



**Minutes of the Bar Council meeting
held on Saturday 16 January 2016 at the Bar Council offices**

Present:	Chantal-Aimée Doerries QC	Chairman
	Andrew Langdon QC	Vice Chairman
	Lorinda Long	Treasurer
	Rt Hon Jeremy Wright QC MP	Attorney General

1. Apologies for absence

Apologies for absence were received from: Mirza Ahmad, Gary Blaker QC, Harriet Brown, Simon Clements, Tom Cockroft, Elisabeth Cooper, John Elvidge QC, Francis Fitzgibbon QC, Alexandra Healy QC, Ruth Hughes, Shobana Iyer, Susan Jacklin QC, Richard G Jones, James Keeley, Anna Macey, Neil Mercer, Stephen Morris QC, Grace Ong, Peter Petts, Giles Powell, Penelope Reed QC, Robert Rhodes QC, Alison Saunders, Paul Stafford, Brie Stevens-Hoare QC, Geoffrey Tattersall QC, and Helen Tung.

The following did not attend and did not send apologies: Safira Afzal, Colin Address, Simon Broomfield, Robert Buckland QC MP, Michael Duggan QC, Mark Fenhalls QC, James George, Manjit Gill QC, Katherine Goddard, Shiv Haria-Shah, Ruth Henke QC, James Hines QC, Christopher Rees, Laurie Rabinowitz QC, Andrew Granville Stafford, Sundeep Singh Virk.

79 further members attended.

2. Minutes of the last meeting

There were no amendments to the minutes of the last two Bar Council meetings (7 November 2015 and 7 December 2015), which were approved.

3. Statement by the Chairman

The Chairman welcomed newly-elected members and representatives to the Bar Council.

Competition and Markets Authority

On 13 January 2016 the Competition and Markets Authority (CMA) announced a market study into the provision of legal services in England and Wales. After an initial six-month,

stage 1 market study, the CMA could escalate their work to a full market investigation. There was a very tight deadline to respond to the request for views on the proposed scope of the initial work. A working group had been set up with appropriate subject matter experts and engagement was being sought with SBAs who have a particular interest in this area. The Chairman encouraged others to feed into the work.

Pupillage Gateway

The Chairman said that in 2015 the Bar Council had produced a report which was about improving access to the Bar for people from non-traditional backgrounds and there had been consideration given to ways of informing students about the realities of entering the profession before they committed to the expensive BPTC (the costs of which currently run from £14,000 to £17,000). One of the recommendations which arose from this report, and which received considerable attention at the time, was the suggestion to move the Pupillage Gateway Timetable. Roughly 400 pupillages were available with applications being made by 2100 students. Half of the pupillages available were advertised and recruited through the Pupillage Gateway.

GMC and Bar Council had approved a change in the timetable. However, a number of chambers were concerned about the change. There was a concern that there was insufficient consultation about the proposed change from chambers who were participating in the Gateway. Bar Council therefore approved a consultation on the date move. Bar Council agreed that, following a review of the results of the consultation, a decision about what to do could be taken by GMC.

The majority of respondents to the consultation supported moving the date. A number expressed concerns. Among the students who responded, 88% supported the move. GMC therefore approved the Gateway move. The Chairman said that the Bar Council would work with chambers which had concerns with the move and would support all stakeholders over the next year.

Max Hill QC commented that the Chairman's prime reason for moving the gateway was to try to give students certainty at an earlier stage. He noted that there was another reason which had not been articulated and that was to allow all of those sets who abide by gateway to get to the earliest students before others. Many of those complaining were those who had been flying under the wire and getting to the best students earlier and reducing the depth of the talent pool. He noted that it was a disgrace that many sets of chambers seemed to think that they could pluck the ablest students when it suited them. He asked whether it would be fairer for all chambers to come into the Gateway.

The Chairman advised that the reasons why people were concerned were varied. Many of those who were against the change would support the opinion of the South Eastern Circuit Leader. Many people said that the biggest issue would be solved if the Gateway was

compulsory. One of the concerns was to make sure the Gateway remained viable. It was not in our power to make it compulsory which was a matter for the BSB. If everyone followed the same timetable, she thought it would make life much easier for students.

Andrew Walker QC said that it was not simply a question of timetable. A number of sets of chambers had made a decision about whether to use the Gateway a few years ago. They had concerns such as the fact that there is only one form for every set of chambers.

The Chairman agreed that it was not simply a timetable issue. The Bar Council would look at the current system and dispel myths if there were any and allow chambers to make a fresh decision. The Education and Training Committee had set up a Pupillage Supervisors Network which would be best placed to explore concerns about the Gateway and see how it might be improved.

Duncan McCombe said he felt that the consultation that was undertaken was largely with chambers in the Gateway. He said that it was only right that the meeting be made aware that up to ten sets had indicated that they would consider leaving the Gateway if the timetable were to change.

The Chairman accepted that, having looked into the matter, it appeared that the first working group had not conducted a full and proper consultation although she noted that it was never intended to be a consultative body. However, the working group had consulted informally but this had resulted in a low number of responses from chambers in the Gateway. The recent consultation, however, had been open to everyone.

Lord Justice Briggs' review

Lord Justice Briggs had embarked on a review of the structure of civil justice at the end of last year. Although no formal consultation had been issued, the Bar Council amongst others had been invited by Lord Justice Briggs to comment on the issues raised by the review ahead of the publication of an interim report for consultation. The Legal Services Committee had put together an initial response. The Chairman encouraged members of Bar Council, particularly civil practitioners, to study the forthcoming interim report which, amongst other matters, would advocate the case for an on-line court for claims under £25,000.

Other matters

The Chairman congratulated all new Silks, particularly all former members of Bar Council.

4. Statement from the Chief Executive

The Chief Executive invited Bar Council to consider Annex 3 to the agenda.

The current Chair of Trustees of the Staff Pension and Life Assurance Fund wished to step down and he had helped to find a successor. Paul Newman QC (PNQC) had been identified and indicated, subject to Bar Council's approval, that he would be happy to take on this role. It was agreed that PNQC would be appointed as Chairman of the Trustees.

5. Bar Council Standing Orders amendments

The Chief Executive said that, in his opinion, it was a good idea to amend the Standing Orders so that all the matters dealt with in common between the BSB and the Bar Council were held in a separate document which would reflect the principles of regulatory independence. The short paper before Bar Council set out the proposed drafting changes, which had been approved by the BSB, the General Management Committee and relevant Committees.

Tim Devlin questioned what was meant by the reference to updating Vanessa Davies' job title.

The Chief Executive advised that the change reflected the job title as Director General of the BSB and to the fact that she had a number of Directors reporting to her.

The proposed changes were approved.

6. Bar Council Constitution – request for exemption

Lucinda Orr made a request for an exemption to be granted so that the BACFI Chairman, Mr Broomfield, would be entitled to attend the General Management Committee of the Bar Council and Saturday Bar Council meetings. The exemption in the constitution reads:

The definition of "subscribed" for the purposes of the constitution (Part I (1)) is: *any self-employed barrister or employed barrister or registered European lawyer whose practising certificate fee to the Bar Council is paid up to date in the full amount, or who has for the time being been specially exempted by the Bar Council from the requirement to pay a practising certificate fee to the Bar Council*.

Melissa Coutinho asked why Mr Broomfield did not simply pay the practising certificate fee?

Lucinda Orr noted that there may be an issue of governance in the company that he works for. The Chairman invited Lucinda Orr to find out why the individual was unwilling or unable to pay the PCF.

Andrew Walker QC agreed and said that, from his perspective as Chairman of the Ethics Committee, Mr Broomfield appeared to be exactly the sort of person he wanted on his committee. The committee (like the Bar Council itself) needed to represent all barristers. If we wanted them within the fold, we needed to decide how to do just that.

Alison Padfield admitted that she knew nothing about a possible conflict but recalled an incident of an employed barrister at OFCOM where the employer had said the employee could not have a practicing certificate.

Lucinda Orr observed that a previous Treasurer of Bar Council, Stephen Collier did not have a practising certificate (at least for part of his term in that office) because, having become Group Chief Executive of General Healthcare Group, a leading private healthcare provider, he considered that in that discharging that role he might place himself in a position of conflict with his role as an employed barrister and had therefore relinquished his practising certificate. Nevertheless he had been allowed to serve (or continue to serve) on the Bar Council as Treasurer without holding a practising certificate.

Louisa Nye noted that there appeared to be a general lack of understanding between what the Bar Representation Fee (BRF) covers, and the purpose of practising certificate fee (PCF) which was intended to cover the cost of regulation. The BRF was very important in enabling the Bar Council to undertake its representational work on behalf of the profession as a whole. The Bar Council needed that contribution.

Richard Atkins QC reminded Bar Council that he had spent many years trying to get people to pay the BRF. He said that if someone wanted to pay it, he would be very disappointed to put it mildly if we dissuaded that person from doing so.

Bar Council agreed to the grant of the exemption.

7. BSB report

Sir Andrew Burns thanked Patricia Robertson QC warmly for her considerable contribution to the work of the BSB over several years and welcomed her successor, Naomi Ellenbogen QC, as Vice-Chairman.

Sir Andrew advised that much of the BSB's activity over the past year had been spent streamlining the BSB's processes in order to distinguish executive from non-executive issues and to make clear the separation of case issues with governance issues. The BSB was reducing the number of its committees from ten to five. Three other committees would change over time. The Education and Training Committee would continue until the BSB had completed its future training work programme. The work of that committee would then then merge with that of other committees. Sir Andrew said that these changes would help the BSB to become a more modern and effective regulator and to work in a way that was more transparent.

Sir Andrew commented on a number of matters as follows.

Open consultations

The BSB had undertaken 12 consultations over the past year. Only one consultation remained open (fees and charges, closing on 15 February).

Equality and access to justice

Sir Andrew referred to the BSB's cross-cultural communication event which, he said, had been a good example of the different ways the BSB could reach out to the community it sought to serve. The BSB had received some very interesting feedback.

The BSB had also recently launched a survey about women at the Bar. As of 15 January, the BSB had received over 1,000 responses. Nearly 20% of women practising at the Bar had responded. A preliminary indication from the response suggested that the Bar might find the survey results rather sobering. The BSB was continuing to encourage all female members of the Bar to submit their opinions to the board before the consultation closed.

CPD

The BSB had moved to a lighter touch approach to CPD. This would take effect in 2017.

Youth Court Advocacy

The report from the Institute of Criminal Research had attracted significant media coverage and was worth careful study. The BSB would be considering the findings of the research and developing proposals as a matter of priority.

Entity authorisation

The Chairman of the BSB reported that the number of entities regulated by the BSB was not large. Its objective had been to give barristers a choice about the appropriate professional structure within which they wished to work.

Future Bar Training consultation

Sir Andrew commented that the BSB had received a huge response to its consultation. The Board would begin examining the response in detail at the end of February and would be testing out various proposals that would be put forward for consultation at the end of the year. This was a major project which needed time to pursue thoroughly and not rushed.

Eleanor Mawrey welcomed the new survey into women at the Bar. She noted, however, that there was an initial issue when she had tried to submit her response. She had logged in and noticed that criminal law was not listed as a practice area. She rang the BSB to inform them that this could undermine the accuracy of some of the figures derived from early responses. The BSB Director General said that she would look into this and check those female barristers who were criminal practitioners and send them another email.

Robin Allen QC asked whether, in light of the discussion about the Pupillage Gateway, the BSB had carried out any analysis on why there had been a reduction in BPTC numbers.

The BSB Director General said the BSB had identified three factors which could account for the reduction in the number of BPTC students: the cost of the course (and associated living costs); the number of overseas students being affected by more stringent UK immigration controls; and a decision by some students to postpone training for the Bar pending clarification about possible changes in the course in the future.

Robin Allen QC said he hoped the BSB would share its assessments with the Bar Council's Education and Training and Equality and Diversity Committees.

The BSB Director General drew attention to the statistics that the BSB had published in November 2015 and noted that there were some interesting conclusions that could be drawn from that data.

Jennifer Joseph advised that she had completed the BSB's women at the bar survey. She noted that the questions were about chambers procedures and protocols and that there was a question asking respondents to input their personal details. She said that it was important that people responded honestly, but might well not do so if they thought they (or their chambers) might get into trouble. The BSB Director General assured the meeting that all responses to the consultation would be treated in confidence.

Guy Fetherstonhaugh QC asked whether the BSB could provide a rough date for publishing the results of the Future Bar Training consultation. The BSB Director General said that a report summarising the responses to the consultation would be issued in January. The BSB's response to the consultation would follow in February or March 2016.

Andrew Walker QC asked whether the BSB considered whether it issued too many consultations. The BSB Director General said that it was very important for the BSB to hear from Barristers. That said, it was noted that for 2016 the BSB planned to undertake no more than twelve consultations.

Philip Marshall QC suggested that that the BSB's consultation on the experience of women at the Bar could be improved by asking at least some men for their opinions. He noted that Heads of Chambers would be in a position to indicate where women from their chambers

had left and the reasons for that. The BSB Director General said that this could feature in a second stage BSB consultation. The first stage was focusing on retention and the impact of the equality and diversity rules on women.

Katie Drummond asked whether the consultation had been sent to female pupils. The BSB Director General said she was not sure and undertook to follow up this point.

Robin Allen QC noted that the Bar Council's Head of Equality and Diversity, Sam Mercer, carries out an exit survey of those who leave, and the Equality and Diversity Committee monitors the findings of this survey.

Richard Hoyle suggested that judicial office holders could also be surveyed in the second phase of the consultation.

8. Introducing the Committees

The Chairman said that she felt it would be helpful if the Bar Council knew the faces and names of those who chair the various representative committees of the Bar Council. You will see contact details for staff and Chairs of Committees.

The following committees were each given an opportunity to summarise their activity and plans through their respective chairs.

International (Amanda Pinto QC)

Main objectives:

- 1) International business development – to ensure the UK is the jurisdiction of choice for international dispute resolution.
- 2) Support the Rule of Law internationally – to engage with and provide assistance as appropriate to foreign bar associations, to consider issues of regulation of legal services overseas, support those who are oppressed in their legal profession and encourage Chairman of the Bar to comment publicly when appropriate, and to deliver an annual Rule of Law lecture.
- 3) Build and sustain relationships with other overseas bodies to develop policy positions and encourage mutual understanding.
- 4) Provide training programmes for the Foreign and Commonwealth Office and related training for UK representations overseas as well as the Judiciary in foreign countries.

Increasing the Bar's international earnings is an important strand of the International Committee's work which, over the coming year, focuses on:

- A mission to Brazil – the success of this type of work is can be assessed when SBAs and chambers carry on the work. The Bar Council endeavours to be the apex of the profession's international work
- Missions to Seoul and Shanghai
- Missions to Europe
- CIS
- International Arbitration Training
- Bahrain Prosecutor training

The International Committee seeks to promote the Bar Council's international work to the profession. It produces a fortnightly e-bulletin of upcoming events and opportunities and APQC urged everyone to encourage their members to get this fortnightly email and to engage with the initiatives. The Bar Council also provides grants for young practitioners to attend conferences overseas.

Legal Services (Derek Sweeting QC)

The work of the committee, broadly speaking, is to keep under review the work of the Bar in England and Wales and all other matters relating to practice at the Bar which are not covered elsewhere within the Bar Council's representational committee structure. The committee makes regular representations to Government, the Law Society and other legal bodies, as well as to BMIF, to name a few. There are three panels responsible for ADR, IT and Direct Access.

The committee meets four times a year. A great deal of the work of the committee is undertaken outside of the meetings. Everyone who was on the committee last year had agreed to remain on the committee. The committee had recently undertaken an initial assessment of proposals from the review of civil justice which was being undertaken by Lord Justice Briggs.

Young Bar (Louisa Nye)

The committee seeks to represent the interests of 'young barristers', that is to say members of the Bar of 7 years' Call and under. There is a case for re-examining this definition because it can, and often does, take longer to enter practice today. The Young Barristers' Committee (YBC) engages with all other committees and has a very wide agenda. The committee wishes to attract young barristers on circuit to get involved, as well as those who practise in criminal and family work. The committee, which is well supported by the Bar Council's policy team, run a number of events and seminars. YBC tries to be 'hip' and 'with it'. It has a Twitter account and a 'Young Bar Hub' which includes a 'tool kit' for young barristers.

Education and Training (Guy Fetherstonhaugh QC)

The Education and Training Committee seeks to respond to the BSB's initiatives and to keep the Bar's independent regulator within the bounds of its areas of responsibility as far as possible. The committee sees an important part of its role being to provide the BSB with information and understanding about how the Bar works in practice.

The committee wishes to develop best practice in mini-pupillages. It hopes that the BSB will not find a need to regulate in this area. The committee recognises the enormously valuable work of the Inns in providing training which it seeks to facilitate wherever possible.

Key initiatives for the year ahead are:

- Pupillage Gateway – the committee wishes this to be extended to all.
- Pupillage Fair – this will be repeated in 2016.
- Pupillage Handbook – the committee wants to produce this important handbook in-house instead of through a commercial publisher.
- Website – information about how to obtain training will be enabled to access reliable, comprehensive and up to date information on-line.
- Outreach – the committee wishes to extend its reach to all parts of the profession using the Bar Council and other appropriate channels.

Equality, Diversity and Social Mobility (Robin Allen QC)

The Chairman of the committee said it was the committee's overriding objective to make the Bar a profession of all and for all. Its main activity covered: access, retention and progression

The committee's current priorities are:

- 1) Well-being: projects will continue with funding from the Bar Council and the Inns.
- 2) Extending Bar Mentoring service
- 3) Training on career breaks
- 4) Strengthening the Network of Equality and Diversity Officers
- 5) Monitoring information so that Bar Council knows what relevant statistics are saying about the Bar
- 6) Monitoring the composition of Bar Council committees and structures

Employed Bar (Michael Jennings)

The committee provides advice and guidance through toolkits, seminars and events across a wide range of issues of interest to Barristers who are employed in different areas of commercial activity (including law firms), as well as in central and local government. The

committee represents 20% of the Bar. The committee is keen to work with the Equality and Diversity and Social Mobility Committee, for example to improve the prospects of the employed Bar being selected for judicial appointments.

Ethics Committee (Andrew Walker QC)

This committee has nothing to do with enforcement, which is a matter for the BSB, the independent regulator of the Bar. The committee oversees the Ethical Enquiry Service (which handles 6,000 calls a year and 500 written enquiries). It produces guidance documents on ethical issues. The Chairman of the committee noted that the BSB had recently abolished its standards committee with the result that the only members of the Bar with an input into standards are those who sit on the Board. As a result, therefore, there is a big job to be done by the Bar Council's representative Ethics Committee in responding to consultations. The Chairman of the committee said he would welcome more Bar Council members who are senior criminal practitioners to serve on the committee.

Bar Pro Bono Board (Alison Padfield)

The Chairman of the Bar has set up the Bar Pro Bono Board which is just beginning its work. If anyone is actively engaged with pro bono, they are invited to contact Alison Padfield.

EU Law Committee (Gordon Nardell QC)

The committee is currently examining at the large question of Brexit and whether the Bar would be better off inside or outside the EU. The committee wants to inform the debate. The committee sees itself as a resource for the Government in the context of the UK's negotiations which have implications for the Rule of Law and 'Justice exports'. Through its representative office in Brussels, the work of the committee focuses on: responding to regular consultations issuing from the European Commission and other institutions, ensuring that developments in EU practice and policy are understood and relevant to the needs of the Bar and ensuring that the voice of the Bar of England and Wales is heard clearly and effectively in Brussels.

9. Introducing the Director of Policy (Philip Robinson)

The Director of Policy said that there are 12 members of the Bar Council's policy team, of which three have been called to the Bar, five have law degrees, two are solicitors and two are not legally qualified but come with expertise in other areas.

The team is split into five areas (the work of which he briefly described):

- Legal Affairs and Ethics
- Regulatory Issues and Law Reform

- Equality & Diversity and Corporate Social Responsibility (CSR)
- Remuneration and Employed Bar
- International

10. Engaging with Bar Council

The Chairman indicated that one of the issues that Bar Council is constantly dealing with is how to engage with practitioners. She would like Bar Council to think about issues that could be discussed at forthcoming Bar Council meetings over the coming months and thereby contribute to the decision-making process.

11. Any Other Business

The Attorney General, the Rt Hon Jeremy Wright QC MP, updated Bar Council on the unduly lenient sentence scheme. Up to this point, all hearings have been undertaken by Treasury Counsel. For a trial period, grade 4 practitioners or Silk would get the opportunity to apply to conduct these hearings. The Attorney said he needed to be able to demonstrate the need for a high level of advocacy and encourage strong candidates to apply.

Philip Marshall QC suggested that, in relation to discussion earlier in the meeting about the the appointment of the Chairman of the Pension Fund Trustees the practice of asking the outgoing chair to identify a replacement was not compliant with equality and diversity good practice. It was agreed that this 'practice' would be reviewed.

The meeting closed at 12:19