



**Minutes of the Bar Council meeting
held on Saturday 30 March 2019 in the The Rutledge Suite, Middle Temple**

Present:	Richard Atkins QC	Chair
	Amanda Pinto QC	Vice Chair
	Grant Warnsby	Treasurer

Apologies for absence

Apologies for absence were received from: Dr Mirza Ahmad, Colin Andress, Nicholas Bacon QC, William Boyce QC, Shelley Brownlee, Robert Buckland QC MP, Alexandria Carr, Celina Colquhoun, Michael Duck QC, Mark Fenhalls QC, Layla Ferguson, Guy Fetherstonhaugh QC, Richard Gibbs, Jonathan Goulding, Max Hill QC, Elizabeth Houghton, Fiona Jackson, Nicholas Johnson QC, Rebecca Murray, Grace Ong, Robert Rhodes QC, Benjamin Seifert, Rachel Spearing, Gordon Stables, Andrew Granville Stafford, Jessica Stephens QC, Jacqueline Thomas, Steven Thompson QC and Nicholas Vineall QC.

The following did not attend and did not send apologies: William East, Neil Hawes QC, Michael Jennings, Martin Nelson, Michael Polak, Andrew Spink QC, Rhodri Thompson QC and Sara Wyeth.

76 further members attended

1. Minutes of the last meeting and matters arising

The Chair began by reminding members of the Bar Council that it is important that others know about the work being carried out by the Bar Council. He appealed to circuit and specialist bar association (SBA) representatives to disseminate the messages to their constituencies.

The Chair thanked the Attorney General, The Rt Hon Geoffrey Cox QC MP for attending the meeting.

The minutes of the meeting of 9 February were approved subject to minor typographical errors.

2. Statement by the Chair

The Chair reported that the Bar Council is awaiting the Legal Services Board's (LSB) response to its Internal Governance Rules (IGR) consultation.

About judicial bullying, the Chair reported that he had received his advice to barristers back from Lady Justice Macur, who made a few amendments. The advice has now been published and has been well received. This is not a widespread problem within the judiciary. It is a minority of judges that cause a problem.

Reporting that he had visited the Legal Aid Agency (LAA) in Nottingham, which deals with the payment of criminal Graduated Fee claims, including special preparation claims. A wide-ranging discussion took place where numerous issues were raised by both sides. A summary document of what was discussed and proposals as to how the system can be improved and the Bar can ensure that fewer claims are returned or rejected will be published in BarTalk this week. The Bar Council is grateful to the LAA for working with us and a future meeting, this time to the LAA in Jarrow to discuss family fees, is planned.

The Chair said that he had written to those members of the Bar Council who have not paid the BRF and reported that most have now paid.

The Ministry of Justice's (MOJ) review of criminal defence fees has commenced. The Bar Council is represented on a panel advising a body that, in turn, advises the Criminal Justice Board. The Chief Executive, Malcolm Cree is heavily involved in trying to set parameters and objectives. Imminent meetings are planned which will focus on defence fees, litigants' fees and disclosure.

The Chair reported that he would be meeting with the Director of Public Prosecutions, Max Hill QC, on Monday. A list of requests has been put to Max Hill QC and the Bar Council is awaiting a response. Some of the Crown Prosecution Service (CPS) received a recent pay increase and the Bar Council put out a message saying that while we are delighted for them, we are saddened that the increase has not been applied across the board. Saying that he appreciates that it is the Treasury who control the budget, the Chair expressed disappointment and described the situation at the criminal Bar as 'desperate'.

With regards to the ID cards scheme, the Bar Council remains in close communication with Susan Acland-Hood and HMCTS. The Chair explained that there are still a few glitches but reassured members of the Bar Council that the Bar Council is hoping to

get the ID cards rolled out to more courts. He said that he wished to 'scotch' the rumours that ID cards will not be accepted in Crown Courts. He also said that he had spoken to Susan Acland-Hood regarding some of the inappropriate searches that have occurred. Saying that he wished to make it clear that Twitter is mistaken in its assertion that nothing is going on, the Chair invited members of the Bar Council to call him if they wanted more information.

It was reported that the next Chair's drop-in session would take place on Thursday 4 April.

A visit to the Wales and Chester Circuit took place shortly before the last Bar Council meeting and, since then, there have been more circuit visits to the North Eastern Circuit and Midland Circuit. A number of chambers have been visited and, because of the meetings, a London set has asked the Chair to come and speak to them. While the purpose of the circuit visits is to get to those areas outside London, the Chair said that he is just as keen to meet with members of the South Eastern Circuit and appealed to them to invite him to South Eastern Circuit Bar messes.

The Bar Council will be celebrating its 125th birthday on Tuesday 9 July with an event at Guildhall. More details will be available in the coming weeks.

The Chair reported that a new Court of Protection Bar Association has been established.

On Monday 1 April, the window for the Officer 2020 elections opens: Chair, Vice Chair and Treasurer. Ballot papers will be sent out on Wednesday 1 May. Describing the role of Chair as 'the most fabulous job', the Chair said that it is an honour and privilege to lead members of the Bar Council and the profession and encouraged members of the Bar Council to put themselves forward.

This's years Pupillage Fair will take place on Saturday 26 October.

The Chair reported that a message had been put out the evening before about court reform and flexible operating hours. The pilots in Manchester and Brentford are delayed. Continuing on the subject of court reform, the Chair reported that he had recently visited Lord Justice Nicholas Green (Chair of the Law Commission) and had not initially been able to get past security at Petty France. The outcome, however, was a good meeting.

Saying that he had been in Edinburgh the previous weekend for the Bar Mock Trials, the Chair reported that he had unexpectedly ended up judging the competition with Lady Rae and Sir Brian Leveson. Urging members of the Bar Council to get involved,

the Chair said that the mock trials had been fabulous to see and praised the students and teachers for hard work they had put into it.

The Chair expressed support for Dominic Grieve QC MP, a staunch supporter of Bar Council, who was facing a vote of no confidence for 'standing up and saying what he believes in and what he thinks is right'. He asked members of the Bar Council to hold him in their thoughts.

Derek Sweeting QC asked whether the issue of who will be paying for the ID cards scheme has been sorted out. The Chair replied that the Bar Council has invested £60k in the app. There have been one or two issues with the scanners, but the Bar Council controls the registering and the app while HMCTS control the hardware. Explaining that negotiations are ongoing regarding fundraising, the Chair said that the negotiations are 'positive and upbeat' and that he has a sense that the scheme is still on the way to fruition. The money to pay for the Bar Council's obligations all comes from the BRF, therefore, it is an option to grant ID cards free to those who pay the BRF only.

Robin Allen QC said that, in one sense, it is good that the flexible operating hours pilots are delayed, and he invited the Chair to say more about the reason for the delays. The Chair replied that he does not know the reasons. The Bar Council is aware that the Evaluation Groups have set out the criteria, therefore the message is not that the pilots will not go ahead, rather that HMCTS are not ready yet. The Bar Council, SBAs and Circuits are all heavily engaged.

Robin Allen QC said that he worries the pilots may run over the long vacation or at times when the profession is less engaged in practice. The Chair reassured members of the Bar Council that the Bar Council is alive to that possibility and will push back. He mentioned that one of the consequences of flexible operating hours are possible scenarios in which a barrister is sitting late in one court and then due early in another court some distance away.

Christina Michalos QC asked whether there is really no prospect of ID cards in the RCJ as there are frequently long queues at security almost back to the road and the Carey Street entrance was often closed. The Chair repeated that in those four courts there are complications but said that he would continue to press for it.

On the subject of the CPS pay awards, Andrew Morgan said that he was grateful for the sentiments expressed but that he wished to correct some misunderstandings. The FDA have been actively campaigning but not all CPS colleagues are being awarded an 8% rise. The average raise was 1.7% with some awards higher due to historical anomalies. The FDA continues to campaign for criminal justice and will be putting pressure on to ensure that agents are paid.

3. BSB Report

Baroness Blackstone presented the Bar Standards Board report. She was joined by Naomi Ellenbogen QC, Vice Chair of the BSB, Dr Vanessa Davies, Director General, and, Wilf White, Director of Communications and Public Engagement.

Baroness Blackstone began by echoing her support for The Rt Hon Dominic Grieve QC MP. She continued by summarising the highlights of the BSB Report.

The BSB met with the Council of the Inns of Court on 27 March and signed a Memorandum of Understanding on the training of barristers. Saying that she wished to correct any misunderstandings about the BSB wanting to put an end to the Inns, Baroness Blackstone was clear that the BSB recognises the vital role of the Inns and the part they play in encouraging the development of a diverse profession.

A key priority for the BSB is the implementation and evaluation of its reforms. There are now fewer policy initiatives, fewer consultations and fewer rules changes. There will, however, be a new edition of the Handbook published next week including include rule changes, most of which will have immediate effect but some of which will be staged.

The examination structure and format for the first new Professional Ethics centralised assessments has not yet been formalised but it will be a robust, high quality assessment.

The revised Handbook will give effect to the decision of the Board announced on 24 November 2017 to apply the civil standard of proof for professional misconduct proceedings involving barristers to alleged breaches of the Code occurring after 31 March 2019. The criminal standard will continue to be applied to alleged professional misconduct that occurred before that date.

Baroness Blackstone reported that the BSB has received 16 applications in response to the recruitment campaign for new Board members. Shortlisting will take place next week with the interviews following in the next couple of weeks. The BSB is hopeful of making good appointments.

Robin Allen QC said that he wished to raise a point on behalf of Guy Fetherstonhaugh QC who was unable to attend the meeting. Citing paragraph 10 of the BSB report, 'Separately, and subject to the approval of the Board on 28 March, we shall also be

publishing the fees and charges which AETOs will be required to pay under the new rules', he wanted to know what the BSB would be publishing in relation to that. He asked whether it was simply a reference to the £250 payable by pupillage training organisations or about greater course regulation. Baroness Blackstone replied that the BSB will have to charge for taking on regulation for the new course and said that the fees will be incurred by the participants. The fees have been based on careful examination of what it will cost. Some responses to the consultation suggested that the Bar should pay but the Bar Council opposed this and the BSB agrees. The applicants, therefore, will be paying with the cost split between parts 1 and 2 in the ratio 2/3rd and 1/3rd respectively. The Chair asked when this information will be published. Baroness Blackstone replied that she expected a decision document published within two weeks but said that a shorter document setting out the fees would be published in the next few days.

4. Treasurer's Report

Grant Warnsby said that as promised he was to provide an update on AtP before updating members of the Bar Council on the final budget for 2019/20 and talking about the property project costs.

As of 27 March 2019, 85% of declarations and related Practising Certificate Fees (PCF) had been paid. Although it is a bit early to tell, it appears that the forecast income is on track.

Grant Warnsby thanked members of the Bar Council for paying, and encouraging others, to pay the BRF. 480 people have paid above the £100, which is already a 20-fold increase on last year's position (14 people).

With regards to the 2019/20 budget, the overall income forecast is £18.2M. This is a slight increase on 2018/19, mainly due to the introduction of two new bands for those earning over £500k and £1M respectively. This means there is an anticipated operational surplus for 2019/20 of £350k. Other non-operating costs total £2.1M.

Grant Warnsby presented a slide showing the high-level income and costs included in the final budget for 2019/20. The Bar Council's operating costs are £5.8M and the BSB's costs are £9.5M.

Turning to the issue of the property project costs, Grant Warnsby said that he wanted to follow up on a couple of questions asked at the last meeting. The price per square foot ranges from £27-£52; service costs and the insurance guarantee amount to £205k; and, the current budgeted property costs in 2019/20 are £1.5M. Saying that the deal is a fair one, Grant Warnsby explained that it provides a cash flow benefit due to the

rent-free period; however, members would see the costs reflecting in the P&L due to accounting practices.

The Chair explained that, last year, the uptake of BRF was 52% of the Bar. A full uptake would enable the Bar Council to carry out better lobbying work, create better information and provide better statistics. Examples of the type of work that the Bar Council could do include the 'I am the Bar' campaign and corporate social mobility and diversity projects. Of the £100 BRF contribution, £8 is VAT and the rest can be set against tax. The money collected from the BRF makes a huge difference to the work of the Bar Council. The Chair appealed to members of the Bar Council to 'get the message out'.

Francesca O'Neill said that, in her experience, it is difficult persuading barristers to pay as they ask, 'what is the Bar Council doing for me?' On a practical note, the Bar Council could think about changing the timing of the BRF payment because the PCF is already a significant amount and it also coincides with the paying of the White Book, professional indemnity insurance and tax bills. To many practitioners the BRF appears to be an additional tax.

In answer to the point about what the Bar Council does, the Chair reported that the Bar Council is in the process of putting together a document that will set out what the BRF has achieved. Francesca O'Neill further suggested that BRF could be requested at another time of the year and be combined with a request for a donation for Advocate or for a particular campaign. She made the point that people want to contribute but need more encouragement, and that the timing was especially poor when barristers already had so many concurrent expenses.

The Chair reminded members of the Bar Council that the PCF has been reduced for the bottom bracket. Ryan Richter then suggested giving an option to pay the PCF in instalments and the Chair explained that barristers already have the option to pay the BRF in instalments, but it would be too resource intensive to offer it for the PCF. He promised that the Bar Council will get more messages out this year.

Francesca O'Neill said that barristers view the AtP and PCF process as a chore and suggested that it should be as easy and straightforward as possible. Grant Warnsby replied that the Bar Council is looking at ways in which this can be achieved. The PCF only pays for activities that fall under the permitted purposes whereas the BRF pays for many things. He highlighted the need to work out cash timings.

Tim Devlin described the PCF as a tax on work imposed by Tony Blair's government.

The Chair said that he wished to show his appreciation to Grant Warnsby. He also thanked those members of Bar Council staff in attendance: Natalie Zara (Head of

Governance), Phil Robertson (Director of Policy), and, Carolyn Entwistle (Head of Services to the Bar).

5. Statement by the Chief Executive

Malcolm Cree said that the Chair and Treasurer had already covered much of what he wanted to say but gave thanks to those barristers in bands 7 and 8 who have continued to pay the BRF this year despite a rise in fees.

Referring to the property project, Malcolm Cree reported that the leases are not yet signed but he expected the outstanding issues to be resolved.

The IGRs are due to be published in the next few weeks. The changes as drafted represent a major shift and could affect all regulators. While the BSB is already completely operationally independent, the Bar Council will need to give careful consideration about how it responds to those changes.

The Bar Council is providing support to the Criminal Legal Aid Review. Professor Martin Chalkley is carrying out research and working closely with the MoJ to provide timely information for the Spending Review. Data and engagement working groups have been set up and the Bar Council have individuals with the right expertise on both.

Malcolm Cree reported that the Bar Council has recently lost a few people from the Policy Team. Acknowledging that 'bright young people want to get on', he explained that this gives the Bar Council's Policy Team an opportunity to refresh and regroup. The Bar Council is continuing to make improvements to processes and controls, particularly in Financial and Performance Management.

Malcolm Cree reported that the bulk of funding for a fully rolled-out ID card scheme will be borne by HMCTS. There is a delay as Susan Acland Hood needs to find the money and write the business case, but, the Bar Council remains optimistic. The plan is to roll out the pilot scheme to another five courts (15 in total) and then implement a full roll out after that.

Speaking about future bar training, Malcolm Cree explained that the fee for the ethics exam will come from the PCF as it will become part of pupillage. All other costs will lie with the students.

6. Plans for the July meeting in Wales and PRIDE

Paul Hopkins QC, Leader of the Wales and Chester Circuit, said that he has put together what he hopes will be an interesting and varied day.

On Friday 5 July, a Bar Mess, with a discounted pricing structure, will be held at Cardiff Castle.

On Saturday 6 July, the Bar Council meeting will take place at the conference suite of the Principality Rugby Stadium. The meeting is planned to run from 11am – 1pm after which a complimentary lunch will be available for all those who wish to stay. The Circuit has suggested, and provisionally booked, accommodation but Bar Council members will need to let the Circuit Administrator know if they wish to take advantage of this.

The Chair said that he is grateful to Paul Hopkins QC, who has been liaising with Natalie Zara, Head of Governance. He explained, however, that the date unfortunately clashes with the London PRIDE event. As the Chair will be in Cardiff, the Bar Council will be represented by Grant Warnsby, Treasurer, and, Athena Markides, Chair of the Young Bar, amongst others, at PRIDE.

The Chair reported that, during a circuit visit, a barrister had suggested that the Bar Conference could take place on circuit. Emphasising the importance of the Bar Council being present on the circuits, the Chair reiterated his wish for a yearly Bar Council meeting on circuit per year but impressed on members of the Bar Council the need to attend the Cardiff meeting as a low turnout could jeopardise future plans for circuit meetings.

7. Publicity of Bar Council meetings

The Chair drew the attention of members of the Bar Council to the options paper that had been circulated. He explained that not all members of the Bar Council are aware that the minutes for the meetings are published, in full, on the Bar Council website. To ensure that all members are aware of this, and have had an opportunity to think about it, the Chair said that he had asked Natalie Zara to write an options paper.

The paper sets out three options:

- 1) Maintain the status quo;
- 2) Provide a summary for the website and full minutes for members of the Bar Council only; and
- 3) Keep the minutes behind a wall on MyBar.

The Chair explained that various bodies follow different models and asked members of the Bar Council whether they want to change the current model or leave it as it is. Leanne Targett-Parker said that she was not in favour of option 3. To this, the Chair pointed out that the Bar Council can sometimes have robust debates and full minutes increase the chances of the Bar Council receiving criticism.

Michael Hayton QC said that he is unaware of any difficulties that have arisen as a result of the minutes being published. The Bar Council has robust debates but unless there are increased instances of members facing criticism, there is no need to change the current approach. The 'halfway house' option (option 2) creates duplication, and, in any case, the minutes should be published on the website for people to see.

Andrew Morgan said that he feels that changing the approach would be like trying to find a cure for no known disease. If barristers are not happy to stand up and be heard, then they should question themselves as to why.

Francesca O'Neill suggested that Chatham House Rules should be applied for certain discussions on particularly sensitive topics.

Efe Avan-Nomayo asked about the traffic to the minutes on the website. Natalie Zara replied that no-one has ever contacted her about anything they have read in the minutes on the website.

The point was made that Natalie Zara always checks the minutes with those who spoke before they are published. To this, the Chair added that the minutes always come out with the papers to give members of the Bar Council the opportunity to correct anything in them.

Quentin Cregan asked whether there would be any difficulty in putting the minutes on MyBar generally. Natalie Zara promised to investigate this.

Christina Michalos QC said that she thought that the profession should support transparency both as a point of principle and in practice.

Alison Pickup said that on a related topic, she is surprised at how many Bar Council papers are marked confidential as she would like to be able to share them with her SBA. Natalie Zara replied that, the paper template has confidential in the header and often those writing the paper forget to remove it. The papers are not all necessarily confidential.

The Chair said that he did not get the sense that members of the Bar Council wished to change the current approach. The Bar Council resolved to maintain the status quo.

8. Issues with Family and Criminal Courts

Tim Devlin, who presented this item, said that the idea for addressing the Bar Council on this topic had come about as a result of a conversation held with another barrister in a coffee bar in Birmingham. He had been telling that barrister that everyone at the criminal and family Bar are fed up. Then, when Richard Atkins QC became Chair for 2019, RA resolved to place discussion of this item on the agenda for the January

meeting. Tim Devlin explained that, as he had been abroad for the January meeting it had been put up for the February meeting, which then ran over, and the item carried over to March.

Tim Devlin explained that the paper deals with 3 things that he wished to address in turn with a view to initiating a discussion and making some proposals:

1. The working environment in the courts
2. Expectations of Counsel
3. Non-payment for work done

With regards to the work environment, Tim Devlin said that so often in courts the lifts are out of action, there are no catering facilities, the toilets not maintained, there is no heat or light in the robing room, there are no meeting rooms, there are broken seats in counsel's bench – even in the Court of Appeal, there is a lack of sockets, and the Wi-Fi is not working.

He said that he had started to compile a list for the meeting which included things being out of action such as the prison cells at Peterborough, lifts at Southwark, robing room not heated at Kingston, toilets in Wood Green and Hove, and Snaresbrook, where the rain comes in through the ceiling.

Tim Devlin went on to say that the family courts are apparently worse. Even the Central registry has no meeting rooms available and the ladies toilets are disgusting. The more he talks to people, the longer the list becomes. Too long for the meeting.

Asking why it is that barristers are we treated like this, Tim Devlin said that the Chair drew attention to the impossibility of achieving the aims of the justice system against a background of huge cuts in the level of resources available from the treasury in his most recent Counsel column. The courts, however, are where barristers work. Although the MoJ refers to barristers as 'court users', barristers don't "choose" to work there.

Fundamentally, the current systems of law in this country cannot function without the goodwill of Counsel. The Criminal courts certainly cannot. Extra demands placed upon barristers result in work being done late at night or early morning.

According to the new Director of Public Prosecutions, Max Hill QC, there are only 2900 external Counsel instructed by the CPS in England and Wales, which is 35 fewer than the number of pilots who fought in the Battle of Britain. " Never has so much been owed by so many to so few in the field of criminal justice, often without any payment or reward."

Tim Devlin asked why barristers allow themselves to do unpaid work. Arguing that the current scheme is one that has gone on too long and one in which barristers have acquiesced, he made the point that barristers should be prevented from working for nothing unless it is a pro bono case.

Solicitors, as well as the Crown, now expect, as a condition of being briefed, advice on receipt of instructions. They expect a mess of documents to be sorted out and notices to be drafted to comply with the CPR. Counsel, however, is only paid for the trial in court, and for Court hearings. Work that is done outside Court may enable the trial, plea or settlement to take place, but barristers will not be paid unless they are physically present on that day.

Tim Devin described the system as 'iniquitous and corrosive' and said that the events are evident to all: the numbers falling out of the Junior Bar in the early and middle years. If you look around the robing rooms at any Crown Court, it is clear that only the older practitioners on higher grades can survive.

Tim Devlin said that, if we are to make the Bar happier in 2019, the profession needs to:

1. Build up real pressure for a better settlement from the treasury for the MOJ, repeatedly highlight the shortcomings all the time, and press for surroundings that allow work to be carried out with dignity. To do this, the Bar Council should establish a hotline, and keep a central register of all the complaints about the facilities so that others, for example Circuit Leaders, can use it as evidence.
2. Crack down on unreasonable demands for trial preparation by judges. The situation is improving, but there is more to be done.
3. Renegotiate the structure for prosecution and defence fees. The CBA is working on this and has asked for all court work to be fairly remunerated.

Addressing the Attorney General, Tim Devlin said that the CPS staff has seen a small increase in pay while the self-employed barristers at the criminal Bar have had a small cut in fees. He made the point that, in 1997, a single hearing, was paid £46.50 which amounted to a week's shopping in Waitrose. Today, over 20 years later, the fee remains unchanged. There is a real need to rebalance the fees between solicitors and counsel and between the prosecution and the defence.

Tim Devlin finished by saying that the Bar Council needs to make a commitment to the whole Bar that it will address some of these issues. Saying that barristers may not have to wear wigs on Saturdays, but that they can wear hats, Tim Devlin took out three baseball caps bearing the Chair's slogan 'Make the Bar happier in 2019', before handing them to the Chair, Vice Chair and Attorney General.

Francesca O'Neill said that although she does not practice in criminal or family work, she gives her full support to colleagues that do. She said that since she left Bar school, five of her successful Bar school colleagues have left the Bar as they found it impossible to live in London on the fees they were paid.

Rehana Popal said that it is not only family and crime that is affected but immigration work also. A substantive application attracts only a £302 fee but involves dealing with very vulnerable people. The pay has been cut from £78 to £54 per hour and now has a cap of five hours. She said that although she agrees with, and supports her criminal/family colleagues, it is important to note that immigration has experienced serious cuts and involved an 'obscene' amount of work for virtually nothing. To this, the Chair said that he would put a date in the diary to meet with her and discuss this further.

Francis FitzGibbon QC said that while he agrees with Tim Devlin about fees, the focus of the criminal Bar is on serving the public and clients. If practitioners are prevented from doing that, because the fees are too low, the public suffers. Emphasising the need to think about the public, he suggested that this message should be at the core of any communications. The Chair agreed.

James Keeley said that he welcomed Tim Devlin's paper. Saying that the courts used to be a stamp of civic pride, he spoke about now wading through the raw sewage at Snaresbrook. The MoJ have huge contracts with large firms and he suggested that these are broken up so that local, regional firms can carry out the repair work quickly using local tradespeople. He also made the point that barristers are treated like second class citizens in the courts and asked, 'when will we be treated and respected for the work we do?' In terms of fees, he was clear that something must change immediately as barristers are being asked to work for nothing which will, in time, lead to a decline in mental health and an increase in suicide rates.

The Chair sought to reassure James Keeley and those present that the Bar Council is alive to the issues and is making exactly those points. The Bar Council has sent a list of 16 points about how the Bar has saved the CPS money to the DPP and it will continue to 'hammer these points home'. He promised to keep members of the Bar Council informed of progress.

James Keeley said that in respect of money, unity and retention, the Bar Council cannot allow the profession to be for the rich, though, sadly, it is becoming so.

Referring to Tim Devlin's earlier comments about rebalancing the fees, Christopher Rees said that this has already been achieved as defence fees have been slashed. Addressing the Attorney General, he talked about having to play exhibits to the court on his own computer as neither the Crown Courts nor the CPS have the ability to play digital evidence to the jury. He argued that this cannot have been envisaged when the scheme came in in 1997.

Frances Judd QC, Chair of the Family Law Bar Association, thanked Tim Devlin for his paper and said that the family Bar faces many of the same problems as the criminal

Bar. Facilities vary greatly – while the Civil Justice Centre in Manchester is fantastic, Reading has no lifts and practitioners are reduced to having conversations with clients about emotive issues in the corridors. The Chair said that this point has already been made to HMCTS and the MoJ with regards to tribunals. He made the point, however, that there is no space anyway in the courts.

Frances Judd QC suggested that holding limited hearings via video link could free up some space and reported that the Public Law and Private Law Committees are working on this.

The Chair informed members of the Bar Council that he has made it his business to visit as many judges as possible, including an upcoming visit to the Senior District Judge (Magistrates Courts) Emma Arbuthnot. He said that some Judges did not realise that barristers are still being paid at the same rates that the judges were getting when they were in practise 15-20 years ago but that most judges were understanding.

The Chair asked Tim Devlin if he had told anyone about the broken seats. Tim Devlin replied that he had to which the Chair said that the Bar has a culture of complaining but not telling. The Chair also said that in Birmingham Crown Court, if you tell the maintenance staff of the problems, they will fix them. Tim Devlin replied that this is not the case in London and gave the example of a Blackfriars trial during which nothing was fixed day after day.

Max Hardy expressed dismay that resident judges are not being more courageous in demanding that the courts are fixed and that they are not prepared to take a stand or go public. Tim Devlin said that barristers should not have to work in surroundings where the facilities are not working. The downside is maintenance people coming out at specific time inconvenient to court hours.

Eleanor Mawrey said that is it not just the fees that are derisory, but the extra work they have to do and the sacrifices barristers have to make as a result. Counsel is not work shy but are forced to take on extra administrative tasks because of the cuts [across the CJS]. Barristers are the ones sitting up at night to do work that should have been done by the CPS or the police. Women are leaving the Bar in part because of fees, but in part because of the toll this extra work takes.

The Chair repeated his earlier reassurances that the Bar Council is alive to the issues and will continue to press the point with the MoJ and CPS.

John-Paul Swoboda said that he wished to raise the attrition rate of junior members of the young and criminal Bar and suggested that the Bar Council should try to gather some data that would illustrate the concerns in a convincing and persuasive

approach. The Chair made the point that this is exactly the type of work that the Bar Council could do more of if more people paid the BRF.

John-Paul Swoboda noted that the Bar Council must have a lot of data. He said that when he did his pupillage he was advised to think very carefully before joining the criminal Bar by his Pupil Master and he finished by saying that he thinks the effect on women is potentially discriminatory and unlawful if there is a greater attrition rate of women due to changes made. This point the Chair said that he would consider.

RAQC said that he had no more to say on fees but that he wished to make two more points:

1. The EDSM Committee, with full support from Officers and staff, has worked constantly on the statistics for attrition rates. The Working Lives survey – a tool which everyone in the Bar Council should consider using – sets these out; and
2. It is surely now the time to think about performance standards for courts. For example, what courts should deliver, the minimum number of court rooms, the minimum IT standards etc. The profession should be formulating what it expects. The public would likely be behind barristers and would help to inform discussions.

Andrew Morgan said that he feels there is a sense that the CPS are in some way to blame and argued that things affecting the self-employed Bar affect those at the CPS too. For example, the CPS are subject to the same pressures: working similar hours and facing similar demands. Saying that the CPS desire to constantly move cases around is a problem, he reported that the FDA is meeting with HMCTS. It is not reasonable to expect people to prepare trials in their own time and then turn up and take a lottery ticket as to which case they get. 25% of prosecutorial staff have been lost and the budget has decreased. Only now are the CPS beginning to 'rebuild ranks'. To this, the Chair said that the complaints are not aimed at those at the sharp end and Andrew Morgan made the point that the CPS relies on those at the self-employed Bar. Saying that the least the CPS can do is be polite, he also highlighted the fact that the CPS staff are under pressure too.

Samuel Main made the point that barristers carry out a public service. He suggested that the Bar Council identifies all barrister and solicitor MPs and write to them about the concerns. In addition, where barristers attend a court that is in disrepair they could write an email direct to the local MP whose constituency covers the court to make them aware of the problem. It would take no more than five minutes to write to an MP while at court. Direct contact with MPs would reinforce the work being done with HMTCS and judges.

Neil Baki said that the frustrations appear to stem from a lack of resources and money. The profession is aware of the problems and of the solution – proper investment. Saying that barristers are effectively ‘hitting their heads against a brick wall’, he pointed out that if the government doesn’t listen, there comes a point when professional bodies must down tools. This is a last resort option tub the situation is reaching this point.

The Chair replied that no one disagrees and reiterated that these are the points that are being made to the MoJ. The Lord Chancellor brought some more money to the table for defence fees and AGFS has had an 18-month review brought in. The MoJ is engaging constructively and are fully alive to the facts. The Bar Council is pressing them to say that they have to land something in 18 months’ time because there will be problems if there are any delays. It would be unfair to claim that they are not discussing the concerns or engaging. If at the end, however, all the hard work has been done and the Treasury say ‘no’, there will be ‘hell to pay’. The DPP is fairly new in post but a meeting is taking place with him on Monday that should set out the parameters. The Chair finished by repeating that the Bar Council is alive to the issues and that he personally hopes to have a criminal practice to go back to.

Amanda Pinto QC said that she is a criminal practitioner and that she agrees with the views of Tim Devlin. She said, however that for those who don’t do family, crime or immigration work, this will still affect their work. The Bar of England and Wales is seen as a beacon of excellence internationally. The fact that the court estate is so badly resourced shouldn’t be seen in isolation. A huge amount of money is obtained from international legal disputes, but all the issues have an impact of the Bar’s reputation and on England and Wales as an outstanding international dispute centre. International dispute centres are ‘popping up’ all over the world and the Bar faces growing competition across the globe. These issues put us in jeopardy as international colleagues begin to look at our justice system with dismay.

Chris Henley QC said that he writes about these sorts of concerns every week in the CBA’s Monday Message. Everyone working in criminal courts is conscious of the state the Bar is in. In the Old Bailey the lifts are out of order, there is no notice stating this, and people have to climb five flights of steps. Describing the situation as ‘shameful’ he made the point that if lifts were out of order in the Houses of Parliament, they would be fixed within 48 hours.

Chris Henley QC finished by citing a case of violent disorder in which the 12000-page briefing for an advocate for an eight-week trial was a mere £750, as opposed to the litigation fee of £75k. The Chair replied that this is precisely the sort of thing that will be discussed as part of the Review, in which the CBA are involved.

Chris Henley QC said that he finds it hard to answer questions from criminal barristers. From the prosecution side, counsel might prepare a rape case with much written work. If the defence need further evidence, and the judge concedes, the case is adjourned, and all the preparation work is wasted. The fee, in such a case, adjourned for a good reason, is £55. He informed members of the Bar Council that he and the Chair would be meeting with the DPP the following Monday. The DPP has been presented with 10 modest requests including payment for a second day of any Crown Court trial. If there are no positive answers, there will be immediate problems. He finished by saying that he had wanted to give a flavour of the issues.

Leanne Targett-Parker suggested a 'hot email' as opposed to a hotline as it would be quicker and could be done from court.

The Attorney General reassured members of the Bar Council that he is acutely conscious of the state of feeling at the criminal Bar and publicly funded Bar more widely. He went on to explain that he is aware of the state of the courts and the general malaise that perpetuates dismay throughout the profession and promised members of the Bar Council that he takes every opportunity he can to promote this. It is important, more than ever before, that the profession should be seen to demonstrate that its love of the Rule of Law is on view throughout the world. Speaking personally, he said that he feels considerable grief about what he has heard and that, during the last seven to eight months since he became the Attorney General, he has lost no opportunity to make these points.

The Attorney General said that the profession ought to be prioritising soft power assets and he spoke of a desperate need to convey the sense that practitioners are wedded to these values. Such an approach will inform the Spending Review, the purpose of which is to look from the beginning to the end of the system and to reallocate tasks so that they are remunerated, and the finances put in the right places. The whole system needs to be looked at, and the resources analysed. That is the purpose of the 18-month Review. There is nowhere in Government that the criminal justice system is being looked at as a whole. Instead, it is spread over several parts and the Criminal Justice Board does not sit often enough.

The Cross Departmental Ministerial Committee, which has now been set up to look at this, comprises the Home Secretary, the Secretary of State for Justice, the Attorney General and members of the Treasury. The reality is that the system needs proper analysis. The Committee want to make certain that, if extra money is afforded to the police, it does not result in a tsunami of arrests that the CPS has no resources to prosecute. A system is being put into place, the message has been received and steps are being taken.

The Chair said that he has been on the Bar Council for a long time and there have been occasions when Attorney Generals have come and said nothing or have not come to meetings at all. He said that he is very glad that The Rt Hon Geoffrey Cox QC MP has attended and is thankful that he is engaging.

9. Employed Barristers' Committee

The joint Co-Chairs of the Employed Barristers' Committee (EBC), James Kitching and Lucinda Orr, presented the EBC Report saying that the report outlines five strategy areas.

Aside from strategy, Lucinda Orr said that the Garden Party for BACFI and the EBC on 10 June is open to everyone. The EBC wishes to have no distinction made between the employed and self-employed Bars.

James Kitching said that he wanted to talk about reinvigorating the employed Bar. Taking the recent 2016 figures as a snapshot, 80% of respondents started work at the self-employed Bar before taking up an employed post. This is no longer the case for the reasons set out in the report. At the same time, the number of individuals going through Bar School has increased. The EBC, therefore, is keen to pursue ensuring that there are more pupillages within organisations. For example, several the larger international law firms offer pupillage. As a first step, on 27 June, BACFI and the BSB are hosting an event that will explain the regulatory requirements. Firms are being targeted and invited to come along with a view to them offering commercial pupillages. Meanwhile, any support for secondments is gratefully received.

10. Law Reform Committee

In the absence of the Chair of the Law Reform Committee (LRC), Iain MacDonald, Eelena Misra (Vice-Chair) presented the LRC Report. She said that she wished to highlight two points:

1. The Law Reform Lecture – last year's lecture, given by Sir Brian Leveson, was fantastic but the attendance levels were down overall. The LRC is looking at ways of making this event as illustrious as it deserves to be. Exciting plans are being drawn up and the LRC will consider the date carefully to maximise attendance; and
2. Consultation responses – paragraph seven of the LRC Report underlines the real breadth of topics that the LRC deal with. Responses to consultations lie on the shoulders of those on the committee and the LRC is fortunate to be able to draw on expertise where it needs to. To ensure that this remains the case, the LRC will

be implementing both an expertise / skills audit and an equality and diversity audit to make certain that its members are representative of the Bar.

11. Any other business

Derek Sweeting QC reminded those on Bar Council last year that the question of block listing had been raised. People shared horror stories of barristers and clients repeatedly turning up and being turned away. Meanwhile, Susan Acland-Hood denied that there was a problem.

Derek Sweeting QC said that he had asked the Bar Council for evidence and, once this was collated, he went back to HMCTS who now have no choice but to accept there is a problem. Working in conjunction with PIBA, Clerkenwell has been identified as a problem and HMCTS are now looking to use this court as a pilot centre. Although listing is technically a judicial function, in practice it is largely administrative.

HMCTS have agreed to share the data that the Bar Council thinks matters. For example, the number of cases adjourned because of a lack of judicial availability. The number of cases that have previously been listed before have not historically been recorded, but they will be going forward. HMCTS have conducted 'blitz' listing exercises (and will do so again at Easter) to plough through cases, but this does little to solve the underlying issues.

As a final point, Derek Sweeting QC reported that he and the Chair had met with Lucy Frazer QC MP to discuss civil and commercial listings and were told that there is no problem. Again, the Bar Council is being asked to provide evidence. Some funding has been secured and the Bar Council's new Research Manager, Cressida Miller, will be asked to look into the issues. Criminal listing has not been forgotten, but the starting point is civil listing.

The Chair made the point that it would be more helpful if the courts all spoke the same language as each other and Derek Sweeting QC appealed for help from everyone in identifying where the problems are.

The Chair reminded members of the Bar Council that the next meeting will take place at Gray's Inn on 11 May. A hustings will follow the meeting if the Vice Chair 2020 post is contested. Members of the Bar Council, therefore, should make themselves available until 12.30pm.