



**Minutes of the Bar Council meeting
held on Saturday 9 February 2019 in the Large Pension Room, Gray's Inn**

Present:	Richard Atkins QC	Chair
	Amanda Pinto QC	Vice Chair
	Grant Warnsby	Treasurer
	Robert Buckland QC MP	Solicitor General

Apologies for absence

Apologies for absence were received from: Colin Andress, Kieron Beal QC, Shelley Brownlee, Michael Collett QC (alternate attended), The Rt Hon Geoffrey Cox QC MP, William East, Neil Garrod, John Goss (alternate attended), Lisa Hancox (alternate attended), Michael Hayton QC, Max Hill QC, Sean Jones QC, Cathryn McGahey QC, Andrew Morgan, Lucinda Orr, Alison Padfield QC, Nigel Sangster QC, Rachel Spearing, Jessica Stephens, Leanne Targett-Parker, Linda Turnbull, Nicholas Vineall QC, Emma Walker and Rhodri Williams QC.

The following did not attend and did not send apologies: Caroline Goodwin QC, Michael Jennings, Tom Leech QC, Francesca Perselli, Patrick Rappo and Rhodri Thompson QC.

83 further members attended

1. Minutes of the last meeting & matters arising

The Chair welcomed members of the Bar Council to the meeting noting that the room was packed and thanking them for making the effort to attend. He reminded non-elected members of the alternates system.

The minutes of the meeting on 12 January 2019 were approved, subject to minor typographical errors.

2. Statement by the Chair

The Chair explained that the Chair's Statement is put together by a number of members of staff and said that he has requested that it is 'chopped down' for ease of reading.

The Chair welcomed Barbara Mills, the new representative for the Family Law Bar Association, to her first meeting.

The Chair congratulated Danny Robinson, a long-standing member of the Legal Services Committee, on his Silk appointment.

Included in the statement were reports from barristers appointed by the Bar Council to external organisations, which the Chair noted.

Announcing that Paul Mendelle QC has stepped down from the Bar Council, the Chair drew the attention of the members of the Bar Council to the current casual vacancy in the category of 'self-employed QC'. Thanking Paul Mendelle QC for his contribution and describing him as a 'great supporter of the Bar Council', the Chair reported that he will remain a member of the Ethics Committee.

Reporting that the Bar Council is pressing ahead with regards to court reform, the Chair informed members of the Bar Council that he would get back to them with more details in due course.

The Chair reported that the Bar Council's response to the LSB's IGRs consultation has been submitted. He explained that there are concerns about the LSB effectively driving a wedge between the Bar Council and its regulator. The proposed separation of shared services is of particular concern. The Bar Council took advice from leading counsel which suggests that the LSB has acted ultra vires. Whereas CILEx have expressed a desire for a completely separate regulator, the other affected legal organisations share similar views to the Bar Council.

The Pupillage Fair, which went well last year, will take place on 26 October 2019.

The Chair reported that the Pupillage Gateway had been running well until the very last day when a high number of applications were submitted. Two of these files were corrupted and clogged the system and the Bar Council was notified of this and extended the deadline. A twitter storm erupted and the Chair reported that he had received an email from amongst others Bar Council member Richard Gibbs alerting him to this. Saying that the team at the Bar Council worked hard to rectify the problems, the Chair announced that the deadline had now been extended to 11am the following Monday. The social media coverage had been positive, but the knock-on effect of the deadline change was that chambers timetables were affected. The Chair said that the Bar Council has apologised publicly and sent out a message suggesting that students did not leave it to the last minute of the extended deadline to submit applications. The Chair sought to reassure the members of the Bar Council that the Bar Council will do all it can to ensure that this does not happen again but emphasised the fact that the Bar Council had reacted quickly.

On the subject of harassment and bullying, the Chair reported that he has been in touch with the Senior Presiding Judge, Lady Justice Macur, who is in receipt of a draft

of the bullying advice that she is reviewing. He said that he hoped to bring good news to the next Bar Council meeting.

The Chair noted the number of meetings with parliamentarians that have taken place over the last month, announced that the Chambers Management Package has now been rolled out, reported that Alexandra Robertson has been appointed a Vice-Chair of the International Committee, and, pointed to the diary section of the statement for noting.

The Chair reported that Thursday had seen the publication of the government's long awaited LASPO Review and said that it has not delivered much in the way of money. Although £5M has been pledged for technology and there is a little more available for immigration work, the Bar Council had hoped for more in the removal of the 'innocence tax' and in respect of family proceedings. The Review makes a number of promises to look into or review things further, but the Bar Council's statement makes it clear that this has been a missed opportunity. The Chair acknowledged, however, that it is the Treasury that holds the funds. Conversely, The Law Society have reacted very positively to the Review which rather misses the point that no more money has been injected into the system.

The Chair informed members of the Bar Council that he had visited the Legal Aid Agency (LAA) in Nottingham the day before, accompanied by Jo Cecil of Garden Court Chambers and Phil Robertson, Director of Policy. He said that the point of the visit had been to improve relations and reported that the meeting had been generally positive.

Switching to the topic of Bar Council members who have not yet paid their BRF subscription, the Chair said he has written personally to each of them. The focus will now shift to non-paying committee members.

The Chair explained that Malcolm Cree, the Chief Executive, was unable to attend for personal reasons.

3. BSB Report

Baroness Tessa Blackstone, Chair of the BSB, presented the report. She was joined at the meeting by Alex Skirvin, Communications and Public Engagement Officer, and Naomi Ellenbogen QC, Vice-Chair.

Baroness Blackstone reported that there have been recent amendments to the BSB Handbook and explained that they are not about changing the rules, but are designed to clarify existing policy and practice.

The BSB has published a review of the way in which pupillages were advertised in 2018 and of the selection criteria used by barristers' chambers. The review and its findings have helped inform the BSB's guidance on best practice, which is useful as

the current rule prescribing precisely what organisations must include in a pupillage recruitment advert will no longer apply.

The BSB Board agreed new rules for barristers to improve transparency standards for their clients at its meeting on 31 January 2019. These were published on 1 February 2019. Subject to Legal Services Board (LSB) approval, the new rules will come into force in May 2019, with compliance spot-checking starting from 2020.

On 1 February the BSB published its annual report on diversity at the Bar. The report shows that progress was again made in 2018 with regard to both diversity at the Bar and to the disclosure rates of barristers providing data. It also shows that while the diversity of the Bar is improving, more still needs to be done. Some of the key findings include:

- male QCs still outnumber female QCs, but the percentage of female QCs increased from 14.8 per cent in December 2017 to 15.8 per cent in December 2018; and
- the percentage of Black and Minority Ethnic (BAME) practising barristers has increased by 0.3 per cent compared to December 2017. 13 per cent of the practising Bar is now BAME.

Baroness Tessa Blackstone said that she hopes the profession will respond to the consultation on FBT costs which closes on Friday 1 March.

The BSB is recruiting for two new barrister members to replace one long-standing member and another member who has become a judge.

Janet Bignell QC asked the BSB how it will monitor whether the increase in the minimum pupillage award has any effect on the number of pupillages offered, particularly by those sets undertaking publicly funded work. She explained that her Inn would like to learn more about the measures and/or proposals that have been put in place to undertake this monitoring work and for the assessment of the results. Baroness Tessa Blackstone replied that it is too early to give figures on numbers of pupillages but promised to report back to the Bar Council at the next meeting.

The Chair thanked Baroness Tessa Blackstone and the other BSB representatives for attending the meeting and presenting the report.

4. Treasurer's Report

Introducing himself to the members of the Bar Council, Grant Warnsby, Treasurer, acknowledged that there are a number of new members and said that, for their benefit, he wanted to do a 'quick canter' through the current financial situation and its background.

The accounting period ends on 31 March and the Bar Council is currently forecasting a £370k deficit. This has increased BY £60k since the last report. The increased deficit is due to:

- 1) Success fee for new leases on the High Holborn premises; and
- 2) Income we have generated in 2018/19 has fallen below what was forecast.

Explaining further how the 2018/19 deficit had arisen, Grant Warnsby said that the PCF is down by £484k and the BRF down by £131k. He urged members of the Bar Council to pay the BRF, thanked the Chair for the chaser letters that he has sent, and encouraged members to send similar letters to their constituents.

Grant Warnsby said that the good news FOR 2019/20 is that the PCF proposals presented to and agreed by the Bar Council in November 2018, have been put forward to, and approved by, the Legal Services Board (LSB). These are:

- 1) Band 1 – a reduction in payment (to £100) for those earning less than £30k; and
- 2) Bands 7 and 8 – increases. 3. the removal of the bulk discount payment.

Taken together these changes are predicted to generate an additional £1M which will be of benefit to the whole Bar. These changes are helpful but the Bar Council still faces three key risks to its financial performance in 2019/20:

- 1) reduction in BRF income;
- 2) The Defined Benefits Pension Scheme deficit (which is due for its triennial review); and
- 3) The property project (if the Bar Council approves the leases, a refit programme will commence and the costs need to be managed).

Grant Warnsby said that good cost control is critical and explained that he sees the next year as an opportunity to bring better reporting and monitoring. A new financial improvement programme is being carried out to address budgeting processes and controls and it is hoped that this will culminate in the provision of better data. The programme is being implemented by the Finance Director, Richard Cullen, who is hoping to budget in three- year terms (rather than the current one-year system), allowing for better control.

Speaking about the forward agenda, Grant Warnsby informed members of the Bar Council that he will bring an update on the 2019/20 financial budget to the March meeting. In May he will report back on the PCF and BRF raised and at September's AGM, Bar Council members will be presented with the final accounts and highlights of the year 2018/19.

The Chair thanked Grant Warnsby for taking on the role of Treasurer. He reiterated the importance of BRF and encouraged members of the Bar Council to get messages out to all constituents telling them what the Bar Council does to make their lives better.

He explained that £100 makes a huge amount of difference to the Bar Council and what the Bar Council can do to represent the profession.

Referring to the BSB Board vacancies, the Chair explained the importance of securing good Board members to explain matters and to get the message across. If the profession can provide good Board members it is to the benefit of the Bar.

5. Statement by the Chief Executive

The Chair said that Grant Warnsby had covered most of the matters that would have been covered by Malcolm Cree but said he ought to cover the matter of the Criminal Justice Board on which the Bar Council now has a seat. Highlighting the importance of the Bar being represented, the Chair expressed gratitude to Malcolm Cree for his assistance in this matter.

6. Office lease sign off

Grant Warnsby explained that he was seeking the approval of members of the Bar Council to enter into four new leases. Outlining the background for those not present in 2018, he explained that there had been a possibility of the Bar Council moving offices, but it transpired that the better all-round option was to remain at the current High Holborn premises. The property project was put on hold due to the potential 'Brexit effect' impacting on rents. This impact did not appear to have materialised and the project was resurrected.

Heads of Terms have been agreed and approval from the Bar Council is now sought to enter into the final leases.

The Heads of Terms set out, on paper, the terms of the agreement. The Bar Council is looking for a lease to start on 29 March. Grant Warnsby explained that, given the next Bar Council meeting is 30 March, an immediate decision is required. He described the lease opportunity as 'very flexible' with one lease per floor and 15-year terms. The proposal is to retain the fourth floor until the end of the year to allow the programme managers to carry out the refit.

Describing the terms as 'financially good', Grant Warnsby said that an initial 23 month rent free period has been agreed with a possible additional seven months' rent free at the start of the 11th year under each lease if the relevant tenant only break clause is not exercised.

The landlord has also agreed a £450k contribution to the Capital Works (HVAC - air conditioning, heating and ventilation). Referring back to the previous risks mentioned, the costs will be scrutinised and managed. The draft leases are being reviewed. Grant Warnsby said that he wished to thank Guy Fetherstonhaugh QC and Andy Curtis, Head of Facilities and Property, for their help with the project.

Robert Rhodes QC thanked Grant Warnsby for his helpful explanation and enquired about the cost of the rent per square foot. Grant Warnsby replied that he would find out and revert.

Lorinda Long asked about the cost of the charges and insurance deposit. Again, Grant Warnsby said that he would find out.

Alexandria Carr said that she had noticed the 10-year break clause and asked if that was normal. Referring to a case being argued in the courts at the moment, which arose due to a lack of a break clause, she wondered whether it would be wise to have a contingency plan. Guy Fetherstonhaugh QC replied that he had been told the terms are pretty standard. Saying that he didn't know about 'normal', he explained that five years would have been preferable, but the rent would be more expensive. In the end, the Bar Council agreed it could live with a 10-year break clause. The agreement is flexible as there are separate leases for each floor and a lease can be sublet at any time.

Grant Warnsby reported that the fact that the leases had been under the Landlord & Tenant 1954 Act, and the Bar Council's rights under this, had helped with the negotiations.

Tim Devlin, drawing an analogy with Brexit, reminded everyone that the lease was due to end on the 29th March and that the Bar Council was planning to leave the premises with no deal, when right at the last moment the landlord came back and offered a better deal than had been expected.

Members of the Bar Council unanimously approved the proposal to enter into the four new leases.

7. BSB BPTC fees – consultation response

Guy Fetherstonhaugh QC informed members of the Bar Council that the latest FBT consultation paper is 'running live' and reported that the Education and Training Committee is preparing a draft response in conjunction with the Young Barristers' Committee.

Describing the paper as 'not long but complicated', he explained that the BSB's proposal brings in further regulation fees and reported that the question is who bears the burden – the PCF, the students or chambers.

The BSB estimate the regulatory costs of supervising the course at £870 per student. At the moment, the existing regulatory costs are passed to the providers, who presumably pass them on to the students. Guy Fetherstonhaugh QC said that it is his opinion that this should not be covered by the PCF and that the current arrangement should continue.

On top of the initial £870, however, there is another £870 fee, this time for the ethics course and exam, which is to be taken by pupils, rather than during the BPTC. Guy Fetherstonhaugh QC said that, personally, he thinks this should be picked up by the

PCF. Some people think that the chambers should pick up the fee, but, many chambers don't offer pupillage.

Guy Fetherstonhaugh QC said that the BSB proposal that the £870 fee should be front-loaded is unfortunate, because the whole point of the COIC model is that it should be cheap to fail Part 1. Part 1 will be a lot more expensive if the students have to pay £870 up front. The response proposed is that this is split between the two parts at a proportionate 60/40 rate. But, down the line, part 2 will only take those good enough, thereby loading costs onto fewer people and raising the cost per student to more than £1500.

Over 10% of the cost of the new course in those circumstances would be purely regulatory, which seems disproportionate. Discussion took place as to how that might be ameliorated.

8. Publicity of Bar Council meetings

The Chair said that this agenda topic (originally put on the agenda as item 11 but discussed as item 8) had arisen for a variety of reasons. Explaining that the minutes of the Bar Council meeting are available publicly, and that members of the Bar Council live-tweet the discussions as they are taking place, he said that he was keen to ensure that Bar Council members understood and were aware of this.

The Chair announced that the Bar Council will be looking into the possibility of secure minutes. He also made the point that the BSB attend for the BSB Report and then leave so that they are not party to the rest of the discussions, yet they receive the minutes and can read the live-tweets.

The Chair indicated that an options paper will be presented at the next meeting.

9. Proposal for Online Voting in Bar Council Officer and Subscriber Elections

The Chair referred to the paper at agenda item 4, proposing an online voting system for Bar Council officer and subscriber elections. He explained that currently paper voting forms are sent out via post for barristers to tick and return. Some barristers don't read the papers and a number of mistakes are made each year, rendering those votes void. The current system costs money each year and the Bar Council feels that it is time to move into the present and make use of the technology.

Members of the Bar Council unanimously approved the proposal for online voting for officer and subscriber elections and the necessary changes to the Constitution to allow for this.

10. Bar Council Charity

The Chair explained that the Bar Council has been offered money by BMIF to deliver the equivalent of an employee assistance programme but explained that the money

has to be paid into a charity. The suggestion is that the Bar Council sets up a charity with a wider remit that will make the Bar 'a happier place'.

Members of the Bar Council unanimously approved the proposal to set up a Bar Council charity with a wider remit that will allow the Bar Council to receive BMIF funds and to make use of other charitable donations for other initiatives.

The Chair reported that on Monday 11 February he would be holding his first open afternoon to which all barristers are welcome to call in or drop in with concerns, suggestions or questions. Phone calls will be taken from 4pm-5pm after which people can drop in in person until 6.30pm. Saying that the Vice Chair, Treasurer and Chair of the Young Bar will also be present, he encouraged members of the Bar Council to tell their constituents.

11. Location of meeting of 6 July

The Chair explained that the Bar Council currently has no accommodation for its July meeting as the Inns are all busy and building works will be taking place at the Bar Council offices. The suggestion is that the Bar Council goes out on tour.

The Chair said that, while he has suggested his home town of Birmingham, the Leader of the Wales and Chester Circuit, Paul Hopkins QC, has offered to accommodate a meeting in Cardiff. It is hoped that one circuit meeting per year is something that will continue in the future.

Explaining that the Bar Council meeting on circuit would start a little later, the Chair acknowledged that there are differing views and encouraged members of the Bar Council to consider the options. For Birmingham, St Philips Chambers would be able to accommodate a meeting and Aston University have reached out. The Chair then invited Paul Hopkins QC to speak to his Cardiff proposal.

Paul Hopkins QC began by saying that he supported and endorsed the 'excellent initiative'. Acknowledging that members on the Wales and Chester Circuit express feelings of remoteness from the Bar Council, he said that getting out into the circuits will help to educate more people about what the Bar Council does. He said that he had no problem with Birmingham, the city where he went university, and acknowledged its central location is convenient, but made a plea for Cardiff, promising to put on a Bar Mess on the preceding evening for those willing to stay overnight. He added that the Bar Council is the Bar Council of England and Wales and this is a welcome opportunity to show how inclusive it is.

Paul Hopkins QC finished by saying that if Birmingham prevails, he hopes that this bid will a marker down for a meeting to be held in Cardiff or another place in Wales in the near future. To this, the Chair said that he hoped that from here on in, there would be one meeting a year outside London. Paul Hopkins QC assured members of the Bar Council that they would receive a great welcome in Wales.

Robin Allen QC, expressing a preference for Birmingham – the city in which he was born, said that he thought this was a great idea. He suggested that if the meeting is held on another circuit, there ought to be a location specific item on the agenda, for example, a presentation from the Circuit Leader.

Fiona Jackson raised concerns about the cost of travel and accommodation, especially for the more junior members. She acknowledged that some circuits sponsor the cost of travel for their representatives and wondered whether others may follow suit. She finished by expressing support for Wales on account of being half Welsh! The Chair acknowledged the cost element but said that he did not think it would be too great.

Frances Judd QC expressed support for Wales.

Christina Michalos said that, whether the meeting was to take place in Birmingham or Cardiff, it was important that everyone on the Bar Council commits to actually going to it. Describing it as a 'great idea' she agreed with the inclusion of a location specific agenda item and suggested that the relevant Circuit should encourage its members to attend. She said that when she had previously been a Bar Council member, she could not recall a single meeting when any non-Council member had ever attended.

Sara Wyeth said that she wished to pick up on the travel cost point and reminded members of the Bar Council that railcards, which will make travel far cheaper, are available for those aged 30 or below.

Saying that he is 'from the North', Martin Nelson made the point that moving the meeting from London to Birmingham could be considered a 'baby step' by those who regularly travel down from the north of the country. Describing it as 'moving from one part of the south to another part of the south' he encouraged members of the Bar Council to vote for Wales and said that if the first circuit meeting is to be in Birmingham, the Bar Council will need to make it clear that it will expand to other circuits in the future.

Gordon Stables said that he is a great fan of the proposal and that he would love to see the Bar Council going out of London. Saying that he tries to deal with the issue of remoteness in robing rooms, he said that he was sure that the circuits would put on messes if the meetings were held outside of London. He finished by saying that it is a 'fantastic idea' that he fully supports.

Athena Markides agreed that the idea to go out on circuit is a fantastic one and offered to coordinate travel for any members of the Young Bar so that the Young Bar cohort can all travel together at a cheaper rate.

Bill Mousley QC joked that Winchester on his circuit was the most obvious choice! Expressing support for the idea, he said that from a funding point of view, he had no doubt that there would be an option from the SBAs and Circuits to cover costs and suggested that the Bar Council consider the same for the elected members. To this,

the Chair explained that the Bar Council does not have a great deal of money and said that, although the Bar Council would be unable to fully commit to this, the idea could be explored for the future.

Paul Hopkins QC, returning to the idea of a location specific agenda item, reminded members of the Bar Council that Lord Thomas of Cwm Giedd is currently chairing the 'Justice in Wales' Commission. A potential separate jurisdiction for Wales is one of the issues being addressed by this Commission, which has potential implications for the structure and regulation of the Bar. He suggested that the potential implications for the Bar and its regulation would be an ideal topic for a Cardiff-based meeting.

Members of the Bar Council voted in favour of a Cardiff based meeting with 46 votes cast for Cardiff and 30 for Birmingham. Therefore, the Bar Council's July meeting will be held in Wales. Paul Hopkins QC agreed to bring a paper to the next meeting outlining the plans.

12. Remuneration Committee Report

Nicholas Bacon QC explained that he and Neil Hawes QC co-chair the Remuneration Committee which is split into crime, civil (public), civil (private) and family law areas of work. He said that the short report included in the Bar Council papers covers a vast amount of work and, beginning with key priorities and activity highlights, it seeks to identify key elements of the Remuneration Committee's work. At the time of writing only LASPO part 1 had been published but not LASPO part 2, which is therefore not mentioned. Since the Bar Council papers were sent out, the Government has released part 2.

Nicholas Bacon QC explained that part 1 of the LASPO report covers the income size and effects of AGFS and the scope changes to civil legal aid. He reported that there has been a spending fall of £90M in civil work and £160M in family work. The Government is planning to undertake further reviews and, in February 2019, the MoJ published 'Legal Support: The Way Ahead An action plan to deliver better support to people experiencing legal problems'. This includes a review of eligibility which Nicholas Bacon QC welcomed, describing it as 'encouraging'. However, he expressed disappointment and concern that while the MoJ has said that they 'will continue to work with The Law Society to explore an alternative model for family legal aid,' no mention has been made of the Bar Council.

Nicholas Bacon QC went on to explain that one of the consequences of a reduction in civil funding is an increase in litigants in person and warned that the system cannot cope. The review includes a heading entitled 'Enhancing support from LIPs' and promises to both enhance support and increase funding to the tune of £2M in the next two years. The review also addresses the modernisation of the Justice System and pledges £700k to the Solicitors Regulatory Authority to support and develop artificial intelligence in the legal services sector.

As far as criminal legal aid goes, it is Neil Hawes QC who leads the Remuneration Committee in this sphere of work. There is a clear statement that there is going to be a criminal review of structures and pay schemes by the end of 2020.

Turning to part 2 of the LASPO report, Nicholas Bacon QC said that with regards to fees reforms in civil cases, there are three main points:

- 1) The Government is continuing to look into fixed fees in multi-track cases;
- 2) Damages based agreement are being reviewed; and
- 3) Qualified one way costs shifting is not going to be extended to other consumer claims.

Speaking about the LASPO reports from the point of view of criminal reforms, Neil Hawes QC acknowledged that, with regards to part 1, the criminal Bar has had a busy year with AGFS. He said that while the scheme is not perfect, the degree to which the case mix and equality in crime has reduced is shifting. Page counts still exist and, as a mark for value, the MoJ have used the litigators system in terms of crown court work. Part 1 finds that since the LASPO reforms, there has been a steep decrease in legal aid volumes in the magistrates' court and Crown Court. Overall, legal aid grants in the magistrates' court have decreased by 45% from 431,000 to 236,000 between 2010-11 and 2017-18, whilst Litigators' Graduated Fee Scheme volumes have fallen by 27% from 130,000 to 95,000 between 2010-11 and 2017-18. However, the MoJ does point to an increase in average case costs in Crown Court legal aid since 2012 but describes this as a significant portion of that fund going into AGFS and LGFS.

Neil Hawes QC said that high page count cases are still very much an issue for debate and continue to be in scope. He explained that one of the challenges faced is how to demonstrate value for money. This is clearly still causing concern at the Bar.

Nicholas Bacon QC, returning to the Remuneration Committee report, said that Very High Cost Cases (VHCC) are covered in the LASPO part 1 and 2 reports. Referring to magistrates' court fees, he explained that discussions are ongoing about the proposed revised Magistrates Court Protocol but said that the Bar Council 'is not quite there yet'. Fees being proposed for approval in the Protocol are £50 for a first appearance, £75 for a half day trial, £100 for hearings of more than three hours and £150 for a full day trial. Nicholas Bacon QC said that it is hardly surprising that the Young Bar are so vocal given the figures.

Another priority for the Remuneration Committee in the case of family work to secure arrangements where barristers are paid directly in publicly funded work. Instead, barristers are paid under another system. Nicholas Bacon QC said that this looks as if it is on the MoJ's agenda and described it as 'helpful' for family practitioners.

Nicholas Bacon QC drew to the attention of members of the Bar Council the link to the Remuneration Committee's Taxation Panel 'Making Tax Digital: Bar Council Briefing Note 1: The New Requirements' in the Remuneration Committee Report and

also circulated with the 20 December 2018 edition of BarTalk. He also asked members of the Bar Council to note the listed activities set out in the report.

Nicholas Bacon QC finished by thanking Remuneration Committee members Martyn McLeish and Mike Horne for their 'hugely influential' work into the ongoing reforms, for example the fixed cost protocol / clinical negligence reform work.

Francesca O'Neill informed the Remuneration Committee co-chairs that she has been contacted by various criminal barristers reporting serious problems in getting paid by the Legal Aid Agency. She cited an example of one barrister who had conducted a six day trial in full after which the jury were discharged and the case listed for retrial. His claim was refused three times before he was finally paid. She asked whether she should encourage such barristers to contact the Remuneration Committee. Nicholas Bacon QC and Neil Hawes QC agreed that she should. Neil Hawes QC also raised the topic of liaison individuals in chambers which should be capable of making contact with the LAA but acknowledged the problems.

The Chair reminded members of the Bar Council that he had met with the LAA the day before. What he found were people who seemed to be trying to help. The Bar Council is in discussion with the LAA with a view to making things better and lines of communication have been opened. Promising to issue a statement concerning the visit, the Chair asked that members contact Adrian Vincent, Head of Policy: Remuneration and Employed Bar, if their chambers has problems.

Christopher Henley QC said that the CBA has a dedicated email account for this (agfs@criminalbar.com) and noted that it can be an effective way to learn what the problems are and solutions might be, and to share experiences. He cited a personal experience in which he had not been paid a trial fee which had been due. Neil Hawes QC said that the key point is to use those channels so that 'hard facts' may be collated.

Christopher Henley QC raised the subject of TNP payments, describing them as a 'bug bear'. The Chair replied that TNP payments had featured at the meeting the day before and said that he would put a note out. Christopher Henley QC said that the CBA is intending to produce guidance that will deal with many of these problems. Describing fees in many cases as 'pathetic', he said that it is even more scandalous when they are not paid.

Frances Judd QC reported that, first, the FBLA's Fees Team are working hard in conjunction with the Bar Council's Remuneration Committee to look at fees in High Cost Cases and are hoping for progress. Secondly, the LASPO report raises an important point about private law cases. The Government thought that the removal of aid from these cases would result in a reduction in the number of cases brought whereas, in reality, it has had the opposite effect.

Alison Pickup said that she wished to make a point about the review of eligibility thresholds which have not increased in civil and crime cases for many

years. Explaining that many of those ineligible for legal aid can't afford their daily living costs, she said that it would be great if the Bar Council could contribute to this review.

Eleanor Mawrey said that she had been disappointed by the way in which the LAA dealt with the 'digital meltdown' in January. Expressing frustration that barristers had been made to 'jump through hoops' to prove that they had been in attendance, including a suggestion by the LAA that barristers send copies of their attendance notes which would be covered by privilege. She said that the LAA should have accepted the word of barristers, who are bound by a strict code of conduct. To this, the Chair said that, although he is not an apologist for the LAA, there have been instances in which barristers who have claimed to have been in court have subsequently been proved not to have been. He agreed that the IT meltdown had been a problem but suggested that barristers submit suitably redacted attendance notes.

Neil Baki said that the publicly funded Bar is in a dreadful state and asked what the Bar Council plans to do about this. He said that there appears to be a deliberate culture to make it as difficult as possible for advocates to get paid. Saying there comes a point when the Bar Council needs to 'stand up', he made the point that while it is fine, in theory, to say that a review is underway, there has just been a review of LASPO and the response is 'dreadful'. He suggested that the Bar Council should be proactive and take the fight and argument to Government. Paper heavy cases are onerous and burdensome. The review will take 18 months and then 'nothing much will happen'. He reasserted his plea to be firmer with the Government, MoJ and other legal authorities.

Neil Hawes QC said, that for his part, the Bar Council needs to think more thematically. Speaking from experience, he said that it is important to empower the MoJ with the Treasury. In order to do this, the Bar Council needs to arm itself with factual data and to understand the precise requests. Nicholas Bacon QC agreed and pointed out that the Bar Council has enjoyed success with fees on the civil side. This has been achieved through the production of considered reports on the cost of producing the work and putting forward a positive case as to what constitutes an acceptable level of remuneration. Explaining the importance of being confident about the evidence being presented, he said that with the Jackson Reforms, the Remuneration Committee formed a sub-committee to collate information which found its way into the intermediate track procedures. Emphasising the importance of engaging, he acknowledged that while some want to take a harder line in opposing change, 'working within and not on the outside' is a better approach.

Neil Baki said that he could not imagine that the Bar Council is starting 'from scratch' in terms of information. Neil Hawes QC explained that the issue faced by the Remuneration Committee has been how to capture data. Examples need to be recorded and there is a bigger question around how to decide an appropriate fee. Saying that as a Head of Chambers he keeps records of the numbers of cases being

refused and why, Neil Hawes QC made the point that this is not a one-year plan. Instead, the Bar Council needs to have a properly identified strategic overview. To this, Nicholas Bacon QC raised the need for funding saying that the Bar Council cannot afford to put a 'Rolls Royce' proposal with expert opinions.

The Chair said that it is his experience that those who 'bleat the loudest' are those who do not pay the BRF. Only a third of the criminal Bar pay the BRF but vast amounts of work are being carried out into matters affecting the criminal Bar.

Robert Buckland QC MP reminded members of the Bar Council of his background at the criminal Bar and said that he understands the issues. Citing disclosure as an obvious example, he said that the MoJ acknowledges the need to look at the fees structure. How to devise and develop a system of fees to reflect that has to be at the heart of the review but there are inherent dangers in a review that takes too long. Robert Buckland QC MP described the work carried out by the Bar Council with the assistance of Professor Martin Chalkley as a 'significantly different approach' and suggested that for this review, if the Bar comes forward with proactive proposals, the MoJ will have to listen. This is an opportunity for the profession to fill the gap. Saying that he could not promise immediate solutions, Robert Buckland QC MP pointed to what happened with AGFS as a 'glimmer of hope' and encouraged the Bar Council to focus on what a modern criminal trial looks like.

Gordon Stables spoke of the 'huge anger' in North Eastern Circuit robing rooms about fees which are considered 'woefully inadequate'. There is also anger around the prosecution fees. He cited examples of senior female criminal practitioners moving to other areas of crime and of those who wish to switch to other areas of work completely. Saying that people are not prepared to work for such derisory fees, Gordon Stables noted the effects of this as where Silks are drawn from and the quality of Silks available. He was clear that double digit increases are needed and that this needs a serious and fundamental review. Gordon Stables finished by saying that over the years the Government has got more and more for less and less.

The Chair said that he understands the issues and explained that those are precisely the messages that the Bar Council has been taking to the people it meets with. The crucial part is that a review is needed. It is for the Bar to decide what it wants to do, but it must engage. The Bar has seen some more money injected into the system for the first time with this Lord Chancellor, underlining the need to engage constructively and to be a bit canny. Explaining that the Chief Executive, Malcolm Cree, has been investigating what the parameters are, the Chair promised not to allow this to slip. The review, however, is the problem as until that concludes it is not possible to change the approach.

Gordon Stables said that he tells anyone who speaks to him that the Bar Council and CBA are taking on this point.

Bill Mousley QC said that the Bar Council has the capacity to drive forward change. It should be a simple sell to encourage people to pay the BRF. Most don't understand how much goes to the regulator. The Chair explained that 71% of PCF income goes to the BSB and said that while the remaining 29% goes to the Bar Council, it may only be used for work which falls under the permitted purposes as outlined in the Legal Services Act. It cannot be used for all of the representational work the Bar Council undertakes.

Gordon Stables promised to put this information in a simple email to all members of his chambers and the Chair said that the Bar Council would look to do the same for the profession. Alexandria Carr suggested including the information in a blog.

13. Issues with Family and Criminal Courts

Given the time, Tim Devlin, who had requested discussion of this issue on the agenda, agreed to postpone it until the next meeting. He said that given 'all the awful things at work', for example leaks and out of date toilets in the courts, he wished to hold a discussion on working conditions.

Mark Fenhalls QC made the point that 'evidence runs through all this' and he encouraged members of the Bar Council to tell others to stop just complaining on twitter and send in evidence to the Bar Council, SBAs and to Circuits. To this, the Chair raised the importance of using MPs as a communication channel.

On the subject of wider communication and by way of illustration as to its importance, the Chair said that, in response to a message he sent out about criminal fees, he received feedback from members of the family Bar expressing dissatisfaction about fees in Very High Cost Cases. As a result of this, he reported that he has been able to get this back on the agenda.

14. Any other business

Rachel Langdale QC, who is organising this year's Bar Conference, encouraged members of the Bar Council to attend the Conference on 23 November at the Grand Connaught Rooms. Saying that she has liaised with the Chair of the Young Bar, SBAs and the Circuits, she explained that the Conference will have a different format this year. The aim is to have all delegates together for topics of common interest. A number of great speakers have been secured including several regional speakers.

The Chair reminded members of the Bar Council that the next meeting is scheduled for 30 March and said that he was looking forward to hearing about the plans for the July meeting in Wales.