the Bar Council that she is pressing the executive to reduce long delays where the figures have worsened in terms of time taken to deal with disciplinary complaints.

Baroness Blackstone continued by emphasising that the BSB has taken measures to help combat harassment. The guidance on 'Reporting Serious Misconduct of Others' has been updated to make it clear that the BSB policy is not to take enforcement action against barristers who fail to comply with their duty to report discrimination, harassment or victimisation where they themselves have been the subject of such conduct. The BSB has also made provision for pilot schemes where properly trained groups of barristers can offer support to those who feel they have been the subject of harassment without themselves being obliged to report that harassment.

The BSB is currently preparing guidance on Non-Disclosure Agreements which will make clear that the use of NDAs is inappropriate if the NDA seeks to prevent the reporting of matters that are disclosable to regulatory or law enforcement bodies or under the Public Interest Disclosure Act. The BSB is keen to address the topic of harassment at the Bar with the Bar Council.

Talking about FBT, Baroness Blackstone reported that the BSB Board agreed a new set of rules for the training and qualification processes last week. The new rules will come into force in early 2019. Baroness Blackstone said that the BSB recognises that one to one interaction is an enormously important part of training. The BSB Board agreed that pupil supervisor training need not be provided exclusively by the Inns, but it hopes that the Inns will continue to provide supervisors with the appropriate training. Baroness Blackstone said that the BSB is looking forward to hearing from COIC about their proposals and thanked the Bar Council, SBAs, COIC and those individuals who have given a huge amount of help and advice.

Baroness Blackstone noted that changes to the BSB's constitution were on the agenda, but she said that she wished to recommend and commend them to members of the Bar Council. Explaining that the BSB is keen to move to a more efficient appointment process, she said that the BSB is of the opinion that a four year term will facilitate this

Baroness Blackstone finished by thanking the Chair at his last meeting. Acknowledging his help and support over the last year, she said that it had been fun working with him.

The Chair drew the members' attention to the BSB's Strategic Plan Consultation saying that while it may look dry and boring, it is very important. Citing page 15 of the consultation, he encouraged members of the Bar Council to read the section under the aim 'advancing access to justice in a changing market' as it covers areas in which the Bar has an interest and he made it clear that this is an opportunity to tell the BSB what should happen.

Welcoming the work carried out on harassment, Bill Mousley QC said that he was pleased that the BSB had adopted most, if not all, of the proposals made by the Western Circuit in terms of a waiver and how this might work. Explaining that the Circuit is starting up a helpline, he asked about the extent and timings of the pilot schemes. Specifically, he wanted to know how long the pilot schemes might operate before permanent changes are made. Vanessa Davies replied that the BSB had been very pleased to work with the Western Circuit but reported that no formal applications have been received yet. Encouraging members of the Bar Council to promote the pilots she said that the timescale depends on the take up. Generally speaking, the wider the take up the quicker the timescale, and discussions on amending the rules and embedding practice can take place. The pilots are likely to take at least six months, but this will depend on the nature and quality of the input. Baroness Blackstone then echoed the thanks to the Western Circuit and the Chair encouraged the Inns representatives on the Bar Council to take this information back to COIC.

Nicholas Vineall QC said that he had a question about the core function of the regulator, monitoring the code of conduct and maintaining standards. He asked, given the increase in challenges to disciplinary tribunals, whether there is any data showing the number of successful challenges. Vanessa Davies replied that these statistics are not published but confirmed that the BSB are in possession of them. Broadly speaking, while the extent of the challenges has increased, the very small number of successes have not. To this, Nicholas Vineall QC said that he would be interested to see the figures and while Vanessa Davies promised to take that away for the new year, she sought to reassure members of the Bar Council that there has not been an alarming trend.

The Chair reported that the Bar Council has moved to an element of self-insurance in relation to this as it feels that it has a reasonable understanding of the level of risk and

likely exposure. Nevertheless, he said that it would be reassuring to see the figures. To this, Vanessa Davies reassured members of the Bar Council that the BSB's Governance, Risk and Audit Committee (GRA) takes a regular update and has not raised any concerns to date.

#### **4. Proposed amendments to the BSB's Constitution**

Before Vanessa Davies began speaking to this item, the Chair explained that all the changes outlined in the BSB's paper (BC04/BSBC) had already been agreed by the GMC, therefore, he hoped that the changes would not prove too controversial.

Vanessa Davies thanked the Chair for putting the proposed amendments on the agenda saying that while the amendments are not particularly interesting, the process by which they are agreed is an important piece of housekeeping as the Bar Council must approve all changes to the BSB's Constitution.

Vanessa Davies explained that the changes aim to streamline the panels and processes for appointment and reappointment of the Chair and members of the Board, to reduce costs and to ensure that the BSB remains compliant with the Internal Governance Rules (IGRs) and up to date, voluntarily entered into agreements on how to work with the Bar Council. Drafting changes are made clear, and the substantive points are laid out at paragraph 3 of the cover paper.

Vanessa Davies explained that since the paper was settled, the Bar Council and BSB have had further helpful dialogue, as a result of which, the words 'whichever is the shorter' will be added to paragraph A20 of the Constitution so that it reads:

"With the exception of the Chair of the BSB, casual vacancies must be filled by the BSB but any appointment so made will last only for the remainder of the current term of office of the members who they have replaced, or such reasonable time as is necessary for the Appointments Panel to be convened and make an appointment in accordance with the provisions of this Schedule, whichever is the shorter."

As the LSB is about to consult on a new set of IGRs, Vanessa Davies reported that she might have to return with another set of revisions but, in the meantime, she asked members of the Bar Council to approve the amendments.

The members of the Bar Council approved the amendments to the BSB Constitution.

#### **5. Statement by the Chief Executive**

Malcolm Cree reported that the Bar Council has a new Strategic Plan in place which is being used for business planning.

The finance stabilisation and improvement plan is currently underway as the need to improve controls and processes has been identified. In addition, significant work on financial trend analysis and forecasting is being carried out.

Thanking barristers and staff for all their work at the Pupillage Fair, Malcolm Cree encouraged members of the Bar Council to sign up for, and attend, the Bar Conference which has some great speakers and a good programme this year.

## **6. Statement by the Treasurer**

Lorinda Long began by saying that she had hoped to bring exciting news to the Bar Council in her last meeting as Treasurer but explained that nothing significant had changed since the last meeting in September.

Lorinda Long started her 2018/19 update by talking about PCF and BRF income. She explained that current forecasts predict other income will be £123k short of the original budget by March 2019 year-end and expenditure is currently forecast to be £155k higher than originally budgeted.

Capital spend will be lower than the original budgeted due to the planned office move no longer going ahead, though there will be money spent on refurbishment, and, notwithstanding the shortfall in income and cost increases the forecast cash position has improved due to the savings made in the capital spend for the current year.

The original budgeted deficit in May was £650k, however, the Bar Council is now forecasting a year end projected deficit of £260k rather than a small surplus of £44k as had been hoped. This is due to a greater drop in income from PCF and BRF than originally anticipated and over expenditure (including performance pay being greater than forecast. The Bar Council is continuing to look at ways of reducing the deficit.

Lorinda Long went on to explain the risks to the Bar Council finances. For example, other income streams falling short of current forecasts and the property project which remains a major endeavour over the coming year. Its costs will be dependent on the outcome of ongoing negotiations with the landlord.

## **7. Budget Proposal**

Lorinda Long presented the budget proposal 2019/2020. She began by explaining that, on behalf of the Bar Council, she was seeking approval from members of the Bar Council for the 2019/2020 proposals, especially the proposed PCF changes. She explained that the Bar Council must publish its consultation as soon as possible as the submission is due to the Legal Services Board (BSB) at the end of the year and Authorisation to Practice (AtP) commences in February 2019.

Inviting members of the Bar Council to approve the budget proposals, Lorinda Long explained that they include the introduction of two new PCF bands (7 and 8); removal of the bulk discount; change of PCF reference year; and the reduction of the band 1 rate to £100. Speaking to the changes in more detail, Lorinda Long was clear that the removal of the bulk discount will not affect barristers in the lower bands and that the introduction of bands 7 and 8 should not impact on the BRF collections. She explained that the real risk would be an across the board rise which the Bar Council is trying to

avoid. In addition, the Bar Council is currently striving to improve its processes and the accuracy of data that it holds.

With regards to the shortfall, there has been some recovery on both the PCF and BRF collections and BSB BPTC income is now expected to be better than forecast. However, the bulk of the expenditure across the three Bar Council groups is in staff costs, facilities, IT and professional services and it is difficult to reduce costs in these areas. Lorinda Long explained that she, the Financial Director and the Chief Executive have examined all elements of the proposals from each group to minimise cost growth.

The following assumptions have been made:

- A maximum 3% uplift in staff costs to account for cost of living and performance related pay; and
- The original assumptions with regards to the property programme have been retained until there is more certainty in the outcome of negotiations.

Lorinda Long continued to run through the rest of the proposals, attached as paper BC05/BP. She explained that the 2019/2020 income and expenditure forecasts are cautious and outlined the headline expenditure set against the 2018/2019 budget.

Two additional staff positions are planned in the Policy Department: a Head of Crime and a Head Researcher. In Resources Group some additional resources are required in the finance team to deliver the finance stabilisation and improvement programme and, in the BSB, the part-year effect of making payments to prosecutors is expected to come to around £72k.

In terms of cost savings, there are reductions in the BSB headcount and savings in the Resources Group, mainly due to the print outsourcing. For income, the Bar Council has identified additional income streams including a proposed 'chambers package' and while the BSB forecast income has decreased, there has been new additional income from the authorisation framework and allowance for the part-year effect of recovering BSB costs in tribunals.

Turning to the PCF history, which she described as the most important part of the paper. Lorinda Long explained the increases agreed in 2015 and 2016. However, by 2019 inflation will have had a cumulative effect of 10.4% and the Bar Council has reached a point at which it is unable to sustain this. Therefore, the proposed introduction of two new earnings bands at the top end of the PCF tables, allowing for a small reduction for band 1, would have the effect of stabilising the finances. The proposal is not an attempt at redistribution of wealth but a recognition of the increasing gap in earnings across the Bar and of the pressures on those at the publicly funded Bar.

Removing the bulk discount will not have an undue impact on those in the low earnings band and it will remove a significant administrative burden from the Bar

Council. Changing the finance reference year means that self-employed barristers will provide the same information to BMIF and the Bar Council at the same time therefore, again, reducing an administrative burden and helping to align earnings with other declarations made at AtP.

Overall, the proposed change could achieve additional income that will cover the demands of the 2019/2020 budget proposal and assist with the funding of the property project.

Lorinda Long informed members of the Bar Council that the views of the GMC have been sought and that there is general support for the proposed changes, with some caveats outlined in the paper. Asking for approval from the Bar Council members she said that the changes will give the Bar Council a sustainable financial position for the next financial year and beyond.

The Chair admitted that he does not like cost increases but explained that there are three reasons why they are necessary:

- 1) Increases have not been sought to take account of inflation for several years.
- 2) The Bar Council now has access to data in a way it has not done previously. If it is to use this data properly, it needs the right people in place to do so. Therefore, the newly formed 'Head Researcher' post is a necessary cost. Similarly, the new post of 'Head of Crime' will bring focus to the Council's work in crime, while releasing other members of staff to put greater energy into other areas. This small part of the increase being sought will make a big difference to the benefits that the Bar Council can deliver to the Bar as a whole.
- 3) The budget in the past has been based on assumptions and predictions that have not proved to be as reliable as they should have been. With the new systems in place, the Bar Council has a much better handle on income and expenditure, and a new Finance Team is now in place. Therefore, this budget should reset the process on a firm footing.

The Chair said that he regrets the need to raise further money but explained that the Bar Council has to deal with what it is presented with, including by the BSB. However, it is a Bar Council decision.

Richard Posner talked about the detrimental risk to the BRF of changes to the PCF and suggested that a clear distinction should be drawn as to the benefits. Warning that recommending an increase in PCF may cause people not to pay the BRF, he said that the point at which the information is communicated to the Bar is of fundamental importance. The Chair agreed saying that the BRF is also a sign of engagement and the last thing that the Bar Council wishes to do is alienate members of the Bar. However, the Bar Council is now much better placed to get the messaging and communication right.



Rachel Spearing said that she supported the comments made about the obtaining of data, the use of data and the increase in head count in supporting the Officers of the Bar Council's work. She informed members of the Bar Council that the Law Society has an in-house research department and that she has seen how valuable this information can be with regards to supporting the activities and strategic objectives for members. For example, whenever a Law Society member speaks to the media or engage with lobbying, they receive a full report from the department in order that they are fully briefed with valuable statistical evidence based information. Rachel Spearing also raised the need to be very clear about what the BRF funds as misunderstandings are very common which can impact the positive work undertaken in the areas funded by the BRF. Communications should be as simple as possible.

Malcolm Cree said that the Bar Council puts huge efforts into explaining some of the intangible things that the BRF funds. The website is being completely refreshed and BarTalk is increasingly focusing on policy and lobbying work, much of which is BRF funded.

Rachel Spearing raised the subject of branding and Malcolm Cree explained that as many barristers who criticise it want it. To this, the Chair said that he has a friend that paid the BRF because it afforded him a 'massive discount' on his BMW!

Martin Nelson said that he was in general agreement with the proposals, but he urged the Bar Council to engage positively with employers concerning the removal of the bulk discount. Explaining that those who pay in bulk will see a number far larger than any personal discount, he said that anything that ties into those discussions could cause difficulties if not handled in the right way. The Chair replied that he understood and encouraged members to come directly to him with any concerns.

Referring to the yearly authorisation to practice process when barristers pay for their practising certificates online, Sara Wyeth suggested that the same messaging that is used to explain what the BRF goes towards could be included on the system at the point of purchase to encourage barristers to pay. The Chair said that this was an extremely helpful point.

Amanda Pinto QC suggested that when sending out communications about the increase in the top two bands, a table showing the increases to all the existing bands that will be necessary if the top two bands are not agreed, should be included to make the difference clear and to illustrate how unfair a rise in each band would be. This would emphasise the fact that this is a principled change for the benefit of everyone at the Bar.

Guy Fetherstonhaugh QC made the point that many people do not read emails and noted that there is probably an overlap between non-BRF payers and those who do not. Saying that he and Amanda Pinto QC speak to pupils each year, he suggested speaking directly as a better approach and encouraged members of the Bar Council who represent the Inns to take adopt it. He finished by saying that 'if you get to people

early enough, you can dispel rumours from the beginning'. The Chair agreed saying that he has tried to talk to as many people as possible this year and he encouraged members of the Bar Council to do the same, and to pay their BRF.

Fiona Jackson said that she echoed the comments made by Amanda Pinto QC and Guy Fetherstonhaugh QC and asked again that staff share any messages they put out around BRF with Bar Representation Committee (BRC) members first as sometimes, unintentionally, the messaging is a little mis-targeted. She informed members of the Bar Council that she has been approved by BRC to write to Heads of Chambers where there has been a significant drop off in the number of BRF payers in a genuine attempt to constructively engage ahead of the 2019 BRF collection process. Appealing to members of the Bar Council to give constructive feedback if the subject is mentioned to them by their Head of Chambers, Fiona Jackson described BRF subscriptions as being at a 'critical stage' and called for 'all shoulders to the mill'.

Greg Williams echoed Amanda Pinto QC's comments in favour of the additional bands, saying that it seemed to be the fairest way forward in the circumstances. Referring to paragraph 5 of the proposal paper, which says that BSB income from the BPTC is £200k better than forecast, he asked about the proportion of the fee that funds the BSB. The Chair made the point that an unfortunate but good outcome of a reduction in fees would be a cut in income.

Greg Williams asked about the average amount paid by a law student. Vanessa Davies replied that some of the providers 'wrap up' the per capita fee in the overall fee whereas others have it as a discrete fee. The current fee is £550 per student and that has not changed in the last 4 – 5 years. Two thirds of this funds the provision of the centralised examinations. She explained that the BSB has budgeted for this cautiously as it had been assumed that fewer people would apply this year, but that was proved not to be the case.

Richard Atkins QC reported that, in preparation for his term as Chair of the Bar 2019, he would be moving to London in a week and a half. He informed members of the Bar Council that he has asked for a list of members of the Bar Council and its committees who are not paying the BRF and asked members of the Bar Council to 'do me a favour and pay it to save me writing to you'! He also asked for help as to what the Bar Council might be doing wrong with regards to BRF messaging and appealed to those on committees to mention it at each meeting.

The members of the Bar Council approved the proposed changes to the PCF.

The Chair said that, before moving onto the next agenda item, he wished to note that this was Lorinda Long's last meeting as Treasurer. However, he also informed members of the Bar Council that, as Lorinda Long has been elected back onto the Bar Council next year, the Council will continue to benefit from her expertise and knowledge for another three years. Describing the role of the Treasurer as 'unsung, grim and unpleasant at times', the Chair made the point that it is an essential position

for the Bar Council and for the profession and one that plays an important part in the Bar Council's reputation with the BSB. He finished by thanking Lorinda Long for her four-year tenure.

Lorinda Long said that it had been a privilege and a pleasure to serve as Treasurer. Saying that she would miss the role in some respects, and less so in others, she noted the importance of having a member of the employed Bar as an Officer, especially given the 'One Bar' ethos and reported that this will continue with Grant Warnsby who takes over as Treasurer from 2019. Acknowledging that she was probably the first female Treasurer of the Bar, she thanked members of the Bar Council and the Bar Council team and informed members of the Bar Council of the 'phenomenal' amount of work that goes on behind the scenes. Lorinda Long finished by thanking Natalie Zara, Head of Governance, for her administrative work and the previous and current Chief Executives and Financial Directors, Stephen Crowne, Malcolm Cree, David Botha and Richard Cullen for their help, as well as the 'extremely supportive' Chairs that she has worked under (Alistair MacDonald QC, Chantal-Aimée Doerries QC, Andrew Langdon QC and Andrew Walker QC).

#### **8. Statement by the Chair of the Bar (cont.)**

Returning to his statement, the Chair emphasised the important role that it is intended to play, as a vehicle by which the staff and leadership communicate those things that they believe members of the Council need to be aware of and what members should be asking about.

The Chair said that he had a few items to which he wished to draw members' attention, the first of which was AGFS. He reported that the deadline for the consultation has now passed. The Bar Council and the Criminal Bar Association (CBA), along with others, have submitted significant responses. The Chair said that he is confident that changes to the AGFS will be delivered but that he does not know what the final form will look like. Meanwhile, the Bar Council continues to work with the Chair and Vice Chair of the CBA, Chris Henley QC and Caroline Goodwin QC.

The Chair reported that the Bar Council has submitted its response to the LASPO Review, which has achieved some publicity in the media and Parliament. The Chair said that he was delighted to see that it had 'hit home'.

Turning to the subject of court reform, the Chair cautioned members of the Bar Council against believing that the subject of flexible operating hours has gone away, although he acknowledged there is no information on whether it will or not. If it is to come back, the Chair said that he hopes it will be 'much more considered' and that the voice of the Bar has been heard.

The Chair reported that although there had been some initial 'teething problems' with the ID cards scheme, the system appears to be working well. The Bar Council is not getting much feedback but is aware of positive feedback being received by the South

Eastern Circuit. HMCTS is looking to add five more courts and although there are some indications as to which courts these may be, no decisions have been made as yet.

About the family Bar and sitting hours, the Chair reported that the Bar Council, in conjunction with the leaders of the FBLA and CBA are still 'plugging away' at what needs to be done. The Chair said that efforts have attracted resistance due to a lack of funding and a lack of capacity to 'make it better'. However, there is a 'chink of light' in the form of Sir Andrew Macfarlane, President of the Family Division and Head of Family Justice, who has spoken out about wellbeing in the judiciary and the profession. Acknowledging the need for a further push regarding 'ever lengthening court hours', the Chair said that it is important that the Bar Council knows what is going on if it is to get the message across as to what is happening at the front line. If there is an opportunity to improve things in the family courts, it could pave the way for others, but firm examples are required.

Turning to the issue of warned lists in crime, the Chair said that he detected that the message has hit home regarding the detrimental effect on all involved in a case, but there is a need for more impetus and the Bar Council needs to know more about what is happening on the ground. Current HMCTS statistics also do not capture the effect of warned lists at the moment, which is a 'major failing'.

On judicial bullying, the Chair said that he is hoping to receive some feedback from the New Zealand Bar on the work being carried out over there. The Bar Council will aim to provide some leadership, together with the Circuit Leaders and SBA Chairs, including giving reassurance to those affected. The Chair advised members of the Bar Council to 'watch this space'.

The Chair reported that the Midland Circuit has completed its vulnerable witness training and that the Northern Circuit is 'nearly there'. The South Eastern Circuit is the final concern, as a fair number still have to complete the training.

Describing the Pupillage Fair as 'very successful', the Chair said that there had been many more chambers and organisations involved than in previous years. Appealing to the members of the Bar Council to support next year's event, the Chair explained that even if attendance does not convert into many pupillage applications to an individual set, it sends an important message about a set's commitment to widening the pool of its applicants. There were over 700 students in attendance this year and the Chair said that he had been delighted by the support, particularly from the commercial and chancery Bars.

The Chair reported that the Bar Council continues to work hard in parliament. Saying that he had been astonished at how good the Bar Council's connections are, the Chair acknowledged that these relationships are something the Council works hard at. The Party Conferences are a fantastic opportunity to engage with politicians 'on their own turf' and though the benefits of attending are intangible in relation to BRF, the BRF funding makes attendance possible. By way of illustration, the Chair said that the fact

that he has spoken in front of innumerable committees in parliament is because of the material that the Bar Council puts out, the work that it puts in and the way in which it has been able to position itself.

Guy Fetherstonhaugh QC said that the Pupillage Fair had been 'huge fun' and described it as akin to 'speed dating for chambers'. Saying that it is a great opportunity for chambers to go along and 'show off', he praised the Bar Council staff for their work in making it happen, in particular Sam Mercer (Head of Policy: E&D and CSR) and Benjamin Burns (Policy Analyst: E&D and CSR) whom he lauded as the 'real heroes'. He finished by alerting members of the Bar Council to the fact that the Pupillage Fair is a great event and that (thanks to Kings College), the accommodation this year had been free.

Frances Judd QC said that she wished to echo what had been said about Sir Andrew Macfarlane taking a genuine interest. Saying that her committee is collating statistics on sitting hours, she encouraged the circuits and others to send stories and evidence.

## **9. Justice Week: Review of events and request for feedback**

On Justice Week, the Chair asked for a show of hands from those who attended an event. Only a few members of the Bar Council raised their arms and the Chair implored members to support the justice campaign as it really makes a difference. There was real excitement around Justice Week and despite the media being preoccupied with other stories including those involving Sir Philip Green and the budget, the Bar Council was able to secure some coverage.

Describing the Justice Week Monday launch event as 'massively important', the Chair explained that the purpose of the event had been to bring together media and marketing representatives to ascertain what needs to be done to get the message across. It generated some good, important ideas.

Referring to the All-Party Parliamentary Group on Legal Aid, the Chair explained that the Bar Council was given a place on the panel because of the role it plays. The Bar Council disapproves of the current direction of travel and is disappointed by the lack of commitment at the top to justice from both parties. However, this represents a great opportunity to make this point and to put politicians to the test.

On the Tuesday, the Chair-Elect, Richard Atkins QC, joined representatives from the FDA and the Law Society at a round table event, calling for increased investment in the criminal justice system, to mark Justice Week 2018. The Chair noted that the FDA have a useful perspective. Also on the Tuesday, the 'Daddy Bear on Trial' event took place at The Royal Courts of Justice. This attracted publicity on Twitter and in Time Out and the Chair praised the Inns of Court College of Advocacy for managing to attract so many parents and children, which he described as an 'innovative' and 'fantastic' idea for communicating what we do to the wider public. The Chair recorded thanks to all those involved from the Bar and the Judiciary.

The Wednesday of Justice Week saw the Bar Council's big event. Entitled 'Justice cuts: The stories behind the numbers', this was a panel discussion on the human cost of the cuts made to our justice system, featuring new research and a short film. The Chair drew the attention of members of the Bar Council to a handout showing a snapshot of the simple statistics launched at the event. He explained that the chart illustrates the 'sorry state of justice'. Saying that a relatively small amount of cash could make a difference, the Chair reassured members of the Bar Council that the message is getting across to those parliamentarians who care.

On the Thursday of Justice Week, the Bar Council put on a 'great event' at Gray's Inn in the form of a panel discussion entitled 'Immigration & the Rule of Law: Will our new immigration policy be 'hostile' to or 'compliant' with the rule of law?', chaired by last year's Chair, Andrew Langdon QC.

The Chair expressed the view that the Minister, Lucy Frazer MP QC, was listening (with her civil servants having attended the events) though her responses so far had been largely the same as those she made when she addressed the Bar Council at its July meeting. Despite this, the Chair said that he believed that the Ministry of Justice is paying careful attention.

Informing members of the Bar Council that copies of the Justice Papers were available at the back of the room, the Chair thanked the authors and explained that the papers set out, in simple terms, the impact of the cuts to justice. In addition, the report by Professor Martyn Chalkley containing the full set of graphs and statistics is available on the Bar Council website, as is the justice petition.

The Chair said that he particularly wanted to commend the members of the Wales and Chester Circuit who worked extremely hard to get Justice Week 'up and running' on their circuit. The Chair was delighted that the Bar Council had been able to offer dedicated support to the Circuit this year including, for example, by translating key materials into Welsh.

He thanked all those involved in Justice Week, and asked members for their perspectives.

Max Hardy said that he had played the role of daddy bear in the Daddy Bear Trial. He noted the importance of having an audience full of children who are future tax payers.

Amanda Pinto QC said that members of the Bar Council should send the justice petition to as many barristers as possible. The Chair noted that it is easy to sign and that 'every little bit helps'.

The Chair finished by saying that Justice Week will run again next year, and it will be bigger than this year. Bar Council members should see it as a duty to get involved.

## 10. A Role for former Chairs of the Bar Council

Michael Jennings, who presented the item, confessed to feeling quite nervous following Richard Atkins QC's earlier comments about disciplining Bar Council members over the non-payment of BRF. He joked that it brought to mind his school days and corporal punishment!

Michael Jennings began his presentation by informing members of the Bar Council that, in 1976, Harold Wilson, then Prime Minister, wrote to his Cabinet Secretary expressing concerns as to the dignity of the role of the Prime Minister. He suggested that former Prime Ministers should be given a car, an allowance and security. These changes were introduced, and Harold Wilson resigned two weeks later!

Assuring members that he has no plans to be Chair of the Bar, Michael Jennings explained that it troubles him that chairs work their way through the ranks, do fantastic work as they step into the role, then step away and no longer come to Bar Council meetings. Saying that the current Chair is old enough to remember when there were pastries at the Bar Council meetings, Michael Jennings noted that Andrew Walker QC has always had a marvellous grasp of the Standing Orders and Constitution and made the point that, although Andrew Walker QC may happily want to 'skip out the door' at the end of the year, it would be helpful to the Bar Council if he could continue to attend as and when he wished without the indignity of having to re-stand in the elections. Often the Chair of the Bar travels internationally and when they come to the end of their term, the new Chair repeats the process again and it would be helpful if the previous chair remained engaged for reasons of continuity.

Michael Jennings acknowledged that there might be drawbacks with the proposal. However, citing Margaret Thatcher's role as a 'backseat driver' during John Major's time as Prime Minister as a bad example, he made the point that the former chairs are sensible and reiterated that he would like to see the Constitution changed to allow their continued membership.

The Chair said that he wished to offer two perspectives. First, this has been a common subject of discussion in meetings with the leaders of other Bars. When Nicholas Green QC was Chairman the subject was explored by the Bar Council. It was concluded that it would be unreasonable to expect Chairmen to do more than a year's term. As a result of the discussions, the Standing Orders were changed so as to elect the next Vice Chair earlier in the preceding year, with the aim of building continuing from that point. It is not always easy, especially when a Vice Chair/Elect is based outside London, to get fully involved but the Bar Council may not yet have worked out how to make as much as possible of future Chairs. Secondly, the Chair quoted a recommendation from the Green Review in 2011: 'It does seem to us that some better way should be found of utilising the skills and experience of past Chairmen. They form a group of individuals whose collective experience should remain accessible to the profession. They might, for example, be asked to meet in order to advise on

particular issues, or to chair working groups, or to assist with negotiations on an ad hoc basis. There is no reason why the tasks allocated to this group should in any way be limited.’ To date, this has not been pursued and it may be something that GMC takes forward as a discrete issue. For example, Chantal-Aimée Doerries QC, Chairman of the Bar 2016, continues as an IBA Council member and the Chair said that he had approached past Chairs informally for advice. The network exists but Michael Jennings makes a valid point that might be taken forward next year.

Michael Hayton QC said that he thought the idea would be beneficial given the potential waste of talent and experience. Noting concerns about the dilution of diversity, he made the point that the Bar Council could trust former Chairmen/Chairs not to ‘skew the way Council is going’.

Colin Andress raised the example of the American President, John Quincy Adams, who was, before that, Secretary of State and before that, an ambassador. When defeated at the election for a second presidential term, he stood for Congress for a further 17 years. He did not consider it below his dignity to seek re-election. Similarly, former English Prime Minister, Edward Heath, remained a backbencher after his defeat in 1975. Colin Andress said that, given that the Bar Council is primarily an elected body, he could see no reason for a special, appointed role. If former Chairmen/Chairs of the Bar wish to continue as Bar Council members, they can stand for election.

Amanda Pinto QC agreed with Michael Hayton QC. Speaking from the perspective of the Bar Council, she made the point that the Bar Council ‘needs all the help it can get’ and suggested that the Bar Council should take advantage of the opportunity to keep former Chairmen/Chairs involved.

The Chair said that the recommendations of the Green Review in 2011 focused on capturing knowledge. Retaining relationships is harder, especially international relationships. He suggested that an ex-Chairs Committee might be a possibility and that this might be addressed as a specific issue.

Fergus Randolph QC said that he would be in favour of the amendments to the Constitution but on the condition that past Chairmen/Chairs do not have voting rights.

Bill Mousley QC asked whether continued involvement of former Chairmen would apply only to those still practising at the Bar.

Nicholas Vineall QC, apologising for his ‘boring’ war story, said that he came to the Bar Council a long time ago ‘on the slate’ as the Bar Council had become ossified and conservative. He warned that the Bar Council should not assume that there will never be a time when it needs a change of direction and made the point that there is a danger that in institutionalising the role of past Chairs, things could get ‘sticky’. Referring,



albeit jokingly, to 'dead weights', he said that there needs to be a sense of 'moving things on'.

Richard Atkins QC (referring to a comment that had just been made) said that, as a future 'dead weight', he would doubt that everyone who has been in the role of Chair would want to come back on Saturdays and to every event. He said that his main concern is that the current Chair walks away and their knowledge is lost. Saying that no voting rights seemed a sensible idea, he acknowledged that there may be occasions for which the Bar Council might want to bring back former chairmen. The Chair made the point that the Constitution states that any barrister may attend Saturday Bar Council meetings anyway.

Michael Jennings and Nicholas Vineall QC suggested that members of the Bar Council send their thoughts to Richard Atkins QC. The Chair said that he is always pleased to take the opportunity to put things on the Bar Council agenda, though very few members ask him to do so.

## **11. EU Law Report**

Alexandria Carr, Vice Chair of the EU Law Committee, presented the EU Law Committee report. Explaining that the Chair of the EU Law Committee, Rhodri Thompson QC, had been unable to attend and sent his apologies, she said that she would take the report as read. However, she suggested that members of the Bar Council look at Brussels News which always sets out what the Brussels office and EU Law Committee are doing and the shared work with the Brexit Working Group.

Alexandria Carr said that she had one or two things to pull out from the report. Beginning with Brexit, she said that the report covers the work being carried out with regards to this. The work of the Committee focuses on impacting the Bar Council's ability to influence at EU level. Evanna Fruithof, in the Brussels Office, is looking into mechanisms for soft influence.

Aside from the Brexit work, the EU Committee continues with business as usual activities such as horizon scanning, responding to consultations and enquiries. The EU Law Committee is grateful for the input from other Bar organisations who work in this sphere.

Alexandria Carr explained that many members of the EU Law Committee sit on the Brexit Working Group which is continuing to participate in discussions, helping to develop proposals on future relationships with the EU. Noting that the changes will affect everyone at the Bar to some extent, Alexandria Carr reminded members of the Bar Council that the Government is taking steps towards putting in place a no deal Brexit legislative framework that will come into force on 31 March 2019. We are

starting to see the introduction of statutory instruments that amend EU law to ‘make it work’ in the event of a no deal.

Explaining that she works in financial services, Alexandria Carr said that she has seen some 100 statutory instruments that need to be gone through and that will effect change. Changes are inevitable because the UK will no longer be ‘in the same club’ as the other 30 EEA Member States and so those Member States will no longer be given preferential treatment. Every sector will need to consider the effect of this.

As legal professionals, we have an interest in the substantive changes to the law but also the approach taken to effect change.

Alexandria Carr finished her presentation by flagging the Brexit session at the Bar Conference. The EU Law Committee are hoping to have a speaker from DexEU at the event. The current and former Northern Ireland Chairs are both scheduled to speak.

The Chair acknowledge that Brexit will affect everyone at the Bar practising in any area affected by European legislation, including crime, family, consumer or insolvency law. Barristers will need to get up to speed with the situation in their own areas of law ‘pretty rapidly’. Statutory instruments are being produced in their thousands and barristers will need to deal with this themselves. He finished by warning members of the Bar Council, and the wider profession, not to assume that they will not be affected.

## **12. Bar Pro Bono Committee Report**

Alison Padfield QC, Chair of the Bar Pro Bono Committee, spoke to the Bar Pro Bono Committee Report. Saying that she hoped members of the Bar Council had taken the time to read the report, she highlighted two points.

First, speaking about the Bar Council’s new CSR Guide for Chambers, Alison Padfield QC acknowledged that Chambers have ‘lagged behind’ other businesses in promoting their CSR activities, including pro bono. She encouraged members of the Bar Council to have a look at this ‘useful’ guidance.

Secondly, Alison Padfield QC raised the ongoing tension that the Bar Council, through its Pro Bono Committee, faces in, on the one hand, wishing to facilitate and encourage pro bono work and, on the other hand, publicising the continuing onslaught on access to justice, including the impact on barristers’ pro bono clients. She sought to reassure members of the Bar Council that the Bar Pro Bono Committee is very aware of the tension, which is why the Bar Council, Law Society and CILEx have launched Justice Week rather than focussing on Pro Bono Week. The work of the Bar Pro Bono Committee does not, as people may sometimes think, undermine other aspects of Bar Council work.

The Chair said that he wished to highlight the increased demand for pro bono work. The tension may exist, but the Bar Council is clear that pro bono work is not intended to fill the gap created by the cuts in legal aid.

### **13. Any other business**

The 3 November meeting marked the last under the leadership of the current Chair, Andrew Walker QC, who will hand over to Richard Atkins QC in the New Year.

In the absence of the Chair of the Young Bar, Rick Hoyle, the Vice Chair of the Young Bar, Athena Markides, read out a statement from him:

“I am sorry that I was not able to make Bar Council today, as I am giving the speech to the IBC Conference in Andrew and Richard’s absence. However, I wanted to say that it has been a great privilege to work closely with Andrew this year as Chair of the Young Bar. From the outside, it is not easy to appreciate just how difficult a balancing act it is to be Chair of the Bar, having to be on top of so many policy areas and issues at once, whilst all the while attending every type of event under the sun. Given the shortage of time that creates, I am immensely grateful that he has been generous with his time with me and has always listened to my views on the issues when I have had them – which as those of you who know me can attest, is quite often! Thank you very much Andrew and all the best next year.

It also marks the end of my own enjoyable, challenging and rewarding three years on the Bar Council and the YBC. I will now take some time away from them, but I will continue to support their work however I can. However, we are in safe hands going forward. Last night YBC confirmed Athena as Chair for 2019 and Katherine Duncan as her Vice Chair - they will make a formidable all female team in the centenary year of when women were first permitted to enter the legal profession, and I wish them every success.”

Richard Atkins QC then reminded members of the Bar Council that Andrew Walker QC has been a Bar Council member continuously since 2005, with only himself having served longer (since 2003, albeit non-continuous as he had missed one meeting). Describing Andrew Walker QC as a ‘force of nature’, Richard Atkins QC said that every Chair-Elect wonders what might ‘come their way’ but noted that, ‘even in his worst nightmares’, Andrew Walker QC could not have foreseen AGFS. Acknowledging that AGFS is a ‘world away from his world’, Richard Atkins QC praised Andrew Walker QC’s ability to concentrate fully on areas out of his comfort zone.

Describing Andrew Walker QC’s time and commitment to the Bar Council as ‘phenomenal’, he informed members of the Bar Council that Andrew Walker QC has been on duty 24 hours a day, seven days a week since his term began and he recounted a particularly busy period in May 2018 when he had watched in awe as Andrew

Walker QC juggled a series of demands on his time. On 23 May Andrew Walker QC was at the IBA Bar Leaders' Conference in Oslo, where he approved a press release at 8am about the Working Lives Survey. At 9.33am he emailed to say that he was thinking of coming back from Oslo to attend a meeting with the Lord Chancellor as things were heating up in respect of AGFS.

At midday, Andrew Walker QC had turned his attention to the subject of ID cards and was correcting the grammar in another press release! Later, he was concentrating on the Welsh justice devolution issue. He flew back from Oslo that afternoon and had a meeting with the Lord Chancellor that evening. At 11.38pm Andrew Walker QC emailed Richard Atkins QC asking if he was still up. Richard Atkins QC replied that of course he was still up, he is a publicly funded criminal silk! They then had a telephone conversation. Andrew Walker QC then flew back to Oslo first thing the next morning. All this, Richard Atkins QC said, he gleaned from the emails that day that he had seen and had no idea as to how many other issues Andrew Walker QC had dealt with that he had not been copied in to.

Richard Atkins QC informed members of the Bar Council that nobody could have worked harder to improve the lot of the Bar than Andrew Walker QC has done this year. Noting that Andrew Walker QC has held a succession of Bar Council positions over the years, including Chair of the Ethics Committee and Vice-Chair of the Law Reform Committee, Richard Atkins QC reminded members of the Bar Council that Andrew Walker QC had also been awarded the Pro Bono Award in 2009 for his work with Shelter.

Richard Atkins QC then turned to some recent, personal memories such as Andrew Walker QC getting 'soppy' over Richard Atkins QC's new puppy Simba and his 'diva-like' performance at Smithfield's Karaoke Bar with Angela Rafferty QC. He finished by saying that he did not know what Andrew Walker QC, or his wife, might make of Michael Jennings' proposal regarding former chairs continuing to attend at Bar Council meetings.

Andrew Walker QC acknowledged the 'huge amount' of work still to be done before the end of the year. He said that it has been a huge privilege to be Chair of the Bar 2018 and admitted that Richard Atkins QC was right about the amount of work it entails and how exhausting it can be. Saying that he cares deeply for the profession, Andrew Walker QC spoke of the necessity of the Chair to do so. However, he acknowledged that it would not have been possible for him to carry out the role effectively without the support of Richard Atkins QC, Amanda Pinto QC (Vice Chair 2019), the members of the Bar Council and the Bar Council staff, all of whom care about, and believe in, the Bar. Andrew Walker QC brought the meeting to a close saying that he will carry on in earnest until the end of the year but was likely to be leaving a long list of things for Richard Atkins QC to do!