

BAR STANDARDS BOARD
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting**

Thursday 23 October 2014, Room 1.1, First Floor  
 289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Ruth Deech QC (Hon) (Chair)  
 Patricia Robertson QC (Vice Chair)  
 Rolande Anderson  
 Rob Behrens  
 Sarah Clarke (items 7-17)  
 Justine Davidge  
 Tim Robinson  
 Andrew Sanders  
 Anne Wright
- By invitation:** Sarah Brown (Special Adviser)  
 James Wakefield (COIC)
- BSB Executive in attendance:** Viki Calais (Business Manager)  
 Maya Chopra (Legal & Policy Assistant, E&T)  
 Andrew Cohen (Business Support Officer)  
 Vanessa Davies (Director General)  
 Joanne Dixon (Qualifications Manager)  
 Oliver Hanmer (Director of Supervision)  
 Sara Jagger (Director of Professional Conduct)  
 Cliodhna Judge (Authorisations Manager)  
 Andrew Lamberti (Communications Manager)  
 Ewen Macleod (Director of Regulatory Policy)  
 Bernard MacGregor (Supervision Officer, CPD)  
 Ruby Newton (Authorisation & Supervision Officer)  
 Chris Nichols (Supervision Policy Manager)  
 John Picken (Board & Committees Officer)  
 Pippa Prangley (Regulatory Risk Manager)  
 Paul Pretty (Hearings and Investigations Manager)  
 Amanda Thompson (Director of Strategy & Communications)  
 Julia Whitting (Chambers and Entity Supervisor)  
 Stephanie Williams (Legal and Policy Assistant)
- Bar Council Executive in attendance:** Stephen Crowne (Chief Executive, Bar Council)  
 Poli Avramidis (Chief Information Officer, Bar Council) (items 14-17)

**Item 1 – Welcome and introductions**

1. The Chair welcomed members and guests to the meeting.

2. **Item 2 – Apologies**

- Malcolm Cohen;
- Simon Lofthouse QC;
- Sam Stein QC;
- Richard Thompson;
- Emily Windsor (Special Adviser);
- Nicholas Lavender QC (Chairman, Bar Council);
- Stephen Collier (Treasurer, Bar Council);
- Simon Thornton-Wood (Director of Education & Training);
- Mark Hatcher (Special Advisor to the Chairman of the Bar).

**Item 3 – Members’ interests and hospitality**

3. During the course of the meeting, Vanessa Davies made a declaration of interest in respect of discussions about additional government support for litigants in person. She is a Trustee of the Personal Support Unit (PSU) which provides free, independent non-legal assistance to people facing proceedings without legal representation in civil and family courts and tribunals (see min 27 below).

**Item 4 – Approval of Part 1 (public) minutes (11 & 18 September 2014)**  
(Annexes A & B)

4. The Board approved Part 1 of the minutes of the meetings held on Thursday 11 and Thursday 18 September 2014.

5. **Item 5 – Matters Arising**a) Authorisations to undertake litigation (min 7 – 11 Sept 14)

The Chair asked about the number of applications from barristers to undertake litigation. Joanne Dixon confirmed these remained low though the take up rate for the associated course is higher.

b) Update on insurance for entities (mins 3-8 – 18 Sept 14)

Subsequent to the last meeting, Board Members were emailed with an update on insurance for entities (sent 1 October 2014). This explained the following:

- the proposed amendment to the entity regulation rules requiring single person entities to take professional indemnity insurance with the Bar Mutual Indemnity Fund (BMIF) would require a variation to our application to the LSB to become a licensing body for entities. That is likely to result in a delay in the LSB being able to make a decision;
- following discussions with the LSB, we do not intend to seek to make an amendment now, but will continue with our application as it stands whilst simultaneously collecting suitable other evidence in relation to the proposed amendment (to be submitted at a later date if we think it is necessary);
- the BMIF has been informed of the variation in our position.

**AGREED**

to note the report.

c) Governance of Education and Training (mins 16-20 – 18 Sept 14)

Vanessa Davies commented as follows:

- the Education & Training Committee is to meet on 2 December 2014 and will discuss revisions to its Terms of Reference;

- in the meantime, the LETR Programme Board has been established as a Sub-Committee so is able to function within the existing governance structure.

**AGREED**

to note the report.

**Item 6a – Action points and Forward Agenda**Action points and progress (Annex C)

6. The Board noted progress on the action list.

Forward Agenda (Annex D)

7. The Board noted the forward agenda list.

**Item 7 – Supervision – Report on Activity**

BSB 069 (14)

8. Chris Nichols highlighted the following:
- the Supervision Team is now fully staffed;
  - risk-based supervision visits are well underway following successful completion of a pilot programme;
  - a report on the pilot exercise has been prepared (Annex A) and states that:
    - ❖ visits have helped identify where the key risks occur in the market;
    - ❖ there have been tangible improvements to chambers' policies and procedures as a result of visits;
    - ❖ on the whole, chambers have received the visits positively and appreciated the advice provided to improve administration;
  - whilst more visits are planned next year, the precise number is not yet known;
  - though most chambers engaged well with the programme, the Supervision Team will, for a minority of cases, adopt a more robust stance in terms of following up agreed action short of referral to the Enforcement Department.
9. Members welcomed the report and commented as follows:
- the report is very helpful and demonstrates how far the BSB has come in developing its role as a risk-based regulator;
  - the visits have engendered more staff time than originally anticipated. It would be useful to know the effect on future cost projections;
  - visits of this nature can provoke both concern and defensiveness of those under scrutiny. It is therefore to the credit of the team that they were received positively. The effective delivery of the communications plan identified in paragraph 62 of the report is of key importance for the future;
  - there is a question around the depth and focus of visits (given these last only three hours in total);
  - the pilot visits were based on a small sample but these identified a comparatively high number with financial viability issues. It would be useful to know more about this;
  - one option to consider for communicating messages is to replicate work undertaken following compliance checking with the new E&D rules. This resulted in a specific event on this topic which was well-received by those attending. The BSB has budget provision for its own conference next year and this could provide the right sort of platform;
  - it is right that chambers be given more help and support in the introductory stages of supervision. In the fullness of time, this could be cut back as chambers develop the necessary knowledge and experience of what to expect.

10. In response, the following comments were made:
- the number of proposed visits has been reduced to compensate for the additional staff time required. In the absence of case management software, it is difficult to accurately assess the cost per visit. Notwithstanding this, extra provision has been made in the 2015/16 budget;
  - the Institute of Barristers' Clerks (IBC) and the Legal Practice Management Association (LPMA) have been a useful means through which to deliver messages on supervision. Chambers within London tend to have established networks but this is less often the case for those outside the capital. This needs to be taken into account as regards future communication strategies;
  - a three hour period represents a considerable investment of time for small chambers and the visits are risk-based and therefore very focused. Follow-up visits can be arranged if there is insufficient time to cover all the points raised;
  - the risk profiles of the chambers included in the pilot suggested that financial viability may give cause for concern so it is unsurprising that this featured quite significantly.

11. **AGREED**

to note the contents of the report and that of the Annex concerning the outcome of the pilot programme of chambers visits.

**Item 8 – BSB research**

BSB 070 (14)

12. Amanda Thompson highlighted the following:
- the research work described in the report is already underway and will deliver against requirements for both the BSB's strategic plan and the Regulatory Standards Framework;
  - a point of clarification is required regarding paragraph 11 (third bullet point). Unregistered barristers are still subject to provisions in the Handbook and an increasing number are being employed in paralegal positions. It is therefore necessary to research the roles they undertake;
  - there is a correction to the paper. The project concerning E&D statistics is an annual event and will therefore be completed in January 2015 (as well as January 2016 as stated in the Annex).

13. Members welcomed the report and commented as follows:

- the inclusion of a project to understand more about consumers of legal services is particularly welcome;
- the project on movers and leavers could focus on retention of women at the Bar. We should liaise with the Association of Women Barristers and the Temple Women's Forum in this regard.

**AT to  
note**

14. **AGREED**

to note the report.

**Item 9 – Standard of proof review – update**

BSB 071 (14)

15. Sara Jagger highlighted the following:
- the Board has previously decided that a move to the civil, as opposed to the criminal, standard of proof would be desirable but, in practice, not possible to implement if this was independent of the Solicitors Disciplinary Tribunal (SDT) also considering such a move;

- there has been no progress to date in moving forward on this issue. The expectation that the LSB would take a lead in its resolution proved incorrect;
  - the SDT is not seeking to change its position, however, there are some test cases in the pipeline which might clarify the issue.
16. Members noted the paper and agreed that appropriate case law may prove to be an effective way forward.
17. **AGREED**
- a) to note the current position regarding the review of the standard of proof.
  - b) to confirm its previous decision that the BSB should not consider a move to the civil standard of proof independently of the SDT considering such a move.
  - c) that the BSB should monitor the position with regard to standard of proof applied by the SDT specifically in relation to any prospective cases that might be taken through the courts over the next year or so. **SJ to note**
  - d) that the BSB formally review its position again as part of the Business Plan for 2016/17 as opposed to 2014/15 as is currently scheduled. **AT to note**

#### **Item 10 – Forward strategic overview – governance review: emerging findings**

BSB 072 (14)

18. Amanda Thompson highlighted the following:
- following the April 2014 Away Day, most committees have given consideration to their structure, remit and continuation;
  - most have agreed that some element of change is desirable but there are no substantive proposals on a revised structure;
  - one option is for the Executive to produce a change plan and associated timetable for discussion at the April 2015 Away Day.
19. Members commented as follows:
- the April 2015 Away Day is too long a period to wait;
  - the agenda for the December 2014 Away Day already includes an item on governance. The Chairs of each Committee should be able to report on progress to date at that meeting and give direction to the Executive in forming subsequent change plans;
  - the incoming Chair, Sir Andrew Burns, is due to attend the December Away Day so it makes sense for it to be discussed at that meeting.

20. **AGREED**
- a) to note the update.
  - b) that the Executive research other regulatory models to inform discussion on the topic at the December 2014 Away Day. **AT**
  - c) that Committee Chairs be prepared to feedback their views on the structure, remit and continuation of their respective Committee at that Away Day. **Comm Chairs**

#### **Item 11 – Supervision and Entity Regulation - Authority for executive decisions**

BSB 073 (14)

21. Oliver Hanmer highlighted the following:
- a proposed scheme of delegations is set out in Table 1 of the paper. This relates to decisions concerning supervision and entity regulation;
  - the Chair of the Supervision Committee has been consulted on the proposed changes and supports them;

- the Supervision Committee will retain an oversight role for both entity regulation and supervision. This is made clear in the Terms of Reference (Annex 1).

22. **AGREED**

- a) to approve the scheme of delegations for the Supervision department activities.
- b) to authorise the Chair to sign the delegation forms to bring them into effect.

**OH to  
note  
RD / CD**

**Item 12 – Returning Instructions – Consultation report**

BSB 074 (14)

## 23. Ewen Macleod commented as follows:

- a summary of responses to the BSB's consultation on proposed changes to guidance on returning instructions has been prepared;
- the original proposals were drafted in the light of the Legal Aid Agency's decision to reduce fees in Very High Cost Cases (VHCCs). Since then, circumstances have changed and the previously perceived risks to the public of barristers returning instructions have not materialised;
- bearing this in mind, the current guidance should remain in force.

## 24. Members commented as follows:

- it is disappointing that the consultation did not generate responses from outside the profession;
- the key concern of the BSB was that the public remained safeguarded. It was disconcerting that the Bar considered withdrawing its services given the potential impact on clients;
- a counter view is that barristers did behave responsibly during the period in question either by representing clients pro bono or informing them of the circumstances and possible consequences of any action.

25. **AGREED**

- a) that the current guidance on returning instructions be maintained.
- b) that the final consultation response (Annex A of the report) be published on the BSB website.

**EM to  
note  
EM**

**Item 13 – Chair's Report on Visits and Meetings: Sept - Oct 2014**

BSB 075 (14)

## 26. The Chair highlighted her attendance at the All Party Parliamentary Group on litigants in person in the Family Court. This meeting was attended by the Minister of State for Justice and Civil Liberties, Simon Hughes. He confirmed that £2m will be made available to assist litigants in person with advice and support.

## 27. Vanessa Davies commented in her role as a Trustee of the Personal Support Unit (PSU). She stated that:

- the Civil Justice Council (CJC) set up a working group under the chairmanship of Robin Knowles QC to consider what steps could be taken in the event of a sudden rise in the number of litigants in person;
- some of the short term measures identified in this report have been taken forward with the announcement of increased funding but the extent of the impact has yet to be seen;
- the funding is for advice services only so will not necessarily enhance qualified legal representation.

28. One effect may be to increase still further the number of “McKenzie Friends” ie someone to assist litigants in person, whether they are legally qualified or not. The Chair noted that there could be regulatory implications arising from this given the potential for overreach into reserved legal activities.

29. **AGREED**  
to note the report.

#### **Item 14 – Director General’s Report**

BSB 076 (14)

30. Vanessa Davies highlighted the following:

- a new Head of HR, Catherine Shaw, has been appointed. Tim Robinson assisted on the interview panel;
- to reduce the volume of Board papers, a reference to the ongoing “Immigration and Supervision” consultation is included in the Director General’s report as opposed to being presented as a separate paper. Should the outcome result in any rule change proposals, however, these will be presented to the Board for approval;
- the Equality and Diversity Adviser, Sarah Loutfi, is leaving the BSB in November. Vanessa Davies and Rolande Anderson paid tribute to Sarah’s valuable contribution to the organisation.

31. Members commented as follows:

- whilst small scale consultations of the type identified can be managed at committee level, the Board should have early notice of more substantial documents. Otherwise there is a risk of the Board being presented with major policy changes without fully understanding the underlying context;
- Justine Davidge would be willing to be involved in the creation of a resource for legal professionals in respect of representing clients with mental health illness (para 18 of the report refers);
- the Youth Courts Advocacy Review is now underway (para 50 of the report refers).
- the improved Q2 KPI results for the Professional Conduct Department are encouraging (paras 32-33 of the report refers);

**VLD to  
note**

32. **AGREED**

- a) to note the report.
- b) to develop a set of indicators around policy consultation documents such that the Board is properly informed, and at an appropriate stage, based on the subject and content under scrutiny.

**VLD**

#### **Item 15 – Any Other Business**

33. None.

#### **Item 16 – Date of next meeting**

34. Thursday 27 November 2014.

#### **Item 17 – Private Session**

35. The following motion, proposed by the Chair and duly seconded, was agreed:

That the BSB will go into private session to consider the next items of business:

- (1) Strategic information management including data quality update;
- (2) Approval of Part 2 (private) minutes (11 & 18 Sept 2014);
- (3) Matters Arising;
- (4) Action points and progress – Part 2;

- (5) QASA - next steps;
  - (6) Entity Authorisation – costs;
  - (7) Update from the Regulators' Summit;
  - (8) LSB standard contractual terms and the cab rank rule: undertakings issue;
  - (9) Any other private business.
36. The Bar Council's Chief Executive and the Chief Information Officer were invited to attend for item 1 of the Part 2 agenda. The Chief Information Officer gave a presentation on proposed changes to the resourcing of the information management project.
37. The meeting finished at 5.40 pm.