



Chairman's Statement Bar Council 14 January 2012

Welcome, and Happy New Year.

Welcome to the Attorney General.

Welcome to new and returning Members of Bar Council.

Welcome the re-appointment of Chair (for three years) and Vice Chair (for one year) of the BSB.

Bar News

1. QASA

The CBA has made it absolutely clear that they require any scheme for Quality Assurance to be premised on three basic principles:

- A level playing field for all advocates
- Judicial evaluation, and
- Case grading rather than hearing grading.

As Max Hill QC has said: "Our primary concern remains the maintenance and promotion of high-quality advocacy, which means that the most serious cases should go to the most capable and qualified individuals."

There continue to exist issues around:

- Judicial Assessment/Assessment Centres
- Plea Only Advocates, and
- Silks

I will invite Baroness Deech/Vanessa Davies to comment on these issues at Bar Council, to the extent that she/they want(s)/feel(s) able to.

I have received statements of interest and concern from other sections of the Bar in relation to which it is said that QASA will apply in due course, and with whom no negotiations or discussions, so far as I am aware, have been held. It is unlikely that "one size will fit all"; but if it is going to be made to do so, then surely, and fairly, all those to be affected need to be consulted and given an opportunity to express their views on the proposals. I have in mind, in particular, the "re-accreditation" of silks.

2. CPS fees

I received a letter from the DPP on Monday 9 January 2012. That letter together with its attachments was sent to Max Hill QC. On that same day that letter was drawn to the attention of GMC.

A copy of that letter, and its annexes which include a summary of the New Arrangements, has been posted on the Bar Council website. I would invite you all to draw these New Arrangements to the attention of our members and those you represent.

The new remuneration arrangements are to be brought into effect in relation to New Instructions after 1 March 2012, and will apply to all cases after 1 August 2012, whenever Instructions were first delivered.

The Remuneration Committee of the Bar Council met with representatives of 2 Dr Johnson's Buildings on Wednesday of this week. They wished to, and did forcefully, express their anger and consternation at the extreme effect that the proposed new CPS Fees' regime would have on their complex fraud cases, which cases were usually extremely document heavy. There can be no doubt that they will be extremely adversely affected unless some adequate provision is made for these exceptional cases.

Mark Lucraft QC made it clear that the proposed new Scheme was not the Bar Council's scheme, that the new proposals were being imposed on the Bar, that the Bar had not agreed to them and that the Bar Council intended to continue to meet with the CPS and to negotiate further on the Bar's behalf.

Helpful suggestions were made, particularly by Nigel Lickley QC, to the manner in which the effect of the new proposals could be alleviated in relation to these cases.

3. LSC late payment of fees:

As you know, in December last year, the then Chairman, Peter Lodder QC, wrote to David Gauke, the Treasury Minister responsible for HMRC in relation to the late payment of fees by the LSC and the effect that that was having and would have on the ability of publicly funded practitioners to meet their tax liabilities at the end of this month.

It is, of course, particularly egregious that members of the publicly funded Bar:

- Should not be paid by the LSC within a reasonable time for the work they have undertaken, and certainly not within the period identified by the LSC within which they would make such payments
- Should be liable for tax to department of Government on monies that they have earned, for services they have skilfully and satisfactorily performed, but for which they have not been paid by the LSC
- Should not be able to set off those debts one against the other, as in any normal commercial relationship, because of the bar on the setting-off of Crown debts, and

- Should be liable for penalties and interest should they not be able to pay the tax due to Government on monies that are owed but have not been paid by Government, and on which monies no penalties or interest is payable by Government to those practitioners.

You may have seen a supportive article in, of all places, the Sunday Express over the New Year period. It is heartening that, to some extent and at last, our message is getting out there.

Nick Hilliard QC has drawn our attention to the new EU Directive on late payment of fees. The new Directive which should cover our fees (BUT we need to check this), replaces an earlier one dealing with late payment of commercial debts, but has not yet been implemented. The new Directive extends the provisions of the earlier one to public authorities. It will need to be brought into our law English law by 16 March 2013 at the latest.

According to a report in the *Daily Telegraph* on 14 September 2011: "Ed Davey, the Business minister, said there would be a consultation in the winter and then officials would "transpose the legislation into UK law in the first half of 2012, which is earlier than we are required to do".

Unfortunately, that consultation does not yet appear to have taken place.

On Thursday of this week, I wrote to Ed Davey, (cc Jonathan Djanogly), calling for some action in this regard.

You will know that Peter Lodder QC, last year, had written to him, (cc Jonathan Djanogly). He had also written to the Lord Chancellor and to David Gauke about the effect of late payment of fees by the LSC.

4. LASPO

Annexed to this Statement is a Report which Stephen Cobb QC made for the purposes of GMC held last Monday 9 January 2012. As you will know Stephen has kindly agreed to continue to Chair the Bill Group, notwithstanding that he has ceased to be Chair of the FLBA and on this Council. As ever, I would like to thank, and I am sure you would like to join me in thanking, Stephen for his continued, and continuing, work for and commitment to the plight of, the publicly-funded Bar.

LASPO is grinding, very slowly, through the Committee stages in the Lords. The Bar Council's points are being made effectively and are receiving support within the Lords. There are at least another six Committee days to come on the Bill. No divisions on any amendments have yet been forced.

We have put our arguments across on Part 1 of the Bill. Most of our amendments have been tabled and those which have been debated to date have received strong cross party support.

The Bill Group is now focusing on Part 2 (civil litigation funding aspects) for which a group led by Charlie Cory-Wright QC has formulated a comprehensive alternative reform agenda to that comprising the Government's selective interpretation of Jackson.

Particular tribute and thanks must be paid by the whole Bar to the sterling work of Gordon Nardell QC who is responsible, almost single-handedly, for formulating our proposed amendments on behalf of the group.

Bar Council News

1. The Inns' subvention / PCF review / BC structural review

The Inns, through COIC, have informed the Bar Council that they intend to reduce their subvention to the Bar Council by 50% over a two-year period commencing April 2013.

The effect of the reduction in the subvention is that over the two-year periods next following April 2013, the subvention will be reduced from some £1.4 m to £700,000, i.e. £350,000 each year. That is equivalent to a cut of approximately 5% each year of the PCF.

So to stand still we will need to raise that sum from the PCF or make cuts to that amount.

Last year, I promised a full review and consultation into the PCF, on what it is spent, and its incidence. The Treasurer has agreed to chair a working group to undertake that review and that consultation.

The Green Review recommended that the structure and workings of the Bar Council should be reviewed. I agree. In my Inaugural Speech I said that we needed to ensure that the Bar Council, and what it does, is relevant to the needs and requirements of the Profession, and that what it undertakes it does so cost-effectively, efficiently and responsively. I am therefore in the process of establishing a working group to undertake that exercise.

We must get on with both of those reviews quickly. I will be looking for people who have, not only the commitment, but also the time to assist in producing reports at the earliest opportunity. Expressions of interest have been, and will continue to be, welcome.

It seems to me that the results of those reviews will inform, and are essential to:

- The budgetary process for this coming year
- The decision as to whether we should employ a CEO, and, if so, to do what, and at what cost, and
- The decisions we must make as to the incidence of the PCF across the Bar.

Mark Hatcher, Oliver Delany and I had an exploratory meeting with some management consultants just before Christmas. It was that which confirmed in my mind just how essential it is that we, the Bar Council, should have a fuller and better understanding of the Council, its composition, its structure, its committees, what exactly it does and the manner

in which it operates, hence, what I would describe as, the structure review. Anyway, the quotation for their proposed work would have kept a High Court Judge alive for a year. It was prohibitively, and I would suggest, unrealistically expensive, more particularly when members of the Bar Council, both elected and employed would have to devote a considerable time and resource to assisting with any meaningful review.

2. LSB triennial review, and response to its business and strategy plan

For those detractors, or possibly even lovers, of the über-regulator, your time has come. I have asked Guy Fetherstonhaugh QC, and he has agreed, to lead a group to respond to both the Triennial Review and the Plan. Again, expressions of interest from those who have, not only the commitment, but also the time to assist in producing the necessary responses and reports at the earliest opportunity will be welcome.

3. Committees

I have been meeting with Committee Chairs and the members of the Executive who are responsible for the affairs of those Committees. I have asked them to produce a business plan for this year setting out their key goals, a time line within which those goals can be expected to be achieved, and that each committee should report regularly to GMC, that is, on a quarterly basis, and to the Bar Council. My intention is that we should improve both communications within this Council and our knowledge of what is being undertaken on our behalf.

In reviewing the Committees against Standing Orders, I have decided, on the basis of advice from others, that the Bar Council no longer needs a PAC. This Committee was established at a time when the provision of our communications activity was outsourced. For some time now, we have had that capability and those services in-house. The Communications team reports directly in to the Chairman's Office and, as many of you will know, reports regularly to Committees, including GMC, and working groups. The PAC has accordingly been disbanded. That does not however mean that Communications services will not be available to the Circuits, the SBAs, the Committees and the working groups. They will be. As you will know from my Inaugural, better and greater communication is at the heart of my agenda for this year.

Taryn Lee has been asked, and has agreed, to take forward the Bar Council's Social Mobility Agenda. Just this last week, we had a round table discussion, which I had convened, and at which there were representative of the Inns, the Circuits, the SBAs and the Bar Council Committees. It was, I believe extremely useful and successful. Our aim was to improve communication between the various stakeholders, to avoid duplication of effort and use of resource, with a view to maximising returns on our collective resources. We have some initiatives to take forward.

The Working Group which I have established to look at the cost and speed of civil dispute resolution is to meet for the first time next week.

The establishment of a working group to take forward my pro bono initiative has not yet been formed. I apologise. I will get on with that next week.

4. Bar Council Secretariat / Executive / Staff “Inaugural”

Last Thursday I took the opportunity of introducing myself to the Bar Council Staff, and of outlining my proposals and aspirations for the coming year. We have a very hard working Secretariat. They are incredibly loyal and helpful.

I fear that, sometimes in their dealings with the Bar, and in particular, with the Bar when it is under pressure, the real value and the importance of their work and of their efforts on our behalf of the Secretariat is not always understood or appreciated. That is unfortunate. I know I, and I am sure we, will do all we can to avoid that happening.

We need them to deliver, and to deliver effectively, efficiently and responsively, those things which we expect of the Bar Council.

I have assured them of just how much I value their services (and I know that goes for all of us here) and how much I will depend on them for the delivery of our objectives in this coming year.

5. Minutes of Bar Council meetings

I would propose, with the approval of Bar Council, in future, to move:

- towards giving a largely written Chairman’s statement to Bar Council and
- away from “Hansard style” minutes of Bar Council meetings.

MICHAEL TODD QC
Chairman of the Bar
13 January 2012

Annex 1

LASPO update

09.01.12

Since the last GMC / Bill Group meeting, the civil practitioners on the Bill Group have met separately and have prepared a paper for discussion at the next Bill Group meeting addressing the proposed amendments to Part 2.

Shortly before the Committee stage commenced in the Lords, the Joint Committee on Human Rights published its report on the Bill; this report rehearses many of the arguments which we have been running in our lobbying campaign. In particular our concern about the lack of independence of the proposed Director of Legal Aid Case Work was picked up; the Committee expressed its concern about the definition of domestic violence and raised concern that it will not lead to practically effective access. It called on the Government to amend the Bill to use the ACPO definition of domestic violence, broaden the forms of evidence which are capable of establishing domestic violence has taken place, and remove the 12 month time limit on eligibility; it further expressed concern about the introduction of means-testing for legal advice and assistance at the police station which it believed would hinder the effective exercise of the right of access to legal advice by an arrested and detained person.

As for our proposed amendments, the majority of our proposed amendments were tabled by the Lords – a few of our more minor amendments have not been tabled, but one notable exception is our proposal in relation to post-report clinical negligence. It is not too late to have this amendment tabled, as the Lords have not reached Schedule 1 yet. We are working on it.

The Committee hearing took place on 20th December. Only four proposed amendments were discussed – each directed to clause 1. There was gratifying reference made by a number of peers to the Bar Council's position on the access to justice provisions.

None of the proposed amendments were moved to division – each were withdrawn. This was undoubtedly a tactical move to see whether the Government makes concessions at Report stage; if they do not, then there is time to move the amendments to division at Third Reading.

Since then, there has been a useful leader in the Guardian citing the Bar Council's CLAF proposals – inviting the Government to consider the imaginative proposals being advocated by lawyers and others.

We are proposing to sign (or maybe now have signed) a joint letter for the Times drafted by Justice for All – on the welfare provisions of the Bill.

Stephen Cobb QC

09.01.12