



Chairman's Interim Statement to Bar Council June 2012

At our last Bar Council meeting in April, I said that, due to the gap between meetings (the next is due to be held on 7 July) it was my intention to release an interim statement in early June to bring Bar Council members up-to-date. This is that interim statement. I am, of course, happy to answer any questions arising out of this interim statement either at the meeting in July or beforehand, if you get in touch with Charlotte, (CHudson@BarCouncil.org.uk).

1. New York Mission

On Sunday 15 April, I caught the 09:55 flight from London to New York, arriving just after midday (NY time). Relaxation after the flight was a walk on the High Line. Bing Attractions on the Internet says this of the High Line:

"The High Line is an urban oasis filled with beautifully manicured landscapes situated upon the old elevated train tracks that were installed as part of the West Side Improvement Project back in 1929. The elevated train tracks originally ran 13 miles from 34th Street to Spring Street, however the southern end of the tracks were demolished in the 1960s to make room for developers. The line primarily was used to transport goods along the lower west side (meatpacking district), but with the advent of vehicles in the 50s and more accessible routes on the west side, the last train ran in 1980. Thereafter, the elevated tracks fell into disrepair and the whole structure was nearly demolished, but all was not lost as some wise benefactors and brilliant city planners called the Friends of the High Line saved the tracks with the purpose of renovating the entire structure as a public park. Today, in its most recent incarnation, the park stretches from Gansevoort Street to 28th Street in its first phase of development and the second phase to 34th Street still under construction."

A great attraction if you are ever out in New York with some spare time.

In the evening we had a dinner, at Beekman Tower, commencing at 20:00 NY time (01:00 UK time). The delegation comprised 15 members of the Bar, including some from the Northern and North Eastern Circuits, both Silks and Juniors, in addition to the International Committee Chairman, Chantal-Aimée Doerries QC, and me. The practice areas of those barristers included company, commercial, insolvency, construction, shipbuilding, energy,

insurance, financial services, IT/Telecoms, personal injury, IP, fraud, human rights, crime, and family.

At 08:00 on Monday 16 April, we hosted, at the Harvard Club, a small networking breakfast with small/medium sized NY firms. About a dozen Attorneys attended. Four of us made presentations to them:

- I gave a brief introduction to the Bar of England & Wales, what we do, and how we operate
- Chantal-Aimée Doerries QC talked about the Bar working with overseas law firms
- Marc Beaumont talked about practical issues in direct access working with the Bar
- Chris Hancock QC talked about working with US law firms.

The messages that came out loudly and clearly from that breakfast were that:

- none of their lawyers knew that they could instruct the Bar of England & Wales directly
- they all believed that they had to come through an English (or Welsh) law firm
- they were very interested to learn of their ability to come directly to the Bar
- in particular an employment lawyer approached me to discuss this ability
- historically they have had a strong and long relationship with the Law Society of England & Wales, but not with the Bar
- they wished to develop and maintain links with the Bar and with the Bar Council

Diversity in NY (1)

That breakfast finished shortly before 10:00, when Toby Craig and I left for a meeting with Alan Rothstein (General Counsel at the New York City Bar) and Gabrielle Brown (aka WonderWoman II) (Director of the NYC Bar Diversity Pipeline Initiatives), to talk about the City Bar's diversity initiatives.

The Diversity Pipeline Initiatives Program aims to provide professional development and educational programs for inner-city students interested in pursuing legal careers. It was created in 2006. It has worked with more than 80 New York City schools and more than 130 firms and organizations in providing opportunities for high school and college students to develop necessary professional skills and gain exposure to the profession. In addition to various college and career readiness opportunities, the primary components of the Program are: the Thurgood Marshall Summer Law Internship Program, "My Rights, My Nation" Constitutional Rights Symposium, annual Pre-Employment Trainings, a Job Shadow Program, a Mentor Program and an LSAT/ Law School Prep Series.

I refer to Gabrielle as WonderWoman II:

- because Charlotte Hudson (the Chairman's Office Manager) is WonderWoman I;
- because Gabrielle manages and is solely responsible for the Pipeline Program; and
- because she is the sole E&D Officer for an organisation with 23,000 members.

I will be encouraging Taryn Lee QC to meet with Gabrielle if at all possible.

That afternoon, at 14:00, we held a Joint Roundtable Seminar with New York City Bar, which I chaired jointly with the President of the NY City Bar Association, Sam Seymour of Sullivan & Cromwell in NY. We had joint presentations on:

- Cross-border Insolvency; by Rick Antonoff of Clifford Chance in NY and Eleanor Temple, of Kings Chambers, Manchester
- Judicial Assistance in International Arbitration; by David Zaslowsky of Baker & McKenzie in NY and Daniel Saoul of 4 New Square, Lincoln's Inn
- The Role of Experts in Litigation; by Larry Newman of Baker & McKenzie in NY and Chantal-Aimée Doerries QC of Atkin Chambers
- The European Court of Human Rights by Stephen Kass of Carter Ledyard & Milburn in NY and Zimran Samuel of 9 St John Street Chambers, Manchester
- The comparative jurisdictional and procedural reach of the UK Bribery Act and the US Foreign Corrupt Practices Act by Jay Clayton of Sullivan & Cromwell in NY and Richard Lissack QC of Outer Temple Chambers, London.

After the Seminar, which finished at about 17:30, we held a Joint Reception with New York City Bar, at their premises in NY.

The response of the New York City Bar to that Seminar Programme and Reception is perhaps best summed up in the email I received from Sam Seymour on my return:

“Michael, thanks again for bringing your team to the City Bar last week. The program was excellent and that sort of collaboration is just what we like to see at the City Bar – I look forward to more with your Bar Council colleagues.”

That same evening I was generously treated to dinner by a former member of this Council, Ken Craig. A dinner companion of Ken and his wife was able to arrange at very short notice a meeting the next day with David Critchlow of Pillsbury Winthrop Shaw Pittman. I mention that particularly, not just because of the delightful company and lovely food, but because of the introduction arising out of it.

On Tuesday 17 April, at 09:00, we all met at the offices of Allen & Overy for a presentation by UKT&I. The briefing was attended by the President of the Law Society of England & Wales and by his “team” of about 4 people, and our delegation of nearly 20. At that presentation, we had separate presentations (1) giving an overview of the work of UKT&I work and (2) giving an overview of the US economy, on NYC economic development and partnerships with the private sector, on Mayoral initiatives to promote economic growth in NYC, and on ADR in the NY Legal Services Market.

At 11:30 that same day I met with James Silkenat, a partner at Sullivan & Worcester LLP, (ABA President Elect). We discussed a number of initiatives we might take forward. He wrote to me on 21 April:

- “1. It was a pleasure meeting with you earlier this week concerning possible joint projects between the ABA and the Bar Council. I hope you enjoyed the Spring Meeting of the ABA Section of International Law and that your other meetings went smoothly.
2. Increased contact between members of the Bar Council and members of the ABA would, I think, be beneficial for both groups. In addition to expanding client contacts, it is tremendously helpful to American lawyers to have a more accurate feel for the current role of barristers in the UK justice/court system and to see the many comparative strengths they provide in a variety of litigation/ transactional contexts.
3. Among the many ways we could expand our institutional and organizational contacts in the future would be through joint programs and panels, both in the U.S. and the U.K. We will specifically look for opportunities to include your leaders and your members in programs and projects that are sponsored here (such as at the ABA Annual Meeting each year). We would be pleased to participate in similar activities organized by the Bar Council.
4. There might also be opportunities to publish brief articles in the journals and newsletters published by our respective organizations. If this is of interest, please let me know.
5. The organization of barristers to which I referred during our meeting in New York was the Commercial Bar Association. As I remember it, the CBA also had overseas members or affiliates (primarily leading commercial practitioners in the United States). I have not heard much from this organization in the past few years, but still have a very useful directory of its members (as of 2002).
6. Finally, as promised, I have enclosed, under separate cover to Michael, copies of the following:
 - a. the most recent Edition of the ABA Guide to Foreign Law Firms (of which I have been the Editor for the past 30 years); and
 - b. the report of the ABA Ethics 20/20 Commission dealing with a variety of topics that would be of possible interest to barristers (the proposal concerning the use of alternative business structures in the U.S. has been withdrawn).
7. Please let us know if you have additional suggestions on how we can work most effectively together. That is certainly a desired result from the ABA's perspective.”

At 12:45 we had a sandwich working lunch with the leadership of the ABA, Section of International Law, at the Grand Hyatt hotel. In particular we discussed their proposed meeting in England in the autumn of 2013. On 2 May 2012, Michael Burke, Chair, ABA Section of International Law, wrote to me in the following terms:

“On behalf of the 25,000+ members of the ABA Section of International Law, I want to thank you for meeting with the Section of International Law’s leadership team during the 2012 Spring Meeting in New York. With more than 1,550 registrants from

80 countries, 65+ top-quality continuing legal education programs, and terrific social events, the 2012 Spring Meeting was the best seasonal meeting in the Section's history. We are grateful to continue our contact with the Bar Council of England and Wales, and we look forward to continuing our close relationship - particularly on future joint programs and on the Section's 2013 Fall Meeting in London.

It was a very special Spring Meeting for the Section, and we are very grateful for your participation."

Diversity in NY (2)

At 14:30, Toby Craig and I had the meeting with David Critchlow, which I have already mentioned. David is an African American, and immediate past managing partner of Pillsbury, which office he has held for the past 5 years, (www.pillsburylaw.com/david.crichlow). He joined the firm in 1989 at which time there were just nine African American partners in "AmLaw firms" and just as few Hispanic and Asian partners. The numbers look much better now but are disproportionately high in California and New York and the growth is mostly in Asian-American partners. Law firms appear to still be lagging behind corporates.

A programme named 'a call to action' was launched by general counsel in large corporates, demanding outside counsel increase diversity. It has been pushed by the City Bar and Groups like Goldman Sachs, Morgan Stanley, IBM and others and became a national call. Groups like Walmart have said they want to see more. In the early to mid-90s, RFPs were asking about diversity. There was clear encouragement for diversity teams to handle matters.

Whilst firms are doing better at entry level, the partnership record is less impressive. Pillsbury was ahead of its time in some respects, introducing domestic partner benefits in 1991/92. It also created affinity minority groups, which was controversial, at the time.

Minority groups felt they did not have a fundamental understanding of what it took to succeed at the firm. They were nervous about asking the 'stupid questions' and needed to understand things like realisation and the business of law firms. As a senior associate level, there were barely any minorities, so there was no partner pipeline. They decided to do business oriented retreats for the affinity groups. One of the most controversial things they have ever done at the firm. Concern it was a remedial class expressed by lawyers on all sides. Everyone came to the middle and there was a sense of enlightenment the more it was discussed.

Women make up 52% of associates and 10% of partners and even less on management board. Pillsbury was first firm with a female managing partner and second in command.

A lot of firms have diversity committees, but we always have to ask ourselves what they do and how empowered they are. It only works when there is buy-in from the top. Whether there is a moral value attached to it or it is enlightened self-interest, it is hugely important to the business of the firm.

Diverse teams are good – it is a positive thing. As businesses around the world become more global it is a huge plus. The Bench and jury pool is more diverse than law firms.

Thomas Sager at DuPont – a white male – pushed a lot of this because he just thought the situation was morally untenable. Sometimes these things are pushed by firms' consumer base.

At 15:30, we met with the UN Assistant Secretary General Mr Stephen Mathias, and with Huw Llewellyn, a senior legal officer, who told us about the work of the Office of Legal Counsel, the work of the UN, including its Tribunals work, and its work on Piracy, and about internships.

At 17:30, I had a meeting with Vice-Consul Kelly Harlick and Consul General Danny Lopez, at HM Consul-General's Residence, 351 East 51st Street. That was a prelude to a Joint reception, at 18:00, which we held with the Law Society and UKT&I (for ABA SIL, NYSBA, NYCB and other NY contacts).

On Wednesday 18 April, at 08:00, we held a joint breakfast seminar with New York State Bar. I co-chaired the session with Stephen Younger, the immediate past President of the NYSBA. The topics we discussed included:

- Non lawyer ownership of law firms
- Increasing regulation of lawyers
- Third party funding of litigation
- Arbitration
- Future Cooperation between the NYSBA and the Bar of E&W.

We discussed a number of initiatives that it might be worth taking forward:

- A joint webinar programme
- Meeting with them when they are in Lisbon in October
- A side meeting at the ABA Annual meeting in Chicago
- The possibility of joint task forces on particular issues, e.g. D&I (E&D), Regulation, Ethics, speed of dispute resolution
- The possibility of a mock arbitration between the US Bar and Bar of E&W.

One of the delegates from the NYSBA said of those initiatives, that he welcomed them but we had to make sure that we delivered on them. He said that many initiatives are discussed but so few (if any) are followed up. The Bar Council, and in particular the International Committee, are working hard to ensure that we follow up on our visits.

At 16:00 we had a meeting with the leadership of the NY Inn of Court, at Fensterstock & Partners LLP, to discuss greater collaboration between the American Inns of Court and the Bar of E&W.

Thereafter, at 18:00, we were invited to a reception in our honour hosted by the American Inns' Board members at the CORE Club.

On Thursday 19 April, at 08:00, we had a Bar Council breakfast session at the ABA SIL conference on "How law firms and in-house counsel can work with English barristers" at the Grand Hyatt hotel. It was, frankly, quite poorly attended, but we had good feedback from those who did attend, again wishing to deal directly with the Bar.

At 15:30, I was due to meet with the UK Ambassador to the UN, Sir Mark Lyell Grant, but he cancelled as he had to attend another meeting abroad at short notice. However, I had the opportunity of speaking to him at the Joint Reception we had held at the Consul General's residence. I flew back that same evening, arriving home early Friday morning, 20 April 2012.

Postscript to the NY Trip (1.3)

- Before we organised the NY Trip, many said that the US was a very mature sophisticated market, and there would be little to gain from a mission there.
- In fact it was a very successful trip. Not one US lawyer I met knew that they could instruct the Bar directly, and many have shown eagerness to explore this further.
- I had two approaches from US lawyers who wished to see how they could work directly with the employment Bar. I have passed details on to Damian Brown QC, the Chair of ELBA.
- We met many corporate and litigation lawyers who wished to learn how they could work more closely with the Bar of England & Wales.
- All US lawyers I met said that they worked closely with the Law Society of England & Wales, but not with the Bar, wished to do so, and to build up good working relationships.
- We should all challenge our preconceived notions and assumptions, particularly in relation to the value which we can derive from different jurisdictions, in looking to promote abroad both the values and ethics of the Bar and our services as a Bar.
- Thanks must be extended, in particular, to Gerard McDermott QC, for his wealth of contacts in the US, and his generosity in sharing them with the Bar Council and the Bar, which added to the trip, to make this, in my view the most successful of this year.

2. CBA Spring Conference: Newcastle upon Tyne

Having returned from New York early on 20 April 2012, I then caught the early afternoon train up to Newcastle, to attend the CBA Spring Conference. The conference started with a dinner that same evening, which Vice Chairman Maura McGowan QC, Max Hill QC and Alistair MacDonald QC attended.

The next morning, 21 April, the conference started with introductory remarks from both Alistair and Max. We were then treated to:

- Recent developments in Criminal Law by Professor David Ormerod.

- A lecture on historical Sexual Abuse Cases by HHJ Nicholas Browne QC and Hooper LJ
- Michael Turner QC and Gareth Underhill on conducting Criminal Appeals (by the way, Hooper LJ does not agree with Mike Turner's observation that the LJJ have made up their minds before they come into Court)
- the Work of the CCRC by Penelope Barrett and Yewa Holiday
- Vulnerable Witnesses by Patricia Lynch QC, the Drugs Czar, Rudi Fortson QC, and finally mental health issues in Young People.

It was an action-packed conference, full to the brim with law, as asked for by those on Circuit.

The concluding remarks were made by Max Hill QC. There are two messages, in particular, which I took away from Max's speech:

- People at the bar need to engage more with the leadership
- Bar Leaders, at the CBA, at Circuit Level, and at the Bar Council must stop being so deferential to Government.

I apologise to Max if I have misrepresented those messages.

3. Brussels Visit

On 23 April, Mark Hatcher, Michael Bowsher QC and I travelled by Eurostar to Brussels to visit the BC Brussels Office. A full day had been arranged by Evanna Fruithof, our Consultant Director and representative in Brussels.

I have copied out the executive summary of the visit produced by Evanna, for the purposes of this Statement. The very much fuller report of the visit may be obtained through Mark Hatcher, Michael Bowsher QC and/or Charlotte Hudson.

Meetings were held with Commission Vice-President Viviane Reding, Commissioner for Justice and Fundamental Rights; Hans Nilsson, Head of Division 2B, Fundamental Rights and Criminal Justice, Council of the European Union; Fernando Paulino Pereira, Head of Unit 2A, Civil Judicial Cooperation, Council of the European Union; and Robert Bray, Acting Head of Unit, Legal Affairs Committee, European Parliament.

It is worth noting that a meeting with the Director General of DG Internal Market, European Commission, which would have covered other files of import to the Bar, including public procurement issues relating to the regulation of the profession and a review of EU company law had to be postponed at the Commission's request. The agenda was thus focused on the Justice and Fundamental rights fields.

Executive Summary / Highlights

- The Bar's valuable contributions to the work of all 3 institutions over several years, in diverse areas of law, including family, crime, private international law, civil procedure, and many others, was acknowledged and appreciated.
- The Bar's status as a key UK legal profession and stakeholder was acknowledged. Its ability to influence UK governmental policy, in particular in regard to the UK's participation in EU initiatives on both the civil and criminal law sides, was highlighted, and we were encouraged to take a proactive stance.
- The particular difficulties facing the UK in the EU currently, whether relating to its non-participation in certain EU initiatives; the ever-reducing numbers of UK officials in high office within the institutions, and the relative isolation of many UK MEPs in the European Parliament, were all cited as factors that may make the negotiating aims of the UK more difficult to achieve.
- That said, we were repeatedly assured of how important it is that the UK take a leading role in the EU Justice field, particularly as EU initiatives are often inspired by the UK's law or system (for example, the proposal for a directive on access to a lawyer in criminal proceedings; the proposed European Asset Preservation Order; and the proposal on the freezing and confiscation of the proceeds of crime, to name but three).
- The Chairman highlighted the variety of work being undertaken by the Bar and bodies such as the EU Law Committee; and its various sub-groups, to educate its membership on EU law and the opportunities that it provides, and to input our expertise into the EU legislative process.
- Key EU initiatives in the Justice and Fundamental Rights fields of import to the Bar, and on which we undertook to make expert contributions to the work of the institutions in the coming months, included:
 - The Commission's planned proposal on the **right to legal aid in criminal proceedings**, to be adopted in 2013/14;
 - The new proposal on the **freezing and confiscation of the proceeds of crime**;
 - The planned revision of the **Insolvency** regulation of 2000;
 - Current proposals applying **criminal sanctions to market abuse**;
 - Negotiations on the Commission's October 2011 proposal for a **Common European Sales Law**, and the Council's current review of the general approach being taken to the file."

I would like to thank Evanna for all her work in making the visit so useful, and informative, if challenging, (and for the 9 page report of the visit). I hope that our friends in Europe did eventually get the message that the BC was not (solely) responsible for the Government exercising "Le opt-out"!

4. Legal Services Board: Chair

On 23 April 2012, I had a meeting with the Chair of the LSB, David Edmonds. On the agenda were the following matters:

- Bar Council plans for 2012, based on the BC Strategy and Business Plan 2011-2013
- Triennial Review and LSB work programme
- Green Review and Bar Council CEO
- Diversity and Social Mobility
- QASA / approaches to quality
- Legal Education & Training Review
- Cab Rank rule/Standard contract terms

By far the most pressing matter for David Edmonds was the rigorous Bar Council response to the Triennial Review of the LSB. He was clearly concerned with its terms, and told me that he had taken some parts of it as personal affront. I told him that that was not what was intended, but that he must have expected a rigorous and well-reasoned response from the BC, which is what we put in. I explained that it is not regulation which the Bar finds offensive, but unnecessary duplication. We discussed, briefly, our respective views about the role of the frontline regulators and that of the LSB. Apart from those items, the meeting was simply a “catch up meeting”.

5. CPS/DPP

On 27 April, Maura and I met with the DPP and Mike Kennedy, the Chief Operating Officer at the CPS, and Helen Kershaw, the Principal Private Secretary to the DPP.

- I discussed my recent visit to Singapore and South Korea, and the request from the Deputy Justice Minister for placements for their prosecutors. I have subsequently, and somewhat belatedly, followed this up with a letter to the DPP. The DPP has been informed in principle that the CPS are prepared to participate in such a scheme, for which I am extremely grateful
- I asked about the DWP merger, and expressed particular concern about the DWP paper-heavy cases under the new fee scheme. Keith Milburn has done some preliminary research and was working closely with the Bar Council’s statistician Professor Martin Chalkley.
- We agreed to leave concerns relating to the fee scheme with Keith Milburn to explore further with the Bar and that they would return to it at the next meeting.
- I raised the issue of payment to the Bar on cases that would have commenced under the old fee scheme. I received some assurance that the CPS would be flexible on exceptional cases.
- The DPP said that the CPS was running training for clerks on the new fee scheme and that there had been a good take up. Generally they were supportive as it was simpler and quicker.
- On CPS Panels, I raised the concerns about the amount of work being undertaken respectively in-house and by the Bar. Mike Kennedy agreed to ask Keith Milburn to undertake further analysis of the stats.

- On paperless prosecutions, I said there were concerns that the defence are at a disadvantage and do not have the same support.
- The DPP said the CPS could explore the possibility of the Bar joining them in the next procurement exercise and go to market together, in order to help them keep costs down, and he invited me to list practical ways the CPS could help the Bar, which they then could explore.
- I said that we were concerned that if solicitors were no longer printing bundles, the cost would be pushed on to the Bar. He agreed however that he needed to take this up with the LSC rather than CPS.
- The DPP said there should be a collective approach and that he was keen that everyone should benefit from paperless prosecutions.
- On Advocacy Standards, Mike Kennedy said that the CPS Prosecution College would soon be available as a training tool for panel members. I said I would welcome this.
- We discussed the inspection report on advocacy standards. The DPP said the conclusions were different from those he found on his unannounced court visits, in that his visits showed CPS lawyers were better at non-contested and not as good as the independent Bar at trials. Maura said that DPP's findings on his visits reflected anecdotal evidence she had heard.
- As to levels of work, Maura said that on the ground it looks like Crown Courts are busy but that Magistrates Courts are quiet. The DPP said that magistrates' court work had declined over the past 5 years and that Crown Court work was on the increase until 18 months ago. He said the CPS was doing some work to try to understand these trends for the next board meeting and that he was happy to share the findings with me.
- The DPP said that the AG and Sir John Thomas had raised their concerns about the basis of pleas. He said it is a mixed problem for both in-house lawyers and the self-employed Bar. He said he had already written to Heads of Chambers on the matter but that more needed to be done. He asked us for our views and we thought that it would be practical to explore using the Prosecution College to provide a training course and that a joint letter would be appropriate.

6. CILEx

On Monday 30 April, I met with Susan Silver and Diane Burleigh (President and Chief Executive of the Chartered Institute of Legal Executives respectively). The Institute received its Royal Charter earlier this year. They are seeking to up their game. They want to undertake more litigation. They already have advocacy rights. They do not profess to have any designs on Higher Court Advocacy. They are proposing to issue a consultation later this year with a view to increasing their practising rights. Nick Green QC, when he was Chairman of the Bar, was very keen on building upon the relationship between the Bar and CILEx, particularly when looking at different models of the Bar for the delivery of legal services.

7. Pro Bono Costs Awards

Also on 30 April, I went with Ruth Daniel, the new Chief Executive of the Access to Justice Foundation, to see the Lord Neuberger MR concerning Pro Bono Costs Awards. The concern is that members of the Judiciary are insufficiently aware of this jurisdiction and their power to make such awards.

Pro bono costs awards are like ordinary costs but are awarded where a party has had free legal representation. The funds support further pro bono assistance of litigants who would otherwise act in person. The County Court, High Court and Court of Appeal Civil Division, and also the Supreme Court from April 2013, can award pro bono costs where they would award normal costs. The costs cover any period when free representation was provided, and even if only one of the lawyers acted for free (i.e. normal costs can also be sought for the fee-paid work). The amount is based on what a paying client would recover.

The Legal Services Act 2007 requires the costs to be paid to the prescribed charity, the Access to Justice Foundation, set up by the Bar Council, Law Society, CILEx and Advice Services Alliance. The Foundation then distributes the funds to agencies and projects to support the provision of free legal help to those in need. The court's power to award pro bono costs arises under section 194 of the Legal Services Act 2007 and CPR 44.3C. The procedure is the same as for normal costs.

At our meeting with the MR, we discussed proposals with a view to drawing this jurisdiction more closely to the attention of Judges. The MR was enthusiastic about our proposals and agreed to help in a number of areas.

8. The Queen's Speech

On Wednesday 9 May, the Queen delivered her speech outlining the coalition Government's legislative programme for the forthcoming parliamentary session. The Speech announced a number of Bills likely to be of interest to the Bar, including the Crime and Courts Bill, the Justice and Security Bill and the Defamation Bill. GMC considered the Speech on 14 May and gave directions to Mark Hatcher's team to communicate the Bar's interests and concerns to the Government, Parliament and Media over the coming year.

9. Paris Bar

On 9 May, we had a very brief visit from the Batonnier of the Paris Bar, and two others from her office. They were keen to discuss the possibility of exchanges between members of our respective bars, and also their international traineeship programme in Paris.

10. Financial Times

That same day, I had lunch with Lionel Barber the Editor of the FT. He was particularly interested in ways which the Bar was seeking to develop for the delivery of its legal services.

11. Inns' Subvention

In the late afternoon, I attended a meeting of COIC. To say that "peace and love" has broken out may be putting it a bit high. But there has now been resurrected the Subvention Working Group, which I co-chair with Michael Blair QC, looking at the future of the subvention payments to be made by the Inns. My Counsel article in February of this year refers. We have had our first meeting of that Working Group. I will keep you informed of "progress."

12. Saïd Business School, Oxford

On Thursday 10 May, I gave a talk at the Saïd Business School in Oxford. I was asked to talk to their MBA Students about fiduciary and other liabilities of officers. What is perhaps of more interest to members of the Bar Council is that I have an open invitation to make a "values speech" at the Saïd Business School later this year. I presently intend to take up that opportunity.

13. Arbitration

On 14 May, I attended a Commemorative Banquet for the Worshipful Company of Arbitrators held in Plaisterers' Hall at which a Royal Charter, granted by HM the Queen, was presented to the Company.

14. New York follow-up for Employment Bar

On 15 May, I had a breakfast meeting with two people from Epstein Becker Green. Dana Livne was one of the employment lawyers I had met at our reception in NY this year, and we had talked about opportunities for US law firms to deal directly with UK employment lawyers. The firm of which she is a member (EBG) have formed a group called the American British Employment Law Alliance (ABELA). Its purpose is to better serve British clients doing business in the US.

ABELA provides advice and counsel on all of the areas of employment and labour laws in the United States that foreign entities need to be aware of, and comply with, as regulations change.

Nevertheless, Ms Livne said that whilst they had good relationships with English law firms, they did not know that they could deal directly with the Bar of England & Wales, believing that they always had to come to the Bar via a UK law firm. They are very keen to form relationships with the Bar.

As I have mentioned above, I have put Ms Livne in touch with Damian Brown QC, the Chairman of ELBA.

15. Ministry of Justice

On 15 May, Mark Hatcher and I had a meeting with Helen Edwards CBE, the acting Permanent Secretary of the Ministry of Justice. Ms Edwards is acting Permanent Secretary, pending the replacement of Sir Suma Chakrabati KCB who was elected as the President of the European Bank for Reconstruction and Development on 18 May 2012 for the next four years, from 3 July, 2012. The meeting with Ms Edwards was also attended by Catherine Lee (acting Director General of the MoJ). The discussion focused mainly on strategic issues in the post-LASPO Bill environment.

- I communicated our profound disappointment with the final outcome of the LASPO Bill. The Bar had made its views known to MoJ and Parliament for over a year, but the beneficial changes which the House of Lords had approved were almost entirely reversed by the Commons. The Bar wished to move on.
- I said that I had been heartened by my meeting on 3 May with the new Chief Executive of the Legal Services Commission, Matthew Coats. Mr Coats had encouraged the Bar to become involved in a constructive dialogue with the LSC (which will become an executive agency of MoJ in 2013).
- Catherine Lee confirmed that the MoJ would be launching a major consultation in the autumn of 2013 on competition in criminal defence services. Ministers understood, and accepted, the thrust of the Bar's concerns about the need to avoid sacrificing quality on the altar of price competition. The MoJ want to hear from the Bar Council. It would be interested to begin a round of initial discussions (together with representatives of the Law Society) prior to the publication of the consultation paper. The MoJ accepted my concerns about taking a doctrinaire approach to a market-based solution. The reality was that the Government occupied a monopsony position as block purchaser. There was not a true market in public legal services although it was recognised that there was a plurality of supply.
- I reiterated the view, which Peter Lodder QC had shared with the MoJ Permanent Secretary in February 2011, about the challenges any Chairman of the Bar faced in representing the interests of a profession comprising a fragmented community of interests with significant differences in the nature, size and scale of its work. The experience of publicly funded practitioners was very different from that of barristers in private practice. Many of the former were genuinely anxious about change and they felt devalued. The adjustments they were being called upon to make in the wake of the cuts in legal aid were undeniably considerable.
- Helen Edwards stressed that all Whitehall departments were having to make preparations for another difficult spending round. Further big changes in public expenditure should be expected. The effects would be seen next year. The anticipated growth in the economy had not taken place. Further measures were being considered by departments which could result in further cutbacks in spending and changes in ways of working.

- I said that the criminal Bar remained extremely concerned about OCOF. It was considered to be too big a change to bring forward and would result, inevitably, in a real and considerable drop in quality. Helen Edwards said that Ministers' sensitivity to the Bar's position on quality reinforced the need for the Bar Council, with the relevant SBAs, to be constructively engaged in discussions about the future. Just "throwing stones" at the MoJ would not take matters forward. There had to be a continuing basis of trust on which a dialogue could be maintained and developed. She was pleased to hear that discussions with the LSC had been steadily improving which augured well for the future.
- The MoJ thought there was a limit to the advances which the Bar could make on a tactical basis. It needed rather to develop a strategy for dealing with Government over the next 5 years or so. Helen Edwards said that, in anticipation of a period of continuing austerity, issues on which the Bar's strategic input would be welcomed extended beyond funding questions (which had dominated discussion over the past few years in which there had been little room for manoeuvre in practice) to include changes in the criminal and civil justice systems. More would be expected for less.
- The MoJ were interested to hear about our civil justice reform initiative (which had been launched after the Secretary of State's speech at Clifford Chance last autumn) to address concerns about the high cost of litigation and delay. I reiterated that High Court procedures were becoming increasingly expensive (for example, the growing length of witness statements and of the problems which disclosure brought); it was rare for a matter listed for trial to be disposed of in under a year. There needed to be a reform of procedure (as well a culture) which was geared to effective as well as efficient administration of justice.
- I expressed our continuing concerns about referral fees with which the LASPO Act had not dealt with despite the Bar's forceful concerns. Helen Edwards noted that Ministers had concluded (with legal advice which differed from the Bar's) that it was not necessary to introduce a new criminal offence but to rely instead on existing regulatory measures.
- I referred to the Bar's submission to the MoJ's Triennial Review of the Legal Services Board. The Bar's views had been both clear and robust, and we hoped that they would be taken into account.
- The MoJ were interested to hear about the Bar Council's continuing work to remove barriers to entry to the profession and to introduce greater diversity. I said that the good work that the profession was undertaking, in difficult circumstances, was being undermined by the Government's policy on tuition fees (which created a real stumbling block for those from less advantaged backgrounds who, increasingly, simply could not afford to take the risk of embarking on a career as uncertain as the Bar). The other barrier to making progress in improving social mobility was the Government's policy on legal aid cuts which had a disproportionate effect on BME practitioners who accounted for a significant proportion of barristers practising in crime and family law. There were further, longer term consequences of the Government's policy in these two areas for improving the diversity of judicial appointments, to which the Bar was committed. I said that I thought it would take 10-20 years to see real change; it was a long term, slow burn process. The Bar should not be criticised for not responding sufficiently, as I had been obliged to point out earlier in the year to the MoJ Minister of State, Lord McNally, in response to the

Minister's misleading comments to the House of Lords Constitution Committee in evidence to the Inquiry into the Judicial Appointments Process.

- Helen Edwards concluded the meeting by stressing that the MoJ wanted to work together with the Bar. The Bar's concerns about the need to safeguard and promote the quality of its work were understood and shared by Ministers. The profession faced a period of continuing change in which it would be important, both for the profession as well as the MoJ, to engage constructively with each other at all relevant levels.

It was a very useful meeting.

16. St Petersburg International Law Forum

On the morning of 16 May, Mark Hatcher and I caught the flight to St Petersburg to attend their annual international law forum. This was the second year in which it had been held. It has increased considerably in size, from 600 attendees last year to about 2000 attendees this year.

The highlights of the Forum, at least for me, were:

- The Welcome Reception that first evening at which Mark and I were able to have "informal" discussions with the Secretary of State for some 30 minutes or more.
- The Opening Plenary Session the next day, "Legal Policy in the 21st Century: New Challenges for Law in a Global Context", opened by Alexander Kononov the Russian Minister of Justice, chaired by Prime Minister Medvedev, and at which our Secretary of State for Justice spoke forcefully and persuasively about our legal system and our legal services, and at which Eric Holder (US AG) and Wu Aiyong, the Justice Minister of the PRC, and Anton Ivanov, Chief Justice of the Supreme Commercial Court also spoke.
- My very brief meeting, with about 4 other people, with the Russian Prime Minister after the Plenary Session.
- The evening visit to the Hermitage, followed by a Gala Dinner at The Mikhailovsky Castle.
- A breakfast roundtable meeting arranged by the Consulate, giving an Overview of current Anglo-Russian commercial law. It was brilliantly chaired by Rupert d'Cruz, a Russian speaker, who leads for the BC's International Committee on Russia. I had the good fortune to be speaking about resolving International (and particularly Russian) Disputes in England whereas John Wotton (President of the Law Society) had to wrestle with raising capital, and listings, in London in 2012. Nick Moore of Herbert Smith talked on using Russian Courts to resolve commercial disputes.
- The Roundtable on ethics in the legal profession.
- The Roundtable session on Pro Bono.
- The UK presentation on the UK Legal System and its contribution to attracting International Business, again expertly chaired by Rupert d' Cruz, at which John Wotton and I again spoke, respectively on English Contract law: facilitating trade and investment, and English litigation and arbitration: protecting property and commercial rights.

- The Plenary Session on Saturday 19 May, at the Conference on “Modernisation of the Civil Code of the Russian Federation”. I was not so impressed with the subsequent discussion in the Roundtable session concerning modernisation of the civil code so far as it related to corporations, but some may have been lost in translation.
- The meeting with Mr Konovalov and Yuri Lyubimov (the Deputy Minister of Justice) at the English Rowing Club in St Petersburg, at which we, John Wotton, and our Consul General and our MoJ representatives (without the Secretary of State who had had to return to the UK) discussed future co-operation.

Having missed the Saturday evening flight in order to meet with Mr Kovolanov, Mark and I returned on the Sunday evening flight to London.

17. CBA

On Friday 18 May, Max Hill QC delivered his speech to the Criminal Bar Association’s annual dinner. The address, which received a standing ovation, detailed the results of a survey of CBA members, which found that 89% of respondents were willing to take direct action in respect of a number of issues (including the late payment of fees and OCOF). The Bar Council Press Office worked closely with Max to secure significant coverage of the speech and of the results of the survey, gaining Max a primetime slot on the Today programme and coverage in several national newspapers, including a very supportive story on page 2 of *The Guardian*.

18. London Legal Walk

A light lunch with Joshua Rozenberg on Monday 21 May set me up for my participation on the London Legal Walk. About 6,000 lawyers walked, ran or stumbled the 10 kilometres to raise money for London’s free legal advice agencies. The Lord Chief Justice, Master of the Rolls, Attorney General and Solicitor General were all there. The walk is getting bigger every year. So far this year’s walk has raised around £525,000. This money will go directly to legal advice agencies in and around London. It will make a huge difference. Thank you for all who participated both financially and physically. Pro Bono could not do it without your help.

19. BARCA

I am pleased to report that on Tuesday 22 May, Finance Committee agreed to the release from reserves of sufficient funds (to be repaid from income from the service when operational) to establish BARCA, an escrow service for the Bar.

As you will know, the restriction on barristers from holding client monies (rule 407 of the Code of Conduct), which the BSB has concluded it would not be appropriate to amend, reduces the Bar’s risk profile and consequently the cost of regulation. But it also restricts the

ability of the self-employed Bar to meet the needs of some clients and to compete for work with other legal service providers.

An escrow service, whereby an independent, trusted third party receives and disburses money on behalf of barristers under a contract, will enable members of the Bar who wish to do so to deal directly with clients without handling client money themselves (in connection with the payment of fees, settlements, disbursements and monies required in arbitration proceedings). Various users might find such a service attractive: the clients of direct access barristers, regulated entities, barrister arbitrators, ProcureCos and SupplyCos as well as the Legal Services Commission and other block purchasers of barristers' services.

Since August 2011, I have been leading a group of practitioners and a Chambers Chief Executive (the BARCA Committee) to examine the concept of an escrow service and whether it could be offered as part of the portfolio of the Member Services Department of the Bar Council. The Member Services team have researched the regulatory environment, assessed the Bar's appetite for an escrow service, explored possible delivery options and considered the infrastructure that would be needed to support an appropriate service, having canvassed the views of a cross-section of barristers' chambers, as well as the Institute of Barristers' Clerks and the Legal Practice Managers Association.

The BARCA Committee concluded that an escrow service could promote a number of the regulatory objectives of the Legal Services Act 2007 and be attractive to consumers who wish to access the services of the Bar directly and thereby promote greater competition in the provision of legal services.

The work of the BARCA Committee was referred to in my Chairman's Statement to Bar Council on 14 April. It is a matter of potentially significant strategic importance to the Bar.

A detailed business case for an investment in the future of the Bar was presented to Finance Committee for a full discussion on 22 May 2012. The outcome of that discussion was reported to GMC at its meeting on 28 May 2012 when the full business case was made available.

I am delighted to be able to tell you that GMC unanimously approved the decision taken by Finance Committee.

I must record my, and the Bar's, sincerest thanks to Paul Mosson, Head of Member Services, and his team, for their untiring and unstinting efforts to produce both this service for the Bar, and the impressive business case made for it.

20. The Independent

On 23 May Toby Craig and I had lunch with Chris Blackhurst, the editor of the Independent. We discussed the paper's attitude towards the Bar, how the Bar could more effectively get its message across, and his apparent willingness to accept "pieces" from us for publication.

21. Wales & Chester Circuit

At 08:15 on Friday 25 May, I caught the train from Paddington to Cardiff for a Circuit Visit. With the assistance of Greg Bull QC, and others on his Circuit, I was able to visit three sets of Chambers in Cardiff and one set in Swansea that day, as well as meeting with Theo Huckle QC, to discuss, amongst other things, the new consultation “A separate legal jurisdiction for Wales”. I was also able to attend part of the YBC Meeting which was being held in Cardiff late that afternoon. Unfortunately, I had to get the 19:30 train back to London, so was unable to stay for the dinner held that evening. Thank you to Greg, Christian Howells and all those on the Circuit who made my visit so enjoyable and so easy.

As to the consultation, Winston Roddick QC and Hefin Rees have kindly agreed to prepare a response on behalf of BC. Many thanks to them for all their work on this over a holiday period. It will be put before GMC shortly for consideration/approval.

22. Jackson Civil Justice Reforms

As you will be aware some of the Reforms suggested by Jackson LJ are being implemented through Part II of the Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO), which received Royal Assent on 1 May of this year. As to which, please see below.

Since he was appointed by the Master of the Rolls, Lord Neuberger, to oversee the implementation of the recommendations in his Report, Jackson LJ, and other Judges, has been giving a series of lectures on the costs reforms. They may be found on the Judiciary website (<http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/lectures>). May I draw your attention to those lectures and encourage you to read them. They are a good read, readily accessible and will make us both a little better informed and a bit wiser.

23. LASPO

Snapshot

Of the 11 amendments imposed by the House of Lords, most led to some form of concession in the Commons. On welfare benefits advice, the Government agreed to retain legal aid for appeals to the upper courts and to review the situation in the lower courts. It amended the Bill’s definition of domestic abuse and committed to extending the evidence criteria for legal aid for victims of domestic abuse (to include admission to a refuge, for example). It amended the Bill to allow the Lord Chancellor to re-include, as well as remove, areas from the scope of legal aid and it strengthened protections on the independence of the new Director of Legal Aid Casework. On clinical negligence, the Government gave no further concessions, having earlier retained legal aid for cases involving complex brain injury at birth, and it refused to move on Lord Pannick QC’s amendment to impose a duty on the Lord Chancellor to promote access to justice. Finally, on civil litigation reform, it agreed to

postpone the implementation of Part II of the Bill in respect of mesothelioma cases until a review has been completed.

Commons stages

The Bill was introduced to the Commons in June 2011. It followed a consultation initiated by the MoJ to which the Bar Council responded with 259 pages of detailed comments (including proposals for achieving savings). The MoJ's consultation, and subsequent legislation, was designed to give effect to the Coalition Agreement in May 2010 in which the Government pledged, amongst other things, to carry out "a fundamental review of legal aid to make it work more efficiently" and to review sentencing policy.

The Bill covered:

Part 1: Legal Aid

Part 2: Litigation funding and costs

Part 3: Sentencing and Punishment of Offenders

The Bill was scrutinised in the Commons by a committee which met for 18 sessions. It left the Commons, after two days of the Report stage, largely un-amended, apart from Government amendments tabled at the 11th hour.

Lords stages

Our best hope was always going to be the House of Lords, but we knew that by defeating the Government in the Lords we could always be reversed in the Commons. After an auspicious Second Reading debate in November, the Bill began its Committee Stage on the floor of the House of Lords, which occupied 10 days. The Bill engaged Peers for a further 5 days during the Report stage.

By the time the Bill left the Lords, after its Third Reading, on 27 March, the Bar Council had caused or contributed to 11 Government defeats, being more defeats than on any other Coalition Bill, including the controversial Health and Welfare Reform Bills.

Much of the good work done, and the principled amendments made by the Lords has been undone by the Commons.

Outcomes

Under Part 1 of the Bill, restoring a general duty on the Lord Chancellor to promote access to Justice, for which the Bar Council had called, did not survive despite the persistence of Lord Pannick's efforts on our behalf. However, the Government did acknowledge the force of our concerns (which were shared by the Lords Constitution Committee) about:

- the need to demonstrate the independence of the new Director for Legal aid Casework
- the need for the Lord Chancellor to re-introduce areas of law within the scope of legal aid and not merely to exclude such areas.

And the Government backed off means-testing police station advice.

On private family law, the Bill removed most private family law from the scope of legal aid, apart from the victims of domestic violence. The Bar Council's efforts led to a better a definition of domestic violence, and the Government bowed to the pressure, which we had helped to create, to improve the criteria for granting legal aid to the victims of domestic violence and to extend the time limit for providing evidence.

The *Manifesto for Family Justice*, which we published with a number of organisations including Women's Aid, the WI and the Children's Commissioner, helped to achieve this outcome together with Stephen Cobb QC's broadcast on the *Today* programme.

On clinical negligence, we made it clear from the start that the removal of clinical negligence from the scope of legal aid (against the recommendations of Jackson LJ), and the Bill's reforms of civil litigation funding would amount to a "double whammy" for victims of clinical negligence, who would find it difficult to find representation under a conditional fee agreement.

We received cross-party support in the House of Lords, where amendments were passed to bring back legal aid for expert reports in clinical negligence and for children embroiled in such claims.

But the Government reversed those amendments when the Bill returned to the Commons, relying instead on a limited (but nonetheless welcome) concession on legal aid for post- and peri-natal brain damage cases.

Welfare benefits appeals

The Bar was one of many lobbying groups campaigning against the Bill's removal of welfare benefits advice from the scope of legal aid.

A wide-reaching amendment passed in the Lords was overturned, but the Government conceded on welfare benefits appeals to the higher tribunals where there is a point of law in issue. It may extend this in future to the lower tribunals.

Despite these gains, we lost many other battles. Although Charlie Cory-Wright QC of PIBA and others lobbied hard, lack of engagement, both in the Commons and in the Lords, on Part II of the Bill made it impossible to defeat the Government on these complex reforms.

A minor victory was achieved by Lord Alton, who successfully persuaded the Government to exclude cases involving asbestos poisoning from the Jackson reforms.

Legal Aid Bill Group

A huge amount of work was done to develop our case about the Bill and to communicate with parliamentarians on all sides in both Houses, and to keep the media briefed at all relevant stages.

The Bar Council's Legal Aid Bill Working Group was chaired by Stephen Cobb QC (who had also led the team which developed our response to the MoJ consultation, together with Chris Hancock QC). The Working Group included representatives from the Administrative Law Bar Association, PIBA, the CBA, FLBA, the Circuits, the Bar Council's Remuneration and Legal Services Committee, the social welfare Bar and the young Bar. Gordon Nardell QC, a former member of the Office of Parliamentary Counsel, drafted our amendments and provided much other valuable assistance.

Special mention must be made of, and gratitude expressed to, Harriet (Herbie) Deane. Herbie is one of Toby Craig's Communications Team. She worked tirelessly to ensure that parliamentarians were left in no doubt whatsoever about the Bar's views. Without her assistance and chivvyng, I am sure that we could never have achieved that which we did.

Considerable thanks also must be extended to Toby himself, who took the lead on media relations, and to "our man in Westminster", Mark Hatcher, whose knowledge of the workings of Parliament is invaluable.

Conclusion

Our concern about this throughout has been about its effects on access to justice, particularly on some of the poorest and most vulnerable in society. It was not seen so by the Government. The Secretary of State claimed to the Commons that he was being pursued by a phalanx of women and children who could not get proper representation in the courts because their lawyers would not be properly paid.

But we have held the moral high ground and support came from an unlikely source at the turn of the year from an editorial in the Guardian, commending the work of the Bar Council for exploring the feasibility of a Contingent Legal Aid Fund (CLAF) as a possible alternative source of funding of the civil justice system, and not just looking after its own interests in relation to the Bill. A message the Government does not like to hear, and a message, which if it does hear, to which it pays no heed.

24. Chief Executive Officer

At the last GMC meeting, I indicated that the issue of whether or not the BC should employ a Chief Executive Officer should be on the agenda for the next BC Meeting, on 7 July. It is the present view of all of the Officers of the BC that the BC should appoint a CEO. We will be providing a statement of our reasons shortly.

25. Congratulations

Congratulations to Chris Owen, the Chief Executive of St Philips Chambers in Birmingham, on his appointment on 24 April of this year as Chairman of the Birmingham Law Society. We wish him well in that new post.

26. Promoting the Bar

At the last Bar Council meeting, I encouraged members to contact me with their suggestions for promoting the Bar (please refer to item 4 in the minutes of that meeting). I have had one or two emails but would welcome more ideas. Please do encourage your constituents to get in touch if they have any ideas.

27. Your Bar Council

I would also like to encourage Bar Council members to get in touch with Charlotte (CHudson@BarCouncil.org.uk) if there is anything specific that they would like to raise at a meeting or would like added to the agenda. It is your meeting and it is important that you can raise the topics that you would like discussed.

Michael Todd QC
Chairman of the Bar
11 June 2012