

**THE HONOURABLE SOCIETY OF LINCOLN'S INN**

**AGENDA FOR A MEETING OF THE BAR REPRESENTATION COMMITTEE  
TO BE HELD ON MONDAY 22 MAY 2017  
AT 33 CHANCERY LANE, ROOMS 4 & 5 at 5.30 p.m.**

*Notes: We send our good wishes to those who will be walking in the 2017 London Legal Walk at the same time as our meeting is taking place.*

1. **Apologies for absence and conflicts of interest**

To **NOTE** the apologies for absence received and any relevant conflicts of interest.

2. **Minutes of previous meeting**

a. To **APPROVE** the Minutes of the meeting held on 11 April 2017. [pp.2-5](#)

3. **Chair's report**

To **RECEIVE** the Chair's updating report to the Committee. [pp.6-8](#)

4. **Sub-Committee reports**

To **RECEIVE** reports from (a) the Social Mobility Sub-Committee ([p.9](#)) and (b) the Social and Wellbeing Group ([pp.10-12](#)). [pp.9-12](#)

5. **Matters arising**

- a. To **NOTE** that the Catering Committee considered the BRC's observations on dining at its meeting on 2 May 2017.
- b. To **CONSIDER** the format of the BRC Dinner and whether the BRC ought to seek to repeat it next year.

6. **BRC Rules**

To **DISCUSS** the draft amendments to the BRC's Rules (tabled at the previous meeting) and, if appropriate, to **AGREE** that they should be put before Hall for adoption at an EGM on 11 July 2017 (to coincide with the BRC meeting). [pp.13-19](#)

7. **Any Other Business**

***Tabled item***

To **RECEIVE** a tabled paper from Julie Whitby on the possible separation of the Bar Council and Bar Standards Board (with accompanying Bar Council document), for substantive discussion at the BRC meeting on 14 June. Please send any questions or comments to [brc@lincsinn.org.uk](mailto:brc@lincsinn.org.uk) by Friday 2 June. [pp.20-25](#)

8. **Dates of the next Committee meetings:**

**14 June 2017 – at 33 Chancery Lane, Rooms 4 & 5**

(agenda items should be identified to Wiebke by 2 June and papers submitted by 6 June for circulation by 8 June)

Thereafter 11 July (possible EGM) and 12 October.

**W Morgan, Member Services Manager  
16 May 2017**

**THE HONOURABLE SOCIETY OF LINCOLN'S INN**

**MINUTES OF A MEETING OF THE BAR REPRESENTATION COMMITTEE  
HELD ON 11 APRIL 2017  
IN THE OLD HALL at 5.30 p.m.**

**Present** Benjamin Wood *Chair*  
Margia Mostafa *Vice Chair*

Thomas Barrett	Karim A. A. Khan QC
Georgina Blower	Timothy Lyons QC
Neil Chawla	James Manning
Melissa Coutinho	Mark McDonald
Aidan Crook	Sarfaraz Metlo
Timothy Devlin	George Payne
Gerard Forlin QC	Amy Proferes
Amelia Highnam	David Scorey QC
Stuart Hornett	Linda Turnbull
Sara Ibrahim	Julie Whitby

**In attendance** Hazel Jackson *Junior Members' Association*  
Ben Hamer *Junior Members' Association*

The Rt Hon Lord Neuberger *Treasurer*  
of Abbotsbury  
The Rt Hon *Master of the Library*  
Lord Justice Patten

Mary Kerr *Under Treasurer*  
Murray Campbell *Assistant Under Treasurer*  
Wiebke Morgan *Member Services Manager*

**Apologies received**

District Judge Afzal OBE	Laura Gould
Daniel Barnett	Christopher Harris
Zoë Barton	Laureen Husain
Emily Culverhouse	Claire Palmer
Keith Gordon	

**Preliminary**

1. The Chair welcomed everyone to the meeting and in particular thanked the Treasurer and the Master of the Library for being present. The Master of the Walks, Lord Justice David Richards joined the Committee at dinner.
2. The Chair thanked the members for sending reports from Bench Committees they had attended. These were extremely helpful for preparing his and the Vice Chair's report.
3. Apologies for absence received were **NOTED**. No relevant conflicts of interest were declared.

4. **Minutes of previous meeting**

The Minutes of the meeting held on 22 March 2017 were **APPROVED** with one amendment. The Committee **AGREED** that the Chair could now inform the Catering Committee of the BRC's views (with the addition of "*and those outside London*" to item 8b).

5. **Chair's report**

The committee **RECEIVED** the Chair's updating report. The Chair drew attention to the following items:

**iv. 16 – Social Mobility Sub-Committee.** The Chair expressed his regret, and this was echoed by the Committee, that Fayyaz Afzal had stepped aside (for reasons outlined) from the role of leading the Social Mobility Sub-Committee. Stuart Hornett and Sara Ibrahim had agreed to take on the role. Stuart explained that they would concentrate on achievable initiatives, which complemented the work the Inn was already involved in. The first initiative would be a page on the Inn's website with testimonials from members of the Inn who come from diverse backgrounds. Stuart and Sara asked members to email with suggested candidates for the testimonials.

**vi. 18 – Social and Wellbeing Group.** The Vice Chair explained that Lincoln's Inn will be holding the first event by the SWG on Monday 8 May in the Old Hall. Rachel Spearing, Chair of 'Wellbeing at the Bar' Working Group, will be giving a presentation on identifying risks to wellbeing and how to deal with the challenges of a busy practice. Thereafter there will be a Q and A session with a panel of experts. Julie Whitby will provide a demonstration of coping strategies, and there will be a reception afterwards for participants to reflect on the evening. This event will be free to attend and the Vice Chair hoped that members of the Committee would show their support by attending. A 'Midsummer Drinks' event was scheduled for 19 June – this would be offer all members (Benchers, Members of Hall and Students) – an opportunity to engage with each other.

6. **Matters arising**

There were no matters arising.

7. **Student Activities and Qualifying Sessions at the Inn**

7.1. The Chair clarified that it was a matter for the Pre-Call Education Committee to decide what should or should not be deemed a Qualifying session and requested that the discussion should focus on the following issues:

- a. **From a practitioner's perspective, what can the Inn provide which we think should be compulsory as a part of qualification/Call to the Bar, if we accept that it must be "outcomes focused" and determined by reference to the Threshold Standards?**
- b. **What activities ought the Inn to be providing to students (whether or not those activities are QS)?**
- c. **What is the purpose of undertaking activities with the/your own Inn? How much of that fits with the Professional Statement?**

7.2. George Payne outlined the main themes identified by the Qualifying Sessions Working Group. In the following discussion the following observations were made:

- (i) There is a danger of confusing Qualifying Sessions with initiatives by the Inn for attracting students.
- (ii) Residential weekends are currently more successful in attracting both students and members of Hall.
- (iii) Dining needs to be made more effective and attractive to both students and members of Hall. There needs to be more encouragement for members of Hall to attend dining.
- (iv) If the Inn becomes overly focused on 'output', it may lose events or qualities anything that distinguishes it (and its activities) from other providers.

7.3. Thereafter there was a discussion amongst the Committee during which many members spoke and where the following points were made:

- (i) Some members expressed regret that ordinary dining and the Call ceremony were no longer likely to Qualifying Sessions.
- (ii) There was nevertheless a consensus that the Inn should retain dining and the Call ceremony within the calendar of activities for members.
- (iii) The Inn should regard the current scrutiny of its activities as an opportunity to improve what it does for its members, rather than as a threat.
- (iv) The Treasurer commented that it is desirable to maintain dining and that collegiality is essential to the future success of the Inn. It is highly desirable to mix judges, senior and junior barristers and students because socialising together is likely to result in a happier and more contented atmosphere.
- (v) There could be benefits to the integration of mooting and debating with dinner.
- (vi) There could also be benefits to students from being sat randomly amongst themselves, since the same 'randomised' seating at Domus dinners is regarded as an excellent opportunity for students to interact with more senior members of the Inn whom they are unlikely to know.
- (vii) However, the benefit of randomised seating amongst students needed to be balanced against the impact that this might have, particular on those from different backgrounds who may be unwilling to attend dinner without knowing that there would be at least one familiar face.
- (viii) There is a balance to be struck between creating an event that is enjoyable and one that is contorted in order to achieve status as a QS. The Master of The Walks commented that it may be preferable to treat ordinary dining as an event the focus of which is fun and enjoyment, so that it remains attractive in that way, rather than as a regulated activity.
- (ix) The missing link at dining was the practising Bar and the Inn need to do more to engage those members.
- (x) Euro Group lectures followed by mixed dining had been very popular in the past. The dinner element was not compulsory, but students and barristers would stay because they wanted to continue the discussion in a pleasant setting.

7.4. The Committee **ACCEPTED** that Ordinary dining in its current format will not be able to continue to be treated as a Qualifying Session.

7.5. However, it was overwhelmingly **AGREED** that collegiate activities, including dining in particular, where students, judges, junior and senior barristers could meet and socialise, ought to be preserved.

8. **Any Other Business – CONFIDENTIAL**

A paper of draft proposed amendments to the BRC rules was tabled (Committee members had also received this by email). It was planned to put these (subject to approval by this Committee at its 22 May meeting) to members of Hall at an EGM in the summer. In order to avoid drafting on the hoof or the consideration of unexpected points, members were asked to send their comments / further amendments to *brc@* by 28 April.

9. **Dates of the next committee meetings:**

- **22 May 2017** – at 33 Chancery Lane, Rooms 4 & 5  
(agenda items should be identified to Wiebke by 9 May and papers submitted by 12 May for circulation by 16 May)
- 14 June 2017
- 11 July 2017

The meeting was followed by dinner in the Old Hall with the Treasurer, the Master of the Library and the Master of the Walks.

**ACTION SUMMARY**

	<b>Item</b>	<b>Action</b>	<b>Lead</b>	<b>Deadline</b>
1	8. Comments regarding draft BRC Rules (as tabled at 11 April meeting)	Committee members to submit drafting or substantive comments, suggestions or proposals to: <a href="mailto:brc@lincolnsinn.org.uk">brc@lincolnsinn.org.uk</a> .	All	28 April
2	Testimonials for website	Committee members to volunteer or to suggest another member to be included to Stuart and Sara.	All	2 May
3	5. Wellbeing Event	Committee members to sign up to attend the Wellbeing event on 8 May.	All	2 May
	Gather Bar Council information for future BRC discussion	BRC's SAG members to liaise with SAG and BRC Chair to identify opportunity and means for BRC to contribute effectively in discussions.	Julie Whitby and Chair	Ongoing

**W Morgan, Member Services Manager  
April 2017**

**CHAIR'S REPORT TO BRC**  
**FOR MEETING ON 22 MAY 2017**  
*Benjamin Wood and Margia Mostafa*

**Introduction**

1. We will be sitting down to meet on 22 May as many of our colleagues are hiking around London on the Legal Walk 2017. From the comfort of our seats, and with cups of tea in hand, we shall wish them well!
2. It is with great sadness, however, that we note the untimely death of Edward Bartley Jones QC, a very popular Bencher. Many will know Ed from having worked with him on committees, from his practice in Manchester or having been taught with or having taught alongside him. Ed will be much missed.
3. This note deals with the following issues:
  - a) Committee update;
  - b) Forward planning; and
  - c) General update and pleas.

**A. Committee and sub-committee update**

4. We hope that everyone enjoyed the BRC dinner after our meeting on 11 April. As you know, an event in this format has not previously been held. In past years, and in common with other Committees, the BRC has dined on the Bench table following a meeting. Whilst we anticipate that the Bench Committee dinners will be reinstated when the Great Hall reopens, we wonder whether it would be better to retain the 'special' dinner for the BRC (along the same lines as this year, and at around the same time, but trying to avoid religious or school holidays).
5. The Chair and Vice Chair have attended the following committee meetings since the last meeting: F&GP, PADG, Catering and Post Call Education.
6. The Committee's notice is drawn to the following.

**BENCH COMMITTEES**

**i. Estates (12 April)**

7. The Inn has received positive pre-planning advice from Camden Council in relation to the overnight accommodation. The formal application – which would enable the flats to be used year round, rather than for only 90 days in a calendar year – will include three flats.
8. The Inn continues to develop its compensation proposals for residential, Bar and commercial tenants affected by the Development.

## **ii. Post-Call Education (25 April)**

9. It is hoped to build on the success of the Women's Forum: Karen Shuman and Sellisha Lockyer are considering a network event.
10. The ICCA will be running an expert witness handling course on 22 July and 7 October 2017.
11. The Inn has updated and refreshed the tutors' and pupils' instructions for the pupils' residential advocacy course and, on a trial basis, the Case Analysis session will be moved from the Friday evening and held in the Inn around 10 days prior to the residential weekend.

## **iii. Catering (2 May)**

12. The Inn has been enjoying strong lunch figures of late, which suggests that members have remained loyal even with the closure of the Great Hall.
13. In order to protect itself against any unforeseen delays, the Inn has not taken any commercial bookings for the Great Hall or new education centre prior to Michaelmas 2018.
14. The Catering Committee considered the Bar Rep's suggestions regarding dining in the context of its wider policy discussions. A report on pricing (current and proposed) will be prepared for F&GP and it is expected that Council will consider the issue of dining in due course.

## **iv. Chapel (3 May)**

15. The Inn has decided against applying for a wedding licence for event spaces outside the Chapel. The decision was reached because the Inn would prefer to restrict weddings to those who have a connection with the Inn and/or the profession, but licensed venues must offer weddings to the public.
16. The Chapel Concert and Dinner will be held on Wednesday 24 May 2017. Members of Hall are encouraged to attend the Concert (for which there is no charge) even if they do not wish to stay for dinner.
17. Thursday 25 May is the 394<sup>th</sup> anniversary of the consecration of the Chapel (and Ascension Day). There will be a sung Eucharist in the Chapel at 5.30.
18. The Warburton Lecture will be given on Sunday 25 June 2017. This year's lecture is entitled "Christ and the Cosmos" and is being given by the Regius Professor of Divinity at Oxford University, Professor Graham Ward.

## **B. Forward planning**

19. At the next BRC meeting (on 14 June) we intend to discuss the potential separation of the Bar Council from the Bar Standards Board. We are extremely grateful to Julie Whitby for having prepared the paper which is included now, so that there is plenty of time to consider the issues and consult as appropriate, in advance of our June meeting.

20. In addition, we hope to bring forward a budget paper, outlining – for the first time – a budget request that we anticipate making on behalf of BRC for its events and activities.
21. In the event that the Committee agrees that some or all of the proposed Rule changes should be presented to Hall, we propose to convene an EGM of Hall to take place immediately before the Committee meeting on 11 July.

### **C. General update and pleas**

22. The Inn is soon to host three events of diverse appeal:
  - a) Cheese and wine evening in the MCR on 30 May. Wines selected by Liberty Wines accompanied by artisan cheeses. *mcrreservations@lincolnsinn.org.uk*
  - b) Garden Party: Thursday 6 July 2017
  - c) Family Day: Sunday 9 July 2017
23. The BSB is consulting on a proposal to lower the standard of proof in disciplinary proceedings from the current criminal standard to the civil standard. Further details are available on the BSB's website and the deadline for responses is 21 July 2017.
24. The Bar Council will be launching its "Working Life at the Bar" survey on 15 June 2017.
25. The Development is continuing to take shape. The holes are fully dug: the concrete floor slab has already been poured for the Library extension and the ground is being prepared for the Education Centre's floor. Work inside the Great Hall and the kitchens is also well advanced. Decked out in a hard hat, high-vis jacket and steel toecapped boots, your intrepid chair, together with the Under Treasurer and the Assistant Under Treasurer (and the rest of the Development Working Group) toured the site on 10 May. If there were photos of the group on its tour, they are sadly not available!

### **PLEAS**

26. Without wanting to cause information overload or goodwill deficit, could we possibly ask that, when the Inn sends out a call for volunteers or a plea for responses, you do what you can to encourage your friends and colleagues to get involved?
27. This plea applies particularly to BRC-led events and initiatives, as we are trying to broaden the appeal and relevance of the BRC and the things that we do.

We look forward to seeing you on 22 May.

**Benjamin Wood and Margia Mostafa, 16 May 2017**

**SOCIAL MOBILITY SUB-COMMITTEE REPORT TO BRC**  
**FOR MEETING ON 22 MAY 2017**  
*Stuart Hornett and Sara Ibrahim*

On 28 April 2017, the SM S-C had a fruitful meeting with Paul McDonald of the Social Mobility Foundation.

University mentoring was identified as an area where there was a current deficit in what the SMF is providing and where members of Hall could really assist.

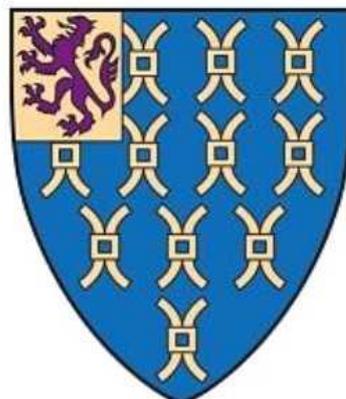
A pilot scheme involving the training and appointment of 10 mentors for 3 years was agreed in principle.

An email was sent to all members of the BRC on 5 May 2017 seeking volunteers for the mentoring scheme and those who felt they could provide a testimonial for the web site.

Unfortunately, the response to date has been a little disappointing, with just 2 volunteers for mentoring and 1 for a testimonial.

**SOCIAL AND WELLBEING GROUP REPORT TO BRC**  
**FOR MEETING ON 22 MAY 2017**  
*Margia Mostafa*

1. On 8<sup>th</sup> May 2017, the SWG held its inaugural and flagship event at the Old Hall. It coincided with Mental Health Awareness week. A copy of the Programme is attached to this report.
2. The Wellbeing evening consisted of a presentation by Rachel Spearing of the Wellbeing at the Bar working group. As Chair of the working group she has access to research about the impact of a high pressure working environment on our mental and physical health. She showed a video which depicted the effect of negative work practices. She then went through a couple of common scenarios and questions asked about wellbeing. She was able to give details of the various resources and contact points for help for those struggling with the pressures of life at the Bar. Her presentation was followed by a lively panel Q and A session.
3. Thereafter Julie Whitby demonstrated a number of simple yoga and breathing exercises. I am pleased to report that the audience engaged fully with the exercises and it was highly entertaining to see the Old Hall filled with people waving their hands in the air! The evening ended with a closing address given by our Treasurer, Lord Neuberger of Abbotsbury. Lord Neuberger indicated that he had noted the concerns raised in the Q & A panel about requests from the judiciary to prepare skeleton arguments overnight which can lead to difficulties with other commitments.
4. The evening was a “sell out” with over 130 people booked on Eventbrite with a waiting list of around 20. The capacity of the Old Hall is 120 seated guests. The tickets on the waiting list were released. Anyone who called or emailed the BRC on the day was invited to come along as there were several last minute cancellations. The final attendance figure was 86 attendees excluding the speakers.
5. I was able to speak to almost everyone who attended the reception thereafter. There was a good mix of students, pupils, barristers and benchers. All gave encouraging words about how much they had enjoyed the evening and how they felt it was beneficial to them. About 40 or so feedback forms were completed and the event was very well received indeed with requests for a follow up event.
6. The evening took a tremendous amount of organisation and I am grateful to the SWG but in particular Wiebke for all the assistance I received.
7. One matter of disappointment was the lack of members from BRC who attended.
8. Julie Whitby, Linda Turnbull and I are the Wellbeing representatives for Lincoln’s Inn and for the Wellbeing at the Bar Working Group. One of us will attend the meetings of Wellbeing at the Bar Working Group. Linda has attended the most recent meeting.
9. Following on from this event, I am encouraged to hold another Wellbeing event. It is likely to be to be in the autumn.



**The Bar Representation Committee  
at Lincoln's Inn**

**Wellbeing Evening**

**Programme**

**Monday 8 May 2017  
6.00 – 8.30 pm  
Old Hall, Lincoln's Inn**

# Programme

Monday 8 May 2017

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**5.45 pm** *Arrival*

**6 pm** *Welcome*

Margia Mostafa, Vice Chair, Bar Representation Committee

*Keynote Speaker: Rachel Spearing*

Rachel will present evidence and deliver guidance on identifying risks to wellbeing and how to deal with the challenges of an increasingly demanding work environment. Tips for putting wellbeing principles into practice at work and in personal development will also be provided.

**6.40pm** Q & A session with a panel of wellbeing experts: Charlotte May QC, Nicholas Peacock, Sam Mercer, Nick Hill and Dr. Chang Park  
The panel will answer questions and provide advice about how the work place can give appropriate support through the use of wellbeing resources.

**7. 10pm** *How to recognise fatigue, tension and stress and implement simple coping strategies to combat burnout. Julie Whitby*

**7.25 pm** Closing address by the Rt. Hon Lord Neuberger of Abbotsbury, Treasurer of Lincoln's Inn

**7.35 pm** *Reception*

## **DRAFT PROPOSED AMENDMENTS TO THE BRC RULES**

*11 April 2017 (updated 16 May 2017)*

Set out below are a second draft of revised BRC Rules which, subject to discussion and amendment, it is proposed be put before Hall for adoption at an EGM on 11 July 2017 (i.e., to coincide with the currently planned BRC meeting), in substitution for the existing Rules. The revisions have been drafted with the intention of modernising the Rules and in order to make them (and the BRC) work better for Hall.

We are extremely grateful to Thomas Barrett and Timothy Lyons QC for the work that they have done. Following circulation of the first draft, comments were received from one member. These have been taken into account in producing this updated version.

The **principal changes** from the existing Rules are as follows:

1. Differentiate between the qualification criteria for Elected and Co-Opted memberships.
2. Elected members would need to be in good standing and to hold or have held a practising certificate (and so, at some point successfully to have completed at least a first six pupillage).
3. Co-Opted members would need to be in good standing. In deciding whom to co-opt, the Committee would be required to have regard to “the desirability of having a Committee membership that reflects to a reasonable extent the diversity of identities and interests of Members of Hall” and to the desirability of having vacancies each year.
4. The Committee would gain the right to terminate the membership of any member (including the Chair or Vice Chair) if that member brings the Committee or the Inn into disrepute (to be decided on a 75% vote).
5. Tidying up (and tightening) the provision for termination of Committee membership upon failure to participate in three meetings without reasonable excuse.
6. The Committee would gain the right to approve any nomination for Vice Chair.
7. Introduction of single transferable voting for elections.
8. Confirming that Committee Meetings are open to members of Hall (subject to exceptions).
9. Confirming that the President and the Vice President of the Junior Members Association may attend Committee Meetings (even if they have not yet been Called).
10. Tidying up of decision making procedures (e.g., to provide that the Vice Chairs may act in the absence of the Chair).

**Benjamin Wood and Margia Mostafa**  
**11 April 2017, updated 16 May 2017**

## DRAFT/ RULES OF LINCOLN'S INN BAR REPRESENTATION COMMITTEE

(Approved at the EGM on [DATE])

1. There shall be a committee of Lincoln's Inn known as the Bar Representation Committee ("the Committee") and these are the rules of the Committee ("the Rules").
2. The Rules may be altered or replaced by a two-thirds majority of Members of Hall present and voting at any General Meeting convened for that purpose.

### Functions

3. The functions of the Committee are :
  - a. To provide representation on behalf of those who have been called to the Bar by the Inn and who have not been elected Masters of the Bench (i.e. "Members of Hall") in relation to:
    - i. the Bench Committees of the Inn, and
    - ii. assisting the Treasurer, the Masters of the Bench, and the staff of the Inn in the running of the Inn's affairs.
  - b. To disseminate information on the running of the Inn to the Members of Hall.
  - c. To bring to the notice of the Bench Committees and working parties any matters of complaint or suggestions, from either the Members of Hall or from the Committee.
  - d. To recommend to the Treasurer and the Masters of the Bench suitable Members of Hall to take part on such other committees and working parties as are thought appropriate, whether within the Inn or on behalf of the Inn on other professional or advisory bodies.
  - e. Generally to collaborate with the Treasurer and the Masters of the Bench in securing a happy and contented atmosphere throughout the Inn.

### The Committee

4. The Committee shall comprise: Elected or Replacement members (up to 24), Co-opted members (up to 10), and a Chair (up to 1).

### The Memberships

5. *Elected Members*
  - a. Posts: At any one time there shall never be more than 24 Elected Members of the Committee.
  - b. Term: An Elected Member's full term of office is 4 years, from the 1st January immediately following their most recent election through to the 31st December 4 years after that.
  - c. Standing: Any Member of Hall may stand for election (or re-election) to the Committee provided that at both the closing date for nominations and at the date of the election they either currently hold or have at any point previously held a practising certificate<sup>1</sup> to practise as a Barrister in England and Wales.
  - d. Schedule: In the autumn of each year a cohort of six vacancies will fall due for election to the Committee for terms starting on 1st January in the following calendar year.

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<sup>1</sup> Any reference to a 'practising certificate' in these rules is to be ambulatory in nature. For example at the time of drafting this refers to a practising certificate provided by the Bar Standards Board as the authorisation to practise under the Legal Services Act 2007, but where at the relevant time that does not apply, the term 'practising certificate' refers to the equivalent document or provision applicable at the relevant time for authorising an individual to practise as a Barrister in England and Wales.

## 6. *Co-opted Members*

- a. Posts: At any one time there shall never be more than 10 Co-opted Members of the Committee.
- b. Term: A Co-opted Member's full term of office runs from the date of the Committee resolution making the appointment through to 31 December of the second year following that (though the Committee may provide for such terms to start later than the resolution concerned and/or finish earlier).
- c. Standing: Any Member of Hall may be appointed by the Committee to serve as a Co-opted member. In considering Members of Hall to appoint to the Committee, it shall have regard to the desirability of having a Committee membership that reflects to a reasonable extent the diversity of identities and interests of Members of Hall.
- d. Schedule: The Committee shall from time to time appoint Co-opted Members as it sees fit in line with the rules and having regard to the desirability of vacancies at the start of each calendar year.
- e. Termination: Any Co-opted Membership may be terminated by a resolution of the Committee.

## 7. *Chair Membership*

- a. Posts: At any one time there shall never be more than 1 Chair of the Committee.
- b. Term: A Chair's term of office is 2 years, from the 1st January immediately following election through to the 31st December 2 years later.
- c. Standing: Any Member of the Committee may stand for election (or re-election) as Chair of the Committee provided that at both the date of close of nominations and at the date when voting closes they are a member of the Committee.
- d. Schedule: In the autumn of every other year, an election for the post of Chair of the Committee shall be held.
- e. The Chair membership may be held concurrently with any other membership, and individuals remain members of the Committee as long as they have at least one unexpired membership term (be this the Chair membership or any other kind).
- f. An individual who concurrently holds both the Chair membership and another membership of the Committee shall only count as a single member for the purposes of quorum and voting.
- g. Where a vote of the Committee is tied the Chair may cast an extra deciding vote.
- h. In the event of the Chair resigning or ceasing to be a member of the Committee for whatever reason during their term of office, the Committee shall appoint an Acting-Chair from amongst its number to serve until such time as an election can be held either for a new chair on the standard cycle or, if the vacancy arises more than six months before the end of the current Chair's term of office, for a replacement chair to complete the term.

## 8. *Replacement Members*

- a. Posts: A Replacement Membership only arises if:
  - i. an Elected Member ceases to be a member of the Committee prior to the expiry of their full term, creating a vacancy, and
  - ii. the Committee resolves to appoint an individual Replacement Member for that vacancy, and
  - iii. If the replacement member was appointed the total number of Replacement and Elected Members would not exceed 24.

- b. Term:
  - i. The full term of a replacement member is the period between the date of the Committee resolution making the appointment and the expiry date of the full term of the Elected Member they replace.
  - ii. Where a Replacement Member during their term becomes an Elected Member, the former terminates upon commencement of the latter.
- c. Standing: Any Member of Hall may be appointed by the Committee to serve as a Replacement member provided that they satisfy the criteria for Elected Memberships (in accordance with rule 5(c) above, if the words “both the closing date for nominations and at the date of the election” were read as “date of appointment”).
- d. Termination: Any Replacement Membership may be terminated by a resolution of the Committee.

### **Disqualification**

- 9. Members of the Committee are disqualified and cease to be Members on:
  - a. their election as a Master of the Bench; or
  - b. their death, disbarment or suspension from practice; or
  - c. their failure to participate in three meetings of the Committee within a 12 month period without reasonable excuse. In this event, the disqualification shall take effect at the conclusion of the next meeting following the third meeting at which the member has failed to participate. It shall be for the Member to satisfy the Chair in the first instance that their excuse is reasonable but the Chair’s decision may, at the request of the member concerned, be reviewed by the Committee (which shall decide by a simple majority vote). Where a member has failed to participate in more than three meetings in a 12 month period they are also liable to disqualification in the event that there are three meetings within that 12 month period for their failure to participate in which they do not have a reasonable excuse.
- 10. Any membership of the Committee (including that of the Chair) may be terminated where 75% or more of the current members of the Committee vote that the Member or Chair has brought the Committee, the Inn or both, into disrepute.
- 11. An individual is prohibited from standing for election, or from being either appointed or elected to any membership of the Committee if they either:
  - a. would be disqualified from Membership under Rule 9 (a) or (b) above, or
  - b. they do not meet the standing requirements of the relevant membership.

### **Business**

- 12. The Committee shall meet and conduct its business in such manner as the Chair may from time to time direct.
- 13. When the Chair is temporarily unavailable or indisposed, any power or duty of the Chair (such as decisions as to the conduct of the Committee’s business including its elections) shall be executed by the Vice Chair(s). Where the Vice Chair(s) is or are also unavailable, these powers and duties are to

be vested in the most senior member of the Committee (determined by Call) who is available and not indisposed.

14. The quorum for the Committee for both normal and general meetings of the Committee shall be 8.
15. References herein to votes, and to any majority thereof, shall exclude those who do not vote or who abstain, but no decision shall be effective unless the number of those voting equals or is greater than the quorum.
16. The Committee has two types of meeting: normal meetings and general meetings.
  - a. Normal meetings shall be open to all Members of Hall to observe, save that the Chair or the Committee may in their discretion decide that part or all of any meeting shall be 'closed'. Even where a meeting is 'open' non-Committee Members of Hall have no right to participate in or address the meeting.
  - b. General Meetings shall be open to all Members of Hall.
    - i. Once every calendar year the Chair shall arrange for the Annual General Meeting of the Committee, and such meetings may never be more than 15 months apart.
    - ii. The Chair or the Committee may convene an extraordinary general meeting of the Members of Hall as necessary, but must convene an extraordinary meeting within a reasonable period following the written request to the chair or the Committee of at least 30 Members of Hall. The request must set out the purpose for and agenda of the meeting.
    - iii. Reasonable notice of both the date and agenda of all general meetings shall be given by such method as the Chair or the Committee may from time to time direct.
    - iv. The Chair (or failing him, such other member of the Committee as the Committee shall nominate for the purpose) shall act as chairperson of any general Meeting, and at Annual General Meetings the chairperson must give a report of the work of the Committee during the preceding year.
17. For the purposes of Rule 16, the President and the Vice President of the Lincoln's Inn Junior Members Association shall be considered Members of Hall, whether or not they have been called to the Bar.

#### **Additional powers of the Chair**

18. The Chair may propose for appointment up to two members of the Committee to the post of Vice-Chair, who will take office if approved by a simple majority vote of the Committee. The term of a Vice Chair shall be determined by the Chair but shall not in any event extend beyond the end of the Chair's own term of office (whether this is a full or part term).
19. The Chair may, from time to time, appoint members of the Committee to sit on Bench Committees for such period as the Chair thinks fit or until the Chair directs otherwise. Members of the Committee appointed to Bench Committees by the Chair shall commence their membership of those Bench Committees at the next meeting following their appointment, unless otherwise instructed by the Chair.

## **Elections**

20. Both the Chair Membership and Elected Memberships shall be filled by election by means of secret ballot using the Single Transferable Vote method.
21. All Members of Hall are entitled to vote in elections for Elected Members.
22. Those who are members of the Committee on the date when their ballots are cast are entitled to vote in elections for Chair of the Committee.
23. The elections shall be conducted at such time and in such manner as the Chair shall from time to time decide, save that;
  - a. the results shall be declared in the same year as the election was held,
  - b. the term of the candidate(s) elected shall not commence until 1 January of the next year,
  - c. the voting procedures and counting method will be set out in the notice that opens nominations for candidates.
24. In the event that two or more candidates poll the same number of votes and the number of vacancies for those candidates to fill is less than the number of candidates polling the equality of votes, lots or an equally random equivalent shall be drawn in order to determine the winner(s).

## **Transitional Period**

25. Until 1 January 2019 the Rules set out above will apply with the following modifications listed below, after that date this whole provision expires and is to be removed from the text of the rules. The Rules are modified with the effect that of the 15 memberships elected in 2016 and beginning on 1st January 2017:
  - a. Six memberships will expire on 31 December of the fourth calendar year following the commencement of this membership term (i.e. 31/12/2020) and these memberships will be awarded to the first through to the sixth placed candidates,
  - b. Five memberships will expire on 31 December of the second calendar year following the commencement of this membership (i.e. 31/12/2018), and these memberships will be awarded to the seventh through to the eleventh placed candidates, and
  - c. Four memberships will expire on 31 December of the first calendar year following the commencement of this membership (i.e. 31/12/2017) and these memberships will be awarded to the twelfth through to the fifteenth placed candidates.

-END-

**REPORT FOR THE BAR REPRESENTATION COMMITTEE**

**Julie Whitby**

**May 2017**

**ANTICIPATING REGULATORY CHANGE FOLLOWING THE FINAL REPORT OF  
THE COMPETITION & MARKETS AUTHORITY (CMA) LEGAL SERVICES MARKET  
STUDY**

- 1) At its third meeting on 27 March 2017 the SAG discussed the outcome of the CMA Final Report of its Market Study of Legal Services and its implications for future regulation. The conclusions of the report, and the recommendations that flow from them have clear implications for the Bar, and any decisions or recommendations made by the SAG / COIC will have an impact on members of hall.
- 2) The purpose of this report is to provide an overview of the study, its conclusions, recommendations and indicate the concerns and opinions of the SAG, and the proposed recommendation to the PADG / COIC. By way of background: The present regulatory framework flows from the Legal Services Act 2007. When this legislation was constructed it brought about considerable change for all branches of the profession, and introduced new regulatory structures and procedures for Barristers, solicitors and legal executives. In 2013, in submissions to the Ministry of Justice's legal regulation review, the Law Society and Bar Council both called for the return of responsibility for areas such as standard setting and training to the professional bodies, with their regulatory arms retained for discipline and enforcement. There was an initial attempt at review, but this was placed on hold. The CMA study then overtook / replaced this initiative.
- 3) The Market Study did not look in detail at the background to the present framework, but the report's recommendations may require a consideration of its construction.
- 4) The CMA published the final report of its market study into legal services in December 2016. The study was intentionally limited to the effect of the workings of the present regulatory system on individual consumers and small businesses; criminal legal services were excluded. The clear conclusion was that the legal services sector is not working well for these two groups. This was largely because those consumers lack the experience, and information to identify their needs, make informed choices and engage with service providers. In the CMA's judgement the present regulatory framework does not meet the principle of targeted regulation, and as a result of these two findings the current regulatory framework will be unsustainable in the long term. The CMA made recommendations to the regulator and to the Ministry of Justice

### **Its principal recommendations to the MOJ were as follows:**

- a. **Short-term recommendations:** That the MoJ should undertake a review of independence of regulators. “We believe strongly in the principle and importance of independence of regulators... This is a fundamental principle... We recommend that the MoJ carry out the review on independence as soon as possible.”
- b. **Long term vision** – that the MoJ should review the current regulatory framework for legal services: a complete review is recommended of the regulatory structure to identify (inter alia) how changes to the framework of regulation might impact the legal services sector outside the scope of the present market study and how it might improve generally risk-based regulation.
- c. Review the case for extending redress to those consumers who use unauthorised providers (that is, those who are not legally qualified and offer only non-reserved services). I.e. increasing the jurisdiction of the Legal Ombudsman, by encouraging self-regulation among unauthorised providers,
- 5) The Long-term vision is designed to increase flexibility in the regulatory framework, with regulation targeted at high-risk activities. The move towards a proportionate system, which will be cost effective, and will move from a regulator attaching to a professional title – so one regulator for all legal services could emerge. Professor Mayson suggests if this is the case then the originating Act will have to be revisited and redrafted.

### **The principle recommendations to the regulators**

- 6) These are aimed in part at solicitors rather than barristers but may affect those dealing with direct access work. Points (d) and (e) are the most relevant to our considerations.
  - a. Set a new minimum standard for disclosures on price and the service provided, the redress available, and the regulatory status of the provider.
  - b. Redevelop their approach to consumer education
  - c. Promote the use of independent feedback and comparison tools to help consumers understand the quality of service offered by competing providers.
  - d. Remove restrictions on solicitors delivering non-reserved services in unauthorised firms. (The current intention of the Solicitors Regulation Authority - with opposition from The Law Society): an individual solicitor would remain regulated; the firm would not be regulated. This will have implications for barristers receiving instructions from such individual solicitors or working within unregulated firms.
  - e. Regulators to take steps to reduce regulatory burden in areas where not justified ...: - such as steps to increase transparency of fees and services. And to take action to reduce regulatory costs (particularly those relating to professional indemnity insurance, training, and codes of conduct).

### **The Post CMA Report Situation**

- 7) The presumption was that the government would accept all of the CMA's recommendations, unless there were strong policy reasons not to do so. However the initial 90-day period passed without response, and the present BREXIT and Election process may have overtaken such a response. There is good reason to think that the MoJ will accept the recommendation of the CMA to commence a review of the independence of regulators. A consultation on independence was ready to proceed prior to Easter 2016 – but delayed in order to allow the CMA investigation to proceed without pre-empting its outcome. The SAG believe that the MoJ has the consultation 'ready to go', and it will, at the least, accept the short term recommendation in relation to the independence issue but will postpone the further more substantial and wider review on regulation generally.
- 8) The CMA expected the regulators to establish a 'programme board' by 31 January, to publish a response to the CMA report by 30 June, and to commence a consultation on the regulatory changes recommended by 30 September. The LSB and frontline regulators have set up a Remedies Programme Implementation Group (RPIG), which has met regularly.
- 9) In 2016 COIC formed a Regulatory Working Party to consider the issues arising from the CMA report (as well as similar issues raised in an earlier paper from the LSB). The Working Group has not met following the publication of the CMA report. SAG has recommended the PADG requests the group reform / meet.
- 10) The Law Society created the SRA as the independent regulator of solicitors: In January the Law Society's Chief executive resigned. She had made comment that the governance arrangements of the society were not fit for purpose. In February the LSB launched a formal investigation into the internal governance arrangements of the SRA and the Law Society to review whether these arrangements "impair the independence and effectiveness of the performance of regulatory functions". It is to be noted that the Legal Services Commission questioned whether the Law Society and the SRA were even complying with the present day requirements of the 2007 Act.
- 11) If the formal, structural, legal and financial separation of the Law Society and SRA is the outcome of such a review, it is difficult to see on what basis the Bar Council and BSB could be treated differently.
- 12) Dr Vanessa Davies, director-general of the Bar Standards Board, said: "For some time, the Bar Standards Board has supported, in principle, the complete separation of the regulatory and representative functions. This is because we believe it would be in the public interest and would allow regulatory and representative bodies to be stronger in their respective roles." The financial implications if there is to be a split have not been considered. If the inevitable is to happen then we must consider our options.

### **The Question raised by the Consultation:**

- 13) The matter which gives the SAG cause for concern and requires the immediate attention of COIC and the Bar is the short-term recommendation for a “review of independence of regulators”. The scheme of regulation embodied in the Legal Services Act 2007, which enabled the Bar Council [the “BC”] to be “the Approved Regulator of the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board”<sup>2</sup>. The BC and the BSB accordingly retain the appearance of connected bodies and in the interests of economy occupy the same building and share some facilities.
- 14) The principal question likely to be asked in such a consultation is whether we agree that the regulatory and representative functions of the relevant professional bodies should be kept completely separate. The SAG concluded at its meeting on 23 February and again on 27 March that the answer to that question would have to be “Yes”. It will recommend that as a matter of first principle that the answer is or ought to be ‘yes’: any other response would be regarded as indefensible and unacceptable.

### **A Major Consequence of Independence**

- 15) Because the present structure (of the Law Society/SRA and BC/BSB) is enshrined in statute, unravelling the relationships requires legislation and will take some time to accomplish. The BC’s financial viability depends heavily on the share of the practising certificate fee (“PCF”) that it receives/retains. Historically, the LSB has taken a generous view of the “permitted purposes” under s.51 Legal Services Act 2007 which has enabled the BC to raise significant funds from the compulsory levy of the PCF on the profession. If the regulatory function were completely separated from the BC, unless the representative bodies can persuade the government to allow them still to receive a share of the PCF, the BC will have to raise all the funds it needs from voluntary contributions from barristers. Further, the combined cost of running the BSB and BC is then likely to increase significantly since upon ‘divorce’ the two bodies will probably need to acquire completely separate establishments and facilities. Any extra cost of running the BSB will fall upon the practising Bar (via the PCF): a question is likely to arise about the future role, shape and viability of the BC.
- 16) At the present time only 60% of the Bar subscribes to that portion of the fee devoted to the provision of representation services and that percentage has been falling over the last five years.
- 17) It is believed that the BC may be forced to try to seek from the Inns a contribution towards its necessary expenses, in order to secure its continuing survival. It is understood that it did so in the current year but while the Inns were prepared to fund two of the activities which they could regard as charitable they refused to fund the BC undertaking more generally.
- 18) Statistically it is hard to see how the Bar Council could survive as a standalone entity. The Bar Council submitted its PCF and budget proposal to the LSB for approval for 2017/18. A copy of

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<sup>2</sup> As currently described on the Bar Council’s website.

that document is here: [Bar Council 2017/18 PCF Application](#). The anticipated receipts from the PCF were £10.3m. Of that, the BSB gets £7.3m and the Bar Council £3.031m. Just under a third of the PCF is received by the Bar Council for its “representative” functions. Taking into account non-PCF funds (principally the voluntary Bar Representation Fee but also the Inns’ subvention), the Bar Council’s anticipated income was £5.56m (with the BSB’s £8.13m). The overheads shared between Bar Council and BSB amount to £5.17m. The direct expenditure budget of Bar Council was expected to be £3.7m (£2.6m, staffing and £1.2m non-staffing) and it would pay £1.9m towards shared overheads

- 19) Unless the Bar Council could persuade the government to give it powers to continue to levy a compulsory charge on members of the bar for the current expenditure on “permitted purposes” it would have an immediate deficit of just over £3m (i.e. its income would be halved). Add to that the burden of additional costs (the element of shared overheads) and it is clear that the Bar Council would be unable to fund its current operations. It would be looking to fill a hole of at least £4.9m. The subvention currently paid by the Inns is £0.25m. If COIC were to step in and plug the gap, each Inn would be looking at a contribution of at least £1.25m. In fact, the position would almost certainly be worse because the current sharing of overheads between Bar Council and BSB leads to significant economies of scale, which would be lost upon separation/independence.
- 20) The Bar Council needs to be asked what plans it has for its operations and funding in the event that (a) the BSB is separated into an independent entity; and (b) the Bar Council is not given statutory powers to raise funds for the existing s.51 “permitted purposes”.
- 21) How important is it that the Bar should have its own fully functioning representational body where issues which require a strong voice and trade union type representation arise?
- 22) There are a number of other institutions in existence today, ie the specialist Bar associations the Circuits and even COIC, who are capable of and do represent their members, are these groups not best placed to take over the representation function of the BC? Would the cost of such ‘representation be cost effective?
- 23) There is a need for a competent and strong representative body for the bar and it is vital this is in place prior to the inevitable separation of function.
- 24) A second question is whether COIC and the Inns can and should support the creation (or, in the case of the BC, continuation) of such a body. This is perhaps not the first instance issue for hall, separation and how that will benefit or assist practitioners has to be considered, but this must be borne in mind.
  - a. **The SAG noted As regards “can”:** It is understood that there is a division of opinion on the Board of COIC as to whether the charitable status of the Inns will prevent them and therefore COIC supporting financially any deficiency of an independent BC, in particular by subsidising any of its ‘trade union representational functions’ which cannot be regarded as

charitable. If such functions cannot be regarded as charitable, the Inns cannot support them financially without endangering their own charitable status.

- b. It has been suggested to us that support given to promote the interest of justice can properly be regarded as a charitable object; and that any quasi trade union support given to the publicly funded Bar in its battles for survival with the Treasury can properly be regarded as provided for the promotion of the interests of justice. We regard this as an important issue which requires urgent investigation and examination in order to assist the Bar (and COIC) to obtain a clear view of the appropriate avenues forward. If it is lawful for the Inns to make such contributions, the question still remains whether they should do so... in the interests of justice and despite the default of individual barristers.

### **What next?**

25) It must be noted that there are a number of issues which there is little or no information available – and it is here that we in Hall may need to focus our attention:

- \* The nature and scope of the representational services which the BC will seek to continue to provide to the Bar after independence;
- \* Whether some or all of those services are or may be duplicated by similar services provided by some other provider, such as, for example, COIC or the SBAs;
- \* The likely cost of providing those services;
- \* Whether those services are ones which the Bar will value and for which it will be prepared to subscribe and pay;
- \* If the Bar is not prepared to pay for the range of services then offered, whether it is appropriate for the Inns to subsidise the BC, for those barristers who want them, the contributions which those who do not want them are not prepared to pay;
- \* Whether those services might be more effectively and economically provided by other means.

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