

Minutes of the Bar Council meeting held on Saturday 7 July 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 Edward Garnier QC MP Solicitor General

61 further members of Bar Council attended.

1. Apologies

Apologies for absence had been received from Keir Starmer QC, Dr Mirza Ahmad, Lesley Bates, Julia Beer, William Boyce QC, Lord Alex Carlile QC, Henry Carr QC, Michael Collard, Charlie Cory-Wright, Tom Crowther, Nicholas Cusworth QC, Lucy Frazer, Philippe Freund, Max Hardy, Fiona Jackson, Gregory Jones QC, Jennifer Josephs, Michael Kent QC, Taryn Lee QC, Fiona McCreath, Sailesh Mehta, Christina Michalos, Rick Pratt QC, Richard Salter QC, Geoffrey Tattersall QC, Francis Watson QC and Nicholas Worsley QC.

2. Approval of the Minutes and Matters Arising

The minutes of the 14 April 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 the Attorney General and Solicitor General and thanked them for making themselves available to attend. He also congratulated Nick Hilliard QC, Mark Lucraft QC and Philip Bartle QC, who have all been recently appointed to the Bench.

The Chairman issued an interim statement in June due to the long gap between meetings and his statement for this meeting had also been circulated in advance. The Chairman said that he did not propose to read these aloud but asked if there were any questions. There were not.

4. BSB Report

The BSB Chair's report had also been circulated prior to the meeting and Baroness Deech invited questions.

Questions / comments on BSB Report

QASA timetable: Malcolm Davis-White QC (MDWQC) said that the consultation period for QASA had originally been put forward as running from June to September but it has still not been released - it is now July - and one cannot access the relevant page of the website without login details. Additionally, the judicial training is due to start as the consultation closes; is this a sign of a "done deal". Baroness Deech replied that the consultation cannot be launched until the SRA and ILEX Boards sign it off; this should be in the next week or so. Vanessa Davies (VLD) confirmed that the consultation period will still be 12 weeks long. MDWQC said that even so, it is being held over the summer break. Baroness Deech said that this is not a consultation on principles, the scheme set out is already familiar; it has been described as a "White Paper with green edges".

Max Hill QC (MHQC) said that as this was his last Bar Council meeting, he wanted to make sure that he made a few points about QASA. Last September, the Legal Services Commission told him point-blank that QASA would not be used to bring the rate of pay for Silks in line with their grading within the scheme. At a supervisory meeting with Sir John Thomas, the issue of plea-only advocates was raised and it was a somewhat volcanic meeting. Time has passed and the Criminal Bar Association has not budged an inch on their views of the principles of the scheme, whether that be in print, in speeches or in emails to the membership. However, ten months later, Silks are in the scheme and so are POAs. How can it be that the consultation is only about the practicalities of implementing the scheme and not its principles? Surely it is up to the profession to say where they stand on those principles; the CBA has always said that it will support the scheme if those principles are in place. This consultation is the first opportunity for the Bar Council and the wider Bar to comment; there has been no consultation since these two important issues came up in September.

Baroness Deech said that she appreciated MHQC's position and that he wanted to "go out fighting". However, POAs have existed for about twenty years and have not, apparently, had any impact on criminal practice. If they are such a bad idea, this will come out in the scheme. The BSB has made sure that clients must be informed of the status of their advocate (i.e. whether they are able to conduct trials) and that the scheme will separate the "sheep from the goats". If there is a fault, the Criminal Procedure Rules must be amended. Baroness Deech warned that if the criminal Bar do not engage, the judiciary will not cooperate, the SRA will implement their own scheme and the Legal Services Board will intervene and impose a scheme on the Bar.

Is it not preferable to go ahead and allow defects shown by inclusion of POAs be evidenced to the public?

Gregory Bull QC (GBQC) said that in his view, the Bar had nothing to lose by not engaging; having a separate scheme for the Bar might be cheaper and more practical. Baroness Deech warned that the top echelons of the judiciary would not be willing to accept this.

John Cooper QC (JCQC) asked what has happened to the term "trial-ready advocates"? Paul Mendelle QC (PMQC) asked for clarification on what POAs will be called. VLD said that the consultation refers to them neutrally as "advocates". PMQC said that POA is the best term for them as it shows their limitations; Baroness Deech encouraged this view to be put forward in response to the consultation.

Baroness Deech stressed that she has explained to this audience many times before the consequences of non-cooperation. She admires MHQC's approach but the BSB are trying to make the best out of the situation.

MDWQC returned to his earlier question and said that as the judicial training coincides with the end of the consultation, it suggests that the consultation itself is a farce. Baroness Deech explained that the LSB sets the timetable and it cannot be extended even further; the training may be slightly different as a result of the consultation but will still go ahead. She said that all this points to what an unsatisfactory piece of legislation the LSA 2007 is and encouraged everybody to raise their concerns in their consultation response.

Robert Rhodes QC (RRQC) asked whether it is really necessary for Silks to be part of the scheme. For some, it will be nigh on impossible to get sufficient judicial evaluations as they will not be in front of many judges. Baroness Deech said that the scheme will not initially apply to those who have taken Silk in the last five years. There will be provisions for those who cannot secure enough evaluations.

Stephen Leslie QC (SLQC) said that a high percentage of Silks at the criminal Bar only do three cases per year. Their inclusion should have been thought through properly and the scheme is being used to give Silks the same fee as Juniors. Baroness Deech said that if anyone thinks the LSC are waiting on the scheme to cut Silks' fees - they aren't. They will do that anyway.

Baroness Deech warned that if the scheme is opposed, the headlines in the papers will read: "Barristers refuse to be assessed" and this will impact negatively on the Bar.

Richard Atkins QC (RAQC) said that at the last Bar Council meeting, it was

suggested that the scheme would be rolled out on the South-Eastern Circuit. This week's CBA round-up (the email newsletter sent weekly by the CBA) says that it will be the Midlands and Western Circuits. Why have the BSB said one thing, then done another and why were the profession told second-hand i.e. by the CBA and not the BSB? VLD said that there had never been a formal announcement regarding the geographical order of the roll-out, previously it was speculation, but the BSB Board formally agreed the roll-out order on 21 June. The rationale is that it would be unwise to start on the largest Circuit but that the South-East would come second in order to get as much data as possible about POAs. VLD apologised if the Bar felt that they should have been told directly by the BSB about the roll-out order. RAQC asked why, in reference to the budget papers, £217,000 has been spent by the BSB on the scheme, doing something which the profession does not think is fit for purpose. VLD said that this was a total spend figure, including staff.

Nigel Lickley QC (NLiQC) said that he has just discovered that the Circuit he leads (Western) is first up and yet a paper went to the Council of Circuit Judges in May setting out the roll-out plan. The paper also refers to "all advocates", including POAs and Silks, being part of the scheme. It is also clear that the person who decides the category / grade of the case will be the solicitor, which leaves the scheme open to abuse. A solicitor can under-grade a case in order to make it appropriate for an in-house advocate to take it and this is not in the public interest. NLiQC expressed concern that if members of his Circuit do not sign up, they will not be allowed to prosecute or defend and will be disciplined by their own regulator if they do. They would then have to wait two years before they could work again. In NLiQC's view, this is a precursor to contracting and the profession should have nothing to do with it.

Baroness Deech said that those opposed to it had clearly not worked in environments where assessment is taken for granted and reminded Bar Council of the potential headlines she made reference to earlier. NLiQC clarified that no-one is opposed to assessment, but that the scheme has to be right.

VLD said that these points have to be made in the consultation but clarified that, when deciding the category and grade of a case, the solicitor and advocate must agree. If the judge is not satisfied with the grading given, they can intervene. NLiQC replied that this is still open to abuse; as the one holding the purse-strings, the solicitor is in charge. They can either agree the grade with an in-house advocate or, if external Counsel disagrees with a low grading, the solicitor can pull the brief.

Alistair MacDonald QC (AMQC) said that this was the first he'd heard of a "white paper with green edges" and that the message is confused as to whether this consultation is one on matters of principle or practicality. Why was the Council of Circuit Judges told about the details of the scheme in May if they were only

approved in June? On his Circuit (North-Eastern), he had thought long and hard about the issue of POAs as there was huge opposition to their inclusion. However, he concluded that the profession should engage as the BSB had a hard job to do and had won on the point about judicial assessment. Therefore, if a compromise had to be made then he was prepared to lose on POAs as long as judicial assessment was mandatory. He gave advice to his Circuit on the basis that a BSB consultation would be full and based on principles.

However, the consultation is now taking place during the break and is not based on principles. The scheme is not rigorous and you could drive a coach and horses through it. Judicial cooperation has not been mandated and he has already spoken to some members of the judiciary who have made it plain that they will not engage. AMQC said that he had also persuaded people to engage on the basis that there would be a full review after two years. Given that a paper went to the Council of Circuit Judges in May - before the profession were told anything - what faith can there be in the BSB's word? The profession must not be railroaded in this way.

Baroness Deech replied that this is the fourth consultation on QASA. The scheme has evolved and it is important to stress that the BSB are not the only players; it would be a different scheme if this were the case.

The Chairman thanked Baroness Deech and VLD for taking questions. He urged everybody - whether a member of the criminal Bar or otherwise - to respond to this consultation. He also recommended that everybody with a vested interest in the scheme should meet.

BSB view on the Burton Working Group's recommendations on pupillage: David Nicholls (DN) asked Baroness Deech about her and the BSB's views on the proposals on pupillage which David Blunt QC (DBQC) was about to present as it has been suggested that they are enthusiastic supporters. Baroness Deech confirmed that she personally would welcome a greater number of pupillages; the number of students emerging from the BPTC with significant debt and no pupillage is of great concern. Even if they don't get a tenancy, undertaking pupillage at least means that these students will be qualified and get a job elsewhere. However, she believes that unfunded pupillages are quite wrong. The BSB Board has not yet considered the proposals about waivers, but will do. As a former teacher, Baroness Deech said that she was very supportive of getting people through to be a "proper" barrister.

5. Burton Working Group Report on Pupillage

The Chairman welcomed David Blunt QC (DBQC), who had kindly agreed to come to Bar Council to report on the recommendations put forward by Sir Michael Burton's working group on pupillage.

DBQC thanked Bar Council for this slot and explained that he was attending on behalf of Sir Michael Burton as the Chairman of the COIC committee set up to implement the recommendations in the working group's report. DBQC referred Bar Council to the paper at annex 4.

DBQC explained that he had come to make an appeal, namely for Bar Council to endorse the recommendations and to participate in the work of the implementation committee by way of a Bar Council member sitting on it. DBQC stressed that the committee had been set up to implement the recommendations, not to debate whether or not they are a good idea.

DBQC ran through the recommendations as they appear at annex 4.

All Inns will submit the same amount of funds and a system of adjustment would be put in place if necessary if one of the Inns' did not receive their share of take-up. COIC (Council of the Inns of Court) has accepted the recommendations and DBQC is pleased to hear of the support from the BSB; he understands that they have set up a working group to look at waivers and it is intended for the implementation committee to work with them on that.

DBQC drew Bar Council's attention to the fact that there is no legal requirement for pupils to be remunerated at the same level. This is, of course, unattractive but although it is not ideal, is it not better than having fewer pupillages? If you ask students if they would prefer no pupillage or a pupillage at a lower rate of pay, they would choose the latter.

The situation is now urgent. For those who do not secure pupillage, there is no Plan B. Previously, if you completed pupillage but did not secure a tenancy, you were qualified and could become a solicitor. However, the SRA have changed the rules and those who want to switch have to go back to square one. Also, until a barrister has completed pupillage, they cannot provide legal services so at least if they get pupillage but not tenancy, they are fully qualified.

As for the other recommendations, DBQC does not see them as being controversial and assumes that there will be no difficulty in securing engagement from Bar Council.

Pupils in their third six: Lt Col David Hammond RM thanked Sir Michael Burton's working group for all the work that has been done and gave his support. He said that what has not been mentioned is support for third six pupils who may not have got tenancy. They have jumped through all necessary hoops and are working in Chambers but unfunded; they are effectively internships. DBQC noted this comment

and said that perhaps Chambers need to be reminded of this situation. However, the priority is for first and second six pupils. One of the options being considered is part-time pupillages, as suggested in the Neuberger report.

Exploring other options: Melissa Coutino (MC) asked what the timetable is for looking at the other options which are referred to, but have yet to be explored. DBQC said that they are simply in abeyance. The implementation committee will simply be looking at the recommendations in the interim report. MC said that the Employed Barristers' Committee of the Bar Council, of which she is joint-chairman, will be writing in due course to the committee to put forward far simpler ways of increasing the number of pupillages. DBQC said that any input from the employed Bar would be very welcome.

Young Barristers' Committee: David Nicholls (DN) said that the YBC is unanimously opposed to the recommendations and they will discuss it further when Sir Michael Burton attends their committee meeting in September. They are concerned that there are too many people coming through the BPTC and that these proposals simply encourage that. The recommendations also encourage Chambers to give different levels of funding, which increases the risk of unfair treatment. DN also asked where each Inn is getting the money from, as if it is even a partial substitute for the subvention to Bar Council, then effectively the practising certificate fee will increase as a result, which will have an impact on the rest of the profession. Waivers must be exercised in extremely limited circumstances. DBQC said that he is not looking for a decision of support now, everybody must have time to think about it.

Pupillages outside of chambers: Tricia Howse CBE (TH) said that BACFI support the recommendations but ideally would like them to go further. She does not think that these additional pupillages will raise expectations, but does want to challenge the monopoly that chambers have on pupillages. There are consumers other than chambers.

Available work: Adaku Oragwu (AO) said that she has been part of the sifting exercise for pupils at her Chambers where there were 537 applications for two places. Some criminal chambers are not providing pupillages because they cannot afford to pay them or because there simply is not enough work for them. Therefore, where is the benefit in these recommendations for them? DBQC conceded that it does depend whether the reason for not offering pupillage falls to funding or volume of work; he is getting mixed messages about the work is and this needs to be looked at.

Financial impact on pupils: Hannah Kinch (HK), Vice-Chairman of the Young Barristers' Committee, said that she completed pupillage four years ago and she cannot even say what her debt still amounts to as it is too depressing to check.

However, it is certainly more than the £16,000 quoted as the average student debt having completed BPTC. She is lucky in that she is in a good set, but there is still not the amount of work around in the Crown Court that one would hope for at six years' call. By increasing pupillages at the criminal Bar, it incurs extra debt as the minimum pay of £12,000 is insufficient for someone to live on. Young criminal barristers are working hard to build up their practice in the magistrates' courts and may have to give up if the burden of debt is too great and there is insufficient Crown Court work.

DBQC said that, in this case, at least the person is qualified for "plan B". HK said that this pre-supposes that industry will take these people on. There are plenty of people who complete their LPC and cannot get a training contract, so the market is being flooded. DBQC said that this applies to other disciplines, not just the legal profession. The committee is looking to help those who have embarked down this road already.

Quality: Suzanne Goddard QC (SGQC) said that her Chambers would welcome additional funding, but that her concern is that it would lower the quality of those coming to the Bar; it must be recognised that the profession needs the best qualified people. Creating a two-tier system based on how people qualify must be avoided. DBQC said that he does not share SGQC's concerns; he saw how the previous system worked - including unfunded pupillages - and it showed that many were able to display their promise. DBQC stressed that they were not looking to "do away" with 12-month pupillages.

Funding and quality: Baroness Deech said that her understanding was that the Inns' contributions would not come from the subvention, but would be a substitute for the scholarships offered to complete the BPTC. As for inequalities in payment, she would never cease to be surprised at concerns about this as there are already pay inequalities at the Bar e.g. crime and commercial. As for quality, the BSB has been working hard to push through the aptitude test to ensure that those who are not up to it do not embark on the long road to qualification. The current quality is amazing and most BPTC students would have walked it thirty years ago. What is hard to reconcile is the government's push on social mobility when there are so few places available at the Bar.

DBQC said that how each Inn funded their donations was up to them and that he does not know what they will do, except for Gray's Inn who are using funds from a bequest. The Chairman said that Middle Temple are definitely seeking to take it from the subvention and therefore the Bar will be paying for these pupillages. He would be interested to know what the take-up might be; at the last COIC meeting, Inner Temple and Lincoln's Inn both questioned whether there would be any take-up from the criminal Bar.

Social Mobility: Kerry Bretherton (KB) said that she disagreed with Baroness Deech's comment about social mobility; this topic has not been looked at properly today but she would like to be involved in further discussions as the importance of social mobility has to be recognised.

Scholarships: Zoe Saunders (ZS) said that she would, as a beneficiary of an Inns scholarship herself, be concerned to hear that scholarship money was to be used to fund pupillage instead. This simply narrows the bottleneck in the system earlier. DBQC recommended that anyone with concerns about how their Inn would pay for it should make representations directly to them.

Potential abuse of the system: AMQC said that he is in a publicly-funded chambers who take on two pupils per year. Would it not be tempting to chambers like these to say that they cannot afford to take any pupils and then apply for funding? DBQC said that the implementation committee will ensure that criteria will be set out to ensure that this does not happen and that chambers who have "played fair" are penalised.

The Chairman thanked DBQC, who received a round of applause. The Chairman said that Bar Council will think about what has been asked and will get back to DBQC. DBQC left his card and said that any Bar Council members are welcome to contact him directly with comments or queries.

6. Bar Council Financial Statements for 15 Months to 31 March 2012

Stephen Collier (SC) opened this item for the first time as Treasurer. He thanked Brian Buck (BB), the Chief Accountant, for attending to assist in answering any questions.

SC noted that the financial statements covered a 15-month period, due to the change which saw the accounting period extended in order to bring it into line with the subscription year. At the back of the financial statements provided (annex 5), data had also been presented on a notional 12-month basis, to provide a like-for-like comparator with previous years. Bar Council may note that the document looks different from previous years; this is because the financial statements and the annual reports have been separated into two documents this year.

SC reported that there are three main financial clouds on the horizon: (1) pensions; (2) withdrawal or reduction of the Inns' subvention and (3) potential financial impact of the disciplinary tribunals. A further "shadow" is the low level of reserves held by the Bar Council, which would need building back.

SC said that he hoped to bring some context to the figures by referring to the Law

Society's accounts for 2011. For example, the Law Society spends £1,000 per practitioner, raises an average of £953 from each practitioner and spends £31m on the directly attributable costs of regulation. By indirect comparison, the Bar Council spends £850 per practitioner, raises an average of £514 from each practitioner and spends £4m on the directly attributable costs of regulation. Given the greater size of the solicitors' profession, it seems that the Bar is generally overcoming the challenges of its smaller scale. It might also be worth noting that the Bar has a Council of 120+, whereas the Law Society's is made up of 98.

SC said that he would discuss pensions further under the next item, but the headlines can be found on page 28 of the financial statements. Although £5.9m has now been raised by way of pension levies over the last three years, the value of scheme liabilities has more than doubled in the same period. In overall deficit terms, we are therefore broadly where we were when we started.

On page 30, the matter of the disciplinary tribunals is addressed, although it is not known at this stage how big or ugly the financial exposure may be.

SC highlighted the main areas of expenditure: entity regulation; Core Database; new website; Free Representation Unit; funding and accommodating the interim Director of the Advocacy Training Council; QASA and the split of the Finance and Audit Committee.

Around 61% of our income comes from the practising certificate fee. 11% comes from the Inns subvention, 19% from Member Services, 10% from the BSB and 8% from Representation and Policy. In terms of expenditure, about 31% goes on the directly attributable costs of the BSB, 21% on the directly attributable costs of Representation and Policy, 37% on Central Services (including paying for the office premises) and 7% on the Chairman's Office, which includes all support staff and donations e.g. FRU, Bar Pro Bono Unit, ATC. These proportions are largely mirrored by the Law Society's income and expenditure figures; however the Bar Council operates on a far more "hand-to-mouth" basis. If you look at the figures as a simple 12-month period, the Bar Council has in fact made a £21k loss.

The priorities for the future are making sure that the Bar Council plans ahead (five years) to determine its financial strategy, moving to a more forward looking rather than reactive approach, whilst forecasting what difference any changes in income will make to the PCF and deciding how the PCF should be levied. The accounts presented here are by definition looking back - a rear-mirror view. It is important now to adapt to a front windscreen view. The questions that the Finance Committee is assessing include whether the Bar Council should change premises; what needs to be done to address the pension deficit; how should the PCF be levied and how can the internal financial controls be improved e.g. approval of expenses. SC said that

the Bar is a strong profession but it is not appropriately funding the regulatory and representational support it receives. The average contribution to the Bar Council is £510, to cover all representational and regulatory activity. In SC's opinion, this is on the light side -given the overall income of the profession and what needs to be done.

Premises: Robert Rhodes QC (RRQC) asked what the rent is on the property in High Holborn. SC replied that with all on-costs, it is about £1.4m a year. However, the answer may not be as simple as just to relocate, as this would incur relocation costs and significant service disruption. There is a working group looking at the upcoming break clause with a view to assessing all the options, including using it within the negotiations on the rent review.

Member Services Fee: Richard Atkins QC (RAQC) said, as Chairman of the Member Services Board, that surely everyone has paid their MSF! He applauded SC for grasping the nettle and tackling the things that need to be done.

7. Bar Council Pensions

Bar Council went into private session. The minutes of that session will be made available, in confidence, only to Bar Council members and the Directors.

8. Appointment of a Chief Executive

The Chairman directed Bar Council's attention to annex 7, a paper prepared by himself, MMQC, SC and Nicholas Lavender QC (NLQC). It is a short, clear paper setting out their reasons for asking Bar Council to approve the appointment of a Chief Executive Officer (CEO). When the topic came before Bar Council last year, members were not persuaded. A case in favour was not properly made and the proposed job description was not found to describe adequately the functions of a CEO. There were also understandable concerns about funding.

The Chairman said that he too was unconvinced last year. However, having been in post for six months, he believes that there is a dire need to appoint a CEO. He has outlined his main reasons for this change of heart at the end of annex 7. He has seen an added burden on the Directors and he himself has been drawn into matters which properly lie within the executive function e.g. staffing matters. Mark Hatcher has reported a four-fold increase in HR work, largely due to the Hay Review, appraisals, grievances and managing staff expectations. The Chairman said that he should not be micro-managing and that everyone should be able to get on with their own job. A CEO is imperative to the continuity of decision-making and delivering efficiencies. The current Structure Review working group can only do so much to recommend change; a CEO would be able to identify improvements and implement change. Additionally, external stakeholders, including the LSB, often ask when a CEO is

going to be appointed. This suggests that the view from the outside is that one is needed. That is also the view from staff.

No Chairman can achieve everything in a year. There needs to be a CEO to develop strategy and take a long-term view; preferably someone with commercial know-how and experience to help take the Bar into the future. His other reasons are set out in the paper. SC, MMQC and NLQC all expressed their support for the Chairman's recommendation.

Stephen Leslie QC (SLQC) said that he had been wholly against the idea for a long time. However, having been part of the Structure Review working group and having interviewed the Directors and members of the executive, his whole attitude has changed. A CEO is essential for all the reasons the Chairman has given, and to bring a sense of cohesion. There should be someone independent at the top of the structure, although not necessarily full-time. The Chairman concurred that the CEO should be independent.

Max Hill QC asked how a CEO would manage potential conflict between the BSB and the Bar Council e.g. over QASA? The Chairman said he is not seeking to "rein in" the BSB; this is not desirable. A CEO should not get involved in debate but oversee operational functions.

Sir Geoffrey Nice QC (GNQC), Vice-Chairman of the BSB, said that whilst it is not the BSB's place to say what the Bar Council should do - and he has no mandate to speak for the BSB - he wished to express his views. He asked Bar Council to exercise caution. In November last year, he had expounded the view that the Bar Council needed radical reform and suggested the "candelabra" model as an appropriate way to run, with both sides matched i.e. both having a CEO. That is still his view. He has every reason to endorse the strong executive management of the representative side; the BSB already has that and it works well.

However, the BSB must be independent. Even if a CEO were to acknowledge this, in practise it is very difficult to divorce oneself from getting involved in the regulatory side. Any line management responsibility over the Director of the BSB would be wholly wrong. No other regulator has this. It is also hard to reconcile the expenditure when the three Directors are doing the job well themselves.

GNQC raised the unusual relationship between the Bar Council and the BSB as mentioned in annex 7, but asked what handling of this relationship is required? In his view, none. The Approved Regulator (AR) does, and does not, exist. The Bar Council is not skilled, experienced or interested in managing the BSB. The BSB Board would not take orders from Bar Council. There are no minutes of any AR meetings, because there haven't been any. Instead, there is the Chairmen's Committee, held

once a month, at which both sides do whatever needs to be done.

GNQC concluded that his strong advice in the past has always been to look at the whole structure. The failure to have a Chairman for longer than a year will be the Bar Council's downfall. It is simply not possible to do anything in eight months of office and this is not a problem which can be addressed by having a CEO. The same problem applies to the Inns who cannot get anything done due to the short tenure of the Treasurers. The present system of CEO rotation between the Directors works very well and, as the BSB do not do anything voluntarily but only what they are told to do, costs are likely to increase and the Bar Council won't be able to afford it. The suggestion that the CEO could be part-time undermines the argument about consistency.

The Chairman said that he fully believed that a part-time appointment could be effective and provide consistency, giving Baroness Deech as an example of where this works well. He added that he agreed entirely with addressing structural issues and pointed to COIC, which is also redefining itself. However, that cannot be dealt within the terms of this debate.

NLQC explained that GNQC had just illustrated perfectly the difficult relationship between the Bar Council and the BSB. The B+ model is a difficult one, but it remains that this body - the Bar Council - is the regulatory authority of the Bar. It is just that it has delegated the role to the BSB. Under the Internal Governance Rules, the Bar Council has to provide resources and facilities for the BSB to do their job and to do it in a way which respects their regulatory independence. A constitution was written for the BSB and the Bar Council's Standing Orders changed to allow for that. An escalation scheme for complaints was created, as was the Chairmen's Committee. Independence is therefore respected.

However, if, as GNQC says, there is already effectively a CEO of the BSB, then the Bar Council should have one too, but not just for one part of its work. The Bar Council's work includes conducting oversight of the regulator. It is not an easy model, but shows why the Officers should have someone who deals with it all. NLQC said that there is a good working relationship between the representative and regulatory sides and that a CEO will strengthen that.

Richard Atkins QC (RAQC) said that he had supported the idea last year and this debate has simply reinforced his view. Whilst it is not ideal to be spending money, if you appoint the right person you could be saving money.

Charles Hale (CH) said that it is an interesting debate and that the independence of the BSB is only part of it. As the Bar becomes more commercial, so must the Bar Council and therefore it needs a CEO.

Tricia Howse CBE (TH) said that she feels the same as last year - the cart is being put before the horse. The whole organisation needs looking at. She supports the idea of stronger support on the finance side of the business.

AWQC said that he disagreed with TH. The Green Review and now the Structure Review have looked at the organisation and seen things that somebody who is not "in there" can see and don't have an understanding of. The Bar Council needs a CEO who can do a job that no member of the Bar can do.

NLiQC said that he had voted against a CEO on the last occasion, however GNQC has now persuaded him that one is needed.

Michael Bowsher QC (MBQC) said that he too had voted against the idea last year, however he has since joined GMC and is Chairman of a committee and this greater link with the Bar Council means that he has now changed his mind. Mark Hatcher and Oliver Delany have challenging day jobs already and it seems that there is something missing.

Guy Fetherstonhaugh QC said that if the Officers are in favour, that is good enough for him. However, what will the LSB reaction be? The Chairman said that every time he meets with Chris Kenny or David Edmonds, they ask whether a CEO has been appointed yet. This indicates that they think one is needed.

MMQC reported that Paul Mendelle QC had to leave the meeting early but has emailed her his support for the appointment of a CEO.

MDWQC said that he had been dubious but was now firmly in favour of a CEO, but asked what happens next if the motion is carried? It was agreed that it would go back to GMC to manage.

GNQC said that the LSB will not give approval to this appointment if there is any control over the Director of the BSB. Also, how can independence be maintained if, for example, a CEO is called in to sort out the QASA problem? The problem is a romantic view of the Bar and its values. It is one of a series of structures (e.g. the Inns) which is out-of-date, whereas the model which has been imposed on the BSB works, is responsive and gives public leadership. The Bar Council does not have a public face and is therefore unmemorable. GNQC expressed his concern for the Council.

Baroness Deech raised the issue of salary. The three directors are valuable and hard-working, seven days a week. If you put someone in above them, their salaries would need to go up too. The LSB will never accept a "dotted line" between a CEO and the

BSB Director.

Baroness Deech told Bar Council that they are being squashed by the LSC, LSB and SRA as well as dealing with COIC. They don't get on and cannot agree (e.g. on the pupillage issue) and cannot act together. The annual change of Treasurers means that nothing can ever be agreed - one year you have support from an Inn, the next you don't. This has happened with the Bar Nursery. A CEO will not be able to overcome that.

The Chairman said that the Law Society has a CEO and that Bar Council would like one too. If the salaries of the directors have to increase, then that will be looked at.

The Chairman asked Bar Council to vote on whether it agreed to:

- 1 to agree to the principle of the appointment of a Chief Executive; and
- 2 to agree to the appointment of recruitment consultants to advise as to salary and to identify suitable candidates for appointment.
- 3 to remit the matter to GMC to take forward

Bar Council voted; of those present only three members voted against. Motion carried.

9. BSB Consultation (Handbook and Entity Regulation)

Nicholas Lavender QC (NLQC) introduced the Bar Council's response to this "portmanteau" consultation. The final response was submitted a week ago, having been through a number of committees and the GMC. The covering paper to the response (annex 8) is not entirely correct insofar as he had not drafted the entire response - it was the work of a number of committees and he had simply pulled all the responses together. NLQC thanked everybody who had contributed.

NLQC drew attention to some specific parts of the consultation which he felt were of particular significance:

Page 9: "Do you think that a barrister should be obliged to report his own failure to comply with applicable rules?" Page 11: "Do you agree that the prohibition on dual authorisation should be removed?" Page 17: "Do you agree that this revised guidance [on disclosure of convictions] is appropriate, in order to ensure that the court is not misled?" Page 49: "Do you agree that the BSB should adopt this new approach to enforcement with greater use of administrative sanctions?" Page 54: Potential increase to level of fines which can be imposed.

NLQC said that others will have also responded to the consultation. It is now a

question of waiting to see what happens as a result.

NLQC said that he would use this opportunity to present the Professional Practice Committee's quarterly report, which is largely the same as last year's as it is a "business as usual" committee. He wished to thank the staff, by whom he is very impressed, and praised the work undertaken to man the ethics helpline, which is very well regarded.

The committee deals with confidential requests for guidance; this year there have been a lot of requests for advice about referral fees, so the committee has released written guidance. The committee are also working hard to review all other written guidance to ensure that it is up-to-date.

NLQC reported that when an issue is raised often and appears to be a growing problem, the committee may approach the BSB to see if change is necessary. NLQC gave an example of where this had happened in relation to referral fees and a possible problem where barristers are working in an LLP, which is regulated by the SRA which has no definite ban on referral fees. With the BSB's Standards Committee, the PPC successfully identified that s32 of LSA 2007 allows barristers in an LLP to be regulated by two bodies as long as the rules do not clash. As the SRA does not explicitly allow referral fees, there is no clash and therefore referral fees are against the Code of Conduct.

There were no questions.

10. BARCA

The Chairman drew Bar Council's attention to annex 9, an executive summary of the BARCA project (an escrow service for the Bar), asking members to note the decisions made by GMC and the Finance Committee. BARCA will facilitate payment to be made to barristers without going through solicitors and without the barrister holding any client money. A working group worked with Member Services to take this forward and the Chairman wished to thank Paul Mosson, Head of Member Services, who has undertaken extensive research, including steps to ensure the scheme is FSA compliant, and prepared fantastic reports to get this project approved. The next phase of the project is a pilot at various chambers across the country.

Maura McGowan QC (MMQC) said that she had invited Paul Mosson to speak to her clerks in order to ascertain whether BARCA would be useful to the publicly-funded Bar. That is to be looked into for the future.

11. Law Reform Committee: Quarterly Report

Andrew Walker QC (AWQC), appearing on behalf of Stephen Worthington QC, presented the Law Reform Committee's quarterly report and business plan (circulated at Annexes 10a and 10b). AWQC explained that this is another "business as usual" committee and that the executive summary provided sets out the work undertaken recently. The only slightly unusual work has been in relation to a plagiarism issue, as outlined in the summary.

There were no questions.

12. Professional Practice Committee: Quarterly Report

Nicholas Lavender QC (NLQC), Chairman of the Professional Practice Committee, spoke to this item under 9, above.

13. Remuneration Committee: Quarterly Report

Mark Lucraft QC (MLQC), presented the Remuneration Committee's quarterly report and business plan (circulated at Annex 12). MLQC explained that it is a very large committee, with a very heavy workload. If there was one thing that he would pick out to draw attention to, it would be the Legal Services Commission and criminal defence fees. With some cooperation, the LSC are now getting through the fees caught in the handover when they took over the payment of fees from the courts, however there are still many to resolve. The LSC are also growing quite difficult over fee notes which are not submitted within three months; MLQC has himself acted as a representative on behalf of someone whom the LSC refused to pay due to a late fee note submission. If a fee note is quite small, it may still be paid past the three months, but if it is quite large there is not much hope. The message, therefore, to all criminal defence practitioners is to get fee notes in on time.

MLQC wished to recognise the support and help given to the committee by clerks and practice managers, and also to thank Adrian Vincent, Head of Remuneration and Policy, for his outstanding support to the committee.

There were no questions.

14. Any Other Business

Congratulations and Thanks

The Chairman once again thanked Nick Hilliard QC, Mark Lucraft QC and Philip Bartle QC for all their work on Bar Council and congratulated them on their new

appointments. He also extended thanks to two other members of Bar Council for whom this was their last meeting: Max Hill QC, who has been a superb leader of the Criminal Bar Association and Malcolm Davis-White QC, outgoing Chairman of the Chancery Bar Association, who has been of considerable assistance to the Bar Council.

No other business was raised.

15. Date of Next Meeting (AGM)

The next meeting, which will also be the Annual General Meeting, will be held at 10.00 on Saturday 15 September 2012, in the Bar Council offices.