

## **Minutes of the Bar Council Meeting held on Saturday 1 October 2011 at the Bar Council Offices**

### **Present:**

Rt Hon Dominic Grieve QC MP - Attorney General

Peter Lodder QC - Chairman

Michael Todd QC - Vice-Chairman

Andrew Mitchell QC - Treasurer

Mark Hatcher - Director of Representation and Policy and Acting Chief Executive

### **1. Apologies**

Apologies for absence had been received from Nicholas Burn, Guy Fetherstonhaugh QC, Amanda-Jane Field, Charles Hale, Tricia Howse, Paul Mendelle QC, Richard Miller QC, Michael Sherry.

### **2. Approval of the Minutes**

The Minutes of the 23 July 2011 Bar Council meeting were approved.

### **3. Matters Arising**

No matters arose from the 23 July 2011 meeting.

### **4. Statement by the Chairman**

PL allowed the meeting to start a little late, as members gathered in the Bar Council reception area to watch England v Scotland in the Rugby World Cup. PL had considered starting the meeting on time, but did not wish to deprive Gareth Evans QC of watching the fixture on the occasion of his last meeting. PL welcomed attendees back from the summer break. A lot had happened since July, and there was much to cover in today's meeting. He recalled the anecdote about a minister very purposefully removing his watch and placing it alongside the lectern before starting his sermon. In the congregation, a son asks his father what it means. "Nothing son", he replies, "It means absolutely nothing..."

### **International Matters**

Instead of launching straight into doom and gloom PL said he would begin with the success story of the Bar's international work. Chantal-Aimée Doerries QC would give a more detailed account later in the meeting.

In August, with representatives from some of the Specialist Bar Associations (SBAs), PL had attended the annual meetings of the American Bar Association (ABA) and Canadian Bar Association. These were good opportunities to strengthen existing links across the Pond, for example meeting the ABA's Section of International Law, who we planned to meet again when they come to Belfast and Dublin in October, and who might be persuaded to hold their autumn meeting of 2012 in London. Already members of the Bar were receiving work from these contacts and there was good reason to believe that this work would increase.

There had also been meetings to discuss a wide range of common problems arising out of public funding crises, and particularly challenges presented by IT advances in terms of privilege and simple client confidentiality, for example the use of the cloud, and wayward email transmissions. One North American firm were reported to have had all of its client files hacked into and copied. Events such as these could have very serious repercussions, which PL was concerned that some chambers did not fully appreciate. PL had asked the Information Technology Panel to prepare some guidance.

There was also a significant domestic agenda for promoting international work: particularly following our contribution to the joint Ministry of Justice (MoJ) and UKT&I Legal Services Action Plan. Through our membership of TheCityUK, on 7 September PL attended a meeting at Linklaters to brief the Minister of State, Lord McNally and MoJ officials on ways in which they could help to develop London's future as a global centre for arbitration and commercial law services. The Ministry were interested to hear which overseas markets they might be able to help with, and were keen to ensure that Government delegations included lawyers.

The following week we met a delegation from the Hong Kong Law Society. We attended the "Think Asia, Think HK" conference in the Queen Elizabeth II Centre and were guests of the Law Society at the conference dinner.

The next day PL was a speaker on a platform which included the Lord Chancellor (LC) at Clifford Chance, concerned with promoting UK legal services abroad. This again was an opportunity to contribute to Government's views on developing international work for the Bar.

Michael Todd QC continued to chair The Bar in the City group, developing similar themes and looking forward to the opportunities afforded by the opening of the new Rolls Building and the "unlocking disputes" initiative to promote its services

worldwide. This had also been an important component of PL's September meeting with the next Lord Mayor of the City of London, who was very keen to have Bar involvement in a programme which would focus on legal services.

Early results of these initiatives were that we were able to feed into the Prime Minister's recent visit to Russia, where announcements were made about co-operation on legal professional projects, some going beyond the Commercial Bar and extending to areas of publicly funded work. Members of the Bar also went with the LC on his recent trip to India in an exploration of opening up the substantial Indian legal market.

In addition and at short notice the Bar Council was asked to brief the Duke of York ahead of his visit to Singapore. We were approached because the Palace had heard of the Bar's special skill and knowledge in that part of the world. Our brief on legal matters was very favourably received.

Last week PL had spoken at a high powered meeting co-hosted by the Financial Times (FT), the City of London and the Bar. The Business Secretary, Vince Cable MP, was also on the platform. It had been an excellent opportunity to put the Bar's views to the Business Secretary directly. He took on the points of constraint on expanding the Bar's services created by the inflexible immigration policies of UKBA, especially by becoming a Tier 5 organisation. We would be following up with UKBA to iron out wrinkles in the system. Clearly as a net exporter of legal services it was unhelpful if our home Government's restrictions gave rise to reciprocal barriers overseas. The meeting afforded good media contact for the Bar with the Chief Political Correspondent of the Evening Standard, the FT itself, and Stuart Frazer, Chairman of Policy and Resources, the City of London.

At a time when many parts of the Bar felt besieged, it was important to remember how very highly regarded we are abroad.

## **Legal Aid**

Talk of feeling besieged brought PL to two important meetings on legal aid: one for the Criminal Bar on 26 July, and one for the Family Bar on 17 September. Each was held in London, but with video links to centres all around the country. Both were well attended, indicative of a huge concern. The Attorney General (AG) had been present at both and had relayed the concerns expressed at the meetings back to the LC. The press had also recently become interested. Attending those meetings no-one could have been left in any doubt of strength of feeling amongst practitioners about unrelenting cuts and effects on access to justice.

The Criminal Bar was becoming more and more angry. There was a fear for the

future of publicly funded work, particularly in respect of pupillage offers drying up. There had been calls for direct action in some quarters, including from many of the attendees of the Criminal Bar meeting in July. The Criminal Bar Association (CBA) was reviewing and updating existing advice on what action might be permitted.

The Family Bar were taking a slightly different approach, and were forming a wide base of support from concerned organisations in order to lobby, inform and perhaps embarrass Government. Those groups included the NSPCC, the Women's Institute, Gingerbread and many others. There had been a telling moment in the meeting when one barrister painted a picture for the AG of litigants in person after a heated dispute leaving the court room to draw up an agreed order. He had then invited the AG to consider how difficult it would be if the order included pension sharing provisions. This comment appeared to touch a recollection from the AG's own experience, and how much more difficult it would be if his opponent were a professional. Another attendee quoted DJ Glover saying "How can a busy Judge conduct an FDR with two individuals who continually produce new documents from plastic bags, who will not listen to each other and who are unable, emotionally, to compromise?" At the conclusion, resolutions were passed entreating the Government to look again at their proposals and temper the more egregious changes to ensure practical and effective access to justice for the abused, for the vulnerable and especially for children.

Following the CBA meeting PL wrote to the LC to stress in particular the effects on pupillage in publicly funded sets, alerting him to the impact on diversity, which would, in turn, affect the talent pool from which the judiciary of the future would be selected. Following that letter PL had a meeting with the LC and the Parliamentary Under-Secretary of State for Justice, Jonathan Djanogly MP to press home these points, also referring to what he had said in the Chairman's Column in the October edition of Counsel Magazine. The LC's attitude had been brutal. He felt that the Bar had to face changes in its markets and in his view chambers simply could not carry on as they used to. The LC had said that it was 'cloud cuckoo land' to pretend that the world had not changed. He had compared the current situation of the Bar to the run up to the Big Bang in the City in the mid-1980s. Many barristers appeared to him to be like ancient stockbrokers. He drew a parallel between private opticians and Specsavers. PL invited him to get a second pair. The LC said that he was looking forward to serious competition in order to maintain quality at the Bar. It was not a welcome message, but that was his view. The LC expected the MoJ's consultation paper on competition in criminal defence services to be launched by the end of the year, with probable implementation in 2013, perhaps 2014.

PL understood that a response to his letter and the subsequent meeting was imminent and that the LC would confirm it to be "desirable that an independent Bar of specialist advocates continues", and that although the challenge is enormous, he

believes "the price is worth fighting for a Bar which prides itself for its modernity and dynamism not just for ethics and public service".

However, there was an air of exasperation from the Bar about a Government which appeared to be unconcerned about the irredeemable harm it was causing to a vital public service. Repeatedly PL had warned that once destroyed, this precious pool of skilled advocates available for all in the public interest would never be recovered.

### **Referral Fees**

We continued to pursue our concerns about referral fees. We had received advice from Treasury Counsel which confirmed, as had been clear to us, that there was indeed a basis for prosecution under the Bribery Act.

There would be a further meeting with the Ministry shortly. Government would be in a position to table an amendment to the Legal Aid Bill to reflect the Bar's wider concerns of the need to outlaw referral payments on publicly funded work.

### **Social Mobility**

Social Mobility in the legal profession had been the topic of a meeting held at 10 Downing Street the previous week in which the Minister of State, Lord McNally, had participated. PL had been able to press home once again the Bar's concerns, emphasising that the social mobility initiatives depended upon real opportunities, and were undermined by cuts in publicly funded work.

### **Party Conferences**

Mention of Lord McNally took PL on to Birmingham, and the Liberal Democrat party conference, where, after PL had confronted him at meetings at breakfasts, lunches and dinners over three days, McNally had publicly expressed the fear that he was being stalked by the Chairman of the Bar. There had been an intensive round of meetings with ministers, back benchers and interest groups.

PL had spoken at a Liberal Democrat Lawyers Association fringe event with Tom Brake (backbench MP on the Legal Aid Bill Committee) on how members could hold the party to account on the coalition's legal aid policy. The Bar's aim had been to prick the social welfare conscience of the Liberal Democrat part of the Government. We also met Lord Jonathan Marks QC, Mike Crockart, Sir Alan Beith MP and Vince Cable MP and spoke on a number of platforms hosted by groups concerned about legal aid developments.

The BC was then present in Liverpool, flying the Bar's flag at the Labour conference and at meetings of the Society of Labour lawyers. However, it was worth noting that

legal aid would not have got a better deal under Labour - justice spokesman Sadiq Khan MP conceding that plans to cut funds had been well advanced.

PL would travel to Manchester for the Tory conference on Monday evening following the Opening of the Legal Year ceremonies. A large number of meetings were scheduled, and PL would share a platform with Jonathan Djanogly MP at one event.

The programme of objectives and key messages of the Bar deployed at all three events was set out in a briefing publication made widely available to politicians, media and other lobbying groups.

We also continued to brief parliamentarians of all parties on the Legal Aid Bill, with the committee stage reaching part 3, dealing with sentencing. BC amendments had been circulated and in many cases tabled for debate, but it was proving to be uphill work to achieve change in the Commons. We were now focussed on the Lords phase, expected to begin in late November.

## **Scotland**

Earlier in the week PL had been to Edinburgh for the opening of the Scottish legal year. This had been combined with a meeting of the heads of the four UK and Irish Bars, and provided a useful opportunity to share the similar challenges they all faced. PL had also mercilessly lobbied Lord Jim Wallace, the Advocate General for Scotland, who had been unwise enough to declare he would help with the Legal Aid Bill in the Lords. He took it all in good heart, but knew what was coming, and had agreed to meet again soon.

## **Quality Assurance Scheme for Advocates (QASA)**

PL had also spoken to the English and Welsh Law Officers that week, and acquainted them with recent developments including QASA. He made the point that sometimes case information regarding Government initiatives was let out earlier than they planned, and could divert attention. The Bar Council and BSB were making every effort to avoid a linkage between a regulatory exercise and remuneration, which we had not understood to be the original intention. PL suspected that public comments had been made by someone who was not necessarily in a position to speak on the matter and that although consideration may have been made regarding a linkage, it had not yet been thought through or developed. Discussions continued.

## **Public Access**

At PL's recent meeting with the LC, the latter had been surprised by the number of barristers who had trained, and he said he was encouraged by the steps that the Bar had taken to make itself more accessible. Discussions continued with the BSB, and there was hope for developments on that side.

### **Circuits**

As PL began the final quarter of his Chairmanship, he planned another round of Circuit and chambers meetings, in order to hear views first-hand from up and down the country. Locations would include Hull and York. The next Public Affairs Committee meeting would be held in Manchester.

### **Green Review**

PL reminded the meeting of the current review of Bar Council decision making, prompted by the departure of David Hobart as Chief Executive. Today's meeting would not seek a concluded view on the suggestions made in the report, as the Bar Standards Board and the General Management Committee (GMC) needed first to consider the way forward. However, PL had asked Andrew Walker QC (AW) to present the findings of Nick Green QC's (NG) working group, and today was an opportunity for Bar Council members to express their thoughts.

### **Strategy and Plan**

The new Plan was the result of more than a year's work, and had been before the GMC on three occasions. It would be introduced by Mark Hatcher (MH), Director of Representation and Policy, and current Acting Chief Executive. PL remarked that whilst it would be important for any organisation to have this level of planning, for the Bar Council it would be a significant component in ensuring continuity of theme across different chairmanships. We had brought forward the election of the Vice-Chairman, and would look at retaining some services of former Chairmen, so that service could now last for many years! The various Officers were engaged in the development of the document, and so he hoped that the focus on issues would be both constant and coherent.

### **Bar Debates**

PL encouraged members to attend the next Bar Debate on 16 November: "Broken Britain, Broken Families". It was sponsored by the Family Law Bar Association (FLBA) and promised to be lively.

### **Chairman's office**

PL gave thanks to Ariel Ricci, who had moved on from her position as his Executive Assistant to work for the BSB, ahead of commencing pupillage at Coram Chambers in 2012. She had given considerable assistance to PL and NG over the last two years, but their loss was the BSB's gain. A replacement had been engaged but she would not arrive until later in October. In addition, PL's PA, Sandra Sidey, was currently absent unwell, and so PL asked members to bear with us during this period of staff shortage, as the 7th Floor currently resembled the Marie Céleste. PL was particularly grateful to MH for his continued support.

## **5. BSB Report**

RD expressed her bafflement as to the LC's comparison of self-employed barristers and private opticians, as reported by PL, and the suggestion that they should become more like Specsavers. Indeed, she had always thought that the latter represented a false economy. She found it extraordinary that the LC spoke so highly of the value of the legal profession internationally, whilst taking steps that would damage it. However, we must keep calm and carry on.

### **BSB Lay Membership**

A notice of the new lay members appointed to the BSB had been tabled at the meeting. Some would remember Rob Behrens' name, a former Complaints Commissioner to the BSB. RD was mystified as to why the BSB was required to follow the Legal Services Board (LSB), which had its own lay majority, in also having a lay majority, as if to imply the profession was not trusted to monitor itself. Nonetheless, we had now moved closer to their notion of independence. We would also need to amend the BSB's constitution to remove the requirement that either the Chair or Vice-Chair of the Board must be a barrister.

### **Referral Fees**

RD was pleased to hear that referral fees were being dealt with: the BSB had never been in favour of them, and looked forward to seeing a strengthening of the ban.

### **QASA**

RD said that there should be no doubt in people's minds that QASA would proceed. The BSB had listened to the interests and concerns of various groups, including the CBA, the judiciary, the Solicitors' Regulation Authority and the LSB. She understood that the timetable was difficult, and adjustments were being made every day.

### **Public Access**

The BSB was moving in a direction the Bar Council would like when it came to public access rules. A consultation was taking place, and the matter would be coming to the Board for decision before the end of the year. They would consider adjusting the rules in terms of barristers accepting work from clients who might be eligible for legal aid. However, they would need to ensure that appropriate safeguards were in place. The Board would also re-examine the three-year rule.

### **Continuing Professional Development (CPD)**

The CPD consultation would remain open until the end of October. The BSB had received a number of responses to the consultation, and would look forward to receiving many more. Those who were focussing on the proposed requirement for an increase in hours should look more closely at the increased flexibility of the revised scheme, as many more activities would become eligible.

Any changes to the existing scheme would not be implemented until 2013. The overarching education review that was taking place in conjunction with other legal regulators would also make recommendations, but those results were a long way away, and meanwhile we had to set our own house in order.

### **Questions**

Esme Chandler (EC) returned to the reported analogy the LC had made between legal services now and the 'Big Bang' in the financial sector in the 1980s. She invited members to read the "The Death of Gentlemanly Capitalism" by Philip Augar, and noted that the Big Bang had dismantled protection in place for consumers, and that its damaging effects continued to be felt. RD agreed with EC, and for her own part was keen to learn from the mistakes of the past.

## **6. Bar Council Strategic and Business Plan 2011-13**

MH remarked that Bar Council meetings rarely provided an opportunity to discuss strategic planning. Whilst some members would think "what a relief", few organisations today, whether in the corporate, public or voluntary sectors, could operate without formal consideration of their future course of action. He referred the meeting to his note covering the Strategy and Plan at Annex 2 to the Agenda.

MH invited members to:

- i. Approve the draft Strategic and Business Plan;
- ii. Approve the principle of considering the plan in conjunction with the Bar Council's budget-setting process; and

iii. Agree that the GMC should take "ownership" of the approved plan and ensure that it was regularly reviewed and reported on (quarterly intervals had been recommended).

MH stressed that the Bar Council was not coming to this exercise from scratch. Each year, in December, the incoming Chairman set out his (or her) priorities for the following year in an Inaugural Address. Invariably these priorities drew closely on the work of his predecessor; often they reflected changes in the external environment, to which the Bar needed to respond; and at times they reflected an assessment of the Bar's strengths and weaknesses and how these should be addressed.

The "Inaugural Address" approach to strategic planning had its strengths but also its weaknesses: high-level objectives and aspirations may not be sufficiently connected to the means for achieving these objectives efficiently or effectively - or possibly even at all in practice. In a world of rapid regulatory and market change, scarce resources and demanding "customers" - pre-eminently the Bar, and the Bar's "stakeholders"(if RD would forgive him for using the word she had banned at the BSB) - there was a real risk of disconnect between policy and programming, dissatisfaction, and wastage of effort and resources.

All strategic planning dealt with at least one of three key questions:

- i. "What do we do?"
- ii. "For whom do we do it?"
- iii. "How do we excel? (or in a business context: "How do we beat the competition?", but not the appropriate question in this context.)

The Plan before members today, which covered the spread of current representative activity and that of the Bar Council in its Approved Regulator capacity, had been designed to address the challenges posed by these questions, whilst attempting to answer the further question, "What has the Bar Council ever done for me?" The BSB had its own separate strategy and business plan, so we were not considering that.

On the Representative side we had made a start on what in future years should be a more distilled version of the Plan, by mapping the Bar Council's current activity with reference to twelve "Aims", arranged in four theme clusters, as summarised on page 22 of the Agenda: "Representation and Promotion", "Products and services", "Accountability", and "Values". This matrix described, at a necessarily high level, a series of key strategic objectives up to 2013. These objectives had been approved by

the GMC, after three meetings to discuss the Plan. They followed discussions with the Elected Officers and discussions in the Secretariat with the chairmen of the various Representative committees. The process, as PL had indicated, had taken the best part of a year to accomplish, and had been initiated by his predecessor, Nick Green QC. However, it was a "living" document, and MH expected that, with the benefit of experience, we would improve the specification of our aims and the detail of our objectives. As Winston Churchill had said, "However beautiful the strategy, you should occasionally look at the results".

Underlying the key objectives was a series of planned business activities. These had all been agreed. They provided the foundation for the development of discrete business plans, with the linkages between the Bar Council's representative strategic plan and its business planning described in paragraph 10 of the note on page 18. Committee business plans would be reviewed each year, and would inform budget bids by the committees, prepared for scrutiny by the Finance and Audit Committee (FAC) and for Bar Council consideration. Indeed, the Strategy and Plan provided the underpinning for the 2012/13 budget, which would come to Bar Council for consideration in November.

It was hoped that this process, which would be refined in the light of experience, would achieve real benefits in the way we did things at the Bar Council, as set out at pages 18-19 of the covering note.

In essence, our aim was to improve the management of the Bar Council's resources on behalf of the Bar:

- To improve our business planning;
- To improve reporting and accountability for our performance; and
- To improve the ways in which we managed our people, our infrastructure and other assets.

MH was very grateful to Simon Garrod, Deputy Director, Representation and Policy, and David Coventon, Administration Manager, Representation and Policy, for their work on this project. It was hoped that the Strategy and Plan would lead to a more professional and businesslike organisation on the Representative side of the Bar Council.

The Strategy and Plan was approved by the meeting.

## **Questions**

Professor Anthony Lavers (AL) commented that aim number 3 of the Plan should use the words "preserve and enhance" rather than just "preserve". PL said that the

Plan was a living document and that AL's comments would be taken on board.

## **7. Pension Update**

ARM joined the meeting directly from a flight from Trinidad, and was pleased to be back in the UK to after a month working abroad.

Further to the decision made by members at the 14 May 2011 Bar Council meeting, staff had been consulted on a "Mark II" pension scheme. The consultation had gone well, with a frank exchange of views between staff and employer.

One concession made to staff who elected to continue from the current scheme to the Mark II scheme was to allow the 5% rate of revaluation for deferred pensions, as written into the old scheme, to be preserved for benefits earned prior to the introduction of Mark II. The new, lower rate of revaluation would therefore apply only to benefits earned under the new scheme. Bluefin pension consultants had confirmed that the impact of this change would not be significant.

A letter had been sent to the Trustees setting out the plan, and the Trustees' silence had been taken as agreement.

ARM predicted that most staff would not accept the offer, because the percentage contribution required of them felt like more than they could afford in the current economic climate. Such a view would be short sighted, but ARM would wait for the formal staff responses to come in. The Trustees had similarly said that they did not feel able to sign up to the scheme, but ARM said that this was not the Trustees' decision.

## **8. Practising Certificate Fee (PCF) Review**

ARM recalled that this time last year the FAC had looked at restructuring the PCF, which was currently heavily subsidised by the senior Bar. The external advisors who had prepared the consultation spoke to selected parties and indications were that the Bar was reasonably content with the structure. However, as changes were forthcoming in respect of Entity Regulation, it did not seem to be an appropriate time to undertake further consultation at this stage.

This was not to say that there would be no changes at all:

i. ARM saw the lowest rate PCF of £65 per year as too low, when the top rate PCF had grown significantly. The current minimum almost cost the Bar Council more to collect than they gained from collecting it. The BSB would similarly prefer to see a higher fee for the junior Bar, and in terms of regulation would have a valid argument

for a flat fee. He did not propose changing the structure to that extent, but the minimum fee should be revised, and ARM would produce a paper to this effect. Given that the levies for the LSB and Office for Legal Complaints were charged to the Bar Council per capita, it would make sense for this charge to be passed on accordingly to each practitioner. He therefore saw the change as being in the region of £30 to £40, in line with the levies.

ii. The budget-setting process for 2012/13 was currently in train, with the Representation and Policy, Central Services and Regulatory directorates submitting their bids to the FAC for the year ahead. Bar Council should be comforted that the scrutineers of the Performance and Best Value Committee thoroughly audited the BSB's budget ahead of it being considered by the FAC.

iii. ARM anticipated the increase in the normal PCF levels being in the region of 5-6%. However, there would be a significant reduction in the pension levy, the profession having done so well in raising £5-6 million in the last few years for this cause. Should a pension levy be included in the 2012/13 PCF, it would be less than the 12-month effect of last year's 15-month PCF. ARM therefore hoped that practitioners would see an overall reduction in the yearly rate.

Andrew Walker QC (AW) put forward the view that if the super-regulators were not charging by reference to regulatory risk then why should the Bar? He queried whether there was any evidence of the junior Bar carrying a greater risk, and if so, whether this was based on a higher likelihood of non-payment, or on disciplinary issues?

Vanessa Davies, Director of the BSB, said that she was not aware of the BSB having said that there should be a flat fee, only that the current PCF was imbalanced in view of the impacts. The cost of the junior Bar was greater in terms of the activity focussed on them. However, she would have to look into the figures to be able to answer AW's query on the specifics of non-payment and conduct costs.

ARM clarified that the FAC was not trying to implement a flatter fee overall, only to correct the current position for the minimum fee, whereby the rate was so low that we were subsidising the regulatory levies.

Nichola Higgins (NH), Chairman of the Young Barristers' Committee, said that if the PCF consultation had confirmed that the Bar continued to support the position that the senior Bar should subsidise the junior Bar, how could it be fair for only the junior Bar's PCF to increase?

ARM explained that the PCF consultation had looked at the structure of the Fee, not the per capita costs. There was no suggestion that the Fee would be redistributed,

only that we should address whether £65 was a fair minimum. He suggested that a minimum in the region of £75, £95, or £105 might be more fair.

## **9. Review of the Bar Council Decision-Making ("Green Review")**

Andrew Walker QC (AW) recounted the genesis of the Green Review at the beginning of the year. PL and RD had asked Nick Green QC, last year's Chairman, to chair a working group to look into ways in which decision making within the Bar Council could be improved. It was to be a joint exercise, as the interests of both the Bar Council and BSB would be affected, whilst it was no part of our remit to review the BSB's own internal processes, as this was entirely a matter for them. To that end, the Group had the benefit of members from both parts of the organisation: AW and Maura McGowan QC from the Bar Council, with barrister Emily Windsor and lay member Richard Thompson OBE from the BSB. AW expressed a special gratitude to the BSB members of the group for their unique perspective. He also thanked staff members Amanda Thompson of the BSB and Ariel Ricci, now also of the BSB.

There were four main reasons for undertaking the review at this point:

- i. It was 12 months since the new BSB constitution had been put in place, and it was useful to take stock of how that was working;
- ii. David Hobart's resignation had created a gap at the top of the Secretariat, and created an opportunity to review the role of Chief Executive;
- iii. Appreciation of the limited terms of office of the Chairman, Vice-Chairman and Vice-Chairman Elect, and the ever-increasing burdens placed on them;
- iv. The desire to ensure that the Bar Council was 'fit for purpose' in the modern world of regulation.

Improved decision making was a deceptively narrow description of what the Group were actually asked to look at. AW referred members to the Terms of Reference and 7 chapter headings of the Green Review at Annex 3 to the Agenda - which were described as "not exhaustive". It therefore soon became clear that it would not be possible to address the whole list in time to produce a report by July 2011. So the group decided to concentrate on the role of Chief Executive as the most pressing issue. The outcome was the Group's unanimous Initial Report, as laid before the meeting that morning. AW emphasised that whilst a summary of the recommendations was included in the paper, members would need to read the report in full to appreciate the details.

The first recommendation was that there should be a Chief Executive. Almost all consultees thought so, and the Group shared that view.

The second recommendation was to split the FAC as currently formed, separating out its Finance functions and its Audit functions, taking note of the requirements of the BSB and LSB.

Third, in consideration of the 12-month term of the Chairman of the Bar they recommended a range of measures to ensure that the office-holder's knowledge and skills were not lost on departure. (See paragraphs 161 to 221 of the report.) This was consistent with the Strategic Plan as presented by Mark Hatcher earlier in the Agenda.

The Group also made the recommendation of a further phase of the review, to look at Bar Council internal workings.

So why have a Chief Executive?

- i. The B+ model of the ring-fenced regulator required a Chief Executive as the lynchpin at the top of the organisation;
- ii. There needed to be a strong focus of leadership for both staff and the profession;
- iii. Continuity was needed at the top in all areas, in consideration of the 12-month term of the Chairman of the Bar;
- iv. An impartial, objective view was required to reconcile the demands of the Bar Council and the BSB;
- v. Someone was needed at the helm of the organisation to give focus and leadership on internal matters such as staff and accounting issues.

The Group wished to pay tribute to the very significant efforts of the three Directors during the interregnum period in carrying out the Chief Executive responsibilities themselves. The Group had considered whether this might be an appropriate arrangement in the longer term, but rejected such a proposal, as explained at paragraph 68 of the report.

AW said that the Group had seen a clear distinction between managing internal and external matters. Internal matters were primary. External matters were more complicated: they had removed the Chief Executive's ability to vote at GMC meetings, and they could not vote on BSB matters. The policy and advice they provided would therefore need to be more nuanced. The Group made no specific

recommendation as to how the Chief Executive would carry influence but, as outlined at paragraphs 90 to 96, felt that this would depend on the respect for the individual across the board. A strong job description and person specification would be set out as a priority, and the Group believed that the role would provide what was needed in terms of cost-effectiveness, not just cost.

## **Questions**

Asked by Fiona Jackson why there was a further delay in Bar Council being asked to make a decision on the matter, AW explained that GMC had not yet considered the matter, and he also doubted whether those present at today's meeting had fully had a chance to consider the report. PL added that the BSB would likewise need to take a view before the matter returned to Bar Council. However, he encouraged members to express their thoughts, as this would help to inform the discussions of GMC and the BSB.

Asked to explain the relationship between the Chairman and the Chief Executive, AW clarified that the Chief Executive was an employee of the Bar Council, and effectively ran the organisation. The current Chairman, in the absence of a Chief Executive, was fielding internal issues, and that burden should be kept away from him. The Chief Executive should ensure that the structural arrangements were in place to support the Bar Council and the BSB. The post-holder should also act as an institutional memory for matters at hand, to inform the Chairman during his 12-month term.

PL invited the unsentimental view of the meeting, and asked whether they agreed with the Green Interim Report. PL noted broad agreement from members. PL echoed AW's comments that the Directors had kept the organisation running admirably. There had also been a financial bonus of not having to bear the highest staff salary in the building for a number of months. However, he asked members to reflect on what Bar Council had been able to achieve previously when a Chief Executive had been in post; and how we were falling short of fulfilling our objectives in that post's absence. He agreed with AW that life at the Bar did not equip a Chairman to run an organisation.

## **10. International Committee: Report on Activity**

Chantal-Aimée Doerries QC (CAD), Chairman of the International Committee (IC), gave a report on the recent work of the Committee.

The IC's remit was:

- i. To promote the Bar internationally through business development;
- ii. To support the rule of law internationally and uphold the values of the Bar; and
- iii. To build relationships with legal professions abroad.

The number of activities carried out by the IC and the International staff at the Bar Council had grown rapidly in the last few years, including organising outward missions, receiving inward missions, and setting up exchange programmes. This reflected both the increased interest at the Bar in international opportunities and work, and the success of the past work of the committee.

The new Representation and Policy Strategic and Business Plan had been discussed earlier in the Agenda. The IC started to work to 3-year Strategy Plans in 2008 to help identify priority regions and markets and to plan effectively.

In order to give a flavour of the growing importance of international work, CAD reported that conservative figures put the Bar's total international earnings in 2010 at £152m - up £18 million from £134m in 2009. There had been a year-on-year rise since the year 2004. These figures were based on zero rated VAT information, so would not include all cases involving foreign clients instructing the Bar through English solicitors, nor would it cover work relating to English firms involved in overseas projects.

To ensure that the IC provided the Bar with what it wanted, we had taken the following steps:

- i. We set up a working group between the IC and all interested SBAs called the International Business Development Working Group so that the SBAs could provide regular input.
- ii. In addition to regular Counsel Magazine updates, we emailed the SBAs once a week with details of all upcoming events and opportunities. We hoped to extend this to interested Circuits.
- iii. We regularly emailed barristers who had signed up to the various regional interest groups (e.g. China, Middle East) with news and opportunities.
- iv. We carried out a survey of chambers earlier in 2011 asking for feedback about the international work that we do.

A particular goal in 2011 had been to continue the previous year's work in educating the publicly funded bar about the international opportunities available, and in promoting it overseas. With this in mind we had for example:

- i. Run two workshops in Manchester and London to engage with and educate the publicly funded Bar about international opportunities.
- ii. Included in missions and conferences where possible speakers/topics on criminal/regulatory issues.
- iii. Were publishing a promotional brochure describing the services offered by the criminal and regulatory Bar, which we would be launching at the IBA in Dubai. This brochure was self-funded, with some 16 Chambers supporting it directly by placing adverts in the brochure.

In the time available it was not possible to cover all the initiatives in which the International Committee had been engaged. CAD therefore gave one example from each of the main jurisdictions that the IC had visited. The purpose of these trips was to educate foreign markets about the services the Bar offered and how to instruct the Bar, to facilitate opportunities for those attending, and to build relationships with the local Bar.

### **Russia/CIS**

The CIS region was one of our priority areas for international business development. It generated, and was likely to generate in the future, significant litigation and arbitration business in London.

After arranging successful seminars and receptions in St Petersburg and Kiev to build on last year's success in Moscow, PL had represented the Bar at the International Legal Forum to speak on the topical subject of the fight against terrorism.

The most exciting project had been participation in English Law Week in Moscow - which was a 3-day programme featuring seminars with topics including UK arbitration and litigation, regulation and bribery. A delegation of barristers attended and spoke, coming from a wide cross-section of the Bar including criminal, commercial and chancery. The seminars attracted some 150 leading Russian practitioners and in-house counsel. The trip had featured in an article in last month's Counsel Magazine.

As a result of these activities we now had broad agreement with the Russians (i) to host an English Law Week and a Russian Law Week in alternate years and (ii) to

launch a young lawyers exchange programme.

CAD added that in common with all such missions, all barristers, other than the BC officers and staff, were wholly self-funded on the trip. The missions were widely advertised amongst the Bar and we were in the process of implementing a formal policy on selection to ensure a transparent process.

### **China and Hong Kong**

The Bar Council had hosted 2 incoming mainland China delegations and was planning an outgoing promotional mission to Beijing and Tianjin in November.

On a less positive note, this April after 20 years the Lord Chancellor's Training Scheme for Chinese Lawyers had come to an end, with the Government withdrawing funding. Some 300 Chinese lawyers had participated and many had gone on to become heads of Chinese law firms. In addition to the values offered by the scheme it gave the Bar the opportunity of educating the participants in English law and the skills the English Bar had to offer. Some 25 chambers had participated in the programme. As a result of demand from the Bar we were now working on putting together a much smaller programme, focussed around chambers placements, which would begin in 2012.

We had also had meetings with and were working towards building closer relations with the Hong Kong Law Society and the Bar Council of Hong Kong, and hoped that there would be some exciting opportunities in 2012.

### **India**

India presented a particular challenge - it was a market with much potential but at this stage the market for legal services was closed to overseas advocates. However, we accompanied the LC on his recent visit to India and campaigned to promote a relaxation of this barrier.

This Easter the Chairman had launched a unique initiative in Kolkata. Following a previous Bar visit, we assisted with the launch of a new arbitration and mediation scheme with the Bengal Chamber of Commerce. Quasi-judicial roles were not caught by the prohibition on foreign lawyers delivering legal services in India and we had succeeded in signing up over 40 barristers as arbitrators and mediators. We hoped that this might be a model for cooperation elsewhere.

### **The International Professional and Legal Development Grant Programme**

CAD wished briefly to mention this important project. The IC believed that it was

important to encourage the Young Bar to start early in looking at building overseas contacts, as this was essential to help them thrive in an increasingly international market. We were therefore making use of the BC scholarship trust to award grants to barristers under 7 years' Call to facilitate their participation on overseas missions / conferences. The programme was supported by 6 SBAs. In return for financial support the successful applicants committed to disseminating the knowledge and experience gained amongst their peers. This year we anticipated awarding some 25 grants.

## **Publications**

This year we had published three booklets, all self-financing:

- i. "Barristers in the International Legal Market", explaining what we do and how to instruct us;
- ii. "Services of the International Criminal and Regulatory Bar"; and
- iii. "Barristers in International Arbitration 2011/12" focussing on the work barristers do as advocates in international arbitration. The 1st edition in 2009 had attracted some 33 chambers. This year we republished a 2nd edition with some 55 chambers.

## **Immigration**

The UK Border Agency had introduced a points-based immigration system which was, partly inadvertently, hitting lawyers. In response we had taken a number of steps, one of which was to register the Bar Council as a sponsoring organisation under Tier 5. This allowed us to act as a sponsor where Chambers want to bring in foreign pupils and mini pupils.

## **Values and the Rule of Law**

The IC responded where it could, often in conjunction with the Human Rights Committee, to rule of law emergencies. We also sought to provide public and political support for legal professional bodies affected.

The flagship annual event for this cause was our International Rule of Law Lecture. This year for our 5th Lecture on 5 December 2011 there would be an emphasis on Libya. We would have Patricia O'Brien, the UN Under Secretary-General for Legal Affairs, who would be speaking on the legal challenges faced by the UN in the context of international crimes and the emerging doctrine of the "responsibility to protect".

## **Looking Ahead**

As well as building on this year's work, next year's agenda would include:

i. An outward bound mission to South Korea around March 2012.ii. In April we would participate in the American Bar Section of International Law's conference in New York, and were hoping to meet with the New York City Bar.

iii. We were aiming to run three short seminars in mainland Europe on how continental law firms can cooperate with the Bar in international dispute resolution.

iv. We would bring online the exchange programmes with Russia and China and hopefully also add one with Hong Kong, which was under discussion.

v. We were investigating opportunities in the Caribbean and had started by setting up webinars with a local Bar.

vi. We would be working with TheCityUK and the MoJ in promoting the Rolls Building and London as a centre for dispute resolution.

CAD ended her report by thanking the International Staff at the Bar Council - Christian Wisskirchen, Sarah Richardson, Rukaiya Bhagani and Jessica Henderson - for all their hard work. Without them the programmes we ran would not be possible.

## **11. Any Other Business**

### **Legal Aid**

Invited by PL to say a few words, the AG said that he would be brief, in view of the unseasonably good weather, not to say the rugby. He had attended the recent CBA and FLBA meetings regarding legal aid, and had found both of great value. He would continue to ensure that the Bar's channels of communication with his colleagues at the MoJ were kept open.

MM made a plea to the AG to bear in mind the large element of the Criminal Bar who as a consequence of the cuts were likely to be facing an up to 40% reduction in income. She said this as a Silk working almost exclusively on murders. Whilst MM herself would not consider entering a referral fee arrangement, she said that she could see why a person would do so in desperation.

### **Bar Conference**

Taryn Lee reminded all Bar Council members that it was their duty not only to attend the Bar Conference on 5 November 2011, but to remind and encourage their colleagues and fellow members of chambers to do so.

Bar Council decision making and Bar Council attendance

Nick Lavender QC had three points to raise:

- i. He wished to reflect the general feeling of the meeting in respect of the Green Review. He said that it was ironic that we had before us a report on Bar Council decision making, and yet were still not being asked to make our decision.
- ii. He felt that an eye should be kept on the dwindling attendance of Bar Council meetings, counting only 55 members present that day.
- iii. As Chairman of the Professional Practice Committee, he reminded members to contact the Committee with any evidence in respect of solicitors asking for referral fees.

Eleanor Mawrey pointed out that Bar Council minutes did not list those who attended the meeting, only those who had sent their apologies. She invited consideration as to whether attendance should be made a matter of public record. PL confirmed that an attendance record was kept and a provision was in place for the Chairman to raise serial non-attendance with individual members. AW recalled the amendment regarding attendance being made, but that they had stopped short of deciding to make information about members' attendance publicly available.

**Gareth Evans QC**

PL thanked GE for his lively and entertaining contribution to Bar Council over the years. We would miss, in equal measure, his wise counsel and his sense of humour.

## **12. Date of Next Meeting**

The next meeting would be held at 10 am on Saturday 12 November 2011, in the Bar Council offices.