



The Bar Council

Meeting of the Bar Council

Minutes of meeting: Saturday 18 September 2021, Microsoft Teams dial-in and at the Bar Council offices

Present

Derek Sweeting QC	Chair of the Bar	DSQC
Mark Fenhalls QC	Vice Chair of the Bar	MFQC
Nicholas Vineall QC	Vice Chair Elect of the Bar	NVQC
Lorinda Long	Treasurer	LL
Baroness Blackstone	Chair, Bar Standards Board	BB
Rt Hon Suella Braverman QC MP	Attorney General	AG
Paul McFadden	Chief Ombudsman, Legal Ombudsman	PMF

Members in attendance (listed alphabetically)

Christine Agnew; Shazia Akhtar; Stuart Alford QC; Robin Allen QC; Lorna Badham; Michael Bellis; Minka Braun; Carl Brewin; Ian Brookes-Howells; Mark Chaloner; Sydney Chawatama; Ben Close; Richard Cole; Ivor Collett; Celena Colquhoun; Barbara Connelly QC; James Corbet Burcher; Melissa Coutino; Layla Ferguson; Emily Formby QC; Caroline Goodwin; Andrew Granville Stafford; Alex Gunning QC ; Amanda Hardy QC; Michael Harwood; Michael Hayton QC; Harriet Holmes; Sa'ad Hossain QC; Matthew Howarth; Shobana Iyer; Sean Jones QC; Faith Julian; Susan Jones; James Keeley; Stephen Kenny QC; Henry King QC (alternate for David Joseph QC); Donal Lawler; Edite Ligere; Kate Lumsdon QC; Timothy Manley; Eleanor Mawrey; Louise McCullough; Martyn McLeish; Christina Michalos QC; Andrew Morgan; David O'Mahony; Deshpal Panesar QC; Francesca Perselli; Alison Pickup; Charlotte Pope-Williams; Amber Qureshi; Jonathan Rees QC; Robert Rhodes QC; Zoe Saunders; Jo Sidhu QC; Natasha Shotunde; Joe Smouha QC; Kate Spence; Gordon Stables; Jessica Stephens QC; Philip Stott; Jason Sugarman QC; Ben Symons; Leanne Targett-Parker; David Taylor; Linda Turnbull; Anton Van Dellen.

In attendance

THE BAR COUNCIL

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Malcolm Cree	CEO, The Bar Council	MC
Richard Cullen	Director of Finance, Bar Council	RC
Piran Dhillon-Starkings	Adviser to the Chair, Bar Council	PDS
Carolyn Entwistle	Director of Services, Bar Council	CE
Rose Holmes	Research Manager	RH
Mark Neale	Director General, Bar Standards Board	MN
Phil Robertson	Director of Policy, Bar Council	PR
Steven Rudaini	Director of Comms & Marketing, Bar Council	SR
Wilf White	Director of Communications and Public Engagement, Bar Standards Board	WW
Natalie Zara	Head of Governance, Bar Council	NZ
Peerce McManus	Assistant Private Secretary to the Law Officers, Attorney General's Office	PMcM

Minutes	Yvonne Treacy	Executive Officer, Bar Council	YT
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Apologies were received from

Dr Mirza Ahmad; Simon Anderson; Nicholas Bacon QC; Elaine Banton; Kirsty Brimelow QC; Alexandria Carr; Birgitte Hagem; Isabel Hitching QC; Joanne Kane; Ted Loveday; Athena Markides; Andrew Mitchell QC; Lucinda Orr; Heidi Stonecliffe QC; Simon Regis; Steven Thompson QC; Colin West QC.

1. Conflicts of interest

None were declared.

2. Minutes of the last meeting

The minutes of the meeting held on 10 July 2021 were approved.

3. Statement by the Chair

The Chair referred Bar Council (BC) members to his paper which was included with the agenda, and which covered the huge extent of work being undertaken by the BC. However, there were a number of items he particularly wished to draw members attention to as follows:

i) Bar Council elections

These are now on the horizon with the deadline for nominations closing on Tuesday 21 September at 5pm. The Bar Council wants to ensure a diverse membership and he encouraged members to consider standing and to submit their nominations in good time. Further details can be found on the BC website.

ii) Afghanistan

Following the recent events in Afghanistan, the Bar Council has spent most of last month trying to help Afghan judges, lawyers and those working in the justice system evacuate the country. We have worked with a number of organisations – both in the UK and international. We will continue to monitor the situation and do what we can but are mindful about not putting too much information into the public domain for safety reasons.

iii) China sanctions

We are continuing our strategy of meeting those who are interested and anxious about the position of the PRC and keeping this in the public eye.

iv) Bar Race Summit

The first of the two-part meetings was held this week with approximately 80 people attending. We hope to develop the ideas arising from that event and launch the action plan at the second part of the event. This will be on 5 November at which Leroy Logan, former Metropolitan police superintendent, will be the guest speaker. Leroy was portrayed by the actor John Boyega in the recent BBC drama series Red, White and Blue.

v) Annual Bar and Young Bar conference: 17 – 20 November

Bookings are now open, and we hope that we have managed to produce a programme which includes something of interest for everyone. It is a real occasion to get together with colleagues and other members of the profession so please book your ticket asap.

vi) Leavers and joiners

Since the last meeting, James Mulholland QC has now come to the end of his term as CBA Chair and steps down from the Bar Council accordingly. The Chair took the opportunity to pay tribute to how closely the Bar Council has been able to work closely with the CBA this year on pivotal issues affecting the criminal bar. Jo Sidhu QC has succeeded James and Jo moves into the ex-officio CBA Chair position on the Bar Council. Meanwhile, welcome to Kirsty Brimelow QC who, as the new CBA Vice Chair joins the Bar Council as the 'Subscriber elected by the CBA'. Kirsty has also been invited to join GMC. Since the last meeting Sonia Tolaney QC has come to the end of her term as Chair of Combar and steps down from the GMC and the Bar Council. David Joseph QC has taken over as Chair. Ruth Hosking is the SBA rep on the BC.

vii) Pupillage Fair

The BC is seeking barrister volunteers at the virtual Pupillage Fair on Saturday 16 October. You will spend 15 minutes with Bar hopefuls at the Pupillage Fair to give advice on their CV or pupillage application. This is a really popular part of the fair each year, and it is your opportunity to give back to future barristers.

xiii) Oxfam/Gurkha Welfare Trust Charity Walk

On Saturday 25 September a Bar Council team comprising myself, Phil Robertson, Rose Malleson and Natalie Zara (with Malcolm Cree as our runner) will be completing a 100km charity walk across the South Downs to raise money for Oxfam and The Gurkha Welfare Trust. We have 30 hours in which to finish following which we will be attending the Labour Party conference. If you would like to sponsor us the link can be found in the Chairs Statement.

4. BSB report

Baroness Blackstone presented the BSB report and hoped that BC members will have found the reports referred to in the paper of interest and that they will consider responding to their consultation on the future of the Bar Course Aptitude Test and to the second consultation by the Bar Tribunals Adjudication Service about their sanctions guidance. It is vitally important that sanctions for professional misconduct have the confidence of both the public and the profession.

BB said there are some encouraging findings in both the reports about retention at the Bar and about the consumer's experience of working with barristers. However, both also point to areas where further improvements might be made: for example, the BSB clearly needs to think about what they can do to encourage more women to remain at the Bar and to ensure that clients always have the choice that they need.

Their report on the last year of the Bar Professional Training Course served as a reminder of what a tough year it has been for many at the Bar, and especially for those seeking pupillage. The BSB, along with everyone, is committed to doing what it can to help pupils and to support the number of pupillages, but this report does remind us of that need.

Since the BSB report was written they have only issued one major piece of work: on 13 September along with the Solicitors Regulation Authority and CILEx Regulation they issued new guidance and resources setting out the competencies expected from solicitors, barristers and CILEx Advocates working in the Coroners' Courts.

The new guidelines have been introduced in response to concerns about the standards of practice among some lawyers in the Coroner's Court. In particular, concerns have been expressed about the adversarial approach adopted by some lawyers, and the guidance also takes into account reports from the charity INQUEST on the experience of bereaved families

in Coroner's Court cases. The Chief Coroner for England and Wales, His Honour Judge Teague QC, has welcomed the new competencies as "important for effective advocacy" and "reflecting the particular and unique challenges lawyers face in inquests". He added that "since they helped develop them, coroners will be vigilant in ensuring those before them are meeting the expected standards." Coroners will be encouraged to address practice that falls short of these competences either during the hearing itself or through raising their concerns with the relevant regulator.

In developing this guidance and resources, the regulators have worked closely with the Chief and Deputy Chief Coroners, practitioners, the Ministry of Justice, and bereaved families. The BSB will also continue to work with these groups to evaluate the impact of the new guidelines and to ensure that they are addressing the concerns identified.

The Chair thanked BB for her presentation.

5. Statement by the Chief Executive

The statement by the CEO will be reported at the AGM immediately following the Bar Council meeting.

6. Paul McFadden, Chief Ombudsman, Legal Ombudsman

The Chair welcomed Paul McFadden, Chief Ombudsman (CO) of the Legal Ombudsman (LeO) to the meeting. The CO thanked the Chair for the invitation to address the Bar Council meeting about the work of the LeO and the direction he planned to take for the organisation going forward. He mentioned the productive meeting he had recently with the Chair, and it was clear from that meeting that ongoing engagement was important to both LeO and the Bar Council.

The CO joined LeO eight months ago at a critical time for the organisation and faced a number of challenges, for example, a backlog of complaints with 5,000 cases waiting to be investigated; complex processes; performance issues; staff turnover in a competitive market and the impact of Covid-19. It was a lot to assess.

His early challenge therefore was to develop a two-year business plan which sought to implement a recovery process to stabilise the organisation and to deal with the backlog of complaints. It was essentially establishing a series of building blocks that would look at the internal organisational structure such as reviewing and supporting existing teams, bringing in new teams; exploring new innovations; identifying performance variations; driving through early resolution of complaints and implementing the process for change. He feels that they have been open about the journey they are taking, and a lot of progress has been made already such as recruitment, greater people engagement and tackling performance variation, although as an organisation they continue to diagnose and unpick the challenges ahead.

They are now approaching the six month point of the business year and many Council members may have seen their business plan where LeO made a commitment to greater transparency for delivery and progress against the business plan.

As part of their mid-year review, they are looking at next year's business plan process along with budget preparation and there will be a consultation in early November along with a number of stakeholder events focused on the mid-year review findings and future business planning.

As discussed with Derek, the CO said that one of their key strategic aims is to better support learning and improvement and to work with service providers such as on training and insight reporting. They already do much of this but there is always more that can be done but leads to the issue of resources.

In terms of identifiable trends regarding the profession it was noted that only about 4% of complaints are about barristers; about a quarter are resolved early; and of the others that are progressed to investigation half of them conclude that there is no remedy to be provided. No concerning trends as such. However, of the complaints that are upheld they tend to be regarding failure to follow instruction and advise accordingly with argument and evidence not presented properly. Therefore, there is work for the profession to be done here and an area where LeO would like to focus future conversations and more collaborative working to overcome these issues.

The Chair thanked the CO for his presentation and also for meeting with him as mentioned earlier to discuss the issues he had inherited and which he was now addressing. At the meeting it was noted that only a small number of complaints were about members of the Bar and that many of the complaints would be avoided by better working practices and therefore this would be something that the Bar Council and successive Chairs will no doubt be looking to remedy in the coming years.

HKQC asked how long it was currently taking to investigate and resolve complaints which the Chair then pointed out was an issue of central concern to the profession. The CO replied that this was indeed a valid concern and given the size of the backlog it can take up to 12 months to investigate a complaint and thereafter up to six months to resolve, possibly 12 months in more complex cases. It is a challenge they are seeking to address in terms of tackling the backlog and deal with complaints more effectively.

Finally, the Chair reported that he hoped to be visiting the offices of the LeO in the coming months and would be looking forward to taking this discussion forward. He would then report back to this meeting in due course.

7. Risk Register and Report

Malcolm Cree, CEO, reported that the Risk Register and Report were included with the agenda papers and were essentially for noting. It was noted that the register is updated regularly with the last update in July and another update due. There are currently 11 risks but none are categorised as high. The last risk which was identified as high was the risk of PCF income falling due to Covid 19 and therefore a potential cashflow issue. It is still a risk but no longer high due to action taken to ensure that the organisation is in a more financially stable place and therefore we entered this year in a better state financially than predicted. There is an increasing risk of concern which is high staff turnover. In the current employment market, the organisation is finding the recruitment and retention of staff difficult.

8. Treasurer's report

A report was shared via Teams and explained by LL.

LL reported that the news is quite positive in that the organisation is doing well. Income has increased against budget (£85k) due to late PCF renewals, international publications and immigration income greater than budget.

Staff costs showed a small saving (£1k) due to staff vacancies savings mitigated by temporary staff costs.

With regards to non-staff costs there has been quite a big saving (£28k) against the budget. However, the non-operating expenditure has increased by £48k due to a revised LSB charge.

The organisation is therefore looking at a surplus of £66k against budget.

Generally, the organisation is in a good financial position except that the resources group is showing a loss of around £6k but we hope that this will be mitigated by other action taken during the year.

9. Bar Council research team – data, research, and future projects

Rose Holmes, Head of Research at the BC, gave a presentation on the work of the BC's research team. The main focus of the team is to organise and "sift all the data that represents the complicated variations of your unknowable human lived workplace experience into some kind of coherent narrative so that we, your quasi-union, can go some way to representing what we consider on the basis of this evidence to be your best interests."

The BC has three main sources of data that are used:

The central, and probably the most important, is the CRM membership data base that is shared with the BSB. This contains all the information barristers give at Authorisation to Practice each spring. It therefore includes data points such as year of call, circuit,

demographic data, income, areas of practice etcetera. They also have access to the anonymous data as a huge spreadsheet so can provide group anonymous data cut by any of these variables. Many of the data points only go back to 2018, when the data warehouse was reconfigured, and the very earliest data goes back to 1990. The team has been doing a lot of work providing group benchmark data to support the work of various committees, circuits and interest groups.

Barristers' Working Live is an invaluable survey of the profession that has been taking place since 2011. This year the Wellbeing survey and a separate analysis of Young Bar data was incorporated into the project. It is planned to continue to run this survey every two years going forward.

The BC also run smaller and more ad-hoc focus groups, interviews and surveys for specific projects where necessary.

The data all supports the organisation's four research priorities, which are:

i) Understanding and supporting the Bar

The BC has consolidated and streamlined its methods of surveying the profession. The Barrister's Working Lives (BWL) survey will now take place every two years beginning in April 2021, facilitated by an independent research partner, and will incorporate the Wellbeing at the Bar survey. This large and comprehensive Barristers' Working Lives and Wellbeing survey will be the only significant survey barristers are asked to participate in and will allow the BC to accurately survey the profession and measure change over time. This year we put together a steering group of internal BC staff, three independent researchers, and discussed the proposed survey questions with a range of internal and external stakeholders.

Data from this survey and from associated focus groups will inform published research reports on the profession as a whole and groups or topics within the profession. This year the BC is going to publish at least five reports from the BWL data – the main report, one on Wellbeing, one on the Young Bar, one on the Employed Bar, and they've been working with Advocate do produce a report on Pro Bono work.

They have also been doing various other research projects under this heading. The BC's Civil Legal Aid project, "Running on Empty" was published in January, and their work with the BSB on historical patterns of retention was published in July.

ii) Justice Funding, Fees and Finance

The BC research piece “small change for justice” established that funding for the justice system has been cut by 29% per person in England and Wales since 2010. The manifold ways in which this dramatic and sudden decrease in resource affects the public and the legal profession need to be carefully monitored, analysed and documented, as do the continuing budgets and spending of the MoJ and the CPS.

iii) The Justice System

The BC’s main organisational and professional principle is of justice for all. Access to justice and the way in which the lived experience of the justice system is filtered through procedural and regional inequalities are thus areas of especial concern to the Bar Council. Monitoring the functioning of the justice system at a micro level, particularly from a financial and courts/HMCTS perspective, is a research priority.

iv) Future Law

Taking an informed and holistic view of the Bar and its place in the national and international economy and labour market, they will start to predict directions of travel so they can best support the Bar to anticipate ways in which both sources of work and the nature of practice are likely to change.

There are some very relevant findings already coming out of the Barristers’ Working Lives survey. The majority of people would like more remote and flexible working for a better work-life balance but have serious concerns about the current practical functioning of remote hearings.

The future of legal services, as with most other professions, is likely to evolve rapidly in coming years, especially as the workforce ages, and the BC will aim to develop policies that will allow barristers to continue to build successful practices in changing times.

In conclusion the BC has now got a great deal of information coming in to support its policy work which is deeply satisfying. The only problem with this is that instead of being able to answer the fundamental questions around categorising the seemingly undefinable, “we end up in a kind of perennial post-Occam’s razor tussle, where the simplest explanation is rarely the one that our evidence allows us to apply.”

RH invited members of the committee to get in touch with her if their committees or groups have any informational needs. She has been working with lots of people to provide benchmarking and overview data, and specific cuts of anonymous group survey data where needed.

The Chair thanked RH for her presentation and mentioned that one of the issues that has become apparent during the course of the year is the need for data and how beneficial and effective reliable and accurate hard data is in order to support consultation responses and

policy positions. It is also interesting to note this year the contrast between our Bar Council data and the lack of data held by such bodies as HMCTS.

PDQC asked a question about research into remote hearings which is a live discussion at the moment, particularly in relation to employment cases. Whilst remote hearings are easier to do, they are not necessarily better. From a research point of view how do you quantify the efficacy of intangibles such as this? RH replied that the BC research into this has focused on how barristers are experiencing this in their personal and professional lives but thinks that what is probably needed is an independent evaluative study to see how it affects all court users and the impact of outcomes. We can however continue to focus on the barrister experience and seek to work with HMCTS and other organisations where possible.

The Chair said that this was very much the topic of the moment with employment tribunals in the vanguard and is probably a way of trying to address the enormous backlogs in cases which is not being done in the same way in other areas. Incidentally he would be meeting with the President of Tribunals soon and this is one of the issues he would raise.

Continuing this discussion SHQC asked whether there was comparable data about remote hearings from the perspective of judges about how easy and effective they are and, if so, is there a way of combining the two sets of views in order to come to a more considered view about the effectiveness of remote hearings and the impact on justice in the long run? RH replied that there is more work being done in this area time and mentioned a study undertaken by the Nuffield Family Justice Observatory – Remote hearings in the family court post-pandemic - which looked at the perspective of all users of that court. A lot more of these research projects are being initiated as the critical need for them becomes more apparent.

The Chair mentioned that there would a session at the Annual Bar and Young Bar Conference in November on the future of justice which will no doubt raise some interesting perspective on remote hearings and their outcomes.

9. Annual Bar and Young Bar Conference – 17 to 20 November

Carolyn Entwistle, Director of Services at the BC, gave a presentation to the committee on the forthcoming Annual Bar and Young Bar Conference taking place on 17 to 20 November.

Before she began she gave thanks to Christina Westlake, Training and Events Manager, who has spent a significant proportion of her time working with key stakeholders, including the Chairs of the Bar and the Young Barristers' Committee, various Specialist Bar Associations, and the Circuit Leaders, to build this year's event which it is hoped offers something for everyone, regardless of whether they are an aspiring barrister, a self-employed or employed practitioner, a chambers professional or even a member of the public.

The theme for this year's Conference is 'Recovery, Growth and Transformation' and the BC will be using the event to examine what is needed to overcome the challenges restricting the delivery of justice, which has been exacerbated by the pandemic over the last two years. The panels will be considering the issues that are currently affecting both the profession and the system in which it operates and exploring on a macrolevel the transformations that are needed to enact positive change. The conference represents an opportunity not simply for members to enhance their continuing professional development in areas such as practice management, marketing, and industry trends, but also for barristers of all seniority, across a variety of specialisms, to come together for the first time in over two years and share their collective experiences with like-minded peers.

CE said that the conference will start with several virtual online fringe sessions between Wednesday 17 and Friday 19 November 2021. The programme culminates in an all-day event at The Grand Connaught Rooms on Saturday 20 November 2021. They are delighted to be able to return to an in-person event, which will also include a modest exhibition and evening drinks reception. In light of the current uncertainty surrounding the return of certain restrictions later this year, the Training and Events Team is working closely with the venue to ensure to reduce as much risk to delegates as possible. This includes introducing new socially distanced seating arrangements in both the Great Hall and the Balmoral Room, and a new format for the delivery of both the Networking Breakfast and Lunch. To reach those unable to travel to London on a Saturday and ensure that, in a post-pandemic World, the Conference remains as accessible and inclusive as possible to all members, the programmed sessions will be lives streamed to the virtual audience.

With regards to the actual programme, the following was reported:

- The Conference will be opened on the Wednesday by the Chair of the Bar, Derek Sweeting QC. He will be followed by The Lord Chief Justice of England and Wales, Lord Burnett of Maldon, who will be sharing his vision for justice and priorities in 2022. The first day of the event will end with a discussion between The Rt Hon Baroness Hale of Richmond DBE, Baroness Helena Kennedy of the Shaws QC, International Criminal Court Prosecutor Karim Khan QC and Member of the European Parliament Sophie in't Veld, on the potential impacts of the Human Rights Act Review and the UK's departure from the EU during the midst of a global pandemic, on the Rule of Law both at home and abroad.
- On Thursday 18 November 2021, there will be a session predominately aimed at the Young Bar that focuses on improving their witness handling and appellate advocacy, both in-person and remotely, and will also offer insight into how to be an effective junior in trials.
- The following day, CE would be chairing a panel event with representatives from the Institute of Barristers' Clerks and Legal Practice Management Association, and Partner and Head of Employment Law at Fox Williams Joanna Chatterton. They will

be discussing the future of hybrid working in the profession, and the expected and potential impacts of implementation on costs, workflow, and people.

- The final fringe event, which is entitled 'Future Bar: Access and Sustainability', will take place on Friday evening and will examine the current routes to the profession, discuss how alternative models might improve access, diversity and inclusion, and assess whether education and training is fit for the future of the Bar and those it serves. The panel will be led by the current Chair of the Education and Training Committee and future Vice Chair of the Bar, Nicholas Vineall QC, and includes Lucy Garrett QC, the General Manager of Inespera Assessment and Bridging the Bar Member, Ishan Kolhatkar, Treasury Solicitor Susanna McGibbon and Professor at the University of Oxford, Rebecca Williams.
- Saturday's in-person and livestreamed event will once again be opened by Derek Sweeting QC, but this time in conjunction with Chair of the Young Barristers' Committee Joanne Kane. Their speeches will be followed by the presentation of this year's Advocate awards and, subject to his agreement, delegates will then receive an address from the new Lord Chancellor and Deputy Prime Minister Dominic Raab.
- The remainder of the Conference includes events on 'Improving Diversity through Fairer Distribution of Work', 'Building your Professional Brand through Social Media', 'Managing your Income and Financial Security', 'The Role of Journalism in Shaping the Justice System', 'Managing your Mental Wellbeing when Faced with Vicarious Trauma', 'Opportunities and Threats in the International Legal Market' and 'The Future Impacts of Technological Innovation on the Justice System'. To talk to all of this, the Bar Council has onboarded over twenty prominent speakers from both within profession and outside of it, including Master of the Rolls, The Rt Hon Sir Geoffrey Vos, Legal Editor at The Times, Jonathan Ames, Home Affairs and Security Correspondent at The Independent, Lizzie Dearden, Shadow Justice Secretary, The Rt Hon David Lammy and the CEO of Microsoft UK, Clare Barclay.

With regards to purchasing tickets, there is a 20% discount for Bar Representation Fee subscribers and a further 15% discount for those attending online. To ensure that the event remains as accessible as possible to the entire profession, we have also applied a huge 70% discount for aspiring barristers, pupil barristers and those practitioners earning less than £60,000 per annum, which means that tickets start at just £51 for 12 hours of expert speaker sessions, professional development and networking opportunities. CE encouraged committee members to share the details of the Conference with their colleagues across the Bar

The Chair thanked CE for her presentation and for the work she and her colleagues have done in putting together an excellent conference programme. He echoed CE's words about encouraging members of the committee to attend the event, possibly with a group from their Chambers.

10. Draft Accounts: for approval and authorisation of signature

The draft accounts are for approval and authorisation and will be reported at the AGM immediately following the Bar Council meeting.

11. Any other business

Committee members were reminded to attend the AGM immediately following the Bar Council meeting but that they needed to do so via a different meeting link.

12. Date of next meeting

Saturday 13 November 2021 both online and in person in Bristol. The online meeting would be hosted with the Western Circuit and would be combined with a Western Circuit visit.