



**Minutes of the Bar Council meeting  
held on Saturday 11 May 2019 in the Large Pension Hall, Gray's Inn**

Present:	Richard Atkins QC	Chair
	Grant Warnsby	Treasurer

**Apologies for absence**

Apologies for absence were received from: Richard Archer, Efe Avan-Nomayo, Nicholas Bacon QC, Neil Baki, Kieron Beal QC (alternate attended), Robert Buckland QC MP, William Boyce QC (alternate attended), James Corbet Burcher, The Rt Hon Geoffrey Cox QC MP, Guy Fetherstonhaugh QC, Max Hill QC, Elizabeth Houghton, Fiona Jackson, Michael Jennings, Frances Judd QC, James Keeley, Tom Leech QC, Lorinda Long, Andrew Morgan, Rebecca Murray (alternate attended), Francesca O'Neill, Grace Ong, Alison Pickup, Amanda Pinto QC, Michael Polak, Rehana Popal, Eason Rajah QC, Joe Smouha QC, Andrew Spink QC (alternate attended), Steven Thompson QC, Sonia Tolaney QC, Emma Walker, Matthew Weaver, Henry Webb (alternate attended) and Rhodri Williams QC.

The following did not attend and did not send apologies: Sarah Crowther QC, Richard Gibbs, Christopher Henley QC, Rhodri Thompson QC, Mark Trafford QC and Sara Wyeth.

78 further members attended

**1. Minutes of the meeting**

The minutes of the meeting on Saturday 30 March were approved subject to minor corrections.

**2. Chair's Statement**

The Chair reported that the next drop in session will be on 2 July. The first session attracted one caller and one visitor in person and the second session received three callers. The Chair explained that he is keen to run another session and encouraged members of the Bar Council to tell people about it. He made the point that those members of the profession who criticise the Bar Council on issues such as the ID cards scheme, never call or drop in. Drop in sessions are designed for those who have

comments, criticism or suggestions. The Bar Council wants to know. No one can legitimately claim that they are not given the opportunity to talk to the Chair.

Vivien Kintu, Executive Assistant, has been working hard to refresh the Ambassadors' Scheme. The first meeting since the refresh took place on 17 April but attendee numbers could have been higher. The Chair encouraged all self-employed members of the Bar to ensure that their Chambers has an ambassador.

The Crown Prosecution Fees Review has commenced. The Bar Council is engaging with the CPS and pressing the issues.

The Magistrates Court Defence Fees Protocol, which applies to Greater London only, has been published and sent out to all practitioners.

Another piece of work on Making Tax Digital was published in BarTalk on 2 May.

HMCTS put out some information about court reform plans, to which the Bar Council has responded.

HMCTS has signed up to the ID cards scheme which will apply to most Crown Courts. Only a handful of courts, due to the nature of the cases heard in them, will not be eligible. The intention is to roll the scheme out to the whole country, and, although this will take time, it is happening. If there is a terrorist case, things may change for a time, but the Bar Council and all parties involved are working hard on it.

On the subject of family Very High Cost Cases (VHCCs), the Chair reported that in June he is due to visit the LAA office in Jarrow which deals with family fees, together with representatives of the FLBA, to discuss these matters with the aim of improving claims and payments. He has previously visited the LAA offices in Nottingham which deal with criminal fees.

The Chair informed members of the Bar Council that he would be going to the Criminal Justice Board on Wednesday of the coming week. The Bar Council now has a seat on this Board. Its other members include the Home Secretary, the Lord Chancellor and the Attorney General.

### **3. BSB report**

In the absence of the BSB, who sent their apologies, the BSB Report was taken as read.

### **4. Treasurer's Report**

The Treasurer, Grant Warnsby, said that he wished to cover three main things:

- 1) 2018/19 audit – the audit is currently underway. The Finance Team have been working very hard to reconcile the figures on the CRM and have made 500 journal entries in the last five months. The full accounts will be presented at the AGM in September.

- 2) AtP 2019-20 - the current AtP year process is complete. 16,411 barristers have paid AtP and this is in line with the forecast. Full numbers will be available in the next few weeks. 8,861 barristers (both registered and unregistered) have paid BRF, raising £860k, which is also in line with budget. This proves that, thanks to the Finance Team, the work done to improve the budgeting process has come to fruition.
- 3) Defined Benefit Pension Fund – the Bar Council runs a defined benefit pension scheme which was closed to new members in February 2013 but still retains around 100 members. The scheme, like many others such schemes, is in deficit. In November 2016, the Bar Council ringfenced £1.3M of PCF income to support liabilities and in an attempt to reduce the deficit. The 2019 preliminary triennial report shows that the deficit has increased by £2M. As a result, the Bar Council will consult on the investment strategy, particularly the assumptions used in the calculations and the commutation (“cash out”) rates, with the Trustees. The Finance Committee is forming a small sub-committee to deal with this. This is an important matter as the Bar Council may need to extend the time frame against which the £1.3M is collected. Members of the Bar Council will be kept informed GW will report back.

The Chair thanked Grant Warnsby, saying that the Bar Council owes him a huge debt of gratitude for carrying out the role of Treasurer.

The Chair reported that there have been changes in Government. Robert Buckland QC MP has moved from the office of Solicitor General to become Prisons Minister and the Bar Council sends him its best wishes. Lucy Frazer QC MP has moved from the MoJ and is now Solicitor General. She has been replaced at the MoJ by Paul Maynard MP. At this stage, it is unclear what approach he will take but the Bar Council will send him congratulations. The Attorney General and Lord Chancellor remain the same.

## **5. Statement by the Chief Executive**

Malcolm Cree reported that he is becoming increasingly involved in meetings with the CPS and MoJ on issues of relevance to the criminal Bar.

The final outstanding issue on the property project has been resolved and the leases are very nearly agreed. The Bar Council is in the process of choosing contractors.

The Barristers’ Foundation has now been incorporated. While its main aim is to use the yearly £15k donation from BMIF to run an employee assistance programme, there are wider charitable aims and work is underway on applying for charitable status.

Malcolm Cree informed members of the Bar Council that the AtP process was much smoother than last year.

Online voting is to be brought in via MyBar in time for this year’s subscriber elections.

The 125<sup>th</sup> Anniversary of the Bar Council is being marked by an event at Guildhall on Tuesday 9 July. All members of the Bar Council should have received a 'save the date' email.

## **6. Advocate**

Jess Campbell, Chief Executive of Advocate, presented the Advocate Report. She explained that since her last report, Advocate has finalised its 5 year strategy with a clear purpose 'To ensure everyone without means who has a legal problem suitable for a volunteer barrister can get help'. The primary focus is therefore on core service delivery and Shyam Popat has returned to Advocate as Joint Chief Operating Officer with Mary Dobson to drive the operations of the charity.

In October 2018 after consultation with the Bar and members of the public Advocate (then the Bar Pro Bono Unit) was rebranded. The brand was looked at in conjunction with a digital project, which will introduce an online application form to the public. In order to be more accessible for the vulnerable applicants who use our service those at the Bar Pro Bono Unit decided that the Unit needed a cleaner appearance and easier name for them to understand.

As part of becoming Advocate, a new strapline 'Finding free legal help from barristers' was adopted. This explicitly puts barristers at the heart of what Advocate does for the first time. Consulting with the Bar has helped Advocate to understand the risks that barristers were most concerned about and Advocate spent much of 2018 re-engaging with the Bar to mitigate these.

In June 2018, Advocate launched 'Pro Bono Champions'. Almost ninety chambers across England and Wales have now appointed Champions. These Champions encourage and support pro bono in Chambers and have already delivered an impact:

- 29% more panel members took on pro bono cases through Advocate in 2018 compared to 2017.
- On average active panel members do 1.65 pro bono cases per year with Advocate (with the highest number taken in 2018 by Alice Nash of Hailsham Chambers).
- 27% more people were helped by barristers in 2018.
- Family continues to be the area of law most in demand for legal help and 17% of placed cases are in this area.
- Employment applications decreased we suspect due to the changes in fees but still 14% of placed case are within this specialism.
- There have been increases in placed cases in Admin & Public, Chancery and Housing and Landlord & Tenant.

Advocate has contributed to the MoJ's LASPO Review and as part of the Litigants in Person Support Strategy and Attorney General's Pro Bono Committee it is helping to shape 'support for pro bono' as described in the MoJ Legal Support Action Plan.

Advocate ended the 2018/19 financial period in a strong position due to an increase in gift aid as gift aid was collected at the point of donation during 2018 AtP, and because Advocate's Chambers financial engagement programme Pro Bono Patrons has proved very popular, with four chambers signing up to the Gold Circle in 2019; Blackstone, Brick Court Chambers, Essex Court Chambers and Quadrant Chambers.

Early signs for the 2019 AtP round indicate an increase in donations on last year.

Barristers raise funds by cycling, running, writing, quizzing and conferencing and Advocate are always open to innovative ideas. Advocate remains very grateful that the Bar continues to financially support its pro bono charity.

Advocate has jointly fundraised with the Solicitors Pro Bono group LawWorks: Law students raised over £20,000 in this year's Law School Challenge and the annual Christmas carols at Temple Church were a sold-out success.

Looking to the future, Advocate continues to invest in improvements to its internal systems and to volunteer engagement.

30% of cases are now placed via new coding which means bespoke case-list emails are sent to volunteers and Advocate is now able to send the same to clerks and practice managers. Advocate has also newly recruited an LEF-Funded Volunteer Manager.

The implementation of an improved database has changed how Advocate gathers data and reports. In the past, Advocate were only able to report on the number of new cases, as opposed to the entire demand on its service. The new database allows Advocate to report on this and, in the first quarter of 2019, 1015 requests for help were received.

The pro bono and advice sectors have collaborated to improve communications and thanks to a grant from Matrix Chambers Advocate is able to lead the way for the sector in case study gathering. Its website will be updated to tell a clearer story of pro bono and its impact and it will also highlight reported judgments of cases where Counsel represented pro bono through Advocate.

Colm Nugent's recent tweet on twitter, celebrating success on appeal after ten years of pro bono help organised via Advocate, was once example of the work that Advocate does. Mr Nugent represented an assaulted bus driver who was finally awarded a six figure sum from the Criminal Injuries Compensation Authority. Jess Campbell

appealed to members of the Bar Council to emphasise to their colleagues that every piece of pro bono work carried out by a barrister, no matter how small or complex, is of great value. Advocate is honoured to properly celebrate what the Bar does. One example of this is the annual Bar Pro Bono Award, supported by the Bar Council. This was expanded in October 2018 to nine Award categories and with new judges including the Lord Chief Justice. Nominations will open at the end of May for this year's Awards. Additionally, Pro bono stories will be celebrated in Volunteers' Week (1 - 7 June) and in Pro Bono Week (4 – 8 November).

Jess Campbell finished by saying that Advocate is looking forward to seeing members of the Bar at the London Legal Walk on 17 June. She told members of the Bar Council to 'feel free to add the Advocate and FRU logos' to their t-shirts and asked them to look out for the Advocate balloon arch at the end. Any barristers who wish to sign up for this year's Legal Wheel Appeal - cycling London to Paris at the end of September – should let Jess Campbell know.

Advocate founded 23 years ago to structure and streamline the pro bono effort of the Bar. Quoting the words of Lord Peter Goldsmith 'we build on the existing strong and proud tradition of the Bar to provide its services free to those who need help and advice', Jess Campbell reminded those present that this is their tradition and their charity. On behalf of the staff, trustees and applicants she thanked those barristers who make such an outstanding contribution to pro bono services.

Paul Hopkins QC sought clarification of the percentage of cases placed in Family, which he understood to be 17% from what Jess Campbell had said. *NB: Following the meeting, Jess Campbell has confirmed that this figure is 30%.*

Alexandria Carr asked Jess Campbell to explain how Advocate works with the Free Representation Unit (FRU). Jess Campbell replied that FRU specialises in social welfare and employment. The Chair further explained that the work of FRU is carried out by students who take on hearings aided by barristers who provide help and advice.

Jess Campbell said that some cases are suitable for students and, therefore, Advocate will point them to FRU (and vice versa). In addition to this, Advocate and FRU undertake joint fundraising initiatives and sit on a number of the same committees.

## **7. Free Representation Unit**

David Abbott, Chief Executive of FRU, noted that this was the first opportunity for FRU to talk about its work directly to members of the Bar Council. He said that as the Bar Council is a significant FRU funder it is right that FRU should come to account for that funding.

Acknowledging that most of the members are aware of FRU and its work, he nevertheless provided some background information. FRU was established in 1972 by Bar students who wanted to argue for greater coverage of social welfare law in legal education and to make the case for legal aid to be extended to tribunals. In fact, Robin Allen QC, one of the current members of the Bar Council, was a founding father.

FRU has two aims:

- 1) To relieve poverty by representing people who can't afford a lawyer; and
- 2) To educate aspiring lawyers.

FRU operates mainly in London and the South East, and in Nottingham via a link to the Nottingham Trent University. FRU offers free representation in employment tribunals and appeals to the Employment Appeal Tribunal, and First Tier and Upper Tier social security and criminal injuries compensation appeals. Such cases do not require rights of audience.

Volunteers are mainly students and some barristers who are post pupillage, but more qualified barristers do provide advice and guidance.

The core work of FRU focusses on training and representation but FRU also aims to feed into justice policy and the work load fluctuates. The main referrals come from third parties such as Citizens Advice and some 500-700 people are helped each year.

FRU enjoys widespread support from across the Bar. The Bar Council provides the largest single donation (£64,800 per year) and the Inns each pledge £20k per year. ICBET is among others who make regular contributions.

FRU has faced a challenging financial situation in recent years and had a deficit of £92k in 2017-18. This will be lower in 2018-19 as FRU has taken steps to manage its income and expenditure to reduce this. An example of cost cutting was the decision not to re-appoint a legal officer until the funds had been raised. Additional income has been raised through successful crowd funding campaigns and grant applications.

Future plans include governance changes. FRU will become an incorporated charity, which should help it to realise a number of benefits including a broader range of skills and expertise. FRU will also be maintaining a structural link between FRU and the Bar Council through the Chair of the Bar Council appointing one trustee for the new FRU charity.

FRU also plans to update its digital infrastructure to offer a better service to our clients, volunteers, referral agencies and staff. Once the new Trustees of the charity are in place, they will be tasked with delivering a Strategic Plan, on which FRU will consult the Bar Council.

Martin Nelson thanked David Abbott for his presentation and informed members of the Bar Council that a FRU case was the first piece of advocacy that he ever did. He enquired as to the causes of the 2:1 training ratio e.g. those who undertake the training

and go on to carry out work for FRU and those who take the training but don't. David Abbott replied that training is regarded as a good thing in its own right. FRU trains up to 1000 people per year but some don't take the test, some don't pass and some decide not to take cases. FRU is keen to retain volunteers for as long as possible as those who are retained the longest tend to go on to do complex cases, but there is a natural attrition at each stage and that is not a cause for concern.

Robin Allen QC thanked David Abbott for an excellent paper. Describing FRU as a 'marvellous organisation', he said that he had indeed been part of it from the beginning and confessed that he had played the Inns off against each other to raise £50 from each in the first place. He then asked whether FRU had found themselves short of cases as a result of not re-appointing the legal officer. David Abbott admitted that the loss of the post was felt keenly. During the six months that FRU were without a legal officer, the team worked hard to fundraise and the post has now been re-established. Despite this, FRU only has 12 months' worth of funding for it. Shortage of staff is a problem, but steps are being taken to address this.

## **8. ICBET Constitutional Amendments**

Nicholas Vineall QC presented this item on behalf of the ICBET Trustees, of which he is one. He reminded members that the last time he gave an ICBET update, there had been a 'hiccup' with the Constitution of ICBET in that it was not clear that ICBET had power to amend its own Constitution. This has been resolved by the ICBET Trustees going to the Charity Commission and implementing a scheme. Now, as a tidying up exercise, ICBET wishes to put some 'flesh on the bones'. Referring to the draft resolution, which sets out draft amendments, Nicholas Vineall QC said that he wished to draw the attention of the members to a couple of details:

Paragraph 4 – the General Management Committee for the Bar Council stated a preference for three year terms for Trustees, to be extended to a maximum of nine years.

Paragraph 12 – this makes clear that no Trustee shall be liable for any loss to the Charity arising out of any improper investment made in good faith or by reason of any mistake or omission made in good faith by him or her. Advice received from Christopher McCall QC suggested that this was an appropriate clause to include.

It was also noted that the reference to Chairman of the Bar has been corrected to read 'Chair of the Bar'.

Nicholas Vineall QC sought approval of the proposed amendments from members of the Bar Council. The members of the Bar Council approved the amendments.

## **9. Education and Training Committee**



Nicholas Vineall QC, Vice Chair of the Education and Training (E&T) Committee presented the E&T Committee report in the absence of its Chair, Guy Fetherstonhaugh QC.

He began by saying that, looking backwards, he wished to highlight three things:

- 1) The response to the BSB's consultation on fees and charges;
- 2) The Pupillage Gateway figures – there have been 2624 applications for 237 pupillages; and
- 3) The Pupillage Fair, which is going from 'strength to strength'.

With regards to the BSB's consultation, the BSB are **going to consult on** a compulsory timetable for pupillage recruitment. The E&T Committee **will** work on a response to this consultation. Nicholas Vineall QC explained that there are two **possible** conflicting views **that might be held**. Some **might** believe that it is a 'free world' and that chambers should be free to recruit at whatever time they like. Some **might be** of the opinion that chambers should pull together to eliminate any unfair advantages.

Nicholas Vineall QC informed members of the Bar Council that details of the next Pupillage Fair can be found in the report. He also asked members of the Bar Council to note the information about Bar Placement Week. Bar Placement Week is an opportunity for pupils from non-typical backgrounds to spend a week in Chambers understanding what the Bar does and how it works. The Birmingham Bar Placement Week is slightly short of places in Chambers for those who have applied and Nicholas Vineall QC appealed to Birmingham-based members to think about taking in students.

Mark Fenhalls QC enquired about the funding arrangements for travel and sustenance for those students. Phil Robertson replied that travel and lunch expenses are covered with some support from the bar Council. He promised to send more details. Mark Fenhalls QC thanked Phil Robertson saying that it would be useful for chambers to know what they are required to fund.

Quentin Cregan asked if we knew (roughly) the number/% of pupillages offered through the Pupillage Gateway vs. those offered by or through other means. Nicholas Vineall QC replied that he thought around two thirds are offered through the Gateway but said that he would check.

## **10. Equality and Diversity**

Robin Allen QC, Chair of the Equality and Diversity and Social Mobility (EDSM) Committee presented the EDSM Report. The previous day, when travelling, he had seen a lady with a shoulder bag bearing the slogan 'It's only an opinion without data'. He said that was how the EDSM worked - a data driven approach to what is happening at the Bar.

Robin Allen QC said that item 3 of the EDSM Report contained a couple of 'hotlinks' which the members of the Bar Council might find useful to have at their fingertips. The first, a link to the Working Lives Survey 2017 and a more recent report on 'attitudes' (published on 29 May 2018), sets out a really interesting snapshot that has informed the EDSM about most of the work it carries out.

Referring to the Report, Robin Allen QC said that the headings mainly speak for themselves. The Committee, and its Executive, Sam Mercer, have a huge passion for the work they do. Wellbeing has gone from 'strength to strength' with the website attracting 242,440 hits since its launch. A lot of very positive feedback is received from the profession about the wellbeing work.

He said that the Bar's campaign for the development of Pre-Application Judicial Education (PAJE) is an important part of EDSM's work. 30% of barristers consider a judicial career at some point during their working lives. EDSM has been concerned about the lack of equality in the application process and are working to obtain good 'feedstock' in this area.

EDSM remains heavily involved in consultations and recent contributions have includes responding to the BSB regarding the 'Reporting Sexual Orientation and Religion and Belief' consultation.

Much training has been delivered on Equality and Diversity issues. For example, EDSM has provided a lot of support on harassment issues and work has been undertaken with the SBAs and Circuits to persuade the BSB that barristers do not have to immediately report sexual harassment.

Robin Allen QC reported that there have been some equality concerns around Directories which tend to focus on diversity and inclusion, rather than wider equality and diversity issues. There is more work to be done.

With regards to parents (mainly women) leaving the Bar, EDSM plans to give the Sitting Hours Protocol more priority in the next year. Linked to this, there have been some big developments in the city and EDSM are working on a protocol that will safeguard against working unreasonable hours with some of the key city firms.

Explaining that the Report sets out the planned activity for the year, Robin Allen QC said that he is yet to attend the PRIDE march and that the Wales meeting may prevent him from doing so again this year. He finished by saying that the EDSM motto is set out in the annex of the Report.

Celina Colquhoun spoke as a member of PEBA (although former representative) but also as an independent member of BC. PEBA has carried out a survey to find out how female members of the planning bar are being treated. She had discussed with Sam Mercer who had suggested that it would be a good idea for there to be a meeting of other SBAs to compare it with other surveys carried out by SBAs. Robin Allen QC

replied that the EDSM has not discussed this in any great detail but noted it as a good and important point that EDSM will take forward.

Rachel Spearing noted the existence of relevant info in the snapshot of working lives studies relevant to Francesca's query. She highlighted the value of these surveys giving SBA's vital info on their members. The importance of Bar Council members supporting requests to champion these surveys and support their content was stressed. The WATB work provided SBA's, Circuits and Inns with data analysis cuts to focus their understanding of members. Greater research is now being undertaken in other areas to help obtain evidence.

Christina Michalos QC reported that Gray's Inn has a new LGBT+ Society which is the first Inn to do so and the Society is holding an inaugural lecture on 22 May on 'Inclusion at the Bar - what it means and how it can be achieved', the details for which are on the website. She also raised a question about data accuracy in relation to diversity particularly women, those doing publicly funded work and level of earnings. Saying that BMIF holds very accurate data, she asked whether any consideration had been given to getting this data anonymised with a view to publication. Malcolm Cree replied that the Bar Council already obtains data from BMIF which it uses in conjunction with the data on the CRM.

Robin Allen QC reported that the EDSM will be developing a programme to monitor equal pay in chamber. It will think harder about some of the points raised and report back in due course.

Alison Padfield QC said that, last year, when she had been chairing the COMBAR E&D Committee, the Committee had a very useful meeting with John van der Luit-Drummond, the Editor of the Legal 500, to discuss the way female barristers are described in the commercial litigation section of the directory. The Committee provided illustrations of women typically being described as having good attention to detail, while male barristers' advocacy skills or intellect were commented upon. John said that the comments come from clients, but that it is open to the researchers to ask follow-up questions to ensure that advocacy skills or intellect are being commented on fairly for female barristers, and that he would talk to the researchers about doing this (it was subsequently confirmed that he had done so). Robin Allen QC said in response that in any single year as EDSM Chair, he has been asked to make representations about a sense of unfairness with the grading that some women have been given in the directories. He said it was interesting that he has received almost no complaints about The Legal 500.

Tim Devlin said that in February, Joanna Hardy of Red Lion Court had appeared in front of the Justice Select Committee. As a result, there were many shocking headlines about how women barristers are treated by their colleagues. Joanna Hardy spoke of requests made of her for coffee, of being asked to arrange case dinners and of being treated in a demeaning way. Noting that this is damaging to the reputation of the Bar,

Tim Devlin reported that he had seen Joanna Hardy the day before and that he had asked her whether the situation was still the same. Joanne Hardy replied that things are much the same, maybe even a little worse. Meanwhile, another female barrister there, who had just come out of court, said that as she left the court room, a male barrister patted her on the bottom. Tim Devlin was clear that this sort of behaviour has to stop. The Bar is seen as an archaic, old fashioned, male dominated, sexist profession. Members of the Bar Council need to do something about it.

Robin Allen QC said that what Tim Devlin had said is reflected in the Working Lives Survey and he read out a couple of comments from the survey by way of illustration (compared to 2011, reports on harassment or bullying are up 8% at the employed bar and 6% at the self-employed bar). He recalled that when Andrew Langdon QC had been Chair of the Bar, the EDSM had to think carefully about what to do in relation to this. Describing this behaviour as 'completely wrong', Robin Allen QC encouraged members of the Bar Council who witness it to call it out there and then. Promising that those who do will receive 100% support from the Bar Council, GMC and the Officers, Robin Allen QC emphasised the importance of creating a safer place for complaints like this to be made and he cited the 'Behind the Gown' project, set up by Elizabeth Prochaska, as a good source of support and an important piece of work. Sexism, however, remains commonplace at the Bar.

Francesca Perselli asked whether the committee have identified issues of diversity in clerking and how they correlate with the paygap. Robin Allen QC replied that work on the legal pay audit is due to be carried out this year and should link this in. In addition, fair access to work rules from the BSB ought to address the issue but there is ongoing discussion about whether the BSB should review its rules about discrimination.

Rachel Spearing said that Lucy Barbet, Chair of the Institute of Barristers' Clerks (IBC), and Catherine Calder have implemented a joined-up initiative to look out for gender equality in the Clerksroom. She suggested that Francesca Perselli might want to contact them.

Francesca Perselli said that her comments had been more of a general observation that clerks tend to come from the same background and from one area of London. She said that she thinks more progress is needed in opening up the clerking profession. Robin Allen QC replied that this is mainly an issue for the IBC, but also for Heads of Chambers. Heads of Chambers need to ensure that their staff are made aware of equality and diversity issues.

Robin Allen QC sought to reassure members of the Bar Council that the EDSM is alive to the issues raised by Tim Devlin. The Bar Council has a direct line number that people can ring for bullying and harassment issues. Circuit Leaders are available to assist and there are people trained at the Bar Council who can help.

William Mousley QC reminded members of the Bar Council that the Western Circuit has set up a helpline. The Circuit obtained a waiver from the automatic duty to report. The Chair said that the other circuits are looking to do the same. Meanwhile, Women's Forums are being set up and the Young Barristers' Committee are looking into what they can do for the young Bar. There are plenty of people that can help.

Tim Devlin asked what the female barrister who had been patted on the bottom was supposed to do. When he had spoken to her, she replied that she preferred to leave the matter and he had been confused by her reluctance.

Alison Padfield QC said, in relation to the question as to why female barristers might not choose to report sexual harassment, that she could give her view. She said that, as soon as a woman does so, the alleged conduct will be investigated, and the woman's credibility may be called into question as part of that process. If someone has behaved inappropriately towards you, it is unpleasant to have to recount what happened for the purposes of an investigation, and the outcome may be a finding that the conduct did not take place, or was not sexual harassment. Alison said that she could not speak for other women, although she could see many of the women present nodding as she spoke, but in her view, for many women who have experienced sexual harassment and have the option of reporting it, 'that game is not worth the candle'. She also said, in relation to the discussion about reporting sexual misconduct that happens to others, that she had once reported sexual misconduct to the BSB in relation to an incident that had happened to someone else because she considered that it amounted to serious professional misconduct and that she was therefore obliged to do so under the Code of Conduct. She said that she had sent the report to the BSB and received an automated response by email saying that she might hear nothing further. She said that she could understand that it might not be appropriate for the BSB to inform someone of the outcome, at least in some cases, but that it was a strange experience because she had in fact heard nothing further.

Tim Devlin wondered if he should report the matter referred to. Robin Allen QC said that there are two views – whether it should be reported irrespective of the views of the individual, or, whether it should not be reported. Some situations absolutely should be reported. Saying that in his view Tim Devlin should report it, Robin Allen QC advised him to have a protected discussion before doing so. All the equality and diversity members of EDSM are exempt from the right to report and can provide advice on what to do. For some issues, the only way to proceed is to 'call the behaviour out' when it happens. This can have the effect of diffusing the situation and teaching the individual that their behaviour is unacceptable. Barristers must feel confident to address these situations.

Athena Markides thanked Alison Padfield QC and said that she would like to echo what she had said. When incidents like this occur, the victim's reactions may seem counterintuitive to others. The victim may feel guilty, ashamed and embarrassed. They are likely to want the situation to 'go away' and to have never happened.

Confronting the incident and reporting it are at odds with those feelings. The question of what to do next is therefore a difficult one. If told of an incident in confidence, it is vital to make sure that the victim is 'on board' with any decision to report it as they need to be prepared to deal with any investigation and its outcomes.

Celina Colquhoun said that she believes it is for the older (female) members of the profession (who will no longer be experiencing the same type of issues) to let younger members know that they understand and are supportive and help give them confidence or effectively give 'permission' for the younger members to report instances of sexual harassment.

Eleanor Mawrey highlighted the difficulty with the BSB rules that oblige barristers to report matters directly to them. In the past, those who had experienced sexual harassment could go to their Head of Chambers and it could be dealt within chambers or between Heads of Chambers. Not everyone wants to report their experiences to the BSB where the process is very formalised and the potential penalties for the "offender" are very serious. Many would prefer to deal with it less formally. Now, if you try to report situations to a Head of Chambers they will advise that you have an obligation to report on to the BSB and therefore many are not reporting at all. The current rules therefore are actually making it less likely that behaviour will be reported or dealt with.

Robert Rhodes QC said that, from what the others had been saying, it is the responsibility of senior members of the Bar to step in quickly when they see such incidents. This will prevent the embarrassment of a long investigation.

Christina Michalos QC made the point that it is important to realise that in many cases these incidents take place when there only two people present behind closed doors, often a young women dealing with a wealthy or powerful older man. It was naive to be surprised about an unwillingness to report incidents. A younger women may feel that she does not wish to report the behaviour for a number of reasons not least that she wouldn't want to go head to head on credibility with a senior practitioner, particularly within chambers, or doesn't want to risk becoming part of a formal enquiry beyond her control. It is important that the option to seek advice in confidence is open to victims of sexual harassment or similar incidents.

The Chair explained that a lot of the work on dealing with sexual harassment is funded by the BRF. Though payment of the BRF has increased this year, it is still not enough, and the Bar Council is working hard to try to persuade more to pay. He asked that members of the Bar Council do what they can to get the message out.

Turning to the matter of the PRIDE march clashing with the next Bar Council meeting in Wales, the Chair said that he would try to ensure that this does not happen again. The Treasurer, Grant Warnsby, will be representing the Bar Council at PRIDE. The fact that he, the Chair, is not able to attend PRIDE is not a snub but a logistical

necessity. He then invited Paul Hopkins QC, Leader of the Wales and Chester Circuit, to say a few words about the plan for the meeting in Cardiff.

Paul Hopkins QC explained that the Circuit will be hosting a dinner on the Friday night at Cardiff Castle. Suggestions about accommodation are available and the Circuit is looking forward to entertaining members of the Bar Council. To allow people time to get to Cardiff, the meeting will start at 11am on Saturday 6 July. Lord Thomas of Cwmgiedd has been invited as an external speaker as he is currently conducting a Commission on Justice in Wales. Lunch, for those who wish to stay, will follow the Bar Council meeting. The Chair said that he hoped to see members of the Bar Council there.

Lucinda Orr asked about progress on the matter of the employed Bar. Currently, members of the employed Bar are not permitted to be members of the Wales and Chester Circuit. Paul Hopkins QC replied that the Wales and Chester Circuit are due to hold an extraordinary meeting to discuss the subject and a second Circuit meeting is scheduled in the next three to four weeks. He promised to report back before the Cardiff meeting but reassured members of the Bar Council that its employed members are welcome to the dinner.

### **11. Ethics Committee**

Rachel Langdale QC, Chair of the Ethics Committee, presented the Ethics Committee Report. She said that she would largely take the report as read but that she wished to highlight a couple of items.

The Ethics Committee comprises 24 people, among them 13 Silks. There are four to five meetings per year and a members' refresh takes place every January. The committee prepares a lot of guidance which is available to the profession on the Ethics Hub. Despite this, the team is receiving an astonishing amount of calls to the Ethics Line, some more urgent than others. While calls are welcome, they take up resources and time. Staff have other jobs to do and, where information is available on the Hub, calls could be avoided. Rachel Langdale QC appealed to members of the Bar Council to assist in making others aware of the Hub and its guidance. In addition, she suggested that if more SBAs and Chambers had 'ethical' discussions it might reduce the number of calls. Meanwhile Tony McDaid of the Ethics Committee is supportive of getting information out to clerks.

Max Hardy suggested inserting a message on the Ethics Line that effectively says 'if your query relates to X, look on the Hub, and, please email if you do not require an immediate response'. Rachel Langdale QC thanked Max Hardy for making a good point and confirmed that this is already being discussed. She acknowledged that barristers want to do the right thing but explained that sometimes calls transgress into legal issues, which is not the point of the Ethics Line.

Cathryn McGahey QC, Vice Chair of the Ethics Committee, said that another solution might be the implementation of Coordinators/Champions in chambers as it would be better generally if people could find the solution in chambers first. To this, the Chair suggested using the Ambassadors' Scheme to get the information out. Cathryn McGahey QC replied that the Ethics Committee would be happy to offer training to Chambers Ambassadors and Janet Bignell QC said that the available guidance notes are 'brilliant' and should be publicised more widely.

## **12. Young Barristers Committee**

Athena Markides, Chair of the Young Barristers' Committee (YBC) presented the YBC Report. She began by explaining that the committee represents barristers in the first 7 years of their practice.

Athena Markides noted that, as with last year, the YBC anticipates a very busy year. Some examples of the work of the YBC last year include the Young Bar Workshop, Young Bar Dinner, Anglo Dutch Exchange and contributions to consultations. None of this would have been possible without the hard work of the YBC members, the Bar Council staff and numerous more senior barristers that support them. Athena Markides thanked all those who have helped the YBC and who continue to help it to achieve its aims.

This year, in addition to business as usual, the YBC will be focusing on three main issues:

1. Pay for the publicly funded Bar;
2. Wellbeing; and
3. Social Mobility, Equality and Diversity.

The YBC is currently involved in both the CPS and MOJ criminal fee reviews, looking at fees for prosecution and defence respectively. As part of these reviews, the YBC would like to conduct focus groups with junior practitioners, in order to establish their key interests and objectives and to obtain a better understanding of the issues regarding pay and working conditions specifically in relation to the young bar.

The plan is to hold two sets of focus groups (one set focusing on CPS fees, and the other on the AGFS review) over the next six weeks. The YBC will be inviting juniors to participate in these focus groups shortly. Athena Markides asked that members of the Bar Council look out for the invitation and encourage others to get involved.

Athena Markides continued by saying that the YBC is keen for some involvement from the circuits in relation to these focus groups, and also later in the year. Athena Markides explained that later this year, the YBC will be holding focus groups of junior practitioners across practice areas and across circuits in order to obtain a 'Young Bar



Snapshot', setting out key objectives and concerns for the young bar. This will help to inform the YBC strategy for the next three years.

Athena Markides reported that the Young Bar Workshop is on 15 June. She asked members of the Bar Council to encourage juniors to sign up. The Workshop will focus on practical tips, practice development and management.

The Chair thanked Athena Markides and her team saying that he is grateful to the YBC who always respond with high quality work.