

Minutes of the Bar Council Meeting held on Saturday 15 September 2012 at the Bar Council Offices

Present:

Michael Todd QC - Chairman
Maura McGowan QC - Chairman-Elect
Stephen Collier - Treasurer
Rt. Hon. Dominic Grieve QC MP - Attorney General
Mr Oliver Heald MP - Solicitor General
Keir Starmer QC - Director of Public Prosecutions

68 further members of Bar Council attended.

1. Apologies

Apologies for absence had been received from Jade Allen, Lesley Bates, Michael Bowsler QC, Ruth Cabeza, Esme Chandler, Charlie Cory-Wright, Amanda-Jane Field, Philippe Freund, Martin Griffiths QC, Nichola Higgins, Fiona Jackson, Robert Lawrie, Natalia Levine, Sarah McCann, Lucinda Orr, Michael Soole QC, Geoffrey Tattersall QC and Nicholas Worsley.

2. Approval of the Minutes and Matters Arising

The minutes of the 7 July 2012 Bar Council meeting were approved. There were no matters arising from the minutes of the last meeting.

3. Statement by the Chairman

The Chairman welcomed everyone to the meeting, expressing the hope that the number of smiling in faces in front of him indicated that the summer had provided a restful break. He thanked the Attorney General, Solicitor General and Director of Public Prosecutions for attending. He apologised for late provision of his written statement and asked if there were any queries relating to it.

David Nicholls (DN) referred to the part of the statement (page 10) relating to the Burton working group on pupillage, which inferred that it was at his request that the matter was brought before Bar Council again. DN wished to clarify that he had simply suggested that no decisions be made regarding the Bar Council's support (or

otherwise) of the working group's proposals until COIC had clarified the status of the committee convened to implement those proposals. The Chairman apologised for any misunderstanding.

Andrew Walker QC (AWQC) asked whether his understanding regarding proposals for clerks affiliation to the Bar Council - namely that a re-worked proposals document was going to be brought back for consideration - was correct. The Chairman confirmed this to be true.

4. BSB Report

Baroness Deech opened her report by saying that she was delighted that the Attorney-General was still in post following the recent cabinet reshuffle and gave a special welcome to the newly-appointed Solicitor-General.

COIC and the Disciplinary Tribunals

Baroness Deech drew Bar Council's attention to the excellent report by Desmond Browne QC, now available on the Inns' websites, written following an investigatory review of the disciplinary tribunal arrangements. The report, at section 3, lists nine different types of anomalies in the appointments, which affect 960 cases. However, in most cases the appointments were either valid (i.e. made in accordance with the Disciplinary Tribunal Regulations) or, under the de facto principle, the panel members had authority to sit. This view is supported by the Visitors' judgement in the Russell V BSB appeal (12 July 2012).

The number of cases affected by the "perceived bias" issue has not increased and remains at 47; the BSB will not resist applications for re-hearings in those cases. All barristers and complainants involved have been written to and a helpline and dedicated email address set up to assist those with queries. Further information is available on the BSB's website.

Turning to the future, the BSB is assessing the contents of the Disciplinary Tribunals and Hearings Review Group report and will respond to it in November. The BSB remains deeply concerned about this matter and its focus is on ensuring that the necessary operational improvements are made. Baroness Deech expressed regret that the media are only too keen to deflect criticism from COIC to the BSB when she believes that the BSB cannot rightfully be blamed for the failings in the system. She is anxious about COIC's capacity to manage in the future and welcomes the news that COIC is looking at its own governance arrangements.

QASA

Baroness Deech reminded Bar Council that the fourth consultation on the scheme is open until 9 October 2012. The BSB continues to hold discussions with sections of the Bar that are interested / affected and is well aware of the arguments made against the scheme by some of those parties. The BSB continues to have concerns about possible risks to the public from those who are not accredited / trained to conduct full trials, and whether clients will be clear about this. They are working on this with SRA, wanting to ensure that comprehensive information is made available to the public for them to have clarity around an advocate's accredited status and their route of qualification. This may be accessible through a searchable register.

Operational planning is well in hand, with 98% of eligible judges on the first circuits to roll out - Midlands and Western -having signed up for training. 8,000 solicitors have pre-notified in accordance with SRA requirements.

Baroness Deech said that a meeting was due to take place later, after the AGM, at which interested parties could raise any regulatory issues, including QASA, with BSB representatives.

Equality and Diversity rules

The new rules came into force on 1 September 2012; information has been sent to all chambers and all barristers as well as being available on the BSB website. There is also a webinar available which gives an overview of changes and what practitioners need to do. The new rules apply to all self-employed barristers in England and Wales and cover a number of areas not dealt with by previous code requirements, including (but not limited to):

- Flexible working -the requirement to have a policy;
- Parental Leave - the requirement to have a policy and provide rent relief;
- Reasonable adjustments - the requirement to have a policy;
- Equality monitoring - the requirement to gather (and in some cases publish) diversity monitoring data.

Questions / comments on BSB Report

Nigel Lickley QC (NLQC) firstly thanked Baroness Deech for addressing the Western Circuit committee meeting on 31 July by telephone when the BSB member due to attend was unable to. He then asked Baroness Deech whether, in light of the fundamental changes to the proposed scheme which were needed before the Bar could sign up to it, would the intended roll-out date be pushed back? Baroness Deech said that she did not see any need for the timetable to change at this stage. The registration date is simply that and a separate issue to the content of the scheme.

5. Bar Council Pensions

The Treasurer gave a confidential briefing to Bar Council members on the current position relating to the DB pension scheme. The Treasurer and the Director of Central services have met with all affected staff and, in light of the outcomes of those discussions, the Bar Council is considering its options in moving the matter forward.

6. Burton Working Group on Pupillage

The Chairman reminded Bar Council of David Blunt QC's address at the last Bar Council meeting and his request for approval for the Burton working group's proposals on pupillage and for a supportive member of the Council to join his implementation committee. Following the meeting, the Chairman wrote to all Bar Council members inviting views and eighteen responses were received. These responses (thirteen against, four in favour and one neither for nor against) can be found at annex 3. Although the working group's proposals have been before COIC, it is not entirely clear what has been agreed to in terms of implementation. Notwithstanding this, the Chairman asked if there were any further views and whether the Bar Council could make a decision on the proposals as they currently stand.

Zoe Saunders (ZS) said that the FLBA committee did debate the proposals again but were unable to reach a consensus of opinion; there were strong views both for and against.

AWQC said that the Bar Council's Equality and Diversity Committee had prepared a paper for the General Management Committee in relation to the proposals, but had been unable to agree on whether they were desirable in principle from an equality and diversity perspective, although they had agreed on some more specific observations. The meeting ought to take their advice into account.

Lord Alex Carlile QC (ACQC) said that if a decision is made to oppose the proposals, this should not rule out the idea of seconded pupillages and greater cooperation outside the self-employed Bar.

DN reported that David Blunt QC had been kind enough to attend a Young Barristers' Committee the previous evening to flesh out the proposals for them.

Amanda Pinto QC (APQC) said that the Criminal Bar Association committee are unanimously against the proposals and thanked the Chancery Bar Association for sharing their response, which was very helpful.

Tim Fancourt QC (TFQC), Chairman of the Chancery Bar Association (ChBA) stressed that their opposition to the proposals does not mean that ChBA is against

improving the system for pupillage, just that it cannot support these specific ideas.

Tricia Howse (TH) reminded Bar Council that these proposals are a "sticking plaster", designed to assist those who are currently in the system. The continuing Legal Education and Training Review (LETR) will change the landscape for training in the future and therefore it is important to do something in the interim to assist with today's problems. APQC fundamentally disagreed with this analysis, saying that the idea of an increasingly squeezed Bar could accommodate these proposals is nonsense.

CA said that, as a co-author of the ChBA paper, she continues to stand by its assertions. It appears that the Burton working group do not see how much of an extra burden their proposals would be on the Bar.

Alistair MacDonald QC (AMQC) counselled that any opposition to the proposals must be couched in constructive terms. It would be damaging for views against the proposals to be unclear and therefore misconstrued. The Chairman said that any official response will be approved by the General Management Committee (GMC).

Vanessa Davies (VLD) said she believes it to be far too early to tell whether the LETR will change the landscape for training in the future and that she had not seen anything that indicated a shift away from practical training.

AWQC said that in terms of putting the issue to the vote, it would seem sensible to focus on the first two sections of the proposals as set out in the summary prepared for the meeting, as these were the parts that appeared to be at the core of the debate, and it did not seem to him that there was anything unreasonable in asking the BSB at least to provide clarity as to how it approaches waivers and to look to identify ways in which pupillages might be encouraged (or unnecessary obstacles removed) in other areas such as employed practice.

The Chairman asked, by way of a show of hands, how many were in favour of unfunded pupillages. A large majority voted against. The Chairman then asked how many were in favour of two-tier pupillages with Chambers; no votes were cast in favour. The Chairman thanked Bar Council members for sharing their views and said that the matter would now be taken forward by GMC, which would also consider the appointment of an open-minded Bar Council representative to sit on David Blunt QC's implementation committee.

7. Any Other Business

MMQC drew Bar Council's attention to the section of the Chairman's statement in which he provides details of a recent meeting with the President of the Bar

Association of Sierra Leone and the Sierra Leone High Commissioner. Practitioners in Sierra Leone need copies of the 1999 White Book (Supreme Court Practice) and MMQC asked if Bar Council members could see if they have any spare and, if so, if they could send them to the Chairman's Office for onward dissemination. Catherine Addy (CA) said that the 1999 book is still used by a lot of practitioners here as it is the last pre-Woolf edition and asked whether the 1998 version would be of use to the Sierra Leonean's? MMQC said that she would check and let Bar Council know.

8. Date of Next Meeting

The next meeting will be held at 10.00 on Saturday 20 October 2012, in the Bar Council offices.