

**Meeting of the Bar Standards Board**  
**Thursday 24 September 2015, 4.30 pm**  
**Room 1, First Floor, Bar Standards Board Offices,**  
**289-293 High Holborn, London, WC1V 7HZ**  
**Agenda - Part 1 – Public**

		<b>Page</b>	
1. <b>Welcome and introductions</b> <b>(4.30 pm)</b>	Chair		
2. <b>Apologies</b>	Chair		
3. <b>Members' interests and hospitality</b>	Chair		
4. a) <b>Action points and progress</b>	Annex A	<b>3-4</b>	
b) <b>Forward agenda</b>	Annex B	<b>5-6</b>	
5. <b>GRA Committee Annual Report (including</b> <b>Annual Report from the Independent</b> <b>Observer)</b> <b>(4.35 pm)</b>	BSB 068 (15)	Malcolm Cohen / Isobel Leaviss	<b>7-29</b>
6. <b>Future Bar Training: Professional Statement</b> <b>(5.05 pm)</b>	BSB 069 (15)	Andrew Sanders	<b>31-84</b>
7. <b>Amended Rules for the Inns' Conduct</b> <b>Committee</b> <b>(5.15 pm)</b>	BSB 070 (15)	Vanessa Davies	<b>85-108</b>
8. <b>Chair's Report on Visits and Meetings:</b> <b>Aug - Sept 15: (*)</b>	BSB 071 (15)	Chair	<b>109-110</b>
9. <b>Director General's Report</b> <b>(5.20 pm)</b>	BSB 072 (15)	Vanessa Davies	<b>111-119</b>
10. <b>Any other business</b>			
11. <b>Date of next meeting</b>			
• Thursday 22 October 2015 (4.30 pm)			
12. <b>Private Session</b>			

**John Picken, Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
17 September 2015

*\*Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*



**BSB – List of Part 1 Actions  
24 September 2015**

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
15a (23 July 15)	finalise and circulate a consultation on BSB fees and charges	Viki Calais / Amanda Thompson	by late Oct 15	03/09/15	<b>In hand</b>
21b (23 July 15)	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Kuljeet Chung	by 31 Jul 15	04/09/15	<b>Ongoing</b> A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.
27d (23 July 15)	send a formal response to the LSB on the BSB's undertaking re: standard contractual terms	Ewen Macleod	by 31 Jul 15	03/09/15	<b>Completed</b>
27f (23 July 15)	finalise the rule change application to the LSB re: removal of reference to the List of Defaulting Solicitors and inclusion of guidance on credit risk	Working Group	by 31 Jul 15	03/09/15	<b>Completed</b>
36b (23 Jul 15)	print a limited number of hard copies and target specific stakeholders	Andrew Lamberti / Amanda Thompson	31 Jul 15	03/09/15	<b>Completed</b>
36a (23 Jul 15)	publish the Annual Report and promote this through a press release and social media (Twitter and LinkedIn)	Andrew Lamberti	31 Jul 15	03/09/15	<b>Completed</b>

**BSB – List of Part 1 Actions  
24 September 2015**

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
25 (21 May 15)	circulate the key points arising from the Authorisation to Practise exercise to Board Members	Vanessa Davies	immediate	16/09/15  08/06/15	<b>In hand</b> – programme Board met on 16 September to confirm and key points will follow.  <b>In hand</b> - a draft report was received by the Information Management Programme Board on 4 June 2015. The Bar Council CEO and BSB DG has requested some further proposals on recommendations and future actions before signing it off for circulation
12b (26 Feb 15)	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	16/09/15  08/06/15  18/03/15	To be re-considered as part of the governance review  Being addressed as part of development of new assurance system (including performance reporting) that will be required to support the new governance system  Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.

**Forward Agendas**

**Thursday 22 October 2015**

- ASPIRE – update
- RSF sign off
- Governance Review update
- Supervision Committee Annual Report
- Supervision report – high impact chambers
- Standards Committee Annual Report
- Bar Council Standing Orders: Part III amendments
- Youth Court Advocacy Research Report

**Thursday 26 November 2015**

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on the Equality Rules
- Outcome of consultation on Disciplinary Tribunal Regulations
- Fees and charges consultation
- Governance Review (Standing Orders)

**Thursday 17 December 2015 (Board Away Day & Dinner)**

- Presentation by Legal Services Consumer Panel
- Future Governance Structure
- Strategic Plan 2016-19

**Thursday 28 January 2016**

- Diversity data report
- PCD / PCD Interim Report Public and licensed access rules
- Future Bar Training: outline proposals for academic, vocational and professional stage reform
- Regulatory Outlook approval
- Outcome of Fees and Charges Consultation

**Thursday 25 February 2016**

- BSB Business Plan for 2016-17 and new Strategic Plan 2016-19
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on recommendations: Immigration Thematic Review

**Thursday 17 March 2016**

- Strategic plan 2016-19 – final
- Public and licensed access review consultation

**Thursday 21 Apr 2016 (Board Away Day)**

**Thursday 19 May 2016**

- Approval of Future Bar Training LSB submission (changes to Qualification Rules, Academic Stage regulatory policy, Vocational Stage regulatory policy, Pupillage Stage regulatory policy)

**Thursday 23 Jun 2016**

**Thursday 28 Jul 2016**

- Approval of CPD regime changes (Part 2)

**Thursday 15 Sept 2016 (budget)**

BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

**Thursday 29 Sept 2016**

**Thursday 27 Oct 2016**

- Approval of CPD quality mark scheme proposal (Part 2)

**Thursday 24 Nov 2016**

BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

**Thursday 15 Dec 2016 (Board Away Day)**

**Thursday 26 Jan 2017**

**Thursday 23 Feb 2017**

BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

**Thursday 23 Mar 2017**

## Report of the Governance, Risk & Audit Committee (GRA)

**Status:** For noting.

### Executive Summary:

1. The GRA Committee is required to update the Board on its activities on an annual basis and this paper also includes the Independent Observer's Assurance Report.

### Recommendations

2. The Board is asked to:
  - a) **note** the contents of the update report;
  - b) **receive** the GRA Committee's assurance on the Independent Observer's report; and
  - c) **agree** to publish the IO's Assurance Statement on the BSB's website.

### Background

3. The Committee's Terms of Reference include: reviewing corporate governance standards, integrity of internal controls, the risk management framework and the internal audit function; and providing opinion on the effectiveness of monitoring processes and whether reliance can be placed upon internal controls.

### Update

4. The Committee met seven times over the year since the last report in July 2014:
  - (a) an extraordinary meeting and a teleconference in September 2014;
  - (b) November 2014;
  - (c) a regulatory risk workshop and an ordinary meeting in January 2015;
  - (d) April 2015; and
  - (e) July 2015.

### *Membership*

5. The membership of the Committee includes:

Malcolm Cohen	Chair (lay)
Adam Solomon	Vice Chair (barrister; commenced in January 2015)
Nicholas Dee	Barrister member
Judith Worthington	Lay member
Tim Fry	Lay member

### *Regulatory Standards Framework*

6. During the latter part of 2014, the Committee oversaw the work undertaken to achieve progress against the LSB's Regulatory Standards Framework, and it provided assurance on an interim Self-Assessment. GRA members reviewed the detail provide by the Senior Management Team (SMT) on progress against the five pillars: outcomes-focussed regulation, risk-based regulation, enforcement, supervision, capability and capacity. Particular scrutiny was paid to the latter theme and action was undertaken to ensure the HR aspects were addressed as a priority by the Director General. As a result the Self-Assessment was signed-off and submitted to the LSB.

***BSB Service Complaints***

7. In November 2014, GRA members reviewed the BSB's service complaints policy, which sets out the process service users should follow if they have a service complaint against the BSB (eg if the BSB takes too long to respond to requests, or if it provides misleading information. NB this is quite separate from complaints against barristers). The policy has been published to ensure that there is a fair and consistent process for service complainants to follow, to help the BSB learn from its stakeholders, and to improve BSB services. The Committee requested that a service complaints monitoring report is produced for its October 2015 meeting; to date, only four service complaints have been raised.

***Corporate Risk Management***

8. The Corporate Risk Register has been presented to the Committee at every ordinary meeting. GRA members scrutinised the risks and the associated mitigating actions, provided assurance to the Board that these were being properly managed, and gave recommendations as necessary. In addition, the Committee was provided with "in-depth risk reviews", which focussed on pertinent corporate risks; much more detailed analyses, operational plans and information were presented in these reviews, and the "Risk Owners" attended the relevant meetings. Risks that the Committee focussed on over the last 12-month period included: Regulatory Knowledge and Data Quality; Entity Regulation; IT; and HR.

***Regulatory Risk***

9. GRA members attended a workshop in January 2015 to discuss Regulatory Risk and in particular the governance and operational arrangements that are being designed. The Committee noted the relationship between corporate risks and regulatory risks and how these are positioned in the overarching strategic framework. Members discussed the role that the Committee might play and how this could complement the work of the Board and Regulatory Risk Owners. In April and July 2015, members received drafts of the Regulatory Risk Index and Outlook for comment.

***LSB Undertaking (Standard Contractual Terms)***

10. The GRA Committee received assurances on the systems that the executive has now put in place to ensure that future undertakings are managed more effectively.

***Independent Observer***

11. The BSB's lay Independent Observer provides independent assurance that the BSB's enforcement system is operating in line with its aims and objectives. The Committee received two Independent Observer reports: from July to December 2014; and from January to June 2015. The reports stated that good administrative standards were observed, and proceedings were handled in line with the BSB's enforcement strategy. It is recommended that both reports are published on the BSB's website.
12. The Committee is due to discuss the recruitment of a new Independent Observer at its January 2016 meeting.

***Governance Review***

13. The Chair of the GRA Committee is a member of the Task and Finish Group that has been set up to steer the BSB's Governance Review; an update on this was provided under a separate paper earlier in September 2015.



***Next update report***

14. The next routine GRA Committee report is due to be presented to the Board in September 2016.

**Financial implications**

15. The governance review (referred to in paragraph 13) has some resource implications for risk and assurance systems, which have been presented under a separate paper.

**Equality Impact Assessment**

16. No equality impacts identified.

**Risk implications**

17. This annual review paper is addressing the risk of the Board and the Committee not delivering against the corporate objectives.

**Consultation**

18. Consultation has taken place between the members of the GRA Committee.

**Regulatory objectives**

19. The GRA Committee plays a pivotal role in ensuring the BSB has adequate controls in place to help carry out its regulatory objectives.

**Publicity**

20. This report will feature in the public part of the BSB Board meeting.

**Annexes**

21. Annex 1 – Independent Observer's report

**Lead responsibility**

Malcolm Cohen  
Chair of the GRA Committee



## Independent Observer's Report July 2014 – June 2015

### Status:

1. For noting.

### Executive Summary:

2. This is the Independent Observer's report for July 2014 – June 2015.

### Recommendations

3. It is recommended that the Board considers the report, noting the recommendations and management responses (Appendix 2).

### Background

4. One of the recommendations of the 2007 Strategic Review Complaints and Disciplinary Processes was to appoint a lay observer to ensure that the BSB was operating in line with agreed objectives and procedures. The current Independent Observer took up post in May 11. This is her fourth annual report covering the period July 2014 – June 2015. Her contract concludes in July 2016.

### Financial implications

5. The implementation of the recommendations can be achieved within existing staff resources and will not require any other additional costs.

### Equality Impact Assessment

6. No equality issues arise from the provision and receipt of this report.

### Risk implications

7. The IO's recommendations are designed to mitigate systemic risks identified by the IO.

### Regulatory objectives

8. The role of the IO is to provide independent assurance that the BSB's enforcement system is operating in line with its aims and objectives and ultimately the BSB's regulatory objectives. The IO does not act as an independent adjudicator and is not tasked with reviewing the merits of individual decisions but rather the application of current policies and procedures

### Annexes

9. Annex 1 – Independent Observer's report July 2014 – June 2015.

**Lead responsibility:** Isobel Leaviss





REGULATING BARRISTERS

## **Independent Observer**

### **Annual Report**

**July 2014 – June 2015**

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**BSB Independent Observer  
Annual Report July 2014 – June 2015**

**1. Introduction**

- 1.1 My role is to provide independent assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's enforcement system is operating in line with the intended outcomes and hallmarks (Appendix 1).
- 1.2 I prepare six monthly reports for the Governance, Risk and Audit Committee and an Annual Report for the Board. All are published on the BSB's website.

**2. Scope of Work**

- 2.1 I spent 56 days observing the BSB's enforcement system. My activities included;
- observing the Professional Conduct Department (PCD) at work
  - observing 11 Professional Conduct Committee (PCC) meetings and the PCC Awayday
  - observing Case Examiner training, Disclosure Training and Data Protection training
  - attending one of the all BSB staff Service Complaint training sessions
  - participating in a BSB workshop with Legal Consumer Organisations
  - observing the BSB Prosecutors' Event
  - observing 10 Disciplinary Tribunals (including one held in private)
  - observing an Appeal at the Royal Courts of Justice
  - reviewing samples of case files and raising queries with case officers
  - reviewing PCD performance reports and other management information

**3. Limit on Assurance**

- 3.1 My observations are made as a part time lay observer and my conclusions and recommendations need to be viewed in that context.
- 3.2 The PCD publishes detailed performance reports. Other management information reports are available internally. I find these extremely useful and use them to inform my areas of focus and select case files to review. On the basis of pursuing various detailed enquiries, I am very confident in the integrity of the data. However, I have not audited or independently verified it.
- 3.3 The BSB does not undertake activity based costing and the pro bono resources are difficult for me to quantify so I have not attempted to make any observations about value for money.
- 3.4 The BSB has statutory responsibility for the Bar's disciplinary tribunal arrangements. In July 2012, the Council of the Inns of Court (COIC) Disciplinary Tribunal and Hearings Review Group made 82 wide ranging recommendations designed to 'put the Tribunals

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Service on an up-to-date professional footing for the future'. The implementation of these recommendations has been overseen by a dedicated Project Board and the BSB's main Board. Since October 2013 the BSB has had a formal contract in place with the Bar Tribunal and Adjudication Service (BTAS). This is managed by a BSB Contract Manager with whom I exchange feedback. However, when observing Tribunal Hearings, my focus is on the BSB in its role as prosecutor, rather than the operation of the tribunal and hearings procedures.

**4. General Observations**

- 4.1 Overall, my observations have been positive. I have not identified any major systemic issues or any individual cases giving rise to serious concerns.
- 4.2 I have continued to observe good administrative standards in the handling of complaints, clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision making and a demonstrable commitment to fairness when responding to queries and challenges from complainants and/or barristers facing complaints.
- 4.3 Internally, there seems to me to be a high degree of openness and constructive dialogue to ensure that cases are handled fairly and consistently and issues are escalated when appropriate. There is also a genuine commitment to continuous improvement. The PCD undertakes an annual survey to gather feedback from complainants and barristers about their experiences. The new BSB-wide service complaints process now provides a distinct avenue for any external parties wishing to raise concerns they may have about how complaints have been handled.
- 4.4 Since the Handbook launch in January 2014, the BSB has continued to deal with alleged breaches of the previous Code of Conduct but it is increasingly enforcing the new Handbook and making use of new/extended powers (e.g. imposition of administrative sanctions, interim suspensions). My observation is that the transition has been smooth and well managed.
- 4.5 Decision making is now much more explicitly risk-based. Written procedures and guidance are in place, training has been provided and risk analysis is embedded in day-to-day case handling. Management information reports are now more widely used to monitor progress across the caseload and illuminate issues. They largely focus on turnaround times but are also becoming more risk-based.
- 4.6 The BSB is making more concerted efforts to inform the profession about its enforcement role including publicising disbarments, the new and improved monthly Regulatory Update email sent to members of the profession and via Counsel magazine.
- 4.7 There is now a more tangible BSB consumer engagement programme. Specifically, the BSB is working more proactively with 'intermediary' stakeholders to identify issues of common interest, inform policy development and improve information for legal consumers.
- 4.8 The BSB website enforcement pages need overhauling to improve transparency and make the extensive information that is available much more readily accessible. A project



has been underway for some considerable time but now at least appears to have momentum. In the meantime, the basic information is reasonably clear and once a complaint is made, parties have a named point of contact for more detailed queries.

- 4.9 Information sharing and knowledge management within the PCD and with the Office Holders, PCC members and prosecutors remains largely informal. In this context, the poor turnout at the prosecutors' event held in May 2015 was particularly disappointing. Whilst there are more structured feedback loops than in the past, there remains considerable scope for reducing the current reliance on the 'corporate memories' of key individuals. The PCD recognises this and is recruiting a Professional Support Lawyer with responsibility for knowledge management.
- 4.10 In some cases I reviewed, it was clear that the complainants were under the misconception that the BSB case officer and prosecutor were acting on their behalf, rather than bringing the BSB's case. The BSB is well aware of this issue. Perhaps the revised enforcement website pages could further clarify the position.

## **5. Areas of focus**

- 5.1 I report to the BSB's Governance, Risk and Audit Committee on a six monthly basis and in discussion with them, agree areas of focus each six months. From July 2014 – June 2015 I focused in particular on the following

- Observing PCC meetings and tribunal hearings
- Monitoring of compliance with regulatory decisions (i.e. payment of fines)
- Database files not categorised as complaints
- Cases outside Key Performance Indicators (KPIs) for turnaround times
- Complaints about barristers working for, or on behalf of the BSB
- 'Comebacks' from complainants
- Complaints resulting in administrative warnings
- Complaints resulting in dismissals with advice
- Long-running cases

## **6. Observing PCC meetings and Tribunal Hearings**

- 6.1 The Professional Conduct Committee (PCC) meets once every three weeks to consider cases referred to it by the Professional Conduct Department (PCD). For each case, one of its members acts as the 'Case Examiner' and prepares a report and recommendation. PCC then decides whether to refer the matter to a disciplinary tribunal, impose an administrative sanction (warning or fine) or 'dismiss' the case. In arriving at these decisions, risk and proportionality now feature more prominently in the process.
- 6.2 I observed almost all of the PCC meetings this year. As in previous years, in the vast majority of cases, the PCC decision was in line with the Case Examiner's recommendation. However, this typically followed a detailed and sometimes heated debate of the principles at stake and robust testing of the reasoning. PCC members participated actively, asked probing questions and provided constructive challenge. My observation is that these discussions provide valuable context for Case Examiners preparing their reports (by testing how certain conduct should be judged against the

Code), support high quality report writing (Case Examiners anticipate and address possible alternative interpretations of the facts) and help promote consistency (all members seeing the detail of large numbers of cases).

- 6.3 Some decisions were arrived at without the need for a detailed discussion but my observation is that this only happened for the most straightforward matters and always with clear conscious ascent from the whole Committee on the basis of the papers. In all cases, the proposed charges or dismissal letter were specifically addressed and in many cases benefited from amendments, often on important points of detail. Whilst the BSB's prosecutors are responsible for finalising charges, attention to these at referral stage often served to clarify and specify the precise conduct in question and the Handbook/Code provisions at stake i.e. improved the quality of the referral decision and reasoning and set clear parameters for the prosecution.
- 6.4 The scheme of delegations allows some cases to be dismissed by staff without being referred to PCC. Within the bundle for each PCC meeting, the PCC receives reports listing these (including their KPI status). So-called 'comebacks' (typically cases for which the complainant has sought a review of a dismissal decision) are also reported to PCC. These reports enable PCC to keep an overview of the wider caseload.
- 6.5 I have observed that more lay members of PCC are acting as Case Examiners (although the vast majority of reports are still prepared by barrister members). This is, in my view, to be encouraged. My instinct is that preparing and presenting reports serves to further enhance PCC members' understanding of the process and regulations and sharpens their analytical and decision making skills within this particular framework.
- 6.6 I continue to find it extremely useful to observe tribunal hearings both to observe the BSB prosecuting cases and to inform my observations of earlier parts of the process. I understand from various PCC members that they have also found it useful to do so as part of their induction (one of my earlier recommendations). There is a formal feedback loop for lessons learned by the BSB itself at prosecutions/tribunals and I have seen examples of follow up action being taken. I did not identify any specific issues at the tribunals I observed this year.

## 7. **Monitoring of compliance with regulatory decisions**

- 7.1 The BSB can issue administrative fines and disciplinary fines can be imposed either by the PCC or a Disciplinary Tribunal. In all cases, it is the PCD that monitors compliance. Currently, the BSB has no express powers to reclaim debts, so if a barrister fails to pay, the BSB's normal recourse is to raise a (further) internal complaint, where it is proportionate to do so.
- 7.2 In 2013/14, fines issued totalled £45,300 and in 2014/15 £28,900. Of the fines due in 2013/14, 80% of barristers had complied, although only 34% of barristers had paid by the due date.<sup>1</sup> Of the fines due in 2014/15, 81% of barristers had complied and of the four remaining, payments were either being made by instalments or expected soon.<sup>2</sup>

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<sup>1</sup> Source: 2013/14 Enforcement Report

<sup>2</sup> Source: 2014/15 Enforcement Report

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7.3 During the compliance stage, the case officer retains responsibility for the file supported by administrative staff and a standard procedure is followed to recover monies owed to the BSB. There are well established practices in place to monitor, pursue individual fines and escalate the non-payment of fines. On the basis of my review and discussions, I can give assurance that all outstanding amounts requiring follow up by PCD were being actively pursued. I only identified one case that might have benefited from more proactive follow-up and this was promptly addressed. However, PCD management did not have reports accurately showing the overall position. This has now been addressed in response to my recommendation.

**8. Database files not categorised as complaints – ‘pre-complaints’**

8.1 The PCD sets up database files (and in some cases hard files) for matters that are not complaints. This broad category is referred to as ‘pre-complaints’. Not all files in this category would ever be expected to become complaints. For example, PG09 requires that complaints outside the BSB’s jurisdiction should be ‘registered as pre-complaints’ so that ‘a record can be kept of the action taken’.

8.2 General enquiries are also logged as pre-complaints as are referrals to LeO, bankruptcy cases (historically these have been monitored by PCD but this function has recently transferred to Supervision) Fitness to Practice cases and Litigation cases (e.g. Judicial Reviews). I reviewed samples of files from each sub category.

8.3 I did not identify any closed case files that caused me concerns and I could see that the majority of those identified as high or medium risk had been converted to complaint files. However, it was quite difficult for me to assess the overall potential regulatory risk amongst the pre-complaint files i.e. whether there might be an overreliance on complainants to particularise their concerns and complete complaint forms (and the system automatically closing the file when they, for whatever reason, do not do so) rather than taking a more proactive approach.

8.4 I recommended that PCD do more to log key information on the database, for example to assist with identifying any patterns and highlighting issues. And I recommended that pre-complaint files should feature alongside complaint files on case listings to give them greater visibility and enable case officers and management to monitor the volume and their status.

**9. Cases outside Key Performance Indicators (KPIs) for turnaround times**

9.1 In addition to post hoc quarterly KPI reporting and year-end analysis, I have observed that the PCD is increasingly using management information to actively monitor, forecast, anticipate and as far as possible proactively address turnaround performance issues.

9.2 During the year, the Assessment Team experienced significant staff turnover which adversely affected turnaround times for assessments (and inevitably is having a knock on effect to end-to-end times). My observation is that the management team were very alert to this, took pragmatic steps to address it (including referring additional cases to PCC members) and kept the PCC well informed.

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9.3 This year, the Reports and Data Analysis Officer has a specific objective to work with the Assessment and Investigations & Hearings Managers to embed/develop management information reports to assist them in their management of their teams' caseloads. He is also introducing risk rating information to some of the reports and this will enable the PCD to ensure their caseload management and prioritisation is risk based, rather than simply focused on turnaround times.

**10. Regulatory complaints concerning staff, prosecutors and Board/Committee members**

10.1 In the past five years, 34 complaints have been opened in respect of 33 barristers who at the time were BSB staff, BSB Board Members, BSB Committee Members or BSB prosecutors. Of these, 17 were barristers acting as BSB prosecutors and 8 as Professional Conduct Committee members, all on a pro bono basis. All except one were external complaints (rather than own motion). All but four of the complaints related to conduct entirely unconnected with the barristers' BSB roles.

10.2 In terms of outcomes, 24 complaints were dismissed at the assessment stage and 8 dismissed following investigations. PCC referred one case to disciplinary action but the BSB ultimately offered no evidence in the light of new evidence and submissions from the defence. In the final case, the PCC issued a formal warning which was subsequently overturned on appeal.

10.3 Whilst we are talking about a small number of cases over a significant period, it is worth noting that the distribution of outcomes is broadly in line with that for complaints in general.

10.4 I reviewed all the case files and did not identify any general issues of concern. In particular, I can assure the Board that there was nothing to suggest that the fact that the barrister had a BSB role had affected the application of standard enforcement policies or procedures.

10.5 One case experienced a year of avoidable delay due to a miscommunication about the status of underlying proceedings. It may be beneficial in future for there to be regular senior oversight of related cases, notwithstanding the desirability of maintaining independence of decision making between an underlying complaint and any complaint about those involved in its handling.

10.6 Whilst one would expect barristers working for the BSB to be held to exactly the same standards of conduct as any other barrister and for the same policies and procedures to apply, I recommended that the BSB should clarify principles to guide future handling of regulatory complaints about barrister members of staff, prosecutors or Board/Committee members, particularly given its dual role as employer and regulator.

10.7 During my review, I identified two other potential issues; firstly an inaccurate reference to the appropriate appeal mechanism for warnings and secondly to ensure that regulatory warnings are sufficiently well particularised. This prompted me to review cases resulting in warnings during the second six months of the year (see below).

## 11. Comebacks

- 11.1 The term ‘comeback’ is used by PCD to describe when a complainant writes to object to the BSB’s decision to close a complaint without a referral for enforcement action and in effect asks for a case to be re-opened and the decision to be reviewed. There are relevant provisions in the new Complaints Regulations (A7 rE90 and rE91) and guidance for PCD (all available on the website). In a nutshell, comebacks are considered by the next more senior decision maker (based on which decision maker took the original decision) who must first consider whether the complaint should be re-opened and if so, do so and proceed to review the matter.
- 11.2 The external facing information (e.g. leaflets and FAQs) is not particularly transparent or user friendly on this. Having said that, at the relevant point in the process (i.e. when a complaint is closed without a referral for enforcement action), the complainant is sent a ‘dismissal’ letter explaining the reasons for the decision and the scope for making a ‘comeback’ is explained.
- 11.3 On the basis of all my file reviews to date, I can give assurance that anything resembling a substantive objection or challenge to a decision by a complainant is logged as a comeback.
- 11.4 GRA have previously expressed concern that PCD appeared to be devoting ‘significant time in managing comebacks even when the complainant involved offers no new evidence’. My observation is that PCD are acting in line with the Regulations. To the extent that they may be more generous in entertaining and addressing comebacks than strictly required, I suggest that this is a proportionate attempt to achieve closure for the complainant.
- 11.5 The 2013/14 Annual Report indicated that of the 295 external complaints closed without a referral for enforcement action, the BSB had received comebacks in relation to 43 complaints (15%) and that this proportion was typical of previous years<sup>3</sup>. Of the 86 comebacks received in the preceding two years (6/3/2013 – 6/3/2015), 77 (90%) were ‘dismissed’ (i.e. the original complaint not reopened) and 5 (6%) were reopened. Of these, three were ultimately dismissed and two were referred for investigation and then referred on to disciplinary tribunals.
- 11.6 The Assessment Team is small and the Assessment Team Manager allocates cases to his team of assessment officers and often provides them with guidance about lines of enquiry or issues to focus on. His reviews of comebacks may not therefore be entirely independent of the original decision making process. Having said that, my observation is that he conducts a thorough and objective review of his team’s decisions. It is perhaps worth noting that for the period I reviewed, in two cases (out of 30 reviews) he decided that complaints should be re-opened (compared with 2/47 for Office Holders). In general, dismissals of more complex cases will have been informed by advice from Committee Members and comebacks for these are by Office Holders. My observation is that the current arrangements are robust and proportionate.

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<sup>3</sup> Enforcement Annual Report 2013/14. For 2014/15, 31 (13%) of the 242 external complaints closed without a referral have resulted in comebacks so far (Enforcement Annual Report 2014/15)

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11.7 When a comeback is logged, a letter is sent saying that the BSB 'would usually endeavour to reply substantively within 20 working days'. On the face of it, turnaround times are disappointing with only half being completed within the 20 working day timeframe indicated to the parties. On a number of files, I noticed considerable avoidable delays that were only occasionally acknowledged, explained or apologised for. I also noticed that the database dates for 'comeback start' and 'comeback concluded' were not always accurate; in some case overstating and in some cases understating the time taken. It is therefore difficult to draw firm conclusions from the current data. I recommended that turnaround times for comebacks should be more actively monitored. This should help ensure the data quality improves and enable cases to be escalated as necessary and undue delays avoided.

**12. Complaints resulting in administrative warnings**

12.1 When the PCC considers that a barrister's conduct constitutes a breach of the Handbook (on the balance of probabilities) and considers that to impose an administrative sanction is proportionate and sufficient in the public interest, it may do so. In determining the level of administrative sanction, the PCC must have due regard to the enforcement strategy (and 'such other matters as the Bar Standards Board may consider relevant from time to time'). The administrative sanctions available are a formal written warning and/or a fine (of up to £1,000 on a regulated individual or £1,500 on an authorised body).

12.2 Prior to 6 January 2014, only a few breaches could be dealt with by way of administrative sanctions. Under the new Handbook, the scope of this enforcement tool is much wider.

12.3 Administrative sanctions are not disciplinary findings but any decision by the PCC to impose an administrative warning or fine will be formally recorded and may, where appropriate, be referred to the supervision team for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE92 and rE93. Barristers may appeal administrative sanctions to an independent panel convened by BTAS.

12.4 There is a comprehensive new PCD Guidance note for Administrative Sanctions (G02). There is also a helpful new public leaflet that clearly explains when administrative sanctions can be applied (only following a formal investigation), the type of factors taken into account (including risk, seriousness, previous findings, impact on clients or others), the standard of proof applied (civil standard i.e. balance of probabilities), who takes decisions, the appeal route and a statement that the BSB does not publish administrative sanctions.

12.5 As at 24 February, there had been 9 cases closed in the previous 12 months that had resulted in administrative warnings as defined by the new Handbook (8) or a warning under paragraph 901.1 of the 8<sup>th</sup> Edition Code of Conduct (1). I reviewed all eight warning letters issued under the new Handbook. Three were issued following a decision by the PCC. Five were staff decisions. I observed that the letters did not consistently address all the following points; summarising the nature of the breach with specific reference to the Handbook and Code provisions, citing the specific factors taken into account in arriving at the decision to issue a warning, explaining why a fine had not been

deemed to be warranted, spelling out ‘the warning’ in terms, putting the barrister on notice that the fact that an administrative warning had been issued could be taken into account if further breaches of the Code/Handbook occurred, explaining the appeal mechanism and signposting further guidance. I therefore recommended that a template letter should be developed and implemented.

### 13. Dismissals with advice

- 13.1 When the BSB considers that a barrister’s conduct does not constitute a breach of the Handbook, it must dismiss the complaint. However, where the PCC (or a duly authorised staff member) takes the decision to dismiss a complaint following an investigation, but the BSB regulated person’s conduct is ‘nevertheless such as to give cause for concern’ (rE44), the PCC may (i) draw to the BSB regulated person’s attention in writing the PCC’s concerns and/or (ii) advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the PCC or on some other person nominated by the PCC, to receive such advice.
- 13.2 Dismissal decisions (including those where advice is given as to future conduct) are not routinely disclosed. In fact, the Regulations specify (rE45) that any decision by the PCC to dismiss a complaint must only be disclosed in accordance with rE92 and rE93 (which does include in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk).
- 13.3 As at 24 February 2015, there had been 10 dismissals with advice during the preceding 12 months. I reviewed the files for all these cases.
- 13.4 In most, but not all the advice letters, the barrister was put on notice that ‘in the event of any similar breach in the future, it is likely that enforcement action would be taken’ or that ‘it may well be that a serious view is taken in the light of your conduct on this occasion’. In some cases, barristers were asked to acknowledge receipt of the letter and advice it contained (although this did not appear to be monitored or logged). In only one letter was it explained that there was scope for the barrister to request a reconsideration of the decision. Only two letters referred specifically to rE44. None addressed disclosure. I recommended that template wording should be developed to add weight and clarity and ensure greater consistency in communication.

### 14. Long running cases

- 14.1 I reviewed the 20 longest running cases (ranked without excluding periods of adjournment). These involved 16 barristers. Thirteen cases were currently adjourned. Of the seven remaining, six were at the Disciplinary Tribunal stage and 1 was with the PCC.
- 14.2 Whilst I did observe spells of avoidable delay or delay on the part of the BSB on some of the files (e.g. due to staff or Case Examiner illness), I observed that for more recent instances, there was evidence on file that these delays had been more actively addressed. For example, asking one of the Office Holders to chase input from the Case Examiner. Having said that, at least two recent unforeseen absences of case officers did not trigger the reallocation of their cases; matters had awaited their return. However, I should emphasise that the instances of avoidable delay that I identified were not by any

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means the main reason for the cases being long-running. In fact, what I observed were many and persistent attempts by the PCD to expedite matters, for example, in one case dealing with the barrister's Chambers in order to help progress matters and another contacting a barrister's GP directly for medical evidence. Overall, I observed a careful balance on the part of the PCD, for example between affording barristers reasonable extensions to deadlines to enable them to prepare submissions whilst avoiding undue delays and seeking to progress matters.

- 14.3 The BSB's longest running cases are typically complex in nature (e.g. complex underlying proceedings, multiple submissions, multiple witnesses), have at some stage been (entirely appropriately) adjourned pending the outcome of related proceedings, may have suffered from poor engagement by the barrister, may have been subject to challenges by the barrister (e.g. strike out applications, appeal of strike out decisions) and/or may have taken time to be listed.
- 14.4 Where relevant, it was clear (for example from my discussions with case officers) that appropriate consideration had been given to the ongoing risk to the public and deployment of other measures available to the BSB (i.e. interim suspension).
- 14.5 Regular oversight occurs via 1-2-1 meetings with supervisors and/or managers. 'Cases of interest' are brought to the attention of the Office Holders at their regular meetings with the PCD management team and these include high risk and long running cases. In their discussions with me, the case officers demonstrated detailed and up-to-date knowledge of the status of the cases and the issues.
- 14.6 Following the settlement in December 2014 of one of the BSB's longest running cases, in addition to inviting feedback from the solicitors handling the case on its behalf, the Office Holders agreed that one of the Vice Chairs should undertake a review to identify lessons for the future. This was recently completed and a number of learning points identified for which action planning is currently underway. In the meantime, during the Investigations and Hearings Team Meeting I observed in March, three specific learning points were raised and addressed relating to disclosure logs, documentary evidence to support adjournments of cases on health grounds and being alert to the risk of contamination of evidence in associated proceedings involving the same barrister.

**15. Equality and Diversity**

- 15.1 On the basis of my observations this year, I can give general assurance that investigations of complaints are being carried out with appropriate consideration of equality and diversity issues. In particular, I have observed the PCC carefully taking account of comments made by the observing member of the Equality and Diversity Committee. I do not have any specific issues or concerns to highlight in relation to equality and diversity matters.

**16. Assurance**

- 16.1 In my opinion and based on my observations as summarised above and detailed in my six monthly reports, I am able to provide the BSB Board with a substantial level of assurance that during the period covered in my review the enforcement system has



operated in accordance with the intended outcomes and hallmarks of the BSB's Enforcement Strategy.

16.2 Specifically, I can assure the Board that:

- potential breaches of the Code are identified and appropriately pursued
- decisions are fair and consistent
- communications are clear
- decisions are well reasoned
- staff are polite and professional in their written contacts
- equality and diversity issues are being appropriately addressed

16.3 In the course of my work I reviewed a small number of cases that had suffered from brief periods of avoidable delay due to staff absences and/or turnover. Management were well aware of these and took steps to minimise the impact on cases. None gave rise to serious or wider concerns.

16.4 This year I made nine new recommendations designed to enhance the BSB's handling of complaints and disciplinary processes. They are listed in Appendix 2. All have been accepted and are being implemented. There are no outstanding recommendations from previous years although I will revisit some once the website pages have been overhauled to ensure that issues I have raised in the past are addressed.

16.5 I would like to thank the Professional Conduct Department, the Professional Conduct Committee and all the other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.

Isobel Leaviss  
INDEPENDENT OBSERVER



## Appendix 1: Independent Observer Role Profile

Key responsibilities include:

- Establishing whether in respect of the BSB's enforcement system
  - Cases are handled in a timely manner in line with service standards;
  - Investigations of complaints are carried out, in accordance with policies and procedures, thoroughly and fairly and with appropriate consideration of equality and diversity issues;
  - Decisions of the Professional Conduct Committee and staff are made consistently and in accordance with agreed criteria;
  - The reasons for decisions are explained fully and clearly to the parties;
  - Cases are transferred effectively, efficiently and correctly between the BSB and the Legal Ombudsman
  - The arrangements made for holding disciplinary hearings are handled effectively by the BSB;
  - The handling of the BSB of the prosecution of disciplinary cases and appeals and the BSB's treatment of all parties is fair, effective and in accordance with laid down procedures; and
  - In all other respects, complaints are being dealt with in accordance with the intended outcomes and hallmarks of the BSB's Enforcement Strategy (see below)
- Developing an appropriate quality assurance programme; agreeing it with the Governance, Risk and Audit Committee (GRA); and working in accordance with the agreed plan.
- At the request of the (GRA) or the Bar Standards Board, conduct enquiries into identified issues of concern and report on such enquiries.
- To prepare and submit to the (GRA) six monthly reports containing
  - A summary of activities
  - Evidence based rational, robust observations and conclusions
  - Recommendations to address any systemic weaknesses identified or areas for improvement
  - An annual general assessment of performance in relation to the relevant aspects of the enforcement system for publication on the BSB's website.
- The IO should report findings and/or seek advice from the GRA Chair or Vice-Chair as necessary between formal reporting, for example in relation to urgent matters. In circumstances where it would be inappropriate to seek advice from the Committee Chair or one of its members, the IO should approach the Chair or a Vice-Chair of the Board.

The Independent Observer does not act as an independent adjudicator and is not tasked with reviewing the merits of individual decisions but rather the application of policies and procedures.

The Independent Observer has no powers to review the progress or outcome of individual complaints and cannot respond to individual parties about complaints.

**The BSB's Enforcement Strategy (published January 2014)****Intended Outcomes**

The main objective is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions.

Enforcement action is intended to meet the objectives of:

- a) promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
- b) providing a credible deterrence to non-compliance with the BSB's regulatory arrangements;
- c) preventing further breaches; and
- d) preventing those who represent a serious risk to the public from practising.

**Hallmarks**

The hallmarks of the BSB's Enforcement Strategy are as follows:

- a) **Risk-based** – We will focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.
- b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
- e) **Flexibility** – We will use a range of enforcement tools to promote compliance with our regulatory arrangements.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond.

## Appendix 2: Summary of new 2014/15 recommendations and management responses

Ref	Priority	Recommendation	PCD Response
H2R1	High	the BSB urgently confirms resourcing and sets a target completion date for overhauling the enforcement website pages	Accepted
H1R2	Medium	PCD review the handling and monitoring of pre-complaint cases to ensure that (i) information provided at the initial enquiry stage is systematically logged on Flosuite; (ii) pre-complaint cases should be added to the case listings for all staff in the Assessment Team and the weekly complaint report for the team should include listings for the Officers as well as the administration staff to prompt regular review and follow-up as required; and (iii) management has a more detailed picture of the nature and status of pre-complaint files to inform its approach.	Accepted
H2R2	Medium	a much clearer expectation is placed upon prosecutor panel members to attend events and contribute to knowledge sharing	Accepted
H2R4	Medium	template wording is developed to clearly and consistently frame all administrative warnings	Accepted
H2R5	Medium	template wording is developed to clearly and consistently frame formal advice that is given as to future conduct when complaints are dismissed but the barrister's conduct has given cause for concern	Accepted
H1R1	Low	all files showing outstanding fines/costs should be reviewed to ensure that the database accurately reflects the latest overall position and a report should be developed to enable monitoring of overall progress with compliance	Accepted
H1R3	Low	the BSB formalises the principles it expects the PCC to apply when handling regulatory complaints involving barristers who undertake work on its behalf and draws these to the attention of barristers undertaking BSB enforcement roles (i.e. PCC, staff, prosecutors) and to complainants where relevant	Accepted
H1R4	Low	following the conclusion of any regulatory complaint about PCD staff, PCC members or BSB prosecutors, a review is undertaken to identify any lessons	Accepted
H2R3	Low	reports listing 'live' comebacks are regularly monitored by the Assessment and Investigations and Hearings Team Managers	Accepted



## Future Bar Training: Professional Statement

### Status:

1. For decision.
2. Public.

### Executive Summary:

3. This paper sets out the Professional Statement as the basis upon which, with Board approval, the FBT programme team will now progress to development of Threshold Standards. The development of the Threshold Standards requires a published Professional Statement to provide the basis on which to engage stakeholders, including the profession, consumer groups and training providers.

### Recommendations

4. The Board is asked to **approve** that the Professional Statement be published in October 2015.

### Background

5. The Professional Statement is an essential component of the Future Bar Training programme. The programme and its components was agreed by the BSB Board in 2014. The development of a Professional Statement addresses specific recommendations of the Legal Education and Training Review report (2013), and will provide a clear and objective point of reference for the regulation of Bar training and the development of training pathways. In the immediate future, the Professional Statement will inform the development of other Future Bar Training activities currently being undertaken.
6. A Working Group advised on the development of the Professional Statement. The Working Group membership was: Robin Field-Smith (Chair), Emily Windsor, Tope Adeyemi and Dr Stuart Weinstein.

### Comment

7. A number of iterations of the Professional Statement have been developed. These have been informed by a range of qualitative and quantitative research exercises, detailed in Appendices A and B. Changes have been overseen by the Professional Statement Working Group and project steer provided by the FBT Programme Board.
8. Both the Education and Training Committee and the BSB Board have been invited to comment on earlier versions of the Professional Statement.
9. A public consultation on the Professional Statement was open between April and June 2015.
  - a. A total of 22 responses were received. Wherever possible, the suggestions made by respondents have been incorporated into the final version of the Professional Statement, whether by using their suggested wording, adjusting wording to reflect concerns, or by re-ordering sections.
  - b. The consultation exercise was valuable in highlighting areas in which the Professional Statement could be improved. It embodies the aspirations of a forward-looking profession, responsive to the demands of its developing professional environment. It also now reflects more accurately the distinctive nature of practice at the Bar while retaining significant and demonstrable harmony with the corresponding work of the SRA, so as to enable the flexible career paths recommended by the LETR.

- c. Different respondents placed emphasis on different aspects of the PS when constructing their response. However, three main themes were identifiable, running through the majority of responses. These were:
- i. a desire for the distinctive features of barristers' practise (particularly advocacy) to be made more central to the document – this has been done in the final version;
  - ii. a desire for more clarity as to the distinction between the Professional Statement and the Code of Conduct for the avoidance of doubt amongst all stakeholders, at the Bar and beyond. Indeed, this sentiment had previously been expressed by some members of the Board. We have addressed the point in a statement of clarification, attached (Annex E).
  - iii. The mapping exercise has been undertaken, with the aim of eliminating doubt on this point;
  - iv. the almost universal dislike of the element dealing with the need for harmonious relationships with all was noted. The original research which prompted that element did not represent wider views and, as such, the whole paragraph has been deleted from the final version.
- d. A report detailing the full outcomes of the consultation is attached as Annex C (note, this is inclusive of appendices C1-C4).
10. At their meeting of 22 July 2015, the Education and Training Committee endorsed the final version of the Professional Statement for sign-off by the Board, subject to some minor changes. The final version is attached as Annex D.
11. Planning for the development of Threshold Standards, which will detail the level expected of those entering the profession for each element of the Professional Statement, has commenced. This will be presented to the FBT Programme Board at their meeting of 1 October 2015.
12. The knowledge, skills and attributes stated in the Professional Statement cover a broad scope of competence. For example, a newly-authorized barrister would not expect to have the same level of oral advocacy competence as one who has practised for many years. As such, Threshold Standards will developed to define precisely the level of competence for each knowledge, skill and attribute listed in the Professional Statement. They will focus on the expected level for barristers at the point of full authorisation.
13. An example of existing threshold standards relating to statement 1.1 of the Professional Statement, "Barristers will have fluent oral advocacy skills" is detailed in the table, below. Where possible, appropriate existing standards will be used to inform the development of Threshold Standards.

<b>A</b> <b>BSB's Professional Statement</b>	<b>B</b> <b>The Advocacy Training Council's "<u>Dutton Criteria</u>"</b>	<b>C</b> <b>Queen's Counsel Appointments' <u>competency framework</u></b>
"Barristers will:  1.15 Have persuasive oral advocacy skills."	"They must prepare thoroughly and present their cases in a manner which is clear, well organised, efficient and persuasive."	"Develops and advances client's case to secure the best outcome for the client by gaining a rapid, incisive overview of complex material, identifying the best course of action, communicating the case persuasively, and rapidly assimilating the implications of new evidence and argument and responding appropriately."



14. An additional example, drawn from the QASA Threshold Standards, including those that relate to authorisation of a barrister (level 2), is included below. The full document may be downloaded from:

[https://www.barstandardsboard.org.uk/media/1531917/qasa\\_handbook.pdf](https://www.barstandardsboard.org.uk/media/1531917/qasa_handbook.pdf)

<b>Standard</b>	<b>1</b>	<b>Has demonstrated the appropriate level of knowledge, experience and skill required for accepting the case</b>
Level 1	1.1	Familiar with law and practice at this level
	1.2	Knowledge of procedure and law is up-to-date
	1.3	Demonstrated skills and experience necessary for this level of advocacy
Level 2	1.4	Demonstrated an effective knowledge of law and practice
	1.5	Conducted trial advocacy efficiently and effectively

<b>Standard</b>	<b>2</b>	<b>Was properly prepared</b>
Level 1	2.1	Had a clear strategy for the case/application
	2.2	Demonstrated an awareness of both client's and opponents case and identified issues
	2.3	Familiar with facts of the case
	2.4	Understood the relevant law and procedure for the matter in hand
Level 2	2.5	Preparation reflected the increased seriousness and complexity of the case
	2.6	Had anticipated opponent's arguments and court interventions
	2.7	Efficiently identified the key factual, legal, evidential and/or procedural issues

15. A further example, drawn from the General Medical Council and annotated to demonstrate comparability with the BSB's Professional Statement and proposed approach to Threshold Standards, is included below.

## Outcomes for graduates

### Overarching outcome for graduates

- 7 Medical students are tomorrow's doctors. In accordance with *Good medical practice*, graduates will make the care of patients their first concern, applying their knowledge and skills in a competent and ethical manner and using their ability to provide leadership and to analyse complex and uncertain situations.

7 See GMC, *Good medical practice*, 'duties of a doctor' (also inside front cover of *Tomorrow's Doctors*)

This title is equivalent to the BSB PS's section titles, eg. *Barristers' distinctive characteristics*

### Outcomes 1 – The doctor as a scholar and a scientist

- 8 The graduate will be able to apply to medical practice biomedical scientific principles, method and knowledge relating to: anatomy, biochemistry, cell biology, genetics, immunology, microbiology, molecular biology, nutrition, pathology, pharmacology and physiology. The graduate will be able to:

8 See Appendix 3, Related documents: 1, 2, 3, 7, 9, 13

This paragraph is equivalent to the content of the BSB PS, eg. *Barristers will: Apply effective analytical and evaluative skills to their work.*

- a Explain normal human structure and functions.
- b Explain the scientific bases for common disease presentations.
- c Justify the selection of appropriate investigations for common clinical cases.
- d Explain the fundamental principles underlying such investigative techniques.
- e Select appropriate forms of management for common diseases, and ways of preventing common diseases,

This list (a-e) contains examples of threshold standards

Source:

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAAahUKEwjkwPT7w-fHAhUyWtsKHQIzAds&url=http%3A%2F%2Fwww.gmc-uk.org%2FTomorrow s Doctors 1214.pdf 48905759.pdf&usq=AFQjCNEVVEQuZk92tZ1Ou dh0xQfnnhPy1g&sig2=aSG-oixu5qhtfOXKqXPgug&cad=rja](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAAahUKEwjkwPT7w-fHAhUyWtsKHQIzAds&url=http%3A%2F%2Fwww.gmc-uk.org%2FTomorrow%20s%20Doctors%201214.pdf%2048905759.pdf&usq=AFQjCNEVVEQuZk92tZ1Ou dh0xQfnnhPy1g&sig2=aSG-oixu5qhtfOXKqXPgug&cad=rja)

16. The Professional Statement will not be fully usable by its audiences until we have established the Threshold Standards. Nevertheless, by publishing the Professional Statement, stakeholders will gain an understanding of the scope within which Threshold Standards will be set. This will afford providers an initial understanding of the key areas in which qualified barristers must develop competence. They may then choose to identify any areas of weakness or ‘non-coverage’ in their current delivery models, and prepare for future change.
17. It is imperative that the development of the Professional Statement and the subsequent development of Threshold Standards is an iterative process. To ensure that the development of Threshold Standards and the engagement of consulted parties is effective, we must have an agreed Professional Statement upon which the Threshold Standards can be developed.

### Next steps

18. The Professional Statement will be published in early October, following a professional redesign of the document. This will involve smartening up formatting and reworking diagrams, but will not affect the content of the Professional Statement itself.
19. Planning for the development of threshold standards has commenced. This will be presented to the FBT Programme Board for comment at their meeting of 1 October 2015.

### Equality and diversity implications

20. An initial impact assessment was undertaken in December 2014. This identified that there were risks associated with two protected characteristics:
  - a. Disability – People with disabilities are more likely to undertake non-traditional educational pathways, which may be viewed as unconventional routes to joining the Bar, compared to those without disabilities. In addition, it is more likely that they would study part-time.
  - b. Gender - The Professional Statement may state that skills, knowledge or attributes which are more likely to be possessed by a particular gender, or which pose more difficulty for a person of particular gender to attain, are of the minimum required on the first day of practice.

These issues have been monitored throughout the development process and no adverse impacts identified.

21. Respondents to the Professional Statement consultation were asked:

*“Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the Professional Statement as a tool to assist our regulatory activities?”*

Only one respondent replied yes, and went on to detail that:

*“The statement could be used to develop alternative routes to the bar would could increase diversity, particularly in the light of the costs of qualification and the need for prospective candidates to incur large debts with uncertain prospects.”*

22. An equality analysis screening form is attached as Annex F.

### **Risk implications**

23. A number of other Future Bar Training workstreams are dependent on the completion of the Professional Statement, including Threshold Standards. Of particular note, changes to Academic Stage, Vocational Stage and Pupillage regulatory policy will be informed by the findings of the Professional Statement. Delays to launching the consultation may result in consequential delays to the completion of these projects.
24. A failure to agree the Professional Statement may reduce the clarity and credibility with which we engage stakeholders in the development of the Threshold Standards.

### **Regulatory objectives**

25. The development of the Professional Statement will contribute to the achievement of the following regulatory objectives:
  - a. protecting and promoting the public interest;
  - b. protecting and promoting the interests of consumers;
  - c. encouraging an independent, strong, diverse and effective legal profession;
  - d. promoting and maintaining adherence to the professional principles.

### **Publicity**

26. Communications materials are currently being developed. These include email copy to support the launch of the statement, web copy and a press release. These will be supported by messaging via social media.

### **Lead responsibility**

Tim Keeling, Change Programme Manager.

Annex A: The Professional Statement development process.

Annex B: Summary of consultation and approvals.

Annex C: Professional Statement consultation report.

Annex D: Professional Statement.

Annex E: Relationship between Professional Statement and Code of Conduct.

Annex F: Equality analysis screening form.

### The Professional Statement development process

A1. In developing the Professional Statement, research was undertaken to ensure that the Professional Statement is based on empirical evidence of barristers' key activities and attributes. The research took the following forms:

a. Qualitative – method

We held five focus group workshops. Sessions were facilitated by Adam Pacifico<sup>1</sup>, and introduced and observed by Simon Thornton-Wood, Director of Education at the BSB. These were attended by a good cross-section of the profession in terms of age, gender, seniority and areas of practice. At each session there was also at least one member of the group who was a legal educator.

Breakdown of numbers:

Date	Location	Number of attendees
13 November 2014	London	6
19 November 2014	London	8
26 November 2014	Manchester	6
27 November 2014	Birmingham	6
10 December 2014	Bristol	12

The process:

- i. At each location, attendees were asked to consider the following areas, one at a time:
  - ethics, professionalism and judgement
  - technical legal practice
  - practice management
  - working with others.
- ii. Attendees were asked to write their individual thoughts on what knowledge, skills and attributes (KSA) are essential for effective practice on entry to the profession. These should focus on characteristics that are measurable, valid, reliable and fair. Notes were peer reviewed.
- iii. Photographs of the resulting notes were taken for subsequent analysis.

<sup>1</sup> Adam qualified as a barrister in 1991. He is an accomplished public speaker having trained over 30,000 people in recent years nationally and internationally. Between 1994 and 1999, Adam took a career break and became a serving police officer with the Metropolitan Police, where he spent three years on the pro-active covert drugs team.

On returning to the private sector Adam held a number of roles including Head of Compliance for the College of Law of England and Wales, and Director and board member of BPP Professional Development.

Adam was appointed an accredited advocacy trainer for Inner Temple in 2005, a Crown Court Advocacy Assessor for the CPS in 2008, and in 2009 a member of the Covert Policing Ethics Committee based at New Scotland Yard. In 2011 Adam was the joint winner of the Law Society's Excellence in Training Award for 'Project Immerse'.

b. Qualitative analysis and evaluation

The photographs produced by the focus groups were analysed at the Bar Standards Board to create a spreadsheet indicating response frequency under each area heading, as well as capturing additional comments.

The evidence of this analysis, combined with a further careful evaluation of the original photographs, was used as the basis for the Professional Statement. The original headings were amended after evaluation of the responses revealed that the KSAs considered to be essential by the research would be better grouped as they appear in the draft Statement (see “Structure”, below).

c. Desk-based research

This was undertaken in the following areas:

- i. other legal service provision in this country; the work of the Solicitors Regulation Authority (SRA) and Ilex Professional Standards;
- ii. legal service KSAs and standards as defined in other jurisdictions; Council of Bars and Law Societies of Europe (CCBE), American Bar Association, Australian Bar associations and the International Bar Association;
- iii. legal education and its regulation as considered within the Legal Education and Training Review;
- iv. How other professions define their KSAs and use those to inform their education and regulation, particularly but not exclusively those who also utilise work-based learning; medicine, architecture, accountancy (national and international standards);
- v. Chartered Institute of Personnel and Development, Ministry of Justice, College of Policing and the Civil Service work on competency frameworks.

Through this process we identified a core set of knowledge, skills, attributes and behaviours that are common to all barristers, whether at the self-employed or the employed Bar, and irrespective of their practice area.

Several drafts of the Professional Statement and its accompanying descriptors (which provide additional detail and context to each KSA requirement) were then carefully considered by a specialist Professional Statement Working Group in collaboration with a consultant. Their details can be found at Annex B.

d. Consultation

A consultation document (including a latest version of the Professional Statement on which to consult) was developed in conjunction with the Working Group and was approved by:

- i. the Education and Training Committee on 19 March 2015 (having previously endorsed the proposed approach at the February 2015 meeting);
- ii. the BSB Board on 26 March 2015.

Part 1 – Public

The consultation document was then piloted with a small number of barristers and legal academics to identify any issues which may prove problematic for a wider audience. Amendments were subsequently made, where indicated as desirable, before being published.

The consultation was launched on 7 April 2015 and closed on 29 June 2015; a 12 week period. Responses by mail, email and via an online survey were permitted. The consultation was launched with a press release (covered by a range of publications), an all-profession email, and updated web copy. Reminders were periodically included in the Regulatory Update email (sent to all barristers), and sent via Twitter.

A total of 23 responses was received from the following:

- i. 11 barristers or representative organisations;
- ii. three academics;
- iii. six training providers;
- iv. one consumer organisation.

There was a healthy amount of constructive criticism of the draft. Many good points were made and criticisms were usually combined with alternative wording suggestions, which have been used in the final draft wherever possible.

The main purpose of the PS was supported by all respondents.

Three main themes of feedback were present throughout the majority of responses. Each has been fully addressed in the final version (see Annex C):

- i. a desire for the distinctive features of barristers' practice to be made more central to the document;
- ii. more clarity as to the distinction between the PS and the BSB Handbook for the avoidance of doubt amongst all stakeholders, at the Bar and beyond;
- iii. dislike for / disagreement with the need for "harmonious relationships with all".

Prior to the consultation closing, a meeting with the following members of the BSB's Consumer Panel was held to gain a consumer aspect on the Professional Statement:

- i. The Bar Pro Bono Unit;
- ii. The Law Centres Network;
- iii. Victim Support;
- iv. The Free Representation Unit;
- v. The Legal Services Consumer Panel;
- vi. The Personal Support Unit.

A further iteration of the Professional Statement, encompassing feedback from all stakeholders has been developed, following analysis of the consultation responses submitted. This was reviewed by the Professional Statement Working Group on Tuesday 7 July 2015. The Working Group took particular care to ensure that all key messages from the consultation were acknowledged in the adjustments to the draft. Following the embedding of Working Group feedback (and a subsequent meeting of the Working Group on Tuesday 14 July 2015). The Education and Training Committee reviewed and endorsed a version of the Professional Statement, subject to minor changes being made. These changes were implemented and the final version is presented to the Board today.





**Summary of consultation and reviews****B1. Consultees (total: 87)**

	Barristers or representative organisations	Academics	Training providers	Consumer organisations
Focus groups	23	5	20	0
Consultation	11	3	6	1
Consumer panel	0	0	0	6
<b>Total</b>	<b>45</b>	<b>9</b>	<b>26</b>	<b>7</b>

Note that to promote the consultation, tailored emails were sent to a number of groups/organisations, including:

- the Inns;
- SBAs;
- training providers;
- Committee of Heads of University Law Schools;
- a range of representative groups, including the Society of Asian Lawyers, Temple Women's Forum and the Society of Black Lawyers.

**B2. Consumer Panel members in attendance at 22 June 2015 workshop (total: 6)**

- a. The Bar Pro Bono Unit;
- b. The Law Centres Network;
- c. Victim Support;
- d. The Free Representation Unit;
- e. The Legal Services Consumer Panel;
- f. The Personal Support Unit.

**B3. Working group meetings (total: 9)**

1	15 July 2014	Initial meeting with WG Chair
2	5 August 2014	Agree terms of reference
3	7 October 2015	General update
4	28 October 2015	Update with Chair (re: workshops)
5	8 December 2015	To review workshop findings
6	13 January 2015	To review first draft
7	20 January 2015	Drafting with EW
8	25 February 2015	To review draft consultation and Professional Statement
9	7 July 2015	Review amendments to PS following consultation closure
10	14 July 2015	Ratify changes made at 7 July meeting and approve the paper for the Education and Training Committee

NB. A large amount of work has also been undertaken 'in between' meeting dates. This has involved significant drafting, planning and email exchanges.

B4. Professional Statement reviewed by Education and Training Committee

1	February 2015	Professional statement progress report / latest draft
2	March 2015	Request to consult
3	July 2015	Request to endorse for Board approval to publish

B5. Professional Statement reviewed by BSB Board

1	March 2015	Request to consult
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**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**Future Bar Training:**

**Professional Statement consultation report**

**1. Executive Summary**

The consultation exercise was valuable in highlighting areas in which the Professional Statement (PS) could be improved. It embodies the aspirations of a forward-looking profession, responsive to the demands of its developing professional environment. It also now reflects more accurately the distinctive nature of practice at the Bar while retaining significant and demonstrable harmony with the corresponding work of the SRA, so as to enable the flexible career paths recommended by the Legal Education and Training Review (LETR).

Wherever possible, the suggestions made by respondents have been incorporated into the final version of the PS, whether by using their suggested wording, adjusting wording to reflect concerns, or by re-ordering sections. Additionally, the consultation revealed the need for mapping exercises which have now clarified the relationships between the PS and both the Bar's Code of Conduct and the SRA's Competency Statement. The Threshold Standards will build on this work.

**2. Preparation stage**

2.1. The consultation was prepared by an expert team and was approved by the PS Working Group. The consultation was piloted with a small number of stakeholders, and small adjustments were made before the consultation was approved by the Board and made public. The full consultation document can be found at Appendix A.

2.2. Respondents were given two options for responding:

- Providing written replies to a series of targeted questions; or
- Completing an online questionnaire containing 51 questions but only limited opportunity for written replies.

2.3. The consultation went live on 15 April 2015.

**3. Publicity**

3.1. Publicity took several forms:

- Press release (see Appendix B for the full list of publications notified);
- Email to all members of the Bar;
- Email to:
  - Specialist groups within the Bar;
  - Specialist educational establishments;
  - All BPTC providers;
  - All providers of Qualifying Law Degrees.

(See Annex B for fuller details)

- 3.2. Initial publicity was followed up by four “reminder” messages to Bar members (via the BSB Regulatory Update email) during the consultation period. Reminders were also provided via Twitter to the BSB’s approximately 12,000 followers.

#### **4. Process**

- 4.1. The consultation period was scheduled to end on 24 June 2015, at which time 20 responses had been received. The deadline was extended by five days to provide an additional opportunity for responses. A further two were received.
- 4.2. Responses comprised:
- 13 full written submissions;
  - 9 completed online questionnaires.
- 4.3. Appendix C details who responded and in what way. Although all respondents could request anonymity only five did so. Full responses (excluding those who requested anonymity) are available on request.
- 4.4. Additionally, the BSB held a focus group of its consumer panel on 22 June 2015. Six organisations sent representatives. The group discussions were led by the BSB team and lasted two hours. A report of the session can be found at Appendix D.

#### **5. Analysis**

- 5.1. The nine online responses were very largely supportive of the content and layout of the PS. The numbers prohibit any meaningful statistical analysis, however there were very few areas of the PS where online responses indicated a need to re-visit the work and the areas of limited criticism closely matched the areas highlighted in the more discursive responses received via email. For the purposes of analysis, online and full-written responses have been combined and not discussed separately.
- 5.2. Written responses took a variety of forms, with only a minority of respondents confining themselves to answering the questions posed in the consultation document (City Law School, University of Law, Nottingham Law School – which, for the purposes of this document, we will classify as “Type A”). Some chose not to address the specific, targeted questions at all, providing instead a commentary on the PS as a whole (Professor Richard Moorhead, UCL; Legal Services Consumer Panel; The Middle Temple Hall Committee – “Type B”). Most responses were a mixture of these two approaches (Council of the Inns of Court, The Bar Association for Commerce, Finance and Industry, The Chancery Bar Association, The Family Law Bar Association, Chartered Institute of Legal Executives, Northumbria Law School (BPTC Programme) – “Type C”).
- 5.3. Each response was read and an initial coding framework constructed, leading to the creation of several categories which were identified to enable structured analysis of the data. Each category was defined by the nature of the substantive point being made in response to a particular question. In an iterative process, those categories were further examined to provide a deeper understanding of what the responses indicated; the method was applied to all responses, Types A, B and C.
- 5.4. The principal categories identified were:
- a. suggestions for re-ordering;
  - b. suggestions for changes or additions;
  - c. unwanted elements;

- d. clarification about relationship between PS and Code of Conduct;
- e. requesting greater emphasis on advocacy;
- f. The issues raised refer to the Threshold Standards and will be dealt with at that stage of FBT programme
- g. wanting more in the Threshold Standards and less in the PS;
- h. advising delay;
- i. preferred the SRA Competency Statement;
- j. believes the BSB lacks the expertise to make decisions in this area.

***It is important to note that not all categories produced the same level of response. Within this list the principal categories, those with the largest number of entries or those which are deemed to have the most significant impact, are highlighted.***

5.5. A summary of each category is provided below.

**a. Suggestions for re-ordering**

- (i) The Professional Statement must be read as a whole and there is no significance in terms of importance associated with the numbering of its sections. However, several contributions made it clear that the existing order created a perceived hierarchy that was thought inappropriate and potentially misleading, particularly for consumers.
- (ii) The final presentational order of the Professional Statement reflects the suggestions made wherever the working group agrees it is possible.

**b. Suggestions for changes or additions**

- (i) This category had by far the largest number of entries (the Chancery Bar Association re-drafted the entire Statement).
- (ii) Some responses indicated a misunderstanding of the purpose of the PS, suggesting for example that the Statement referred to areas covered by the current Graduate Diploma in Law.
- (iii) A number of very pertinent points were made. These points, and the response of the PS drafters to them are detailed in the table, below.

Not undertaking work beyond a barrister's abilities.	While recognising the pressure to accept work, particularly for new barristers, the Code of Conduct clearly makes this an individual responsibility which must be borne personally and the PS reflects this.
Communicating difficult decisions.	Now included.
Not incurring unnecessary fees.	The previous wording has been replaced.
Acting in situations involving litigants in person.	This has been adjusted to reflect the implications of acting both where instructed by public access litigants and against litigants in person and the additional issues arising in both circumstances.

Limiting research requirement.	It has now been acknowledged that recognising the need to research non-legal areas is important but not the ability to undertake that research personally. Barristers may be required to delegate or sub-contract such activities.
Distinguishing accurately between requirements for the self-employed and employed Bar.	Further advice, from a representative of the employed Bar, was taken and adjustments made to the PS so that it more accurately reflects practice in this area.
Boundaries for negotiating skills.	These were made more tightly worded.
Keeping records and negotiating.	Wording suggested by the Family Law Bar Association now replaces the originals.
Discrimination.	Previously, the drafting implied that exercising discrimination of any kind was prohibited; now the prohibition is confined to unlawful discrimination.

**c. Unwanted elements**

- (i) Some respondents disliked elements relating to the personal development of barristers, such as planning their careers, understanding the business structure in which they work and analysing their own skills and knowledge. These remain in the final version of the PS, as previous research demonstrated a need for them to form part of a professional approach that goes beyond narrow compliance with disciplinary codes.
- (ii) “Nurturing positive relationships” – some respondents disliked the wording of this section intensely. The possibility of re-wording to create a consensus around wording denoting the need to build positive relationships with those encountered in a barrister’s work seems impossible, and the section has been deleted.

**d. Clarification about relationship between PS and Code of Conduct**

- (i) Significant concerns were raised about the relationship between the PS and the Code of Conduct, specifically relating to the potential for conflict between them and resultant confusion amongst both barristers and the general public as to which takes priority. As such, a supporting statement has been developed to clarify the relationship of the two documents. This is attached as an appendix to the final version of the Professional Statement.
- (ii) In addition, a mapping exercise has clearly delineated the relationship between the two documents and demonstrates their compatibility.

**e. Requesting greater emphasis on advocacy**

- (i) Advocacy was emphasised as a barrister’s most important characteristic skill, and that the PS did not give sufficient prominence to this, as originally drafted. Several respondents made reference to the Dutton criteria, and these comments were considered carefully.

- (ii) Significant adjustments were made in the final PS in the light of suggestions. Referring directly to the Dutton criteria was considered to be too restrictive. However, considerable re-drafting has resulted in a more tightly-drawn PS with greater emphasis on advocacy and indeed other elements of a barrister's work that were thought to be highly distinctive.
- f. **The issues raised refer to the Threshold Standards and will be dealt with at that stage of FBT programme and;**
  - g. **Wanting more in the Threshold Standards and less in the PS**
    - (i) Some responses were confused in thinking the PS constituted the Threshold Standards that will follow it. The PS describes the knowledge, skills and attributes which barristers should have when issued with a full practising certificate, while the Threshold Standard will define precisely the level at which barristers should be competent for each of these. Some criticisms called for a more detailed explanation of a skill or behaviour (for example team working); this will be dealt with when the Threshold Standards are established.
    - (ii) Other responses called for a shorter PS and longer Threshold Standards document. One (Councils of the Inns of Court) proposed a completely different approach, starting with a detailed set of Threshold Standards from which a PS should be derived. The Threshold Standards will be published in summer 2016.
  - h. **Advising delay**
    - (i) Responses which suggested a different methodology for developing the PS, as above, also tended to recommend a delay in their implementation. As we are confident in our methodology, no delay to timescales was deemed necessary.
  - i. **Preferred the SRA Competency Statement**
    - (i) The compatibility of the PS and the SRA's work is known to be vital in developing career pathways with the flexibility envisaged by LETR, and a mapping exercise between the two documents has demonstrated the high level of harmony and coherence between them. However, the distinctiveness of the Bar supports its own PS, and the adjustments made to the PS following consultation reflect this.
  - j. **Believes the BSB lacks the expertise to make decisions in this area**
    - (i) The BSB has not relied entirely upon its own expertise in creating the PS; its research has involved members of the Bar, legal academics, educators and consumer-representative organisations. Their input has come at a number of stages throughout the development of the PS. There is a clear and strong evidence base for the PS, as it is now constituted.

## 5.6. Consumer Panel focus group

- 5.6.1. While the impressive nature of the Bar's expertise was noted, the effect such an image can have in engendering empathy with consumers was also noted. The attendees agreed that the PS dealt with issues such as respect and courtesy, but stated that they would have liked greater emphasis on them. On the basis that the PS already

contained these elements and that repetition would not be beneficial, these elements were not included additional times.

- 5.6.2. Improvements on references to dealing with diversity were made in the final version.
- 5.6.3. The suggestion that a barrister should have awareness not just of law but of the wider legal environment, sources of funding and/or advice and support created a valuable addition to the final version.

### 5.7. Conclusions

- 5.7.1. There was a healthy amount of constructive criticism of the first draft. Many good points were made and criticisms were usually combined with alternative wording suggestions. **Each suggestion was carefully evaluated and has been used in the final version, wherever appropriate.**
- 5.7.2. The purpose of added descriptors was not understood by all, and some felt they could make only limited comment before the Threshold Standards are created. The final version starts with the descriptors and summarises after that, simplifying both reading and comprehension of the PS.
- 5.7.3. The main purpose of the PS was supported by all respondents. Below are some illustrative quotes:

*“In our view, the current draft produced by the BSB captures many of the skills and qualities expected of a barrister commencing practice.”*

- Chancery Bar

*“Yes, we feel that the Professional Standard captures the minimum level of knowledge, attributes and skills that a barrister should have at the commencement of their career. One would expect these skills and attributes to develop during the course of a barrister’s career rather than diminish.”*

- Northumbria Law School

*“On the positive side, it is helpful to have a statement which sets out in neutral and unbiased terms the KSAs which all barristers must possess at the point of qualification. The draft achieves that, and it is hoped that any revision will do the same.”*

- Council of the Inns of Court

- 5.7.4. Different respondents placed emphasis on different aspects of the PS when constructing their response. However, three main themes were identifiable, running through the majority of responses. These were:
- A desire for the distinctive features of barristers’ practise to be made more central to the document – this has been done in the final version;
  - There should be more clarity as to the distinction between the PS and the BSB Handbook for the avoidance of doubt amongst all stakeholders, at the Bar and beyond – the mapping exercise has been undertaken, with the aim of eliminating doubt on this point;
  - The almost universal dislike of the element dealing with the need for harmonious relationships with all was noted. The original research which prompted that element did not represent wider views and, as such, the whole paragraph has been deleted from the final version.





## **Future Bar Training Consultation: The Professional Statement**

### **Introduction**

1. This consultation paper is an essential component of the Future Bar Training (FBT) programme.
2. FBT is our programme for change in education and training. We hope that by changing how we regulate, we can:
  - make education and training for the Bar more consistent, innovative and flexible;
  - remove unnecessary barriers to entry to the profession.
3. We are developing a Professional Statement which will describe the knowledge, skills and attributes that all barristers should aim to have at the point of being issued a full practising certificate. It will:
  - a. provide a clear and objective point of reference for the regulation of training for the Bar and the development of training pathways;
  - b. provide a baseline for more detailed training specifications, education standards and establishing routes to authorisation;
  - c. provide a starting point for development of Threshold Standards to be expected from any barrister at the point of being issued a full practising certificate.
4. The purpose of this consultation is to seek views on the draft we have produced. A copy of the Professional Statement is attached in Appendix A.
5. The Professional Statement will guide providers of education, training and pupillage in what outcomes they should seek to deliver and will serve as a means for the BSB and barristers to judge whether provision is fit for purpose. Once this consultation process is complete and the Professional Statement is in its final format, we intend to use it to develop Threshold Standards (where appropriate).
6. We have reviewed the proposals set out in this consultation paper to make sure they meet the outcomes specified by the Legal Services Board (LSB) in their Statutory Guidance on Education and Training, dated 4 March 2014.
7. This consultation document describes how we have developed the Professional Statement, and invites comments on its content.

## The Professional Statement – barristers at point of authorisation

### What is the Professional Statement?

8. It is crucial that the Professional Statement captures the knowledge, skills and attributes that a barrister should aim to have on entry to the profession.
9. The Professional Statement focuses on what a barrister should *be able to do*, rather than what they must do; the BSB Handbook (which includes the Code of Conduct) deals with the latter.

### Who is the Professional Statement for?

10. **The BSB:** The Professional Statement sets out the parameters of competent practice that will assist the regulator in maintaining standards of both of those entering practice and providers of education and training.
11. **Those involved in the design and delivery of education and training for the Bar:** The Professional Statement will be used to inform the development of education and training materials and pathways. The Statement will be used as a basis for the development of Threshold Standards, upon which learning outcomes will be based.
12. **Aspiring barristers:** The Professional Statement describes the knowledge, skills and attributes which should be developed in order for them to qualify as a barrister. This will help aspiring barristers make informed decisions about their future development.
13. **Practising barristers:** The Professional Statement describes the essential knowledge, skills and attributes that they should expect of themselves and their peers. The Professional Statement will not replace the Code of Conduct, and all barristers must continue to comply with the regulations set out in the BSB Handbook, which will remain the sole reference point for all disciplinary matters.
14. **Consumers:** The Professional Statement may be used to inform an understanding of the barrister's role and the service they can expect to receive. Complaints will continue to be dealt with under the Code of Conduct.

### What are Threshold Standards?

15. Within the framework of the Professional Statement, Threshold Standards will be developed to set out the level to which all barristers will be expected to perform on entry to the profession, and against which they can be assessed as they seek to become fully qualified. Whilst the Professional Statement defines what barristers should be able to do, the Threshold Standards will define what they must be able to do at the point of being issued a full practising certificate.

The Threshold Standards will give educators and trainers sufficient information to enable them to define learning outcomes, create pathways, learning opportunities and assessments that will enable diligent prospective barristers to demonstrate they have reached the standards required for them to be issued a full practising certificate. It will also inform those seeking to enter the profession what they will need to achieve. We will develop the Threshold Standards in collaboration with experts and specialists in education and training, drawn from the Bar and academia.

The Professional Statement will therefore provide the framework within which Threshold Standards can be calibrated. The wording may appear aspirational in some instances, especially in the areas of skills and behaviours. However, when supplemented with a definition of Threshold Standards, the expectations of a barrister from the point of being issued a full practising certificate will be made clear.

16. For illustrative purposes, the table below provides examples of thresholds already available in relation to advocacy skills.

Column A is an excerpt from the Professional Statement. It broadly describes the general requirement (in this example, relating to *oral* advocacy) of all barristers. It is generic and there is no indication of how these requirements might change depending on, for example, the level of seniority, length of service, or technical ability of a barrister. The Threshold Standards which will be developed will provide this detail *only* for barristers at the point of being issued a full practising certificate.

Column B describes the standard required at the ‘threshold’ of completing pupillage. It is taken from the Advocacy Training Council’s “Dutton Criteria”. This is therefore indicative of advocacy requirements for the early stages of a career at the Bar.

Column C describes the standard required at the ‘threshold’ of being made a Queen’s Counsel. It is taken from the Queen’s Counsel Appointments’ competency framework. This is therefore indicative of advocacy requirements of a well-progressed career at the Bar.

Please note that, when developing Threshold Standards for the Professional Statement, we will *only* focus on one threshold: the point at which barristers are issued a full practising certificate. The examples, below, are for illustrative purposes only.

A	B	C
<b>BSB’s Professional Statement</b>	<b>The Advocacy Training Council’s “<a href="#">Dutton Criteria</a>”</b>	<b>QCA’s <a href="#">competency framework</a></b>
“Barristers will:  1.11 Have fluent oral advocacy skills.”	“They must prepare thoroughly and present their cases in a manner which is clear, well organised, efficient and persuasive.”	“Develops and advances client’s case to secure the best outcome for the client by gaining a rapid, incisive overview of complex material, identifying the best course of action, communicating the case persuasively, and rapidly assimilating the implications of new evidence and argument and responding appropriately.”

The evidence base for the Professional Statement

17. Research was undertaken to make sure that the Professional Statement is based on empirical evidence of barristers' key activities and attributes. The research took the following forms:

17.1. Qualitative – method

We held five focus group workshops:

- London (two);
- Manchester;
- Birmingham;
- Bristol.

Sessions were facilitated by Adam Pacifico<sup>1</sup>, and introduced and observed by Simon Thornton-Wood, Director of Education at the BSB. These were attended by a good cross-section of the profession in terms of age, gender, seniority and areas of practice. At each session there was also at least one member of the group who was a legal educator.

Breakdown of numbers:

Date	Location	Number of attendees
13 November 2014	London	6
19 November 2014	London	8
26 November 2014	Manchester	6
27 November 2014	Birmingham	6
10 December 2014	Bristol	12

The process:

- a. At each location, attendees were asked to consider the following areas, one at a time:
- ethics, professionalism and judgement;
  - technical legal practice;
  - practice management;
  - working with others.

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<sup>1</sup> Adam qualified as a barrister in 1991. He is an accomplished public speaker having trained over 30,000 people in recent years nationally and internationally. Between 1994 and 1999, Adam took a career break and became a serving police officer with the Metropolitan Police, where he spent three years on the pro-active covert drugs team.

On returning to the private sector Adam held a number of roles including Head of Compliance for the College of Law of England and Wales, and Director and board member of BPP Professional Development.

Adam was appointed an accredited advocacy trainer for Inner Temple in 2005, a Crown Court Advocacy Assessor for the CPS in 2008, and in 2009 a member of the Covert Policing Ethics Committee based at New Scotland Yard. In 2011 Adam was the joint winner of the Law Society's Excellence in Training Award for 'Project Immerse'.

- b. We asked attendees to write their individual thoughts on what knowledge, skills and attributes (KSA) are essential for effective practice on entry to the profession, on individual post-it notes.
- c. We encouraged attendees (throughout this and the subsequent stages of the process) to focus on characteristics that are measurable, valid, reliable and fair.
- d. We then asked smaller groups of attendees to put those individual post-it notes on to a common “poster” grouping them into coherent sections.
- e. Attendees then annotated these posters to show any linkages between KSAs, as well as any additional comments (including where an attendee might disagree with another’s observation).
- f. Each smaller group then reviewed the remaining “posters”, again adding their own comments and analysis to create a rich picture of the entire group.
- g. This process was repeated for all four areas. Photographs of the resulting “posters” were taken for subsequent analysis.

### 17.2. Qualitative analysis and evaluation

The photographs produced by the focus groups were analysed at the BSB to create a spreadsheet indicating response frequency under each area heading, as well as capturing additional comments.

The evidence of this analysis, combined with a further careful evaluation of the original photographs, was used as the basis for the Professional Statement. The original headings were amended after evaluation of the responses revealed that the KSAs considered to be essential by the research would be better grouped as they appear in the draft Statement (see “Structure”, below).

### 17.3. Desk-based research

This was undertaken in the following areas:

- other legal service provision in this country; the work of the Solicitors Regulation Authority (SRA) and Ilex Professional Standards;
- legal service KSAs and standards as defined in other jurisdictions; Council of Bars and Law Societies of Europe (CCBE), American Bar Association, Australian Bar associations and the International Bar Association;
- legal education and its regulation as considered within the Legal Education and Training Review;
- how other professions define their KSAs and use those to inform their education and regulation, particularly but not exclusively those who also use work-based learning; medicine, architecture, accountancy (national and international standards);
- Chartered Institute of Personnel and Development, Ministry of Justice and the Civil Service work on competency frameworks.

Through this process we identified a core set of knowledge, skills, attributes and behaviours that are common to all barristers, whether at the self-employed or the employed Bar, and irrespective of their practice area.

For the statement to apply to all areas of practice, it needs to be comprehensive. To do so, it must balance between specific and more generic requirements. One aspect of this consultation is to discover to what extent the Professional Statement has hit the right balance.

18. Several drafts of the Professional Statement and its accompanying descriptors (which provide additional detail and context to each KSA requirement) were then carefully considered by a specialist Professional Statement Working Group in collaboration with a consultant.
19. This consultation document was then piloted with a small number of barrister and education respondents to identify any issues which may prove problematic for a wider audience. Amendments were subsequently made, where indicated as desirable, before being published.

#### Solicitors Regulation Authority

20. The first stages of the Professional Statement development were conducted in consultation with the SRA, with the aim of producing a common structure. In order to produce a Professional Statement that adequately represents the requirements of the Bar, a common document has not proved possible. However, in this Professional Statement, the comparable work of the SRA has remained an integral part of the process; there is significant and deliberate consistency of approach between the two professional regulatory bodies. The clear intention is to create harmonious definitions.

#### Structure

21. The Professional Statement is divided into four areas:
  - a. technical legal characteristics;
  - b. working with others;
  - c. management of practice;
  - d. personal values and standards.

We have listed key elements for each area, supported by descriptors that indicate in greater detail the essence of each.

### **PLEASE GIVE REASONED ANSWERS IN YOUR RESPONSES**

#### **Consultation question 1**

Does the Professional Statement provide an acceptable *outline* description that can be developed into a Threshold Standard of what you would expect a barrister to be able to do at the point of being issued a full practising certificate?

#### **Consultation question 2**

Are there any additional elements that should be included? If so, what are they?

#### **Consultation question 3**

Are there any elements that should not be included? If so, what are they?

### The Professional Statement – maintaining standards

22. The LSB's [Statutory Guidance on Education and Training](#) recommends that regulators set standards “that find the right balance between what is required at the point of being issued a full practising certificate, and what can be fulfilled through ongoing competency requirements”.
23. Throughout a barrister’s career, the standards met on authorisation should not be eroded. The Professional Statement will not be used to measure a barrister’s likely increasing competency as their career progresses. However it may be of assistance to barristers as the start point when considering their own Continuing Professional Development (CPD) needs.

### **PLEASE GIVE REASONED ANSWERS IN YOUR RESPONSES**

#### **Consultation question 4**

Does the Professional Statement reflect what you would expect *all* barristers to be able to do throughout their career and not just at the point of being issued a full practising certificate? Why is this?

#### **Consultation question 5**

Are there any additional areas of knowledge, skills, attributes or behaviour which should be included, but which are not necessarily essential at point of being issued a full practising certificate? If so, what are they?

#### **Consultation question 6**

Have we struck the right balance in the Professional Statement between the broad qualification which our research tells us is encompassed by the title barrister, and the degree of focus which comes in time with practice in a particular area? Why is this?

#### **Consultation question 7**

Will the Professional Statement be a useful tool to help barristers comply with their Core Duties, as detailed in the BSB Handbook, and ensure they maintain their practising standards? Why is this?

#### **Consultation question 8**

Have we articulated sufficiently clearly the distinction between (a) this Professional Statement (and its use for education and training and in developing thresholds at the point of authorisation) and (b) the role of the BSB Handbook and Code of Conduct (in defining how a barrister must conduct themselves throughout their career)? Why is this?

### **Equality impact assessment**

24. We have undertaken an initial screening of the function of the Professional Statement and did not identify any adverse impacts. We will undertake a full Equality Impact Assessment of the Professional Statement as it will be used in developing new regulatory requirements for education and training for the Bar.

**PLEASE GIVE REASONED ANSWERS IN YOUR RESPONSES**

**Consultation question 9**

Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the Professional Statement as a tool to assist our regulatory activities? If yes, what are these?

**How to respond**

There are three ways you can respond to this consultation.

1. **Online**, by visiting:  
<https://www.surveymonkey.com/s/BSB-FBT-Professional-Statement-Consultation>
2. **By email**, to:  
[futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk)
3. **By post**, to:

Future Bar Training – Professional Statement consultation  
The Bar Standards Board  
C/O Tim Keeling  
289-293 High Holborn  
London  
WC1V 7HZ

With postal and email responses, please state:

- your name or the name of the person on whose behalf you are responding (unless you wish to respond anonymously);
- your role (eg. barrister, consumer, legal academic);
- your location;
- if you wish for us to treat any part or aspect of your response as confidential.

**Responsible officer**

The officer responsible for this work at the BSB is Tim Keeling. Please return your responses, or direct any questions, to [futurebartraining@barstandardsboard.org](mailto:futurebartraining@barstandardsboard.org).

**Deadline**

Please email your responses by Wednesday 24 June 2015. Responses received after this date will not be considered.

**Confidentiality**

We may publish a list of respondents to the consultation. Please state clearly if you do not wish your name and/or response to be published. Although we may not publish all individual responses, it is our policy to comply with all Freedom of Information requests.



### **The Professional Statement Working Group**

The Working Group was formed of members of the BSB's Board, Education and Training Committee and Equality and Diversity Committee and comprised:

- [Robin Field-Smith](#) (Chair);
- [Tope Adeyemi](#);
- [Emily Windsor](#);
- [Stuart Weinstein](#).

### **Our consultant**

The consultant was Judith Willis. Judith qualified as a solicitor in 1983, practised until 1990 then entered Higher Education, teaching predominantly postgraduate, vocational law.

Over the next 18 years she acquired an MBA and Masters in Learning and Teaching in Higher Education and joined BPP where she was Professor of Legal Practice, a senior participant in setting up their Business School and successful application for taught degree awarding powers.

Judith has researched and spoken in several areas including work-based learning/assessment and professionalism and is a Fellow of the Higher Education Academy. She has been a member of the Law Society's Equal Opportunity Committee, Chair of the Association of Women Solicitors, UK Board member and General Secretary of the European Women Lawyers Association and worked as an External Examiner and Institutional Assessor for the SRA. She now consults independently and has worked for clients such as City University, The Law Society, Ilex Professional Standards and UCL.



## Organisations directly contacted about consultation

### Representative organisations

Association of Law Teachers  
Association of Women Barristers  
Bar association for commerce, finance and industry  
Bar Association for Local Government and the Public Service  
CBA  
Chancery Bar  
Commercial Bar Association  
Committee of Heads of University Law Schools  
Constitutional and administrative law bar association  
Employment Law Bar Association  
Family Law Bar Association  
FDA  
Institute of Barristers' Clerks  
Intellectual Property Bar Association  
London Common Law & Commercial Bar Association  
Midland Circuit  
North Eastern Circuit  
Northern Circuit  
Northern Circuit Commercial Bar Association  
Personal Injuries Bar Association  
Planning and Environment Bar Association  
Professional Negligence Bar Association  
Property Bar Association  
Public Access Bar Association  
Revenue Bar Association  
Society of Black Lawyers  
South Eastern Circuit  
Technology and Construction Bar Association  
Wales & Chester Circuit  
Western Circuit  
Young Bar Committee

### Press organisations

The American Lawyer  
Associated Press  
Barrister magazine  
BBC News  
BBC Radio 4 Today  
BBC Law in Action  
BBC You and Yours  
Bloomberg News  
Channel 4 News  
City AM  
Counsel  
Counsel News  
CrimeLine  
Daily Express  
Daily Mail  
Daily Telegraph

Evening Standard  
Financial Times  
The Guardian  
Halsbury Law Exchange  
The Independent  
The Independent on Sunday  
ITN  
ITV News  
The Lawyer  
Lawyer Monthly  
Lawyer Watch (blog)  
Legal Action Group  
Legal Futures  
Legal Cheek (blog)  
Legal Week  
LawCareers.net  
Law Society Gazette  
Lex 500  
Legal Business  
Life in the Bus Lane (blog)  
Local Government Lawyer  
Mail on Sunday  
Metro  
Modern Law Magazine  
New Law Journal  
The Observer  
The Partner  
Practice Blog  
Press Association  
Pupillage and how to get it (blog)  
Reuters  
Roll on Friday (blog)  
Sky News  
Solicitors Journal  
Sunday Telegraph  
The Sunday Times  
The Times  
The Times (Law supplement)

### Breakdown of responses to consultation

A total of 22 responses were received from the following demographics:

- 12 barristers or representative organisations;
- three academics;
- six training providers;
- one consumer organisation.

Five respondents asked for anonymity. Those who did not are:

- Bar Association for Commerce, Finance & Industry (BACFI);
- Chancery Bar Association;
- Chartered Institute of Legal Executives;
- City Law School;
- Council of the Inns of Court;
- Elizabeth Mytton;
- Family Law Bar Association;
- John Hodgson;
- Law Centres Network;
- Legal Services Consumer Panel;
- Middle Temple Hall Committee;
- Northumbria Law School;
- Nottingham Law School;
- Professor Dermot Cahill;
- Richard Moorhead (individual capacity);
- Rita Leat;
- University of Law.



**BSB Professional Statement Consumer Panel  
22 June 2015**

**Representatives and key for notes:**

Legal Services Consumer Panel (3)  
Personal Support Unit (4)  
Free Representation Unit (5)  
Bar Pro-Bono Unit (6) (7)  
Victim Support (8)  
Law Centres Network (9)

**Bold: comment made by PS project team**

**Introduction from Future Bar Training Programme Manager**

*PowerPoint presentation slides at Appendix A.*

**Exercise**

**Judith Willis (JW), an independent consultant, invited representatives to “think of one good thing and one thing that could be improved about the barrister profession, from a consumer perspective”. Participants took a few minutes to brainstorm alone.**

*Good things*

- (3) Fairly principled re: the administration of justice
- (4) Knowledgeable about the law
- (5) Is and perceives itself as an elite profession
- (6) Amount of pro-bono
- (7) High level of skill and expertise
- (8) Professionalism
- (9) The Bar are able to adapt. Barristers are able to collaborate with others in the sector, with independence. Many organisations will take a position, but there is adaptability at the Bar.

*Could do better*

- (3) Jargon and formal language. Use of plain English could be much better.
- (4) Clients’ perspective – approachability and accessibility. Could be more approachable and accessible.
- (5) Can be elitist, provincial and insular. Provincial means “not invented here” syndrome, not adopting developments in technology, “we’re different to others”, bad at using expertise of other professions e.g. marketing.
- (6) Needs to be more open about the difficulties of practice, and possible abuses in the system
- (7) Prohibitively expensive - from a client’s perspective, and those wishing to pursue a career.
- (8) Clients’ view – lack compassion for victims and people on the stand. The common perception is that they have the defendant’s interests at heart, they are only on the defendant’s side. They are not seeking justice, just on the defendant’s side. (Note: at Victim Support, always seen from the other side of defendant).
- (9) Communication and communication styles, accessible information explaining what the Bar is and is about. Often there is a lack of consumer focus - perception. Should be addressing diverse communication so that messages are understandable for different groups.

**JW asked if there was anything else to add – the representatives said no.**

### **Discussion**

**JW asked representatives to “take each point from this list, look through, and see where you think we’ve met them [in the Professional Statement]... Provide new barristers with a goal to aim for”.**

*Principles – administration of justice*

At 1.3

- (9) Would have liked to see real understanding and recognition of how justice is administered. Wider than just the Bar, other contexts. Not just own professional standard. Professions in flux, need to understand across in order to deliver best service to consumer.
- (6) Disagree – not just about consumer. Fitting in with administration of justice.
- (5) See 4.1. Could tweak, but mostly as personal commitment and ethos. Principled. Once of the things good about the Bar. The Bar is genuinely committed to justice – why generally standards of integrity are so high. About ethos, not knowing technical. Personal ideological commitment.
- (4) Should be aware e.g. that PSU exists, etc. Not just barrister level – aware of every step consumer has taken.
- (6) Overall principle is core of profession. Talking about administration is repetition of Code of Conduct. Saying technical knowledge or principle instilled by end of training?
- (5) No one has ethos because the BSB puts it in a training course. It is transmitted in culture. Could remove mention, wouldn't make any difference to ideology (although not saying should remove).

**Re: administration of justice. Good principles – might say more than we do. Make sure not in conflict with Code of Conduct, or gap between them. Wider system is something they could do better.** - Nearly all representatives felt that way.

- (9) Benchmark, also improving continuously. Administration of justice is wider than systemic. Victim Support – predominantly barristers are against them. Someone aware of that might be able to adapt, some barristers can. That's a skill.
- (6) That re: communications then – language etc. Understanding of administration of justice in communication section?

### **Working with others – those sorts of things at 2.2**

- (5) Query that. Job not to nurture positive relationships at all. Sometimes. Phrasing. Not rude, unpleasant or needlessly cruel, but if you're a defendant, you don't want your barrister nurturing a relationship with the people against you.
- (9) Direct access. Pro bono. That type of understanding – agencies etc. – can help a person's case. Administration of justice.
- (5) Very easy to fall into stereotyped thinking. Maybe true 50 years ago. Now, criminal barrister explaining very complicated, very important things to ordinary men and women – probably do better than we could. Even barristers fall into it. Profession have very vivid and powerful self-image. Generates positive things, e.g. profession is almost entirely free of conventional corruption, but also leads to funny viewpoint. Can distort reality quite easily.



**Need to include more depth and breadth to administration of justice system. Wider than just own role. Awareness. Not all are criminal barristers, not all in court regularly. Needs to cover all. Awareness of other agencies.**

- (5) Would be good to be live and aware. Should a regulator be able to say, if you don't you are not competent to be a barrister? (Implication: should not). Without granular detail doesn't mean anything. Not much here in principle to object to. Difficult to discuss in absence of threshold standards.
- (8) Valuing proper administration of justice, not just understanding the process.
- (5) Could re-write 1.13 – not just “observing” but committed.
- (6) Going beyond Handbook/Code of Conduct.
- (9) If about consumer interest – how does that statement speak to consumers – might need repeating. Goes to different receptors. If day 1 everyone won't have the same awareness it's aspirational.

**See 1.2 and 1.3. Repetition is to be avoided.**

- (5) Access to justice means different things: ethos, communicating it, and the knowledge to put it into practice.  
[This statement was met with agreement]
- (6) Risk in putting in such general terms. Different views of administration of justice, barristers v. consumers. Throughout – general terms. Complaints mean an administrative burden. Glossary of what meant by terms?

**Will not be used in a disciplinary context. Make clear to consumers.**

- (6) Practically, consumer will say that someone doesn't have X, and will ask where in the Code of Conduct the basis of their complaint is.

**Work gone into mapping to Code of Conduct. Should not be a gap. Shouldn't find something different – will find equivalent in Code of Conduct.**

- (9) Some in 2.7. Might be at 1.2 – add awareness of practice within the administration of justice.

*Knowledgeable about the law*

All agreed this was summed up at 1.2.

*Good that it is elite*

- (6) About maintaining standards
- (5) Self-fulfilling prophecy – inculcating young lawyers is very good. Expectations of themselves: integrity, to be the best. Negative flipside as well. Don't do it because it is written down somewhere, but because of culture. Not from legal institutions.

**[Some disagreement]**

- (5) Outside direct control; BSB can control knowledge.
- (7) Question – presumably is the bar course. During pupillage, how shown complying? Chambers asked to take into account?

**Explanation of combined consultation**

- (5) Difficult to think about, divorced from threshold standards and way it will be enforced.

**JW asked the representatives if there was anything from the ‘Good’ list missing from the professional statement.**

- (6) Pro bono. Not about making it a requirement. But, understanding and awareness. Ethos. Day 1 – aware of agencies, so if want to get involved, can. No intention that they have to.
- (9) Pro bono – then have to explain it? Not for profit is not the same as pro bono. Administration of justice as whole includes pro bono. Broad. Understanding multi-layers.
- (5) Wider environment, e.g. Crime: Victim Support, police, press. For some pro bono is in there.

**Concept of wider environment in which you sit. Level of awareness. Could be in definitions – more detailed.**

- (9) Absences in Professional Statement – understanding of equalities framework.  
**See 2.3 and 2.4.**
- (5) Follows common tendency – absolutist. Spectrum – equality is somehow different. Important to recognise not something will be perfect at from beginning.
- (4) Disagree. Saying, important for the Bar to be aware of what they might face. Should be level of judgement – anyone could walk through the door. Wording is correct.
- (5) Agree. Please re: threshold criteria – not different to other criteria. Risk in de-valuing.
- (9) Wording – “needs and sensitivities”, as if those from diversities have sensitivities. Diminishing factors?

**Agree – needs tweaking**

- (9) ECHR sometimes advises on wording.
- (8) Could be separated out: a. sensitivities and circumstances; b. diverse backgrounds.
- (5) 2.7 relevant?
- (6) Yes – can do direct access from day 1.
- (4) When on other side, against a barrister. Could be aware of agencies: McKenzie friend, mediation friends etc.
- (5) Looks odd – lay client only refers to litigants in person and direct access.
- (6) Code of Conduct re: litigants in person, no additional obligation. Day 1 against litigant in person, need to be aware, can be challenging. 2<sup>nd</sup> six will address, BSB can assist supervisors more. Might reference court guidance at 2.7.

**Coming back to same point – sits within ecology.**

- (6) Re: adaptability – business structures. Reference to business is problematic from the Bar’s point of view. Context, for consumer context is vital; and for training organisations it’s invaluable. Where Bar slots in, ecology. Business at 3.4. Point re: conflict of interest.

**Content from workshops. Includes self-employed Bar.**

- (5) Generational and engagement split. Younger/more commercial group.
- (6) Adaptability – s.3 is good, might go further to raise awareness, options available. Might want awareness from first day – consumer access.
- (5) Aside word “business”, think 3.4 has got it right.
- (6) Good to include most junior in discussions on structure etc., positive flipside.

**JW asked the representatives if there was anything from the ‘Could do better’ list that hadn’t been touched upon in the Professional Statement.**

- (9) Management of practice. Consumer point of view, not incorporating collaboration, sharing knowledge and skill. Sort of in ‘Working with others’. Could have opportunity to show collaboration in this statement.

**In the detail. Not repeating.**

- (9) [*Agreed, seemed satisfied with response*]. Consumer focus, would want to see element at 2.2 – collaborate with consumers.
- (6) Open about difficulties is a “can of worms”. Day 1 – want a healthy relationship with job. Establish well-being at training stage, not necessarily for statement. What can we influence? Where are we influencing?
- (5) Working with others, provide healthy and supportive environment with others.
- (9) SRA: “offering advice and assistance when required”.
- (5) Nothing to do with appropriate complaints handling.
  - (6) Handbook is adequate.
  - (5) Could be in 1.12.

**Might come under s.3, compliance.**

- (9) Communication points: SRA equivalent (para. C1), other points worth putting in – succinctly etc.

**Covered in 1.3?**

- (9) About clear, succinct, appropriate language. Comes up regularly in consumer impact and surveys.
- (3) Looking at sections in isolation, would feel like it’s missing – language etc.
- (6) 1.3 – writing – way that is appropriate. Plain English v. legal language.

**Need to cross reference communication skills in different sections.**

- (5) Re: 1.3, “where essential” sounds grudging. Technology is odd – may or may not be technological.

**Might have to re-visit.**

- (9) Appropriate adjustments?
  - (8) Appropriate tools?

**As the session came to an end, representatives were invited to get in touch with any more than they wanted to say.**

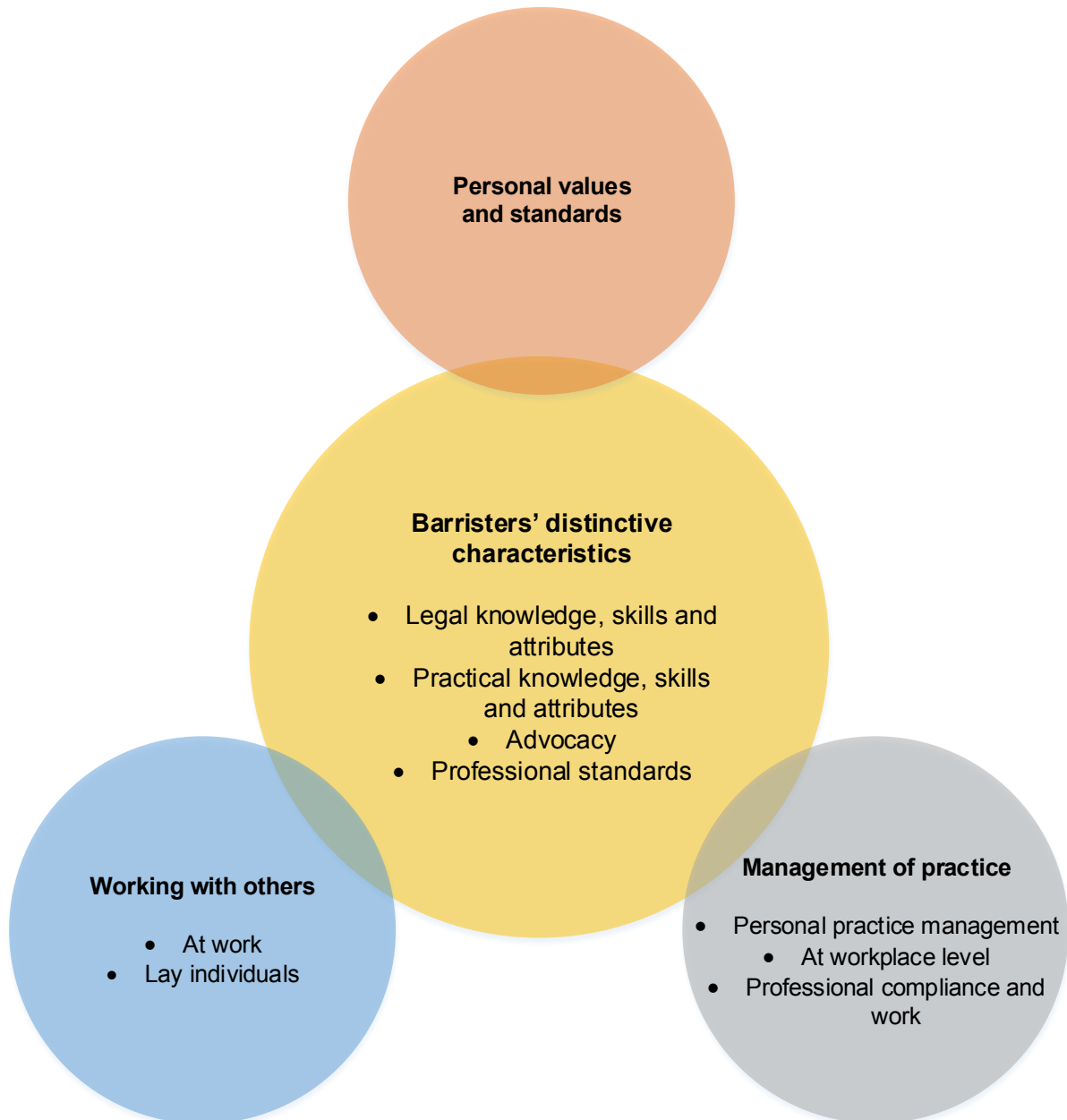
- (5) Urge to consult publicly on the threshold standards.



**Professional Statement**

**Future Bar Training**

**Professional Statement for barristers**



**The Professional Statement describes the standard to be achieved by a barrister upon the issue of a Full Qualification Certificate, on which basis they may apply for a Full Practising Certificate.**

## 1. Distinctive characteristics

Barristers will:

### Legal knowledge, skills and attributes

1.1 **Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.**

They will recognise and abide by their paramount duty in this regard including where this may require them to act against their own or their client's best interests.

1.2 **Have a knowledge and understanding of the key concepts and principles of public and private law.**

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

1.3 **Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.**

They will have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practice. They will have a good understanding of the rules of practice and procedure operating in courts relevant to their area(s) of practice. For example, the rules relating to jurisdiction, evidence, disposals, financial orders and costs. They will understand the processes by which disputes can be resolved outside court, such as arbitration and mediation.

1.4 **Have an awareness of the wide range of organisations supporting the administration of justice**

They will understand that the system for administration of justice comprises more than the judicial system alone and will have an awareness of the other elements wherever they are relevant to their work. They will also have an awareness of the sources of advice and funding available to clients, their additional responsibilities in cases that are not self-funded, and the implications of the same on the conduct of a case.

1.5 **Apply effective analytical and evaluative skills to their work.**

They will identify the relevant facts of a matter and apply their legal and procedural knowledge to those facts to analyse the issues. They will acquire an understanding of their client's circumstances, needs, objectives, priorities and constraints. They will use that analysis and understanding to evaluate the available options and communicate them to their client.

1.6 **Provide clear, concise and accurate advice in writing and orally and take responsibility for it.**

Advice in writing will include written opinions and advising by email. Oral advice will include conducting conferences and advising by telephone. This will also include advising on the need and preparation for trial where an earlier disposal of the case does not occur, and the ability to convey unpalatable advice where necessary.

1.7 **Negotiate effectively.**

They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client.

**Practical knowledge, skills and attributes**

- 1.8 **Exercise good English language skills.**  
They will have an effective command of the language and be able to use it appropriately, accurately and fluently so as to handle complex and detailed argumentation. They will use correct English grammar, spelling and punctuation.
- 1.9 **Exercise good communication skills, through any appropriate medium and with any audience as required in their work.**  
They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.
- 1.10 **Make sound judgements in their work.**  
They will ensure their judgements are independent, based on a good understanding of the relevant law and evaluation of relevant facts and information, and that any advice they give or decisions they make are reasoned and supported by evidence.
- 1.11 **Ensure they are fully prepared.**  
They will be familiar with the facts and law applicable to any matter on which they are working, as well as their client's circumstances and goals, so as to be able to supply their client with a good standard of work.
- 1.12 **Employ effective research skills.**  
Using either paper or electronic media, they will be able to recognise and identify relevant legal issues as well as recognise the need to research areas beyond the law that are relevant to their work. They will undertake any research accurately and efficiently. This will involve assessing the quality and relevance of sources, interpreting and evaluating the results of the research and presenting those results clearly and accurately.

**Advocacy**

- 1.13 **Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.**  
They will be able to draft standard court documents. For example, claim forms, statements of case, witness statements, applications, indictments, witness statements, orders and appeal documents. They will be able to draft these documents in clear language which focuses on the issues relevant to the case.
- 1.14 **Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.**  
They will be able to draft skeleton arguments that have clarity of purpose, are of an appropriate length and which comply with any applicable rules. Their arguments will identify the issues and will cite authorities and external materials in an appropriate manner.
- 1.15 **Have persuasive oral advocacy skills.**  
They will be able to communicate their client's case effectively. They will be able to deliver coherent, well-structured and concise

submissions and cite legal authorities and materials appropriately. They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients. When delivering submissions and questioning witnesses, they will be able to communicate audibly, using both pace and language that are appropriate to the tribunal. They will be able to handle witnesses in accordance with the rules of the court. They will ask questions which assist the court, focus on the real issues in the case and avoid the irrelevant. They will listen to the answers and demonstrate appropriate conduct towards the witness.

### **Professional standards**

- 1.16 **Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.**  
They will clearly understand a barrister's core duties and apply them in all aspects of their work.
- 1.17 **Know how to conduct themselves appropriately in court.**  
They will know and use the required dress, accepted forms of address, formalities of proceedings and established conventions and customs in each forum where they represent clients.
- 1.18 **Only accept work which they believe they are competent to undertake**  
They will be able to assess the level of their own knowledge, skills and attributes, to enable them to make an informed judgement on the acceptance of work and have the resilience to decline to act where necessary.

### **Supporting characteristics**

#### **2. Personal values and standards**

- Barristers will:
- 2.1 **Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.**  
They will be aware of and recognise the explicit and implicit pressures to behave in any other way and resist those pressures even where to do so may be against their personal interests.
- 2.2 **Be honest in their dealings with others.**  
They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.
- 2.3 **Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.**  
They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.
- 2.4 **Ensure their work does not incur unnecessary fees.**  
They will establish with a client at the outset of any matter the basis for charging fees and then follow those arrangements in a cost-effective



manner. They will only undertake work which they believe promotes their client's interests.

2.5 **Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.**

They will continually assess their weaknesses, limitations or knowledge gaps, analysing them accurately and honestly. They will acknowledge these to others if appropriate, and learn from the reflective process.

2.6 **Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.**

They will be able to plan and develop their career by identifying their strengths and preferences and the risks and opportunities of the environment in which they work. They will be able to assess their legal knowledge and skills and their working environment regularly, then eliminate any perceived knowledge or skills shortfall, ensuring their abilities remain relevant for the work they wish to undertake.

### 3. Working with others

Barristers will:

#### At work

3.1 **Understand and exercise their duty to act in the best interests of their client.**

They will apply this core barrister's duty in every case except where it conflicts with their duty to the court in the administration of justice.

3.2 **Understand and apply principles of team working where appropriate.**

They will have an understanding of how teams work and the benefits of team working and be able to use their individual knowledge and skills to work collaboratively with others towards a common goal. They will be able to play an active role in supporting a team-working ethos, work co-operatively with others and willingly give help and support to colleagues, know when to offer assistance and advice and do so when required.

3.3 **Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.**

They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences, or those who have characteristics which are protected under the Equality Act 2010. They will be receptive and responsive to how those needs might be met through making adjustments to their own practices.

3.4 **Treat all people with respect and courtesy, regardless of their background or circumstances.**

They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all. They will know how and where to demonstrate empathy, and act accordingly. In their own workplace, they will treat senior, junior and support colleagues with respect and courtesy, recognising where an adversarial approach is not suitable.

3.5 **Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.**

They will be able to identify situations where keeping the client informed is their responsibility and in those circumstances they will be able to establish with their clients a suitable structure, including timescales, for communicating significant developments in their case and communicate those effectively. This will include telling the client about options as their case develops, possible outcomes and associated risks.

#### **Lay individuals**

#### 3.6 **Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.**

They will understand and apply the relevant elements of the Code of Conduct for barristers in this regard and the need to maintain a balance between their duty not to take unfair advantage and their duty to the court. They will recognise and appreciate the potential lack of understanding where clients or opponents have an inadequate knowledge of the law and procedure compared with those whose cases are conducted through qualified legal advisors and the effect this may have on the handling of a matter.

### 4. **Management of practice**

Barristers will:

#### **Personal practice management**

#### 4.1 **Where appropriate, possess a strong understanding of the specific implications of being:**

##### 4.1.1 **a self-employed barrister**

They will be able to supervise the day-to-day management of their practice by clerks and other employees and accept overall responsibility for all delegated work.

##### 4.1.2 **an employed barrister**

They will understand the specific implications of being employed as a barrister. They will be able to identify and deal with any conflicts of interest that arise as a result of their employed status and act with independence.

#### 4.2 **Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.**

They will have an awareness of skills such as time and project management, planning, record keeping, using IT effectively and personal development. They will analyse their own needs for such skills then acquire and apply them to a good standard where necessary. They will have a basic understanding of risk analysis so as to be able to apply it to their work. The employed barrister in particular will ensure they understand the governance structure of the organisation in which they work and achieve a balance between their obligations to that organisation and their professional duties.

#### 4.3 **Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.**

They will ensure their workload is manageable. They will have a basic understanding of business continuity so as to be able to deal with unplanned circumstances. They will be sufficiently organised to ensure absences are planned so as to enable them to honour commitments.

**At workplace level**

- 4.4 **Understand the organisational systems or structures within which they work and which support their delivery of a professional service.**

They will contribute to the efficient operation of their workplace where appropriate through such actions as the sharing of work when necessary, the developing of the business, and the creation of effective support systems.

**Professional compliance and work**

- 4.5 **Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.**

They will be aware of and be able to use either electronic or hard copy information management systems so as to ensure the confidentiality and security of their client's information as well as comply with current file storage and destruction regulations.

- 4.6 **Exercise good time-keeping in face-to-face or telephone encounters.**

They should attend meetings, conferences and court appearances punctually and fully prepared unless prevented by matters beyond their control.

- 4.7 **Where necessary, be diligent in keeping good records and files of cases.**

They will be able to identify situations where keeping records and files is their responsibility and in those circumstances they will ensure that the records they keep may be understood by others as well as themselves, are organised, accurate, contain sufficient details to portray a true record and are up-to-date.

**Summary****1. Distinctive characteristics**

Barristers will:

**Legal knowledge, skills and attributes**

- 1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.
- 1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.
- 1.3 Have a knowledge and understanding of the law and rules of procedure and practice relevant to their area(s) of practice.
- 1.4 Have an awareness of the wide range of other organisations supporting the administration of justice.
- 1.5 Apply effective analytical and evaluative skills.
- 1.6 Provide clear, concise and accurate advice in writing and orally.
- 1.7 Negotiate effectively.

**Practical knowledge, skills and attributes**

- 1.8 Exercise good English language skills.
- 1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.
- 1.10 Make sound judgements in their work and take responsibility for their decisions.
- 1.11 Ensure they are fully prepared.
- 1.12 Employ effective research skills

**Advocacy**

- 1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.
- 1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.
- 1.15 Have persuasive oral advocacy skills.

**Professional standards**

- 1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.
- 1.17 Know how to conduct themselves appropriately in court.
- 1.18 Only accept work which they believe they are competent to undertake

**Supporting characteristics****2. Personal values and standards**

- Barristers will:
- 2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.
  - 2.2 Be honest in their dealings with others.
  - 2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.
  - 2.4 Ensure their work does not incur unnecessary fees.
  - 2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.
  - 2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

**3. Working with others**

- Barristers will:
- At work**
- 3.1 Understand and exercise their duty to act in the best interests of their client.
  - 3.2 Understand and apply principles of team working where appropriate.
  - 3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.
  - 3.4 Treat all people with respect and courtesy, regardless of their background or circumstances.
  - 3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.
- Lay individuals**
- 3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

**4. Management of practice**

- Barristers will:
- Personal practice management**
- 4.1 As appropriate, possess a strong understanding of the specific implications of being a:
    - 4.1.1 self-employed barrister
    - 4.1.2 employed barrister.
  - 4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.
  - 4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

**At workplace level**

- 4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

**Professional compliance and work**

- 4.5 Maintain the confidentiality of their clients' affairs, including by the use of secure information and communications technology methods.
- 4.6 Exercise good time-keeping.
- 4.7 Where necessary, be diligent in keeping good records and files of cases.

### Relationship between Professional Statement and Code of Conduct

1. A healthy profession is one that goes beyond basic compliance with its regulatory code. To practise effectively in today's dynamic marketplace, barristers should be adaptive, systematic and flexible. Related knowledge, skills, attributes and behaviours will support them in upholding the regulatory standards of the BSB Handbook
2. The Professional Statement describes what barristers should be able to do upon entry to the profession: the essential knowledge, skills, attributes and behaviours that all barristers should be able to demonstrate when issued with a full practising certificate. It is an entry standard which barristers should expect of themselves and their peers. It is also a resource which may be used by consumers to inform their understanding of a barrister's role and the service that they can expect to receive. Furthermore, it can be used by those developing and delivering training to inform the development of effective future educational tools and pathways.
3. The Professional Statement does not focus on what barristers must do; this is dealt with in the BSB Handbook (inclusive of the Code of Conduct and associated Core Duties), with which all barristers must continue to comply. The Professional Statement may be used as an evidential point of reference when a breach of the requirements for competent practice (set out in the Code of Conduct) have been raised as a matter of complaint.
4. The Professional Statement forms part of the regulatory regime governing entry to the profession. The BSB Handbook details the regulatory landscape for subsequent practice, following admission.
5. Much of the knowledge, skills and attributes described in the Professional Statement can be related directly to the Core Duties set out in the BSB Handbook, as would be expected in any document that is used in admitting people to a profession. The Professional Statement refers to the BSB Handbook wherever compliance with its regulations is essential to demonstrating the knowledge, skills, attributes and behaviours that should be expected of a barrister. This relationship is illustrated by demonstrating which elements of the Core Duties are to be found in each element of the Professional Statement (an exercise known as mapping). The knowledge, skills, attributes and behaviours needed for a new barrister to practise in accordance with the Code of Conduct are revealed with clarity by this process.
6. A detailed mapping of the Professional Statement to the Core Duties is contained below.

#### The core duties

- CD1** You must observe your duty to the court in the administration of justice.
- CD2** You must act in the best interests of each client.
- CD3** You must act with honesty and integrity.
- CD4** You must maintain your independence.
- CD5** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- CD6** You must keep the affairs of each client confidential.
- CD7** You must provide a competent standard of work and service to each client.
- CD8** You must not discriminate unlawfully against any person.
- CD9** You must be open and co-operative with your regulators.
- CD10** You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

**Professional Statement → core duty mapping**

<b>1. Distinctive characteristics</b>		
	<u>Legal knowledge, skills and attributes</u>	
1.1	Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.	<b>CD1 CD3 CD4 CD5</b>
1.2	Have a knowledge and understanding of the key concepts and principles of public and private law.	<b>CD7 CD10</b>
1.3	Have a knowledge and understanding of the law and rules of procedure and practice relevant to their area(s) of practice.	<b>CD7 CD10</b>
1.4	Have an awareness of the wide range of other organisations supporting the administration of justice.	
1.5	Apply effective analytical and evaluative skills.	<b>CD7</b>
1.6	Provide clear, concise and accurate advice in writing and orally.	<b>CD7</b>
1.7	Negotiate effectively.	<b>CD7</b>
	<u>Practical knowledge, skills and attributes</u>	
1.8	Exercise good English language skills.	<b>CD7</b>
1.9	Exercise good communication skills, through any appropriate medium and with any audience as required in their work.	<b>CD7</b>
1.1	Make sound judgements in their work and take responsibility for their decisions.	<b>CD7</b>
1.11	Ensure they are fully prepared.	<b>CD7</b>
	<u>Advocacy</u>	
1.12	Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.	<b>CD7</b>
1.13	Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.	<b>CD7</b>
1.14	Have persuasive oral advocacy skills.	<b>CD7</b>
	<u>Professional standards</u>	
1.15	Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.	<b>CD9</b>
1.16	Know how to conduct themselves appropriately in court.	<b>CD1 CD3 CD4 CD5</b>
1.17	Only accept work which they believe they are competent to undertake	<b>CD7</b>
<b>2. Personal values and standards</b>		
2.1	Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.	<b>CD2 CD3 CD4</b>
2.2	Be honest in their dealings with others.	<b>CD3</b>



2.3	Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.	<b>CD8</b>
2.4	Ensure their work does not incur unnecessary fees.	<b>CD6</b>
2.5	Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.	<b>CD3</b> <b>CD7</b>
2.6	Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.	<b>CD7</b>

<b>3. Working with others</b>		
	<u>At work</u>	
3.1	Understand and exercise their duty to act in the best interests of their client.	<b>CD2</b>
3.2	Understand and apply principles of team working where appropriate.	<b>CD10</b>
3.3	Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.	<b>CD2</b> <b>CD8</b>
3.4	Treat all people with respect and courtesy, regardless of their background or circumstances.	<b>CD3</b> <b>CD5</b> <b>CD8</b>
3.5	Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.	<b>CD7</b>
	<u>Lay individuals</u>	
3.6	Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.	<b>CD2</b> <b>CD7</b> <b>CD10</b>

<b>4. Management of practice</b>		
4.1	As appropriate, possess a strong understanding of the specific implications of being a: 4.1.1 self-employed barrister 4.1.2 employed barrister.	<b>CD10</b>
4.2	Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.	<b>CD7</b> <b>CD10</b>
4.3	Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.	<b>CD7</b> <b>CD10</b>
	<u>At workplace level</u>	
4.4	Understand the organisational systems or structures within which they work and which support their delivery of a professional service.	<b>CD7</b> <b>CD10</b>
	<u>Professional compliance and work</u>	
4.5	Maintain the confidentiality of their clients' affairs, including by the use of secure information and communications technology methods.	<b>CD6</b> <b>CD10</b>
4.6	Exercise good time-keeping.	<b>CD7</b> <b>CD10</b>
4.7	Where necessary, be diligent in keeping good records and files of cases.	<b>CD7</b> <b>CD10</b>



## Equality Analysis (EA) Screening Form

Date of Assessment	09.09.15
Assessor Name & Job Title	Tim Keeling, Change Programme Manager
Name of Policy/Function to be Assessed	Future Bar Training programme, workstream 1: Professional Statement
Aim/Purpose of Policy	To describe the knowledge, skills and attributes that barristers should possess when issued with a full practising certificate.

1. Do you consider the policy to have an adverse equality impact on any of these groups? Write either 'yes' or 'no' next to the appropriate group(s).

Race	No	Sexual Orientation	No	Marriage/Civil Partnership (only in employment matters)	No
Gender	Yes	Religion/Belief	No		
Disability	Yes	Gender Reassignment	No		
Age	No	Pregnancy/Maternity	No		

2. If you answered 'yes' to any of the above, give your reasons why.

Disability – People with disabilities are more likely to undertake non-traditional educational pathways, which may be viewed as unconventional routes to joining the Bar, compared to those without disabilities. In addition, it is more likely that they would study part time.	Gender – there is a risk that the statement may state that skills, knowledge or attributes which are more likely to be possessed by a particular gender, or which pose more difficulty for a person of particular gender to attain, are of the minimum required on the first day of practice.
<p><b>Commentary:</b></p> <p>No issues relating to the gender and disability risks, above (identified in the December 2014 impact analysis), arose. Furthermore, no additional equality and diversity risks were identified during the development of the Professional Statement.</p> <p>A number of safeguards were put in place to ensure equality and diversity issues were monitored throughout the project:</p> <ul style="list-style-type: none"> <li>An expert in equality and diversity who is a member of the BSB's Equality and Diversity Committee, was the chair of the project's Working Group. The Working Group did not identify any issues pertaining to equality and diversity in the drafting of the Statement.</li> <li>Care was taken to ensure that terminology used within the Professional Statement did not discriminate or unduly favour any protected characteristic. Particularly, with regards the identified risks above, language used was kept gender-neutral.</li> </ul>	

Respondents to the Professional Statement consultation were questioned about any perceived equality and diversity issues that the draft might present:

*“Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the Professional Statement as a tool to assist our regulatory activities?”*

Only one respondent replied yes, and went on to detail that:

*“The statement could be used to develop alternative routes to the bar would could increase diversity, particularly in the light of the costs of qualification and the need for prospective candidates to incur large debts with uncertain prospects.”*

The Professional Statement focuses on the knowledge, skills and attributes that all barristers should attain by the point of full authorisation. As such, equality and diversity issues are more likely to be identified when looking at how the training is accessed. An initial equality impact analysis was considered by the Board in June and a full equality impact assessment will be created for each stage (academic, vocational and pupillage) when the consultation is closed and proposed changes are being formulated.

3. If you answered ‘no’ to any of the above, give your reasons why.

Race – no impact  
Age – no impact  
Sexual orientation – no impact  
Religion/belief – no impact  
Gender reassignment – no impact  
Pregnancy/maternity – no impact  
Marriage/civil partnership – no impact

## Amended Rules for the Inns' Conduct Committee

### Status:

1. For approval.
2. Public.

### Executive Summary:

3. At its July meeting, the Board considered amended Rules for the Inns' Conduct Committee that had been submitted for approval by the Council of the Inns of Court ("COIC") and approved by the Standards Committee. The Board decided to ask COIC to reconsider the proposals, taking into account the position of those seeking readmission following a disbarment by a Disciplinary Tribunal.
4. COIC has now addressed the issues raised and has submitted amended proposals for approval.

### Recommendations

5. It is recommended that the Board approve the amended Rules for the Inns' Conduct Committee.

### Background

6. The Bar Training Rules (section 4.B of the BSB Handbook) give to the Inns' Conduct Committee ("ICC") certain powers relating to admission/readmission to an Inn of Court and to student discipline. These powers must be exercised in accordance with the Inns' Conduct Committee Rules ("the Rules").
7. The role of the Inns' Conduct Committee and its Rules is to ensure that only those individuals who are "a fit and proper person to become a barrister" are admitted to an Inn of Court (and so permitted to qualify as a barrister) and that appropriate disciplinary action is taken against those who are members of an Inn but have not yet been called to the Bar, where a "serious matter" (ie a matter which calls into question whether they are a fit and proper person to become a barrister) is proved against them.
8. Admission to an Inn includes the readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of an Inn. Under rQ11, an individual who has been expelled from an Inn may not normally apply for readmission until five years after expulsion.
9. Under rQ126, any amendments to the Rules must be approved by the BSB.
10. At its July meeting, the Board considered amended Rules that had been proposed by COIC and approved by the Standards Committee. The proposed amendments were, in summary, as follows:
  - i) To move to a position where hearings are ordinarily in public to one where hearings are normally in private, unless the student/applicant requests that it be held in public and the Chair of the Panel agrees
  - ii) To state explicitly that the standard of proof is the civil standard

- iii) That members of ICC Panels should be drawn from the same pool as members of Disciplinary Panels
  - iv) Amendments to the constitution of the Inns Conduct Committee
11. The Board was not satisfied that sufficient consideration had been given to how the amended Rules would apply to disbarred barristers seeking readmission as opposed to students seeking admission to an Inn for the first time. It therefore asked COIC to reconsider the proposals (i) and (ii), taking into account the position of those seeking readmission.
  12. COIC has considered the issues raised by the Board and has sent the response attached as Annex 1.

### Comment

13. The BSB Handbook explicitly states that “admission to an Inn” includes readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of an Inn. This means that, if a barrister who has been disbarred wishes to apply for readmission (which they are entitled to do once five years have passed since their expulsion), they are subject to the same procedures as those seeking admission to an Inn for the first time. However, whereas a standard applicant for admission will still need to complete their training before becoming entitled to practise as a barrister, a successful applicant for readmission following disbarment will usually be entitled to take up a practising certificate as soon as they are readmitted.
14. COIC accepts that, in these circumstances, it would be more appropriate for the hearing to be in public than in private. It is therefore proposing an amendment whereby the hearing of an applicant for readmission who has previously been disbarred as a result of an adverse decision by a Bar Disciplinary Tribunal should normally be heard in public. Hearings of other applicants for readmission would normally be in private.
15. COIC has also, as requested by the Board, reconsidered the issue of the standard of proof applied in relation to applications for readmission. It remains of the view that the standard of proof should be the civil standard for all hearings relating to admission, including readmission. Although this means that the decision on readmission will be made on the basis of a different standard than that applied in the disciplinary proceedings that led to the disbarment, it submits that there is no anomaly here, as the task of the ICC on readmission is very different from that of a Disciplinary Tribunal.
16. The view of the Executive is that COIC has satisfactorily addressed the concerns of the Board.

### Resource implications

17. There are no Bar Standards Board resource implications.

### Equality Impact Assessment

18. Data supplied by COIC on those appearing before ICC Panels during the period 1 September 2013 to 12 June 2015 indicates that 63% (31 out of 49) were male and 54% (13 out of the 24 who supplied the relevant information) were of BME origin. If, therefore, any of the proposed amendments are disadvantageous to those appearing before ICC Panels, they will have a disproportionate adverse impact on these particular groups.

**Part 1 – Public**

19. The only amendment that is potentially disadvantageous to those appearing before ICC Panels is that concerned with the standard of proof. However, given that COIC have explained that this amendment will not lead to a change of practice, but is simply a codification of current practice, it appears that there will not be any adverse impact.

**Risk implications**

20. The key risks being addressed here relate to competence and suitability to practise. These proposals are a proportionate way of ensuring that the Inns can take appropriate disciplinary action where there are concerns about the suitability of a person to be called to the Bar and can address the suitability of persons who wish to be readmitted following a disbarment as a result of disciplinary action.

**Impacts on other teams / departments or projects**

21. The Qualifications Committee considers applications for review of decisions of the ICC. A change to the standard of proof could potentially affect the number of such applications made to the Committee. However, given that COIC have explained that this amendment will not lead to a change of practice, but is simply a codification of current practice, it appears that there will not, in fact, be any impact.

**Consultation**

22. The Standards Committee considered and approved the proposed amendments prior to their consideration at the July meeting of the Board.
23. We will discuss with the Legal Services Board whether there should be any consultation on the proposed amendments.

**Regulatory objectives**

24. The proposed amendments accord with the regulatory objectives of protecting and promoting the public interest and the interests of consumers, encouraging an independent, strong, diverse and effective legal profession and promoting and maintaining adherence to the professional principles.

**Publicity**

25. It will be for the ICC to publicise the changes.

**Annexes**

26. Annex 1: Letter from COIC dated 10 September 2015, with enclosures

**Lead responsibility:**

Joanne Dixon, Manager, Qualification Regulations

Ewen Macleod, Director of Regulatory Policy







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10 September 2015

Dear Ms Dixon,

**Inns' Conduct Committee: proposed amendment to Rules**

Thank you for your letter dated 30 July 2015, in which you confirmed that the Bar Standards Board (**BSB**) had not approved the proposed amended Rules for the Inns' Conduct Committee (**ICC**) at its meeting on 23 July 2015. The BSB was "not satisfied that sufficient consideration had been given to how the amended Rules would apply to disbarred barristers seeking readmission, as opposed to students seeking admission to an Inn for the first time". The BSB noted two specific points (referred to further below) and asked that the ICC "reconsider the proposals, taking into account the position of those seeking readmission". A copy of your letter is attached (for ease of reference).

On behalf of COIC, the ICC and BTAS, we would be very grateful if this letter could be put before the next meeting of the BSB for their consideration. As you will appreciate, we are keen to have approval for the amended ICC Rules, so that arrangements for their implementation can be put into place. All those involved (as mentioned above) have taken time and effort to ensure that this response to the 30 July 2015 letter is provided as early as practicable, in a full and approved form. Appreciating that the BSB has a busy agenda, we would be very grateful if this could be considered at the BSB's September meeting, however if this is not possible we would be grateful if the Board would take into account, and allow for an amendment to, the implementation date of the Rules which would need to be pushed back to March 2016 as opposed to January 2016 which is currently proposed in the draft.

Your letter was sent to Hayley Addison, ICC Administrator, at the Bar Tribunals and Administration Service (**BTAS**). As you know, the process of preparation of the proposed amendment to the ICC Rules involved the ICC, the ICC Rules Working Group (**ICCRWG**) (Chaired by HHJ Blackett), BTAS and the Council of the Inns of Court (**COIC**), as well as the benefit of professional advice as to content and form of the proposed amendment, and

with oversight and guidance from the Strategic Advisory Board (SAB) (Chaired by Clare Dodgson).

Your letter has been carefully considered by the Chair and Vice-Chair of the ICC (Heather Rogers QC and Gordon Catford), by the ICCRWG (Chair and members), by BTAS (Ms Addison and BTAS Registrar, Andy Russell), by the Chair of the SAB and by me, as Director of COIC. We are all agreed upon the approach, which is set out below. We considered it appropriate that the response to your letter, representing the shared view, should come from me.

Before turning to the specific points raised, I should say on behalf of all of the above that we welcome the BSB's scrutiny and observations. We have taken the opportunity to examine and reflect upon the points raised, acknowledging the relevant public interest in the proposals. We hope that the BSB will be satisfied by our response and that it will be able to approve the amended Rules, in the form suggested.

## 1. Public Hearing

1.1 The first point raised by the BSB was: *"There is greater justification for a public hearing in the case of those seeking readmission than for normal student applicants."*

1.2 We see the force of this point. A great deal of consideration was given to whether ICC Panel Hearings should generally be in public or private. The arguments were carefully weighed and, on balance, the decision was to seek approval for an amendment providing for such hearings to be in private. A critical factor was the nature and function of the ICC Panels, where (in the overwhelming majority of cases) the person appearing before a Panel is an applicant (usually a student or young person) seeking to join an Inn for the first time, or a Student Member of the Inn alleged to have been guilty of a "Serious Matter" (as defined in the BSB "Handbook") (again, usually a student). Once a person has been Called to the Bar, they cease to be subject to the jurisdiction of the ICC.

1.3 We accept that there is a greater justification for a public hearing in the case of an application for admission to an Inn made by a person who has been disbarred (and whose membership of an Inn has been terminated) as a result of an adverse decision by a Bar Disciplinary Tribunal (following a hearing in public and with the decision being announced and recorded publicly). Accordingly, we propose that Rule 26 should be amended, so as to provide for ICC Panel Hearings in such cases to be in public. Please see the draft amendment, enclosed with this letter: Rule 26(3), with consequential amendments in Rule 27.

1.4 We hope that this is self-explanatory. We note that the wording is directed to the concern raised by the BSB: we take the view that there is no greater justification for a public hearing in relation to an application for readmission by a former *Student Member* (someone not previously Called to the Bar, but perhaps expelled from an Inn following an ICC decision or who had voluntarily given up Inn membership) or by a former barrister who had *voluntarily* been disbarred (following a temporary career break, for example). The draft Rule refers to an order for disbarment made by a Bar Disciplinary Tribunals (BDT) (the reference to the "Handbook" is clear: see ICC Rule 2) or by any other disciplinary body exercising jurisdiction over persons Called to the Bar (it thus includes any predecessor of the BDT).

1.5 We note that there is a power to sit in private where this is required, by reference to the facts and circumstances of the case. There may, for example, be a necessity to refer to private medical or family matters. This is a matter for the Panel Chair, who must be satisfied that the particular reason for a private hearing "outweighs the public interest in the hearing being held in public". The reasons for any such decision must be recorded in writing.

Accordingly, how this works in practice can (and will) be kept under review by the ICC, subject to the supervisory role of the BSB.

1.6 We believe that the proposed change addresses the concern raised by the BSB. We hope that the BSB will agree.

## 2. The Standard of Proof

2.1 The second point raised was: *“Those seeking readmission will have been disbarred as a result of proceedings based on the criminal standard of proof. It might seem anomalous if the decision as to whether they should be readmitted is then on the civil standard.”*

2.2 When preparing the draft amended ICC Rules, the question of the allocation of the burden of proof, and the appropriate standard of proof, was the subject of very extensive consideration and discussion. The existing ICC Rules do not refer to any burden or standard of proof. It was considered (in our view, rightly) that there should be express provision in the Rules. Extensive consideration and discussion took place within the ICC, within the ICCRWG, within SAB, and within COIC. A wide range of legal and lay opinion has been canvassed. The outcome was that - on an application for admission, where the question is whether the applicant is a "fit and proper person to become a practising barrister" (see rule 9 of the Bar Training Rules (BTRs)) - the burden is placed on the applicant to satisfy the Panel "on a balance of probability" (more likely than not). This is reflected in draft ICC Rule 34 (copied below, for ease of reference). This decision is sound in principle and is practicable.

2.3 The BTRs (part of the BSB's Handbook), by which the ICC is bound, provide for *admission* and *readmission* to an Inn to be dealt with by one and the same procedure. The definition of "admission to an Inn" expressly includes "readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of an Inn": see Definition (2), Handbook, Part 6. It would be problematic (to say the least) to operate the ICC process with two *different* standards of proof, depending on the status of the (re)applicant. We take the view that there is no rational ground for such a distinction and, indeed, that it might be perceived as discriminatory, irrational, unfair and, conceivably, subject to challenge and judicial review. Further, in the absence of clear justification and explanation, to set a higher standard of proof in such cases would be confusing to applicants, panel members, and the public.

2.4 Ultimately the role of the ICC with regard to (re)applicants is defined by the BSB (in the BTRs) as deciding the question whether an individual is a "fit and proper person to become a practising barrister" (see 2.2 above). The ICC must therefore consider the totality of the individual's circumstances and history, at the time of their (re)application to join the Inn. This includes not only previous disbarment by a BDT, but disciplinary action taken by other regulatory bodies and indeed previous criminal offences. It is not the role of the ICC to re-hear the case that led to the barrister's disbarment (or the finding of any other body or court): see draft ICC Rules, Rule 32. The findings of the BDT will be taken as fact. The question for the ICC Panel is to determine if the re-applicant is *now* "fit and proper" to become a practising barrister. To operate a higher threshold for previously disbarred barristers than all other applicants will be interpreted (and almost certainly challenged) by some as akin to 'double jeopardy'.

2.5 The task of an ICC Panel on a (re)admission application (as explained above) is different from the task of a BDT (in determining whether or not a disciplinary matter has been proved). There is no anomaly in having a different standard of proof when the task is different. In addition, when considering the *standard* of proof, it is very important to take into account upon whom the *burden* of proof is placed. In the case of BDT proceedings, the burden of proof is placed on the *prosecutor* to prove the case against the barrister to the



criminal standard: that requires proof to a high standard to be met, but it is not the standard imposed upon the barrister. In cases of application for (re)admission, the burden is upon the *applicant* to satisfy the ICC Panel that they are “fit and proper”. It would be anomalous to impose a higher standard on the barrister (at the stage of application for readmission) than had been imposed upon them at the BDT. More importantly (in our view) it would be wrong in principle, and not consistent with good practice, to impose such a standard.

2.6 Finally, by way of reassurance to the BSB, we note that in criminal proceedings, the general position is that where a burden of proof is placed upon the *defendant* (rather than on the prosecution), the standard of proof is the lower civil standard (more likely than not) rather than the higher criminal standard; though the prosecution remains subject to the higher criminal standard on all issues.

2.7 We have given the point raised by the BSB very serious consideration and have assessed the matter with open minds. We have concluded that although the criminal standard of proof will have been applied in the disciplinary proceedings by the BDT (or other body) in deciding to order disbarment of a practising barrister (the burden of proof being on the “prosecution”), nonetheless the civil standard of proof is appropriate for the determination of an application for readmission by the disbarred barrister (the burden of proof being on the individual). We hope that, on further consideration, the BSB will agree that the application of the civil standard to an application for readmission by a disbarred barrister is not anomalous, but is right in principle and sound in practice.

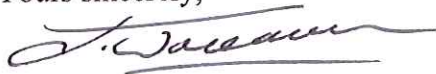
## Conclusion

While I trust that the response (above) and the proposed draft amendments (below) are clear, please do not hesitate to say if you would like any further information or clarification. I suggest that it would be appropriate to write in the first instance to Ms Addison (at BTAS), who will ensure that a response can be provided to any queries raised as soon as practicable.

We hope that the BSB will approve the draft amended ICC Rules, in the form now proposed. We look forward to receiving their response.

Please will you acknowledge safe receipt of this letter: by email to [hayley.addison@tbtas.org.uk](mailto:hayley.addison@tbtas.org.uk).

Yours sincerely,



James Wakefield

## ENCLOSURES:-

1. BSB letter 30 July 2015.
2. Proposed new draft amended ICC Rules, Rules 26 & 27 (1 page).
3. Draft amended ICC Rules 34 & 35 (burden and standard of proof) (1 page).
4. Complete draft of amended ICC Rules (including the amendment at 2 above).



REGULATING BARRISTERS

Hayley Addison  
The Bar Tribunal and Adjudication Service  
The Council of the Inns of Court  
First Floor  
9 Gray's Inn Square  
London  
WC1R 5JF

30 July 2015

Dear Hayley

**Proposed Amended Rules for the Inns' Conduct Committee Rules**

The Bar Standards Board's considered the proposed amended Rules for the Inns' Conduct Committee at its meeting on 23 July 2015.

The Board did not approve the proposals as it was not satisfied that sufficient consideration had been given to how the amended Rules would apply to disbarred barristers seeking readmission, as opposed to students seeking admission to an Inn for the first time. It noted in particular that:

- i) There is greater justification for a public hearing in the case of those seeking readmission than for normal student applicants
- ii) Those seeking readmission will have been disbarred as a result of proceedings based on the criminal standard of proof. It might seem anomalous if the decision as to whether they should be readmitted is then on the civil standard

The Board asks that the ICC reconsider the proposals, taking into account the position of those seeking readmission.

Yours sincerely

A handwritten signature in black ink, appearing to be "JD", written over a light blue horizontal line.

Joanne Dixon  
Manager, Qualification Regulations



**PROPOSED NEW DRAFT – ICC RULES 26 & 27 (with letter dated XX August 2015).**

*(draft from June 2015, amended to show proposed further amendment (response to BSB letter of 30 July 2015))*

**.....Conduct of the Hearing**

.....

26. The hearing shall:

- (1) subject to paragraphs (2) and (3) of this Rule, be in private.
- (2) be in public if the applicant/student, as the case may be, so requests.
- (3) be in public if the Hearing Panel is to determine any matter in relation to an application for readmission to an Inn by a person previously ordered to be disbarred by a Disciplinary Tribunal (as defined in the Handbook) or by any other body exercising disciplinary functions in relation to persons Called to the Bar.

27. Notwithstanding Rule 26 (2) and 26(3), the Chair of the Panel may decide that the public shall be excluded from the whole or any part of the hearing where it appears desirable to do so in the interests of justice or for any other special reason provided always:

- (a) the particular reason for the private hearing (in whole or in part) outweighs (in a Rule 26(2) case) the applicant's/student's interest in holding a public hearing and (in a Rule 26(3) case) the public interest in the hearing being held in public; and
- (b) the Chair of the Panel is satisfied that the parties have had an opportunity to make representations;

and, in any such case, the decision and the reason(s) for it shall be recorded in the written report produced by the Hearing Panel (Rule 46 below).

Should any request be made for the hearing to be held in public, any reasons for the decision in relation to this shall be announced at the beginning of the hearing and sent in writing to the referring Inn and applicant/student.

Subject to the Panel's approval and for the purposes of training and observation, TAB appointed persons may attend panel hearings.

....

**Rules 34 & 35: burden and standard of proof**  
*as in draft amended ICC Rules (June 2015)*

34. Where a Hearing Panel is to determine whether an applicant is a fit and proper person to become a practising barrister:
- (a) It is for the applicant to show, to the satisfaction of the Hearing Panel, that they are a fit and proper person to become a practising barrister; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied on a balance of probability (“more likely than not”). Proof beyond reasonable doubt is not required.
35. Where a Hearing Panel is to determine whether a Serious Matter has been proved in relation to a student:
- (a) It is for the Inn to show, to the satisfaction of the Panel, that the student’s conduct amounts to a Serious Matter, as defined in paragraph (212) of Part 6 of the Bar Standards Board “Handbook”; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied that the Serious Matter has been proved on a balance of probability (“more likely than not”). Proof beyond reasonable doubt is not required.



## **RULES FOR THE INNS' CONDUCT COMMITTEE**

### **Part I - Purpose and Objective**

1. These Rules, which shall be referred to as the Inns' Conduct Committee Rules, provide the terms under which the Inns' Conduct Committee will operate in determining whether an Inn of Court should refuse to admit an applicant for admission, or expel or refuse to Call a student to the Bar.
2. These Rules should be read in conjunction with relevant sections of the Bar Training Rules, which are contained in the Bar Standards Board Handbook ("the Handbook"), in Part 4, Section B.
3. The function of the Inns' Conduct Committee is:
  - (a) To determine any question whether an applicant for admission to an Inn is a fit and proper person to become a practising barrister;
  - (b) To determine whether, in the case of a Student member of an Inn, a Serious Matter (within the meaning of the Bar Training Rules (the BTR)) has been proved; and if so, what sanction it is appropriate to impose
  - (c) To hear and finally determine appeals from determinations by a student's Inn of minor internal disciplinary matters against that student in accordance with rQ106 of the Handbook.
4. To be eligible for admission to an Inn or Call to the Bar, a person must be a fit and proper person to become a practising barrister.
5. The Inns' Conduct Committee and the four Inns of Court will ensure that all existing and potential members receive consideration appropriate to their needs. There is a commitment to the elimination of unlawful or unfair discrimination on the grounds of sex, race, sex reassignment, disability, ethnic and national origin, nationality, sexual orientation, marital status, responsibility for dependants, religion or belief or age. The ICC recognises that it is the intention of the four Inns of Court that membership of the Inns should reflect the diversity of society. The Inns' Conduct Committee and all the Inns have a responsibility to apply the principles of this statement in their dealings with others both internally and externally.

### **Part II - Definitions**

6. In these Rules, the following terms have the following meanings:

"Admission to an Inn", "Admission Declaration", "Bankruptcy Order", "Criminal Offence", "Call Declaration", "Call to the Bar", "pending Criminal Proceedings", "Directors Disqualification Order", "Inn", "Council of the Inns of Court" ("COIC"), and "Serious Matter" are as defined in Part 6 of the Handbook.

"Applicant" shall include persons granted exemptions from training requirements under Part B7 of the Bar Training Rules and former members of an Inn seeking

readmission.

“Student” means a person who has been admitted to an Inn and remains a member of the Inn but has not been called to the Bar.

“BTAS” is the Bar Tribunals and Adjudication Service.

“Fit and proper person to become a practising barrister” is as defined in rQ9 of the Handbook.

“Screening Panel” is a panel of persons which considers whether referrals to the ICC should be referred to a Hearing Panel for determination or returned to the referring Inn and is constituted in accordance with Rule 15.

“Hearing Panel” is a panel that hears matters that are to be determined by the ICC, made up of persons appointed in accordance with these Rules either by the ICC or by the Tribunal Appointments Body further to any delegation under Rule 14.

The “Tribunals Appointment Body” is a body appointed by the Council of the Inns of Court in order to (i) vet the applications of those people who wish to be members of the panel of persons hearing matters under these Rules and (ii) certifies that those they select to the panels are fit and properly qualified to conduct the business for which they have been selected.

### **Part III - Membership and Procedures of the Inns’ Conduct Committee**

#### **Membership of the Inns’ Conduct Committee**

7. The Inns’ Conduct Committee shall have the following members:
  - (a) a Chair, selected by the Tribunals Appointments Body and appointed by the President
  - (b) Two Vice-Chairs (one barrister and one lay representative), selected by the Tribunals Appointments Body and appointed by the President
  - (c) Four barrister members, one selected by each of the Inns from those appointed by the Tribunals Appointments Body
  - (d) Two lay members, selected by the Tribunals Appointment Body from amongst those appointed by the Tribunals Appointments Body

No person shall be a member of the Inns’ Conduct Committee if they are a member of the Bar Council or of any of its committees or a member of the Bar Standards Board or of any of its committees

8. Each member of the Inns’ Conduct Committee (other than the Chair and Vice-Chairs) shall serve for a term of up to 4 years and shall thereafter be eligible for re-appointment for a further period of up to 4 years subject to their continuing appointment by the Tribunals Appointments Body.
9. The Chair and Vice-Chairs shall serve for up to 4 years from the date on which s/he takes office and shall thereafter be eligible for re-nomination for a further term of up to 4 years, without reference to any previous membership of the Inns’ Conduct

Committee.

10. The Bar Tribunal and Adjudication Service shall make arrangements for secretariat support to be provided to the Inns' Conduct Committee and any panels appointed for the purpose of these Rules.

### **Operation of the Inns' Conduct Committee**

11. The Inns' Conduct Committee may meet as a full committee to consider matters of general policy or process.
12. The Inns' Conduct Committee will:
  - (a) follow any guidance issued by the Bar Standards Board under rQ127.1 of the Handbook; and
  - (b) respond to any request from the Bar Standards Board for information under rQ127.2 of the Handbook.
13. The Inns' Conduct Committee will report in writing annually to COIC on its performance.
14. In accordance with rQ129 of the BSB's Handbook the ICC may delegate its powers and functions in relation to:
  - (a) whether an applicant is a fit and proper person to be a practising barrister to a Hearing Panel constituted of persons selected by the Chair of the ICC from the persons appointed for this purpose by the Tribunal Appointments Body .
  - (b) the determination of whether a Serious Matter is proved and decisions in accordance with rQ109 of the BSB's Handbook to a Hearing Panel constituted of persons selected by the Chair of the ICC, from the persons appointed for this purpose by the Tribunal Appointments Body .
  - (c) appeals by a student from a decision of an Inn under its internal disciplinary procedure to a Hearing Panel constituted of persons selected by the Chair of the ICC from the persons appointed for this purpose by the Tribunal Appointments Body.

### **Screening Panel Proceedings**

15. The handling by the Inns' Conduct Committee of any case involving an applicant/student referred to it by an Inn shall be determined by a Screening Panel who will consider documentation from the Inn about the applicant/ student. The Screening Panel shall comprise the Chair or Vice Chair of the Inns Conduct Committee and one other committee member (at least one of whom must be a lay member), with support provided by a member of the BTAS Administrative team or an individual appointed by BTAS. The members of the Screening Panel will generally conduct their business by meeting in person but may, at the discretion of the Chair or Vice Chair of the ICC (as the case may be), do so by telephone or email. An Under/Sub Treasurer, or an appropriate person delegated by that Under/ Sub Treasurer, may also attend meetings of the Screening Panel in person or by telephone or email to provide general advice and information to aid the Screening

Panel if required.

16. The Screening Panel may direct, at any stage, that the relevant Inn and/ or a student or applicant provide any information in relation to a case at the Screening Panel's request. This information should normally be provided in writing within 14 days. Should a student or applicant be unwilling or unable, without good cause, to provide this further information, the Screening Panel and any subsequent Hearing Panel may make any reasonable inferences.
17. The purpose of the Screening Panel is –
  - (a) In the case of an applicant, if the Screening Panel is satisfied, on consideration of all information provided to it, that:
    - i) there is material that suggests that the applicant is not a fit and proper person to become a barrister or may not be a fit and proper person to become a barrister;
    - ii) there is material that gives rise to any question as to whether the applicant is a fit and proper person to become a barrister that requires further consideration by the ICC;

the Screening Panel will refer the question of whether the applicant is a fit and proper person to a Hearing Panel for determination.

If not so satisfied, the ICC will return the matter to the Inn, for the applicant to be admitted.

- (b) In the case of a student, if the Screening Panel is satisfied, on consideration of all information provided to it, that there is material that suggests that a Serious Matter would or might be proved in relation to the student, the Screening Panel will refer that matter to a Hearing Panel for determination.

If the Screening Panel is satisfied that there is no material on which such a finding might be made, it will notify the Inn and state its reason(s) for such decision.

18. In referring a case to a Hearing Panel, the Screening Panel shall determine whether it should require the appointment and attendance at a hearing of a shorthand writer or whether the provision of appropriate tape recording facilities will suffice.
19. If not referring a matter to a Hearing Panel, the Screening Panel will state (in summary form) the reasons for its decision not to refer to a Hearing Panel. These reasons will be provided by BTAS to the referring Inn.
20. Once an Inns' Conduct Committee decision has been communicated to the referring Inn, the Inn must confirm to the ICC, in writing, that the decision has been received and that any action required of them has been completed.

### **Appointment of a Panel to Hear a Case**

21. Any case involving an applicant/student referred by the Screening Panel for hearing shall be heard and determined by a Hearing Panel appointed by the Chair of the Inns' Conduct Committee
22. The Panel shall comprise three members including a lay member, and the Chair of

the Inns' Conduct Committee will designate a Panel Chair from those three members.

**Notification of arrangements for a Hearing**

23. As soon as practicable after a referral to a Hearing Panel for hearing, the BTAS Administrator shall write by registered post or recorded delivery, with a copy sent by email, to the applicant/student at the last known address notified to the Inn to give notification that the matter is to be heard and determined by a Hearing Panel . The letter of notification shall:
- (a) Identify the date, time and venue of the hearing (which shall be convened as soon as practicable);
  - (b) Inform the applicant/student of his or her right to submit a written request (with reasons) for the hearing to be adjourned. Such request shall normally be given within seven days of receipt of the notification letter or the applicant/student will be deemed to have waived the right to ask for an adjournment;
  - (c) Contain details of the referral, setting out the grounds and reasons as to why the Inn has referred the matter in question;
  - (d) Inform the applicant/student whether the referring Inn will be represented;
  - (e) Inform the applicant/student of the membership of the Hearing Panel and of the applicant/student's right to give written notice (with reasons) objecting to one or more of the proposed members of the Hearing Panel. Such notice shall be given within seven days of receipt of the notification letter or the applicant/student will be deemed to have waived the right to object;
  - (f) Inform the applicant/student that s/he will within the period specified in the notification letter be supplied with copies of the documents that are to be provided to the Hearing Panel;
  - (g) Inform the applicant/student that s/he may within such reasonable time as may be specified deliver a written answer, explanation or other representation to the Hearing Panel in advance of the hearing;
  - (h) Inform the applicant/student of his or her entitlement to attend the Hearing and right to be heard by the Hearing Panel;
  - (i) Inform the student/applicant of his or her right to appoint a representative or, in the case of students only, request the appointment of a representative;
  - (j) Inform the student/applicant that the hearing will take place in private unless they request for it to be in public as per Rule 26(2);
  - (k) Require the applicant/student to inform the BTAS Administrator whether s/he intends to attend the Hearing and to be represented at the Hearing;
  - (l) Inform the applicant/student of the Hearing Panel's right to proceed with the

Hearing in his or her absence and that should they fail to attend, without good cause, the Hearing Panel may make any reasonable inferences; and

- (m) Include a copy of these Rules and the Bar Training Rules, as set out in the Handbook.

### **Objections to Panel Membership & Requests for Adjournments**

24 Where the Inns Conduct Committee has received a written notification:

- (a) of objection to the membership of a Hearing Panel made under Rule 23 (e), the Chair of the Inns' Conduct Committee shall take the relevant decision,
- (b) of a request for a hearing to be adjourned made under Rule 23 (b) the Chair of the Inns' Conduct Committee, or the Chair of a Hearing Panel, where the relevant function has been delegated under Rule 14, shall take the relevant decision,

the reasons for which shall be recorded in writing and provided to the applicant/student and the referring Inn.

### **Conduct of the Hearing**

25. At any time after the Hearing Panel has been constituted, the Panel may direct that the relevant Inn and/ or a student or applicant provide any information in relation to a case. This documentation information should normally be provided in writing within 14 days unless specified otherwise by the Chair of the Panel. Should a student or applicant be unwilling or unable, without good cause, to provide this further information, the Hearing Panel may make any reasonable inferences.

26. The hearing shall:

- (1) subject to paragraphs (2) and (3) of this Rule, be in private.
- (2) be in public if the applicant/student, as the case may be, so requests.
- (3) be in public if the Hearing Panel is to determine any matter in relation to an application for readmission to an Inn by a person previously ordered to be disbarred by a Disciplinary Tribunal (as defined in the Handbook) or by any other body exercising disciplinary functions in relation to persons Called to the Bar.

27. Notwithstanding Rule 26 (2) and 26(3), the Chair of the Panel may decide that the public shall be excluded from the whole or any part of the hearing where it appears desirable to do so in the interests of justice or for any other special reason provided always:

- (a) the particular reason for the private hearing (in whole or in part) outweighs (in a Rule 26(2) case) the applicant's/student's interest in holding a public hearing and (in a Rule 26(3) case) the public interest in the hearing being held in public; and
- (b) the Chair of the Panel is satisfied that the parties have had an opportunity to make representations;

and, in any such case, the decision and the reason(s) for it shall be recorded in the written report produced by the Hearing Panel (Rule 46 below).

Should any request be made for the hearing to be held in public, any reasons for the decision in relation to this shall be announced at the beginning of the hearing and sent in writing to the referring Inn and applicant/student.

Subject to the Panel's approval and for the purposes of training and observation, TAB appointed persons may attend panel hearings.

28. Should an applicant/ student fail to attend then the hearing may go ahead in their absence.
29. A BTAS Administrator or an individual appointed by BTAS will be in attendance at the hearing, except for during deliberation unless the Hearing Panel request assistance in relation to the ICC processes or policies.
30. Subject to Rule 40, proceedings at the hearing shall be at the discretion of the Chair of the Panel, but the Hearing Panel shall act in accordance with the principles of natural justice and have regard to the Statement of Principles and Guidelines for the Inns' Conduct Committee. The Panel Chair may before or at the hearing give all directions as may reasonably be necessary for the fair and orderly disposal of the referral.
31. The Hearing Panel shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court.
32. The Hearing Panel shall treat:
  - (a) a criminal conviction of the applicant/student, which has not been set aside on appeal or otherwise, as sufficient evidence of the commission of the offence in question; and
  - (b) a finding of misconduct by a regulatory/professional/educational body exercising a regulatory, disciplinary or educational jurisdiction as sufficient evidence of the commission of the misconduct in question;but may give such weight to that misconduct as it considers reasonable in all the circumstances.
33. The use of video conferencing facilities, where possible, can be granted by the Panel Chair should the student or applicant agree to the use of this equipment.
34. Where a Hearing Panel is to determine whether an applicant is a fit and proper person to become a practising barrister:
  - (a) It is for the applicant to show, to the satisfaction of the Hearing Panel, that they are a fit and proper person to become a practising barrister; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied on a balance of probability ("more likely than not"). Proof beyond reasonable doubt is not required.
35. Where a Hearing Panel is to determine whether a Serious Matter has been proved in relation to a student:

- (a) It is for the Inn to show, to the satisfaction of the Panel, that the student's conduct amounts to a Serious Matter, as defined in paragraph (212) of Part 6 of the Bar Standards Board "Handbook"; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied that the Serious Matter has been proved on a balance of probability ("more likely than not"). Proof beyond reasonable doubt is not required.
36. Where a shorthand writer is not appointed under Rule 18 above, and no tape recording facility is provided, the BTAS Administrator or someone appointed by BTAS will ensure that a note is taken of the evidence given at the Hearing.
37. Where a student has requested representation under Rule 23 (i) above, the Inns' Conduct Committee shall require the referring Inn to provide the student with an appropriate Bar Pro Bono Unit (the "**Unit**") application form for representation, and shall offer to transmit any completed form to the Unit on the student's behalf.
38. Evidence may be received by the Hearing Panel by oral statement, written statement, or statutory declaration.
39. Members of the Hearing Panel shall have the right at each stage of the hearing to ask questions of the referring Inn's representative (where applicable), the applicant/student (or, where applicable, his or her representative).
40. Subject to the discretion of the Chair of the Hearing Panel, the order of proceedings shall be as follows:
- (a) The Chair of the Panel introduces the Hearing Panel, explains the process and why the matter has been referred as well as referring to the Rules under which the matter is to be determined. The Panel Chair will identify the documents that the Hearing Panel members have been provided with.
  - (b) The student or applicant will be asked for any comments in relation to the reason for referral.
  - (c) The Hearing Panel will ask any relevant questions of the student/ applicant.
  - (d) The student/ applicant is then given the opportunity to raise any relevant matters not previously covered.
  - (e) Private deliberations take place.
  - (f) The Hearing Panel reconvene to ask further questions (if any), to announce their decision, to reserve their decision or to adjourn the matter to enable the production of further evidence/ documents.
41. The Chair of the Hearing Panel may adapt the order of proceedings. Any adaptation does not invalidate any decision.
42. In exceptional circumstances where the Inn is represented, once the Panel Chair has explained the process the Inn will be asked to present their case with any questions from the Hearing Panel following. The student or applicant will be asked for any



comments in relation to the Inn's case and the Panel will ask any relevant questions of the student/applicant. Both the Inn and the student/ applicant, respectively, can make any closing remarks before the Hearing Panel deliberates.

43. In the event that on or immediately before the day of the hearing, and due to exceptional and unforeseen circumstances, the Panel is unable to convene in person, the Hearing Panel may, after consultation, and once they are satisfied that there will be no injustice, proceed to conduct their business by phone/ email/ video conference facility.

### **Adjournments**

44. In any case where the Hearing Panel considers that further information is required for the fair disposal of the matter, or due to any request from the student/ applicant, the Chair of the Hearing Panel may adjourn the hearing for a fixed period of no greater than 28 days.
45. In exceptional circumstances where a further adjournment is deemed necessary, the Chair of the Hearing Panel may adjourn the hearing for a further fixed period of no greater than 28 days.

### **Decision of the Panel**

46. Within 14 days of the conclusion of the proceedings and on behalf of the Inns' Conduct Committee, the Hearing Panel will produce a written report setting out its findings, the reasons for those findings and its decision. A failure to provide the report within 14 days shall not (of itself) affect the validity of the decision. As soon as it is available, the written report will be sent to the applicant/student, the Inn which made the referral, the other Inns and (where appropriate) the student's BPTC Provider. Those written reports shall be retained by BTAS. The names of those students who are expelled may be published on the Inn's website.
47. Once an Inns' Conduct Committee decision has been communicated to the referring Inn, the Inn must confirm to the ICC, in writing, that the decision has been received and that any action required of them has been completed.
48. If members of the Hearing Panel are not in agreement as to the finding(s), the decision of the Panel shall be by a simple majority.
49. In accordance with rQ11 of the Handbook, a person whose application for admission to an Inn has been rejected on the ground that that person is not a fit and proper person to become a practising barrister or who has been expelled from an Inn because of a disciplinary offence may not apply for admission to an Inn unless a period of at least five years (or such other period as the Bar Standards Board may determine in the particular case) has elapsed from the date of such rejection or expulsion.

### **Review of the decision of the Inns' Conduct Committee**

50. If in accordance with rQ19 and rQ110 of the Handbook, the Inns' Conduct Committee decides that the applicant/student is not a fit and proper person to become a practising barrister or finds a Serious Matter proved or, having found a Serious Matter

proved, imposes any sanction, the applicant/student shall when sent the written notice of the Inns' Conduct Committee decision be informed in writing that a review of the decision under B10 of the BSB Handbook may be requested, provided that a request is made in writing to the Bar Standards Board within one month of the date when notice of the Inns' Conduct Committee decision is given.

51. In accordance with rQ121 of the Handbook, the Inns' Conduct Committee will consider whether to comment on any further representations and evidence which the applicant/student submits to the Bar Standards Board under rQ120.3 of the Handbook for review of an Inns' Conduct Committee decision.

#### **Part IV - Admission to an Inn**

##### **Referral by an Inn to the Inns' Conduct Committee**

52. To ensure consistency and transparency in decision making and in accordance with rQ16 of the Handbook, an Inn of Court will refer to the Inns' Conduct Committee for determination the question of whether an applicant is a fit and proper person to become a practising barrister and as such eligible for admission to an Inn if:
- (a) The applicant has been convicted of a Criminal Offence (or is the subject of pending Criminal Proceedings); or
  - (b) The applicant has been convicted of a disciplinary offence by a professional or regulatory body (or is the subject of pending proceedings for such an offence); or
  - (c) The applicant has been the subject of a Bankruptcy Order or Directors Disqualification Order or has entered into an individual voluntary arrangement with creditors; or
  - (d) The applicant has previously been refused admission to or expelled from an Inn; or
  - (e) There is any other circumstance which in the opinion of the Inn calls into question the applicant's fitness to become a practising barrister.
53. In referring an applicant for admission to the Inns' Conduct Committee, an Inn, at its discretion, may appoint a representative to present the Inn's case at any hearing.
54. The Inns' Conduct Committee will determine whether a referred applicant is a fit and proper person to become a practising barrister, and should be admitted to an Inn of Court by reference to rQ9 of the Handbook.

#### **Part V – Conduct of Student of an Inn**

##### **Referral by an Inn to the Inns' Conduct Committee of a Serious Matter**

55. To ensure consistency and transparency in decision making and in accordance with rQ108 of the Handbook, an Inn of Court will refer any matters relating to the conduct of a student of the Inn to the Inns' Conduct Committee for determination if the Inn decides that the student's conduct constitutes a Serious Matter. If it is decided by an

Inn that the student's conduct does not constitute a Serious Matter, the Inn will deal with the matter under its internal disciplinary procedures in accordance with rQ106 of the Handbook.

56. A Student in relation to whom a conduct matter is being considered under Part V of these Rules by either the Inn to which the Student belongs or the ICC, will be held in membership of the Inn until the conclusion of the matter.
57. In referring a student to the Inns' Conduct Committee, an Inn, at its discretion, may appoint a representative to present the Inn's case at any hearing.
58. The Inns' Conduct Committee will determine whether it finds the Serious Matter proved by reference to rQ104 and Part 6 of the Handbook.
59. If the Inns' Conduct Committee finds a Serious Matter proved, it may in accordance with rQ109 of the Handbook:
  - (a) advise the Student as to future conduct;
  - (b) reprimand the Student;
  - (c) order that the Student's Call to the Bar be postponed for a specified period;
  - (d) direct that the Student be expelled from the Inn (in which case the Inn must expel the Student); or
  - (e) Any combination of the above.

## **Part VI – Review of an Inn decision by the Inns' Conduct Committee**

### **Appeal Request by a student for a Review of a decision under an Inn's internal disciplinary procedures**

60. In accordance with rQ107 of the Handbook, the Inns' Conduct Committee will consider requests from students for a review of a decision of an Inn under its internal disciplinary procedures, whether as a consequence of rQ106 of the Handbook or Rule 62. Such requests must be made in writing to the BTAS Administrator within one month of the date when the Inn gave notice of the decision.
61. An appeal to the Inns' Conduct Committee from a finding of an Inn shall be by way of review by a Hearing Panel, not a re-hearing.
62. A request from a student for a review must be accompanied by:
  - (a) a copy of the notice of the Inn decision and the reasons for it;
  - (b) copies of all documents submitted or received by the student which were before the Inn; and
  - (c) the student's reasons for dissatisfaction with the Inn's decision.
63. On receiving an appeal from a student, the BTAS Administrator shall notify the Inn and invite it to comment on the student's reasons for dissatisfaction.

64. A Hearing Panel may allow the appeal affirming the decision of the Inn under its internal disciplinary procedures or substitute any decision which could have been made by the Inn.

## **Part VII – Delegation to an Inn**

### **Delegation of categories of minor cases to the Inns for determination**

65. The Inns' Conduct Committee may, on the basis of experience, issue a Practice Direction identifying certain categories of minor admission/student misconduct cases covered by rQ16-17 and rQ108 of the Handbook which may be automatically retained by the Inns for determination.
66. Committee members and Hearing Panel members should have regard to the ICC Statement of Principles and Guidelines ("the ICC Statement"). This Statement will be updated as appropriate.

## **Part VIII– Commencement and Amendment of the Inns' Conduct Committee Rules**

67. These Rules came into force on 1 September 2009.
68. The Inns' Conduct Committee Rules and any amendment to any part of these Rules must be approved by (i) COIC and (ii) in accordance with rQ126 of the Handbook, the Bar Standards Board.
69. The date when an amendment to these Rules shall take effect will be determined in accordance with rQ126.1 and 126.2
  - (a) These Rules were amended with effect from 1 June 2010.
  - (b) They were further amended with effect from 1 September 2010.
  - (c) They were further amended with effect from 14 February 2013.
  - (d) They were further amended with effect from 18 July 2013.
  - (e) They were further amended with effect from 21 February 2014.
  - (f) They were further amended with effect from 1 January 2016.

**Chair's Report on Visits and External Meetings, August – September 2015****Status:**

1. For noting

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last board meeting.

**List of Visits and Meetings:****Sir Andrew Burns**

5 August	Met with the executive team and staff at the Legal Ombudsman (LEO) in Birmingham , accompanied by DG
8 September	Attended a lunch meeting with Baroness Deech QC (Hon) at the House of Lords
15 September	Met with the Chairman of the Bar Council Attended a lunch meeting with the Chairman of the Bar Council
17 September	To attend the Chairmen's Committee meeting
19 September	To attend the Bar Council meeting
24 September	To meet, marshal and have lunch with HH Judge Oliver Sells QC at the Old Bailey
30 September	To attend a meeting with SRA officials To attend a dinner to mark the opening of the legal year hosted by the Law Society

**Equality Impact Assessment**

3. No Impact

**Risk implications**

4. These reports address the risk of poor governance by improving openness and transparency.

**Consultation**

5. None

**Regulatory objectives**

6. None

**Publicity**

7. None

**Lead responsibility:**

Sir Andrew Burns KCMG

**Director General’s report - BSB meeting 24 September 2015**

For consideration and noting.

**Director General**

1. The “quieter” summer period has seen little slowing in BSB activity nor much change in the balance of internal and external BSB work. I participated actively in the International Legal Regulators’ Conference in Toronto, giving a presentation on our Fitness to Practise regime and on the Bar Council’s research into wellbeing amongst barristers. As has been the case since this conference first convened four years ago, the meeting provides important opportunities to learn from our counterparts in other jurisdictions and to share best practice. That of course can also be done closer to home and in relation to other professional areas: I was pleased in August to meet my counterpart at the General Pharmaceutical Council and compare and contrast regulatory approaches and operating models.
2. I have led the work over the summer bringing to a conclusion our governance review and budget and business plan for 2016/17. Board members already have close knowledge of this work, the detail of which will be made public at the October Board meeting. I take this opportunity now to record gratitude to the staff team who worked most intensively on these items over August: Viki Calais, Chloe Dickinson and John Picken in particular, and our Resources Group colleagues in the Print Room Paul Hope and Paul Kempton.
3. I have enhanced the level of my direct involvement with aspect of the FBT Programme (as planned) and chaired the live webinar on the consultation on 16 September. This will shortly be available on our website. Over 90 people registered to participate in the webinar and there was a steady flow of on-line questions, ranging from queries as to whether we were taking into account our responsibilities towards Commonwealth jurisdictions and the training of their lawyers, to how to deal with uncertainties which intending law undergraduates might experience in relation to possible changes. Professor Andrew Sanders from the Board, and Simon Thornton -Wood and Tim Keeling from the executive assisted in fielding questions.
4. The ASPIRE programme has continued through the summer of course. The process for completing the LSB’s Regulatory Standards Framework self-assessment has been agreed and work is well underway. Consumer awareness training sessions for all staff, with the Legal Services Consumer Panel, have now been designed and scheduled and will start in October. A cross-section of relevant staff have undertaken training in written communication skills, focusing in particular on how to communicate more successfully with our main audiences – including how to reduce the regulatory jargon and use plainer English.
5. Finally, it has been a pleasure to meet individually with our new barrister Board members and discuss their induction programmes and our work priorities.

**Regulatory Policy**

***Standards***

6. Work has been continuing on the immigration thematic review. A report was initially due to be presented to the Board in November, however following the roundtable event hosted in July, which drew together key consumer organisations and regulators from across the sector, the timelines and stages for the project have been altered. The roundtable event raised a number of issues that require further consideration. A number

of organisations also volunteered to take part in a reference group, that will help analyse findings and form recommendations. Some consumer organisations also volunteered to put the BSB in touch directly with consumers of immigration advice and services to assist with evidence gathering. As a result of these additional steps, the project will need to take place over a longer timescale. A report with final recommendations is now due to be presented to the Board in February 2016.

7. A consultation on the definition of *employed barrister (non-authorised body)* is due to be issued in October. The amended definition will allow barristers to source employment through agencies and their own corporate vehicles. The change to the definition is minor and the Board has previously agreed in principle that the rules for employed barristers working in non-authorised bodies should be relaxed. The policy change allowing barristers to work through agencies and corporate vehicles was agreed by Standards Committee earlier this year, and since then the Executive has been issuing waivers to reflect this change. The change to the definition will mean that waivers will no longer need to be issued. The wider work on scope of practice issues will form part of the Handbook review due to commence in 2016. The consultation document can be made available to those who wish to review it.
8. The team has also been formulating research questions for the public and licensed access review. The LSB are due to undertake specific direct access research looking at the supply side of the market. Our own research questions will feed into this and separately we will be looking at the demand side of the market as part of the review.
9. Work has also begun on mapping the Handbook review in conjunction with the Research team. The team has been formulating the methodology and identifying different work streams that will form part of the review.

### ***Regulatory risk***

10. Work over the summer has focused on the first phase of development of the BSB's first Regulatory Risk Outlook. An initial round of analysis and research to profile key risk areas has been completed, with the findings tested and refined with over 40 staff from across the BSB and reviewed by the SMT. The SMT has further narrowed down priority areas and these were the subject of a dedicated workshop with GRA Committee and Board members earlier this month. A report back from this workshop is provided under Part 2 of the Board's agenda this month. This will enable us to embark on phase 2 of the Outlook work which will benefit from our Regulatory Risk Analyst now being in post, doubling the size of our risk function: we welcome Nicholas Bungard to the team who is an economist and risk management practitioner by professional training.
11. We are finalising preparations for our 5 October event at which Sir Andrew will address invited guests on the landscape facing the BSB, our role within it and how risk is a tool to help us to pursue access to justice and uphold the public interest.
12. A training programme for staff is being developed which will provide an opportunity to apply the risk-based approach in practice to a set of scenarios, as well as the opportunity for project teams to understand how to identify, assess and respond to regulatory risks relevant to different initiatives, including policy work.

### ***Equality and Access to Justice***

13. The team met with the equality and diversity teams at the Solicitors Regulation Authority and CILEx Regulation to discuss common objectives and partnership working to address issues of race equality within the sector. The teams looked at different



equality frameworks in advance of a meeting with other regulators at the General Medical Council in September.

14. The E&AJ team organised its second Knowledge Sharing Session which was open to all BSB and Bar Council staff as well as BSB Board and Equality and Diversity Committee members; a total of 40 people attended. The session in July was delivered by Sarah Charlesworth, Senior Policy Officer, on women's inequality in society and at the Bar. This is part of wider programme to embed equality and access to justice thinking and work across the organisation. Next month we have Jonathan Cooper OBE who will be delivering a session on human rights and the rights of lesbian, gay, bisexual and transgender people.
15. The team has been working on a communications plan for their key projects. The plan covers key messages for the profession and consumers. It includes key messages on religious and cultural holidays and upcoming pieces of work including the research into women's experiences of the equality rules.
16. In August the team updated the guidance on reporting the serious misconduct of others to include a section on "when discrimination becomes serious misconduct". This was communicated to the profession in the "BSB Handbook explained" feature in September's Regulatory Update. This was part of our equality objective to produce guidance on the reporting of discrimination and harassment for barristers.
17. As part of our commitment to identify and address potential disproportionality in our enforcement process, the team has been delivering training to the Professional Conduct Department (PCD). The training covers anti-discriminatory practice and how PCD can apply this way of working to combat discrimination. The training has received very positive feedback. In order to take this work further, we are looking into new unconscious/subconscious bias training packages for the whole organisation.

## **Supervision**

### ***Entity authorisation***

18. At the time of writing, 29 entities appear on the BSB's Entities Register meaning they are authorised by the BSB to provide legal services. A further four decisions have been issued and these entities will be authorised to operate once confirmation of appropriate insurance is provided to the BSB. However the application rate has slowed considerably over the summer period and conversion and completion continues to be low.
19. The new fully on- line application system was launched in July and there has been positive feedback from users. A number of applications have been successfully completed through this portal. The "back end" of the system will be implemented in mid-September.
20. The application to license Alternative Business Structures was submitted to the Legal Services Board in late April. The indicative launch date was originally posited as 1 June 2016. However due to extended Ministry of Justice consultation periods which impact the implementation of key work streams (i.e. s69 and s80 orders), the revised working date is now September/October 2016. There is regular engagement with the LSB on progress and it has been agreed that the operational elements of the implementation project will be deferred until early 2016.

21. At the start of September a quantitative survey was launched on the BSB's website and also on the websites of the Institute of Legal Practice Managers and the Institute of Barristers' Clerks. The objective is to help determine the extent of interest in setting up an ABS and the type / size of ABS being considered. Qualitative research will commence in October to get a more in-depth view of the market.

## **Education and Training**

### ***Future Bar Training***

22. The first phase of delivery for the Future Bar Training programme is drawing to a close, with the agreement of the Professional Statement and the publication of consultations on future options for the structure of pre-qualification training and for a new scheme of continuing professional development. Following closure of consultations on each this autumn, a programme of work is planned to establish a preferred option for the future of the academic and vocational stages of training and pupillage, with a view to introducing the first phase of changes for students enrolling in September 2017.

### ***Vocational Training***

23. A revised Handbook for the BPTC is published in September, incorporating a revised syllabus and introducing a supporting curriculum.
24. A report by the Chair of the Centralised Examination Board was published in August on the First Sit assessments, and is available online. The report includes a detailed analysis of the Professional Ethics assessment, which had given rise to some commentary after disappointing results for some providers.
25. Dr Victoria Stec has been appointed Head of Training Supervision, and will oversee the administration of the BPTC alongside the development of any revised approach to vocational training that arises from the Future Bar Training programme.

### ***Pupillage***

26. The 2015 edition of the Pupillage Handbook will be published in September, incorporating guidance on pupillage funding that was first published in October 2014, and highlighting the key responsibilities of pupils, in light of evidence that some pupils are poorly informed about the BSB Handbook and some of the duties upon them that it identifies.

### ***CPD***

27. Monitoring for CPD provider accreditation is under way, in the first year of implementing the interim scheme (prior to the planned introduction of new CPD regulations in 2017), for which take-up has been good. Most accredited providers have submitted reports as required in our agreement with them, but some have not done so, requiring additional prompting. The quality of response will feed into our risk-based approach to review. Accreditation has been removed from three providers that have failed to meet our requirements.

### ***Qualification Regulations***

28. The Qualifications Committee met on 8 September 2015. It considered three applications for review of decisions of its Panels and upheld the decision of the Panel in each case. It also considered and approved an application referred to it by a Panel.

## **Professional Conduct**

### ***Staffing changes***

29. The PCD has experienced some issues with recruitment over the last few months. While we have been able to attract suitable candidates to advertised posts, on two occasions we have not been able to secure appointments. As a result, both the Casework Supervisor and Professional Support Lawyer (Enforcement) posts are currently being re-advertised. Interviews will take place in October 2015. In the meantime, to assist with the workload, the PCD has welcomed Theresa Murphy to the role of Senior Case Officer for an interim period.
30. In August 2015, after over five years, the PCD said goodbye to Sian Mayhew, Policy and Projects Officer (PPO). In light of the PSL role, which incorporates a significant volume of policy work, the PPO role which sits in the Operational Support Team, has been modified to focus more on project management. The revised Projects and Operational Support Officer post is currently being advertised and the PCD hope to recruit a successful candidate to start by the end of the year. Also in the Operational Support Team, Paul Martyn, the Reports and Data Analysis Officer, is leaving the PCD after nearly five years. Paul is transferring to the Resources Group to take up the post of IS Business Intelligence Analyst and will start in October 2015.

### ***PCD work***

31. Over the last two months new reports focussing on the current caseload have been developed for the PCD managers and we have introduced wider monthly statistical review meetings to discuss issues in relation to casework trends.
32. At the end of 2014/15 we reported that 25% of complaints undergoing assessment or investigation were over-running our performance indicators. This figure has been reduced to 8% showing that we are finally recovering from the ongoing impact of last years' staffing issues.

### ***Time recording***

33. The PCD has now recorded eight months' worth of information on time spent on each aspect of our work in order to establish a sound basis for calculating the cost of complaints. In order to have enough information on which to base results, the PCD need to see the conclusion of more disciplinary tribunals before we can accurately calculate the time spent on complaints.

### ***Disciplinary Tribunal Regulations review***

34. The consultation on the Review of the Disciplinary Tribunal Regulations is due to close on 12 October 2015. Some interest has been registered for the workshops due to take place on 21 September and 1 October. These workshops will allow participants to feedback their views in an open forum.

### ***Judicial Reviews***

35. There have been no changes since we last reported in July 2015. The PCD remains involved in five judicial review proceedings. Four of these are at the permission stage and the other one is listed before the Court of Appeal for hearing in May 2016.

## **Strategy and Communications**

### **Communications**

36. Since this report was prepared for the July Board meeting, the following press releases and announcements have been issued:
- 24 July: Disbarments now the most common outcome at Disciplinary Tribunal hearings according to the BSB's Enforcement Annual Report;
  - 31 July: The BSB Annual Report for 2014-15 is published;
  - 2 September: Announcement about the new members for the Bar Standards Board.
37. The Board will have seen the fortnightly media coverage that the above announcements generated.

### ***Work in Progress***

38. At the time of writing, the following pro-active communications activities are scheduled over the next few weeks and months:
- FBT webinar about the academic, vocational and pupillage consultation due to take place on 16 September;
  - QASA communications plan and forthcoming JAG announcement about the timescales for implementation;
  - BSB event to promote our risk-based approach to regulation on 5 October;
  - Forthcoming publication of the post-consultation Professional Statement;
  - Publication of the new BPTC providers' report;
  - Launch of the consultation concerning self-employed barristers.

### ***Online and social media***

39. During July, 26,170 users visited the BSB website with a further 22,971 visiting during August. At the time of writing, we have 12,235 followers on Twitter.

### **Business Support**

#### ***Governance***

40. Further work has been undertaken to firm up the Governance Review plan to specify timelines and resource commitments, and this was discussed by Board members in the private session at the beginning of September 2015.

#### ***Strategic Plan, Business Plan and Budget***

41. Embryonic drafts of a new Strategy and Strategic Plan for 2016-19 have been compiled and have been shared with staff and Board members, whose thoughts about how these documents could be further developed were discussed. Board members also noted the early workings of a business plan and budget for 2016-17 at the meeting on 10 September.
42. For the current business plan (2015-16), the Business Support Team has set up the systems needed to monitor the BSB's performance, and these have incorporated

“weightings” of the activities as can be seen in the Q1 performance report for the meeting on 10 September. The 2014-15 Annual Report was published on 31 July 2015.

### ***Research***

43. Since the meeting in July, work has progressed as follows:
- Completion and sign off of the Youth Courts Advocacy Review report ready for review at the October Board meeting;
  - Publication of the second tranche of annual statistics on the BSB website (replacing the Bar Barometer);
  - Development of research design and scoping for the Handbook Review;
  - Drafting of research manuals and ethical guidelines for business use;
  - Drafting of the literature review for the ASPIRE Consumer Research Programme;
  - Work on evaluation of the BCAT, including discussions with the Education & Training and Equality & Diversity Committees and the BPTC sub-committee;
  - The Immigration Thematic Review has held a round table event with stakeholders, which resulted in production of a report of the event and the recruitment of a reference group of external stakeholders to assist with the project as it progresses;
  - An online survey of pupillage applicants using the Pupillage Gateway has been undertaken with the Bar Council to gather evidence on concerns raised over recruitment for pupillage;
  - An online survey has been launched for those interested in setting up a BSB-regulated Alternative Business Structure, to gather evidence on level of interest;
  - Development of research design for the Public and Licenced Access review;
  - Drafting of follow up research into complaints received and complaint outcomes using data from PCD.

### **Resources Group**

#### **Current Key Business Projects and Programme**

##### ***CPD Regulation Implementation***

44. The CPD Consultation has closed. A total of 81 responses were received and a number of collective responses from the Inns of Court, Consumer Panel and Specialist Bar Associations. Analysis of the responses is underway.

##### ***Property Strategy 2018/19***

45. The first phase of the project is underway to research the drivers and options available to us. A timetable has been drawn up to achieve an agreed option in a business case for the end of March 2016. An outline for a flexible working model is being drawn up as a first step to shaping our options for the future.

**The following fit underneath the umbrella of the Information Management Programme of work:**

##### ***Authorisation to Practise 2016***

46. A kick-off project meeting has taken place to plan out resources and tasks in preparation for the 2016 A2P process.

***Intranet***

47. Content authors have been trained and a project closure process is underway

***Human Resources Information System (HRIS) and Payroll***

48. The HR system is on track for Go Live on 1 October. Outsourcing of payroll is provisionally scheduled for January 2016.

***Supervision and Entities regulation***

49. The supervision system is operational and live and well received by the team – a project review is underway and looking at how we can showcase the success there. The Entities Application System is live and receiving applications; project closure is underway. The Entities Renewal project is being scoped out currently for implementation by April 2016.

***Information Architecture – Defining the future “Single Solution”***

50. Information Architecture work is now complete; outputs produced include:

- Full business process review;
- Information Architecture;
- Systems requirements for new CRM;
- Self-service Portal;
- Case Management;
- Finance and Management/Information Service;
- Data Governance Framework.

51. A Business Case was presented to the Finance Committee in July and is undergoing external assurance prior to a decision on investment in the Information Management Programme and implementation of new systems architecture.

***Data Foundation***

52. This project includes data governance, data cleansing and preparation of data for migration. An initial audit of the quality and integrity of data across the organisation is underway in conjunction with the information architecture project. Planned cleansing of data stored in our current systems is underway. A Data Governance framework, including functions, processes and roles is being scoped out for implementation

***PCI Compliance***

53. Assessment of our compliance with the payment card industry standards has taken place. An initial scope of work is to be negotiated and implemented based on priorities; this has been prioritised in the programme of work to achieve compliance.

**Key Resource Group Team Updates**

**Human Resources – Catherine Shaw**

***A full report is made to the private session of this month’s meeting.***

**Records – Lisa Smith**

54. The annual BMIF audit is near completion with final reminders being sent to five Barristers. The income audit is near completion with the BSB sending the final reminder to the remaining 20 who have yet to respond. Any issues will be referred to supervision and/or PCD by the end of September.
55. Annual housekeeping is underway including auditing rights of audience and qualified persons data. All Chambers have been contacted to provide up to date Chambers data and these are being updated over the coming month. There has been a high level of public access and top-up courses prior to the deadline to complete the top up course by 4 October. We anticipate a peak in the Records workload relating to this in the coming weeks.

**Finance – Mark Ennals**

56. Since the last report, Finance has reviewed and reformed the process of paying staff expenses from monthly with the payroll to a weekly payment cycle; improving payment times to staff and gaining departmental processing efficiencies.
57. The format of the monthly management accounts has been significantly updated and reformatted for the August accounts period to provide greater transparency for managers and other stakeholders.
58. A review of departmental processes and procedures is ongoing with changes being made where appropriate to ensure we aspire to and achieve best practice. Changes to individual roles and responsibilities are also taking place where required to improve support to the organisation and internal process.

**Facilities – Sam Forman**

59. All statutory obligations against health and safety have been met. Tenants on floors seven and eight have completed their fit out and have taken residence.
60. The FM team has been working in conjunction with Camden Climate Alliance to calculate the organisation's carbon footprint. Following the creation of the Green House Gases accounting policy documents the FM team are now seeking volunteers to join a 'Green Team' in an attempt to identify schemes, initiatives and ways of reducing energy consumption.
61. Desk level training has been conducted with various staff on the StarLeaf Video/Audio Conferencing System.
62. The FM team are working on refining the pricing structure for the relaunch of the external printing services. Various ways of marketing the services are currently being explored.

**Vanessa Davies**  
**Director General BSB**  
**17 September 2015**