



**Minutes of the Bar Council meeting
held on Saturday 7 September in the Old Hall, Lincoln's Inn**

Present:	Richard Atkins QC	Chair
	Amanda Pinto QC	Chair Elect
	Grant Warnsby	Treasurer
	The Rt Hon Geoffrey Cox QC MP	Attorney General

Apologies for absence

Apologies for absence were received from: Janet Bignell QC, Ivor Collett, Michael Collect QC, Quentin Cregan, William East (alternate attended), Michael Ellis QC MP, Layla Ferguson, John Goss, Lisa Hancox (alternate attended), Max Hill QC, Rupert Jones, Martyn McLeish, Alison Padfield QC, William Payter, Charlotte Pope Williams, Mark Trafford QC, Sonia Tolaney QC (alternate attended), Nigel Sangster QC, Joe Smouha QC, Andrew Granville Stafford, Derek Sweeting QC, John-Paul Swoboda, Anton Van Dellen, Henry Webb (alternate attended) and Sara Wyeth.

The following did not attend and did not send apologies: Neil Baki, Sarah Crowther QC, Caroline Goodwin QC, Fiona Jackson, Cathryn McGahey QC, Eason Rajah QC, Christopher Rees, Rhodri Thompson QC and Nicholas Vineall QC.

79 further members attended

1. Minutes of the last meeting and matters arising

The Chair welcomed members of the Bar Council to the meeting.

Reporting that he had recently been in Mexico and Colombia for an international business development mission, the Chair said that the Mexican and Colombian Bars were delighted to see the English/Welsh delegation and that several members of the English/Welsh delegation had picked up work.

The minutes of the meeting on 7 July 2019 were approved, subject to some changes to the list of apologies.

2. Statement by the Chair

Referring to the recently published list of new Recorders, the Chair congratulated all of those listed, particularly Sean Jones QC who is a member of the Bar Council. Others are on Bar Council committees.

The Chair welcomed the incoming Leader of the Western Circuit, Kate Brunner QC, and thanked the outgoing Leader of the Western Circuit, Bill Mousley QC, for all his hard work. The Chair also welcomed other newcomers to the meeting.

The Chair said that he is delighted that the Attorney General remains in post. The former Solicitor General and Prisons Minister, The Rt Hon Robert Buckland QC MP, has become Lord Chancellor and Michael Ellis QC MP has become the Solicitor General.

Frances Judd QC, Chair of the Family Law Bar Association, has been appointed to the High Court Bench. The Chair congratulated her and a number of others on their appointments.

The Chair reminded members of the Bar Council that the nominations process for the subscriber elections is now open. For the first time, voting will be carried out electronically.

The Chair noted the passing of Sir Henry Carr and expressed condolences to his family on behalf of the Bar Council.

The Chair reported that the criminal fees review is 'moving along'. Those who prosecute will have seen an increase in fees on 1 September. Discussions continue with both the CPS and the MoJ. The Chair explained that Malcolm Cree and Athena Markides have been working hard to progress the negotiations.

On the subject of the Internal Governance Rules (IGR), the Chair reported that the Bar Council has been successful in persuading the Legal Services Board (LSB) of the prejudice/influence point. However, there are still some aspects of the proposed rule changes that the Bar Council is unhappy with. The Bar Council is currently awaiting advice from Leading Counsel as to the approach to take and will inform members of the Bar Council of the decision in due course.

The Bar Council is about to launch 'Talk to Spot', an app which will allow barristers who encounter harassment or bullying to log on and record the incident immediately.

The Bar Council has enjoyed widespread media coverage in the last few weeks. The Bar Council has featured in the Daily Mirror and the Daily Mail and the Chair has appeared on the Nick Ferrari breakfast show on the radio, as well as on BBC Radio 4's Law in Action.

Tim Devlin, commenting on the closure of the criminal courts in August, said that he had found it staggering to discover that only one or two of the large courts were sitting. The Chair replied that he had written to the Senior Presider in July concerning sitting days and was told that the decision to open fewer Crown Courts and to keep the backlog at the same levels was one taken by HMCTS and the MOJ. The response has been picked up by the Press and the Bar Council is monitoring the situation. The Attorney General is also alive to the issue. The Chair promised to keep the pressure on to ensure that the numbers of sitting days do not fall further.

The Chair congratulated Cyrus Larizadeh QC on his appointment as Chair of the Family Law Bar Association (FBLA).

3. BSB Report

In the absence of any BSB representatives, the BSB report was taken as read and no queries were raised.

4. Statement by the Chief Executive

Malcolm Cree described as 'extraordinary' the media coverage that the Bar Council has enjoyed in the last few weeks. For example, the Bar Council was mentioned three times in one week in the Daily Star.

With regards to the LSB changes to the IGR, the Bar Council is awaiting advice but is already talking to the BSB about their implementation. The approach being taken by the Bar Council and BSB is pragmatic and sensible and both are keen to work together to overcome some difficult issues. Malcolm Cree said that he has also had relatively useful conversations with the new Chief Executive of the LSB.

The office refurbishment project is well underway but has encountered a delay of four weeks due to a problem with the Landlord. The roll out will now continue until the end of March 2020. The Bar Council is looking to re-coup the costs of the delay from the Landlord.

Twenty courts are now using the ID card scheme. Reports are positive and there are plans to roll the scheme out to at least ten new courts each month until April 2020.

5. Risk register

Malcolm Cree drew the risk register, included in the papers as BC04b/RREG, to the attention of members of the Bar Council. He explained that the risk around the IGR was probably a little overplayed as it was written before the results of the LSB's consultation. It will be reviewed in light of more recent events.

6. Statement by the Treasurer

Grant Warnsby reported that the Defined Benefit Pension Scheme triennial report has just been delivered. It shows an increase in deficit and the Bar Council is talking to the Trustees to ensure that this is not based on inaccurate assumptions. A Sub-Committee of the Finance Committee (covering both Bar Council and Bar Standards Board) has been created to deal with this matter.

Draft accounts

Grant Warnsby then outlined some key highlights of the accounts 2018/19:

- 1) The overall surplus is £580k, which is a slight reduction from last year. This has been impacted by the termination of the print contract and consequent termination payment of £378k and an accounting adjustment of £396k in relation to the LSB levy. The original treatment was incorrect and required adjustment. It should be noted that a similar adjustment for the LSB will be taken in 2019/20 accounts.
- 2) The group reserves are just over £3M. The Bar Council recognises the need to monitor this and is keeping an eye on the committed reserves which have been negative three years running.
- 3) The cash levels are high as Authorisation to Practice is raised in April. Therefore, all the cash is received in one month and this creates a deferred income. £13M was received in cash and approximately £14M is deferred income.
- 4) The key risks are cyber security, the IGR, Brexit and the Defined Benefit Pension Scheme. A risk mitigation plan is in place for all these key risks and is regularly reviewed by the Finance and Audit Committees.
- 5) In the accounts, the Defined Benefits Pension Scheme is shown as having a surplus. The accounts are prepared under the financial reporting standard 102 but the triennial report is based on actuarial assumptions. The deficit is more important which is why it is listed as a risk.

Members of the Bar Council approved the accounts for 2018/19 and authorised the Chair and Treasurer to sign them on behalf of the Bar Council.

7. Proposal to amend the Standing Orders – timeframe during which the Inaugural address can take place

Members of the Bar Council approved the proposal to amend the timeframe during which the Inaugural address can take place from 28 to 40 days. This is to ensure that there is room availability at the Inns at a busy time of year and to avoid clashes with other religious festivals.

8. A role for former Chairs of the Bar

Michael Jennings said that he had first raised this issue at the November Bar Council meeting but explained that the issue was first considered in 2011. He reminded members of the Bar Council that he has concerns about losing the experience of former Chairs once they leave the Bar Council. Saying that he thought it had been a positive move, back in 2011, to appoint a Vice Chair-Elect, he listed the options set out in the options paper (BC07/ROLE):

- 1) Maintaining the status quo
- 2) Formalising the status quo
- 3) Bar Council membership

Michael Jennings invited members of the Bar Council to consider adopting option 3, his preferred option. He acknowledged the cons, namely that former Chairs may not wish to come back, but argued that they should have access if they wished. There are a number of other examples of bodies that encourage continued membership, the House of Commons for example. If former Chairs go on the Bench, they would not be able to continue as a Bar Council member. Similarly, if they were conflicted by having taken up positions elsewhere that would make them ineligible for Bar Council membership, they would have the option of standing down, but these are not reasons against introducing the idea of Bar Council membership for former Chairs. As to how long the membership of former Chairs might last is debatable but it is the issue of voting rights that is the most difficult to decide.

The Chair explained that he had asked for the paper to be circulated to the past seven Chair(men) of the Bar in order to hear their thoughts. Responses were received from three: Alistair MacDonald QC, Andrew Walker QC and Michael Todd QC. The Chair read out the responses to the members of the Bar Council. On the whole, they were not in favour of a formalised committee of ex-Chair(men) or life membership. Andrew Walker QC had suggested that the Vice Chair could take more of a role in liaising with past Chair(men).

Amanda Pinto QC said that she was glad that the issue had been raised. She said that she could see the merit of former Chairs being invited to be on Bar Council to inform the Council, rather than the Chair individually. This could be for a finite period (potentially renewable) but not a life membership.

Acknowledging that life membership sounds like a 'splendid' idea, Guy Fetherstonhaugh QC wondered how it might work in practice. He said that there is nothing to stop former Chair(men) from picking up the phone, made the point that Chairs already have access to former Chair(men), and finished by saying that the codification of a group of former Chair(men) might prove rather cumbersome.

The Chair said that, during the course of this year, he has spoken to some of the past Chair(men). For example, Andrew Walker QC has been involved in the work around the fees review and he has had cause to contact Andrew Langdon QC on a couple of occasions. Andrew Walker QC is now engaged in the Stephen Mayson report which he could not be if he were still a member of the Bar Council.

Michael Jennings explained that his point was more around making former Chair(men) available to members of the Bar Council at Bar Council meetings. The former Chair(men) are not just a resource for the current Chair, but for the members as well.

Tim Devlin, explaining that the issue had been an agenda item at the last meeting in Wales, said that it had provoked interesting discussion amongst the members of the Bar Council. He recalled that the view had been that it might be difficult for the current Chair to have former Chair(men) present at meetings. He said that, in his opinion, it would be far better to leave things as they are. By the time someone gets to the point at which they are Chair, they are likely to have done a number of years on the Bar Council and might have had enough. It could be felt that formalisation imposes a former Chair to attend.

David Joseph QC said that from the point of view of a Specialist Bar Association, the resource of access to former Chairs was useful, but only on an issue by issue basis and invariably former officers made themselves available to give advice. He said that the present system works and that he would maintain the status quo.

Bill Mousley QC said that he is in favour of maintaining the current position. Bar Council members are either elected or appointed by Circuits or SBAs. A former Chair would not have any constituency to represent and this may raise constitutional issues around the make-up of the Council. He saw no reason in changing a system that already works.

Martin Nelson said that he is in favour of formalisation. He made the point that, during meetings, the Bar Council proceeds on the understandings of all of the members there at the time. Saying that the only former Prime Minister to cause problems for his successor was Edward Heath, he doubted that any former chair would behave in such a manner; and if they did, the members of Council at the time would surely notice and take it into account.

Christina Michalos QC warned of the danger of inadvertent undermining of authority of the current Chair. There was a risk of those who already knew the past Chair, both members and surrounding networks, going to the person they already knew and had an established relationship with.

Amanda Pinto QC asked whether a former Chair may be invited to a meeting should their knowledge be required on a specific occasion. She explained that while she has been on the Bar Council for a long time, there are many issues that she does not know about. The Chair and Natalie Zara, Head of Governance, replied that any barrister is permitted to come to any meeting of the Bar Council.

Natalie Zara said that she did not think that former Chair(men) would attend meetings if they were to remain lifelong members.

The Chair asked members of the Bar Council whether there was an appetite for change. Members of the Bar Council were in favour of maintaining the status quo.

9. Motion

James Keeley spoke to the motion that he had proposed for discussion. He introduced himself as a Social Mobility Advocate for the Bar and reminded members of the Bar Council of the highly successful #IamtheBar campaign, launched by Shiryn Sayani and Sam Mercer, of last year which was followed up by a judicial version.

Saying that he hoped for more Social Mobility Advocates, James Keeley described the Bar Council as 'showing and leading the way in making a career at the Bar accessible' and said that the motion acknowledges that the Inns also do a lot of work. He explained that it is suggested in the motion that it is of paramount importance that the Inns, and their Benchers, are as socially diverse as possible and that the Bar Council asks the Inns about the work that is being done to achieve this.

Rehana Popal said that she is also a Social Mobility Advocate. She made the point that the current Benchers are reflective of the make up of the Bar some 15-20 years ago. They do not represent the current Bar society. Listing all the good work being carried out by the Inns to encourage a more diverse profession, for example the scholarships, she suggested that the picture will be very different in the future when there is a wider, more diverse, pool of people to draw from. However, she was clear that she could not see how social mobility would, or could, encroach on the current pool.

Louise McCullough said that as a woman Bencher, she realises the impact it has on other female barristers seeing her there, but explained that, while she understood the sentiment, she agreed with Rehana Popal.

James Keeley expressed gratitude for the feedback but said that, in his opinion, the question could only encourage more work.

Robin Allen QC acknowledged as important the efforts made to advance the issue of social mobility up the social agenda, but cautioned that the wording of the question could be misconstrued. He explained that his own Inn is carrying out a 'great deal' to

consider the selection of Benchers and the issues of social mobility and warned of the protentional risk of damage if the Inns understood this to mean that not enough is being done. He invited James Keeley to consider withdrawing the motion for the time being.

James Keeley thanked Robin Allen QC for his intervention. Although he disagreed with the point made, he agreed to withdraw the motion out of respect for Robin Allen QC and members of the Bar Council.

10. Any other business

Natalie Zara said that in the course of doing some work on the Standing Orders for Committees of the Bar Council, she had come across some mis-numbered paragraphs, namely in paragraph 23, the number 84 should be 50, and, in paragraph 62 the numbers 94a, 94b and 96 should be 61a, 61b and 63. The members of the Bar Council approved the proposal to correct the numbers.

The Chair thanked members of the Wales and Chester Circuit for hosting the last Bar Council meeting in Cardiff. Describing the dinner and meeting as ‘fabulous’, he said that the Wales and Chester Circuit had set the bar very high. Reporting that the Bar Council is looking to take the March 2020 meeting out on Circuit, he said that he hoped the practice will continue in the future as it is important that the Bar Council gets out of London from time to time.

The Chair reminded members of the Bar Council that the Annual Bar and Young Bar Conference, Chaired by Rachel Langdale QC, will take place on Saturday 23 November. Amanda Pinto QC’s Inaugural Address will take place in Middle Temple Hall on Monday 2 December.