

Minutes of the Bar Council meeting held on Saturday 21 September 2013 at the Bar Council offices

Present:

Maura McGowan QC - Chairman
Stephen Collier - Treasurer
Rt. Hon. Dominic Grieve QC MP - Attorney General
Mr Oliver Heald QC MP - Solicitor General

72 further members of Bar Council attended.

1. Apologies

Apologies for absence were received from Mr Keir Starmer QC, Nicholas Lavender QC, Kerry Bretherton, Ruth Cabeza, Alexandria Carr, Michael Collard, John Cooper QC, Tony Cross QC, Jonathon Egerton-Peters, Guy Fetherstonhaugh QC, Manjit Gill QC, Suzanne Goddard QC, Stuart Jamieson, Gregory Jones QC, Ian Lawrie QC, Natalia Levine, Jolyon Maugham, Sarah McCann, Lucinda Orr, Dawn Pritchard, Roger Quickfall, Robert Rhodes QC, Bernard Richmond QC, Nigel Sangster QC, Geoffrey Tattersall QC, Andrew Walker QC and Nicholas Worsley.

The following did not attend and did not send apologies: David Anderson, Ayesha Bhutta, Henry Carr QC, Tamsin Cox, Gemma de Cordova, Paul Lewis QC, Nigel Lithman QC, Sarah Morgan, Christopher Rose and Mark Thomas.

2. Approval of the minutes and matters arising

The minutes of the July 2013 Bar Council meeting were approved. There were no matters arising from the minutes of the last meeting. Nigel Lickley QC (NLIQC) did, however, ask that the minutes of the last GMC meeting be updated at paragraph 7 as a comment attributed to him was in fact made by someone else.

3. Statement by the Chairman

The Chairman welcomed everybody to the meeting, particularly those whose journey had been affected by problems on the Northern Line. She was pleased to see new faces in the room - new members of Bar Council and some who had come along for the AGM - and encouraged contribution to the discussions from everybody. The Chairman requested that care be given to how some of the topics are tweeted as 140 characters are often insufficient to give a full explanation of the debate. However, everybody is encouraged to take the full details back to their membership /

constituencies after the meeting.

The Chairman offered her thanks to the Attorney General and the Solicitor General for attending and welcomed some of the new faces, including Andrew Langdon QC who will take over from Nigel Lickley QC as Leader of the Western Circuit in October, and congratulated Andrew O'Byrne QC who has recently been elected Leader of the Northern Circuit with effect from 1 January 2014.

The Chairman's statement was circulated on the afternoon of 20 September; she did not intend to go through it but would take questions. There were no questions.

4. BSB report

Patricia Robertson QC (PRQC) started by talking about the BSB's response to the Ministry of Justice's call for evidence on the regulation of legal services, which is now on their website. They have advocated the need to strip back the complexities of legal services regulation and the LSB's authority to dictate to regulators what work they should be undertaking, regardless of priorities already identified by those regulators and the inherent resource limitations.

Development of the BSB Handbook has been a long, drawn-out process but approval has now been given by the LSB. Workshops are being rolled out across the country to support its implementation.

PRQC said that no doubt everybody is aware that a judicial review challenge to QASA has been made. The sooner that is resolved the better.

As outlined in the BSB's written report, there is work ongoing in relation to risk-based supervision, a review of CPD and the development of events for Equality Officers in Chambers. They are also considering what actions should be taken further to the Legal Education and Training Review. These decisions are a matter for the BSB, not the LSB.

Questions for the BSB

NLiQC said that he had been rather looking forward to asking Baroness Deech one last question before he steps down as Circuit Leader, so was disappointed that she was unable to attend the meeting. Given that the Justice Secretary has just announced a wide-ranging review of advocacy which will take six months, is this not a good and proper reason to postpone QASA? Vanessa Davies (VLD) had said at a recent GMC meeting that the BSB Board were due to consider this at their next meeting.

PRQC replied that it is not feasible for the Joint Advocacy Group (JAG) to say that it will do nothing until such point as a report is published. There is a debate to be had

about providing meaningful information to the public at times of legal aid cuts, when quality is a very real issue. This includes addressing the bottom line, in other words, those barristers who should not be working at all. That is what QASA is concerned with.

Eleanor Mawrey (EM) asked what attendance has been like at the QASA workshops and how much they cost. VLD confirmed that attendance is low; no-one attended the first one and only two people came to the second. VLD said that costs were essentially limited to staff time and travel but undertook to return to EM with a specific figure.

The Chairman added that, by her understanding, the review of advocacy has not yet got underway and will therefore not close until early April. However, if the clock started ticking on the day that it was announced, then in fact it may only be a five-month review. She said that she would address this further in her statement to the AGM, but in her opinion she felt that it warranted a delay of a few months to QASA.

5. Chief Executive's report

Stephen Crowne (SCr) said that it was very nice to be at the meeting. In the future, he will provide a written report but today he wanted to speak about his first three months at the Bar Council.

SCr gave his thanks to those who have made him feel welcome; the reception has been very warm and people have given up a lot of time in these early months to assist him. He is conscious that he has arrived at a time of great challenges and he is clear that he wishes to ensure that the organisation supports the leadership of the Bar as effectively as possible, giving a strong sense of confidence in its strategy.

SCr's role is also to give leadership to the executive staff and to work with them to look for and implement opportunities to work in new and efficient ways, creating an organisation which is comfortable with change. He is also responsible for ensuring that the Bar Council's role as Approved Regulator works efficiently as well as contributing to policy development and influencing Government and other key stakeholders.

SCr has spent the last three months looking at what needs to be done; the Bar Council is blessed to have highly professional staff and this is a very good starting point. His early key priorities are:

- A new approach to looking resources, which is already underway. Instead of looking at individual budgets, it is about asking what the organisation can do with less and picking priorities;
- An overhaul of the performance management system;

- Review of accommodation;
- Continuing investment in IT to help drive and support developments and new working practices.

The next stage is about helping the Council look at its strategy for the next three years; this is imperative when looking to set business plans and budgets. There is scope for more efficiency and this must be considered in the longer term. This may have implications for the staffing structure and the way the organisation works together.

During this period, SCr hopes that he will play a powerful role in supporting the Officers and ensuring that the BSB has the resources it reasonably requires.

The Chairman added that there have been long discussions over the last couple of years over whether to have a Chief Executive and what that role would look like. It went backwards and forwards for a long time. However, the proof of the pudding is in the eating. In the last three months, the organisation has been revitalised despite the fact that staff are having to work to ever higher standards but with a shrinking budget. This revitalisation is down to SCr and how he has worked with staff. The Chairman said that she is very grateful to SCr for the changes he has already made to processes and attitude.

6. Entity Regulation: Bar Council Constitution

PRQC presented this item with reference to annexes 4a-4c. The context behind this agenda item is that the part of the new BSB Handbook which will allow entity regulation under the BSB has a knock-on effect on the constitutions of both the BSB and the Bar Council. Approval is sought to make the amendments as set out in the annexes.

Chantal-Aimée Doerries QC (CADQC) asked what the cost implications of entity regulation are for the profession. PRQC said that the work that has been undertaken so far to develop the BSB's ability to regulate entities has been included in the BSB's general costs, therefore everyone in the profession is paying for that. The costs specifically relating to an entity will be charged to that entity. These are being refined.

Melissa Coutino (MC) asked whether there will be any implications for an individual barrister where an entity is guilty of a wrongdoing but where the individual is not guilty. PRQC said that this would not be automatic and would be based on the findings of each specific case.

Bar Council approved the changes to the BSB and Bar Council constitutions as set out in annexes 4b and 4c.

7. Practising Certificate Fee consultation: results

The Treasurer, Stephen Collier (SC) said that the issue of how to raise the practising certificate fee (PCF) is a pressing matter which needs to be determined. It has been a very long journey; every year for the last four years there has been a survey on the subject and a decision now has to be made. The question being asked today is whether Bar Council approves, in principle, the proposal to collect the PCF based on earnings instead of year of call and agrees to delegate the exact details of implementation, and timing, to the General Management Committee (GMC) and Finance Committee.

SC gave a presentation to remind Bar Council of the numbers and scale of funds involved. Income across the Bar is good but widely spread; the publicly-funded Bar is going through a particularly difficult time. Last year, £9.4m was raised through the PCF, which accounts for some 65% of the Bar Council's income. The PCF costs, on average, across all its activities, £600 per practitioner, whilst the Bar Council spends £900 per practitioner.

The current PCF rates to individual practitioners are set by seniority (i.e. year of call) and whether one is an employed or self-employed practitioner. There is also a low-income waiver. It is a complicated scheme and difficult to administer. The proposal is to set the PCF by reference to an individual's gross earnings or salary by the previous practice year. Levels are set in bands with a £100 minimum fee and a £1,500 maximum fee. It moves the weight of PCF contribution away from those earning relatively less to those earning relatively more. The implications are not dramatic and it is not a tax. SC showed Bar Council a set of slides setting out what the changes would mean to different categories of practitioner.

Alistair MacDonald QC (AMQC) asked whether success will depend on a self-declaration of income. SC said that this is so, but that there will be a verification process with BMIF. It will be a 'tick box' exercise to indicate into which band a practitioner falls; there is no need to declare a specific amount. There is no need to supply tax information and it will be immune from Freedom of Information Act requests regarding individual income.

MC asked whether there will now only be one practising certificate for both the employed and self-employed Bar? SC replied that the payment of a common fee did not mean there would be any change to the arrangements whereby practising certificates reflect whether an individual is entitled to practise as self-employed, employed or in a dual-capacity. If the latter, the fee due will be based upon the total of gross fees from self-employed practice and the gross income from employed practice.

Zoe Saunders (ZS) asked whether there will be some provision for practitioners

whose income is likely to drop dramatically in the course of a year e.g. because they are on maternity leave. SC said that this is an extremely good point which he will consider, and he undertook to do this.

John Elvidge QC (JEQC) asked for clarification as to whether the figure was based on cash receipts or earnings? SC said that, for the self-employed Bar, it should match what is declared to BMIF i.e. gross receipts. For the employed Bar, it is gross earnings. SC was asked to make that more clear in the documentation; he and OD undertook to do so.

MC asked whether there is any reason why bands have been chosen as they have as there are implications for the employed Bar. SC said that he has received a similar query from Lucinda Orr, Chairman of BACFI. Bands cannot be changed to accommodate specific groups but he will, as requested, round the brackets up by £1 to make them come to round numbers.

Lorinda Long (LL) asked whether, on the employed side, the figure is gross or net? SC said that it is gross, as with the self-employed Bar. LL remarked that this was therefore a tax; SC replied that there is a clear cap on the rates so it is not like a tax.

Joe Smouha QC (JSQC) asked whether SC could show a practitioner headcount and the anticipated impact. SC showed a slide which gave the distribution of practitioners across the proposed bands, comparing the existing seniority-based system with the proposed income-based system. The latter demonstrated that there is certainly a re-weighting but not a dramatic change in the overall distribution. JSQC expressed concern that there is a high concentration of practitioners in the second-highest band. SC explained that it is a wide band with a large number of practitioners (and comparable to the current '12 years' + call').

MC said that the difference between PCF rates for the self-employed and the employed Bar has always existed for a number of reasons. The reality is that many employed barristers pay their own PCF and will be affected adversely by these changes; they may choose not to renew their practising certificates. SC acknowledged the importance of this and explained that this risk had been assessed in discussion with a large GLS employer.

Oliver Delany (OD), Director of Central Services, spoke about implementation of the changes. It is not anticipated that there will be a change to the Handbook as it already includes a reference to an entitlement to charge on the basis of income. The BSB has discussed the changes and endorsed the approach but made it clear that it is not a matter for their approval. However, it is agreed that an application to the LSB would be appropriate. The latter would take a minimum period of 28 working days. Ideally, the Bar Council would like to have the LSB's agreement ahead of submitting

the 2014-15 budget and PCF proposals to them for approval in December; hence the need to deal with the issue today. It has been necessary to anticipate Bar Council agreement in initiating work to make the requisite changes to the Bar Council's database and to Barrister Connect, although the new system will actually simplify the renewal process. There will also be the need to address the legality of the proposals arising out of any developments in *Hemming v Westminster*. The intention, as in previous years, is to go out to the profession in February 2014 to give them enough time to renew their practising certificates by 1 April 2014.

Turning to the PCF survey, OD said that there were over 4,000 responses, which is an excellent rate and gives great authority to the extrapolation taken from it. A clear majority are in favour of change to an income-based model. There were 40 written responses to the survey which asked questions, many of which were common.

OD outlined both the main arguments made and the responses he had provided with regard to each of the following points. The first was about bringing the self-employed and employed Bar fees in line with one another (as the employed Bar calls less upon the services of the Bar Council); where the cap is set (some said it was too high, some thought it was too low); the definition of 'earnings'; the applicability of FOIA; privacy of the data; the impact on the junior end of the Bar; the fairness of the model and its legality.

James George (JG) said that there needs to be a clear definition of reserved legal services because there are a number of government departments which are voluntarily paying but will look to see if their staff actually need a practising certificate. A number has already been lost from the Courts and Tribunal Service. SC replied that this applied regardless of which basis of PCF allocation was allocation. Additionally, he and OD met with a number of representatives from relevant government departments before starting this consultation, all of whom understood the position.

LL said that some firms who currently pay the PCF for their employees may encourage them to practise as solicitors if it is cheaper. Has that been taken into account? Also, what happens when an individual is awarded a bonus; does that count? SC said the first point was a matter for the firm and the individual concerned. As to the second point, the payment of a bonus would be included in the total earnings for an employed practitioner.

SC said that his recommendation is for Bar Council to approve the changes in principle, subject to the resolution of any outstanding issues, and to pass the implementation to GMC and Finance Committee. This was approved.

8. Any other business

There was no other business.

9. Date of next meeting

The next meeting will be held at 10.00 on Saturday, 26 October 2013 at the Bar Council offices.