

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*



**Meeting of the Bar Standards Board**  
**Thursday 26 October 2017, 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 (4.30 pm)</b>	Chair	
2.	<b>Apologies</b>	Chair	
3.	<b>Members' interests and hospitality</b>	Chair	
4.	<b>Approval of Part 1 (public) minutes</b> <ul style="list-style-type: none"><li>• <b>28 September 2017 (*)</b></li></ul>	Annex A Chair	<b>3-9</b>
5.	<b>Matters Arising (*)</b>		
6.	a) <b>Action points and progress</b> b) <b>Forward agenda</b>	Annex B Annex C Chair Chair	<b>11-13</b> <b>15-16</b>
7.	<b>Rule change application (practice area information, compliance with Money Laundering Regulations, registration of youth court work) (4.35 pm)</b>	BSB 075 (17) Chelsee Howells/ Ewen Macleod	<b>17-51</b>
8.	<b>Public Access Review - Consultation Paper and Rule Change (4.50 pm)</b>	BSB 076 (17) Ewen Macleod	<b>53-83</b>
9.	<b>Chair's Report on Visits and Meetings: October 2017 (5.10 pm)</b>	BSB 077 (17) Chair	<b>85</b>
10.	<b>Director General's Report (5.15 pm)</b>	BSB 078 (17) Vanessa Davies	<b>87-96</b>
11.	<b>Any other business</b>		
12.	<b>Date of next meeting</b> <ul style="list-style-type: none"><li>• Thursday 23 November 2017</li></ul>		
13.	<b>Private Session</b>		

**John Picken**  
**Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
19 October 2017

*\*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.*



<p>BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

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

Thursday 28 September 2017, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Alison Allden OBE  
Rolande Anderson  
Aidan Christie QC  
Judith Farbey QC  
Steven Haines  
Zoe McLeod  
Andrew Mitchell QC  
Nicola Sawford  
Anne Wright CBE
- Bar Council in attendance:** Mark Hatcher (Special Adviser to the Chair of the Bar Council)  
Andrew Walker QC (Vice Chair, Bar Council)
- By invitation:** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Joseph Bailey (Policy & Projects Officer) – items 1-10  
Dan Burraway (Corporate Services Manager)  
Vanessa Davies (Director General)  
Rebecca Forbes (Governance Manager)  
Oliver Hanmer (Director of Regulatory Assurance)  
Sara Jagger (Director of Professional Conduct)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
Oliver May (Legal and Policy Officer) – items 1-10  
John Picken (Governance Officer)  
Wilf White (Director of Communications and Public Engagement)  
Julia Witting (Supervision Manager) – items 1-10  
Christopher Young (Policy Manager - Quality Assurance) – item 7 only
- Press:** Neil Rose (Legal Futures)

**Item 1 – Welcome**

1. The Chair welcomed Members to the meeting. He decided to change the order of the agenda such that item 7 (FBT Consultation) was taken after item 10 (GRA Annual Report). The intention for this was to allow time for the arrival of the FBT Programme Chair (Justine Davidge), who had been delayed at an ongoing tribunal. However, it later became apparent during the meeting that Justine would not be able to attend after all.

**Item 2 – Apologies**

2.
  - Justine Davidge
  - Naomi Ellenbogen QC (Vice Chair)
  - Adam Solomon
  - Anu Thompson

- Andrew Langdon QC (Chair, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- Malcolm Cree (Chief Executive, Bar Council)
- Amit Papat (Head of Equality and Access to Justice)

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

3. The following declarations of hospitality were made:
- Vanessa Davies and Ewen Macleod – attendance at a networking event held on 6 September 2017 hosted by Kingsley Napley (law firm).
  - Vanessa Davies – attendance at a breakfast meeting held on 14 September 2017 at the invitation of Menzies (a legal consultancy firm) and Think Marble (a cyber security firm).

### **Item 4 – Approval of Part 1 (public) minutes (Annex A)**

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 27 July 2017.

### **Item 5 – Matters Arising**

5. None.

### **Item 6a – Action points and progress (Annex B)**

6. The Board noted the updates to the action list.

### **Item 6b – Forward Agenda (Annex C)**

7. The Board noted the forward agenda list.

### **Item 7 – Future Bar Training: Autumn 2017 FBT Consultation**

BSB 061 (17)

8. Vanessa Davies reported on behalf of Justine Davidge (Chair of the Education and Training Committee and the FBT Programme Board) who was unable to attend (cf. min 1 above) but had sent in some written notes. The salient points were:
- the current draft consultation accurately incorporates the views of the Education & Training Committee and adopts an open stance to encourage feedback on a wide range of options;
  - the responses from this will help the Board determine a policy direction from first-principles and in a transparent and evidence based manner;
  - the consultation will be published in October with a second, shorter follow-up document next year on the form that the final rules will take;
  - the draft document is the product of a significant amount of work undertaken in the Strategy and Policy Department for which she expressed her sincere appreciation.
9. Regarding the text, she highlighted the following:
- some of the language used in the foreword and executive summary reflect earlier versions and should be re-phrased to capture the consultation’s “open” nature (cf pages 26 and 30 of the agenda papers);
  - the section on student membership of an Inn and the options for relaxing these requirements (para 72-76) could be made clearer – ie either that this is not mandated until the point of call to the Bar or that student membership is not required at all;
  - the section concerning the provisional practising certificate may need re-drafting (paragraph 175, bullet 2). We would expect pupils to gain sufficient practical experience of advocacy so as to meet the standard set out in the Professional Statement. However, the wording of the bullet point is open to misinterpretation on this point;

## Part 1 - Public

- in earlier versions of the draft the section on financial risks (paragraph 206) included a table on pupillage payment rates. This helped to illustrate the potential impact of a rise in pupillage awards. This table is no longer included and the reason for this is not apparent;
  - the equality impact assessment for pupillage awards does not reference the *numbers* of chambers offering pupillages who would be affected by a rise in the award to be commensurate with the national living wage, and the areas of practice they cover. There may be a disproportionate impact on those in the public sphere.
10. The following comments were made with reference to the above points
- the original intention on student membership of an Inn was to include an option that did not require this at all. However the distinction identified in Justine’s comments about point of call (cf min 9) is worth including in the text; **CY to note**
  - the bullet point identified in paragraph 175 will be re-worded. There is no intent to allow barristers to circumvent the underlying requirements of the Professional Statement; **CY to note**
  - any data we publish on pupillage awards needs to be current and accurate. That used in previous drafts was only collated until 2014 with no adjustments made for inflation;
  - the key points on pupillage awards are already included in the narrative. We could import some of this to give a fuller explanation of issues identified in the equality analysis. **CY to note**
11. The following comments were also made:
- we should include, as an annex, a list of all the questions we ask in the consultation paper; **CY to note**
  - we should encourage respondents to look beyond the strict confines of the options quoted in our questions - there may be instances of other valid alternatives that we have omitted to include;
  - the two tables in paragraphs 110 and 111 concerning conduct cases referred to the Inns’ Conduct Committee (ICC) need further explanation. It is not clear if one is a subset of the other; **CY to note**
  - the qualifying sessions referred to in the document do apply to transferring barristers but the Inns can also grant waivers for these if they so choose;
  - the BSB’s research identified that a key benefit from student membership of the Inns is the networking opportunities it offers. Given our aim of increasing access and diversity, it would help to know if this equally applies to those from lower income backgrounds. We do have anecdotal evidence to this effect but it would help if we could monitor progress over time.
12. In response to the latter point, Ewen Macleod confirmed that, though we plan to monitor target groups, this evidence has yet to be collated. It is a matter for future research projects.
13. Vanessa Davies referred to the revised timeline for the implementation such that rule changes will now be introduced from January 2019, subject to approval by the LSB. Applications from providers seeking designation as “Authorised Education and Training Organisations” will be received and processed in the three months prior to this, though formal approval will only be granted once the rules come into force.

14. **AGREED**

- a) to note the comments made by the Education and Training Committee in relation to the scope of the consultation.
- b) to approve the consultation as set out in Annex A of the report for publication subject to further amendment as identified above.

CY

**Item 8 – Response to the CMA Recommendations: Policy Consultation on Transparency Standards**

BSB 062 (17)

15. Ewen Macleod highlighted the following:
  - the consultation paper forms part of the BSB's response to the CMA's findings on its market study into legal services. We now plan to publish this on Monday 2 October 2017;
  - it proposes to make mandatory rule changes in respect of those transparency measures identified by the CMA which the BSB categorises as having "very high impact" for consumers;
  - those measures categorised as "high" or "medium" impact will be addressed through guidance to chambers;
  - subject to feedback from this initial consultation, a second document will be issued in March 2018 about final rule change proposals.
  
16. The following comments were made:
  - the foreword of the consultation stresses the high degree of flexibility that the BSB's approach encompasses. However, this make it harder for third parties to compare prices between chambers;
  - we might need to say more on accessibility, especially in considering clients with special needs. It would help to standardise language throughout ie be consistent in the use and definition of key terms;
  - there are no quality assurance schemes currently in operation which clients could use to compare chambers;
  - there is a potential unintended consequence of prices rising as a result of the new rules on transparency. It would help to know if a baselining exercise on prices will be completed in advance of implementation;
  - we need to take care not to stray into the territory of price regulation. This is purely about price transparency;
  - the consultation refers to the potential use of the BSB logo to identify those bodies that are BSB regulated. If adopted, it would be a departure from current policy as we have not permitted its use before now.
  
17. In response, the following comments were made:
  - the point on flexibility relates to the BSB's view that one size does not fit all. There needs to be greater transparency on prices but, equally, we must recognise that a range of options are necessary for this to be achieved;
  - the point on language is acknowledged. We shall conduct pilot exercises on planned changes to the rules in advance of the second consultation. We can use these to test points of language and consistency. We might expand the foreword to explain this more fully;
  - chambers will still have the option to vary fees according to client groups. Guidance will be given on how to describe fee structures;
  - the consultation acknowledges the risk that consumers may focus disproportionately on price rather than quality. There is scope to provide feedback on this point and the BSB will work with the Bar Council as necessary;

EM to  
note

- discussions on monitoring the impact of future changes (including prices) have already commenced and work on this will be developed in parallel with regulatory changes;
- there may be some value in using the logo more widely but we must make clear that this only relates to regulation and is not an endorsement of any particular set of chambers.

18. **AGREED**

to approve publication of the draft consultation on transparency standards as set out in Annex 1 of the paper.

EM

**Item 9 – Disclosure of sexual orientation and religion and belief data by chambers and entities**

BSB 063 (17)

## 19. Ewen Macleod commented as follows:

- the paper seeks to consult on rule changes on disclosure. At present data on sexual orientation and religion / belief is not reported unless every member of chambers has consented to the release of this information;
- a further rule prevents data on any protected characteristic from being reported where the complement within chambers is ten or fewer, unless there is consent from all those involved;
- the means that any one individual can prevent publication, even if the person concerned is not part of a protected group;
- the resulting low disclosure rates means that it is not possible to monitor these strands effectively making it difficult to establish evidence of any inequality. The Executive therefore wishes to review the current rules.

## 20. The following comments were made:

- there are sensitivities on this issue but we should proceed with the consultation as outlined;
- we need to think about how to encourage people to be more forthcoming about disclosure;
- we can clarify that our usual practice is not to identify individuals who respond to consultations, to encourage responses in confidence;
- it would be helpful for the Board to see the final draft consultation paper before publication.

21. **AGREED**

- a) to endorse the request to consult on a potential change to the equality rules, in order to promote disclosure of sexual orientation and religion / belief data.
- b) that the draft consultation paper be presented to the Board at a future meeting.

EM to note

EM / AP

**Item 10 – Annual report of the Governance, Risk and Audit Committee (GRA)**

BSB 064 (17)

## 22. Nicola Sawford referred to the report which covers the period October 2016 – September 2017. She also thanked Malcolm Cohen for his past chairmanship of the committee (Malcolm stood down from this role on 31 December 2016). The salient points were:

- key areas of work during this period included:
  - assessment of BSB performance against the Regulatory Standards Framework;
  - service complaints monitoring;

- work to converge the regulatory risk and corporate risk registers;
  - appointment of the BSB's internal auditors.
23. The following comments were made:
- it would be helpful for the internal auditors to present their findings at the Board as well as the GRA Committee;
  - the GRA Committee is developing plans for Board Member training on regulatory risk and knowledge sharing sessions will also be organised for staff. Sufficient notice will need to be given to Board Members to enable their attendance at the staff knowledge sharing sessions.
- DBu to note**  
**DBu to note**
24. **AGREED**  
to note the report.
- Item 11 – Performance Report for Q1 (April 2017 - June 2017)**  
BSB 065 (17)
- AGREED**
25. to note the report.
- Item 12 – Chair's Report on Visits and Meetings: September 2017**  
BSB 066 (17)
26. **AGREED**  
to note the report.
- Item 13 – Director General's Report**  
BSB 067 (17)
27. The Board considered the Director General's report. In response to a question on the cross-regulator risk forum on cyber crime, Vanessa Davies commented as follows:
- the risk forum was helpful and covered the cyber risks that regulators face (as well as those by the regulated community);
  - the levels of readiness vary but, in general, regulators have more to do in this area. This will be brought into sharper focus with the advent of the General Data Protection Regulations (GDPR) which come into effect from 25 May 2018;
  - GDPR is now included in the GRA risk register and we shall be working with the Bar Council to draft guidance to barristers.
28. Rolande Anderson referred to paragraph 43 of the report concerning the equality and diversity eLearning programme. This has been reviewed and updated so we might consider sending round the link to Members.
- AP to note**
- AGREED**
29. to note the report.
- Item 14 – Schedule of Board Meetings Jan 2018 – Mar 2019**  
BSB 068 (17)
30. The Board noted the schedule of meetings for January 2018 – March 2019. Board meetings from May 2018 will start at 5.00 pm, instead of 4.30 pm.
31. The Chair advised of an additional meeting date. The Board will now meet jointly with representatives of the Legal Ombudsman's Board on Thursday 17 May 2018.
- BSB Members to note**



**Item 13 – Any Other Business**

32. None.

**Item 14 – Date of next meeting**

33. Thursday 26 October 2017.

**Item 15 – Private Session**

34. 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) Approval of Part 2 (private) minutes – 27 July 2017
  - (2) Matters arising
  - (3) Action points and progress – Part 2
  - (4) Budget Bid – 2018/19
  - (5) Corporate Risk Register
  - (6) Decision on PII arrangements for Single Person Entities (SPEs)
  - (7) Section 69 order update
  - (8) GRA Committee Reports referred to the Board for information:
    - Scheme of Delegations – update
    - BPTC Ethics Examination
  - (9) Any other private business
    - BSB Statement – Khawar Qureshi QC
  - (10) Review of the Board meeting in terms of conduct and outcomes.
35. The meeting finished at 5.45 pm.



**BSB – List of Part 1 Actions  
26 October 2017**

*(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
14b (28 Sep 17) – FBT programme	amend the FBT consultation document in line with comments raised at the meeting and publish to stakeholders	Christopher Young	before 5 Oct 17	05/10/17	<b>Completed</b> – published on website
18 (28 Sep 17) - CMA Recommendations: Policy Consultation on Transparency Standards	publish the consultation documents on Transparency Standards	Joseph Bailey	before 5 Oct 17	04/10/17	<b>Completed</b> – published on website
21b (28 Sep 17) – E&D data: sexual orientation and religion / belief	draft a consultation paper on the disclosure of sexual orientation and religion and belief data by chambers and entities and present to the Board	Amit Popat	before end Jan 18	18/10/17	<b>In hand</b>
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Ewen Macleod / Joseph Bailey	before 26 Oct 2017	18/10/17 20/09/17	<b>In hand</b> – awaiting response from the FCA <b>In hand</b> – a joint approach has been made with CILEX regulation to the FCA
23c (27 Jul 17) – ATE insurance	issue regulatory guidance on ATE insurance subject to further discussions with the APEX member concerned and taking account of the need to ensure that barristers are aware of the potential risks involved	Ewen Macleod / Joseph Bailey	before end Sept 2017	18/10/17 20/09/17	<b>In hand</b> – awaiting discussions with Bar Council before publication <b>In hand</b> – we are awaiting comments from the relevant APEX member and we want to discuss the guidance with the Bar Council before publication
17b (22 Jun 17) – Research Strategy	publish the Research Strategy on the BSB website	Corrine Charles	immediate	04/10/17 17/7/17	<b>Completed</b> – now published on website <b>In hand</b> – the Strategy is being designed and will be published w/b 24/7.

**BSB – List of Part 1 Actions  
26 October 2017**

*(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
15b (27 Oct 16) – definition of “employed barrister (non-authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	20/09/17	<b>Ongoing</b> – application being finalised
				09/06/17	<b>Ongoing</b> – additional guidance being produced to support final application to the LSB
				16/05/17	<b>Ongoing</b> – currently updating application in the light of LSB comments
				15/03/17	<b>Ongoing</b> – draft application due to be submitted to LSB by end March
				15/02/17	<b>Ongoing</b> – awaiting meeting with BACFI
				17/01/17	<b>In hand</b> – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	9/10/17	<b>Completed</b> – Board agreed not to apply for rule change at this stage. The issue may be revisited pending a wider review of PII arrangements for the self-employed Bar.
				20/09/17	<b>In hand</b> – Board being asked to make a decision at the September meeting
				18/07/17	<b>Ongoing</b> – update elsewhere on agenda 27 July
				16/05/17	<b>Ongoing</b> – TCG set up with Board and APEX members in June. Revised deadline for Board decision is September 17.

**BSB – List of Part 1 Actions**  
**26 October 2017**  
*(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
				15/02/17	<b>Ongoing</b> – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	<b>On track</b> – oral update on Part 2 agenda
				20/10/16	<b>For discussion</b> - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	<b>On track</b> – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.



**Forward Agendas****Thursday 23 Nov 2017**

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Education and Training Committee Annual Report
- Standard of Proof – response to consultation
- Scheme of Delegations
- Action Plan to reduce discrimination and barriers to retention/progression for Women at the bar
- Corporate Risk Register
- IDMB update on progress
- Statutory Interventions – operational readiness
- Regulatory risk (including relevant illustrative case studies based on risk appetite)

**Thursday 7 Dec 2017 (Board Away Day)**

- Draft Authorisation Framework (FBT)
- Barristers' use of social media

**Thursday 25 Jan 2018**

- Final Report on PII Project
- Regulatory Operations Programme including IDMB - Consultation Approval
- Positive Action Plan to address underrepresentation on the Board
- Entity Regulation Review

**Thursday 22 Feb 2018**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register

**Thursday 22 Mar 2018**

- BSB Business Plan for 2018-19
- FBT: response to consultation and policy decisions
- Scope of Practice proposals
- Authorisations Governance update

**Thursday 26 Apr 2018 (Board Away Day)****Thursday 17 May 2018 (Board to Board meeting with LeO)****Thursday 24 May 2018**

- PRP Report: includes the BSB Q4 & YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register

**Thursday 28 Jun 2018****Thursday 26 Jul 2018**

- BSB Annual Report 2017-18

**Thursday 27 Sep 2018**

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Budget Bid for 2019-20
- Corporate Risk Register
- Schedule of Board meetings Jan 2019-20

**Thursday 11 Oct 2018 (Board to Board meeting with LSB)**

**Thursday 25 Oct 18**

**Thursday 22 Nov 18**

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register

**Thursday 13 Dec 2018 (Board Away Day)**

**Thursday 31 Jan 19**

**Thursday 28 Feb 19**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Draft Business Plan for 2019-20

**Thursday 28 Mar 19**

- Business Plan for 2019-20



## Rule change application (practice area information, compliance with Money Laundering Regulations, registration of youth court work)

### Status

1. This paper is for **decision** and **approval**.

### Executive Summary

2. We have been consulting on a number of potential rule changes which would require barristers to provide information on practice area, require those who work with young people to register with the BSB, ensure compliance with new Money Laundering Regulations and make the provision of a unique email address compulsory when applying for a practising certificate. The board has discussed these issues previously (apart from the provision of a unique email address, which is an administrative requirement relating to the new My Bar system). The consultation ran over the summer and closed on 15 September. In total we received 21 responses. A full summary of responses is attached at **Annex A**.
3. There is broad acceptance of our proposals relating to practice area information and the Money Laundering Regulations (although, in response to concerns raised, will we provide additional guidance to the employed Bar on practice area requirements, as well as additional guidance and a slight change in approach on the Money Laundering Regulations to facilitate the declaration about whether an individual barrister falls within scope of the Regulations). There is also support for our proposals on the registration of barristers who work with young people, although we accept the need to more clearly define the scope of the requirement. **There is, however, some disagreement over whether registration will be or should be linked to competency and we are asking the board for a decision on this.** The arguments for and against are set out below. We received no comments on the requirement to provide a unique email address.
4. Subject to Board approval, we plan to submit a rule change application to the LSB in November. The various declarations and requirements are linked to the issue of practising certificates (i.e. barristers will need to make the necessary disclosures when applying for/renewing their practising certificate) and we want to have the rules in place in time for the 2018/19 Authorisation to Practice (AtP) exercise. This starts in February 2018. This is particularly important in relation to the Money Laundering Regulations as we need to be fully compliant with the requirement that barristers need a basic disclosure check by 26 June 2018.

### Recommendations

5. We recommend that the Board:
  - **decides** whether registration of Youth Court work and cases involving young defendants should be linked to competency, noting the Regulatory Assurance Department's preference to do so;
  - **notes** our analysis of responses below and **approves** the rule changes relating to practice area, Youth Court work, Money Laundering Regulations and the provision of a unique email address. The draft rule changes are attached at **Annex B**; and
  - **approves** the publication of the summary of consultation responses attached at **Annex A**.

## Background

### *Practice area information*

6. In March 2017, the Board approved plans to consult on the collection of practice area information based on existing BMIF categories. The consultation was launched in June 2017 and sought views on proposed new rules which would require barristers who are renewing their practising certificates to provide:
- (i) information on areas of practice;
  - (ii) the percentage of total income attributable to each area of practice for the last full calendar year; and
  - (iii) for those who are registered to undertake public access work, the percentage of total income derived from public access work for the last full calendar year.

### *Registration of Youth Court work and cases involving young defendants*

7. In February 2017, the Board noted the progress of the Youth Proceedings Advocacy Review project, and noted in discussion the recommendation that compulsory registration of all Youth Court advocates should be introduced. Our consultation in June 2017 sought views on proposed new rules which would require from 2018 that:
- (i) barristers applying for their practising certificate<sup>1</sup> register using My Bar if they are undertaking, or intend to undertake in the following 12 months, work in proceedings involving young people;
  - (ii) pupils falling within the scope of the above must register with the Supervision department when applying for their provisional practising certificate; and
  - (iii) barristers who did not register as above, and who subsequently undertake work during the year, register promptly after the event using their My Bar account.
8. Barristers would be able to unregister at any point throughout the year by logging into their My Bar account.

### *Money Laundering Regulations*

9. In May 2017, the Board noted the work of the BSB to ensure compliance with the new Money Laundering Regulations<sup>2</sup>. These Regulations require the BSB to provide a list of Trust and Company Service Providers to HMRC, to develop risk profiles for those undertaking work which engages the Regulations and to consider whether individuals undertaking this work have been convicted of a relevant offence. This latter requirement will mean that barristers are required to undertake a one off basic disclosure check (if they have not had one since call to the Bar) and to make an annual declaration of whether they have been convicted of a relevant offence.

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<sup>1</sup> Barristers applying for their first practising certificate, those who are returning following a break and those who are renewing.

<sup>2</sup> The Regulations transpose the EU Fourth Money Laundering Directive (and the Fund Transfer Regulation (FTR) which accompanies it), which seek to implement the international standards set by the Financial Action Task Force. They replaced The Money Laundering Regulations 2007 when they came into force in June 2017.

10. Our consultation in June 2017 sought views on our proposals for compliance which would require barristers to declare whether they are undertaking, or intending in the next 12 months to undertake, work which falls within the scope of paragraphs 11(d), 12 (1)(a) to (e) and (2) (a) to (d)<sup>3</sup> of the Regulations, and if they do fall within the scope of the Regulations, to declare:
- (i) whether, with reference to paragraphs 26(8) and (11)<sup>4</sup> of the Regulations, they have been convicted of a “relevant offence” as listed in Schedule 3 of the Regulations; and
  - (ii) that they will obtain a basic disclosure check<sup>5</sup>.

*Unique email address for My Bar*

11. To ensure that the new “self service” My Bar portal is secure, we consider it important that all barristers use a unique email address to access the system so they have control over their information. This will mean that personal details – such as home addresses and contact numbers – cannot be viewed or edited by other users. The Programme Board overseeing the My Bar portal agreed that a unique email address should be provided and this proposal, together with a draft rule, was included within the consultation.

### Comment

12. In total we received 21 responses to the consultation, including from the Bar Council, individual barristers, organisations and individuals connected with the Youth Justice system. A full summary of responses is attached at **Annex A**. There was broad support in principle for our proposals although a number of concerns and questions were raised which we have considered carefully. In some cases, we are proposing to issue additional guidance or to amend our requirements to take account of the comments received. And there is one point on which we are specifically seeking a board decision. This is explained more fully below.

### Practice area information

13. The majority of respondents to the consultation agreed in principle with our proposal to collect practice area information<sup>6</sup>, for the reasons outlined in our consultation paper. However, in relation to the employed Bar, a number of concerns were raised.

<sup>3</sup> 11(d) – These regulations set out the definition of a tax advisor. This has also changed from 11(4) in the draft Regulations, to 11(d) in the published Regulations.

12 (1) (a) to (e) - These regulations set out the definition of an independent legal professional and the services that would fall within the scope of the Regulations

12 (2) (a) to (d) – These regulations set out the definition of a Trust and Company Service Provider (TCSP) and the services that would fall within the scope of the Regulations

<sup>4</sup> 26 (8) - These regulations set out the obligations on the BSB as a supervisory authority when considering whether a barrister has been convicted of a relevant offence

26 (11) – These regulations set out that the BSB may wish to consider if the TCSP has been convicted of a relevant offence

<sup>5</sup> <https://www.gov.uk/disclosure-barrister-service-check/overview>

<sup>6</sup> Paragraph 3.4 of the summary of responses

*Categorising practice areas*

14. Some respondents raised concerns as to whether mirroring the BMIF categories is the most effective way to collect the data for our purposes<sup>7</sup> as the categories do not necessarily reflect the employed Bar's areas of practice. If our proposals are approved, some suggested that this should be subject to some modification for the employed Bar.
15. We have carefully considered the comments made but remain of the view that *all* barristers declare their areas of practice using the same categories and that we adopt the BMIF categories for a number of reasons:
- (i) the self-employed Bar is already declaring areas of practice using the BMIF categories when they renew their professional indemnity insurance each year. By adopting the same approach, we minimise the administrative burden for the majority of the Bar;
  - (ii) BMIF provide support to self-employed barristers when they are categorising their areas of practice;
  - (iii) we recognise that the employed Bar will not be accustomed to categorising their areas of practice in this way, and that the categories may not necessarily well reflect their areas of practice. We will therefore engage with respondents to the consultation who raised these issues, as well as Specialist Bar Associations, to explore this further. This could result in the creation of additional categories so that all work can be captured; and
  - (iv) having consistent categories will enable direct comparison between the employed and self-employed Bar in the analysis of matters related to area of practice. This would be more difficult if practice areas were classified in a different way.
16. Also, the proposed wording of rS50.5 enables the BSB flexibility to change our system of categorisation in future (if we consider this necessary), without the need for a rule change.

**Recommendation – All barristers should declare their areas of practice (initially according to the same BMIF categories)***Percentage of income*

17. Responses to the consultation highlighted that for the employed Bar, their income is derived from their employer, regardless of what areas of work they are practising in, making the allocation of income by practice area challenging<sup>8</sup>. We accept this and will develop guidance for My Bar which will ask employed barristers to allocate the percentage of their *time* spent on different areas of practice to determine the proportion of their salary.
18. The self-employed Bar already provides this information (percentage of income) and for them the administrative burden of this requirement should be minimal.

**Recommendation – All barristers should declare their percentage of income according to their areas of practice**


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<sup>7</sup> Paragraph 3.6 of the summary of responses

<sup>8</sup> Paragraph 3.12 of the summary of responses

## Registration of Youth Court work and cases involving young defendants

19. The majority of respondents supported our proposals to require applicants to register if they undertake work in proceedings involving young people<sup>9</sup> as our aim is to improve standards of advocacy in these proceedings<sup>10</sup>. However, a significant number of respondents raised some concerns with our proposals, which we have categorised into three main issues which are discussed below:

### *Scope of the rule*

20. A significant number of respondents highlighted that the scope of our proposed rule was unclear as it did not specify whether it applied to Youth Court work only, or would involve any legal proceedings with a young person (e.g. family law cases)<sup>11</sup>. As such, we recommend amending the wording of the rule, changing from ‘proceedings involving young people’ to ‘cases in the Youth Court and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates’ court, Crown Court or higher courts’. This wording is consistent with the scope of the Youth Proceedings Competences.
21. We also recommend changing the focus of the rule. Rather than asking barristers if they anticipate undertaking work in the next 12 months, we will ask if they have undertaken in the last 12 months, or whether they are currently instructed to do so.
22. We recommend changing the wording of rC64.4, updating the requirement to register ‘promptly’ to ‘within 28 days’ of undertaking the work (if the barrister did not register at AtP and subsequently undertakes this work)<sup>12</sup>.

### **Recommendations – The rules should be reworded to;**

- a. focus on Youth Court work, and cases involving young defendants; and**
- b. the rule should focus on the last 12 months (and current instructions); and**
- c. the requirement to register (if not registered at AtP) should specify that barristers should update My Bar within 28 days of undertaking the work.**

### *Competency*

23. There was an assumption from a number of respondents that registration equates to competency<sup>13</sup>. Others highlighted that if there is no process in place prior to registration to check competency, then our supervision should include an assessment of whether these barristers are maintaining their competency. These two issues relate to the Youth Proceedings Advocacy Review report, which concluded that standards of advocacy in youth proceedings are variable, and that as a result, some young people are poorly represented<sup>14</sup>. Therefore, we need to consider whether competency and registration should be linked as there were concerns that registration alone will do little to improve standards of advocacy<sup>15</sup>.

<sup>9</sup> See paragraph 3.38 of the summary of consultation responses

<sup>10</sup> Paragraph 3.7 of the *New information and registration requirements for the Bar; consultation on rule change*

<sup>11</sup> See paragraph 3.30 of the summary of consultation responses

<sup>12</sup> See paragraph 3.30 of the summary of consultation responses

<sup>13</sup> See paragraph 3.26 of the summary of consultation responses

<sup>14</sup> *The Youth Proceedings Advocacy Review: Final Report*, Ali Wigzell, Amy Kirby and Jessica Jacobson, Institute for Criminal Policy Research [v]

<sup>15</sup> See paragraph 3.40 of the summary of consultation responses

24. Whilst both the Youth Proceedings Advocacy Review and a number of respondents supported the introduction of mandatory training<sup>16</sup>, we are not seeking to introduce this at this time. We recognise the strength of the case for mandatory training to be introduced once the value of this work has been raised. However, we are mindful that the market for work in the Youth Court and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates' court, Crown Court or higher court is fragile and are keen that any additional regulation we introduce is not burdensome. At present, we feel that introducing compulsory (and likely costly) training into an area of work which already has low fees and low status is disproportionate and is likely to discourage advocates away from this kind of work.

25. We have proposed two options for the Board to consider with regards to competency of advocates undertaking this work.

*Option A – Registration requires a declaration of competency*

26. This would require the barrister to make a declaration of competency against the Youth Proceedings Competences.

27. This is the option supported by the Regulatory Assurance department as there are clear benefits for consumers and solicitors as they can have greater confidence that their barrister has the specialist skills and knowledge required for undertaking this work.

28. Similarly, it adds value to the rule as the intention is to improve standards of advocacy and this work as a specialism. This would demonstrate our commitment in this area and that we are considering proportionate ways of working towards the recommendations set out in the Youth Proceedings Advocacy Review. Without the direct link between registration and competency, there is a risk that registration alone will do little to achieve our aim.

29. However, there are risks with adopting this approach. There is potential that some barristers may need to undertake additional training to meet the Youth Proceedings Competences. Due to the low remuneration in this area of work, the potential need for additional training could act as a disincentive. Whilst the impact of this could be high as it could affect access to justice, we do not have evidence to know the likelihood of this risk.

*Option B – Registration does not require a declaration of competency*

30. We would include on the BSB register an explanation that registration is an indicator that the barrister has undertaken this type of work in the last 12 months, or is currently instructed to do so, and does not represent a level of competency or training.

31. Our extensive engagement with the youth justice sector has already raised the profile of our proposal to introduce registration. We would therefore ask these third parties to report instances of poor advocacy to us, supporting targeted engagement with barristers to improve their competency.

32. Although pupils aren't required to undertake CPD, we would expect them to demonstrate how they have established their competency to accept youth justice cases.

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<sup>16</sup> See paragraph 3.42 of the summary of consultation responses

**Recommendation – The Board choose one option, noting the Regulatory Assurance Department’s preference for option A**

*Publication on the BSB register*

33. The majority of respondents agreed that the registration should appear on the BSB register, as it supports consumers and promotes the work as a specialism<sup>17</sup>. However, a small number of respondents disagreed as there was concern that consumers could be misled as to specific training a barrister has undertaken, or that the absence of registration implies a lack of competence. They felt that guidance which explains what the registration means may be insufficient to dispel confusion<sup>18</sup>.
34. There are benefits to publishing registration on the BSB register, as identified in paragraph 28. To mitigate the risk that publishing registration may be misleading for stakeholders, we intend to provide clear guidance alongside the register on what registration means.

**Recommendation – Registration of youth court work, and cases involving young defendants, should appear on the BSB register**

**The Money Laundering Regulations**

35. Responses to this question presented two main issues which are considered in more detail below:

*Forward or backwards looking requirements*

36. One respondent to the consultation was concerned that our proposal to require a declaration is forward looking (i.e. the next 12 months), which can create difficulty for barristers to make an annual declaration accurately (due in part to the cab rank rule). Another respondent felt that a forward-looking requirement creates a gap, as barristers declare their intention at AtP and if they did not anticipate doing work which engages the Regulations, but subsequently do so before the next AtP, then they would not be subject to our rule. As we did not propose a rule requiring barristers to declare part way through the year if they did not do so at AtP, then we risk not holding accurate data about which barristers are undertaking work which engages the Regulations<sup>19</sup>.

**Recommendation – The requirement should ask barristers whether they have undertaken work in the past 12 months, are currently undertaking or have been instructed to undertake work which falls within the scope of paragraphs 11(d), 12(1)(a) to (e) and 12(2)(a) to (d) of the Regulations.**

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<sup>17</sup> See paragraph 3.50 of the summary of consultation responses

<sup>18</sup> See paragraph 3.52 of the summary of consultation responses

<sup>19</sup> See paragraph 3.64 of the summary of consultation responses

*When a basic disclosure check should be undertaken*

37. There were two main concerns from respondents. Firstly, some employed barristers are required to undergo a disclosure and barring service check during the recruitment process and therefore, requiring them to obtain a subsequent basic disclosure check imposes an additional burden and costs. Secondly, it was suggested that requiring a basic disclosure check before a barrister has undertaken work which engages the Regulations is disproportionate. It was suggested that a check should be undertaken at the point at which a barrister accepts the instructions.
38. The basic disclosure check is a one off requirement. Barristers who have already undertaken a basic disclosure check or a disclosure and barring service (DBS) check after call to the Bar will not be required to request a new check. For those barristers who do not have a check and have declared that they are currently undertaking work which engages the Regulations, or for those whose practice regularly engages the Regulations, they will be required to undertake a check before 26 June 2018. For those who have not declared at AtP but subsequently undertake work within the Regulations, it is proposed that they should request a check upon accepting instructions but only begin the work after the result of the check has been received. This has been developed following responses to the consultation as some respondents felt requiring barristers to undertake a basic disclosure check before they know whether they'll be undertaking work which engages the Money Laundering Regulations is disproportionate<sup>20</sup>.
39. Whilst barristers could be delayed in undertaking their instructions, we believe this is a proportionate way to ensure compliance with the Regulations, as it only requires barristers who didn't declare at AtP to undertake a check upon receiving instructions<sup>21</sup>.

**Recommendation – That a basic disclosure check can be undertaken when instructions that engage the Regulations are accepted, and that work should not be undertaken until the result of the check is received, for those who did not declare at AtP and/or have a prior disclosure check.**

Unique email address

40. We did not receive any comments regarding the requirement to register for My Bar with a unique email address and therefore plan to proceed with rule change as set out in the consultation paper.

**Next steps**

41. Subject to Board's approval, we intend to make an application to the LSB in November. Subject to LSB approval, we aim to make the changes in time for AtP in February 2018.

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<sup>20</sup> See paragraph 3.68 of the summary of consultation responses

<sup>21</sup> There is a new system being introduced in January 2018 for basic disclosure checks which should mean the result is available the same day.



### Resource implications

42. Introducing the proposed rules in time for AtP for 2018 will coincide with the use of the new CRM, which has been designed with this function in mind. There are therefore no significant additional resources required for implementation but there will be an additional cost if we link registration to competency.
43. With regards to practice areas, we propose a review after the first year of implementation, to ensure that our categories are appropriate.
44. The cost of undertaking a basic disclosure check will be met by barristers who fall within the scope of the Regulations. This is currently £25.

### Equality Impact Assessment

45. Separate EIAs have been completed to assess the equality impacts of introducing the proposed rule changes. There is potential for adverse impacts on access to justice from the introduction of additional requirements for those undertake Youth Court work and cases with young defendants. However, because our options impose a minimal burden, we anticipate this risk to be low.
46. We did not identify any other obvious adverse impacts and the EIA screening forms can be found in **Annex C**.

### Risk implications

47. There are two main risks with these rule changes. The first is the tight timeframe in which we need to get the rules approved by the LSB. There is little contingency time if the LSB takes the full three months to reach a decision. We also must have the basic disclosure checks for those falling within the Regulations by 26 June 2018. We have mitigated these risks by investing resource to ensure we can meet key deadlines and sharing a draft application with the LSB. The second main risk is that we are relying on barristers to make a self-declaration for each requirement. This presents the possibility that barristers are non-compliant, either because they are unaware of the new rules or do not understand the requirements. We have mitigated this by mirroring the BMIF categories for practice areas and developing additional guidance to appear on My Bar.

### Impacts on other teams / departments or projects

#### *Registration of Youth Court work and cases involving young defendants*

48. The Supervision department will sample the CPD records of those barristers who are registered, in addition to the CPD sampling of the whole profession. They will also be undertaking engagement activities with external organisations and developing guidance for the website.

*The Money Laundering Regulations*

49. The Supervision department will need to provide a register of Trust and Company Service Providers to HMRC<sup>22</sup>, check that the basic disclosure checks have been undertaken and develop risk profiles for those undertaking work which engages the Regulations. This is a requirement of the Regulations.

**Consultation**

50. A number of BSB departments worked together to issue a consultation paper in June 2017 which ran for 12 weeks, closing on 15 September 2017. This was published via a press release, featured in four Regulatory Updates, was in a number of issues of Counsel Magazine and was published on the BSB's Twitter, Facebook and LinkedIn accounts. We also engaged extensively with stakeholders regarding our Youth Proceedings work, including the Ministry of Justice, the Equality and Human Rights Commission and the Standing Committee for Youth Justice.
51. Please refer to **Annex A** for a summary of the consultation responses and the BSB's proposed response, along with a breakdown of respondents. Whilst we are not proposing to publish individual responses, we are able to make these available on request.

**Regulatory objectives***Practice area information*

52. Having practice area information will enable us to protect and promote the public interest, the interests of consumers and access to justice as it will support our understanding of the varied and diverse areas of legal work at the Bar, the realities of practice and the difficulties facing consumers within each sector and to track trends over time. Having this will enable us to take account of particular barriers and detrimental impacts and how we can address the risks in different sectors.

*Registration of Youth Court work and cases involving young defendants*

53. Requiring registration will protect and promote the public interest and the interests of consumers as young people will find it easier to identify advocates for the proceedings they are involved in. Assessing competency through CPD and/or requiring a declaration of competence will promote high standards.

*The Money Laundering Regulations*

54. Requiring barristers to declare whether they will be undertaking work which engages the Regulations will protect the public interest and the interests of consumers. This will be achieved as those who are undertaking this work will need a basic disclosure check and to make an annual declaration of whether they have been convicted of a relevant offence. Therefore, only those who are suitable to undertake this work can do so.

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<sup>22</sup> The frequency of this is currently under discussion

55. There is a risk that these measures could dissuade barristers from undertaking this work, which could adversely impact on access to justice. However, as we are requiring a one off basic disclosure check, followed by an annual declaration, we believe the risk of this occurring to be minimal.

*Unique email address*

56. The rule requiring a unique email address will not negatively impact on any of the regulatory objectives.

**Communications and Stakeholder Engagement**

57. We plan to publish the summary of consultation responses at the same time as the summary of responses to the Public and Licensed Access consultation paper, which appears elsewhere on the agenda. These will go out under cover of a single Press Release. We would also include articles in the November edition of the Regulatory Update.
58. If the rules are approved by the Board and the LSB, there will be a communications plan in place for when the rules come into force in 2018.
59. We are also developing guidance for My Bar which will provide clarity on the new requirements to ensure that the profession is aware of the requirements and how they can ensure compliance.

**Annexes**

- Annex A – Summary of consultation responses  
Annex B – Proposed rule changes  
Annex C – Equality Impact Assessments

**Lead responsibility:**

- Chelsea Howells – Policy Officer - Strategy and Policy  
Ewen MacLeod – Director of Strategy and Policy



**The Bar Standard Board’s report on responses to the consultation on new information and registration requirements for the Bar**

**1. Introduction**

- 1.1. In June 2017, the Bar Standards Board (BSB) launched a consultation on new information and registration requirements for the Bar. This proposed:
- the collection of practice area information;
  - the registration of those working in proceedings involving young people;
  - that all barristers must declare whether they will undertake work which engages the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([‘the Regulations’](#)), with additional requirements for those who do; and
  - that registration for the new My Bar portal must be with a unique email address.
- 1.2. A copy of the consultation paper is attached at Annex A. The consultation closed on 15 September 2017.
- 1.3. We received a total of 21 responses to the consultation. Responses were received from the following:
- Bar Council
  - Council of the Inns of Court
  - Criminal Bar Association
  - Crown Prosecution Service
  - Equality and Human Rights Commission
  - Government Legal Service
  - Inner Temple
  - Legal Services Consumer Panel
  - Magistrates Association
  - Ministry of Justice
  - Newham Youth Offending Team
  - Standing Committee for Youth Justice
  - Youth Justice Board
  - Youth Justice Legal Centre
  - Five barristers
  - One solicitor
  - One social worker
- 1.4. We have not published individual responses but these can be made available on request.
- 1.5. This paper summarises the key issues raised and provides the BSB’s response.

## 2. Overall summary of responses

- 2.1. The majority of respondents agreed that we should collect information on areas of practice, but there was less support for mirroring the categories used by the Bar Mutual Indemnity Fund (BMIF), particularly for those at the employed Bar.
- 2.2. The majority of respondents supported registration of those undertaking work in proceedings involving young people but many wanted the scope of the new requirement to be more clearly defined and felt that mandatory training should also be introduced to ensure that barristers who are undertaking this work are providing a competent standard of service.
- 2.3. There were a small number of responses to our proposed new declaration and associated requirements relating to the Regulations. There was some support for basic disclosure checks as this could increase consumer confidence, although several respondents questioned why all barristers falling within the scope of the Regulations should undertake a check when applying for a Practising Certificate.
- 2.4. We did not receive any responses regarding our proposal to require barristers to register for My Bar (a new online portal which barristers will use to apply for a Practising Certificate) with a unique email address.

## 3. Summary of responses by question and BSB response

### Practice areas

- 3.1. Within the consultation, we proposed to require barristers to disclose their areas of practice, the percentage of their total income attributable to each area of practice for the last full calendar year and, for those who are registered to undertake public access work, the percentage of total income derived from public access work for the last full calendar year.
- 3.2. We proposed this to support our work as a risk and evidence-based regulator as this would ensure we have more reliable information about the Bar, provide a good understanding of the dynamics of the market and of the way in which consumers engage with the market, and it would support our risk profiles of the profession.

### ***Question 1 – Do you agree with the proposal to collect areas of practice?***

- 3.3. We received a total of eight responses to this question.
- 3.4. The majority of respondents were supportive of our proposal to collect practice areas. For one respondent, they thought this information should be made publicly available and integrated into the Legal Choices website, to improve transparency for consumers.

*We welcome and support the proposal to require barristers to declare information about their type and area of practice..... Moreover, this data would provide the BSB with some insight on risks and opportunities in the legal services market, including the challenges faced by consumers..... the Panel believes that the information gathered should be made publicly available and integrated into the Legal Choices website.*

*Legal Services Consumer Panel*

## Part 1 – Public

- 3.5. Two respondents did not consider that sufficient information had been provided about how the information will be used and felt that more information should be provided.
- 3.6. A number of respondents raised concerns as to whether mirroring the categories used by BMIF for the employed Bar was the most effective way to collect the data for our purposes. A summary of these responses has been included below.

*The current categories are not very relevant for employed barristers working for the Government Legal Service. Within Government work there is often a great deal of overlap between areas. For example.....work could be categorised as public international law, (English) public law, legislation, EU law, or specific sectoral areas of law.*

*An employed barrister*

*Having considered the practice areas used by the BMIF we are of the view that a new category should be introduced to cover the work of employed barristers working within the Government Legal Service..... a category of e.g. public sector employed barrister.*

*Government Legal Service*

***BSB response***

- 3.7. **We note the concerns from some respondents about our proposals, particularly with regards to the employed Bar. We will therefore look to engage with respondents to the consultation who raised these issues, as well as Specialist Bar Associations, to see if the current categories do not include some areas of work at the employed Bar. This could result in the creation of additional categories so that all work can be captured. In the short-term, however, we will proceed using the BMIF practice area categories. This will enable a direct comparison between the employed and self-employed Bar in the analysis of matters related to area of practice. This would be more difficult if practice areas were classified in a different way.**
- 3.8. **We are currently consulting on whether we should make core information, such as practice area, publicly available and will be in a position to form a view once the consultation has closed.**

***Question 2 – Do you agree with the proposal to collect information on the percentage of income attributable to practice area?***

- 3.9. We received a total of eight responses to this question.
- 3.10. One respondent agreed with our proposal as it would help to provide a clearer understanding of the barrister's specialism and areas of expertise.
- 3.11. A number of respondents to the consultation agreed with the principle of collecting the percentage of income attributable to practice area but highlighted some concerns. For one respondent, they felt that insufficient information had been provided to enable them to support the proposal and they wanted greater transparency about how the information will be used. For another, they sought greater clarity around our enforcement processes.

*The relevant regulatory rules should make clear that the barrister's duty is simply to assign fee income to practice area categories in good faith, and that there is no "strict liability" offence for getting it wrong.*

*A self-employed barrister*

- 3.12. For other respondents, concerns were focused around the issues for employed barristers, as for such barristers all income derives from the employer regardless of the work of the previous year and which practice areas it is categorised as falling within.

*Employed barristers are typically paid a fixed annual salary by their employers, meaning their salary could be very difficult to divide into their different areas of practice. For this reason we would recommend that the employed Bar is not asked this question.*

*Bar Council*

- 3.13. One respondent highlighted that this issue also affects the self-employed Bar:

*The nature of my practice means that the vast majority of my income is from cases that fall within more than one BMIF category.....The BMIF categories do not well reflect how practitioners divide their practice areas.*

*A self-employed barrister*

### **BSB response**

- 3.14. **We note the concerns raised. The self-employed Bar is already required to provide this information to BMIF. As such we believe it is proportionate to request this information as the administrative burden on self-employed barristers is minimal as they can provide the exact same information to us that they provide to BMIF. We acknowledge that the employed Bar will typically receive their income from their employer, regardless of the work they undertake, and therefore requiring a declaration of percentage of income may be difficult. To mitigate this, we will develop guidance which will ask employed barristers to allocate the percentage of their time spent on different areas of practice to determine the proportion of their salary. The rule is drafted to give flexibility to the BSB over the precise information that it requests, so we will have flexibility to vary the areas of practice over time if the current BMIF list is not appropriate in the light of experience.**
- 3.15. **We note the concerns around the enforcement of this rule. As our published Enforcement Strategy makes clear, the BSB takes a risk-based approach to the enforcement of our rules. We recognise that practice area information may change over time We would expect barristers to submit the information about the nature of their practice in good faith and any decision to take enforcement action will be take into account the circumstances of any incorrect entry against relevant risk factors, for example dishonesty or non-cooperation with the regulator).**



***Question 3 - Do you agree with the proposal to collect information on income attributable to public access work? Please give reasons for your answer.***

- 3.16. We received a total of six responses to this question.
- 3.17. Some respondents were supportive, stating that the purpose seems legitimate and will help to provide a clearer understanding of specialisms and expertise. However, one respondent felt that we need to provide more information about how we will use the data, particularly so barristers do not feel they will be unfairly targeted by the BSB.

***BSB response***

- 3.18. **We note the concern around how data will be used. The information will be accessible to different departments within the BSB to support our risk based approach to regulation, particularly our research into the market and our risk profiles of chambers.**

**Registration of Youth Court work and cases involving young defendants**

- 3.19. We proposed to require barristers who will be working in proceedings involving young people within the next 12 months to register with the BSB. This would apply to pupils requesting a provisional practising certificate and all barristers applying to a full practising certificate.
- 3.20. We proposed that those who did not register during the annual Authorisation to Practice (AtP) exercise should register promptly after the event if they subsequently undertake this work, by contacting our Records Office.
- 3.21. We also proposed that the registration will appear on the BSB's Register.

***Question 4 – Do you foresee any practical challenges with introducing compulsory registration for Youth Court advocates? If you do, what are these?***

- 3.22. We received a total of 17 responses to this question.
- 3.23. One respondent to the consultation highlighted a potential challenge could be ensuring that clerks are fully informed of these changes, and the rationale behind the changes, as they play an important role in allocating work to barristers.
- 3.24. One respondent stated that the amount of work in the Youth Court is decreasing so it may be difficult to find a registered barrister, local to the court, who is able to attend for an urgent overnight case or to make arrangements for a lengthy trial in either the Youth Court or Crown Court. Another also highlighted the fact that the Ministry of Justice is likely to increase the number of cases heard in the Youth Court (by moving those heard in the Crown Court), and that low fees and the additional burden of registration may adversely impact on the number of barristers available to undertake this work.
- 3.25. One respondent identified that barristers are often instructed at short notice and that requiring registration may mean that inexperienced practitioners are instructed over a more competent barrister who is not registered at the time. This may amplify the provision of services by 'inexperienced practitioners'. They also felt that the scope of the rule is insufficiently clear, as it is not known whether one case is sufficient to trigger the requirement to register.

- 3.26. A number of respondents highlighted concerns that registration could be seen as a measure or indicator of competency. They queried how we will make an assessment of competency and how we will supervise this and enforce our rules.
- 3.27. One respondent also queried how we engage with pupils who are undertaking Youth Court work, as there is not a requirement for them to undertake CPD<sup>1</sup>.
- 3.28. Similarly, there were concerns that registration on its own would not prevent inexperienced barristers, or those lacking the appropriate skills, from regularly undertaking work in the Youth Court.
- 3.29. Another respondent felt it was important to ensure that the aim of registration is not lost and to provide guidance on training, supporting barristers to maintain their competency.
- 3.30. A number of respondents were unclear on the scope of the rule and whether this extended beyond the Youth Court. One respondent queried what ‘promptly after the event’ means, and sought greater clarity on the timeframes we would expect for registration.
- 3.31. One respondent felt that registration during the annual AtP exercise should be the default position and it should only be in exceptional circumstances (to be decided by the bench chair or judge) that advocates could register after the case. This position would recognise the specialism of Youth Court work and not frustrate the administration of justice. Similarly, another respondent felt that enabling retrospective registration undermines the purpose of the rule change and should only be a transitional position.

### ***BSB response***

- 3.32. **We note the concerns raised as to the scope of the rules requiring barristers to register if they are involved in proceedings involving young people. As a result, we will amend our proposals and limit the scope of our requirement to the Youth Court and to cases involving young defendants (those under the age of 18) that are heard in the adult magistrates’ court, Crown Court or higher courts. This mirrors the scope of our Youth Proceedings Competences.**
- 3.33. **We will also amend the requirement to register ‘promptly’ if the barrister did not register at AtP and subsequently undertook work in this area. Instead, the barrister will now be required to register on My Bar within 28 days of undertaking the work.**
- 3.34. **We are also changing the focus of the rule to consider the previous, rather than future 12 months, as this will mean the data is more reliable.**
- 3.35. **We consider there is a significant risk that access to justice could be frustrated if we were to remove the ability to register retrospectively and we are therefore retaining this requirement.**

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<sup>1</sup> *The Youth Proceedings Advocacy Review: Final Report*, Ali Wigzell, Amy Kirby and Jessica Jacobson, Institute for Criminal Policy Research [12] highlights that there are a small number of pupils working in the Youth Court, Magistrates and Crown Courts

- 3.36. **Within the Youth Proceedings Competences, we outline possible training providers and other resources to support practitioners tailor their training needs.**

***Question 5 - Do you agree with the proposal to require barristers undertaking work in proceedings involving young people to register?***

- 3.37. We received a total of 17 responses to this question.
- 3.38. The majority of respondents to this question agreed with our proposal to require barristers to register.
- 3.39. A significant number of respondents felt that registration could help tailor training needs (through CPD) to ensure barristers have the specialist skills required for Youth Court work. One of these respondents did highlight that this assumes prior competence, or an ability to highlight where they could benefit from further training, which is not necessarily accurate.
- 3.40. It was suggested that the rules by themselves may not improve standards of advocacy, particularly because it does not combat the issue of low remuneration for Youth Court work<sup>2</sup>. It was suggested that this could be mitigated by introducing clear guidance as to the level of training and expertise we would expect advocates to have before undertaking this work, or by requiring a declaration of competency against our Youth Proceedings Competences.
- 3.41. Another respondent was concerned that there was insufficient information provided as to how the CPD of Youth Court practitioners will be monitored. In particular, whether the BSB would require specific training to be undertaken, or whether this will be left to the barrister's judgment, with supporting guidance. It was also highlighted that our intention to monitor CPD records may deter barristers due to the concern that specific training may be expected.
- 3.42. The majority of respondents suggested that mandatory training should be introduced for all advocates practising in the Youth Court, with some suggesting this should be both pre and post qualification as a barrister.
- 3.43. One respondent put forward a number of alternatives, which included introducing a panel of advocates to ensure that all of those doing Youth Court work (including solicitors) are suitably qualified.

***BSB response***

- 3.44. **We are pleased that the majority of respondents agreed with our proposal to require registration of barristers undertaking work in the Youth Court and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates' court, Crown Court or higher court. We believe this is a proportionate step to help improve standards of competency within this sector.**
- 3.45. **We recognise the strength of the case for mandatory training to be introduced once the value of this work has been raised. However, we are mindful that the market for this work is fragile and are keen that any additional regulation we introduce is not burdensome. At present, we feel that introducing compulsory**

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<sup>2</sup> Those respondents who highlighted this did recognise that this is beyond control of the BSB.

(and likely costly) training into an area of work which already has low fees and low status is disproportionate and is likely to discourage barristers from this kind of work.

- 3.46. We note the concerns that the rules by themselves may do little to improve standards. To mitigate this, we will undertake a spot check of the CPD records for those barristers who have registered to ensure they are maintaining their competency. As barristers are already required to maintain their competency for their areas of practice, we believe the additional spot check is a proportionate approach to take as it imposes a minimal burden.
- 3.47. We recognise that pupils are not required to undertake CPD but we would expect them to ensure they are competent before taking on the work.
- 3.48. We acknowledge the benefits of linking registration to competency<sup>3</sup> and will therefore require barristers who register to declare their competency against the Youth Proceedings Competences.

**Question 6 - Do you agree that the registration should appear on the BSB Register?**

- 3.49. We received a total of 15 responses to this question.
- 3.50. The majority of respondents agreed that the registration should appear on the BSB register, as it supports consumers and promotes the work as a specialism.
- 3.51. One respondent highlighted the following:

*We also welcome the proposal to make the registration publicly available on the BSB's Barristers' register, as this would increase transparency and may aid consumer choice.*

*Legal Services Consumer Panel*

- 3.52. However, there were a number of respondents who felt that registration could potentially mislead the general public as to specific training a barrister has undertaken, or that the absence of registration implies a lack of competence, and that guidance which explains what the registration means may be insufficient to dispel confusion.

*We do not agree that registration of competence should be publicly available on the BSB Register..... Even if a lengthy explanation of registration were included on the register, we do not think that this would be sufficient to dispel any confusion.*

*Bar Council*

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<sup>3</sup> Including the increased confidence which clients could have that their barrister has the specialist skills and knowledge required for undertaking this work.

*There is also the danger that registration in accordance with the current proposals (appearing against the barrister's name on the BSB register) has the potential to mislead: a client may be misled into thinking that an absence of registration implies a lack of competence to undertake the work, or similarly believe that registration reflects a specialism in the area that is not truly held.*

*Inner Temple*

- 3.53. One respondent believed that a kite mark/accreditation could also be developed to accompany registration. This would support consumers in identifying barristers who have been assessed as competent to work within the Youth Court. Similarly, another respondent outlined the complexity of Youth Court work, which can range from minor to serious matters, and therefore, one registration with no differentiation between different cases and the expected level of competence required to advocate for each, is unhelpful.

*A kitemark could be developed to accompany registration. We regularly receive calls from parents looking for a youth justice specialist to represent their child at the police station or at court. We believe that there is a real need for defendants and their families to be able to be confident that the advocate they choose to instruct is competent in youth justice law.*

*Youth Justice Legal Centre*

*Most children and their parents will not know to check the register, or know what registration means practically. What is more, if they were to consult the register, with no accreditation requirements prior to registration, possible clients would assume that barristers are better qualified to represent them than they actually are.*

*Standing Committee Youth Justice*

- 3.54. One respondent believed that in addition to the public register, the barrister's practising certificate should also contain the registration. This is because the certificate is renewed annually and it will be a minimal burden for those no longer wishing to undertake this work.
- 3.55. Two respondents did not agree that registration should appear on the public register. Aside from those issues outlined above, there is a risk that those who are registered to undertake Youth Court work may be offered more complex cases than they are competent to handle. This creates a pressured situation for both the barrister and client, as the instructions would be returned and alternative representation would need to be sought.

**BSB response**

- 3.56. **We welcome the support for publishing registration on the BSB register. To mitigate the risk that this could mislead the public, we are developing guidance to appear alongside the registration to make clear what it means.**
- 3.57. **We are also producing guidance, which should be published at the end of 2017, which will provide support to those involved in these proceedings in terms of knowing what to expect from a barrister and what to do if things go wrong. This will include some information about the registration requirement to support clients.**
- 3.58. **Publication of registration will also enable solicitors, clients and third parties in the youth justice system to know whether the barrister is registered, and to report instances of poor advocacy or non-registration to us. We will then be able to work with the barrister, supporting them to improve.**
- 3.59. **We are not looking to introduce a kitemark at this stage as we would need to undertake research before developing this. We are not seeking to have registration appear on the practising certificate as this would mean barristers must have registered before undertaking this work. As outlined in our consultation, we believe the risk to access to justice to be too great if barristers were unable to undertake work before registration.**

**Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations)**

- 3.60. The Regulations transpose the EU Fourth Money Laundering Directive (and the Fund Transfer Regulation (FTR) which accompanies it), which seek to implement the international standards set by the Financial Action Task Force. They replaced The Money Laundering Regulations 2007 when they came into force in June 2017.
- 3.61. Within the consultation, we proposed a rule change to ensure compliance with the Regulations and would require barristers to disclose during the AtP process:
1. whether they are undertaking, or intending in the next 12 months to undertake, work which falls within the scope of paragraphs 11 (d), 12 (1)(a) to (e) and (2) (a) to (d) of the Regulations; and if they do fall within the scope of the Regulations, to declare:
    - a. whether, with reference to paragraphs 26 (8) and (11) of the Regulations, they have been convicted of a “relevant offence” as listed in Schedule 3 of the Regulations; and
    - b. that they will obtain a basic disclosure check and provide the result to the BSB.

**Question 7 - Do you foresee any practical challenges around declaring whether the work you do, or intend to carry out, falls within the scope of paragraph 11 (4)<sup>4</sup> and 12(1) (a) to (e) and 12 (2) (a) to (d) of the Regulations;? If you do, what are these?**

- 3.62. We received a total of five responses to this question.
- 3.63. One respondent was concerned that our proposed rule is forward looking, which can create difficulty for barristers to make an annual declaration accurately, due to the cab rank rule.

*The problem with the 'prospective' nature of the question is that the answer depends upon the personal view of the barrister as to what they think some hypothetical future instructions might involve. This is not a sound basis upon which to seek to build a statistical base.*

*Bar Council*

- 3.64. Another respondent raised that we did not propose a rule requiring barristers to declare if they undertake this work part way through the year. They anticipated a gap as barristers who do not declare during the annual AtP exercise and subsequently undertake work which engages the Regulations do not need to notify us of this and therefore would not undertake a basic disclosure check.
- 3.65. One respondent was supportive of our proposal to require basic disclosure checks as this could increase consumer confidence in the profession.
- 3.66. One respondent considered the reasoning for requiring a basic disclosure check was unclear, given the duty already on barristers to notify the BSB if they have been charged with a criminal offence. They would welcome a further explanation as to why this is necessary.
- 3.67. Another respondent highlighted that all of their employees undergo a disclosure and barring service check during the recruitment process and therefore, requiring them to subsequently obtain a basic disclosure check imposes an additional burden and costs.
- 3.68. One respondent suggested that the check should be undertaken at the point at which instructions are accepted. This would also allow barristers to accept instructions on an urgent basis before the check can be obtained, so as not to adversely impact the client.
- 3.69. One respondent sought clarification as to how the costs of the Office for Professional Body Supervisors (OPBAS) will be apportioned.
- 3.70. There was uncertainty from one respondent as to whether My Bar will have the facility for barristers to declare whether they have undertaken the basic disclosure check previously, thereby acknowledging that it is a one off process.

<sup>4</sup> Within our consultation paper, this was listed as paragraph 11(4). This was accurate within the draft Regulations but the paragraph numbering was amended when they came into force.

*BSB response*

- 3.71. We have carefully considered these responses, which were constructive in helping us to refine the way we pose the questions. We recognise that the nature of practice at the self-employed Bar means that, for most barristers, it is generally not possible to predict what work they intend to undertake. On reflection, we agree with the consultation responses and have amended our question to focus the declaration on work that a barrister has undertaken in the last 12 months, is currently undertaken or has accepted instructions for.
- 3.72. Under the direction of HM Treasury, the Legal Sector Affinity Group of legal sector regulators and professional bodies has published joint guidance on the Regulations which apply to the entire legal profession<sup>5</sup>. This will be supported by additional guidance and training that is being developed by the Bar Council to help barristers understand how the Regulations apply to the Bar and what type of work engages the Regulations. We have also developed FAQs which will support barristers when completing the declaration during the AtP process. We appreciate that it can be challenging to identify when the Regulations apply to the work that barristers do, but we think that, combined, this information will help barristers to better understand their obligations under the Regulations and our proposed rule.
- 3.73. We are asking barristers to obtain a basic disclosure check to meet the requirements of section 26 of the Regulations. In developing our rule, we have been in discussion with HM Treasury about our current rule that barristers are required to report to the BSB if, inter alia, they are charged with an indictable offence or are convicted of a criminal offence<sup>6</sup>. However, the Treasury has indicated that it requires, as a minimum, that a one-off basic disclosure check is completed. They have set a deadline in the Regulations of 26 June 2018 to comply.
- 3.74. We will not be requiring barristers to undertake a new check if they have had a basic disclosure check or a disclosure and barring service (DBS) check since being called.
- 3.75. We will allow barristers to obtain the basic disclosure at the point of accepting instructions for relevant work for the first time, although instructions should be accepted subject to receipt of a clean basic disclosure check. Currently, the basic disclosure check takes around 10 days, although we understand that testing is underway with new systems that will enable same day checks<sup>7</sup>.
- 3.76. Barristers who are already undertaking work that falls within the scope of the Regulations on a regular basis will need to get the check done in advance of the deadline set for compliance with HM Treasury's requirements (26 June 2018).

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<sup>5</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/anti-money-laundering-and-counter-terrorist-financing/>

<sup>6</sup> rC65.1-.8

<sup>7</sup> <https://www.gov.uk/government/news/disclosure-and-barring-service-is-introducing-new-online-services>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650127/DBS\\_News\\_October\\_17.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650127/DBS_News_October_17.pdf)



- 3.77. **Barristers will only be required to make a declaration around the basic disclosure check once, which will then be stored in our system. It will therefore not be necessary for barristers to make subsequent declarations if they have previously undertaken a check. We are producing an FAQs document to support barristers.**
- 3.78. **We anticipate that OPBAS will invoice the BSB and we will pass this cost on to all barristers through the PCF. We agree with the Bar Council's response that this is in the interests of the Bar as a whole. We do not yet know how OPBAS costs will be apportioned between regulators/Professional Body Supervisors. That will be subject to consultation that has not yet started. We want to do everything that we can to ensure that the approach that OPBAS takes to its role as oversight regulator is proportionate to the risk at the Bar. One way to demonstrate that is to collect the best data that we can to indicate the number of barristers engaged in the Regulations and the type of work that they do.**

#### **4. Equality and Diversity**

- 4.1. We asked stakeholders whether they agreed with our equality impact analysis. We received a total of four responses to this question.
- 4.2. The majority of respondents agreed that the proposals would not adversely impact upon equality and diversity. However, one respondent commented on a section of our Equality Impact Assessment (EIA) for the Regulations which highlighted that the requirement to undertake a basic disclosure check may affect those who are foreign qualified as it could be more challenging for them to satisfy the requests for documents, thereby affecting their ability to practise.

#### ***BSB response***

- 4.3. **The Supervisors Forum of regulators has raised the question of how relevant persons based overseas should be managed. The Treasury has agreed that regulators should develop their own risk based approach. We will expect barristers who have declared that their work engages the Regulations to undertake the basic disclosure checks by 26 June 2018. If a barrister has been unable to do this, we would expect them to contact the Supervision department at the BSB. We will then take a risk-based approach in response and review each matter on a case by case basis. We do not therefore anticipate that foreign lawyers will be adversely impacted as we are not proposing that a failure to obtain the basic disclosure check by 26 June 2018 will necessarily mean they must cease practice until the result is available.**



**Proposed rule changes**

The proposed amendments are included below, **in bold**, to give effect to the practice area information, the requirements under the Regulations and to provide the BSB with a unique email address:

rS59

The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the practising certificate or litigation extension (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer:

- .1 does not hold adequate insurance in accordance with Rule C76;
- .2 has failed and continues to fail to pay the appropriate practising certificate fee or litigation extension fee when due;
- .3 would be, or is, practising in breach of the provisions of Section 3.B;
- .4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them;
- .5 has not declared information on type and area of practice in a form determined by the BSB;**
- .6 has not made the declarations required by the BSB in relation to Youth Court work and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates' court, Crown Court or higher courts.**
- .7 has not made the declarations required by the BSB in relation to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;**
- .8 has not provided the BSB with a unique email address**

We are proposing the following addition to rule rC64 (in bold) which would apply to barristers who need to register and declare they are undertaking work in proceedings involving young people outside of the AtP period:

Provision of information to the Bar Standards Board

rC64

You must:

.1 promptly provide all such information to the Bar Standards Board as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and

.2 comply in due time with any decision or sentence imposed by the Bar Standards Board, a Disciplinary Tribunal, the Visitors, the High Court, an interim panel, a review panel, an appeal panel or a Fitness to Practise Panel.

.3 if you are a BSB entity or an owner or manager of a BSB entity and the conditions outlined in rS113.5 apply, give the Bar Standards Board whatever co-operation is necessary, including: .a complying with a notice sent by the Bar Standards Board or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a BSB entity (such notice may require such documents to be produced at a time and place fixed by the Bar Standards Board or its agent; and .b complying with a notice from the Bar Standards Board or its agent to redirect communications, including post, email, fax and telephones.

**.4 register within 28 days if you undertake work in the Youth Court and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates' court, Crown Court or higher courts if you did not register when applying for a practising certificate**

## Equality Impact Assessment

Equality Analysis – Practice Area Declaration

Date of Assessment	May - September 2017
Name of Policy/Function to be Assessed	<p>Rule change for new reporting and registration requirements:</p> <ul style="list-style-type: none"> <li>• Declare areas of practice; and</li> <li>• Declare the percentage of income derived from each area of practice; and</li> <li>• Declare the percentage of income derived from public access work; and</li> <li>• Provide the BSB with a unique email address to access the My Bar portal</li> </ul>
Aim/Purpose of Policy	<p>We are proposing a rule change which would require barristers to declare their areas of practice during the Authorisation to Practise (AtP) process from 2018, accompanied by the percentage of income attributable to each area.</p> <p>We are also proposing that barristers who have declared they are undertaking public access work must provide us with the percentage of their total income that this accounted for in the last full calendar year.</p> <p>By collecting this information, it will enable us to have more reliable information on the Bar and a good understanding of the dynamics of the market.</p> <p>Without such information, we are limited in our ability to be an effective risk-based regulator – one that is targeted and proportionate in our work - if we view the Bar as a homogenous set of practitioners and practices.</p> <p>The aim of proposing a new rule which would require barristers to provide us with a unique email address is to ensure their data is kept confidential, by not allowing other users (who may be using the same username if it was a general email for example) to view and edit personal details.</p>

Part 1 – Public

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	No	Religion/Belief	No		
Disability	No	Gender Reassignment	No		
Age	No	Pregnancy/Maternity	No		

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

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

We do not have evidence to suggest that the introduction of rules which would require barristers to comply with the above would result in a significant adverse impact on the protected characteristics outlined above.

We do acknowledge that some individuals may require reasonable adjustments in order to comply with these requirements and we can take steps to accommodate this on request.

We anticipate, that by having more robust data on areas of practice that we will be able to be risk based when targeting our regulatory activities. This could have a positive impact on barristers if we identify a relationship with the protected characteristics.

Equality Analysis - Youth Court registration

Date of Assessment	May - September 2017
Name of Policy/Function to be Assessed	Rule change for new reporting and registration requirements – Registration of Youth Court work and cases involving young defendants
Aim/Purpose of Policy	<p>We are proposing a rule change which would require barristers to register if they have undertaken work in the Youth Court and cases involving young defendants (under the age of 18) in the adult magistrates, Crown Court and higher courts in the last 12 months, and if they are currently instructed to do so. This will be captured either during the Authorisation to Practice (AtP) process from 2018, or if a barrister registers promptly after having undertaken the work (if they did not register during AtP).</p> <p>The aim of introducing this rule change is to ensure that we understand which barristers are undertaking such work so that we can tailor our regulatory activities accordingly.</p>

4. 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	No	Religion/Belief	No		
Disability	No	Gender Reassignment	No		
Age	No	Pregnancy/Maternity	No		

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

6. If you answered 'no' to any of the above, give your reasons why.

**Race**Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of race.

As the proposed rule would impose a minimal burden on barristers undertaking this work, we do not anticipate that introducing a registration process will have a significant adverse impact on BAME barristers.

Consumers

Young people from a White ethnic background accounted for 75% of all young people receiving a youth caution or court conviction in the year ending March 2016. Those from a Black ethnic background accounted for 9%, those from an Asian ethnic background for 5% and those from a Mixed ethnic background for 6%. The Other ethnic group made up 1%<sup>1</sup>. This is not representative of the UK population and we therefore anticipate that young people from BAME backgrounds are more likely to be impacted by the Youth Court project since they are over-represented in the youth justice system<sup>2</sup>. As we will know which barristers are undertaking work in the Youth Court and with young defendants, we will be able to tailor our supervisory activities accordingly. We aim that this will increase standards of advocacy in this area which could have a positive impact on those clients from BAME backgrounds as they are disproportionately represented in the Youth Justice system.

Consumers may be aware that they can check whether their advocate is registered to undertake work in the Youth Court and with young defendants but as we are not prohibiting barristers from representing clients if they are not registered, as they will still be covered by the general competency rules within the Handbook, we do not anticipate a negative impact will result of the publication of the registration.

**Gender**Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of gender.

As the proposed rule would impose a minimal burden on barristers undertaking this work, we do not anticipate that introducing a registration process will have a significant adverse impact on barristers on the basis of gender.

Consumers

As males are over-represented in the youth justice system<sup>3</sup> we anticipate that the increase in the standards of advocacy will have a greater impact on males.

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585897/youth-justice-statistics-2015-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf) [30-31]. The remaining 5% were unknown.

<sup>2</sup> <https://www.gov.uk/government/statistics/youth-custody-data> and [http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776\\_2\\_90558.pdf](http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_2_90558.pdf)

<sup>3</sup> <https://www.gov.uk/government/statistics/youth-custody-data>



**Disability**

Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of disability.

**Age**

Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of age.

Consumers

The report on advocacy in youth proceedings showed that a number of respondents were unlikely to continue practising in this area, with some stating the reason for this being the relatively low pay and status of Youth Court advocacy<sup>4</sup>. It could be suggested that requiring barristers to fulfil extra criteria (registration) may create a disincentive to undertake such work. However, as this will impose a minimal burden, we consider that this relatively unlikely risk is justified.

**Religion/belief**

Practitioners

We do not have evidence to suggest that this policy will adversely impact on barristers on the basis of religion/belief.

We do not have evidence to suggest that the implementation of a rule requiring registration and declaration of competency will impact of the following protected characteristics; **sexual orientation, gender reassignment, pregnancy/maternity, marriage and civil partnership.**

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<sup>4</sup> The Youth Proceedings Advocacy Review: Final Report, Ali Wigzell, Amy Kirby and Jessica Jacobson, Institute for Criminal Policy Research, 2015 [18]

Equality Analysis – The Regulations

Date of Assessment	May - September 2017
Name of Policy/Function to be Assessed	Rule change for new reporting and registration requirements – The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations)
Aim/Purpose of Policy	<p>We are proposing a rule change which would require barristers to disclose during the Authorisation to Practise (AtP) process:</p> <ol style="list-style-type: none"> <li>1. whether they have undertaken, are currently undertaking or have been instructed to undertake work which falls within the scope of the Regulations as set out in paragraphs 11 (d), 12 (1)(a) to (e) and (2) (a) to (d); and if they do, to declare:             <ol style="list-style-type: none"> <li>a. annually that they have not been convicted of a relevant offence as listed in Schedule 3 of the Regulations; and</li> <li>b. that they will undertake a basic disclosure check and provide the result to the BSB</li> </ol> </li> </ol>

7. 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	No	Religion/Belief	No		
Disability	No	Gender Reassignment	No		
Age	No	Pregnancy/Maternity	No		

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

9. If you answered 'no' to any of the above, give your reasons why.

**Race**

Foreign lawyers may not be able to satisfy the document requests for the basic disclosure checks. For these individuals, we would expect them to contact the Supervision department at the BSB. We will then take a risk-based approach in response and review each matter on a case by case basis. We do not therefore anticipate that foreign lawyers will be adversely impacted as we are not proposing that a failure to obtain the basic disclosure check by June 2018 will necessarily mean they must cease practice until the result is available.

**Disability & Age**

Barristers will be required to declare online as part of the annual AtP process. This process is predominantly conducted online which may affect those barristers who have IT literacy issues as the result of a disability and we can make reasonable adjustments if required.

Some older people may also find an online system more difficult to navigate and require more support. We can make reasonable adjustments if required.

We do not have evidence to suggest that the introduction of a rule which would require barristers to make the above disclosures and undertake a basic disclosure check will have an adverse impact on a barrister's **gender, sexual orientation, religion/belief**, whether they are, have or are proposing to undergo **gender reassignment** or whether they are **pregnant or on maternity**.



## Public Access Review - Consultation Paper and Rule Change

### Status

1. For approval.

### Executive Summary

2. The BSB conducted a review of the Public and Licensed Access (PLA) schemes in 2016. The initial results of the review were presented to the board in November 2016 and the final report approved by the board for publication in March 2017. Following this, we drafted a consultation paper setting out a series of rule changes, and related guidance changes, to implement the recommendations in the PLA review.
3. The consultation closed on 26 September. We received 27 responses in total. These were largely positive, including on our proposal not to extend the cab-rank rule to public and licensed access work. We plan therefore to proceed with the majority of the changes set out in the paper. There were, however, two proposals with which many respondents disagreed: the proposal to require disclosure by barristers of the level of Professional Indemnity Insurance (PII) cover; and the proposal to allow clients ineligible to complain to the Legal Ombudsman (LeO) to directly instruct any barrister. In response to the concerns raised we propose not to make any changes on these issues at this stage. Instead we will reflect further on the concerns and comments made as part of our work on the CMA market study (on PII) and as part of our wider review of the scope of practice rules (on allowing clients outside LeO's remit to directly instruct barristers).

### Recommendations

4. The Board is asked to:
  - a) **note** the responses summarised in the report at **Annex B**;
  - b) **approve** the rule changes and related proposals at **Annex A**; and
  - c) **approve** publication of the report at **Annex B**.

### Background

5. The BSB began a review of the PLA rules in late 2015. The main driver for the review was the fact that the PLA rules had not been revised prior to the launch of the BSB Handbook in January 2014 and may not reflect the more outcome-focused nature of the rest of the Handbook nor properly embed the consumer perspective in all aspects of our rules.
6. The results of the review were published in March this year. It concluded that the PLA schemes are largely working well, although identified a number of areas for improvement. The three key issues identified from the review were that:
  - a) some barristers and clerks may not have enough support or may be inadequately prepared to manage public access work;
  - b) there are barriers that are making some consumers unable or unwilling to access a public access provider; and
  - c) some public access barristers may be providing a poor client service.

7. A consultation paper, setting out a series of rule changes and related proposals to implement the findings of the review, was agreed by the board in June. A summary of the proposals is attached at **Annex A**. This consultation closed on 26 September and a summary of responses has been produced (set out in the report attached at **Annex B**). 27 responses were received in total, with 26 responses given via email and one response taken via a meeting with the organisation. 13 responses were received from individuals, 13 from professional organisations and one response was from a consumer organisation. Responses were received from the following:

The Academy of Experts  
 The Association of Accounting Technicians  
 The Association of Personal Injury Lawyers  
 The Bar Council  
 The Chancery Bar Association  
 The Commercial Bar Association (COMBAR)  
 The Insolvency Practitioners Association  
 The Institute and Faculty of Actuaries  
 The Institute of Barristers' Clerks  
 The Legal Practice Management Association  
 The Legal Services Consumer Panel  
 The Personal Injuries Bar Association  
 The Public Access Bar Association  
 The Royal Town Planning Institute  
 13 individuals

We can provide copies of any response to board members on request.

8. Respondents broadly supported the proposals outlined in the consultation document, although diverged on the proposals for Public Access barristers to publicise their level of PII cover and for clients ineligible to make a complaint to LeO to be allowed to instruct any barrister directly.

### **Proposals supported by respondents**

9. The proposals listed below had clear support from respondents. They were either directly agreed or unopposed by professional organisations - including the Bar Council, the Public Access Bar Association and the Chancery Bar Association – and consumer respondents, including the Legal Services Consumer Panel and an individual user of the Licensed Access scheme.
10. **We plan therefore to proceed with the following changes to the Public Access Rules:**
- a) to remove the requirement for barristers who are of less than three years' standing to maintain a Public Access log; and
  - b) to change text under rules rC125.2 and .4 to make phrasing consistent with the rest of the Handbook.

11. **We also plan to proceed with the following changes to the Licensed Access Rules and Licensed Access Recognition Regulations:**
- a) to extend the requirement to be clear with clients about the basis upon which Licensed Access instructions have been accepted to clients who are members of professional bodies;
  - b) to remove reference to a barrister's chambers being able to provide the services required by a Licensed Access client from rC135;
  - c) to remove reference to the Bar Council's Licensed Access Terms of Work from the Licensed Access Rules and Licensed Access Recognition Regulations;
  - d) to place limitations and conditions on licenses only in exceptional circumstances;
  - e) to remove the duplication of rC134.2 under Paragraph 4c) of the Licensed Access Recognition Regulations;
  - f) to remove the outdated reference to the profession as a 'referral profession' under Paragraph 6a) of the Regulations;
  - g) to remove the restriction on Licensed Access clients instructing barristers to represent them at higher courts and the Employment Appeal Tribunal;
  - h) to move the Licensed Access Recognition Regulations First and Second Schedules to guidance, so that the BSB does not need to seek LSB approval to add organisations to them; and
  - i) to devise an application process for bodies to be added to the First and Second Schedules and to only charge a fee for professional bodies to be added to the First Schedule (with the Second Schedule being preserved for ombudsman services).
12. See **Annex A** for more detail on all these proposals.
13. While two of four respondents disagreed with the proposal to move the First and Second Schedules to guidance (see 11(h) above), this was under the impression that doing so would incur a fee for organisations already listed or that the Schedules could no longer be referred to by barristers who want to know who is licensed to instruct them directly. This is not correct (as explained in the draft report at **Annex B**).
14. In previous board meetings, the board discussed at length the proposal that we do not extend the cab-rank rule to public and licensed access cases. The board might like to note that all respondents who answered this question agreed that the cab-rank rule should not be extended to PLA cases. This includes responses from professional organisations, such as the Bar Council, the Public Access Bar Association, COMBAR and the Chancery Bar Association. It also includes the Legal Services Consumer Panel. Respondents agreed that extending the cab-rank rule could result in barristers ceasing to undertake this work, thus reducing access to justice. Some responses also stated that the rule could be used to pressure barristers into taking up unmeritorious cases or taking on clients who are unsuited to public access. While the Legal Services Consumer Panel noted that there is an ostensible argument for extending the rule to public access cases for reasons of improving access to justice, it concluded that extending the rule could actually be counterproductive due to the potential for barristers to stop providing public access work as a result. **We therefore do not propose to extend the cab-rank rule to PLA work** for the reasons outlined above and in the consultation document.

## Proposals not supported by respondents

### *Disclosure of level of PII cover:*

15. The consultation document's proposal that public access barristers be required to disclose the level of PII cover to clients met with strong resistance from respondents for a number of reasons. It was felt that there would be scope for clients to erroneously use the level of cover as a metric of good quality when choosing a barrister, that disclosing the level of cover upon instruction would be misleading as Bar Mutual and others provide insurance on a 'claims made' basis and that disclosing the level of cover could encourage unmeritorious claims. **Taking into consideration the points raised by respondents to the consultation, we recommend that further action on the disclosure of insurance information be considered as part of the CMA project,** which is currently consulting on an alternative option of barristers confirming that they are covered for all of the legal services they provide.

### *Amendment of the Scope of Practice Rules to allow any client unable to complain to LeO to instruct any barrister directly*

16. Most respondents disagreed with this proposal. The main opposition to this proposal stemmed from querying whether a client's inability to complain to LeO allows the BSB to safely conclude they are sufficiently sophisticated to instruct directly. Other concerns identified by respondents include that:
- a) clients instructing in this manner may not understand the role they must take on, particularly regarding conducting litigation;
  - b) clients may not benefit from the range of safeguards the public access scheme has, including the client care letter and the obligation that barristers must inform their client if they do not conduct litigation;
  - c) clients may lack the knowledge to ensure the barrister is supplied with all the relevant documentation;
  - d) practitioners may need to conduct an assessment to establish whether their client actually meets the criteria to instruct in this manner;
  - e) practitioners may need to establish whether the individual instructing them has sufficient authority within the organisation to do so; and
  - f) barristers accepting instructions would not necessarily have benefited from public access training, which provides various benefits in terms of client care.
17. We expected a range of responses to this proposal and assumed we would probably want to explore these issues further, as part of the wider Scope of Practice review. **We therefore do not propose to make any change to the scope of practice rules at this stage.**

## Changes proposed by respondents

18. As part of the consultation, we invited comments from respondents on ways to simplify further the PLA rules. A number of good proposals were put forward which we plan to implement.



19. The Bar Council noted that rule rC131.4 clarifying that public access barristers may take proofs of evidence is now defunct. It was drafted at a time when PA barristers were unable to undertake criminal work, with the intention of clarifying that they could still take a proof of evidence in civil cases. However, this restriction no longer applies, thus the provision is redundant. **We therefore propose to remove rule rC131.4.** The Legal Practice Managers' Association suggested that rC134.2 requiring public access barristers to obtain a copy of Licensed Access clients' licence each time they receive instruction is an unnecessarily prescriptive way of ensuring that barristers check that their clients fall under the Licensed Access scheme. **We propose to replace rule rC134.2 with a generic requirement that barristers ascertain whether their client holds a licence and that guidance be added on how this could be done.** This would be in keeping with our aim to make the rules more outcomes-focused. The purpose of the rule is to ensure that barristers check that their client is licensed to give instruction directly and it does not make sense to suggest that obtaining a copy of their licence is the only way to achieve this. A barrister could, for example, check the list of licensed access clients published on our website.
20. The Public Access Bar Association highlighted that references in rules rC120.1 and rC121.1 to 'the Bar Council' are out of keeping with references elsewhere in the Scope of Practice rule and that rC129 and rC141 should require records to be retained for seven years, as simple contract claims can be filed for four months after the 6 year deadline. **We agree and plan to amend rules rC120.1 and rC121.1 to refer to 'the Bar Council (acting by the Bar Standards Board)'**. This is in keeping with phrasing elsewhere in the Scope of Practice Rules (albeit we will review this terminology as part of our wider scope of practice review in due course). **We also propose to retain rC129 in its current form and amend rC141 to require records to be retained for seven years.** We recommend this change, as although the Limitation Act 1980 sets the limitation period for bringing simple contract claims to six years, claims can be filed some months after this deadline.

### Next Steps

21. If the board is content, we will make an application to the LSB for the approved rule changes. We will also begin work to:
- a) develop an application process for bodies seeking to be added to the First and Second Schedules of the Licensed Access Recognition Regulations;
  - b) devise a transitional arrangement for licensees whose licences contain limitations and conditions that we are reviewing; and
  - c) update application forms and associated guidance for obtaining licences to align with the changes proposed within the consultation document.

### Resource implications

22. The resourcing impact of approving these changes is minimal. The establishment and maintenance of an application system for bodies seeking to put on the Schedules will require some staff resource. Amendments to the PLA Rules in the BSB Handbook will also require staff resource. This can all be managed with existing plans.

### Equality Impact Assessment

23. An Equality Impact Assessment was conducted on the initial PLA Review recommendations and found there to be no adverse impact anticipated on the basis of protected characteristics. This assessment, is attached at **Annex C**.
24. A question was also asked in the consultation on whether respondents anticipate any adverse impact on the basis of protected characteristics as a result of our proposals. No adverse impacts were raised by respondents regarding the proposals that we intend to take forward.

### Risk implications

25. We think any risks arising from approving the rule changes, and related work, are minimal.
26. There is the potential that the application for rule change to the LSB could be refused. However, the changes are relatively minor and, as the responses to the consultation show, largely uncontroversial. We know the LSB has an interest in the cab-rank rule but we have taken a “first principles” approach to this and can evidence that there is no support for changing the current arrangement nor any evidence that this would advance our Regulatory Objectives.
27. There is a risk that changes to the PLA Rules could be missed or misunderstood by consumers and the profession. To mitigate this, the update of the PLA rules will be accompanied by a communications plan.

### Impacts on other teams / departments or projects

28. Strategy and Policy will be working with colleagues in the Regulatory Assurance Department to ensure that systems to give effect to changes in the Licensed Access scheme will be in place before changes to the rules governing this scheme go live.
29. As explained above, some of the issues raised will be considered further as part of our CMA work and in the forthcoming Scope or Practice review.

### Consultation

30. Please see **Annex B** for the full analysis of consultation responses.

### Regulatory objectives

31. The recommendations will contribute to the BSB achieving its regulatory objectives of:
  - a) protecting and promoting the public interest and the interests of consumers by ensuring that relevant documentation is kept for a suitable length of time and that members of professional bodies are informed of the basis on which their barrister has accepted Licensed Access instruction, and by streamlining the Licensed Access process;
  - b) improving access to justice by maintaining the status quo of not applying the cab-rank rule to public access cases, thereby avoiding a potential negative impact on the number of barristers willing to supply these services; and
  - c) maintaining adherence to the professional principles, particularly that barristers are acting in clients’ best interests, by continuing to allow barristers to refuse work if they feel the client or case is not suitable for public access.

## Communications

32. If the board is content, the report summarising responses and setting out our plans for rule change at **Annex B** will be published on the BSB website. We will also issue a single Press Release (for both this rule change and the rule change relating to disclosure of practice areas, youth advocacy work and compliance with money laundering regulations). An article will also appear in November's Regulatory Update.

## Annexes

- Annex A: Summary of recommendations.  
Annex B: Report on Responses to the Consultation on Changes to the PLA Rules.  
Annex C: EIA of PLA Review Recommendations

## Lead responsibility:

Luke Kelly, Policy Officer  
Ewen Macleod, Director of Strategy and Policy



**Summary of recommended changes to the Public and Licensed Access (PLA) Rules**

This paper lists the proposals in the initial consultation paper (together with recommendations put forward by respondents), and our recommendations for the board.

**Cab Rank Rule**

1. We do **not** recommend that the cab rank rule be extended to cover public and licensed access work. There was consensus amongst respondents that extending the rule could lead to barristers pulling out of this work, thus impacting access to justice. Additionally, clients could use this rule to pressure barristers into taking on unmeritorious cases or clients who are unsuitable for direct access work.

**Public Access Rules**

2. We recommend that rC120.2 on additional public access training be removed, as the deadline for undertaking this training has expired.
3. We recommend that the requirement to maintain a public access log be removed. The aim of this rule was to ensure that inexperienced barristers take account of feedback, but it is not clear that it has achieved that. Furthermore, Future Bar Training changes will require all barristers to take account of feedback from the moment of qualification, making the log unnecessary.
4. We recommend that reference to ‘*other authorised litigator*’ in rC125.3 be changed to ‘*other person who is authorised to conduct litigation*’ to reflect the language used in the rest of the Handbook.
5. We recommend that the text “*not a member of a firm*” under rC125.4 be replaced with “*not employed by a regulated entity*” and the text reading “*do not take on any arranging role*” be replaced with “*(subject to Rule S26) do not undertake the management, administration or general conduct of a client’s affairs*”. In both cases, this is to reflect the language used elsewhere in the Handbook.
6. We do **not** recommend proceeding with rule change to require barristers to notify clients of the level of PII cover held. We will instead consider this issue further as part of our work on responding to the CMA recommendations in its recent market study of legal services.
7. We do **not** recommend that the requirement to retain records in relation to public access work be changed from seven to six years (as originally proposed in the consultation paper). We had proposed this change as the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years. This would also bring this rule in line with the equivalent rule relating to licensed access work. However, as claims can in fact be filed for some months after the six year deadline we now propose to leave the rule as it is (and instead amend the equivalent rule for licensed access work, see below).
8. We recommend that rC130 stating that Public Access barristers ‘*may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the Bar Standards Board*’, be removed. There is no risk posed if a barrister undertook correspondence that was not ancillary to permitted work.

Part 1 – Public

9. We recommend that rC131.4 be removed. This provision clarifies that Public Access barristers can obtain proofs of evidence in civil cases, but is no longer required because the restriction on public access barristers undertaking criminal work has been lifted.
10. We are also proposing some minor changes be made throughout to simplify and update the language used.

Licensed Access Rules

11. We recommend that rC134.2 be amended to a generic requirement that barristers ascertain whether their client is licensed. This rule currently requires barristers to obtain a copy of their client's licence when they receive instruction. It is intended to ensure that the barrister checks that their client is licensed to instruct in this manner, but obtaining a copy of the licence is not necessarily the only way to achieve this.
12. We recommend that references to the Licensed Access Terms of Work be removed from the Licensed Access Rules. The Terms of Work are written by the Bar Council, in its role as the representative body, so it is inappropriate that the regulator would continue to refer to them without a pressing public interest reason for doing so.
13. We recommend that reference to rC136-137 to be removed from rC133. Currently, this prevents barristers from being required to be clear with clients about the basis on which they have accepted Licensed Access instructions where the client is a member of a professional body. It is unclear why they would not be required to provide this information to this type of client.
14. We recommend that reference to chambers also being able to provide the services required by a Licensed Access client to be removed from rC135 on accepting Licensed Access instructions, as barristers rather than chambers are responsible for their professional work.
15. As discussed above, we recommend changing rC141 to require barristers accepting licensed access instructions to retain documents for at least seven years after the date of the last item of work done. The six year figure currently in the rules reflects the limitation period for bringing a simple contract claim, but claims can still be brought up to four months after this period.

Licensed Access Recognition Regulations

16. We recommend that paragraph 3(e) of the Licensed Access Recognition Regulations be amended to allow the Bar Standards Board to impose limitations and conditions only in exceptional circumstances. Currently, the BSB can impose limitations on the matters the client can instruct for and the courts and tribunals the barrister can appear in, which is excessive in light of the level of risk presented and can create an administrative burden when licence holders apply to have the remit of their licences amended.
17. In light of the change in paragraph 3(e), it is proposed that a transitional arrangement be created, whereby a decision is made on whether it is absolutely necessary to retain existing limitations and conditions on licences as they come up for renewal.

Part 1 – Public

18. We recommend that paragraph 4(b) be removed, as it refers to the Licensed Access Terms of Work, which are published by the Bar Council in its representative capacity. A strong public interest justification would therefore be required to retain reference to them in our rules.
19. We recommend that paragraph 4 (c) be removed, as it is a duplication of rC134.2 requiring a copy of the licence to be sent to a barrister with every set of instructions.
20. We recommend that paragraph 6(a) be removed, as it refers to barristers in independent practice operating as ‘a referral profession of specialist consultants’. This is no longer strictly accurate since the establishment of the Public Access Scheme.
21. We recommend that paragraph 7(b) be removed. This rule prevents members of professional bodies listed under the First Schedule from instructing a barrister via licensed access to represent them in the higher courts and the Employment Appeal Tribunal. This restriction is not proportionate to the risk posed.
22. We recommend that the First and Second Schedules be moved to guidance, so that the BSB does not need to apply to the Legal Services Board to amend them. This will allow the BSB to devise its own application process for organisations seeking to join the Schedules and will simplify the process for admission. An application process be devised for admission to the Schedules, as a necessary consequence of this recommendation.
23. We recommend that a fee only be levied for organisations seeking to be added to the First Schedule, as this Schedule will contain professional bodies, whose application is more likely to be driven by the interests of their members wanting to make use of the Licensed Access Scheme. The Second Schedule will be for ombudsman services, for whom it is in the public interest to they be able to instruct barrister directly.
24. We do **not** recommend any changes to the Scope of Practice rules at this stage. We had invited comments on the proposal that the rules be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). We will reflect further on the comments made and on this proposal as part of the wider review of the Scope of Practice rules schedule to start in 2018.
25. We recommend that references in rC120.1 and rC121.1 of the Handbook to ‘the Bar Council’ be changed to ‘the Bar Council (acting by the Bar Standards Board)’, as this is the convention followed elsewhere in the Handbook.





**The Bar Standards Board's report on responses to the consultation on changes to the Public and Licensed Access Rules.**

**Introduction**

1. This report summarises the responses received to the Bar Standards Board's (BSB's) consultation paper *Consultation on Changes to the Public and Licensed Access Rules*, which was published on 26 June 2017. It also outlines the BSB response to the comments made by respondents.
2. The consultation was scheduled to close on 26 September 2017, although the BSB did grant some extensions to the deadline. 27 responses were received in total.
3. The original consultation report is available at:  
[https://www.barstandardsboard.org.uk/media/1835713/public\\_and\\_licensed\\_access\\_consultation\\_paper\\_final\\_cross-references .pdf](https://www.barstandardsboard.org.uk/media/1835713/public_and_licensed_access_consultation_paper_final_cross-references.pdf)

**Public and Licensed Access Review**

4. The BSB began a review of the Public and Licensed Access (PLA) Schemes in late 2015, primarily because the PLA Rules had not been revised prior to the launch of the BSB Handbook in January 2014 and therefore predated the embedding of a more consumer-focused approach in all aspects of the BSB's work.
5. The Public and Licensed Access Review Report<sup>1</sup>, published in March 2017, found that overall the PLA Schemes promote consumer choice by expanding the ways in which the public can access legal services. However, the report identified some ways in which the PLA Schemes can be further improved in the public interest. In particular, the review found that:
  - there are barriers that make some consumers unable or unwilling to access a public access provider;
  - barristers and clerks may not have sufficient support or may be inadequately prepared to manage public access work; and
  - some public access barristers may be providing a poor client service.
6. The report made a number of recommendations to address these issues. This includes:
  - a first principles assessment of whether the cab-rank rule should apply to public access cases;
  - changes to align the public access and licensed access rules to the more outcomes-focused approach in the rest of the Handbook;
  - an assessment of whether the Scope of Practice Rules should allow any client not able to complain to the Legal Ombudsman (LeO) to instruct a barrister directly, outside of the PLA Schemes; and

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<sup>1</sup>[www.barstandardsboard.org.uk/media/1824703/public\\_and\\_licensed\\_access\\_review\\_final\\_report.pdf](https://www.barstandardsboard.org.uk/media/1824703/public_and_licensed_access_review_final_report.pdf)

- the removal of reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations.

### Consultation on changes to the Public and Licensed Access Rules

7. The BSB determined to consult on these recommendations, with the Board approving a consultation paper on 22 June 2017. The consultation was opened on 26 June 2017 and closed on 26 September. 27 responses were received in total.
8. The paper consisted of 8 questions on proposed changes to the PLA Schemes, as well as the potential implications of these changes. 26 responses were received via email and one response was based on notes taken at a meeting with BSB staff, with the respondent agreeing the text of the response.
9. Responses were received from:
  - The Academy of Experts
  - The Association of Accounting Technicians
  - The Association of Personal Injury Lawyers
  - The Bar Council
  - The Chancery Bar Association
  - The Commercial Bar Association (COMBAR)
  - The Insolvency Practitioners Association
  - The Institute and Faculty of Actuaries
  - The Institute of Barristers' Clerks
  - The Legal Practice Management Association
  - The Legal Services Consumer Panel
  - The Personal Injuries Bar Association
  - The Public Access Bar Association
  - The Royal Town Planning Institute
  - 13 individuals
10. Copies of all responses are available from the BSB on request, where respondents have given their permission for the responses to be made public.

### Overall summary of responses

11. There was broad support from the majority of respondents to our proposed changes to the PLA Rules, including the proposal that the cab-rank rule should not be extended to public and licensed access cases. Therefore, we plan to proceed with these changes as set out in the consultation paper.
12. The only areas of significant disagreement relate to our proposal that all barristers must disclose their level of professional indemnity insurance (PII) cover to public access clients and that the Scope of Practice Rules be amended to allow barristers to receive direct instruction from clients who are not eligible to complain to the Legal Services Ombudsman (outside of the PLA Rules). We have reflected on the concerns raised and as a result will not proceed with either proposal at this stage. Instead, we will consider the issue of PII disclosure further as part of our work responding to the recent Competition and Markets Authority (CMA) market study into the supply of legal services<sup>2</sup>. The comments made in response to our proposed change to the Scope of Practice Rules will be considered further as part of a wider review of the Scope of Practice Rules, which will take place in 2018.

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<sup>2</sup> <https://www.gov.uk/cma-cases/legal-services-market-study>

### Summary of responses by questions and BSB response

**Q1. Do you agree with the conclusion that the status quo should be maintained i.e. that the cab-rank rule should not be applied to Public and Licensed Access cases? If not, please state why not.**

13. We received 19 responses to this question, all of which supported the BSB's position.
14. The consultation paper (pages 11-14) outlined the rationale for not extending the cab-rank rule to PLA cases. This includes concerns that to do so would result in a reduction of barristers willing to undertake public access work, and that clients unsuitable for public access or with cases of little merit may invoke the rule with the result that instructions may be accepted where it would not be in the interests of clients.
15. All respondents who answered this question agreed with the proposal that the cab-rank rule should not be extended to PLA cases. The Personal Injuries Bar Association particularly highlighted the potential for instructions to be accepted when not in the interests of the client. The Bar Council agreed that the number of barristers undertaking public access work may decline if the cab-rank rule were enforced, noting that barristers undertaking both public and non-public access work may feel overburdened if they lose the ability to decide whether to take a public access case. The Public Access Bar Association, in supporting the proposal that the cab-rank rule should not be extended, noted that extending the rule may not effect a practical positive benefit for clients, as public access barristers are only regarded as being "instructed" after having sent a client care letter, by which point it is unlikely they intend to refuse instruction in any event. The Legal Services Consumer Panel, also in agreeing with the proposal, noted in particular the potential for clients to attempt to invoke the rule when they are unsuitable for public access, or where their cases have little merit.

### BSB Response

16. **There is a clear consensus amongst respondents that the cab-rank rule should not be extended to public access work. Therefore, the BSB intends to continue this approach and maintain the current arrangements.**

**Q2. Do you agree with the proposed changes to the Public Access Rules?**

17. The consultation paper sets out a number of minor changes to the PA Rules, largely to update and simplify the Rules, and to ensure consistency with other parts of the BSB Handbook. This includes the proposal that documents **relating to public access work should be retained for at least six, rather than seven, years. This would bring this rule in line with the equivalent rule for documents relating to Licensed Access work (Rule C141), and the fact the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years.** Three respondents answered this question, of whom two supported the proposed changes

18. COMBAR noted its support for a reduction in duration to 6 years of the period for which documents have to be retained under rC129.<sup>3</sup> The Personal Injuries Bar Association (PIBA) noted that if rC130<sup>4</sup> is to be deleted from the Handbook, then it is essential that guidance elsewhere is updated to clarify to barristers what they can and cannot do if not accredited to conduct litigation, otherwise there is scope for misunderstanding.

### BSB Response

19. **The BSB notes the comments received. The Public Access Bar Association have however noted elsewhere in this consultation that although the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years, claims can in fact be filed for some months after the deadline (see paragraph 71). As such, we propose to leave the rule relating to the retention of documents relating to public access work at seven years, and instead amend the rule relating to the retention of documents relating to licensed access work (see paragraph 76). Regarding the concerns expressed by the PIBA, the BSB notes that current *Guidance for Public Access Barristers* available on the BSB website addresses the issue of correspondence.**

### Q2a. In particular, do you agree with the proposal to... remove the requirement for barristers who are of less than three years' standing to maintain a Public Access log;

20. Fourteen respondents answered this question, ten of whom agreed with the proposal to remove the requirement for a public access log. Three respondents offered a neutral response and one respondent disagreed with the proposal.
21. Amongst those responding, a variety of reasons for agreement were given in support of our proposal. The Legal Practice Management Association felt that public access barristers are effectively supervised in the public access work they do, with the log adding little value to this. The Bar Council noted that no risk or disadvantage has been identified from the rule change in 2013 to allow barristers of under three years' standing to perform public access work. The Bar Council also noted the various other efforts to encourage barristers to obtain client feedback as mitigating the need for a log. The Legal Services Consumer Panel was reassured by the BSB's assertion that new education and training requirements for the Bar will reflect the requirements of the Professional Statement<sup>5</sup>, and that guidance on how to gather and make use of feedback will be revisited.
22. The Personal Injury Barristers Association lodged a neutral response to the proposed change, although highlighted its concern that the removal of the requirement for a log could be replaced by more burdensome regulatory requirements for all public access barristers. The Association expressed the view that:

*"If barristers are to compete fairly in the provision of legal services...the delivery of those services must not become over-encumbered with unnecessary regulation."*

<sup>3</sup> rC129 is our rule requiring public access barristers to maintain, or ensure their client maintains, copies of certain documents for at least seven years.

<sup>4</sup> rC130 is our rule permitting public access barristers to undertake correspondence when it is ancillary to work they are permitted to perform.

<sup>5</sup> The Professional Statement for Barristers describes the knowledge, skills and attributes that all barristers should have on "day one" of practice.

23. One individual respondent disagreed with the proposal, arguing that it is important to have additional checks on individuals of under three years' practice undertaking public access work, as:

*"...the work is potentially high risk in terms of managing clients, negligence and misunderstandings as to the scope of the instructions".*

### **BSB Response**

24. **The BSB notes that responses to this proposal are almost entirely positive, with only one respondent disagreeing with the proposal. While we acknowledge the importance of ensuring that barristers are adequately supervised in performing public access work, we do not agree that maintaining a feedback log is necessarily the most productive way to achieve this end. As noted in the consultation document, the BSB's Professional Statement states that "barristers should ask for and make effective use of feedback" and the BSB's Future Bar Training programme will work to ensure that education and training for the Bar reflects this requirement within the Professional Statement. We also plan to revisit guidance on client feedback and ensure that all barristers, not just those undertaking public access work with less than three years' practising experience, are encouraged to make effective use of client feedback. Considering these actions, the BSB will continue with take forward the proposal to remove the requirement to maintain a public access log.**

### **Q2b. In particular, do you agree with the proposal to.... require that the written notification given to Public Access clients discloses the level of professional indemnity insurance (PII) held by the barrister?**

25. 15 respondents answered this question, the majority of whom disagreed with the proposal. This included most professional associations and individual barristers. Two respondents agreed with the proposal and one respondent submitted a neutral response. The main arguments against the proposal were that:
- as Bar Mutual and other insurers provide insurance on a "claims made" basis, the relevant level of coverage is often that of a point several years after the work is completed;
  - disclosure of the level of insurance could encourage unmeritorious claims; and
  - other professions are not required to disclose this level of information.
26. The Legal Practice Management Association, although neutral to the proposal, noted that potential clients could be misled into thinking that the level of coverage a barrister has speaks to their suitability or quality. The Personal Injuries Bar Association, in disagreeing with the proposal, suggested that an alternative measure could be to include a statement in the "Terms for Provision of Legal Services" noting that all barristers are obliged to have minimum of £500,000 PII cover and that any additional cover can be disclosed upon request by the client. The Bar Council, in disagreeing with the proposal, argued that the recommendations of the CMA market study did not include disclosure of the level of PII cover by barristers.

27. The Personal Injuries Bar Association noted that this would have the additional benefit of administratively simplifying the “Terms for Provision of Legal Services”, which would otherwise be bespoke for each barrister.
28. The Chancery Bar Association agreed with the proposal, stating that the information would be *‘of real value to clients without imposing any onerous or unnecessary obligation on the profession’*.

### BSB Response

29. **The BSB notes the concerns expressed by respondents. We note in particular the comments that this is not a change mandated by the CMA in its recent market study of legal services and that potential clients could utilise PII information to make erroneous assumptions about the suitability of a particular service. We also note the comments of the Personal Injuries Bar Association, suggesting a more generic statement on the minimum level of cover that barristers are obliged to maintain. As a result, we will not proceed with this proposal at this stage but will instead explore the issue of PII disclosure as part of our wider work on responding to the recommendations in the CMA market study. We recently published a consultation paper on this<sup>6</sup>.**

### Q3. Have you identified any further opportunities to simplify or improve the Public Access Rules?

30. Seven respondents had comments on further opportunities to simplify or improve the PA Rules.
31. The Bar Council suggested that rC131.4<sup>7</sup> may be of limited value, given that a barrister may take a proof of evidence from a client in any case, whether public access instructed or otherwise. The Public Access Bar Association and the Institute of Barristers’ Clerks also raised this point.
32. The Legal Practice Management Association (LPMA) felt that the definition of “intermediary” could be clarified, as it can be difficult to distinguish between an individual acting as an intermediary and a person who is merely introducing a lay client.
33. The LPMA also considered the requirement under rC134.2<sup>8</sup> that Licensed Access barristers obtain a copy of their client’s licence every time they receive instructions to be unnecessarily onerous; the Association suggested that it ought to be permitted for barristers to simply check the list of Licensed Access clients that the BSB publishes to ensure that the client is able to instruct.
34. The LPMA further stated that complications are presented by the fact that only named individuals under a licence can instruct, particularly when there are staffing changes. The Association suggested that the process could be adapted to allow individuals of a certain seniority within an organisation to issue instruction under the licence.

<sup>6</sup> [https://www.barstandardsboard.org.uk/media/1852551/october\\_2017\\_-\\_policy\\_consultation\\_on\\_transparency\\_standards.pdf](https://www.barstandardsboard.org.uk/media/1852551/october_2017_-_policy_consultation_on_transparency_standards.pdf), page 31

<sup>7</sup> rC131.4 is our rule permitting public access barristers to take a proof of evidence from their clients in civil cases.

<sup>8</sup> rC134.2 requires public access barristers to obtain a copy of their client’s licence each time they receive instruction.

35. One individual respondent suggested that the BSB ought to define the “conduct of litigation”.
36. COMBAR raised the suggestion that it is not practical or cost-effective for a barrister to prepare a list of all the documents that have been sent by their client, as required under rC129.<sup>9</sup> COMBAR expressed that clients themselves should be encouraged to retain documents, particularly originals.

### **BSB Response**

37. **The BSB welcomes all the suggestions put forward.**
38. **Regarding rC131.4, it is correct that there is no longer a rule prohibiting self-employed barristers from investigating or collecting evidence. We believe that rC131.4 was drafted with the intention of clarifying to public access barristers (at a time when they were not able to undertake criminal work) that they were able to obtain a proof of evidence in civil cases. However, public access barristers are no longer prohibited from undertaking criminal work and the BSB will therefore remove this provision. The BSB also clarifies the obligations on self-employed barristers when investigating or collecting evidence in its [Guidance on Self-Employed Practice](#).**
39. **The term “intermediary” is currently defined within Part 6 of our Handbook, although this could be made clearer. The BSB will amend its Guidance for Public Access to refer to this definition when discussing intermediaries**
40. **Regarding the requirement under rC134.2, the intention behind this requirement is to ensure that barristers apprise themselves of whether the client instructing them under the Licensed Access scheme is able to do so. We will therefore amend rC134.2 to a generic requirement that barristers ascertain whether their client is licensed. This will ensure that the barrister checks that their client is licensed to instruct in this manner, but obtaining a copy of the licence is not necessarily the only way to achieve this.**
41. **Concerning the naming of individuals under licences, the BSB acknowledges that some inconveniences may arise under the current system, depending on the client’s own arrangements for issuing instructions. The BSB is currently exploring a number of opportunities to make the system for renewing licences more efficient, and the difficulties faced when named persons change will be considered as part of this exercise.**
42. **In terms of defining the “conduct of litigation”, this is defined statutorily under Schedule 2, Paragraph 4 of the Legal Services Act 2007. However, the BSB has recently published [Guidance on Conducting Litigation](#) which sets out our view on the activities that amount to conducting litigation.**
43. **Finally, the BSB agrees with COMBAR’s observation that it is desirable for clients to retain documents, particularly originals – indeed, the BSB has outlined this point under paragraph 74 of its [Public Access Scheme Guidance for Barristers](#). However, the BSB would distinguish this desirability from the ultimate**

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<sup>9</sup> rC129 is our rule requiring public access barristers to maintain, or ensure their client maintains, copies of certain documents for at least seven years.

responsibility that public access barristers have to ensure that records are kept, either by themselves or by their clients. It is not in the interests of either the client or the barrister to allow the responsibility of maintaining records to become a matter of uncertainty – this is a matter that all public access barristers should discuss with their clients, as per our guidance. In light of this, the BSB does not agree that the administrative effort of listing documents sent by the client, in instances where the client themselves have not maintained such a list, is sufficient justification to remove this rule.

**Q4. Do you agree with the proposed changes to the Licensed Access Rules? In particular, do you agree with the proposal to remove references to the Licensed Access Terms of Work? If not, please state why not.**

44. 14 respondents answered this question, eleven of whom expressed agreement with the proposal.
45. COMBAR, in supporting the proposal, queried the necessity of removing reference to the Licensed Access Terms of Work, suggesting that references to “standard terms” in rC136-137<sup>10</sup> would become defunct. They also noted that while there may be good reason for the BSB to remove reference to the Terms of Work due to their being published by the Bar Council in its representative capacity, it would be prudent to retain mention of them under rC136-137 if they are commonly used in practice.

#### **BSB Response**

46. **The BSB acknowledges the use of the Terms of Work. However, as these are drafted by the Bar Council as a representative body, it would not be appropriate to continue to cite them within our regulations unless a strong public interest argument for doing so were apparent. Barristers are able to agree their own terms with their clients and the Terms of Work will still be available for use irrespective of their being cited in the PLA Rules. In addition, references to “standard terms” will not be defunct but refer to any standard terms used by the barrister and agreed with the client. Such standard terms could include the Licensed Access Terms of Work, which will continue to be published by the Bar Council in its representative capacity. We will therefore continue as proposed to remove the references to the Licensed Access Terms of Work from the Handbook.**

**Q5. Do you agree with the proposed changes to the Licensed Access Recognition Regulations?**

47. The consultation paper sets out a range of proposed changes to the Licensed Access Recognition Regulations, including proposals to simplify and update the language throughout. 10 respondents answered this question, eight of whom agreed with the proposed changes and two of whom were neutral towards them. The Bar Council raised the additional point, although agreeing with the proposals, that it should be clarified whether individual members of professional bodies must comply with rC134.2<sup>11</sup> when instructing barristers.

<sup>10</sup> rC136 outlines steps a licensed access barrister must take if they have been instructed on terms other than the Licensed Access Terms of Work and rC137 outlines steps a licensed access barrister must take upon being instructed.

<sup>11</sup> rC134.2 requires public access barristers to obtain a copy of their client’s licence each time they receive instruction.



**BSB Response**

48. **The BSB notes that the majority of general responses are positive and will proceed with the proposed changes to the Licensed Access Recognition Regulations. In terms of the requirement under rC134.2, rC133 clarifies that this does not apply where the client is a member of one of the organisations listed in the First and Second Schedule to the Regulations. As noted under paragraph 40, the BSB will also consider taking a less prescriptive approach where clients are currently required to provide barristers with copies of licences.**

**Q5a. In particular, do you agree with the proposal to... only impose limitations and conditions on licences in exceptional circumstances?**

49. Four respondents answered this question, all of whom agreed with the proposed change. One individual respondent noted that there is always a possibility that they may need to instruct counsel on an unforeseen issue, not permitted by the terms of their licence.

**BSB Response**

50. **The BSB notes the positive response to these proposals and will continue as planned.**

**Q5b. In particular, do you agree with the proposal to... if appropriate, permit members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal?**

51. Three respondents answered this question, all of whom agreed with the proposal.

**BSB Response**

52. **The BSB notes this positive response and will continue as proposed.**

**Q5c. In particular, do you agree with the proposal to... move the First and Second Schedules to guidance?**

53. Four respondents answered this question, two of whom agreed and two who disagreed. The Association of Accounting Technicians stated that moving the First and Second Schedules to guidance:

*“...could streamline the process whereby the BSB would be required to apply to...the Legal Services Board to amend them from time to time.”*

54. The Insolvency Practitioners Association said it would oppose the move if it were to attract any fees for those already listed in the Schedules. The Association of Personal Injury Lawyers expressed concern that barristers would no longer be able to use the Schedules as a reference to check whether clients are licensed if they are moved to guidance:

*“...the schedules provide a simple way for barristers to ensure that their instructions are from those with licensed access.”*

**BSB Response**

55. **The BSB notes the concerns of the Insolvency Practitioners Association and confirms that no fees will be incurred by organisations already listed under the Schedules as a consequence of this move. We also note the concerns of the Association of Personal Injury Lawyers. However, as they can now, barristers will equally be able to use the Schedules as a reference when they are part of guidance. In light of this, the BSB will continue with the proposal to move the First and Second Schedules to guidance.**

**Q5d. In particular, do you agree with the proposal to... devise application processes for bodies to be added to the First and Second Schedules?**

56. Four respondents answered this question, three of whom agreed and one of whom was neutral to the changes. Some of those who agreed had additional comments. The Chancery Bar Association submitted its view that any application process would need to “*ensure that proper professional standards are maintained across the membership of [applicant bodies]*”. They also expressed concerns that individual members of some professional bodies may not maintain a high level of professional standards “*irrespective of the existing rules regulating them*”. The Insolvency Practitioners Association submitted that bodies recognised by the Secretary of State for the purposes of authorising insolvency (“Recognised Professional Bodies”) should be automatically admitted to the First Schedule, as they have already demonstrated their suitability to their oversight regulator.

**BSB Response**

57. **The BSB notes the general agreement that an application process should be devised for those bodies wishing to be added to the First and Second Schedules. Regarding the Chancery Bar Association’s comments, all appropriate steps will be taken to ensure that the bodies admitted to the Schedules are suitable to instruct via Licensed Access. The authorisation criteria will be drawn from the existing criteria (in paragraph 6 of the Licensed Access Recognition Regulations) which the BSB already uses to determine Licensed Access applications from individuals and organisations. Concerning the Insolvency Practitioners Association’s comments, the BSB would not consider it appropriate to exempt professional bodies from the application process on the sole basis that they have been recognised by their oversight regulator. Recognition by an oversight body is not concomitant with an assessment of a body’s suitability to instruct barristers via Licensed Access, although the oversight regulator itself could apply for recognition on behalf of its regulated community under the scheme. The BSB will therefore continue as proposed to devise an application process for admittance to the Schedules.**

**Q5e. In particular, do you agree with the proposal to... only charge a fee for applications by professional bodies to be added to the First Schedule?**

58. Four respondents answered this question, two of whom agreed with the proposals and two of whom were neutral to the proposals. All agreed in principle with the proposal that applications by professional bodies to be added to the First Schedule should incur a fee. Two had additional comments. The Insolvency Practitioners Association felt that Recognised Professional Bodies should be automatically admitted to the Schedule, and therefore no fee should be charged. The Association of Accounting Technicians submitted that fees for applications should be on a cost recovery basis only, so that

the fee is not prohibitive and therefore does not hinder access to justice. This was proposed in the consultation and is in line with our fees and charges policy.

### BSB Response

59. **The BSB notes that respondents agreed in principle that applications to be added to the First Schedule should incur a fee. Regarding the comments of the Insolvency Practitioners Association, the BSB’s response above under paragraph 57 is relevant. In terms of the Association of Accounting Technicians’ submission, the BSB would emphasise that fees will be charged only to cover the administrative cost of processing the application. This was proposed in the consultation and is in line with our fees and charges policy. In light of this, the BSB will continue as proposed and ensure that fees are levied only for applications by professional bodies to be added to the First Schedule.**

**Q6. Do you agree or disagree that, in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to the Legal Ombudsman (LeO) to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes)?**

60. 18 respondents answered this question, ten of whom disagreed with the proposed change. The key arguments put forward against changes to the Scope of Practice Rules include:

- the concern that some organisations would struggle to give instructions to a non-public access trained barrister just as much as a member of the public would;
- that, unlike under the PLA schemes, it could be unclear who (either the client or the barrister) would be responsible for establishing the suitability of the case for direct access; and
- the change would be unfair on those who have undertaken the required public access training.

COMBAR encapsulated much of the concerns of respondents in its assertion that *“the fact that a client may not be able to complain to the LeO does not mean that the client is a sophisticated user of legal services”*.

61. Eight respondents did agree with the proposal to expand direct access in this way. The Personal Injury Bar Association noted that a number of sophisticated, well-funded and experienced organisations exist within the personal injury field, who could safely instruct in this manner. The LPMA expressed that bodies who are unable to complain to LeO should be *“of sufficient size and resource to prepare cases and assess whether to engage a solicitor or go to counsel directly”*. The Chancery Bar Association expressed that larger and more sophisticated clients *“have the commercial power to deal with any shortcoming in service delivery without the need for extra protection”*.

### BSB Response

62. **The BSB notes that most respondents disagreed with this proposal. While the reasoning behind these proposals is that clients unable to complain to LeO are less likely to need the protections afforded by the PLA Rules, it is clear that most respondents do not feel that this is the case. Evident from the responses is**

that much of the opposition to this proposal stems from whether the ability or otherwise to complain to LeO is an appropriate metric by which to measure the capacity of an organisation to instruct directly. As a result of these concerns, we will not proceed with any change to the Scope of Practice Rules on these grounds at this stage. However, the BSB will consider this issue further as part of the wider review of the Scope of Practice Rules scheduled to start in 2018.

**Q7. In these scenarios of clients instructing barristers directly, have you identified any risks in not requiring compliance with the Public and Licensed Access Rules?**

63. Fifteen respondents answered this question, with ten of these highlighting potential risks with the proposal under Question 6. These included the following concerns:
- that clients instructing in this manner may not understand the role they must take on, particularly regarding conducting litigation;
  - that clients may not benefit from the range of safeguards the PLA schemes have, including the client care letter and the obligation that barristers must inform their client if they do not conduct litigation;
  - that clients may lack the knowledge to ensure the barrister is supplied with all the relevant documentation;
  - that practitioners may need to conduct an assessment to establish whether their client actually meets the criteria to instruct in this manner; that
  - practitioners may need to establish whether the individual instructing them has sufficient authority within the organisation to do so; and
  - that barristers accepting instructions would not necessarily have benefited from public access training, which provides various benefits in terms of client care.

**BSB Response**

64. **The BSB notes the additional risks highlighted by respondents. Many of these, particularly those concerning client care, are inherent to a set of regulatory arrangements that seek to lessen regulation where the client is more expert. However, it is clear that there is no consensus that a client can be said to be more expert simply because they are unable to complain to LeO. The BSB will consider these risks alongside others as part of the 2018 Scope of Practice Review.**

**Q8. Do you consider that any of the proposals in the consultation could create any adverse impacts for any of those with protected characteristics under the Equality Act 2010?**

65. Ten respondents answered this question, only one of whom noted any potential adverse impacts resulting from the proposed changes. COMBAR stated that individuals may seek to reduce the level of their PII cover when taking extended maternity leave; thus, disclosure could have a disproportionate impact on individuals on the basis of maternity.

**BSB Response**

66. **The BSB notes COMBAR’s comments regarding PII cover in the context that clients could misconstrue the level of cover as a commentary on the quality or suitability of the barrister. Our proposed response to the CMA recommendations is that barristers could simply confirm (in accordance with the BSB Handbook) that they have insurance cover for all the legal services they supply. If this proposal is implemented, there will be no risk of clients misconstruing the level of cover as a commentary on the quality or suitability of the barrister.**

**Additional comments**

67. A number of respondents lodged additional comments that did not fit within the framework of the consultation questions. These will be addressed in this section.
68. Two individual respondents suggested that there are insufficient measures within the PLA Schemes to protect consumers.
69. The Institute and Faculty of Actuaries noted that references to the Institute and Faculty as separate bodies in the Regulations should be updated, as they merged in 2010.
70. The Royal Town Planning Institute felt that its members who are involved in planning litigation should be as aware of possible of the risks and benefits of not engaging an intermediary when instructing a barrister. The Institute suggested that guidance for consumers on the risks and benefits for those using Licensed Access could be produced.
71. The Public Access Bar Association also suggested a number of miscellaneous changes, including:
- that references in rC120.1<sup>12</sup> and rC121.1<sup>13</sup> to ‘the Bar Council’ be changed to ‘the Bar Council (acting by the Bar Standards Board)’, as this is the same convention followed in the Scope of Practice Rules; and
  - that rC129<sup>14</sup> and rC141<sup>15</sup> should both require records to be retained for seven years, as while the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years, claims can in fact be filed for some months after the deadline.

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<sup>12</sup> rC120.1 outlines one of the prerequisites for a barrister to be eligible to undertake public access work

<sup>13</sup> rC121.1 outlines the requirement that a barrister of under three years’ practice have a qualified person who is registered to provide public access work ready to provide guidance to them

<sup>14</sup> <sup>14</sup> rC129 is our rule requiring public access barristers to maintain, or ensure their client maintains, copies of certain documents for at least seven years.

<sup>15</sup> rC141 is our rule requiring barristers to maintain, or ensure their client maintains, copies of certain documents for six years where instructed by a licensed access client.

**BSB Response**

72. The BSB welcomes the additional comments and observations provided.
73. Concerning the level of protection offered under the PLA schemes, the Handbook contains a range of measures intended to safeguard clients under rC122, rC125, rC127-rC131 and rC134-rC141.<sup>16</sup> The BSB has not identified sufficient evidence to suggest that there is a need to move beyond the level of protection already offered, although we will update our Public Access Guidance for Barristers and Lay Clients to include relevant reference to the Consumer Contracts Regulations 2013.
74. The BSB has already ensured that the references to the Institute and Faculty of Actuaries will be updated in the Regulations (see Annex D to the consultation).
75. In terms of the suggestion of the Royal Town Planning Institute, the authorisation process and rules already provide a significant level of protection for consumers seeking to utilise the Licensed Access route. Additionally, the Bar Council already produces [guidance](#) for clients seeking to utilise Licensed Access.
76. The BSB will adopt the miscellaneous changes suggested by the Public Access Bar Association, including requiring records to be retained for seven years.

**BSB**  
**October 2017**

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<sup>16</sup> These rules include requirements (amongst others) that public access barristers send clients a client care letter, that they ensure that they or the client retain copies of certain documentation and that they return documents to clients on demand.

### BSB Equality Analysis (EA) Screening Form

For EIA's **the term 'policy' is shorthand**. Policy needs to be understood broadly to embrace the full range of our: Policies, Frameworks, Strategies/Business Plans, strategic Activities and Decisions etc

Whether it is formally written down or whether it is an informal custom or working practices you must conduct an initial EIA. This includes new policies under development and, if relevant, can include your existing policies.

The BSB is responsible for making a wide range of strategic and operational decisions. This spans decisions about BSB policies and strategies, budget setting and service redesign right through to everyday decisions that affect individuals.

Equality Impact Analysis is a way of considering the effect of these decisions on our staff, those who work in our sector, consumers and the wider public, who belong to different protected and/or discriminated groups.

Please approach the BSB Equality and Access to Justice Team and/or read the Guidance for BSB Staff on Conducting Equality Analyses (EIAs) for further assistance.

Date of Assessment	November 2016.
Assessor Name & Job Title	Joseph Bailey (Senior Policy Officer).
Name of Policy/Function to be Assessed	Public and Licensed Access review recommendations.
Aim/Purpose of Policy	<p>The Public and Licensed Access review recommendations are as follows:</p> <p><u>Cab-Rank Rule</u></p> <p>It is recommended that the BSB assesses from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the regulatory objectives in the LSA. This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.</p> <p><u>Guidance for Barristers, Clerks and Lay Clients</u></p> <p>It is recommended that the BSB reviews its Public Access Guidance for Barristers and Clerks, redrafts as necessary and then tests the guidance to ensure it is fit for purpose. It should then be published and promoted through all of the usual channels.</p>

It is also recommended that the BSB reviews its Public Access Guidance for Lay Clients guidance in light of its now larger evidence-base and any further evidence emerging from the CMA, redrafts as necessary and then tests the guidance to ensure it remains fit for purpose. The BSB should explore whether to make provision of the guidance to lay clients mandatory for barristers. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and clients.

*Guidance on Conducting Litigation*

It is recommended that the BSB reviews its position on which tasks constitute conducting litigation, drafts standalone Guidance on Conducting Litigation and then tests the guidance to ensure it is fit for purpose. It should then be tested and promoted through all of the usual channels.

*Model Client Care Letters*

It is recommended that the BSB reviews its Public Access Model Client Care Letters in light of its evidence-base, redrafts as necessary and then tests the letters to ensure they are fit for purpose. Making provision of the guidance to lay clients mandatory for barristers could also reduce the amount of information which needs to be included in client care letters and therefore, reduce the length of the Public Access Model Client Care Letters.

It is also recommended that in reviewing its Public Access Model Client Care Letters, the BSB draws on the best practice it has identified in providing clarity and transparency on fees, and managing clients' expectations. The BSB should also draw on other best practice in this area. This should help clients to understand how the fees they are charged are calculated, what is required of them and what sort of contact with barristers they can expect. Subject to the forthcoming recommendations of the CMA, we would also anticipate considering rules that would promote greater transparency in costs before clients have engaged a barrister.

*Public Access Officer and Training for Clerks and Administrators*

It is recommended that the BSB explores whether chambers with more than one Public Access barrister should be required to appoint a Public Access Officer. Their role would be to lead on Public Access issues in chambers – particularly the administration of such work – and make themselves available to give advice and discuss any problems. The Public Access Officer could either be a barrister, or a clerk or administrator.



It is also recommended that the BSB encourages Public Access clerks and administrators to attend relevant training courses as a matter of good practice. These could include, but not be limited to, the Bar Council's Public Access training course for clerks. If the BSB does require chambers with more than one Public Access barrister to appoint a Public Access Officer, they should also be trained for the role. In the case of a barrister they could attend a Public Access training course, and in the case of a clerk or administrator they could attend another relevant training course.

#### Public Access Rules

It is recommended that the BSB redrafts the Public Access Rules in the more outcomes-focused manner of the rest of the BSB Handbook, and explores whether to replace the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback.

#### Public Access Training

It is recommended that the BSB undertakes further assessment of how well the current Public Access training course meets the required outcomes, and how well the training is being delivered in the areas which barristers have identified for improvement. These assessments should be used to produce a revised set of required outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). It is also recommended that the revised outcomes align a) with the BSB's Professional Statement, which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice, and b) with the BSB's Future Bar Training programme more widely. This seeks to make education and training for the Bar more consistent, innovative and flexible, while also removing unnecessary barriers.

#### ***Licensed Access – Recommended Options***

The main findings from both the barristers' and clients' survey are that the Licensed Access scheme is generally working well, and there are no significant issues with the way in which the scheme operates. The surveys also showed that there continues to be regulatory value in Licensed Access as a niche scheme which is distinct from Public Access. However, there do appear to be a number of ways in which the Licensed Access scheme could be made more outcomes-focused in line with the BSB's wider regulatory approach.

It is therefore recommended that the Licensed Access scheme is retained largely in its current form, with only the following changes being made:

Licensed Access Rules and Recognition Regulations

It is recommended that the BSB redrafts the Licensed Access Rules and Recognition Regulations in the more outcomes-focused manner of the rest of the BSB Handbook. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. We will explore, amongst other things, whether the Schedules should be moved to guidance.

Limitations and Conditions

It is recommended that members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This would be in keeping with redrafting the Licensed Access Recognition Regulations to reflect the more outcomes-focused manner of the rest of the BSB Handbook.

It is also recommended that the BSB explores whether the whole system for individual approval of licences continues to be necessary and/or whether it could be made more proportionate.

Scope of Practice Rules

It is recommended that the BSB explores whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). However, if this is an amendment which should be made in principle, it may be best made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).

Terms of Work

The Licensed Access Terms of Work are published by the Bar Council in their representative capacity. It is therefore recommended that the BSB removes reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations and, via the protocol for ensuring regulatory independence, requests that the Bar Council update the terms.

Part 1 – Public

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/Ethnicity	No	Sexual Orientation	No	Marriage/Civil Partnership (only in employment matters)	No
Gender (including gender identity)	No	Religion/Belief	No	Carers	No
Disability/Mental Health	No	Gender Reassignment	No	Socio Economic Status	No
Age	No	Pregnancy/Maternity	No		

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

N/A.

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

It is not considered that the Public and Licensed Access Review recommendations will have an adverse equality impact on any of the above groups. It is also considered that the review will help to promote equality of opportunity, foster good relations between different groups and embed the equality and access to justice agenda at the BSB in the following ways:

The Equality and Access to Justice Team will be engaged throughout the implementation of the recommendations, providing assurance that proper regard is given to equality and access to justice issues;

The BSB will assess from first principles whether the cab-rank rule should apply to Public Access cases, focusing in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers;

When the BSB's Public Access guidance documents and model client care letters are reviewed to ensure that they are fit for purpose, work will be undertaken to ensure that they are written in plain English, improve clients' understanding of the Public Access scheme, manage their expectations and provide clarity and transparency on fees. This will help to promote access to justice;

It is recommended that members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This will also help to promote access to justice; and

The new Public Access training regime will be assessed specifically in terms of how effectively it has embedded equality and access to justice considerations. Training providers must put in place arrangements to monitor and address equality and diversity issues. The Equality Champion for the Regulatory Assurance Department will be lending their expertise to this assessment.



**Chair's Report on Visits and External Meetings, October 2017****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**

1 October	Bar Council and Law Society Dinner at the Opening of the Legal New Year
2 October	Attended the Swearing-in Ceremony of Lord Chief Justice
2 October	Attended the Service at Westminster Abbey on Opening of the Legal New Year
2 October	Attended the Legal Breakfast given by Lord Chancellor in Westminster Hall
4 October – 8 October	Attended the International Conference of Legal Regulators in Singapore
5 October	Attended Launch by Lord Keen of British Legal Services are GREAT at British High Commissioner's Residence in Singapore
10 October	Attended SMT meeting
10 October	Attended the Longlisting panel meeting for new Lay Board members
11 October	Addressed the Inns of Court Strategic Advisory Group on Consultations on Future Bar Training and response to CMA Report
17 October	Attended GRA
23 October	Call on new President of the Supreme Court
24 October	Attended Finance Committee
26 October	Attended Chairs' Committee with Bar Council



**Director General's report - BSB meeting 26 October 2017**

For consideration and noting.

**Director General**

1. The two cross cutting programmes of work which I sponsor directly are reported on below.
2. My other key activity this month has been attendance, with Sir Andrew, at the International Conference of Legal Regulators, held in Singapore in the first week of October. The hosts were the Ministry of Law and the Law Society of Singapore, and the theme this year was “Legal Regulation in a Borderless World: Building Networks”. The Introductory Keynote address was given by the Senior Minister of State for Finance and Law, Ms Indranee Rajah SC.
3. This conference brings together legal services regulators from an increasingly wide variety of jurisdictions (albeit predominantly common law ones). Some 20 countries were represented and this of course means many more regulatory jurisdictions as e.g. lawyers in Australia, Canada and the USA are regulated on a state / province basis. All of the jurisdictions in the UK were represented but it was especially pleasing to have the (Texas-based) chair of one session specifically address the day 2 keynote speaker Lord Keen (UK) with comments applauding the BSB and SRA for their leadership of the community of legal service regulators.
4. Topics covered in plenary and workshop included
  - Legal regulation and data
  - Anti-money laundering and counter-terrorism
  - Set, scope, structure and interfaces of regulators
  - Lawyer well-being
  - Complaint handling
  - “Disruption” and on-line delivery of legal services
  - Protecting the vulnerable
  - Risk-based regulation
5. A number of the sessions afforded insights into the maturity of the BSB's approach to regulation. In several instances, there were specific and valuable lessons from other jurisdictions that will contribute to resolution of issues the BSB is grappling with currently e.g. professional indemnity insurance, use of data and evidence, or the boundaries between supervision and enforcement. I will be preparing a fuller read-out for the senior management team in due course.
6. Materials relating to the conference as well as other resources which the community of regulators contribute to, can be found on ICLR.Net. Access to most of the website (managed by the SRA) is through membership – any Board member interested in joining should get in touch with the Governance Manager.
7. Outside the conference I was able to update Singaporean colleagues on developments in relation to Bar training which might have an impact on their students, and to discuss other items of bilateral regulatory interest such as recognition of foreign lawyers in Singapore.

**Future Bar Training programme**

8. I continue to work with external stakeholders to promote understanding of the implications of FBT. I have further engagements with specific universities in the next month, and was pleased to accept an invitation to the launch of a new student Legal Clinic at King's College London: an example of a traditional university seeking to offer students a greater range of pre-qualification experience as well as contribute in a small way to unmet legal services demand. (declaration of interest: I am an alumna of KCL, though not of its Law School.) Other work on FBT under my sponsorship is reported on below.

***FBT Consultation and Rule Change***

9. Following on from the September Board meeting, the consultation was published in the first week of October. This will run until the first week of January 2018. As part of our plans to seek views from all the stakeholders involved, we are planning to stage several roadshows in key locations across England and Wales. These events are being planned, where it makes sense, to also include addressing our consultation on proposed changes following the CMA market.
10. Following the consultation closing, we plan to bring recommendations to the Board over the course of spring 2018 and to have a draft set of rules to consult on in summer 2018.
11. The present consultation contains the draft Authorisation Framework which outlines how potential Authorised Education and Training Organisations will need to demonstrate in their proposals that they fulfil the four principles of flexibility, affordability, accessibility and high standards. While the consultation is out, we will continue to refine the Framework, in parallel with the further work that will be done on the Review of Curriculum and Assessments. The team will now scope out the next set of milestones and deliverables in greater detail, both to further develop the AF itself and also to put it into operation.

***Pupillage***

12. The Crown Prosecution Service has confirmed its involvement in the Pupillage Pilot from this academic year, with Doughty Street Chambers joining in 2018/19. We have commenced working with the Government Legal Department and 23 Essex Street. Communications with other Pupillage Training Organisations (PTOs) are ongoing.
13. The Supervision Team has met with the Pupil Supervisors Network (PSN). They will assist the team in encouraging more PTOs to join the Pupillage Pilot. A roundtable session has also been arranged with the PSN in their November meeting, to obtain their views on some of the Future Bar Training consultation questions.

***Curriculum and Assessments Review***

14. The programme of consultative engagement with relevant stakeholders that is to take place over the next three months has now commenced. On 13 October the Task Completion Group met with current BPTC Providers, Inns education officers, COIC and ICCA. The draft proposals for the revised curriculum and assessment strategy were discussed and detailed written comments were also invited. Further engagement activities will take place over the next three months. During this time, the Group will also consider the compulsory training courses currently undertaken during pupillage and in the first three years of practice.



### ***Review of Advertising and Recruitment***

15. A number of policy questions related to work based learning are included in the consultation. In addition to these, the current process of recruitment and advertising for work based learning has been identified as a potential barrier to diversity within the profession.
16. The objectives of this review are to determine which elements of the current system for advertising and recruiting pupil barristers involve potential unjustifiable barriers to entry to the profession, to gather and clarify an evidence base to support any findings, establish recruitment and advertising best practice and to review, from first principles, what the appropriate methods for recruitment and advertising are for Authorised Training Organisations.
17. This has now been scoped as a separate project within FBT and the Programme Board has formally agreed to add the advertising and recruitment project to the FBT Programme.

### **Regulatory Operations Programme**

18. Detailed updates on Centralised Assessment appear in the papers for Part 2 of this month's meeting. Progress in relation to the IDMB is reported below under the Professional Conduct Department and will be covered in more detail at November's Board meeting.

### **Strategy & Policy**

#### **Professional Standards**

19. In September, the team received over 100 calls and e-mails to the Professional Standards Helpline. This brings the total number of enquiries received this calendar year to over 900.
20. The new version of the BSB Handbook will be published on 1 November. This will include changes to the parental leave rules and to the Disciplinary Tribunal Regulations, in addition to some minor changes to provide additional clarity.
21. On 2 October we launched a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. The consultation closes on 5 January 2018. As part of this we plan to deliver a series of roadshows and events around England and Wales to engage with, and seek feedback from, the profession and consumer groups. The Professional Standards Team is also overseeing a number of "pilots" of potential new transparency requirements. Design of the pilots is complete and recruitment is well underway (the October Regulatory Update included a call out for further volunteers). The results of all this work will lead into a rule change consultation in the New Year.
22. We have been running a series of workshops with the profession over October to explore solutions to the problems identified in our *Women at the Bar* report. Engagement to date has been good, conversations very rich and feedback positive. We will present the results of this work, together with our proposed next steps, to the Board in the next couple of months.

23. A consultation on changes to the Public and Licensed Access Rules closed on 26 September and an analysis of responses has been prepared. There was broad support from most respondents to the majority of our proposals. A paper on this is before the Board this month.
24. A consultation on rule changes in relation to new information and disclosure requirements also closed in September. We have prepared an analysis of responses and, pending Board approval, hope to submit an application to the LSB in November. A paper on this is before the Board this month.
25. Work on implementing the recommendations of the Immigration Thematic Review continues. We plan to test a new vulnerability “toolbox” with a small number of barristers over the winter.
26. Following the Board’s decision not to seek approval to extend the requirement to insure with BMIF to SPEs, we have written to Bar Mutual and arranged a Board-to-Board meeting to discuss next steps. Separately, our programme of work on PII continues. Our Policy Forum has met to explore some of the governance challenges the Board discussed in September and we will be scheduling a meeting of the PII TCG shortly. We plan to bring a paper updating the Board on this work in the New Year.
27. The team continues to support a number of key projects across the business. This includes support to the Records Team and Project Management Office on the development of the new Authorisation to Practise portal, MyBar. All of the guidance has been written ready for the launch of the portal scheduled for November.

### **Research**

28. Work continues on our research concerning price and service transparency provided by barristers. Interviews are now complete and the analysis of the consumer survey is in progress. We are also guiding the Professional Standards Team with the piloting of transparency arrangements and developing plans for further consumer testing.
29. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. ICPR have been appointed to carry out the research, consisting of 60 qualitative interviews with Crown Court judges. ICPR are currently analysing the completed interviews and a draft report is due by end October.
30. Pixl8 are continuing their research into users of the BSB website to inform future improvements. A survey of website users is complete, with interviews ongoing, and we will continue to work with the communications department to shape and quality assure the research going forward.
31. We have been working with the Policy team on research into the operation of the Qualified Persons rule for new practitioners, with a survey of new practitioners and Qualified Persons launched in July. A report of the findings was completed and presented to the project group in September, and the findings will be used to inform policy work on the QP rule going forward.
32. The NatCen ‘Barriers to Legal Education’ research report and a report on differential attainment between different groups on the BPTC and in obtaining pupillage will be published later this year, pending further external review and agreement of handling with stakeholders. An action plan is being developed in response to the recommendations arising from both research findings and will be published at the same time, following circulation to the Board.

33. Work continues on research to determine policies aimed at improving retention of women at the Bar, which will inform delivery of one of the BSB's Equality Objectives and address the issues raised by last year's 'Women at the Bar' research. This month we have supported the Equality & Access to Justice team in conducting four workshop sessions to explore the issues and develop potential solutions. We will analyse the themes arising from these, distilling the key findings into a report.
34. Our regular 'Research Roundup' has been updated and published on 'verity'. The roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.

## **Regulatory Risk**

### ***Risk Prioritisation***

35. The Regulatory Risk Team has continued to develop the risk prioritisation and discussed a draft with the Risk Forum, before taking a paper to SMT on how the prioritisation will work at the case by case (micro) level. Departments are developing plans on how to apply this to existing systems in the transitional period before CAT is implemented. The Regulatory Risk Team is also working through the market level risk assessment and prioritisation with SMT and will provide the Board with an update in November setting out how risk appetite is being applied. We are looking to provide knowledge sharing sessions for BSB staff over the next couple of months.

### ***Risk Roles & Responsibilities***

36. The role of the new Departmental Risk Reporting Officers (RROs) has been confirmed and the new risk officers have been appointed. The first and second lines of defence in the assurance framework are now in place. Internal auditors, as the third line of defence, have been appointed. An update of the terms of reference for GRA (as the fourth line) are being developed in conjunction with the Governance team.

### ***Risk Reporting***

37. The Regulatory Risk team have met each of the Departmental RROs to discuss their individual approaches to producing a departmental report, and a first draft of the departmental risk reports was considered by the Risk Forum at the beginning of October.
38. Statistical data from PCD, Supervision and LeO has been reviewed for potential trends in risk and will be developed further over the coming months with the RROs.
39. We look to bring together a first draft Risk Report in time for the GRA meeting on 28 November. That report will provide a high-level view of all risks, consolidating Regulatory, Strategic and Operational into one report, and will bring together the Risk Profile, statistical and departmental information, together with an overview of corporate risk.
40. Key to being able to produce a single reporting document for regulatory and corporate risks is the work to consolidate the separate impact and likelihood tables. The refreshed impact and likelihood table has been reviewed by SMT and will be presented to GRA in November, with an update to the Board in November.

***Risk Assessment***

41. The initial phase of testing has been completed and a number of issues identified for further discussion with the CAT project board in order to develop solutions (see also separate paper in Part 2).

**Equality and Access to Justice**

42. The Head of Equality & Access to Justice met with a number of external organisations to discuss the issue of inclusion within London professional bodies. The meeting was hosted by the Royal College of Nurses, and included discussions on best practice and potential future partnerships in the development of inclusion policies.
43. The Senior Policy Officer has helped organise the BSB-hosted “Women at the Bar” workshops. The three workshops in early October have been attended by practitioners, clerks, and BPTC providers, and have provided a forum for considering what steps should be taken to best promote the retention of women barristers. Further sessions are being planned with the Institute of Barristers’ Clerks and the Legal Practice Management Association to specifically consider the issue from a clerk’s and practice manager’s perspective.
44. The equality and diversity statistics of applicants to the latest round of Board recruitment have been analysed. Once finalised after completion of the recruitment exercise, the analysis will contribute to forming a Positive Action plan for future Board recruitment.

**Professional Conduct Department*****Performance Indicators***

45. Performance in Q2 has been good: overall performance against the corporate KPI, of 80% of cases completed within the service standards, was 85% in Q2, bringing the year-to-date performance to 80.1%. Also, the volume of cases closed in Q2 was higher than in Q1. As a result, the prospects for meeting the corporate KPI target at year-end are good.

***Independent decision-making body (IDMB)***

46. The IDMB project is progressing in line with the project plan and a full update on progress will be provided at the November Board meeting. The Project Team conducted the first of a series of planned pilot meetings of the proposed IDMB structure on 28 September. Feedback from the first pilot meeting will inform any adaptations required to the proposed IDMB meeting structure. The adaptations will then be tested in future pilot meetings due to held in November and December. The feedback received to date indicates that those participating in the initial meeting were enthusiastic about the new decision-making format and considered it worked well.
47. Significant progress has been made on drafting the new regulations that will support the alterations in the enforcement decision making processes. The IDMB Task Completion Group is currently considering the draft regulations and solicitors have been instructed to assist with their development.

***Staff training***

48. The PCD continues to provide support to the rest of the organisation in relation to legal knowledge. This month the Head of Investigations and Hearings provided Basic Legal Knowledge training for new staff. This corporate training, which is held once a quarter, ensures that all staff, regardless of the area they work in, have an understanding of the legal system.
49. Training was also given to existing PCD staff, on the Disciplinary Tribunal Regulations changes which are due to take effect on 1 November 2017.
50. Two members of PCD staff attended Law Care's 20th anniversary conference, "Making Mental Health Matter" on 10 October, World Mental Health Day. The conference provided interesting and thought-provoking up to date insights on the day to day stresses experienced by lawyers and how these impact on their behaviour. The key learning points from the conference will be disseminated more widely to PCD staff to promote greater understanding of such issues in handling enforcement cases. We are also considering how best to provide training on these issues for PCC members. PCD staff also made a significant contribution to a well-attended internal workshop on Wellbeing and Regulation, considering especially perspectives from practising barristers.

***Litigation***

51. The matter before the Supreme Court (an appeal against previous decisions to dismiss a claim for discrimination on the basis the claim was time-barred) was heard on 4 October 2017; judgement has not been handed down yet. This hearing attracted wider interest from the legal press due to the fact that it was the first heard by the new President, and the panel was 40% female.
52. We still await dates in relation to the discrimination claim brought by a disbarred barrister before the Employment Tribunal. In relation to the other Judicial Review about a decision not to investigate, this is still at the permission stage. Finally, the claim before the county court by a different complainant remains stayed until the end of November, pending an internal review of the decision to dismiss.

**Regulatory Assurance Department*****Anti-Money Laundering and Counter Terrorist Financing***

53. The new joint guidance for the legal sector has been completed and submitted to HM Treasury (HMT) for approval. The guidance has been published on our website and through the Regulatory Update subject to approval (as agreed with HMT): <https://www.barstandardsboard.org.uk/regulatory-requirements/anti-money-laundering-and-counter-terrorist-financing/>
54. We anticipate that HMT will publish their National Risk Assessment (NRA) in October. We have been engaging with them to ensure that it accurately reflects the level of risk in the Bar. We have a responsibility under the Money Laundering Regulations 2017 (MLRs) to reflect the results of the NRA in our own risk assessment so, once published, we will update our own risk assessment. We would anticipate bringing this to the Board and publishing it, so that it is available to the Bar, where it is appropriate to do so. Again, we are required to do this under the MLRs.
55. We continue to provide information to HMT in preparation for the Mutual Evaluation Review of the UK by the Financial Action Task Force in 2018.

56. The Financial Conduct Authority has prepared a Sourcebook (supervision manual), for the Office for Professional Body Anti Money Laundering Supervision (OPBAS), which is due to go live in January 2018. It is available here: <https://www.fca.org.uk/publication/guidance-consultation/gc17-07.pdf>. The Sourcebook is subject to consultation and we are in the process of preparing our response. We and have carried out a gap analysis against our current policies and processes.

### ***Authorisations***

57. The first 3-member Review Panel sat on 3 October and considered 5 applications for review. All first instance decisions were upheld. Assurance measures and robust information gathering mechanisms are in place to ensure the consistency and standard of decision-making is maintained.
58. Since the induction day in mid-September, the APEX has been used on 1 occasion. On an ongoing basis the type of query for which input is being sought and the expertise provided is being captured to ensure knowledge is passed onwards to the executive.

### ***Entity Regulation***

59. The entity regulation scheme continues to operate as business-as-usual. There are 77 authorised and 4 licensed bodies currently regulated by the BSB to provide reserved legal activities.

### ***Youth Proceedings***

60. We continue to meet with stakeholders to publicise the competences and encourage them to report where barristers are not meeting the expectations. We have nearly finished a series of visits to all Youth Offending Team manager quarterly meetings in the country. Youth Offending Teams are keen to work with us to share the competences and finish refining the Guide for Young People. We have met with the Equality and Human Rights Commission to discuss how we can work together following their recent intervention in a Court of Appeal case in which senior members of the Bar were criticised for not having appropriate regard to the needs of the young people involved in the case.
61. We are presenting at the Youth Justice Convention in November, hosted by the Youth Justice Board. The BSB is running a session where a panel will discuss what competent advocacy in Youth Proceedings looks like. We are in discussion with the CBA and Just for Kids Law about their involvement in our session.
62. We had a useful meeting with members of the CBA Youth Justice working party to discuss areas of common interest. Addressing advocacy standards in youth proceedings is an area of particular focus for the CBA chair this year and we have been exploring ways in which we can work together to promote this shared cause.

### ***Training Supervision and Examinations***

63. The subject boards for all three examinations taken in the summer have been held; the final board will take place on 19 October and results will be reported to the Education and Training Committee in November. The Chair's report for the spring assessments is due to be published this month: the headlines are that 57.6% of candidates passed Professional Ethics, 60.2% of candidates passed Civil Litigation and 78.2% of candidates passed Criminal Litigation.

**Communications and Stakeholder Engagement**

64. Since this report was last prepared for the Board, the following press releases have been issued:
- 19 September: A statement about Khawar Qureshi QC;
  - 26 September: a news announcement about appointing a new pool of Authorisation Review Panel members and an advisory expert;
  - 2 October: A press release to accompany the launch of our policy consultation regarding transparency standards at the Bar in Response to the CMA’s recommendations; and
  - 3 October: A press release to accompany the launch of our FBT consultation about shaping the education and training requirements for prospective barristers.
65. The Board will have seen the fortnightly media coverage that the above announcements generated.

***Work in Progress***

66. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- The publication of our reports summarising the recent consultations on new information and registration requirements for the Bar, and changes to the Public and Licensed Access rules;
  - The launch of a new version of the BSB Handbook that will include updated regulations for disciplinary tribunals, and new rules about shared parental leave for barristers; and
  - Launch communications for the new “My Bar” portal for barristers.
67. The team is also working on the following projects:
- Developing and planning a series of public engagement events and roadshows to seek views for the current CMA and FBT consultations;
  - Preparing for the BSB session and stand at the 2017 Bar Conference; and
  - Analysing the results of the recent BSB website user experience survey.

***Online and social media***

68. During September, 26,052 users visited the BSB website. At the time of writing, we have 18,069 followers on Twitter, 2,840 followers on LinkedIn and 397 followers on Facebook.

**Corporate Services*****Governance***

69. 20 requests for engagement of the APEX members who support policy development have been submitted since its inception in January. All requests but two have been accepted. One request has been accepted and completed by the member appointed (from 1 September) to give advice to staff taking decisions on authorisations to practise and waivers from requirements of the Handbook.

70. The member of APEX appointed in regulatory policy and theory, Fran Gillon, terminated her contract after commencing as the Chief Executive of the Intellectual Property Regulation Board and agreeing that this role for the regulatory arm of another approved legal services regulator was not consistent with continued engagement in APEX. This coincides with our annual review of our needs in APEX. Recruitment for a replacement for Fran, and for experts in other areas including money laundering legislation and statistical analysis, will commence in the New Year.
71. The second update meeting for members of APEX in this year is scheduled for 8 November. At the first update in April, we found that a workshop session on the CMA report elicited a range of insights and proposed approaches to the work, and the contribution of members in the group context was of considerable value to us. We are structuring future updates so that any factual information is provided in a written format prior, with time allowed for questions at the meeting, and with more time devoted to utilising their expertise on an issue where their combined knowledge and experience can provide new ideas or alternative approaches.
72. Recruitment for the next Chair of the BSB, three lay members of the Board, and one barrister member of the Governance, Risk and Audit Committee continues, with all appointments anticipated to be confirmed before year end.

### ***Corporate Services***

73. The newly appointed Internal Auditors (Crowe Clark Whitehill) have concluded their audit needs assessment, having met with all directors, key managers and the Chair of GRA. They presented their findings and recommendations to a meeting of the GRA Committee on the 17 October. A detailed audit plan will be created by the end of the year.
74. The team coordinated the development and finalisation of the 2018/19 budget bid which was submitted to the joint Finance Committee at the end of September. Work included detailed scenario planning and cost modelling exercises.
75. Work has been ongoing updating the agreement with the Resources Group to better reflect the current ways of working collaboratively.

### **Resources Group**

76. The last comprehensive report form RG was included in September's Board papers. Notable achievements in the Group this month have included:
- Go-live on the new CRM data base as part of the IM programme, and the start of comprehensive staff training.
  - A very successful launch of a Wellness Programme for staff, the initiative of a junior member of the HR team. A range of new opportunities to promote and preserve physical and mental good health have been made available. (Board members who would like further details and access to the Programme should get in touch with the Governance Manager.)
77. The HR director latest analysis has shown a welcome decrease in employee turnover which has now been sustained for 9 months.

**Vanessa Davies**  
**Director General BSB**  
**October 2017**