



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

Thursday 19 May 2016, 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> • 17 March 2016 (*)	Annex A Chair	<b>3-7</b>
5.	<b>Matters Arising (*)</b>		
6.	a) <b>Action points and progress</b>	Annex B Chair	<b>9-10</b>
	b) <b>Forward agenda</b>	Annex C Chair	<b>11</b>
7.	<b>PRP Committee Report for Q4 (January 2016 – March 2016) and year-end 2015-2016 (4.35 pm)</b>	BSB 032 (16) Anne Wright	<b>13-29</b>
8.	<b>Immigration Thematic Review Report (4.45 pm)</b>	BSB 033 (16) Sarah Charlesworth / Ewen Macleod	<b>31-73</b>
9.	<b>BSB 2015-16 Equality Objectives Progress Review and Developing New Objectives for 2017 (5.00 pm)</b>	BSB 034 (16) Amit Popat / Jessica Prandle	<b>75-91</b>
10.	<b>Youth Proceedings Advocacy Review: BSB Response (5.10 pm)</b>	BSB 035 (16) Oliver Hanmer	<b>93-99</b>
11.	<b>Fees and Charges - update (5.30 pm)</b>	BSB 036 (16) Viki Calais	<b>101-119</b>
12.	<b>Chair's Report on Visits and Meetings: Mar-May 2016 (*)</b>	BSB 037 (16) Chair	<b>121-122</b>
13.	<b>Director General's Report (5.40 pm)</b>	BSB 038 (16) Vanessa Davies	<b>123-132</b>

*\*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](#) before the meeting.*

**BSB 190516**

14. **Any other business**

15. **Date of next meetings**

- Thursday 23 June 2016

16. **Private Session**

**John Picken**

**Governance Officer**

[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)

12 May 2016

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

**BSB 190516**

<p><b>BAR STANDARDS BOARD</b></p>
-------------------------------------------

REGULATING BARRISTERS

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

Thursday 17 March 2016, Room 1.1, First Floor  
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Naomi Ellenbogen QC (Vice Chair)  
Rolande Anderson  
Rob Behrens CBE  
Aidan Christie QC  
Malcolm Cohen  
Justine Davidge – items 7-13  
Judith Farbey QC  
Andrew Mitchell QC  
Tim Robinson  
Nicola Sawford  
Adam Solomon  
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)  
Chantal-Aimée Doerries QC (Chairman, Bar Council)  
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)  
Joseph Bailey (Governance Policy & Project Officer)  
Nicholas Bungard (Risk Analyst)  
Viki Calais (Head of Corporate Services)  
Joanne Dixon (Manager, Qualification Regulations)  
Oliver Finlay-Smith (Communications and Public Engagement Officer)  
Oliver Hanmer (Director of Supervision)  
Sara Jagger (Director of Professional Conduct)  
Andrew Lamberti (Communications Manager)  
Bernard MacGregor (Senior Supervision and Authorisation Officer) – items 1-7  
Ewen Macleod (Director of Regulatory Policy)  
John Picken (Governance Officer)  
Amit Popat (Policy Manager – Equality and Access to Justice)  
Pippa Prangley (Head of Regulatory Risk)  
Amanda Thompson (Director for Governance Reform)  
Simon Thornton-Wood (Director of Education & Training)  
Wilf White (Director of Communications and Public Engagement)
- Press:** Nick Hilborne (Legal Futures)  
Chloe Smith (Law Society Gazette)

## Part 1 - Public

**Item 1 – Welcome**

1. The Chair welcomed Members to the meeting. He also introduced two new members of staff:
  - Wilf White – Director of Communications and Public Engagement;
  - Oliver Finlay-Smith – Communications and Public Engagement Officer.

**Item 2 – Apologies**

2.
  - Professor Andrew Sanders;
  - Emily Windsor (Special Adviser);
  - Andrew Langdon QC (Vice Chairman, Bar Council);
  - Lorinda Long (Treasurer, Bar Council).

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

3. Vanessa Davies made a declaration for hospitality received regarding her attendance at the Family Law Bar Association Annual Dinner at Middle Temple (26 February 2016).

**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 25 February 2016.

**Item 5 – Matters Arising**

5. None.

**Item 6a – Action points and progress**

6. The Board noted progress on the action list.

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

7. Vanessa Davies confirmed that Members would be contacted about the start time for the Board Away Day (21 April 2016) after the Easter break. It is also likely that some of the items listed for the May meeting will be moved to June. This is to achieve a better balance.

**Item 7 – BSB Strategic Plan 2016-19 and Business Plan for 2016-17**  
BSB 024 (16)

8. Members received the following tabled items:
  - a design proof version of both the above plans;
  - the text of the Chairman’s Foreword to the Strategic Plan (this was also circulated electronically to Members prior to the meeting).
9. Vanessa Davies commented as follows:
  - the latest drafts include amendments suggested by the Planning, Resources and Performance Committee;
  - the plans will be published prior to Easter but there will be time to address any further amendments up until the end of Friday 19 March 2016;
  - hard copies will be sent to key stakeholders and a formal launch event will take place on 12 April 2016 at the Royal College of Surgeons (5.30 pm).
10. Members welcomed the re-drafts and commented as follows:
  - the feedback from respondents on risk themes suggests we need to explain the issues around risk based regulation more thoroughly;
  - the table in page 9 of the business plan (design proof version) refers to “strategic programmes” but this term is used in a different context in the strategic plan.

## Part 1 - Public

11. Vanessa Davies confirmed that:
- the strategic plan now incorporates a fuller explanation of risk based regulation;
  - to aid clarity, the term “strategic programmes” will be removed from the business plan table.
- VLD to note
12. **AGREED**
- a) to publish the Plans subject to final copy proofing and lay-out, in the week of 21 March 2016.
- b) to note the launch event on 12 April 2016.
- VLD

**Item 8 – Future Bar Training – Continuing Professional Development Consultation Report**

BSB 025 (16)

13. Bernard MacGregor highlighted the following:
- a majority of consultation respondents agreed that compulsory CPD activities were not necessary and that CPD completed in one year should be taken into account in future years;
  - we received a positive response from the LSB’s Consumer Panel;
  - there were calls for further guidance as to how learning objectives should be drafted. This has since been identified as a developmental priority for the scheme and will be addressed in due course.
14. The BSB also ran a pilot exercise for the new scheme. In terms of feedback, the salient points were:
- planning learning objectives is possible for barristers to do but the main point for them to consider is what outcomes they want to achieve by the end of the year – not every CPD activity need be (or can be) planned in advance;
  - the feedback has helped in the formulation of worked examples for good and not so good practice in preparing learning objectives;
  - the revised scheme offers greater flexibility to barristers in terms of what is permissible which has benefits in terms of equality and diversity eg those on maternity leave who can now comply with CPD requirements without necessarily seeking waivers;
  - the “reflection stage” of the pilot was well received by participants and enabled good explanations of the choice of CPD and how these linked to objectives.
15. Regarding next steps, the following points were mentioned:
- the Education and Training Committee will be asked to provide input to revised guidance material. This will be presented to the Board in May, after which there will be a consultation period with the outcome reported to the Board in September 2016;
  - a communications plan will be drafted to raise awareness so that the profession is fully informed by the proposed start date of January 2017.
16. Members commented as follows:
- the focus in improved guidance is welcome. The pressures on barristers mean they have little time available so we need to give clear, easily comprehensible advice on the regulatory requirements for CPD. Moreover many will not be familiar with underpinning concept of planning learning objectives;
  - we need to respond to the comments from the Inns of Court (paragraph 95 of Annex 1);

## Part 1 - Public

BMcG to  
note

- one of the better features of the current system is that it rewards contributions to the profession through enhanced CPD points eg teaching. We need to ensure this incentive remains in the new scheme;
  - there is still a lot to complete before the projected start date of January 2017 which prompts the question as to whether we have enough time;
  - the negative response to question 5 about requiring a barrister to reflect on CPD activities at the end of a CPD year is disappointing;
  - we need encourage take up of the new scheme in a positive way so should concentrate on education and supervisory responses to non-compliance rather than enforcement;
  - the outcome of the pilot is encouraging but we should be aware of the inherent enthusiasm of early adopters. It may take long to achieve a full buy-in from the profession. It may be worth arranging a follow up survey in two or three years' time.
17. In response, the following comments were made:
- the Inns of Court are a key audience and will feature strongly in the communications plan;
  - the LSB is already aware of our impending rule change application regarding CPD and it accords with its outcomes focused philosophy. We remain on track with the project so should be able to meet the January 2017 deadline;
  - the comments on the preferred approach to the regulation of CPD are reflected in the report – enforcement is regarded as a last resort;
  - the comments about a follow up survey are noted and could feature in a future business plan.
18. **AGREED**
- a) to note the consultation report and pilot feedback.
  - b) to approve the next steps for the implementation of the new CPD scheme.
- Item 9 – Chair’s Report on Visits and Meetings (Feb-Mar 16)**  
BSB 026 (16)
19. **AGREED**  
to note the report.
- Item 10 – Director General’s Report**  
BSB 027 (16)
20. Vanessa Davies highlighted the following:
- the end of year performance appraisals will take place over April. This will include 360 degree appraisal in the case of SMT members and senior managers one level below. In consequence Board Members may be approached to give feedback on senior staff performance;
  - the annual Authorisation to Practise (AtP) exercise is progressing well and the report notes with thanks the excellent contribution of the Records Team.
21. Aidan Christie QC referred to last year’s AtP round where a number of pupils were not contacted even though they required practising certificates. Vanessa Davies gave an assurance that this had been satisfactorily addressed.
22. Nicola Sawford referred to staff training on risk (paragraph 6 of the report) and asked about similar opportunities for Board Members. Vanessa Davies confirmed that Members are welcome to join staff training sessions but that an option remains for a Board only session if there is sufficient demand.

**Part 1 - Public**

23. In response to a question about entity authorisation, Oliver Hanmer confirmed that all those entities currently regulated by the BSB had chosen to renew.

24. **AGREED**  
to note the report.

**Item 11 – Any Other Business**

25. None.

**Item 12 – Date of next meetings**

- 26.
- Thursday 21 April 2016 (Board Away Day).
  - Thursday 19 May 2016 (Board meeting).

**Item 13 – Private Session**

27. 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;
- (2) Matters Arising – response to Bar Council’s letter re: strategic plan (min P26d – 25 Feb 16);
- (3) Action points and progress – Part 2;
- (4) Women at the Bar Survey – Quantitative Analysis;
- (5) Advisory Pool of Experts (APEX);
- (6) Regulatory Risk Outlook 2016 for approval;
- (7) Any other private business.

The meeting finished at 5.10 pm.





**BSB – List of Part 1 Actions  
19 May 2016**

*(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
12a (17 Mar 16) – Strat / Business Plans	publish the BSB Strategic Plan 2016-19 and Business Plan for 2016-17	Vanessa Davies	w/c 21 March 16	25/03/16	<b>Completed</b>
20d (26 Nov 15) – Gov review & revised SOs	establish two new roles to support the changes in education and training ie <ul style="list-style-type: none"> <li>a “Visitor” to hear challenges against Centralised Examination policy and procedures</li> <li>an increased role for the Independent Observer to the Centralised Examination Board.</li> </ul>	Simon Thornton- Wood	before 31 March 16	28/04/16	<b>On track</b> – recruitment in progress
				09/03/16	<b>On schedule</b> – role descriptions agreed and recruitment about to start
				16/02/16	In hand – agreed at GRA and recruitment being built into schedule; assurance framework in development.
				19/01/16	<b>In hand</b> – proposal before GRA on 19 January 2016
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	Kuljeet Chung	by 31 Jul 15	11/05/16	<b>On track</b> – internal project initiated
				09/03/16	<b>On track</b> – initial neutral response from LSB on our submission
				16/02/16	<b>In hand</b> – legal advice being used for submission to LSB on competition law aspects being prepared.
				19/01/16	Ongoing – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board.
				16/11/15	Ongoing – update in private session

**BSB – List of Part 1 Actions**  
**19 May 2016**  
*(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
				04/09/15	Ongoing. A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.

**Forward Agendas****Thursday 23 Jun 2016**

- Draft BSB Annual Report 2015-16
- Public and licensed access review (Part 1)
- Amending the definition of in-house employed practice (Part 2)
- Centralised Assessment Team Project (Part 2)
- Entity authorisation, our experiences over the 12 months since launch and plans for the next 12 months
- BTAS service level agreement  
Draft protocol with BMIF on oversight of its terms of cover for professional indemnity insurance

**Thursday 28 Jul 2016**

- Enforcement Annual Report
- FBT: Threshold standards – final confirmation post consultation
- FBT: Draft consultation on future model for training

**Thursday 29 Sept 2016**

- GRA Annual Report – includes the Report from the Independent Observer
- Approval of consultation on future model for training regulation, for publication
- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Budget bid for 2017/18
- Approval of BSB position on professional indemnity insurance and compliance with competition law. Approval of rule change in relation to SPEs (if necessary)

**Thursday 27 Oct 2016**

- Independent Decision Making – final proposals

**Thursday 24 Nov 2016**

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

**Thursday 15 Dec 2016 (Board Away Day)****Thursday 26 Jan 2017**

- Response to FBT Consultation

**Thursday 23 Feb 2017**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2017-18
- Corporate Risk Register

**Thursday 23 Mar 2017**



**PRP Committee Report for Q4 (January 2016 – March 2016) and year-end 2015-2016****Status**

1. For noting and discussion.

**Executive Summary**

2. This paper provides a summary of discussion that the PRP Committee had at its April 2016 meeting. The majority of the session was dedicated to scrutinising the Q4 and year-end performance against the 2015-16 Business Plan activities and budget. It covers a wide range of information (see annex 1, year-end dashboard) relating to the projects, financial position and performance measures, and it provides the Board with an assessment of achievements against our plans.
3. The material from this paper will feed into our 2015-16 Annual Report, which the Executive is currently drafting. This will also cover the considerable amount of “business as usual” activity that we undertake throughout the year. One of the key achievements for the year was the LSB approving our application to become a Licensing Authority on 31 March 2016.
4. We are also conducting a review of the recently completed three-year strategic plan. This is at an early stage, but one of the key messages to communicate will be that the BSB has achieved a step-change in the way that it regulates, and it has done so whilst reducing the overall cost of regulation (see annex 4).
5. Overall for 2015-16, the BSB has progressed well against the planned activities, although a number have had their timelines extended into the 2016-17 Business Plan. This can be seen on the year-end dashboard, annex 1, which shows the positive achievements through the number of activities which have been marked as “completed”. This has been achieved against a number of legal challenges and the drive to achieve a “satisfactory” rating against the Regulatory Standards Framework (RSF). The LSB’s reports on our performance have now been published.
6. The main areas highlighted in the report are:
  - a) 19 out of 31 activities were completed by the end of 2015-16 business year;
  - b) 12 out of 31 activities were off target by the end of 2015-16 business year, for a range of reasons;
  - c) Staff turnover remains above 30% overall and at 17% for voluntary leavers;
  - d) The time taken for Entity Authorisation decisions has been added to the BSB dashboard as a service standard to monitor;
  - e) Professional Conduct Department (PCD) indicator targets were achieved in Q4 t, but overall the year’s performance was slightly below target;
  - f) Our financial performance<sup>1</sup> is as follows:
 

(i) Income:	£1,421k (-24%)
(ii) Expenditure:	£5,329k (+2%)

---

<sup>1</sup> unaudited – also at the time of going to print, the accounts had not been closed

The main driver for the income outturn was low number of Entity and Qualifications Committee applications. The outturn for our expenditure demonstrates close and careful management of our budgets.

7. Reflecting upon the year there are a number of lessons learned that we have taken into our new strategic plan:
  - a) we must continue to improve our forward planning and tight forecasting, especially for our income projections, taking into account our internal capability and capacity, as well as any external factors that can knock us off course;
  - b) the timelines for some of the activities were on occasions too ambitious, and for the future we must endeavor to be more realistic with timescales and planning exercises; and
  - c) we need to continue to involve staff of all levels in the planning of activities.

### Recommendations

8. Members of the Board are invited to:
  - a) **note** the BSB's performance against the 2015-16 Business Plan and the key messages from the PRP Committee;
  - b) **endorse** the conclusions drawn on the 2015-16 year in the executive summary;
  - c) **discuss** the main areas highlighted;
  - d) **note** the addition of Entity Authorisation decision time to the Key Performance Indicators (KPI) on BSB dashboard;
  - e) **note** the achievements on the year-end dashboard;
  - f) provide an early **steer** on the key messages for the 2015-16 Annual Report publication; and
  - g) **make recommendations** to the Executive or the PRP Committee as necessary.

### Background

9. We have now concluded the 2013-16 Strategic Plan<sup>2</sup>. This aimed to make us a more modern and efficient regulator operating at a high level of effectiveness. The five strategic aims were to:
  - a) Implement specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the LSA2007;
  - b) Promote greater public and professional understanding of and support for our role and mission;
  - c) Set and maintain high standards of entry to and practice in a diverse profession;
  - d) Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market; and
  - e) Strive for "best practice" as an organisation for those who work for us and those whom we serve.

---

<sup>2</sup> Strategic Plan - [https://www.barstandardsboard.org.uk/media/1513219/bsb\\_strategic\\_plan\\_final\\_20.6.13.pdf](https://www.barstandardsboard.org.uk/media/1513219/bsb_strategic_plan_final_20.6.13.pdf)

10. The Business Plan for 2015-16 outlined our key activities for the year<sup>3</sup>, and it was the third and final year of our Strategic Plan. The plan also set out our budget and staffing requirements. This report describes our performance against our objectives and budget, as well as the overall performance within the BSB.

### Reporting process

11. On a quarterly basis, the Corporate Support Team gathers information, in liaison with the Senior Management Team (SMT) which reviews the activities in the Business Plan and provides progress updates. It is SMT members' responsibility to provide explanations for delays or overspends and the associated risks or impacts and how they are being addressed. Resources Group (RG) colleagues provide the figures underlying the HR and IT performance data on a quarterly basis. The Corporate Support Team has quarterly meetings with the RG teams to see if the Service Level Agreements (SLA) aims, objectives and deliverables are being met.

### Areas for further consideration

12. Activity is reported to the Board by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below, and have been listed in the order that they appear in the 2015-16 Business Plan. These include:
- a) Alternative Business Structures (ABS), S69 and Entity Authorisation
    - (i) We stated in our business plan that we aimed to achieve Parliamentary approval for ans69 order giving the BSB powers of intervention, enforcement and information gathering. We had also aimed to review the insurance requirements for single-person entities. These activities had been labelled as C3 as they are not entirely within our control.
    - (ii) Although marked as “not complete”, the LSB did approve our application on 31 March 2016 to become a licensing authority for Alternative Business Structures. The indicative launch date for ABS regulation was originally 1 June 2016. However the lengthy LSB statutory approval combined with the drafting of the associated secondary legislation and the Ministry of Justice's requirements for full consultation has pushed the timeline into the 2016-17 business year.
  - b) Public and Licensed Access
    - (i) We set out to review our approach to public and licensed access and the review was delayed for a number of reasons as previously reported. The business activity has been entirely within our control (labelled as a C1) and the scale of this work is rated as level 2. Until very recently, the Regulatory Policy Department had been understaffed and the work required particular technical expertise, meaning that it did not progress as quickly as anticipated. This activity has been reforecast into the 2016-17 Business Plan.

<sup>3</sup> Business Plan - [https://www.barstandardsboard.org.uk/media/1658569/bsb\\_business\\_plan\\_2015-16.pdf](https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf)

c) Immigration Thematic Review

- (i) We set out at the beginning of the business year to review the regulatory arrangements in relation to the immigration advice and services. This activity, which was within our control (labelled as C1), has not been completed, although a good deal of evidence gathering has been conducted. This was a new type of activity for the BSB, acting as a pilot for the new ways of working and ensuring that our initiatives follow the Policy Development Framework. This led to extensive stakeholder engagement in order to shape how the work would be taken forward, which in turn led to the scope and timeline being redefined. The next stages of the work have been extended into Q1 of the 2016-17 Business Plan.

d) Review of the three-year rule

- (i) The Business Plan stated our intention to review the three-year rule and any other scope of practice restrictions in relation to employed barristers to ensure our rules continue to be fit for purpose. The LSB has since published guidance to s15 of the Legal Services Act (LSA), which requires approved regulators to examine any restrictions on employed barristers working in-house. That narrow issue was therefore prioritised and we have consulted on a proposal to broaden the definition of employment for barristers working in organisations that are not authorised law firms.
- (ii) This activity which is currently within our control (C1) has been planned into the 2016-17 Business Plan. This is mainly due to a number of consultation responses which raised issues that the BSB needed to consider further.

e) Education and Training Policies and Access Routes

- (i) We had set out in our Business Plan to draft new Qualification Rules so that our Education and Training policies align with our new overarching approach to risk-based, outcomes-focused regulation. We also wanted to improve access routes into the profession and to reassess the regulation of the Academic Stage. These activities are bound up with the Future Bar Training programme (FBT).
- (ii) Our FBT project focuses on changing the way that we regulate, in order to foster innovation, protect the rule of law, protect access to justice and to safeguard standards for all those who rely on its service. It is a large-scale programme of work that had some indicative timelines when we first drafted the 2015-16 Business Plan. The programme completion date remains the same (2017/18) but key milestones within our overarching plan have shifted to reflect current activities. This has meant that at the end of 2015-16 business year this activity has been flagged as red. However, this programme is being delivered according to the revised timescales, which advances well into the 2016-19 strategy.



- f) Flexible Approach to Continuing Professional Development (CPD)
- (i) At the beginning of 2015-16, we said we wanted to establish a more flexible approach to Continuing Professional Development (CPD), an activity that is labelled as C1. The planning and testing stages formed part of the 2015-16 business year, with an intention to finish full implementation in 2017. Some of the dates for the interim checkpoints have been revised, however the final milestone of CPD, “Roll-out of new CPD scheme” is on schedule for delivery in 2017.
- g) Disciplinary Tribunal Regulations (DTRs) Review
- (i) At the beginning of 2015-16 business year we aimed to consult and implement changes arising from the review of the Disciplinary Tribunal Regulations. This activity is currently not within our control (labelled as a C3). This activity originally slipped throughout the year due to the resignation of the Project Manager (the PCD Project and Policy Officer). LSB approval could not take place until we were designated as a Licensing Authority. On 31 March 2016, our ABS Licensing Authority application was approved by the LSB, so we can now submit our LSB application on the revised DTRs.
- h) Achieve a Rating of “satisfactory” against RSF
- (i) We stated at the beginning of the year that we would aim to achieve a rating of “satisfactory” against the LSB’s Regulatory Standards Framework (RSF). We have received the report from the LSB on our performance against the RSF, which shows that the LSB’s rating reflects our own Self-Assessment rating. We did not achieve satisfactory ratings across the board, however we did receive satisfactory ratings in two out of the five areas, as well as advancing significantly on the rating scale in respect of all standards. In addition we have a programme (ASPIRE) in place to continue working towards the standards and we have detailed this as an activity in the 2016-17 Business Plan.

### **Accessing Staff Potential to Inspire Regulatory Excellence (ASPIRE)**

13. Board members will recall that the Regulatory Improvement Programme (TRIP) focused on putting in place the systems and infrastructure in order for the BSB to become a more effective regulator. The ASPIRE programme builds on from TRIP, but places considerable emphasis on changing the way we think and behave as a regulator. Its success therefore relies heavily on the engagement of all staff members in making the changes happen. The three main streams of work from the programme are:
- Consumer engagement - putting consumers at the heart of how we regulate;
  - Governance - having in place arrangements that best support executive-based decision making and inspire public confidence in our governance ; and
  - Risk-based regulation - ensuring that we regulate in a targeted and proportionate manner.

PRP Committee members asked for an update on the progress to be of the strands within the ASPIRE programme to be provided, and a summary of the update is set out as follows:

- a) A great deal of progress has been made within the consumer engagement strand. Consumer awareness and engagement training has been delivered to staff and a workshop was held at the Board away day in December 2015. Key projects within this strand have been finalised; the complaints section of the BSB website has been revised to make it more accessible to the public; guidance has been produced for consumers on using a barrister; and explored new and different ways of engaging with representatives of the legal consumers in the development of regulatory policy.
- b) Work has been continuing on the next development stage of the governance programme. The Board will remember that this programme is to modernise our governance arrangements, which will improve public confidence, allow staff to take more regulatory decisions and that the non-executives provide strategic oversight. In order to reach this point, we need to ensure that staff are trained in the new skills required to work in this way. We are working on appropriate assurance measures to ensure that decisions are consistent and transparent and in line with clear criteria; staff have access to expertise when they need it; and that there is delegation of decision making from the Board to staff.
- c) The Regulatory Risk Framework, Index and Outlook were published and officially launched on 12 April 2016. Training has been delivered to all BSB staff on the Regulatory Risk Framework and Index. This has represented a major milestone in the BSB's commitment to operating as a risk based regulator and provides core tools that allows us to ensure that our decisions and our priorities are risk and evidence based.

#### **Professional Conduct Department (PCD) Performance Indicators**

14. The performance in Q4 was well above the 80% target in relation to the individual Operational Performance Indicators (OPIs). However, as predicted, this high performance in Q4 was not sufficient to counteract the reduction in performance in Q1 and 3 to allow the overall 80% target at year-end to be met. Nevertheless the year-end outturn on the KPI (the percentage of complaints that were concluded or referred within the service standards) was only 4.3% off target at 75.7%. This is a considerable improvement on the outturn for last year (2014/15), which was 11% off target (69% against a target of 80%).
15. In relation to the OPIs for Q4: the Assessment Team achieved 87.7% for OPI 1; and the Investigation and Hearing Team recorded 94.7% in relation to OPI 2, and 100% in relation to OPI 3. As we are still so close to the year-end, the detailed statistics for the year have not yet been run and a detailed analysis for the year is not available. More information will be included in the Enforcement Annual Report which is scheduled to be presented to the Board at its July 2016 meeting.
16. Board members have previously received detailed accounts of the performance in Quarters 1-3 and it is not considered necessary to repeat these here. In relation to the high performance in Quarter 4, this is currently attributed to a number of factors as outlined below. The more detailed analysis currently being carried out for the Enforcement Annual Report may change the emphasis on these contributory factors:

- a) the decreasing number of older cases in the office during the course of the year;
- b) the age of the cases that fell to be closed in the period. It is inevitable that the outturn in cases closed in any one quarter will be affected by whether the cases are already past, potentially for good reason, the OPI deadlines. If most of the cases ready for closure in one quarter are within the OPIs, then performance will always be good. Conversely, if a number of older cases are closed in one quarter, then the quarter outturn can be significantly reduced; and
- c) the inclusion in the quarter of a number of closed investigations in relation to one barrister which were referred to disciplinary action by staff under a specific authority from the PCC.

### HR Dashboard

- 17. The PRP Committee reviewed the HR dashboard which details some of the corporate measures that we use to monitor staffing arrangements. The rolling turnover calculations continue to hover above 30%, as it has done so since 2013. This quarter, Q4, saw 11 leavers, 7 of which were planned (involuntary leavers), out of the 4 unplanned BSB leavers, 2 remain at the Bar Council. This brings the total number of leavers for year-end 2015-16 to 26. Our retention figures echo our turnover statistics where in the last three years more than 68% of staff members have more than one years' service.
- 18. PRP Committee received an update on the HR operating plan for 2016 and reviewed the HR operating plan for 2016-17. The plan is making progress and will continue to be monitored on a quarterly basis by the Committee. Annex 6 BSB paper 039(16) Human Resources Operating Plan Update, provides more detail about the HR operating plan and the initiatives the organisation is taking to respond to some of these matters.

### Resources Group (RG) - Performance against the Service Level Agreement (SLA)

- 19. Overall, the service level agreement is working well and the aims and objectives are on the whole being met. The Corporate Support Team collated a great deal of positive feedback on RG colleagues. We (both the BSB and RG) also continue to work on improving our collaborative working relationships and on defining our responsibilities and accountabilities. The main points to highlight are set out below:
  - a) The Records Team achieved a much more streamlined approach to the Authorisation to Practise process this year.
  - b) The Information Management programme (IM) is progressing well with a number of key projects either completed or developing, such as the data management aspects, the implementation of a new HR system, and suppliers sourced for the new finance and CRM systems.
  - c) The Worksmart programme (to help staff work more flexibly and to eventually reduce office space) is well underway and new ways of working have already been embedded into a number of teams.
  - d) Substantial improvements have been observed with previous financial transactional issues, although there remains a small number of residual matters that are being worked through.

**2015-16 year-end actuals**

20. Below are the headline figures for Q4 and year-end 2015-16, further detail can be found in Annex 2:
- a) In the twelve-month period ending 31 March 2016 (Q4 of 2015-16), the BSB received £1,421k in income against our budgeted projection of £1,875k (-24%). The 2016-17 income projection is set at £947k.
  - b) For expenditure, we have spent £5,329k against a budget of £5,438k (+2%). The 2016-17 expenditure level is set at £5,213k.
21. Detailed information on each departmental budget, which sets out the departmental forecasts and commentary on each line of the budget, can be provided upon request. The key pressures and challenges have been summarised from these documents and are set out below:
- a) Staff costs:
    - (i) We have consciously and closely managed the overspends in the staff costs budgets, ensuring that we are recruiting to our priority regulatory areas and using the underspends in the non-staff costs areas to do so. A breakdown of these costs can be found / seen in annex 2, management account summary.
    - (ii) We do not budget for recruitment or maternity costs as these types of expenditure are expected to be funded through underspends caused by vacancies. Currently we have five members of staff on maternity leave (more than previously), and each of these roles is being covered by temporary members of staff. With regard to recruitment, we have experienced a volume of churn this year. We are closely monitoring our recruitment and the associated costs, so expect to see this decrease in future.
    - (iii) We have progressed with staff changes and restructured the way we work, as per the Governance Review (agreed by the Board at its September 2015 meeting). We had a number of voluntary leavers as we integrated our authorisation functions together. The cost of this exercise impacted the staff budget in the order of £100k as it involved long-serving members of staff members.
    - (iv) The overspend relating to Board recruitment has already been reported.
  - b) Non-PCF Income
    - (i) As previously reported, the Board did not agree to increase the Qualifications Committee application fees, which means that there is a shortfall against budgeted income in 2015-16. Regarding Entity Regulation, we had projected that there would be over 400 applications and approvals for these new business structures for the year, however only 40 so far have been fully authorised, meaning our revenue has underperformed significantly against our year-end projections.

- (ii) Our projections for next year are extremely conservative, so we do not expect to see such significant variances in the future, however we do expect to see non-PCF income falling in future, mainly due to the changes we make to our regulatory policy positions.
- c) Non-staff Expenditure
- (i) Our research and consultancy budgets were underspent and we have pared back these amounts in the 2016-17 budget. A large portion of this was earmarked for further Bar Course Aptitude Test evaluation, but most of the work was carried out by internal staff, meaning that the funds were not be spent. Also in relation to Examinations, we have been exercising tighter control over our contractual arrangements with the Centralised Exam Board costs, which has meant a reduction in expenditure compared to previous years.
  - (ii) With regard to PCD Outsourced casework and legal fees, the budgeted figures were based on previous years' activity and trends, and it was thought that the number and complexity of cases would increase over time. This turned out not to be the case for 2015-16 and so there is an underspend here.

### **Equality Impact Analyses**

22. All areas of the Strategic Plan and Business Plan are subject to an equality impact assessment. The Performance Indicators relating to HR also monitor our status against various E&D measures.

### **Risk implications**

23. Risks that may have an impact on the BSB achieving its objectives have been considered as of compiling the business plan activities.

### **Regulatory objectives**

24. Delivery of Strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

### **Publicity**

25. This report will form the outline of a paper presented to the Board, which will be presented in the Public part of the agenda. The information in the report will feed into our Annual Report which will provide a public account of our performance over both one year, and three years.

### **Annexes**

26. Annex 1 – Year End Dashboard  
Annex 2 – Management Accounts summary  
Annex 3 – PCD Performance Indicators  
Annex 4 – 4-year Financial Performance

**Further reading**

27. BSB Corporate Risk Register as reported to GRA in April 2016.

**Lead responsibility**

Dr Vanessa Davies, Director General

Viki Calais, Head of Corporate Services

Eva Hales, Corporate Support Manager

Natasha Williams, Business Support Officer

Q4 and Year End Dashboard														
Business Plan Activities (2015-16)					Service Standards (Core activity)									
					<b>Professional Conduct Indicators</b>			Q4	YE	Target	✓			
					KPI - % of complaints concluded or referred to disciplinary action within service standards			88.7%	75.7%	80%	✓			
					OPI - % of complaints concluded or referred to investigation within 8 weeks			87.7%	72.6%	80%	✓			
					OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation			94.7%	81.3%	80%	✓			
					OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation			100%	79.2%	80%	✓			
					<b>Qualification Committee Applications</b>			Q4	YE	Target				
					Time taken to determine applications from receipt of the complete application:									
					Up to 6 weeks			84.8%	79.5%	75%	✓			
					0 to 12 weeks			100%	99%	98%	✓			
					Over 12 weeks			0%	1%	2%	✓			
					<b>Entity Authorisation Decisions</b>			Q4	YE	Target				
					The % of authorisation decisions made within service standards									
					Within 6 Months			92%	n/a	90%	✓			
					Within 9 Months			100%	n/a	100%	✓			
					<b>Number of Service Complaints closed</b>			Q4	2	YE	10			
					<b>2015-16 year end performance against budget</b>			<b>2016 -17 Budget</b>						
					Act	Bud	Var	Bud	Var					
					Income	£1,421k	£1,875k	-£455k	£947k	-£474k				
					Expenditure	£5,329k	£5,438k	£109k	£5,213k	£125k				
					<b>Staffing (Rolling figures)</b>			Q4	2014-15	HR	15/16	14/15		
					Sickness (days/FTE)			2.1	6.7	✓	Recruitment times (approval to start date (weeks))			
					Sickness (days/long term)			25.0	1.6	✗	10	13		
					Turnover (%)			33.1	36.2	✓				
					<b>IT Response times</b>			<b>Corporate Risk Register</b>						
					2015-16			22 Jan 16						
					Response to high priority calls			100%	✓	Likelihood				
					Response to medium priority calls			98%	✓	Likelihood				
								Impact						
								Impact						
					<b>Service level agreement with BC (Resources Group)</b>			% of aims and objectives met						
					Project Management Office			97%	✓	HR	88%	✗		
					Records Office			90%	✗	Facilities Management	99%	✓		
					IT			96%	✓	Finance	72%	✗		
<b>Key</b>														
<b>Control</b>			<b>Importance</b>			<b>Size</b>			<b>Weighting</b>			<b>Business Activities</b>		
C1 - BSB Control			↑ More important			↑ 1 Small piece of work			Higher weighting			Completed		
C2 - RG control			↓ Less important			↓ 4 Large piece of work			Lower weighting					
C3 - External control														





## YEAR END REPORT

	2014/15	2014/15	2014/15		2015/16	2015/16	2015/16 Fcast vs		2016/17		2015/16 Actual vs	
	YE	YE	YE		YE	YE	2015/16 Budget				2016/17 Budget	
	ACTUAL	BUDGET	VAR	VAR %	ACTUAL	BUDGET	VAR	VAR %	BUDGET £k		VAR	VAR %
<u>Income</u>	£k	£k	£k		£k	£k	£k				£k	
<b>Professional Conduct</b>	38	0	38		32	0	32	0%	0		-32	-100%
<b>Assessments</b>	181	262	-81	-31%	115	163	-48	-30%	0		-115	-100%
<b>Education and Training</b>	1,133	1,061	72	7%	993	977	17	2%	657		-336	-34%
<b>Qualifications</b>	251	386	-135	-35%	253	477	-225	-47%	176		-77	-30%
<b>Entity Regulation</b>	3	50	-47	-94%	28	258	-231	-89%	36		8	30%
<b>Supervision</b>	1	0	1		-	0	0	0%	0		0	0%
<b>QASA</b>	0	56	-56	-100%	1,421	1,875	-455	0%	78		-1,343	100%
<b>Total</b>	<b>1,606</b>	<b>1,816</b>	<b>-209</b>	<b>-12%</b>	<b>1,421</b>	<b>1,875</b>	<b>-455</b>	<b>-24%</b>	<b>947</b>		<b>-474</b>	<b>-33%</b>
<b>Expenditure</b>												
<b>Executive</b>	696	638	-59	-9%	697	629	-68	-11%	599		-98	-14%
Staff Costs	602	593	-9	-2%	615	557	-58	-10%	470		-144	-23%
Other Costs	95	45	-50	-110%	82	72	-10	-14%	128		46	56%
<b>Strategy and Comms</b>	708	792	84	11%	756	852	96	10%	852		96	13%
Staff Costs	586	537	-49	-9%	612	548	-64	-12%	716		104	17%
Other Costs	122	254	132	52%	144	304	160	50%	136		-8	-6%
<b>Professional Conduct</b>	1,351	1,266	-85	-7%	1,256	1,269	13	1%	1,281		25	2%
Staff Costs	1,141	1,096	-45	-4%	1,115	1,060	-55	-5%	1,134		19	2%
Other Costs	210	170	-40	-24%	141	209	68	33%	147		6	4%
<b>Assessments</b>	423	435	12	3%	257	421	165	39%	330		74	29%
Staff Costs	309	304	-5	-2%	163	156	-7	-4%	129		-34	-21%
Other Costs	114	131	17	13%	94	265	171	65%	201		108	115%
<b>Education and Training</b>	551	583	32	6%	569	455	-113	-25%	363		-205	-36%
Staff Costs	400	348	-52	-15%	332	297	-35	-12%	271		-62	-19%
Other Costs	151	235	84	36%	236	158	-78	-49%	93		-144	-61%
<b>FBT</b>	0	0	0	0%	169	175	5	3%	66		-104	-61%
Staff Costs	0	0	0	0%	81	78	-3	-4%	33		-49	-60%
Other Costs	0	0	0	0%	88	97	9	9%	33		-55	-62%
<b>Qualifications</b>	296	320	25	8%	387	314	-73	-23%	221		-166	-43%
Staff Costs	273	281	8	3%	361	278	-83	-30%	200		-161	-45%
Other Costs	23	39	17	42%	26	36	10	28%	21		-5	-19%
<b>Regulatory Policy</b>	503	361	-141	-39%	659	703	44	6%	863		203	31%
Staff Costs	289	346	58	17%	543	539	-4	-1%	799		256	47%
Other Costs	214	15	-199	-1334%	117	165	48	29%	64		-53	-46%
<b>Entity Regulation</b>	145	213	68	32%	159	183	24	13%	92		-67	-42%
Staff Costs	92	88	-4	-5%	109	129	21	16%	82		-26	-24%
Other Costs	53	125	72	58%	50	54	3	6%	11		-40	-79%
<b>Supervision</b>	316	383	67	17%	420	436	17	4%	484		64	15%
Staff Costs	301	299	-1	0%	415	395	-21	-5%	481		66	16%
Other Costs	16	84	68	81%	4	42	38	90%	3		-1	-32%
<b>QASA</b>	89	202	113	56%	0	0	0	0%	63		63	100%
Staff Costs	89	104	15	14%	0	0	0	0%	0		0	0%
Other Costs	0	98	98	100%	0	0	0	0%	63		63	100%
<b>Equality and Diversity</b>	85	121	37	30%	0	0	0	0%	0		0	0%
Staff Costs	77	105	28	26%	0	0	0	0%	0		0	0%
Other Costs	7	17	9	55%	0	0	0	0%	0		0	0%
<b>Total</b>	<b>5,163</b>	<b>5,313</b>	<b>151</b>	<b>3%</b>	<b>5,329</b>	<b>5,438</b>	<b>109</b>	<b>2%</b>	<b>5,213</b>		<b>-116</b>	<b>-2%</b>
<b>Total Staff Costs</b>	<b>4,158</b>	<b>4,102</b>	<b>-57</b>	<b>-1%</b>	<b>4,346</b>	<b>4,036</b>	<b>-310</b>	<b>-8%</b>	<b>4,315</b>		<b>-31</b>	<b>-1%</b>
<b>Total Other Costs</b>	<b>1,004</b>	<b>1,212</b>	<b>208</b>	<b>17%</b>	<b>983</b>	<b>1,402</b>	<b>419</b>	<b>30%</b>	<b>899</b>		<b>-84</b>	<b>-9%</b>



## PCD Key Performance Indicators

PCD Measure		2015-16				2015-16 YE	2015-16 Target	2014-15 YE	2014-15 Target
		Q1	Q2	Q3	Q4				
Complaints	Number of complaints received	166	96	113	106	481	n/a	325	n/a
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	64%	84%	73%	88.7%	75.7%	80%	69%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	56%	86%	68%	87.7%	72.6%	80%	65%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	72%	69%	82%	94.7%	81.3%	80%	84%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	70%	94%	77%	100%	79.2%	80%	75%	80%

## Over-Running Cases

Snapshot at the close of Q4 of 2015-16

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	53	8	15%
External Investigation (8 months)	51	6	12%
Internal Investigation (5 months)	43	6	14%
<b>Total</b>	<b>147</b>	<b>20</b>	<b>14%</b>

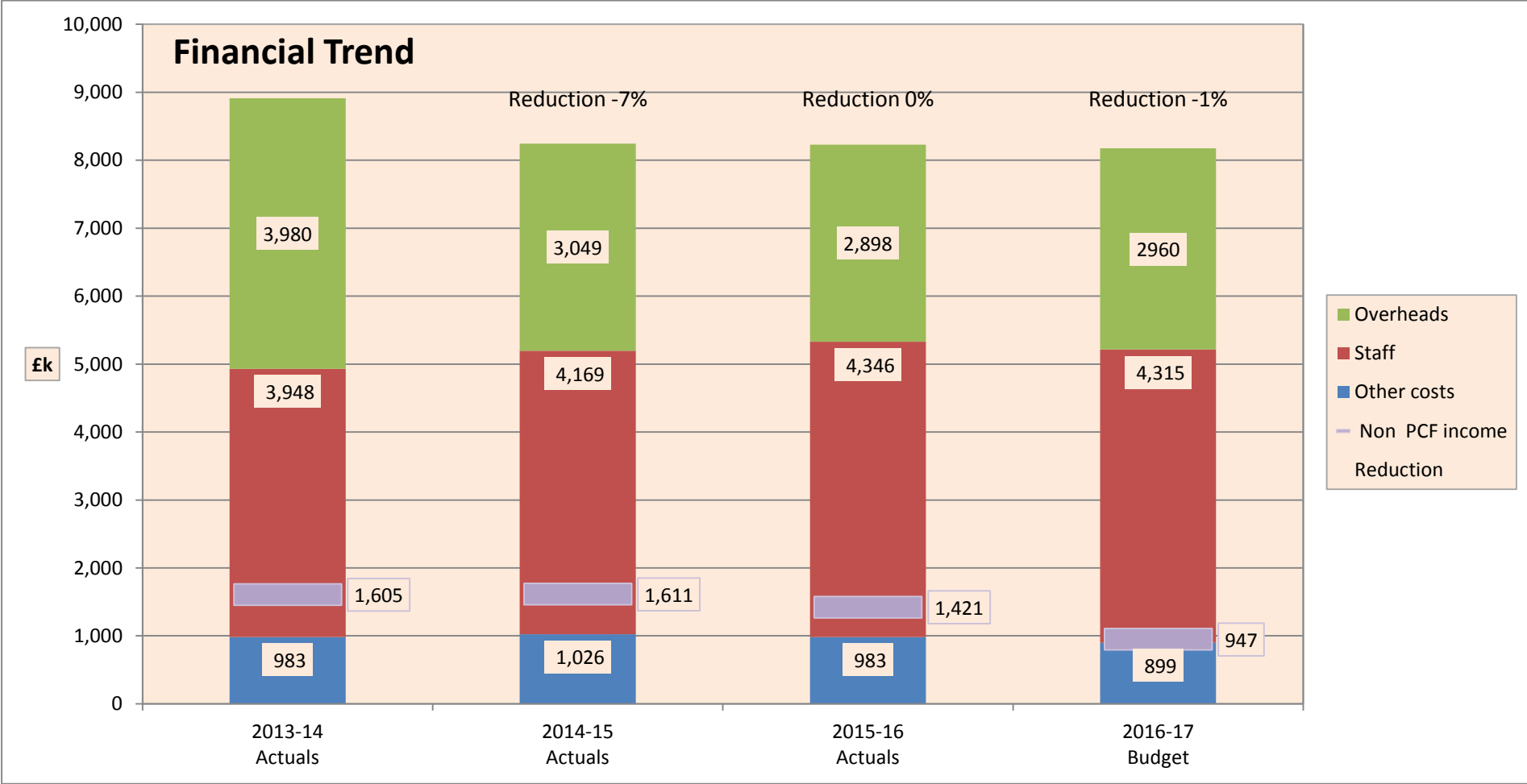
**Note**

OPIs and the overall KPI measure closed cases – In consequences, cases that are delayed (however legitimate the reason) will impact these figures.

The overall KPI reflects the combined effect of the three individual OPIs



Four Year Financial Trend





## Immigration Thematic Review Report

### Status

1. This paper is for approval.

### Executive Summary

2. We are seeking approval of the recommendations arising from the Immigration Thematic Review, for external communication.
3. The purpose of the review was to understand and analyse the risks in the immigration advice and services market with reference to the BSB's remit.
4. The review involved gathering and analysing evidence and we identified three themes in light of the evidence gathered. The three themes are access to justice, poorly informed consumers and quality of advice and standards of service. The themes were assessed against the BSB's Risk Framework and Index.
5. A report summarising evidence gathered and recommendations for the immigration thematic review is at **Annex 1**.
6. The recommendations consist of actions to contribute to existing BSB projects and new controls that would compliment existing regulatory arrangements.

### Recommendations

7. It is recommended to the Board that it:
  - Approves the report at **Annex 1**;
  - Agrees the recommendations in relation to current activities summarised at paragraph 27; and
  - Agrees the new initiatives outlined from paragraph 28.

### Background

8. Following the release of a discussion document by the Legal Services Board in 2012 which expressed concerns that there were significant problems with the overall architecture governing the provision of immigration advice and services, the Bar Standards Board has been carrying out a series of projects assessing whether our regulatory arrangements in this area are fit for purpose and what changes can be made if not.
9. The project the BSB conducted in 2013 identified a range of issues in relation to the provision of immigration advice and services. These issues were highlighted through a number of different exercises, including:
  - Consumer research;
  - Roundtable with practitioners, regulators and representative groups;
  - CPD spot checks; and
  - Chambers monitoring and complaints data.
10. Although the evidence gathered during the initial project identified areas of concern, there was not enough targeted information on specific problem areas to suggest the BSB needed to take immediate action. For this reason, the BSB committed to carrying out a thematic review of immigration advice and services – which began in July 2015.

11. The purpose of the review was to understand and analyse the risks in the immigration advice and services market with reference to the BSB's remit.
12. The review involved gathering and analysing evidence and developing an understanding of the market in this area. Our evidence gathering consisted of:
  - A roundtable with consumer organisations and other regulators of immigration advice and services to understand more about an immigration client's journey;
  - Visits to chambers who supply immigration advice and services. A range of questions were asked around the types of immigration services provided, how they provided these services and risks to clients in accessing good quality legal services;
  - Consultation with a Reference Group consisting of immigration- focused consumer organisations and regulators; and
  - Desk research into immigration advice and services and clients experiences of receiving such services.
13. To carry out this review we adopted several new ways of working. We ensured that each BSB department was included in the project and we utilised the BSB's Policy Development Framework, Risk Framework and Index and Consumer Engagement Strategy.

### Three themes and risks

14. We identified three themes in light of the evidence gathered. The three themes are access to justice, poorly informed consumers and quality of advice and standards of service.
  - Access to Justice – This theme outlines the barriers the public face when accessing the legal help that they need. These barriers include: the demand for immigration services outstripping supply, the impact of the large amount of work that public access immigration cases require, inconsistent client care, cost and geographical location.
  - Poorly Informed Consumers – This theme is about immigration clients and potential clients who lack proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a provider, or seek redress when things go wrong.
  - Quality of Advice and Standards of Service - This theme is about the standards of immigration advice and services being provided by different practitioners (eg barristers, solicitors, immigration advisers regulated by the Office of Immigration Services Commissioner (OISC)). It is acknowledged that the service provided by barristers is, in many cases, the last link in the supply chain and that may also have an effect on the ability to provide a competent service.
15. The themes were assessed against the BSB's Risk Framework and Index, to ensure we understood how the issues we had identified could impact on the market for barristers' services. The key risks that were identified across the three themes were:
  - Failure to meet consumer demand;
  - Poor public perception of legal services;
  - Excessive barriers to supply of legal services;
  - Lack of cultural competence and people skills;
  - Lack of public awareness of legal rights and duties;



- Lack of accessible, quality market information to inform consumer choice;
  - Affordability or value concerns;
  - Inadequate training and preparation for practice;
  - Supply chain risks; and
  - Failure to provide a proper standard of service.
16. Key principles were adopted during the development of recommendations for this review. This ensured we had clear criteria when deciding the options and helped us to refine the recommendations.
17. The issues we identified related to an immigration client’s legal journey, which may or may not be with a barrister but which has the potential to have an impact on a client’s interaction with a barrister and barristers’ standards of service. Therefore a key principle was agreed that we will need to work with other regulatory bodies and other stakeholders to influence standards in this area.
18. It was agreed that the recommendations should seek to avoid reducing or negatively impacting the supply of immigration legal services available from barristers to consumers, which would likely not be in the best interests of consumers. One of the ways our recommendations could negatively impact the supply of immigration services is if it imposed a disproportionate burden on those practising immigration law and fewer barristers were willing to work in this area as a result.
19. We wanted the recommendations to have value to all members of the public who may seek legal services, in addition to immigration clients, where appropriate. As we have highlighted, many of the issues we identified could appear in other areas of law. Therefore the majority of the recommendations are likely to benefit all consumers of legal services.
20. The report contains descriptive recommendations that address how the BSB can control and mitigate the risks identified. The BSB already has controls in other projects and initiatives to manage these risks. The analysis we have undertaken in this project can help other projects target resources to the areas of biggest risk.

### **Barristers and the Immigration Legal Services Market**

21. Barristers represent a small proportion of the supply of immigration services. Around 5-6% of the Bar (approx. 700 practitioners) listed immigration as a practice area during the Authorisation to Practise process, but this is not necessarily their main practice area<sup>1</sup>. There are currently 5,388 barristers registered to undertake public access work and 582 of those barristers listed immigration as one of their practice areas (11% of public access barristers).

Total number of practising barristers	15,915
Barristers practising immigration	Approx 700
Public access barristers	5388
Public access barristers practising immigration	582

<sup>1</sup> Practice area data is self-submitted by Barristers as part of their application to renew their practising certificate and is not quality assured by the BSB. Barristers can list as many practice areas as they wish, and it is common for barristers to list a number of different practice areas – as a result the total listing any given practice area may not represent only barristers who specialise or spend the majority of their time on a particular area of work, but also barristers who do a certain amount of this work alongside other areas which take up more of their time.

22. Research commissioned by the BSB and LSB into the current provision of legal services through public access barristers found that one in ten respondents practised in immigration. Of those one in ten, 78.9% of immigration public access practitioners had accepted instructions over the past 12 months, which was a high acceptance percentage compared to other areas of the law.
23. Our research found that immigration advice and services are often needed with other legal services. Other legal issues may be tied up with immigration or be required on top of immigration advice, most notably family law and housing law.
24. Although a relatively small proportion of barristers supply immigration advice and services, the evidence we found covers a range of issues that are not limited to immigration. The majority of the recommendations at paragraph 22 will help to address similar problems in other areas of the law.
25. This review has captured evidence and identified risks throughout the immigration legal process which have the potential to impact the services provided by a barrister, who is often the last link in the supply chain. The themes we have identified can also impact the quality of interaction a client has with a barrister.
26. A barrister's engagement in an immigration case is often at a crucial point in the legal process (eg where potentially final decisions are being made on a client's case). Although barristers working in this area are a relatively small proportion of the overall market, poor practices by barristers could significantly impact a client, particularly vulnerable clients.

## Recommendations

### Improving existing controls

27. We have identified a number of existing projects and initiatives that will benefit from the knowledge gained from this report. The following is therefore recommended:
  - We have invested, and will continue to invest, our resources into engaging with consumers and organisations that support them. We will continue to provide information, including our recently produced online consumer guidance, to improve their understanding of the legal services market. This will help reduce the knowledge gap that exists between lawyers and their clients, helping clients to better identify their own needs and the quality of service they are receiving;
  - We will continue to listen to consumers and organisations that support them to monitor the risks in the market and develop our consumer guidance where necessary. In particular we will expand the guidance on how a consumer pays a barrister to include questions clients can ask barristers. This will help to empower clients to participate in the legal process and experience greater transparency about fees;
  - We will use the evidence and analysis from this project to contribute to the forthcoming review of client care letters to ensure clarity of fees is included;
  - We will use the evidence and analysis from this project to inform our Future Bar Training programme. It is important that all barristers, on qualification, have an adequate awareness of the issues associated with client vulnerability and are able to apply them where necessary. They must also understand their limitations and further development needs, particularly if entering a new area of practice such as immigration;

- We will continue to engage with the other regulators of immigration and asylum work. This includes the Solicitors Regulation Authority and Office of the Immigration Services Commissioner. This report has already been informed by discussions with them. We acknowledge that the best responses to a number of the risks identified will occur through collaborative action by all the relevant regulators. This is because the lawyers and legal advisers regulated by each regulator may be involved in the same case and issues such as public understanding are common to all regulators; and
- We will contribute the learning and evidence on client vulnerability to the project on youth proceedings advocacy that is considering expanding training and learning opportunities to advocates on vulnerability. The evidence we have gathered will bring a different perspective to the project and any outputs from the project are likely to be beneficial to a range of consumers.

#### New controls

28. It is recommended that the BSB adopts three new controls. These will complement the existing controls identified above.

#### *“Good” and “poor” practice case studies*

29. To complement the existing guidance we provide to consumers and to barristers, we recommend creating case studies describing situations where “good” or “poor” service has been provided. We would hope to involve both consumer organisations and barristers specialising in immigration in creating them.
30. This would be specifically for the benefit of immigration consumers to help them to understand what to expect and their legal rights if they do receive “poor” service. The difficulty in assessing the quality of service may be a problem for all consumers of legal services, however our research suggests that this is a particular problem for immigration clients because of the barriers they experience. This was highlighted in the Roundtable Report 2015, which states that confusing immigration laws, reduction in legal aid, geographical issues are all barriers to accessing “good” quality services. The evidence we gathered throughout this review provided us with examples of “good” and “poor” practices in the supply of immigration services, which could be used in the creation of guidance. As a result it may be difficult to generalise the examples for all consumers.
31. The main risks this control would mitigate would be lack of public awareness of legal rights and duties and failure to provide a proper standard of service. It would also help to mitigate a lack of cultural competence and people skills and supply chain risks.
32. By having contributions from both consumers and barristers, these case studies can reflect “good” and “poor” practice in how barristers communicate with clients. This will help practising barristers become more competent in how to interact with their clients and lead to better overall service to the client.

#### *Vulnerability Framework*

33. A framework that all barristers can use to assess and manage client vulnerability would be created by building on existing guidance from the Legal Services Consumer Panel in conjunction with consumer organisations. The framework would be beneficial for all barristers to use to assess and manage client vulnerability, it would not be immigration focused, because vulnerable clients exist in many areas of the law. It would include:

- Literature on vulnerability;
  - Questions the barrister could ask the client;
  - Support services the barrister can signpost the client to; and
  - Good practice examples.
34. The main risks this control would mitigate would be poor public perception of legal services and lack of cultural competence and people skills by barristers. It would also help to mitigate failure to provide a proper standard of service.
35. This will help consumers of any legal services to be assessed in a consistent manner, which is something that barristers said would be helpful in our visits. We would want to work with other regulators to enable a smoother transition from one lawyer to another. However, this framework would be voluntary in order to not reduce the supply of legal services for consumers, by placing a potentially disproportionate burden on the profession. It will be necessary to plan communications of the framework carefully to encourage high participation.

*Joint guidance outlining responsibilities when instructing a barrister*

36. The final new control would be continuing our work with other immigration advice and services regulators and developing joint guidance. The guidance would outline responsibilities when instructing a barrister and could be created to support both professional and lay clients to inform and manage their expectations. This review found the key areas that cause problems in the supply chain for immigration services that could be covered in the guidance; these include communication of fees, late delivery of paperwork, poor quality of files and assessment and management of vulnerability. If joint guidance cannot be created with other regulators, then it is proposed that guidance will be created which focuses on the barrister's responsibilities to the lay client when instructed by an intermediary.
37. The main risks this control would mitigate would be supply chain risks and failure to provide a proper standard of service. It would also help to mitigate a lack of public awareness of legal rights and duties.
38. The joint guidance could be beneficial for barristers in different practice areas; the issues identified between the intermediary and the barrister were not immigration specific and are likely to apply to a range of practices. The outcome for this recommendation would be clients understanding the transition from their intermediary to a barrister, as well as barristers and intermediaries setting and managing expectations with each other and for the client. It would also contribute to the BSB's strategic direction of "considering with other regulators what common approaches might usefully be adopted".

**Resource implications**

39. A number of recommendations assume collaboration other organisations. A number have indicated a willingness to work with us, but progress may be dependent on their capacity and resources. This will be considered as part of an implementation project.
40. The recommendations to improve existing controls are achievable within planned resources for this business year. The new controls suggested have not been incorporated into current business plans. Capacity will be considered as part of the implementation project planning, but substantive delivery may happen next business year if there is insufficient capacity in the current year.

### Equality Impact Assessment

41. We carried out an equality impact analysis at the beginning of the project to ensure we were engaging a diverse range of consumer organisations. The Equality and Access to Justice team has been engaged throughout the thematic review and production of the report. An equality impact analysis of the recommendations has been carried out.
42. The main findings of the impact analysis indicate that we will need to ensure a diverse range of organisations continue to be engaged and this should be monitored. Our research found there was a link between immigration and ethnicity and the impact of this will need to be considered as the recommendations are implemented. We have worked with the Race Equality Foundation throughout this project and will continue to do so and engage further race equality organisations for varied consultation and input.
43. The recommendations in this review closely align with the work of the Equality and Access to Justice team. These recommendations will feed into the new equality objectives for 2017.

### Risk implications

44. This project has worked closely with the Regulatory Risk team to ensure the BSB's Risk Framework and Index were being embedded.
45. The evidence gathered in this review was assessed directly against the Risk Index and the process for assessing the risks was aligned with the approach in the Risk Framework. The risks themselves are summarised in the body of the paper.

### Impacts on other teams / departments or projects

46. This project has been managed jointly by the Regulatory Policy and Supervision departments, and has involved each BSB department. This collaborative approach will continue through the implementation of recommendations. There will need to be ongoing support from the Communications and Public Engagement department.

### Regulatory objectives

47. The research and recommendations will contribute to the BSB achieving its regulatory objectives of protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers and increasing public understanding of citizens' legal rights and duties. This is discussed in more detail in the report.

### Annexes

Annex 1 – Immigration Thematic Review Report

### Lead responsibility:

Sarah Charlesworth – Senior Policy Officer, Regulatory Policy Department  
Ewen Macleod – Director of Regulatory Policy



BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

**Immigration Thematic Review Report**

**May 2016**

**Contents**

- 1. Executive Summary**
- 2. Introduction**
- 3. Objectives of the Project**
- 4. Background**
- 5. Our Approach**
- 6. Research and Evidence Collection**
- 7. Risk and Themes**
- 8. Barristers and the Immigration Legal Services Market**
- 9. Option Development**
- 10. Recommendations**



## Executive Summary

The Bar Standards Board (BSB) began a thematic review into immigration advice and services in 2015. The purpose of the review was to understand and analyse the risks in the immigration advice and services market with reference to the BSB's remit.

The review involved gathering and analysing evidence and developing an understanding of the market in this area. Our evidence gathering consisted of:

- A roundtable with consumer organisations and other regulators of immigration advice services to understand more about an immigration client's journey;
- Visits to barristers and chambers who supply immigration advice and services. A range of questions were asked around the types of immigration services provided, how they provided these services and risks to clients in accessing good quality legal services;
- Consultation with a Reference Group consisting of immigration- focussed consumer organisations and regulators; and
- Desk research into barristers supplying immigration advice and services and clients experiences of receiving such services.

In order to do this we took a specific approach for this review. We ensured a member of staff from each BSB department was included in the development of this project and we utilised the BSB's Policy Development Framework, Risk Framework and Index and Consumer Engagement Strategy.

We identified three themes in light of the evidence gathered. The three themes are access to justice, poorly informed consumers and quality of advice and standards of service.

- Access to Justice – This theme outlines the barriers the public face when accessing the legal help that they need. These barriers include: the increased demand for immigration services, the large amount of work that public access immigration cases require, inconsistent client care, cost and geographical location.
- Poorly Informed Consumers – This theme is about immigration clients and potential clients who lack proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a provider, or seek redress when things go wrong.
- Quality of Advice and Standards of Service - This theme is about the standards of immigration advice and services being provided by different practitioners (eg barristers, solicitors, immigration advisers regulated by the Office of Immigration Services Commissioner (OISC)). It is acknowledged that the service provided by barristers is, in many cases, the last link in the supply chain and that may also have an effect on the ability to provide a competent service.

The themes were assessed against the BSB's Risk Framework and Index, to ensure we understood how the issues we had identified could impact on the market for barristers' services. The key risks that were identified across the three themes were:

- Failure to meet consumer demand;
- Poor public perception of legal services;
- Excessive barriers to supply of legal services;
- Lack of cultural competence and people skills;

- Lack of public awareness of legal rights and duties;
- Lack of accessible, quality market information to inform consumer choice;
- Affordability or value concerns;
- Inadequate training and preparation for practice;
- Supply chain risks; and
- Failure to provide a proper standard of service.

Following this we began to develop options to control the risks we had identified. We developed and refined options in consultation with BSB staff, consumer organisations, other immigration service regulators and the BSB Board.

The recommendations for understanding, promoting and protecting consumer interests are presented below. The BSB currently has controls in place to manage some of the risks identified, these controls feature in existing projects and initiatives. We propose that the evidence and analysis gained from the Immigration Thematic Review will contribute to the BSB's current projects, these are:

- The forthcoming review of client care letters with other regulators;
- Engagement with consumer and immigration frontline organisations that provide assistance to those seeking legal advice;
- Development and dissemination of the BSB's online consumer guidance;
- The youth courts advocacy proceedings review and the development of education and training on vulnerability; and
- The future Bar training programme and the new CPD regime.

We have identified three new controls that we recommend the BSB implements, which will compliment the existing controls identified above, these are:

- Development of "good" and "poor" practice case studies which will be incorporated into the current online consumer guidance;
- Continue working with other immigration services regulators to create joint guidance which outlines responsibilities when instructing a barrister; and
- Build on existing guidance in conjunction with key consumer organisations to develop a framework that all barristers can use to assess and manage client vulnerability.

## Introduction

1. The Bar Standards Board (BSB) is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. The BSB regulates 15,915 barristers in England and Wales.
2. It is a criminal offence for a person to provide immigration advice or services in the UK unless they are a "qualified person" as defined in section 84 of the Immigration and Asylum Act 1999. A practising barrister is a "qualified person" and able to provide immigration advice and services; approximately 700 barristers list immigration as one of their main practice areas.
3. Currently the BSB does not place any specific requirements on barristers wishing to provide immigration advice and services. All barristers who have a practising certificate are automatically authorised to undertake this type of work.

4. In July 2015, the BSB began a thematic review into immigration advice and services provided by barristers.

### Objectives of the Project

5. The objectives of the immigration thematic review were to:
  - (a) Collect evidence from immigration barristers and organisations that engage consumers seeking immigration legal advice and services;
  - (b) Map and understand the immigration advice and services market, and the different client journeys;
  - (c) Collate evidence gathered and divide into distinct themes;
  - (d) Undertake a prioritisation exercise whereby the issues to be addressed are chosen with reference to the BSB's remit, sphere of influence and the relative risk level of the issues identified;
  - (e) Identify areas of risk by analysing the key themes that have developed, identifying linkages with the BSB Risk Index; and
  - (f) Produce a report for the Board, with recommendations as to how this work should be progressed.
6. This report outlines how these objectives have been achieved.

### Background

7. In May 2012 the Legal Service Board (LSB) released a discussion document concerning the regulation of immigration advice and services, seeking comments from regulators and others. The LSB was concerned that there were significant problems with the overall architecture governing the provision of immigration advice and services. To address these problems, the LSB considered that all qualifying regulators must implement coherent, evidence-based approaches to manage the risks to consumers and the public interest.
8. The BSB responded to the discussion paper, and later in 2013 submitted a report to the LSB outlining a programme of work that had been undertaken to assess whether our regulatory arrangements were fit for purpose for the regulation of immigration advice and services.
9. The report to the LSB specifically gathered evidence through the following means:
  - Liaison with agencies such as the UK Border Agency, the Asylum Immigration Tribunal, the prisons estate and others who have first-hand experiences of those needing immigration advice and services, to obtain evidence of performance, problems and issues;
  - Discussion with service providers and representative groups (for example, Immigration Law Practitioners' Association (ILPA)) to obtain evidence of performance, problems and issues;

- Targeted consumer research on experiences with barristers providing immigration advice and services; and
  - Liaison with Legal Services Commission (now the Legal Aid Agency) specifically in regard to performance issues.
10. As a result of the evidence gathered the BSB specifically considered whether we should:
- Have specific authorisation arrangements in place for those that provide immigration advice and services;
  - Use consistent accreditation schemes in conjunction with other regulators
  - Introduce targeted CPD requirements;
  - Put in place peer review of quality and consistency of advice; and
  - Use feedback to drive up quality and identify those who should not be allowed to provide immigration advice and services.
11. At the time, the BSB considered that there was insufficient evidence to make any specific alterations to regulatory arrangements. However, a specific action list was prepared to address any on-going issues. In this action list the BSB committed to undertaking a thematic review of immigration advice and services in 2015. This undertaking is the basis for the current review.

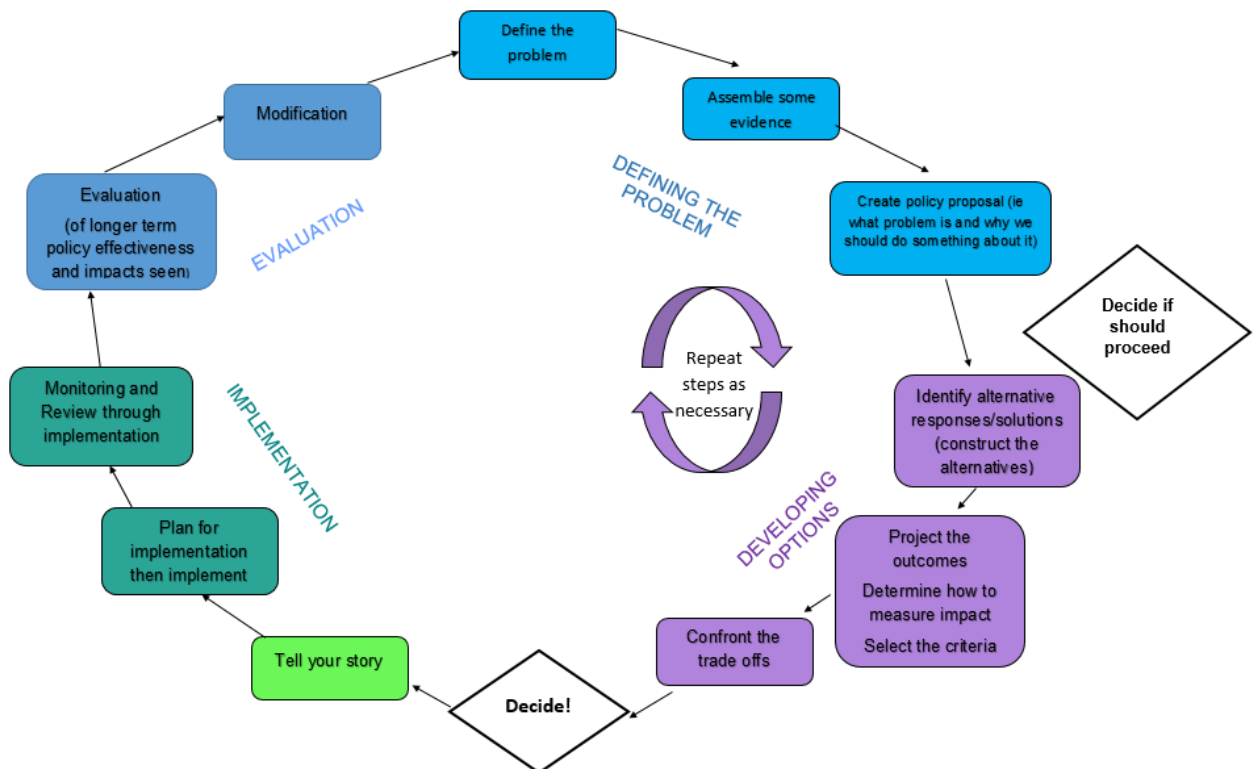
### **Our Approach**

12. The BSB used a number of different approaches in carrying out the review into immigration advice and services. These included use of the BSB's Policy Development Framework, the Risk Framework and Index, Consumer Engagement Strategy and cross-organisational working. The BSB has committed to using these tools in our projects in order to become a more evidence and risk- based regulator. This project was an opportunity to test these new approaches and review them to provide valuable learning for applying these approaches in future BSB projects.

### **Policy Development Framework**

13. The Policy Development Framework is a tool to undertake policy analysis in a more systematic and consistent way throughout the BSB. In devising the framework, the BSB drew on good practice in policy analysis, using components from various models to develop a process for the BSB. It is designed to offer a method of policy analysis that is systematic but flexible. It is one way in which we can draw together a number of different strands of work we undertake, from evidence gathering to the regulatory risk framework. It gives an “end to end” of policy analysis, including the full life cycle from identification of a possible problem to consideration of whether or not an intervention has worked in practice. The framework has four main stages:
- Problem definition
  - Developing options
  - Implementation
  - Evaluation

**BSB POLICY FRAMEWORK**  
(as agreed by the Bar Standards Board July 2014)



14. In undertaking the Immigration Thematic Review, the BSB followed each step of the Policy Development Framework. Separate project plans were developed for the first two stages – “Problem Definition” and “Developing options”. This ensured the BSB did not start developing solutions prior to completing a systematic and comprehensive problem identification process. Internal and external stakeholders were identified, and each person involved in the project had a clearly defined role. The identified themes and options the BSB has developed in this review are therefore based on research and stakeholder engagement that has been undertaken. The three identified themes were tested with BSB staff and external stakeholders to ensure they had been accurately defined and could be easily understood. Major project decisions were made by an internal Project Board to check at various points whether to continue with the project.
15. Utilising the Policy Development Framework helped individuals involved in the project to understand the process of the project. The framework provided a systematic process for policy development and analysis, but was also suitably flexible to allow for the individual nuances of this project. The framework helped us to ensure a robust and systematic approach was used to policy development.

### Consumer Engagement

16. The BSB aims to embed the consumer perspective in all aspects of our work and our strategic plan 2016-2019 commits to nurturing a deeper dialogue with consumers. During the Immigration Thematic Review, the BSB has engaged with consumer

organisations at each stage of the Policy Development Framework, starting with the BSB Roundtable event in July 2015. The Roundtable helped us to understand the immigration market and was an opportunity to hear a range of consumer perspectives. A summary of the Roundtable event is provided at paragraph 55.

17. A Reference Group was also formed with membership sourced from consumer organisations and other regulators of immigration legal services. The Reference Group helped the BSB to map the legal journey from an immigration consumer's perspective. It helped us to identify what the barriers are to getting immigration advice and representation, and where a barrister fits into the process. The group assisted the BSB in evaluating potential policy options and made suggestions about organisations we could work with if the options were to be implemented. A summary of the work undertaken and evidence collected from the Reference Group is at paragraph 83.
18. The BSB has found engagement with consumer organisations to be extremely valuable in enabling us to gather evidence and as a means to develop our understanding of a client's legal journey. The Reference Group has acted as an effective auditor of the issues and options we have identified and many of the representatives on the Reference Group have links to other organisations which may prove to be useful in implementing solutions.

#### Risk Framework and Index

19. The Risk Framework<sup>1</sup> outlines the BSB's approach to identifying and managing risks in the legal system and the Risk Index categorises those risks<sup>2</sup>. These tools were used throughout the Immigration Thematic Review. The 2015 Supervision Report evaluated the evidence gathered from visits to chambers based on the regulatory Risk Index. A summary of the Supervision Report is at paragraph 25.
20. Templates based on those used in developing the BSB's Risk Outlook were used throughout the project. This helped to align the issues we had identified with the Risk Index and the BSB's regulatory objectives.
21. Following the Risk Framework and using the Risk Index gave structure to the process of critically assessing the evidence we had collected. It also helped the Project Board to understand the relevance and potential impact of the issues we had identified. The Risk Index has subsequently been updated to include risks which have been newly identified by this project, for example, Risk 5.5: lack of accessible, quality market information to inform consumer choice.

#### Cross-organisational working

22. In order to ensure that the project adopted a cross-organisational way of working, and utilised knowledge from different parts of the organisation, a Project Board was created for the this review with representatives from each department at the BSB. The

---

<sup>1</sup> BSB Risk Framework

[https://www.barstandardsboard.org.uk/media/1751663/bsb\\_risk\\_framework\\_16pp\\_5.4.16\\_for\\_web.pdf](https://www.barstandardsboard.org.uk/media/1751663/bsb_risk_framework_16pp_5.4.16_for_web.pdf)

<sup>2</sup> BSB Risk Index

[https://www.barstandardsboard.org.uk/media/1751667/bsb\\_risk\\_index\\_12pp\\_5.4.16\\_for\\_web.pdf](https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf)

Project Board met regularly throughout the project to discuss the identified themes, share ideas, refine each other's work, help assess risk and conduct desk research.

23. This cross-organisational style of working meant that new insights and different perspectives were captured throughout the policy development process. Knowledge from across the organisation, both from the work that the teams do and drawing on prior experiences of staff in other fields, was able to be utilised.

### Research and Evidence Collection

24. The research we conducted was part of the "problem definition" stage of the Policy Development Framework. A supervision exercise with immigration barristers and chambers, a roundtable event, a Reference Group and desk research were part of the BSB's evidence gathering activities to inform the immigration thematic review.

### Supervision Report

25. As part of the Immigration Thematic Review, the Supervision department carried out a number of chambers visits between July and September 2015. The chambers were asked a series of questions around the types of immigration services provided, how they provided these services and risks to clients in accessing good quality legal services.
26. The Supervision department was able to gather data about the market factors affecting the provision of immigration advice and services. They found that it was evident from the visits that the amount of immigration work itself is increasing. Most barristers spoken to noted that there was no shortage of work in the immigration area, but that the type of work might be changing as a result of recent changes in the rules (e.g. more judicial reviews being requested).
27. The Supervision department identified the following key themes from the information gathered from the visits:
  - Understanding the types of client and the regulatory risk;
  - Vulnerable clients;
  - Assessing the quality and value for money of the service provided;
  - Accreditation, training and continued professional development (CPD);
  - Access to Justice; and
  - Other concerns chambers expressed.
28. A summary of each of the key themes identified is provided below.

### *Understanding the types of client and the regulatory risk*

29. A key point that chambers stressed is that there are different types of clients requiring immigration advice and that it is important not to generalise when considering the regulatory risks. This is consistent with the message from the round table session for consumer organisations that the BSB facilitated in July 2015.
30. Chambers that engage in work on visa applications for students and more experienced clients have clients who tend to be well educated and able to use the internet and

personal or business contacts to research the market. These clients may have developed an understanding of the legal system and how to find good quality advice.

31. In contrast, the chambers that are located close to major immigration centres and carry out predominantly appeals, entry clearance, asylum and human rights work, say that their clients are often vulnerable for a range of reasons. These clients have less time and less ability to locate the best quality advice, and less access to choice.
32. Some barristers thought that asylum seekers who are entitled to legal aid are more likely to access good quality services than those not entitled to legal aid. Given that access to legal aid has been removed for most consumers of immigration legal services, these people now represent a minority of cases.

#### *Vulnerable clients*

33. Vulnerability can arise from a number of factors including:
  - the underlying reasons for seeking asylum;
  - gender-based persecution;
  - trafficking: both those who have escaped trafficking and those who are currently being trafficked);
  - fear of sudden deportation;
  - fear of children being taken out of school;
  - financial hardship and lack of access to legal aid;
  - language barriers;
  - cultural barriers;
  - mental health issues;
  - trauma experience;
  - family conflict or separation;
  - unaccompanied minors;
  - age (young or old), etc.
34. It was noted that in the field of immigration, often these vulnerabilities come in combination.
35. The Supervision department found that all barristers they spoke to were acutely aware of the vulnerabilities of their clients. Barristers saw it as in their interests to identify vulnerability, as that tends to be central to the legal case that is made, as well as central to their personal interest in practising in this area of law. It was also evident from their visits that assessing and effectively dealing with a vulnerable client is key in the provision of good quality immigration advice and services. There was less clarity around whether clients are currently being assessed for vulnerability in a consistent manner and, what happens if they are assessed as vulnerable.
36. The general consensus was that the majority of less experienced clients seeking immigration advice will be vulnerable in some way. Where the case is not engaged via the public access scheme, often the barrister will not see the client until the day of the hearing. This can mean that barristers are not best placed to make this assessment as by that stage it will be too late to make adjustments. It was seen as critical for the



solicitor/professional client to assess vulnerability and make suitable arrangements, where necessary.

37. Some barristers expressed concern that even if vulnerability is identified, the action that can be taken may be limited by financial factors. It was noted that, as legal aid is no longer available to the majority of immigration clients, expert reports or additional support that may have been commissioned in the past now has to be privately funded.
38. There was a perception that there is currently no specific training for barristers on vulnerability and a number of barristers said that this would be helpful to their work in the immigration area.

*Assessing the quality and value for money of the service provided*

39. Concern was expressed that clients might not be able to establish whether they are likely to receive, or indeed have received “good quality” service as there is no transparent way for them to ascertain this. Chambers said that in the absence of other measures, price is often taken as a sign of good quality – the perception being that the more expensive something is, the better the quality. This could compound the effect of poor service by allowing unscrupulous providers to charge higher and higher fees to vulnerable clients.
40. The withdrawal of legal aid has led to risks to the quality of the service delivered and what was referred to as a “race to the bottom” for the level of fees charged. It has made it very difficult for some barristers to provide “good quality” legal services, the focus being on getting through as many cases as possible, as quickly as possible.
41. Barristers are placed in the position of having to choose to work for little or no fee, because the client has a valid claim, or turn them away. They are increasingly under pressure to do more work for less money, or even for free. This puts at risk the quality of services delivered by barristers, as well as the viability of their immigration practices.
42. There appears to be a contradiction between the view that immigration work is deemed to be high risk and is, therefore, likely to generate more complaints compared to other areas, versus the observation of the BSB that actual complaints levels are low. Chambers visited said that various factors may reduce the likelihood that immigration consumers in particular will make a complaint or question the service that they are receiving. For example:
  - Certain cultures hold legal professionals in very high esteem and are unlikely to question them;
  - Vulnerable consumers at risk of deportation may be afraid that making a complaint will bring them into conflict with the authorities who will deport them;
  - Other types of vulnerability described above means that the client is completely dependent on the barrister and solicitor to direct the case and keep them informed, so they are likely to be unable to hold them to account; and
  - Clients are unlikely to complain after they have been deported.

43. In most cases, the client's contact with the barrister is at the final stage of the "client journey". There seemed to be a unanimous and strong opinion from chambers that they repeatedly experience poor standards of service from solicitors, including:
- The quality of work/files is often poor and papers are often missing.
  - Solicitors (and OISC representatives) tend to send papers to chambers very late in the day before the hearing.
  - There were concerns raised about the level of client care provided by solicitors, in preparing the client for the court process.
  - Delays and outright failure to pay barristers, including legal aid money which, as public money, should be handed over promptly.

*Accreditation, training and CPD*

44. A number of chambers highlighted the risk that the law in this area is particularly complex and fast-changing, yet any barrister, with no specific training, can start an immigration practice. Standard legal training does not necessarily equip a newly qualified barrister to handle immigration work.
45. However, the barristers spoken to did not support the idea of specific accreditation, querying why immigration should be singled out for an additional regulatory burden compared to other areas of the law. They placed greater weight on effective pupillage training, support from more experienced barristers and CPD.
46. All chambers said that a considerable number of major changes to the law have been made over recent years and the Home Office changes its rules on a regular, and sometimes daily basis, but they are poorly disseminated. Given that the law is changing so quickly, chambers underlined the importance of training and ongoing CPD, and ensuring that practitioners keep up to date with the law.
47. There was seen to be limited post qualification specialist training available. Some chambers commented in particular about the lack of training on immigration law outside of London. They were of the view that London had plenty of courses to offer but this made it difficult for practitioners from other parts of England and Wales to access training.

*Access to Justice*

48. The Supervision department found there is a clear correlation between the way that immigration advice and services are provided, the current market factors and access to justice.
49. The closure of key support agencies in recent years and the cuts to legal aid have meant that loss of access to justice is a major concern to immigration barristers. There is unmet demand for good quality free advice. Those who are unable to afford a barrister are now representing themselves as litigants in person, which increases the risk that they do not get equality of access to justice.
50. However, it was evident from the visits that there is no shortage of immigration work for barristers. The unanimous view was that the amount of work is increasing.

Part 1 - Public

Chambers who receive their work through solicitors find that there is a good supply of work. A number who were public access accredited expressed reluctance actively to promote that option because they felt that the work is less profitable (because clients need more “hand-holding” by both barrister and clerk) and carries more risks. Those engaging primarily in public access work find that they get enough work through word-of-mouth recommendations and they do not need to advertise their services.

51. Consequently, chambers said that there was no motivation actively to market their services. This means that vulnerable consumers trying to navigate their way through the legal system for the first time are unlikely to see services by good quality barristers publicly advertised.
52. Chambers that carry out immigration work tend to be clustered around the towns and cities where the Immigration Tribunals are located. Some chambers said that vulnerable people who found themselves in need of urgent immigration services, but who were not located in one of these centres, might find it hard to locate good quality advice.
53. Chambers said that community connections are regarded as a key source of information for consumers about where to find immigration advice. It is therefore crucial to ensure that these communities are well-informed about how to access good quality services.

*Other concerns chambers expressed*

54. The Chambers that were visited raised a number of other issues which may have an impact on some immigration clients and the provision of advice and services. These included:
  - Difficulties with Home Office Presenting Officers not turning up for hearings;
  - The quality of OISC representatives;
  - Receiving work from people who are not in fact regulated solicitors; and
  - The unregulated market for immigration advice, with non-expert, non-qualified persons operating abroad and providing potentially incorrect immigration advice.

Roundtable Report

55. The BSB hosted a Roundtable event for organisations involved in the immigration sector in July 2015. A number of themes emerged from the discussions with the roundtable participants. These were as follows:
  - Terminology;
  - Users of immigration services;
  - Access/barriers to access;
  - Direct access;
  - Geographical issues;
  - Information provision;
  - Choice;
  - Cost/funding;
  - Use of intermediaries/interpreters; and
  - Competent service/standards.

56. A summary of each of the key themes identified from the views of those attending the discussion is provided below.

*Terminology*

57. It was seen as necessary to distinguish between immigration work and asylum work and see these as two distinct categories. It was noted that asylum work consists of a very specific sub-set of immigration with its own unique issues. The use of the term “consumers” in relation to legal services implies having a choice, which is largely not present for many immigration clients, and even less so for asylum clients.
58. The term “market” was also not thought to be useful in this context and potentially misleading, as many consumers don’t have the power to choose that this term implies. It was pointed out that the terms used do not just reflect an issue over language but also a lack of understanding of the underlying issues.

*Users of immigration services*

59. It was suggested that there are wider political factors influencing the policy framework, which affects the extent to which the system can sufficiently address the complexities and needs of immigration clients. It was also noted that regulatory changes could have a negative impact, intended or otherwise, on consumers (particularly with regard to cost and methods of delivery). There was some concern that aspects of regulation do not properly consider users and the impact on them. There was recognition that focusing on the consumer as opposed to focusing on providers of services is relatively new for regulators.
60. Views were expressed about the “types” of immigration client that exist. Immigration services cover a wide range of clients – including high net worth individuals who have very different needs and issues from the traditional view of “immigration clients”. The immigration client base has considerable depth and complexity and it is important not to ignore elements such as private clients whose needs and level of vulnerability are often very different.
61. Lower socio-economic vulnerable clients may have different barriers to and constraints on accessing of information, advice and services compared to clients who are more affluent, or have a less urgent requirement to access services, or have a better knowledge of the immigration market and the services available.

*Access/barriers to access*

62. While it was recognised that correct consumer protections need to be in place it was thought equally important that there are not too many barriers to provision of immigration advice as this may drive up costs and adversely impact on users.
63. In the past voluntary organisations provided the route by which many people obtained advice and a referral to a solicitor or barrister. Many of those voluntary organisations no longer exist due to funding issues and areas where legal aid is available have also changed due to government policy.

Part 1 - Public

64. It was pointed out by participants that people in need of immigration advice can be hesitant about seeking such advice due to the circumstances they are in. This level of vulnerability can potentially sway “immigrants” to approach their community in the first instance. This leads to people seeking legal help from those that have been recommended from their networks through word of mouth, rather than directly approaching barristers or solicitors for legal advice.
65. There was concern that, although participants wanted rogue advisors to be controlled, any sort of control on this could lead to a reduction of legal services available to asylum seekers in particular. It was seen as important to continue to raise standards, without reducing access. Participants did not want to see it made harder for people to access advice when they become part of the immigration system or for access routes to legal representation to be closed off.
66. A general point was made that the problems with many cases were happening before that client ever engaged with a barrister. Participants felt that how well a case progressed often depended on who the client initially went to for advice and how competent they were at providing correct information and/or recommending providers.

*Direct access*

67. The impact that direct access is having on the market was discussed by participants. They believe that issues raised in previous research are coming into sharper focus as a result of the changes to the traditional solicitor/barrister relationship. This is particularly the case in relation to language, consumer understanding of the barrister’s role, and client care and service delivery.
68. It was suggested that there may need to be better support structures around sole practitioners to ensure they are doing a competent job when dealing with immigration clients directly, considering the amount of administration necessary for direct access. An additional risk inherent in direct access was also raised. While solicitors are “repeat clients” and will not offer further work to barristers who provide poor service, individual clients tend to be “single use” consumers of legal services. Therefore market controls over poor service for consumers are weaker when they access a barristers services directly.

*Geographical issues*

69. It was thought that currently there is not a good spread of high quality immigration advice services and immigration barristers geographically. This can make it difficult for clients in some areas to access good advice, which results in a “postcode lottery”. Individuals are forced to use whatever sources of information, advice and services are available locally regardless of their quality.
70. In relation to regional scarcity and variable availability of advice, it was thought that sole practitioners are increasingly filling a gap as demand continues to outstrip supply.

*Information provision*

71. People are increasingly turning to the internet and social media to source advice, which raises various issues. This is something that is potentially difficult for regulators in this area to control. It was also noted that if services are being increasingly advertised on the internet, those who are in prison/detention centres, or those with low income, will struggle to access this information.
72. It was suggested that barristers or chambers who specialise in immigration work could be placed on some sort of public register, so those seeking an immigration barrister can find out where and who to go to. There was also a question raised of whether or not it was possible to identify market leaders, so clients have some idea of who the most competent providers are.
73. There was discussion about a potential system of accreditation or assessment of barristers working in immigration. Members of the public could then use this information on which to base any choice of barrister. It was acknowledged that while accreditation was a good idea in principle, as only small numbers of the entire profession work in immigration, introducing any sort of accreditation system for immigration alone might restrict supply.

*Choice*

74. For the majority of people seeking immigration and asylum services there is little choice of legal representation. There is no “market” for immigration legal advice providers for these people. There was general consensus that making a decision on choice of legal representation is very difficult. Despite this the impact of the decision is very important as it can affect the rest of the client’s life.
75. It was thought that there are a substantial number of people currently operating in the system who are unregulated but are holding themselves out as being regulated. There is a high level of risk associated with these people, and lay clients may not understand who is regulated and who is not, and the difference between them.

*Cost/funding*

76. The shortage of available immigration advice and/or legal representation was identified as a problem in this area. However, this shortage mostly affects those clients who are unable to pay or who rely on legal aid. The lack of supply in the legal aid sector and at the Bar because of low pay associated with this type of work restricts the choices that lower socio economic clients have in legal representation.
77. The cuts to legal aid in this area have also meant that those who are available to provide advice and services are often over-worked and under-resourced. As a result there is a sense that the best providers are pressured to exit the market, knowing they can’t continue to offer a good service on such limited funding.

*Use of intermediaries/interpreters*

78. Generally in relation to referrals it was thought that the relationship between the solicitor and the barrister is the most powerful factor behind referral of business. Even direct access work tends to be subsequent to receiving some kind of advice elsewhere, whether through another legal professional or an NGO.
79. In relation to hearings, it was pointed out that interpreters play a key role, but there are significant risks if a substandard service is delivered. Mistakes can be made both in terms of accurate translation and ensuring the nuances of what is said are properly communicated. The problems arising from low levels of funding were also highlighted relating to interpreters.

*Competent service/standards*

80. There were some conflicting views about the levels of service being provided by barristers. Some participants felt that service is very good and has improved of late particularly with more use of pro bono work and barristers building good relationships with immigration clients and consumer groups.
81. There was some discussion about the standards of other legal professionals providing services in this area. The service from those providing immigration advice, even those who are regulated, does not always meet expectation. Although having more community groups who can help people with their immigration issues is a good thing, if people are not regulated they should not be providing legal advice on immigration. However, it was stated that there is currently a large number of unregulated people operating in the market and providing immigration advice. Concerns were expressed about unregistered barristers in particular, and people who are not legally qualified in any way (e.g. accountants) setting themselves up as “introducer types” and giving legal advice.
82. Client awareness about what constitutes a good service was also discussed. Participants questioned how a client could be expected to know whether they had received competent service or not. They have no way of assessing whether the barrister they are using is competent and there is sometimes a lack of knowledge about what they should expect from their barrister. This means many clients will inevitably judge the service they have received based on the outcome rather than the quality of legal advice or representation they receive. There is often a delay before a consumer realises the legal service they have received has not been to the standard that can be expected. As a result it is often the solicitor or the OISC-regulated adviser that complains rather than the consumers themselves.

Reference Group

83. A Reference Group was set up in September 2015, made up of members who had participated in the BSB's Roundtable Event in July 2015. The members were from the following organisations:
- Race Equality Foundation;
  - Immigration Law Practitioners' Association;
  - Bar Pro Bono Unit;
  - Office of the Immigration Services Commissioner (OISC);
  - Migrant Help;
  - Solicitors Regulation Authority; and
  - Joint Council for the Welfare of Immigrants.
84. The Reference Group met twice, in October 2015 and February 2016, to discuss issues the BSB had identified within the Immigration Thematic Review and to share their insights into the market for immigration legal services.
85. In their first meeting the Reference Group helped the BSB to refine its understanding of a client's journey through the immigration system. While they noted that the client journey could not always be simplified, they provided information on groups using immigration services that may not have previously been considered. They also advised that there was a wider range of issues that affect immigration clients, including housing, banking, welfare, and not just the right for people to be and remain in the UK.
86. The Reference Group was also asked to consider which issues facing immigration clients in accessing services, could be addressed by the BSB. The Reference Group stressed that it should be a priority for all regulators in this area to work together, and to communicate with other organisations working in the area as well. They also emphasised that any approach the BSB took to problems in this area should not be too restrictive, as this may lead to a reduction in access to legal services for consumers. The Reference Group supported work that could raise standards in the immigration legal services market, and noted that clients may not be able to tell what a good standard of service is, or even have much knowledge of what a barrister does. They also noted there is a lack of clarity about what barristers can do with others, that clients face numerous issues to do with money and funding, and that clients in this area are less likely to complain about services they receive.
87. The second session of the Reference Group was focused on options refinement. The group was presented with some of the early stage options the BSB had identified and asked for comment. While the Reference Group was supportive of more information being available to consumers, they felt the key issue was how the BSB would ensure such information made it to the people who needed it. The Reference Group was able to provide the BSB with help in determining possible dissemination routes for consumer information.



Desk Research

88. During the “problem definition” stage of the policy development process we conducted desk research to check whether the risks we had identified from our own research were prevalent in other research into immigration legal services.

*Barriers to accessing immigration advice*

89. Our desk research found that clients were experiencing barriers to accessing immigration legal advice. The Ministry of Justice’s 2015 report on the early impacts of *the Legal Aid, Sentencing and Punishment of Offenders Act (2012) on onward immigration appeals*<sup>3</sup> stated that stakeholders observed adaptations that clients had to make because of LASPO changes, such as opting for self-funding or self-representation for all, or part, of their case. The report also found that there had been an increase in case processing times in relation to the First-tier Tribunal, which causes delays in the immigration system. In 2014, Bail for Immigration Detainees (a charity that provides legal advice and representation to asylum seekers and migrants held in immigration detention to secure their release) surveyed detainees on access to legal advice in detention<sup>4</sup>. Their report found a key barrier to accessing immigration legal advice in detention centres is delays to getting appointments for legal advice and that legal advice surgeries were often unable to keep up with demand for advice. Toynbee Hall (a charity based in Tower Hamlets that provides a number of services, including free legal advice) conducted research to examine the impact of legal aid cuts on people’s lived experiences<sup>5</sup> and found reports of clients taking months to find a specialist barrister. They suggested that legal processes could take longer than necessary involving extra court administration costs.

*Client care*

90. We found that immigration clients require support and considerable client care in addition to the legal advice they need. Toynbee Hall’s data suggests there is an impact on mental health among people seeking justice without legal aid<sup>6</sup>. This was highlighted in their interviewee’s narratives and evidenced by the fact that 78% of survey respondents experienced high levels of anxiety. In their survey participants emphasised that a free legal advice services advisor was not just a lawyer but also a friend and counsellor. Over half (61%) of the respondents considered free legal advice services as their main support to confide their worries in. A report on access to early legal advice for asylum seekers found that trust and confidence between the legal advisor and the asylum seeker were seen an essential component of the process<sup>7</sup>. The report stated advice and support given by the legal advisor reduced the fear of the unknown for the asylum seeker and ensured they were an active participant in the process.

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/449626/monitoring-early-impacts-of-LASPO-act-2012-onward-immigration-appeals.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449626/monitoring-early-impacts-of-LASPO-act-2012-onward-immigration-appeals.pdf)

<sup>4</sup> <https://detentioninquiry.files.wordpress.com/2015/02/bail-for-immigration-detainees-access-to-legal-advice-bid1.pdf>

<sup>5</sup> Sleepless nights: Accessing justice without legal aid - November 2015 Toynbee Hall [http://www.toynbeehall.org.uk/data/files/Reports/Sleepless\\_Nights\\_digital\\_version.pdf](http://www.toynbeehall.org.uk/data/files/Reports/Sleepless_Nights_digital_version.pdf)

<sup>6</sup> Ibid

<sup>7</sup> <http://www.asylumaid.org.uk/wp-content/uploads/2014/08/Providing-Protection.pdf>

*Demand for immigration advice*

91. Our research confirmed that there are a limited number of voluntary organisations providing immigration advice, often due to closure of services, and many are unable to meet demand. Toynbee Hall produced another report about immigration services and the demand for such advice, entitled “Trusting the Dice”<sup>8</sup>, and found voluntary sector providers of immigration advice in the borough were increasingly few in number and under considerable pressure. This was translating into difficulties for clients who were trying to access increasingly oversubscribed services, often with inadequate or inaccurate information about the quality and scope of the services they provide. We found several sources of evidence about the increased demand for immigration advice. The Citizens Advice Bureau found that there was an 11% increase in immigration advice sought in October- December 2015 compared to the same quarter in the previous year. The biggest increases were from refugees (increase of 31%) and national/citizenship (increase of 14%)<sup>9</sup>. In 2015, the Legal Advice Centre at Queen Mary University closed its centre temporarily because of a surge in enquiries, which they felt had been caused by the cuts to legal aid<sup>10</sup>. In 2013, the Bar Standards Board held a roundtable with consumer stakeholders and found evidence that more successful barristers with established reputations often experience an inability to meet demand and cannot accept the volume of instructions that could readily come their way. This is especially the case in relation to tight deadline / short notice work e.g. with deportations, charter flights etc.

*Geographical location*

92. The practice of dispersal in immigration was found in our research, whereby an asylum seeker is moved away from the location of the legal advisor before the first decision which can make it difficult, if not impossible, to provide the support that is needed at this crucial stage<sup>11</sup>. The BSB Roundtable in 2013 also stated clients in detention centres were likely to be moved around which meant links with their legal advisor and community could be severed leading to problems with continuity and quality of service received.

*Inaccurate information provision*

93. We found several pieces of evidence to suggest that inaccurate information provision is a barrier to a client accessing immigration advice. The BSB Roundtable in 2013 stated there were concerns that clients were not being provided the right information at the right time. Word of mouth recommendations and Internet search engines were common tools used to find immigration advice, but clients had limited understanding to inform their choice. Research commissioned by the Bar Standards Board and conducted by IFF Research on the experiences of immigration clients found a lot of misinformation circulated within communities and that this put those needing immigration support at risk of exploitation and being exposed to poor quality advice

---

<sup>8</sup> “Trusting the Dice”

[http://www.toynbeehall.org.uk/data/files/Immigration\\_Advice\\_in\\_Tower\\_Hamlets\\_KEY\\_FINDINGS\\_2.pdf](http://www.toynbeehall.org.uk/data/files/Immigration_Advice_in_Tower_Hamlets_KEY_FINDINGS_2.pdf)

<sup>9</sup> “Advice Trends” <https://www.citizensadvice.org.uk/Global/Public/Advice%20trends/Advice%20trends%202014-15/Advice%20trends%20Q3%202015-16.pdf>

<sup>10</sup> <http://www.lawgazette.co.uk/law/advice-centre-struggles-with-demand-surge/5051482.article>

<sup>11</sup> Providing Protection - Access to early legal advice for asylum seekers <http://www.asylumaid.org.uk/wp-content/uploads/2014/08/Providing-Protection.pdf>

and services<sup>12</sup>. The “Trusting the Dice” report by Toynbee Hall found clients frequently have very little accurate information on which to base choice, often paying over the odds for advice which is sometimes either futile or inaccurate. The “Trusting the Dice” report by Toynbee Hall found that cost is a significant barrier to accessing the advice and there was vague and/or inaccurate information about fees.

94. Our desk research found a large amount of information available online for people who are seeking immigration legal advice. There were some organisations that signposted legal providers and the legal profession as suppliers of immigration advice, however it was apparent that information about barristers was either missing or minimal. As well as clients receiving information from communities and through internet searches, there are online discussion forums where information and advice is being circulated.

#### *Limited Knowledge*

95. The Solicitors Regulatory Authority’s report on the “Quality of Legal Services for Asylum Seekers” found asylum clients struggle to understand the difference between provider types and regulatory protections. Our 2013 research stated consumer organisations felt that there was a general lack of understanding among clients about their legal circumstances, the stages of an immigration case and particularly at what stage representation may be required. The immigration clients interviewed were not entirely sure of the differences between a barrister and a solicitor even after having been through the process of seeking immigration advice/services.

#### *Quality of immigration advice*

96. Our desk research confirmed that clients often associate the quality of immigration advice with cost, which is highlighted in the “Trusting the Dice” report by Toynbee Hall. The BSB’s Immigration Roundtable in 2013 highlighted that immigration, asylum and nationality work are very complicated and challenging areas of the law. It was not uncommon for less experienced advisors to get out of their depth. The IFF research commissioned by the BSB in 2013 reported positive views about the advice clients received from their barrister. However, several clients felt the amount of advice they had received was minimal and that they would have appreciated more detail or explanation. Consumer organisations also stated in the IFF research that clients had a tendency to judge the quality of advice received purely on the basis of the outcome achieved in their case. A report on “Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers” explains that although there is regulation of asylum advice, unscrupulous advisers continue to operate. Reductions in legal aid have made it more difficult to deliver good quality advice. The report states that the damage done by poor advice early on is, in some cases, irreparable<sup>13</sup>.

---

<sup>12</sup> Immigration Client Experience Research (IFF 2013)

[https://www.barstandardsboard.org.uk/media/1525842/iff\\_report\\_\\_immigration\\_client\\_experience\\_research\\_final.pdf](https://www.barstandardsboard.org.uk/media/1525842/iff_report__immigration_client_experience_research_final.pdf)

<sup>13</sup> “Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers” <http://www.naccomm.org.uk/wp-content/uploads/2015/09/models-of-immigration-advice1.pdf>

*Standards of service*

97. The IFF Research commissioned by the BSB in 2013 stated some individuals felt they had a lack of contact with their barrister and the barrister had not made much effort to find out about the details of their case. There were no protocols for providing updates to the client and many clients felt that having regular updates was an important part of the service and they had to chase the barrister for updates. A lack of support from the barrister was also reported in the research, with some barristers only talking to the client when they requested money. Asylum Aid's report entitled "Rethinking Asylum Legal Representation" outlines their concern of about the dearth of competent and trustworthy legal representation across the country<sup>14</sup>.

**Risk and Themes**

98. Once the evidence gathering stage had been completed we progressed onto analysing the evidence collected. We identified key themes and risks and this was the final part of the "problem definition" of the Policy Development Framework.
99. We identified common issues across each report and assessed the frequency and severity of the issues facing immigration clients seeking legal advice and barristers supplying immigration legal advice and services. The issues that were identified were then grouped into themes using the immigration client journey. The three themes are:
- Access to justice;
  - Poorly informed consumers; and
  - Quality of advice and standards of service.
100. The BSB Risk Index is a catalogue of risks that can be a barrier to delivering our regulatory objectives. The themes and evidence were assessed against the BSB's Risk Framework and Index, to ensure we understood how the issues we had identified could impact on the market for barristers' services.
101. The key risks that were identified across the three themes are:
- Failure to meet consumer demand;
  - Poor public perception of legal services;
  - Excessive barriers to supply of legal services;
  - Lack of cultural competence and people skills;
  - Lack of public awareness of legal rights and duties;
  - Lack of accessible, quality market information to inform consumer choice;
  - Affordability or value concerns;
  - Inadequate training and preparation for practice; and
  - Failure to provide a proper standard of service;
  - Supply chain risks.

---

<sup>14</sup> "Rethinking Asylum Legal Representation" [http://www.asylumaid.org.uk/wp-content/uploads/2013/02/AsylumAid\\_report\\_V3.pdf](http://www.asylumaid.org.uk/wp-content/uploads/2013/02/AsylumAid_report_V3.pdf)

102. The three themes were issues the BSB identified in the light of the evidence gathered. The following is a summary of the themes and the risks associated. The risks identified as part of this review cover the whole of an immigration client's journey through the legal process, not just their interaction with a barrister. It is important to note that the themes cannot be viewed in isolation and should be considered altogether in the context of the wider immigration legal services market.

#### Access to Justice

103. This theme is about the barriers the public face to accessing legal help that they need. These barriers include the following:

- The increased demand for immigration advice, which is outstripping supply of advice by barristers.
- The large amount of non-legal support and help a client often requires, with many support services closing and voluntary organisations that previously supplied access to advice or referral to a barrister or solicitor no longer existing.
- Delays to immigration legal advice and services mean that the system has been blocked, often by process delays and clients who are prompted at the “last minute” to access legal advice for example by enforcement action. Appeal routes have been reduced and there is no automatic right to appeal. As a result Judicial Review is being increasingly used and this is a more complex system, which contributes to further delays.
- Immigration legal advice can be labour intensive work for public access barristers, particularly sole practitioners, as they often do not have capacity to deal with the administration required. Public access barristers have often been unwilling to advertise their services because they have enough work.
- There has been a poor spread of immigration advice and barristers across the country as well as more cases being reallocated to tribunals in other locations outside London. There has also been a growing market overseas from people seeking legal help once they have left the UK.
- There has been a reduction in legal aid funding for immigration clients, meaning clients have to pay for legal services. There has been a lack of clarity around costs and evidence of overcharging. Clients have had to adapt to a lack of legal aid by self-funding or self-representation for all, or part, of their case.
- The majority of non-professional clients seeking immigration advice will be vulnerable in some way; this may be due to languages, financial or cultural barriers. Clients may have been exploited before reaching a barrister, sometimes due to poor levels of client care. There was confusion about who is responsible for assessing and managing vulnerable clients and whether a consistent approach was being used.

#### Risks associated with the access to justice theme

104. Key risks have been identified in the BSB Risk Index in relation to this theme. The access to justice theme particularly relates to our regulatory objectives of protecting and promoting the public interest, the interests of consumers and improving access to justice.

105. The key regulatory risks identified in this theme were:

- Affordability or value concerns and failure to give clear information about fees

This theme identified the reduction in legal aid for immigration cases and the risk that legal services were unaffordable, were perceived to be unaffordable or perceived not to represent sufficient value for money. As well as the risk that clients may not be given the correct or clear information about fees.

- Failure to meet consumer demand

This theme has identified clients were often unable to access the services they require, many first points of contact were unavailable due to closures and legal aid no longer funds access to support services. This highlights that the legal services market might not understand or adequately provide for consumer needs. Clients who are unable to access legal advice might be forced to represent themselves or access the unregulated market and be susceptible to poor advice and services.

- Poor public perception of legal services

This theme raised concerns about the inconsistent approaches taken to client care across the legal providers, which could affect public confidence. If access to profession becomes increasingly limited this could also significantly impact the profile of the profession.

#### Poorly Informed Consumers

106. This theme is about immigration clients and potential clients who lack proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a provider, or seek redress when things go wrong.

107. The causes of this theme were identified as:

- Limited understanding and knowledge of the law and the legal services market is widespread among the general public, and this can be a particular problem for immigration clients; immigration clients often have multiple vulnerabilities that are exacerbated by limited understanding, leading to substantial disadvantage in the market.
- Immigration clients can often access or be provided with inaccurate information either due to multiplicity of information sources, unintentionally due to the complex and changeable nature of immigration law, or deliberately on the part of unscrupulous providers.
- Limited understanding contributes to high levels of support being required when engaging with the legal system (which providers are often poorly equipped to provide), this harms access to an appropriate service, and can contribute to additional burdens on legal services in terms of time and cost.

Risks associated with the poorly informed consumers theme

108. This theme significantly impacts on the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers and increasing public understanding of citizens' legal rights and duties.

109. Key risks have been identified in the BSB Risk Index in relation to this theme. These were:

- Lack of public awareness of legal rights and duties

This theme raised the risk that consumers have limited understanding of the legal system and therefore could be more susceptible to poor advice and services. Focusing on this risk could address the disadvantages faced by immigration clients in accessing legal services, result in better decision making both from clients and courts, reduce the time taken to obtain fair outcomes, and reduce appeals and time pressures on courts and providers.

- Lack of accessible, quality market information to inform consumer choice

This theme highlighted that consumers do not have timely access to reliable information by which to identify their legal needs and choose an appropriate provider to meet those needs. If a consumer does not have access to information they need they may be exploited by unscrupulous providers, they may face delays in their case and potentially have to appeal a decision.

Quality of Advice and Standards of Service

110. This theme is about the standards of immigration advice and services being provided by practitioners. Possible causes of poor standards of service and quality of advice have been identified as:

- The pace of change in immigration law over recent years and changes to Home Office rules on a regular basis, presented considerable challenges to barristers in keeping up to date with the law, which might impact on the quality of advice and service being provided.
- Barristers were increasingly under pressure to do more work for less money, or even for free. This puts at risk the quality of services delivered by barristers, as well as the viability of their immigration practices. Cuts to legal aid available for immigration cases have meant that those who provide immigration advice are often over-worked and under-resourced.
- The service provided by barristers is, in many cases, the last link in the supply chain. Poor standards and advice is often given at the outset of a case by an intermediary, which may have an effect on the ability to provide a competent service. As a result the client may not receive appropriate client care in the supply chain before reaching the barrister and it may be too late for the barrister to rectify.
- Clients often judge the quality of legal advice they received by the cost and perceive a negative result in their case as receiving poor quality advice.

- Regulators are not always aware when incompetent or poor service has been provided; there are low numbers of complaints in this area and this means that issues are not being detected or resolved.

#### Risks associated with quality of advice and standards of service theme

111. This theme significantly impacts on the regulatory objectives of protecting and promoting the public interest, the interests of consumers, improving access to justice and promoting and maintaining adherence to the professional principles. Key risks have been identified in the BSB Risk Index in relation to this theme. These are:

- Inadequate training and preparation for practice

Varying standards of advice and services could have serious consequences for the client. It might be caused by insufficient training to prepare barristers to be competent and delivering the services required of them. If this issue is left unaddressed then poor practices may continue to exist.

- Lack of cultural competence and people skills

The evidence we collected highlighted that barristers or other individuals engaged in the provision of services might demonstrate lack of social and cultural insight, interpersonal communication skills or empathy.

- Failure to provide a proper standard of service;

The evidence collected highlighted some of the possible causes of a barrister's failure to provide a proper standard of client care and quality of work to clients.

- Supply chain risks

In our research with barristers and consumer organisations concerns were stated about the performance and conduct of other professional providers instructing barristers.

#### **Barristers and the Immigration Legal Services Market**

112. Barristers represent a small proportion of the supply of immigration services. Around 5-6% of the Bar (approx. 700 practitioners) listed immigration as a practice area during the Authorisation to Practise process, but this is not necessarily their main practice area<sup>15</sup>. There are currently 5,388 barristers registered to undertake public access work and 582 of those barristers listed immigration as one of their practice areas (11% of public access barristers).

---

<sup>15</sup> Practice area data is self-submitted by Barristers as part of their application to renew their practising certificate and is not quality assured by the BSB. Barristers can list as many practice areas as they wish, and it is common for barristers to list a number of different practice areas – as a result the total listing any given practice area may not represent only barristers who specialise or spend the majority of their time on a particular area of work, but also barristers who do a certain amount of this work alongside other areas which take up more of their time.



Total number of practising barristers	15,915
Barristers practising immigration	Approx 700
Public access barristers	5388
Public access barristers practising immigration	582

113. Research commissioned by the BSB and LSB into the current provision of legal services through public access barristers found that one in ten respondents practised in immigration. Of those one in ten, 78.9% of immigration public access practitioners had accepted instructions over the past 12 months, which was a high acceptance percentage compared to other areas of the law.<sup>16</sup>
114. Our research found that immigration advice and services is often needed with other legal services. Other legal issues may be tied up with immigration or be required on top of immigration advice, most notably family law and housing law.
115. Although a relatively small proportion of barristers supply immigration advice and services, the evidence we found covers a range of issues that are not limited to immigration. The majority of the recommendations at paragraph 22 will help to address similar problems in other areas of the law.
116. This review has captured evidence and identified risks throughout the immigration legal process which have the potential to impact the services provided by a barrister, who is often the last link in the supply chain. The themes we have identified can also impact the quality of interaction a client has with a barrister.
117. A barrister's engagement in an immigration case is often at a crucial point in the legal process (eg where potentially final decisions are being made on a client's case). Although barristers working in this area are a relatively small proportion of the overall market, poor practices by barristers could significantly impact a client, particularly vulnerable clients.

### Option development

118. Once the risks and three themes had been identified we progressed to the option development stage. This is the second stage of the Policy Development Framework.
119. In order to think about this stage of the project more creatively and collaboratively we held an internal workshop, to which all BSB staff were invited. 40 people voluntarily attended the session. At the workshop, roleplay was used to illustrate the relationship between an immigration lay client and barrister, and the various challenges such a client might face. It was made clear to staff that the roleplay was not intended to cover all the lived experiences of immigration clients, but it was intended to provide a snapshot of the issues and risks that we had encountered through our research. BSB staff were invited to discuss the problems that had been identified and encouraged to be creative in suggesting potential policy solutions.

<sup>16</sup> "Research into the Public Access Scheme" <https://www.barstandardsboard.org.uk/media/1754315/public-access-final-report.pdf>

120. Following the all staff workshop, we collated all the options that were suggested for each of the themes. There were between 20-40 potential options for each theme, they were refined by considering the following:
- Whether there was enough evidence to take the option forward;
  - The level of required regulatory intervention and proportionality / feasibility of the option;
  - The possible benefits and adverse consequences; and
  - Whether it addressed the problems we had defined for each theme.
121. The list of options were narrowed down to a list of thirteen options, these were then explored and the following was considered:
- The practicalities of the option and what the BSB would need to do;
  - The resources required for the option;
  - Whether the option required input from external organisations;
  - The projected timescales for implementing the option; and
  - The advantages and disadvantages of the option.
122. The options were then presented to the Reference Group for consideration along with specific questions for each of the options. The options were then refined to seven options based on the feedback from the Reference Group. These options were then checked with the Project Board.
123. One of the final stages in the option development process was a workshop with the BSB Board in April 2016, which provided an opportunity for members to feed in their views on each of the options. At the workshop the Board was invited to consider the BSB's role in undertaking the options.
124. Our approach to option development has ensured that we articulated the risks accurately in relation to immigration advice and services. We have tested each of the potential options to ensure they are addressing the risks and problems we had found through the evidence we collected. We consulted a large number of staff and key stakeholders to shape and refine options.

### Recommendations

125. In this section we draw on the evidence produced by this review and the risks identified to present recommendations for improving the experience for consumers accessing and barristers supplying immigration legal advice and services.
126. It was clear from the feedback on the options from each of the stakeholders and the evidence we collected that any recommendations should not pose a disproportionate regulatory burden on immigration practitioners, because this could impact supply in the market.
127. The risks identified as part of this review cover the whole of an immigration client's journey through the legal process, not just their interaction with a barrister. Therefore it

will be important for the BSB to work other regulators and organisations where appropriate.

128. The recommendations are focused on how the BSB will address the risks we have identified as part of this review and what the outcome of the recommendation would be. We have focused on projects in the BSB that are currently on-going and we can expand on, in order to start embedding the learning from this project as soon as possible. We have outlined if recommendations would require a new programme of work.

Risk 1 and 2: Affordability or value concerns and failure to give clear information about fees

129. There is a requirement in the BSB Handbook that all barristers when accepting instructions must confirm in writing the terms and/or basis on which they will be acting, including the basis of charging<sup>17</sup>. The Office of the Immigration Services Commissioner requires an organisation that charges for its immigration advice or services to charge a reasonable fee that directly relates to the work done. The organisation must not charge a fee for work that is unnecessary or unauthorised by the client<sup>18</sup>. The Solicitors Regulation Authority requires that clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter. This information must be provided in a clear and accessible form that is appropriate to the needs and circumstances of the client<sup>19</sup>.
130. Although there are regulations currently in place about fees, serious concerns have been expressed by barristers about providers of immigration legal services attracting clients with an initially low fee offer and then raising the fee and there is evidence of “marking up” fees<sup>20</sup>. This means that genuine providers are subject to fee pressures to remain competitive. This creates difficulty for barristers to stay in the immigration market as well as confusion for clients who may perceive immigration legal services by certain providers as wholly unaffordable.
131. The BSB has committed to conducting a review of client care letters with other legal services regulators through the Regulators Forum to ensure they are fit for purpose.
132. Therefore it is recommended that the findings from this review are included in the review of client care letters to ensure clarity of fees is included. This would be to ensure that the following risks are minimised:
- The “marking up” of barrister fees- where an intermediary charges the client more money than the barrister requested.
  - Confusion about subsequent or additional costs – if a provider originally charges the client less money to appear attractive and increases the fees.
  - Unexpected costs to the client – for example the client is still charged if their hearing date changes.

<sup>17</sup> Rule C22 [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf)

<sup>18</sup> OISC Code of Standards <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>

<sup>19</sup> SRA Code of Conduct <https://www.sra.org.uk/solicitors/handbook/code/content.page>

<sup>20</sup> Supervision Fieldwork Report 2015

- Confusion about what a barrister can and cannot provide depending on what the client can afford – due to the reduction in legal aid, many clients cannot afford to meet their barrister as often.
  - Confusion about the outcome of case – a client who pays for immigration legal services may assume that their case will be successful, which is not necessarily the case.
  - Confusion about unbundling of services and what constitutes a fair fee.
133. The BSB currently has consumer guidance on its website and one of the sections covers how a consumer can pay a barrister. It is recommended that this guidance is expanded to cover questions clients could consider asking their barrister about fees. In order to do this we will need to continue our engagement with consumer organisations to develop the key questions that consumers want to know about fees. The BSB's consumer guidance is available online but dissemination to consumer organisation still needs to be planned. Therefore this will be an excellent opportunity to work with consumer organisations to use the guidance with their clients and help to develop this further.
134. The outcome of this recommendation would contribute to empowering consumers to participate in the legal process and it would enable consumers to receive greater price transparency.
135. These recommendations would contribute to on-going work in the BSB and further development of existing materials for consumers.

Risk 3: Failure to meet consumer demand

136. There are many organisations that are often the first contact for an immigration client seeking advice. Citizens Advice (CA) or local community organisations signpost and support clients to access legal advice. In order for consumer organisations to meet consumer demand they would need to be aware of the role of the Bar in the provision of legal services.
137. The BSB has already begun developing relationships with consumer and immigration-focused organisations. The Reference Group stated that organisations would benefit from understanding more about different legal providers and the process of accessing a barrister directly. It is recommended that we continue and expand our engagement with consumer and immigration frontline organisations that provide assistance to those seeking legal advice. We could provide information on the duties and requirements that barristers must meet. This recommendation will allow the BSB to have a more meaningful dialogue with consumer organisation and build our insight into different types of organisations that signpost and support consumers seeking legal advice.
138. This recommendation would build on the existing engagement the BSB has with consumer and immigration- focused organisations. It will contribute to achieving the BSB's first strategic aim in its current strategic plan, by helping the public better to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have better understanding of their legal rights and duties as citizens. This recommendation would

apply only to immigration-focussed organisations at first because they are the organisations that are currently engaged in this project.

Risk 4 and 5: Poor public perception of legal services and lack of cultural competence and people skills

139. The BSB requires all barristers to ensure the interests of vulnerable clients are taken into account and their needs are met. This includes the duty for barristers to consider their ability to work with vulnerable clients before accepting instructions in a case and the guidance to avoid any unnecessary distress to the client.
140. In the Supervision visits the BSB conducted in 2015, barristers stated that it was in both the barrister and clients interest to identify vulnerability because it was often central to the legal case. Barristers were clear that they would welcome guidance or training on client vulnerability in order to meet consumers' needs.
141. The Legal Services Consumer Panel in its guidance on responding and recognising consumer vulnerability state it is the responsibility of lawyers to adjust their practices and enable vulnerable consumers to use legal services effectively<sup>21</sup>. They have created guidance for regulators to use that includes concepts of vulnerability and information on vulnerability in the legal services market. It is recommended that the BSB build on this guidance in conjunction with key consumer organisations to develop a framework that all barristers can use to assess and manage client vulnerability. It would not be immigration specific, although could contain information relevant to different practice areas. The reason being that vulnerable clients exist in many areas of the law and as previously mentioned immigration advice is increasingly being sought in conjunction with other legal advice (eg family and housing). This would be a voluntary framework that barristers could use to help them achieve the regulatory outcome of ensuring the interests of vulnerable clients are considered and their needs are met. It would include:
- Literature on vulnerability;
  - Questions the barrister could ask the client;
  - Support services the barrister can signpost the client to; and
  - Good practice examples.

*“It was apparent that all barristers we spoke to were acutely aware of the vulnerabilities of their clients and could articulate this, often passionately. However there is no specific training for barristers on vulnerability and a number of barristers said this would be helpful.” (Supervision Report 2015)*

142. The BSB is currently implementing a range of recommendations following the review into youth proceedings advocacy<sup>22</sup>. One of the recommendations taken forward is

<sup>21</sup> “Recognising and responding to consumer vulnerability”

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf)

<sup>22</sup> “The Youth Proceedings Advocacy Review: Final Report”

<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

about expanding training and learning opportunities to advocates on vulnerability. It is recommended that the evidence collected as part of this review and information gathered whilst developing the vulnerability framework is contributed to the development of training on vulnerability for advocates.

143. The recommendation to create a vulnerability framework would be a new area of work for the BSB but it would build on existing relationships with consumer organisations. The recommendation to contribute to the current youth proceedings advocacy project would be supporting an on-going project at the BSB. This recommendation would contribute to the BSB's strategic programme of ensuring that the perspective of the consumer (and especially the most vulnerable) is more central in regulatory policy making and actions.

Risk 6 and 7: Lack of public awareness of legal rights and duties and failure to provide a proper standard of service;

144. Since 2013, when immigration services were first reviewed by the BSB, the public's awareness of legal services and their rights has been a concern. Immigration clients are often unable to judge the quality of the services they receive, therefore they will be unaware if they should seek redress and what the options for redress are.
145. The BSB Handbook requires all barristers to provide a competent standard of work and service to each client. In our Supervision visits barristers raised a concern that clients might not be able to establish whether they are likely to receive, or indeed have received "good quality" service, as there is no transparent way for them to ascertain this.
146. It is recommended that the BSB expand the current consumer guidance to include case studies of what "good" and "poor" service is. This would be specifically for the benefit of immigration consumers to help them to understand what to expect and their legal rights if they do receive "poor" service. Our research suggests the difficulty in assessing the quality of service is a particular concern for immigration clients. In the Roundtable Report 2015, it states that confusing immigration laws act as a barrier to good quality service. It also highlighted that the reduction in legal aid for immigration services has had an impact on a client finding "good" quality services. The geographical issues in accessing immigration advice and services also create another barrier to "good" quality services. Individuals are forced to use whatever sources of information, advice and services are available locally regardless of their quality.
147. A lot of the evidence we have collected as part of this review could be used in the guidance. We would also need to gather further information from the immigration-focused organisations we currently engage with, the Legal Ombudsman, immigration barristers and other regulators of immigration legal advice and services.
148. In the BSB the Supervision and the Professional Conduct departments will share and check practices.

**Examples of good practice**

*“The barrister asks the lay client to provide the solicitor with feedback about their barristers, in the hope that the client will be more likely to give an honest assessment to the solicitor” (Supervision Report 2015)*

*“A number of barristers carry a copy of chambers’ client information leaflet with them to hand out to lay clients to ensure that the client understands the process and what to expect” (Supervision Report 2015)*

149. The recommendation to expand the existing consumer guidance would build on on-going work in the BSB to raise awareness of the public of its legal rights and duties. However it is a new control for the BSB and new content on practices provided by immigration barristers and consumer organisations would need to be created and it would require engagement with key stakeholders to ensure it accurately covered a range of “good” and “poor” practices.
150. By having contributions from both consumers and barristers, these case studies can reflect “good” and “poor” practice in how the two sides communicate with each other. This will help practising barristers become more competent in how to interact with their clients and lead to better overall service to the client.

**Risk 8: Lack of accessible, quality market information to inform consumer choice**

151. In 2016, the BSB launched its consumer guidance on the website. It helps all past, current and potential users of legal services to understand what a barrister is, what they do and how they may be able to help. It was stressed in our research that consumers should have timely access to reliable information by which to identify their legal needs and choose an appropriate provider to meet those needs.
152. It is recommended that the project team responsible for the online consumer guidance creates a plan to disseminate it to appropriate consumer organisations. We will need to work closely with the consumer organisations currently engaged to formulate dissemination routes that we will promote the guidance to.
153. This recommendation would contribute to an existing project at the BSB and it would draw on the expertise of consumer organisations already engaged.
154. The outcome of this recommendation would be the consumer guidance disseminated to a diverse range of organisations and organisations feedback that the guidance is useful in their role in supporting consumers navigating the legal process.

**Risk 9: Inadequate training and preparation for practice**

155. The BSB is currently undertaking a programme for change in education and training to ensure it is consistent, innovative and flexible. This programme consists of the introduction of a professional statement, which describes the knowledge, skills and attributes that all barristers should have on ‘day one’ of practice. A new flexible CPD regime has also been introduced for barristers on the established practitioners programme. There is also another work stream reviewing the arrangements and

content for the vocational stages of training to be a barrister (currently the Bar Professional Training Course).

156. It has been identified that barristers may lack the training and preparation to provide a competent standard of service to their clients, particularly those who are vulnerable. It is recommended that the evidence gathered as part of this review should inform the programme for Future Bar training. This could include the following:
- Ensure that all barristers, on qualification, have an adequate awareness of the issues associated with client vulnerability and are able to apply them where necessary. They must also understand their limitations and further development needs, particularly if entering a new area of practice such as immigration; and
  - Consider how guidance as part of the new CPD regime can assist a barrister to identify how client vulnerability learning should feature when planning their training needs.
157. The BSB is currently undertaking a review into the public and licensed access rules. The review includes assessing the effectiveness of the public access training and the guidance for lay clients. It is recommended that the evidence gathered in this review, particularly about public access work and intermediaries should feed into the public access and licensed access review.
158. These recommendations would contribute to existing projects at the BSB. It would be a constructive way of sharing the knowledge gathered from this review and using the evidence to help shape current programmes of work.

#### Risk 10: Supply chain risks

159. This review identified that the barrister can often be the last in the supply chain for immigration legal services, which means services provided early can impact the barristers' ability to provide a competent service. As part of this review we have worked closely with other regulators of immigration services to identify key issues that can impact the supply chain from the intermediary to the barrister.
160. It is recommended that the BSB continue to work with the immigration advice and services regulators. Joint guidance, which outlines responsibilities when instructing a barrister, could be created to support both the professional and lay clients to inform and manage their expectations. This review found the key areas that cause problems in the supply chain for immigration services; these include communication of fees, late delivery of paperwork, poor quality of files and assessment and management of vulnerability.

#### ***Examples of existing practices***

*"The majority of barristers we spoke to said that their clients will almost always have been given poor advice or exploited before reaching them"* (Supervision Report 2015)

*"There were concerns raised about the level of client care provided by solicitors, in preparing the client for the court process"* (Supervision Report 2015)



161. The joint guidance could be beneficial for barristers in different practice areas; the issues identified between the intermediary and the barrister were not immigration specific and are likely to apply to range of practices. The outcome for this recommendation would be clients understanding the transition from their intermediary to a barrister. In addition to barristers and intermediaries setting and managing expectations with each other and for the client.
162. The recommendation for this risk would continue our existing engagement with the immigration services regulators. The creation of joint guidance would be a new area of work for the BSB and it would contribute to the BSB's strategic direction of "considering with other regulators what common approaches might usefully be adopted"<sup>23</sup>.

---

<sup>23</sup> BSB Strategic Plan 2016-19



**BSB 2015-16 Equality Objectives Progress Review and Developing New Objectives for 2017****Status**

1. For noting and approval.

**Executive Summary**

2. The Equality Act 2010 requires public bodies to publish equality objectives that commenced not later than 6<sup>th</sup> April 2012. Objectives must be re-published at intervals of not greater than four years following the date of first publication.
3. Following Board approval, the BSB published its first set of equality objectives in March 2012 and has republished new objectives annually thereafter. Objectives are aimed both externally at the barrister profession and internally at BSB staff. In May 2015 the Board approved 11 equality objectives for publication for the 2015-16 period.
4. The table at Appendix 1 provides a progress update on the BSB's 2015-16 equality objectives. The majority of equality objectives are now complete. Two objectives (numbers 1 and 4) are currently on track to be completed by their revised deadlines.
5. This paper sets out a proposal for a new approach to developing the BSB equality objectives for 2017 following the disbanding of the BSB Equality and Diversity Committee (EDC) in December 2015 as part of the BSB governance review. Previously, equality objectives were developed by the Equality and Diversity (E&D) team in conjunction with the EDC who provided oversight and reported to the Board. In publishing new objectives at the end of 2016 rather than in May we have allowed sufficient time for the development and implementation of a new approach, in light of the BSB's new strategic priorities. With new governance arrangements in place, the Equality and Access to Justice (E&AJ) team plans to set up a Task Completion Group (TCG) to develop and propose new equality objectives for the board to approve.
6. The new approach will deliver greater involvement with BSB departments, the Board, committees, the SMT as well as engagement with consumer/voluntary organisations. The BSB is committed to helping people and communities work together to shape positive equality outcomes by drawing on their own knowledge, skills and experiences. This recognises that meaningful change is more likely to happen if people and are in control and manage their own futures.
7. It is proposed that the new equality objectives for 2017 would be developed in the May – August period and Board approval for publication would be sought in December 2016. The new objectives would apply for the duration of 2017. An action plan can be found at Appendix 2.

**Recommendations**

8. That the Board:
  - Notes the 12 month progress review of the 2015-16 equality objectives at Appendix 1
  - Approves the approach to developing 2017 equality objectives at paragraph 11 and the action plan at Appendix 2.

## Summary of Legal Requirements

9. The Equality Act 2010 Specific Duties Regulations 2011 came into force in September 2011. The regulations require that listed public authorities prepare and publish one or more objectives which it thinks it should achieve to meet any of the arms of the general equality duty (s.149 Equality Act 2010). The general duty requires public bodies to pay due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation;
  - Advance equality of opportunity between different groups; and
  - Foster good relations between different groups.
10. The Act stipulates that the objectives must be published not later than 6th April 2012 and subsequently at intervals of not greater than four years beginning with the date of last publication. Objectives must be specific and measurable (SMART). The BSB reviews and re-publishes its objectives annually beginning in April 2013, as outlined in the BSB Equality Strategy 2013-16. Under the proposed approach, new equality objectives and a new equality strategy will be developed in the May – November 2016 period with publication taking place in December 2016.

## Background

### Current Equality Objectives 2015-16 (Appendix 1)

11. The majority of the current equality objectives (9 in total) are complete. Two objectives (numbers 1 and 4) are on track to be completed by their respective deadlines.

### New Approach to Developing Equality Objectives for 2017 (Appendix 2)

12. The BSB EDC, along with a number of other BSB committees, was disbanded at the end of 2015 as part of the BSB governance review. At its final meeting in December 2015, the EDC approved a paper proposing a new approach to developing equality objectives for 2017. The new approach would involve greater engagement with other BSB departments and external organisations to ensure that the objectives are aligned with BSB strategic priorities and are risk and evidence based. Priorities will be both external (aimed at the profession) and internal (aimed at BSB staff). The E&AJ team will aim to foster dialogue between different distinct groups, for example between the BSB and external organisations, to give a broader perspective and ensure decisions are not made in isolation.
13. Engagement with all BSB departments will ensure that the new objectives reflect current ongoing projects which have strong equality and diversity elements such as the immigration thematic review, the research into women at the Bar and the review into advocacy in youth courts.
14. The work the EDC and E&AJ team has completed to date has done much to raise the profile of the E&AJ agenda across the BSB and externally. The current equality objective number 11 includes a commitment to *‘Invite diverse groups to contribute and inform our future diversity programme’*. To this effect, the E&AJ team delivered on a commitment to produce an E&D directory with over 150 external diversity organisations to target for further involvement and have already established relationships with organisations that are willing to engage with us to help inform the development of BSB equality objectives.

15. Internally the E&AJ team has been working closely with the Regulatory Risk team on the Risk Outlook, which includes a commitment to address those risks associated with anti-discriminatory practices and improving cultural competence. Additionally, support has been given to the BSB Consumer Programme to ensure that consumer engagement is embedded in our work and that the consumer perspective is taken into account in everything we do.
16. The action plan at Appendix 2 sets out the detail of how the E&AJ team intends to implement the new approach and develop equality objectives for 2017. The proposed equality objectives for 2017 will be presented to the Board in December 2016 and published following approval. The equality objectives will be reviewed and republished in December 2017.

#### Work with the Bar Council

17. The BSB agreed a memorandum of understanding (MoU) with the Bar Council to clarify (for the profession) the respective roles and responsibilities of the Bar Council and the BSB with respect to equality and diversity. The MoU addresses the organisations' Public Sector Equality Duties, the advice to the barrister profession, the regulatory and good practice guidance and finally the support that is given to chambers' Equality and Diversity Officers.
18. Recent Bar Council work has raised some equality and diversity issues that are relevant to the regulator, specifically around wellbeing at the Bar, diversity monitoring and potential opportunities for the introduction of shared parental leave provisions. These have been raised formally with the BSB through the independence protocol and we will ensure that these feed into the new equality objectives where appropriate. In those areas where we have a shared interest with the Bar Council, we will seek to ensure the appropriate regulatory response that avoids duplication of resources and where appropriate acknowledges the Bar Council's role in sharing of good practice etc.

#### **Financial implications**

19. The cost of developing new equality objectives for 2017 is already accounted for within the Regulatory Policy departmental budget for the current year. The cost of implementing the 2017 equality objectives will be factored into the budget bid and business plan for next year.

#### **Equality Impact Assessment**

20. It is not considered that the new approach to developing equality objectives will have any adverse impact on equality because the approach has been designed to specifically promote and advance equality and diversity. The proposed approach involves increased internal and external engagement, particularly with diverse groups. Equality Impact Assessments will be completed on individual projects by the relevant departments, with the support of the E&AJ team.

#### **Risk implications**

21. Best practice dictates that public bodies should review and re-publish their equality objectives regularly. Failure to do so could lead to criticism of the BSB and would mean that we were not setting an appropriate example for the profession.

22. The BSB Risk Outlook identifies a lack of diversity in the profession and discriminatory working practices as one of three core themes that the regulator should focus its attention on. A second, and closely related theme, is that of addressing consumer needs. The Outlook provides a substantial evidence base from which to build upon in relation to these topics. The proposed new approach to developing equality objectives helps to demonstrate that the BSB is serious in its commitment to promoting equality and addressing the identified risks.

### **Regulatory objectives**

23. The equality objectives relate directly to the BSB's regulatory objectives, as defined in Section 1 of the Legal Services Act 2007, namely objective 1 (f): "encouraging an independent, strong, diverse and effective legal profession".

### **Appendices**

24. Appendix 1: Table containing the BSB 2015-16 equality objectives and a 12 month progress update  
Appendix 2: Action plan for development of 2017 equality objectives

### **Lead Responsibility**

Amit Popat (Equality and Access to Justice Policy Manager)  
Jessica Prandle (Senior Policy Officer, Equality and Diversity)  
May 2016

No.	Activity	Description	Finish	RAG Status	Update
1	Research the impact the Equality Rules have had on Women at the Bar	<p>Women are currently underrepresented at the practising Bar, compared to those training to become a barrister. The number of women at the Bar decreases sharply after 12 years of being called to the Bar.</p> <p>The Equality Rules in the BSB Handbook were introduced, in part, to support the retention and progression of women.</p>	22 December 2015 (revised deadline May 2016)	In progress	Survey closed in February with over 1000 responses. A Task Completion Group is reviewing the results and a report with recommendations will be presented to the Board for publication in June 2016. The original deadline was amended in order to take account of the Bar Council's research on women at the Bar.

No.	Activity	Description	Finish	RAG Status	Update
2	Review the results of the new approach taken to Supervision and highlight any actions needed.	<p>The Supervision Department implemented a new risk-based approach to monitoring chambers and authorising entities. As a result chambers and entities are given a rating of high, medium and low risk.</p> <p>In addition, diversity monitoring forms are sent to all registered applicants for entity authorisation. It is important to review the results from the new approach to monitoring chambers and entities and to authorising entities and identify any equality and diversity issues that need to be addressed.</p>	25 September 2015	Completed	Report delivered to EDC in July 2015 highlighting the key equality and diversity themes arising from the high impact supervision returns. The E&AJ team have been working with the Supervision team to further support chambers in their compliance with the equality rules.



No.	Activity	Description	Finish	RAG Status	Update
3	Increase the completion of diversity monitoring forms across the barrister profession.	The BSB holds good levels of data for some protected characteristics (over 79% disclosure for age, gender and race) but has lower levels of data in relation to other characteristics (19-24%).	28 August 2015 (revised deadline end 2016)	Completed	Disclosure rates for the monitoring forms have increased by an average of 6.3% across all categories since 2014. As the Barrister Connect System is due to be replaced, investment in significant changes in 2015 was not cost effective. The E&AJ team will feed into the design of a new system being developed and launched in 2017. For the 2016 Authorisation to Practise round, the E&AJ team worked with the Project Management office to implement smaller, in-house changes to the current system and we have sought to improve disclosure through better communications.

No.	Activity	Description	Finish	RAG Status	Update
4	Receive completed diversity monitoring forms from the Board and all Committee members.	<p>Monitoring of the Board and all Committee members diversity status has not been completed in the last year.</p> <p>The BSB currently has a low amount of completed diversity monitoring forms from the Board and all Committee members.</p>	29 January 2016 (revised deadline mid 2016)	In progress	Due to the Governance Review there was an EDC agreement that this objective will feature in 2016 when all recruitment for Board, committees and APEX takes place. Where there is underrepresentation positive action approaches will need to be considered to enable diversity to be embedded in our governance structure.

Part 1 - Public

No.	Activity	Description	Finish	RAG Status	Update
5	Collecting diversity data across each stage of the barrister life-cycle.	<p>There is a disparity in the diversity data that is collected at each stage of the barrister life-cycle.</p> <p>The BSB needs full and correct diversity data of barristers in order to inform regulatory policy development.</p> <p>Widening access to the Bar and addressing inequalities for the barrister profession are key priorities for the BSB.</p>	28 August 2015	Completed	A diversity data audit was undertaken and a report presented to the EDC in April 2015. The findings will be used to inform the BSB's next equality objectives and equality strategy.

## Part 1 - Public

No.	Activity	Description	Finish	RAG Status	Update
6	Produce guidance on the reporting of discrimination and harassment for barristers.	<p>The Biennial Survey 2013 found that 25% of black minority ethnic (BME) barristers reported they had personally experienced bullying and harassment.</p> <p>Bullying and harassment also disproportionately affects female and disabled barristers.</p> <p>LawCare found that 15% of complaints were about bullying from legal professionals.</p> <p>There has been a low number of reports to the BSB's Professional Conduct Department.</p>	25 September 2015	Completed	Handbook updated and communicated across sector. Guidance published on BSB <a href="#">website</a> <sup>1</sup>

<sup>1</sup> [https://www.barstandardsboard.org.uk/media/1594778/bsb\\_guidance\\_on\\_reporting\\_serious\\_misconduct\\_of\\_others\\_-\\_external.pdf](https://www.barstandardsboard.org.uk/media/1594778/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external.pdf)

Part 1 - Public

No.	Activity	Description	Finish	RAG Status	Update
7	Identify the current complaints against BME barristers and develop an action plan to counteract any potential disparity.	In 2013 a review into the professional conduct processes was completed and it was found that there was a disproportionate amount of complaints against BME barristers.	25 September 2015	Completed	In-depth research was undertaken and a report presented to EDC in December 2015. A report with recommendations was presented to the Board in January 2016. The research showed that gender was a significant predictor of the outcomes of complaints but ethnicity was not. All cases before the PCC will now have gender references as well as names removed. Anti-Discrimination Training was delivered to PCD in October 2015 with positive evaluations. Further training in Unconscious Bias to be planned for 2016.

No.	Activity	Description	Finish	RAG Status	Update
8	Ensuring Equality Analysis is integrated in Policy, Strategy and Business Planning.	A programme of work has commenced to reform the BSB's education and training regulation to ensure flexibility and high standards in barristers' services for the future. It is important that we assess each stage of development to ensure it does not have an adverse impact on diverse groups. A programme of work has commenced to identify key areas of risk to our regulatory objectives. This will make changes to the way the BSB works and we need to ensure that the work produced has also been equality impact assessed.	See below	Completed	<i>See below for updates on each action area</i>
		<i>Meet with Future Bar Training (FBT) leaders to agree timescales for each EIA - produce plan</i>	07 May 2015	Completed	Complete – plan produced.
		<i>Complete an equality analysis of the review and reforms of education and training for the Bar (Future Bar Training Programme).</i>	22 May 2015	Completed	Completed over all four areas: - Academic stage - Vocational stage - Professional stage - Legal subjects/knowledge  The FBT programme was adjusted to take into account the equality issues identified through the above EIAs.

## Part 1 - Public

No.	Activity	Description	Finish	RAG Status	Update
		<i>Meet with Regulatory Risk Manager - produce plan</i>	22 May 2015	Completed	The Index and Outlook reflect diversity, anti-discriminatory practice and cross cultural communication. Engagement has included diverse stakeholder groups
		<i>Design an EIA training session</i>	30 July 2015	Completed	Training session designed
		<i>Deliver pilot EIA training sessions</i>	30 August 2015	Completed	Two pilot sessions delivered with positive evaluations
		<i>Complete an equality analysis for the work that has been produced from the Regulatory Risk Programme.</i>	30 October 2015	Completed	EIA screenings of the Risk Framework and Risk index have been completed.
		<i>Contract Manual EIA- to agree actions</i>	30 October 2015	Completed	EIA competed with recommendations – awaiting final contracts manual to formalise EIA
		<i>Consumer Guidance EIA- to agree actions</i>	22 December 2015	Completed	EIA of Consumer Guide first draft completed.
		<i>ABS Implementation EIA</i>	22 December 2015	Completed	EIA complete with project team and recommendations are now considered as part of the project plan.

No.	Activity	Description	Finish	RAG Status	Update
9	Completion of equality & diversity e-learning training by the Board and Committee members.	The Board and all Committee members should ensure that their equality and diversity knowledge is kept up-to-date and that they are well equipped to deal with issues that arise.	25 September 2015	Completed	All Board members and members of the EDC have completed the e-learning course. Approach to E&D training will be reviewed once new governance structure is in place to ensure appropriate training is delivered to remaining committees, new Task Completion groups and new APEX group once it is formed.



No.	Activity	Description	Finish	RAG Status	Update
10	Review diversity data of people who have applied for alternative pathways to the Bar and make recommendations to improve access for underrepresented groups.	<p>The BSB collects diversity data of people who have applied to the Qualifications Committee for a waiver or exclusion from the current prescribed route to the Bar.</p> <p>We should be aware of the diversity of people applying for an alternative pathway in order to progress widening access to the Bar for underrepresented groups.</p>	28 August 2015	Completed	Report on diversity of applicants to the Qualifications Committee presented to the EDC in June 2015. E&T department to work with E&AJ team and Research team to continue monitoring to identify trends over time, and include outcomes data in the analysis.

No.	Activity	Description	Finish	RAG Status	Update
11	Invite diverse groups to contribute and inform our future diversity programme.	<p>The BSB recognise the need to capture wider knowledge and skills from underrepresented communities and the wider public.</p> <p>These groups can provide vital intelligence to co-produce our equality and access to justice work.</p> <p>The BSB Business Plan 2015-2016 committed to establishing collaborative relationships with the public and consumers.</p>	29 January 2016	Completed	<p>The E&amp;AJ team have produced an E&amp;D directory containing over 150 external diversity organisations to target for further involvement with our work. Over 30 delegates attended our cross-cultural communication event and registered their interest in working in partnership with the BSB in the future. Support has been given to the BSB Consumer Programme to ensure engagement is embedded in our work and the consumer perspective is taken into account in everything we do.</p>

Ref.	Activity	Description	Timeframe
1 a	Engage all BSB departments to identify E&AJ priorities. (including SMT)	All BSB departments will be consulted about E&AJ priorities both externally (within the profession) and internally (for BSB staff). Departments will be engaged through workshops delivered in conjunction with their respective Equality Champion.	May - Aug 2016
1 b	Engage all BSB committees to identify E&AJ priorities. (including Board)	BSB Board and committees will be consulted about E&AJ priorities. They will be engaged through workshops and/or surveys.	May - Aug 2016
1 c	Invite consumer/voluntary organisations to explore potential themes for BSB equality objectives (national, regional and local across protected characteristic groups)	The BSB recognises the need to capture wider knowledge and skills from underrepresented communities and the wider public. Through existing contacts the E&AJ team have developed over the past year, workshops will be delivered to targeted external organisations who are specialists in the area of E&AJ.	May - Sept 2016
2	Reviewing current developments within the Bar related to E&AJ	Identifying current issues and priorities for consideration through published research, media coverage and meetings with relevant stakeholders (the profession and other legal stakeholders)	May – Aug 2016
3	Draft final set of equality objectives and associated communications plan	Prepare final list of equality objectives, both external (for the profession) and internal (for BSB staff) and seek approval from SMT. Work with Strategy and Communications Department to produce communications plan.	Sept – Nov 2016
4	Present proposed equality objectives to Board	Final Board approval of equality objectives	Dec 2016
5	Publish equality objectives for 2017	Objectives published and communications to the profession delivered.	Dec 2016 - Jan 2017



## Youth Proceedings Advocacy Review: BSB Response

### Status: For discussion

1. To provide an update and to seek the Board's approval for the BSB's proposed response to the findings highlighted in Youth Proceedings Advocacy Review: Final Report (YPAR Report).
2. The YPAR Report was provided to the Board in October 2015. A copy is available on the BSB's website:  
<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

### Executive Summary:

3. The Board has committed to raising the standards of advocacy within youth courts given the risks associated with poor quality of advocacy in these proceedings and the vulnerability of those involved.
4. The Board is aware of the findings of the YPAR Report which was published by the BSB in November 2015. Whilst recognising that there were instances of good practice, the report highlighted that standards of advocacy were not at the level the public should expect them to be. In particular, it highlighted the damaging effects that poor advocacy has on access to justice for young, and often very vulnerable offenders, and their perceptions of the system in general. Advocates receive little or no training before they represent youths within the youth court or the crown court both in terms of the law and practice within those proceedings or in how to engage or communicate with young and vulnerable people. The impact on the experience for young people and the outcomes of their cases can be grave.
5. The youth justice sector is under close scrutiny. In addition to our own work, the Ministry of Justice (MOJ) has commissioned an independent sector-wide review of the youth justice system which will report in July 2016. This is as a result of wide concern about whether the current system is meeting the needs of young people and whether the court process is operating in the most effective manner to reduce re-offending and to manage the underlying issues that are often present in young offenders. Allied to this is greater expectation on cases involving youths to be heard not in the crown court but in the youth court. As a result more complex and serious cases are being tried in the youth court.
6. The youth justice sector is complex with a wide range of organisations involved and representing different parts of the system. Following the publication of the report, the BSB has held discussions with senior representatives from each of those organisations to identify opportunities to work together in order to improve and promote effective advocacy in youth proceedings. These include:
  - recognising youth courts advocacy as a specialism;
  - identifying the competencies we would expect from advocates;
  - training programmes which would enable advocates to develop the competencies required to be an effective youth court advocate; and
  - raising the status of the youth courts as a whole.
7. This paper sets out the steps we propose to take to address these issues.

## Recommendations

8. It is recommended to the Board that it:
- a. **notes** the progress since the publication of the report
  - b. **agrees** to the further development of the proposed way forward
  - c. **agrees** that further discussions are held with the MOJ and Legal Aid Agency (LAA) on how to address the financial value placed on the youth justice system.

## Update

9. Since the publication of the YPAR Report, we have met with a range of key organisations within the youth justice sector. The aim of these meetings was to see whether the findings of the research resonated with them and to discuss possible solutions for addressing the concerns identified. From those meetings it is clear that there is consensus that standards of advocacy are generally low and that the impact on the youth justice system is grave. It is important to note that, whilst the research focused on barristers and legal executives (as the SRA had declined to participate in the research), the discussions following the report have been clear that issues in respect of standards apply across all professions. Encouragingly, following the publication of the YPAR Report, the SRA has become engaged in this area of activity and any regulatory response will, therefore, be developed to apply across the whole sector.
10. Listed below are the organisations that we have met with. The breadth of these organisations reflect the complexity of the sector and the importance of developing constructive relationships across the sector in order to make the necessary progress. One of our challenges is that we are a relatively small organisation looking at one part of the youth justice sector. Our approach has been therefore to develop effective relationships with key stakeholders and to be seen to be demonstrably taking the lead to improve the standards of advocacy within this sector. This combination has allowed us to build strong support for our work in this area.
- The Ministry of Justice (and Charlie Taylor who has been commissioned by the Ministry to conduct the review into the youth justice system)
  - The Youth Justice Board
  - The Magistrates Association
  - The judicial lead for youth justice - Mr Justice William Davis
  - The Association of Youth Offending Team Managers
  - The Standing Committee on Youth Justice
  - The Law Society
  - The Criminal Bar Association
  - Voluntary sector organisations and charities with an interest in protecting the rights of children – the Michael Sieff Foundation for example
  - Youth justice training organisations such as Just for Kids Law
  - The Advocacy Training Council (ATC)
  - The Court Service
11. Allied to the meetings outlined above, we have spent time in youth courts observing advocacy first hand and speaking with youths, advocates, youth offending teams and magistrates to get their views on the youth justice system. This engagement activity culminated in a roundtable event on 5 April 2016, which brought together senior

representatives from a wide range of organisations working in the youth justice sector (including most of those listed above). The outputs of the meeting were:

- Support for the introduction of a training infrastructure to enable advocates to develop the competencies required to be an effective youth court advocate
  - A collective commitment to trying to address the value and the status of the youth court.
12. On 3 May 2016, the BSB was invited to speak at the ‘Development and Research Needs in Youth Justice’ conference organised by the Michael Sieff Foundation and the Nuffield Foundation. The conference was attended by key people and organisations working within the youth justice sector. It was an excellent opportunity for us to set out the work that we have undertaken to date and to outline the role we, as a regulator, wish to play in improving the standards of advocacy within this sector. As part of the conference there were numerous workshops, one of which centered on youth court representative competence and was facilitated by the BSB. It enabled us to gather further feedback and comments on our desired approach.

### Proposed approach

13. This section of the paper sets out what we believe the BSB response should be. Further refinement is necessary but we set out here the broad outline of how we think we can support advocates to become more competent in their representation of young and vulnerable people.

### Why do anything?

14. Whilst there has been overwhelming support across the youth justice sector for the BSB’s work in this area, there has been some criticism in other quarters that the BSB is focusing on an area where only a relatively small number of barristers practise. The BSB is a risk based regulator. We target our regulatory intervention where there is evidence of the greatest risk to the public interest. The YPAR Report indicated (and its findings have been supported) that there was evidence of poor quality advocacy within the youth justice sector and that the impact on some of the most vulnerable people within the criminal justice system was grave. It also indicated that poor representation at the youth court stage lead to the wrong outcomes for young people and, as a result, an increased likelihood of re-offending (as a youth and as an adult). The BSB is, therefore, clear that it is absolutely its responsibility to take action to address these concerns and improve the experience and outcomes for young people.

### Training

15. The YPAR Report identified the following as key and frequently occurring themes within the youth justice sector:
- a. Many advocates lacked the knowledge of youth justice law, procedures and provisions.
  - b. Many advocates struggled to communicate well with young defendants and witnesses.
  - c. Barristers practicing in the youth courts tended to do so at the outset of their careers.
  - d. Advocates and solicitors juggled large caseloads but were being paid ever lower legal aid fees.

- e. Some cases were treated as matters to be progressed as quickly as possible and advocates failed to prepare their cases accordingly.
  - f. Youth court work was not given enough significance and status by those involved in youth proceedings.
  - g. Due to the status of youth court work and the low fees involved, advocates tended to favour other kinds of criminal work.
16. To date the debate on the introduction of training has centered not on the need for training, which is accepted, but whether it should be compulsory or voluntary.
  17. The argument for compulsory training is that there is sufficient evidence that standards are low and the risks are great to access to justice. Requiring all advocates to undertake training before they are able to appear within the youth court would be the most effective means of ensuring that all advocates are competent. There is however, a risk in imposing compulsory training. We are aware that the youth justice sector is fragile. The report indicated that there is little appetite amongst advocates to undertake work within the youth court because it is viewed as of lower status than the adult court and it attracts significantly lower fees than similar work within the crown court. The risk therefore of introducing a compulsory regulatory requirement into the market is that the additional regulatory burden reduces further the number of advocates prepared to undertake the work. This combined with more complex and serious cases being heard in the youth court presents a significant risk to access to justice and the proper administration of justice.
  18. The second option available is a 'voluntary' training approach. Training would be developed and made available on a voluntary basis but made as attractive as possible so that advocates felt compelled to do it. This could be achieved by:
    - broadening the scope of any training so that it provides training in competencies that apply beyond youth courts (training in how to engage with a vulnerable person will be valuable whether you undertake work in the youth or the adult courts); and
    - developing the training so that it is seen as a mark of excellence and a means by which advocates can differentiate themselves from the market.
  19. The effect would be that youth court advocacy was seen as specialism and an opportunity to develop competence that would benefit your wider practice aspirations.
  20. The debate on whether training should be compulsory or voluntary has, we believe, distracted focus from what the aim of our approach to regulating in this area should be (and indeed what our wider regulatory approach has become). The BSB is a risk and outcomes focused regulator. Our approach to future bar training and other regulatory activity is not to prescribe regulation but to define the outcome that we are aiming for. For example, CPD will no longer be based on a defined number of hours but on whether an advocate can demonstrate they have, through their CPD choices, taken steps to maintain standards of their practice.
  21. The key issue is to improve the standards of advocacy within the youth justice sector for the benefit of the young people going through the system. All of the professions working within the youth justice sector have to meet certain competencies in order to attain the right skills to work with vulnerable people. Magistrates and judges have clear expectations placed upon them about what is required before they hear cases involving young people. The legal advisor in the youth court and the youth offending team will all need to demonstrate their competence in order to undertake their role.



22. We believe, therefore, that the right regulatory approach to take is to focus on the competency requirements for advocates undertaking youth courts work. This would build upon the Professional Statement that is already in place for barristers and which sets out what the regulator expects from an advocate when they enter practice. There would be a similar complementary statement setting out what competent advocacy within the youth court looks like and an expectation that an advocate who wishes to do youth court work must be able to demonstrate that they are competent to do so. This statement would be supported by guidance to the profession on how to achieve the required competence and a highlighting of certain training courses and materials. It would however be the professional responsibility of the advocate to decide how they developed that competence. Allied to that could be the ability of an advocate to self-certify that they were competent to undertake youth court work. That information would be included on their entry on the Barristers Register. It would be open to us to seek evidence to support that self-certification (through a process of spot checking) and to monitor through CPD completion whether that competence was being actively maintained (either for example through training or through regular practice within the youth court).
23. This approach has a number of benefits:
- It is in line with an outcomes focused approach and allows us to seek to address the issue in a way which fits with our regulatory approach.
  - It emphasises that we believe that youth advocacy is a specialist area that justifies particular regulatory response (over and above the expectations set out in the Professional Statement).
  - It places responsibility on the advocate to ensure that they are competent rather than the regulator imposing prescriptive regulatory requirements.
  - It could be a means by which the value placed on youth court advocacy could be addressed – advocates who are prepared to self-certify (and therefore expose themselves to the need for justification by the regulator) could be entitled to an uplift in fees for work undertaken in the youth court.
24. The Board is asked to give its support for the development of this option. The approach reflects considerable consideration of the issues arising from the report and the various regulatory responses. We believe that it is a proportionate approach and a means by which we can have a positive impact on the standards of advocacy. The proposal requires further development and consideration as well as discussion with the other regulators and the wider youth justice agencies. We would look to engage a wide group of people to discuss the development of any specific youth advocacy competencies. But before doing any further work we would welcome Board endorsement for this approach.

### **Identifying poor performance**

25. In order to maintain public confidence some consideration should be given to whether and how poor performance within the youth courts should be identified. We propose to commit to a periodic review of advocacy standards within the youth court to assess whether our regulatory intervention has had the desired impact so that an informed and evidenced based decision can be taken if further regulation is necessary. No firm views are established on how poor performance can be established and it would be useful to hear the Board's views. Options range from risk based or sampled visits to youth courts to observe advocacy, to encouraging anyone who comes into contact with an advocate during the youth justice process to bring to our attention concerns they might have about

the competence of that advocate. It would also be important to encourage positive feedback so that good practice can be shared.

26. Allied to the issue of reporting poor performance is the need for us to be clear about what we would do if such evidence came to light. Historically there has been a reluctance to bring to our attention cases of incompetent advocacy for fear of the impact that could have on the advocate's ability to practise. Under our current regulatory approach, our first step (unless that incompetence fell into the category of misconduct) would be to establish what steps could be taken by the advocate to improve their advocacy through training or other forms of development. Disciplinary action would therefore be reserved for persistent or serious cases of poor performance. Providing this greater clarity about our regulatory approach may address some of the reluctance to raise concerns about poor performance.

### **Raising the status of Youth Courts**

27. A recurring theme which has arisen in our engagements with stakeholders is the concern that youth court work isn't given enough significance by members of the profession. The YPAR Report highlights that there is evidence that youth courts can be used as a training ground for many advocates and advocates generally view the youth court as of lower status than the adult courts. In part this relates to the level of fees available within the legal aid system but it also perhaps reflects the lack of prominence and importance placed on the youth justice part of the wider criminal justice system.
28. Greater focus will be given to youth justice through the Charlie Taylor report to be published in July. Our work in this area has also raised the profile of the need for competent advocates but there is more to be done. At the recent roundtable discussion, there was a collective commitment to improving the experience of young people within the youth justice sector. We understand that we regulate a small section of this sector. However, we firmly believe that as a public interest regulator, we have an obligation to take the necessary steps towards making a difference to the sector as a whole.
29. We intend to liaise with other organisations to seek out opportunities to work together to promote the work undertaken within the youth courts. In this regard, we are currently putting together a communications strategy which will focus on raising the profile and status of youth courts work. This will target not only advocacy competence but also seek to demystify the youth court for young people and what they can expect from their advocate. We have been in discussion with the ATC on the development of a toolkit to support advocates undertaking the youth court. The ATC has also agreed that a section of their annual conference will focus on competency in dealing with vulnerable people and which will extend to include advocacy within the youth court.
30. The Board is asked to note the above and to provide its thoughts. It is also asked to agree to continued dialogue with the MOJ and the LAA on the financial value placed on youth justice.

### **Ministry of Justice review**

31. As mentioned above, the MOJ has commissioned Charlie Taylor to conduct an independent review of the youth justice system as a whole. The findings of the review are due to be published in July. We have met with Charlie Taylor (and he attended our roundtable in April and the youth justice conference in May.) It is highly likely that he will make reference to the work that we have been doing and the findings of the YPAR Report

and the concerns around standards of advocacy within the youth courts. We would expect that there would be alignment with his recommendations and what is outlined in this paper. We will continue to engage with him and will keep the Board apprised.

### Issues for the Board

32. The Board is invited to consider the approach outlined in the paper to improve the standards of advocacy within the youth courts. We propose to continue working with other organisations in order to formulate a collaborative approach.
33. It is recommended to the Board that it:
  - a. **notes** the progress since the publication of the report
  - b. **agrees** to the further development of the proposed way forward
  - c. **agrees** that further discussions are held with the MOJ and Legal Aid Agency (LAA) on how to address the financial value placed on the youth justice system.

### Resource implications

34. Resources have been managed through the Supervision Department. The Director of Supervision has lead on this area of work supported by Faryal Khurram, Senior Supervision and Authorisation Officer. There will need to be on-going input from the Communications Department.

### Equality Impact Assessment

35. Regular contact has been made with the Equality and Access to Justice Team and they will work with us to develop an EIA.

### Risk implications

36. This work relate to one of the core themes of the 2016 Risk Outlook – the failure to meet consumer needs.

### Regulatory objectives

37. The BSB's work on the youth courts particularly impacts on our regulatory objectives to protect and promote the public interests and the interests of consumers as well as improving access to justice.

### Lead responsibility:

Oliver Hanmer  
Faryal Khurram



## Fees and Charges - update

### Status:

1. For noting.

### Executive Summary:

2. The BSB consulted on the “Full Cost Recovery” principle and the “sliding-scale” approach from December 2015 to February 2016 (see further reading). We have analysed the results and this paper provides an update on the results and proposed next steps.
3. We set up a SurveyMonkey questionnaire for the consultation. 7 consultees started the questionnaire and only 1 completed it. We have published here the 3 more substantive responses, and would like to record publicly our thanks to the respondents. Although th Broadly, the respondents agreed with the Full Cost Recovery principle, and the BSB’s Fee Waiver policy.
4. The Board is asked to note that our largest non-PCF revenue streams are already operating under these principles. We will be reviewing in more depth our authorisations fees this year (eg waivers, entity applications etc), to ensure that the sliding-scale approach is fully considered and embedded.

### Recommendations

5. Members of the Board are invited to:
  - a) **Note** the consultation results;
  - b) **Note** the Executive will continue to work to the Full Cost Recovery principles where appropriate;
  - c) **Note** the Executive will be carrying out further more in-depth analysis.

### Background

6. The BSB, in its 2016-19 Strategic Plan, has made a commitment to maintain the level of its direct operating costs and to strive to achieve value for money, efficiency and cost reduction where it can.
7. The BSB is primarily funded through Practising Certificate Fee (PCF) funds (£6,754k)<sup>1</sup> from the Bar Council and the Inns’ Subvention (£250k), which in the next year will come to an end. The BSB also raises a small proportion of its revenue from fees it charges to certain services users and contractual partners (£947k).
8. The BSB could in fact fund all of its services through the PCF as all our activities relate to regulation, accreditation, education and training of barristers (as detailed in s51 of the Legal Services Act 2007 (LSA 2007)<sup>2</sup>). The income we receive from non-PCF fees (BSB fees and charges) reduces the call on the PCF.

<sup>1</sup> Numbers quoted in this paragraph are taken from the BSB’s 2016-17 Business Plan  
[https://www.barstandardsboard.org.uk/media/1750592/bsb\\_business\\_plan\\_2016-17\\_31.3.16.pdf](https://www.barstandardsboard.org.uk/media/1750592/bsb_business_plan_2016-17_31.3.16.pdf)

<sup>2</sup> [http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga\\_20070029\\_en.pdf](http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf)

## Fees and charges principles

9. In July 2015, Board members first discussed the principles in annex 1; and subsequently considered the consultation document (see further reading) in November 2015. The Board specifically requested that the fee waivers policy was included in the consultation. The consultation opened to the public and the profession in December 2015 and closed in February 2016. The consultation was publicised in the usual ways (press release, articles in the Regulatory Update, twitter, etc). The results have now been analysed and are summarised below.

## Consultation Responses

10. The response rate was very low as the table below shows. However we did receive a very detailed response from the Bar Council; its answers have been incorporated into annex 2 and the full response has been published on its website<sup>3</sup>.

Section	Completed responses
Introduction	7
Part 1	2
Part 2	1

11. We have published the three substantive responses in annex 2. These broadly agreed with the Full Cost Recovery principle and the other principles set out in annex 1. They also endorse the BSB's Fee Waiver policy and that waivers should be funded by the profession as a whole (as opposed to users of the same service).

## Next steps

12. Our largest revenue streams are already operating under the Full Cost Recovery principle and our Fee Waivers policy continues to be used. So in light of these responses we do not need to undertake any immediate new action. As part of our budgeting processes, we will continue annually to review our fee levels ensuring that we assess all areas (including equality) that could be impacted by our decisions to change fee levels.
13. During 2016 we will be carrying out much more detailed analyses in line with the BSB's Policy Development Framework. In particular we will be reviewing all of our authorisations fees, which will include qualifications applications and entities. The Fee Waivers policy will also be reviewed as part of these considerations and in line with the evidence that can be gleaned from the consultation responses. This will be carried out with a view to implementing any necessary changes in April 2017.

## Equality Analysis

14. All of the BSB's services undergo Equality Impact Assessments or analyses. This is fundamental to understanding how our fees impact on our regulatory, strategic and equality objectives. The consultation contained some specific questions on how we should mitigate any negative impacts in relation to this area. We only received a full response to these questions from the Bar Council which suggested that fee waivers or discounts should be considered to mitigate any negative equality impacts.

<sup>3</sup> <http://www.barcouncil.org.uk/media/419635/latest.pdf>

### **Risk implications**

15. This paper is essentially about the risks that we face by following the existing policy and insisting upon full economic cost recovery in all cases: the risk of market changes, demand falling and lowered income are addressed in the current arrangements and proposed next steps.

### **Regulatory objectives**

16. By considering these issues, we are supporting the regulatory principles set out in the Legal Services Act: that regulatory activities should be transparent, accountable, proportionate, consistent, and targeted.

### **Publicity**

17. This paper represents a public account of the consultation results.

### **Annex**

18. Annex 1 – Fees and Charges principles  
Annex 2 - Fees and Charges consultation results (substantive)

### **Further Reading**

19. Link to consultation document  
[https://www.barstandardsboard.org.uk/media/1717468/bsb\\_fees\\_and\\_charges\\_consultation\\_-\\_final\\_pdf.pdf](https://www.barstandardsboard.org.uk/media/1717468/bsb_fees_and_charges_consultation_-_final_pdf.pdf)

### **Lead responsibility**

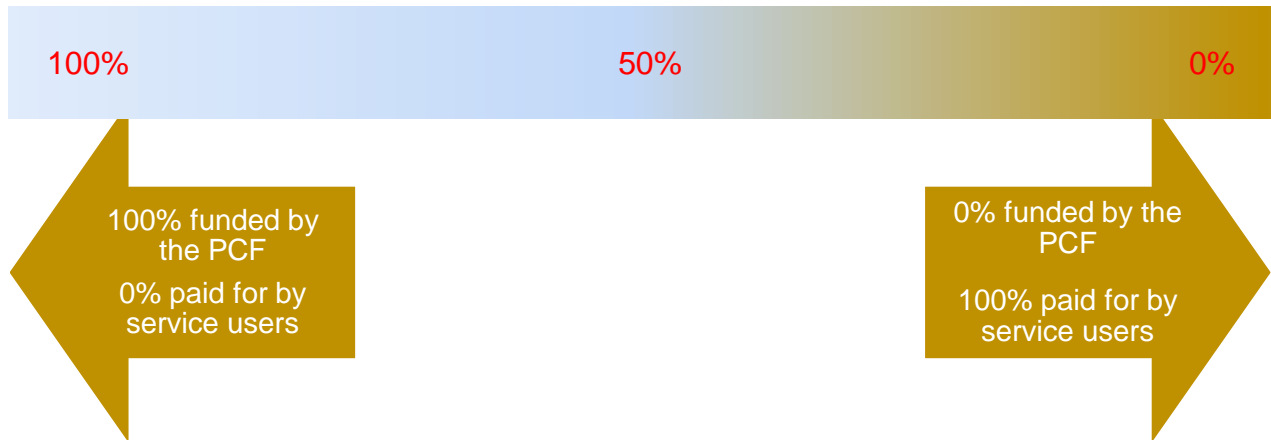
Viki Calais  
Head of Corporate Services





Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
<b>Regulatory Objectives</b> <ul style="list-style-type: none"> <li>• <b>Protecting and promoting the public interest</b></li> <li>• <b>Protecting and promoting the interests of consumers</b></li> </ul>	<ul style="list-style-type: none"> <li>• The service being provided <u>indirectly</u> promotes the public interest</li> <li>• The service being provided <u>indirectly</u> promotes consumer interests</li> </ul>	<ul style="list-style-type: none"> <li>• The service directly protects the public interest</li> <li>• The service directly protects consumer interests</li> </ul>
<b>Strategic Objectives and Values</b> <ul style="list-style-type: none"> <li>• <b>Value for Money</b></li> </ul>	<ul style="list-style-type: none"> <li>• The service is expensive to run, and draws upon significant staff and financial resource</li> </ul>	<ul style="list-style-type: none"> <li>• The service runs at a low cost, and resources used are negligible. Costs associated with fee collection outweigh service delivery</li> </ul>
<b>Beneficiaries</b>	The main beneficiaries are: <ul style="list-style-type: none"> <li>• Individuals</li> <li>• Private companies</li> <li>• Niche service users (eg barristers from a particular Specialist Bar Association)</li> </ul>	The main beneficiaries are: <ul style="list-style-type: none"> <li>• The profession as a whole</li> <li>• Large groups of prospective barristers</li> </ul>
<b>Market</b>	<ul style="list-style-type: none"> <li>• Fees for a particular service would have a negligible effect on market behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• The BSB wants the service to heavily influence market behaviour</li> </ul>
<b>Regulatory Risks</b>	<ul style="list-style-type: none"> <li>• The service relates to <u>low</u> “likelihood” and <u>low</u> “impact” regulatory risks</li> </ul>	<ul style="list-style-type: none"> <li>• The service relates to “<u>highly likely</u>”, “<u>high impact</u>” regulatory risks</li> </ul>
<b>Barriers to the profession</b>	<ul style="list-style-type: none"> <li>• The financial or administrative processes relating to the service do <u>not</u> deter good quality people entering the profession</li> </ul>	<ul style="list-style-type: none"> <li>• The financial or administrative barriers <u>would</u> deter good quality from entering the profession</li> </ul>
<b>Equality Objectives</b> <ul style="list-style-type: none"> <li>• <b>Encourage an independent, strong, diverse and effective legal profession</b></li> </ul>	<ul style="list-style-type: none"> <li>• Fees <u>do not</u> adversely impact service users with protected characteristics</li> </ul>	<ul style="list-style-type: none"> <li>• Financial barrier <u>discourages</u> or adversely impacts service users with protected characteristics</li> </ul>

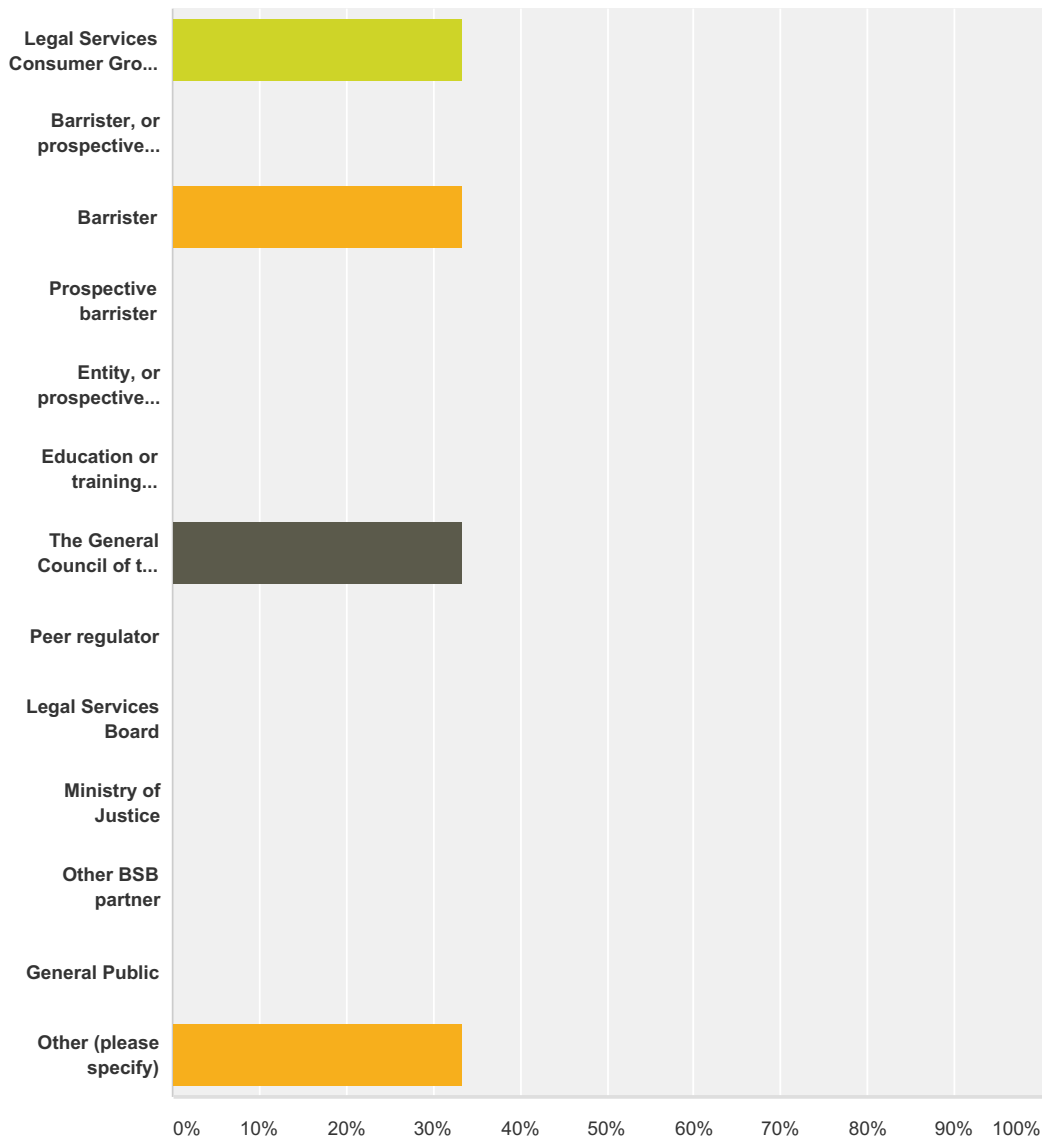
**Sliding scale principle**



There is not one “hard and fast rule” to calculate non-PCF charges. In most cases, we will work our way through each principle in table above, considering the impacts and effects that each would have. We will make an evidence-based judgement on what percentage of costs should be recouped from direct charges, and what percentage should be underpinned by PCF funds, as depicted in the Sliding scale diagram above.

**Q1 Please tell us who you are, or if you are responding on behalf of an organisation:**

Answered: 3 Skipped: 0



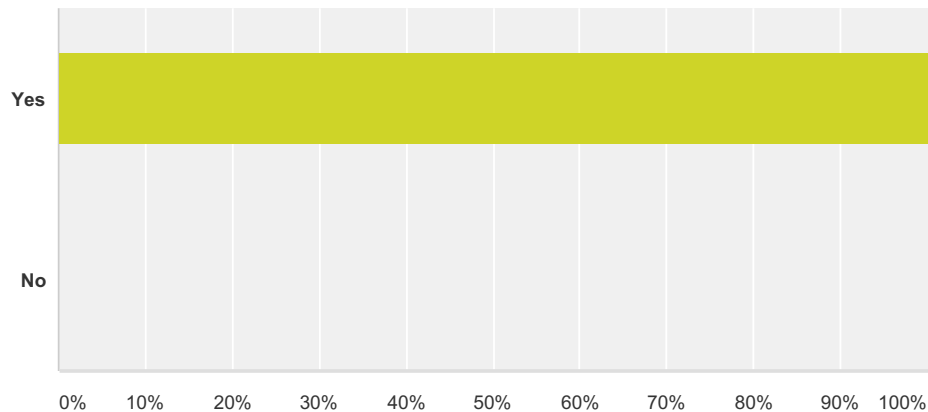
Answer Choices	Responses
Legal Services Consumer Group or representative	33.33% 1
Barrister, or prospective barrister, who has applied for a waiver from the BSB Handbook, including the Bar Training Rules	0.00% 0
Barrister	33.33% 1
Prospective barrister	0.00% 0
Entity, or prospective entity, regulated by the BSB	0.00% 0
Education or training provider	0.00% 0
The General Council of the Bar	33.33% 1

Peer regulator	0.00%	0
Legal Services Board	0.00%	0
Ministry of Justice	0.00%	0
Other BSB partner	0.00%	0
General Public	0.00%	0
Other (please specify)	33.33%	1
<b>Total Respondents: 3</b>		

#	Other (please specify)	Date
1	CPD Provider	1/4/2016 2:53 PM

## Q2 Do you think the BSB should continue to charge for delivering certain services?

Answered: 3 Skipped: 0

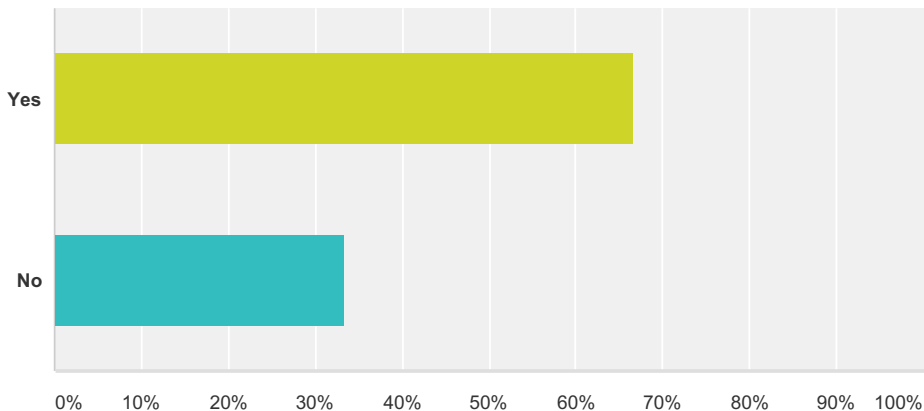


Answer Choices	Responses
Yes	100.00% 3
No	0.00% 0
<b>Total</b>	<b>3</b>

#	Additional comments	Date
1	The Bar Council argued, in its response to the consultation paper on the cost of licensing of a Bar Standards Board regulated Alternative Business Structure that the whole of the practising Bar should not subsidise the few who decide to set up an ABS. This principle should be applied more widely to other services save for circumstances where there is a wider benefit to either the public interest or the Bar as a whole. An instance of this might be where the diversity of the profession would be enhanced with a waiver system in place. For example, where the fee for the waiver from the requirement to undertake the new practitioner programme within the first three years of practice would prevent or discourage a woman returning from unpaid maternity leave. We know that retention of women is an issue at the Bar and that it is in the public interest for the Bar to be more diverse, hence a waiver of the fee would be in the public interest.	5/4/2016 4:00 PM

## Q3 In your opinion, should the PCF funds cover all of the BSB's activities?

Answered: 3 Skipped: 0

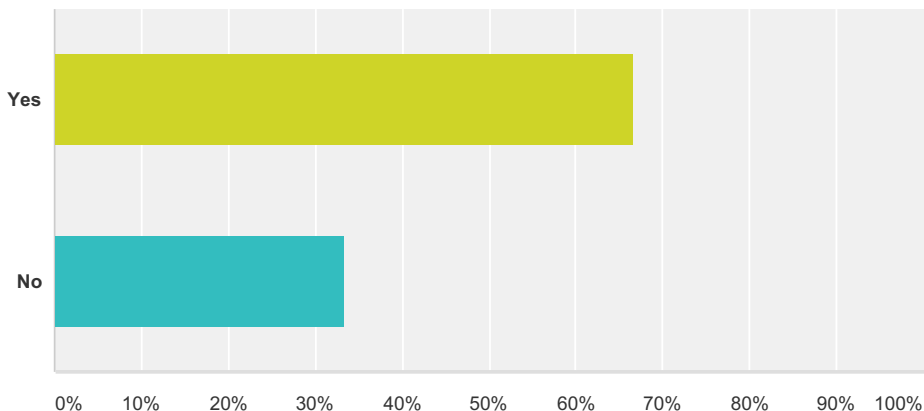


Answer Choices	Responses
Yes	66.67% 2
No	33.33% 1
<b>Total</b>	<b>3</b>

#	Additional comments	Date
1	The starting principle should always be that the individual benefitting from a qualifications type service should pay for the provision of that service on a full cost recovery basis and only if a wider public interest benefit is established should the PCF be considered as a funding source. We would add that all BSB activities funded through the PCF should fall within the permitted purposes as required by s51(4) of the Legal Services Act 2007 and Rule C6 of the LSB's Practising Fee Rules 2009.	5/4/2016 4:00 PM

**Q4 If the BSB is to charge for certain services, do you agree that the Full Cost Recovery principle should normally be applied?**

Answered: 3 Skipped: 0



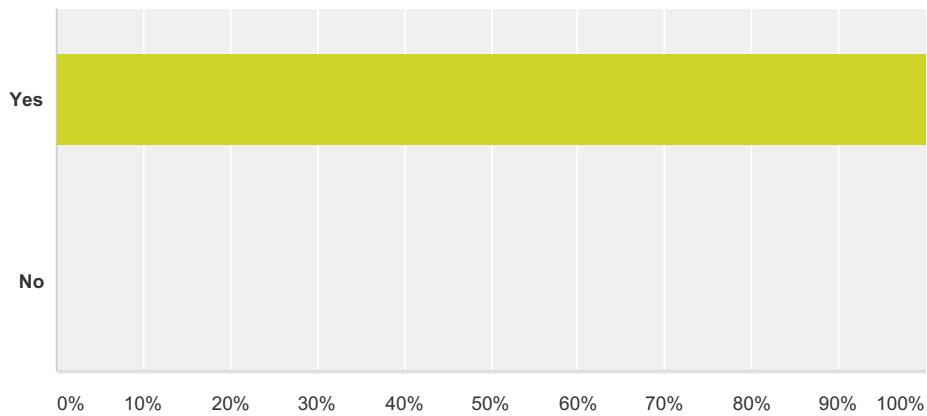
Answer Choices	Responses
Yes	66.67% 2

No	33.33%	1
<b>Total</b>		<b>3</b>

#	Additional comments	Date
1	This is consistent with our view that the PCF should not be used to fund regulatory services that are optional for barristers (e.g. application to establish a BSB authorised entity, authorisation to conduct litigation). We would add that the BSB should seek only to cover their costs and not to make a profit or a loss from the profession for such regulatory activities.	5/4/2016 4:00 PM

### Q5 Are the Principles set out in table 5.4.2 of the consultation document the right ones to consider when deciding fee levels?

Answered: 3 Skipped: 0



Answer Choices	Responses
Yes	100.00% 3
No	0.00% 0
<b>Total</b>	<b>3</b>

#	Additional comments	Date
1	These principles ought to be considered in conjunction with the BSB's regulatory objectives.	5/4/2016 4:00 PM

### Q6 What else do you think should be considered when deciding on fee levels?

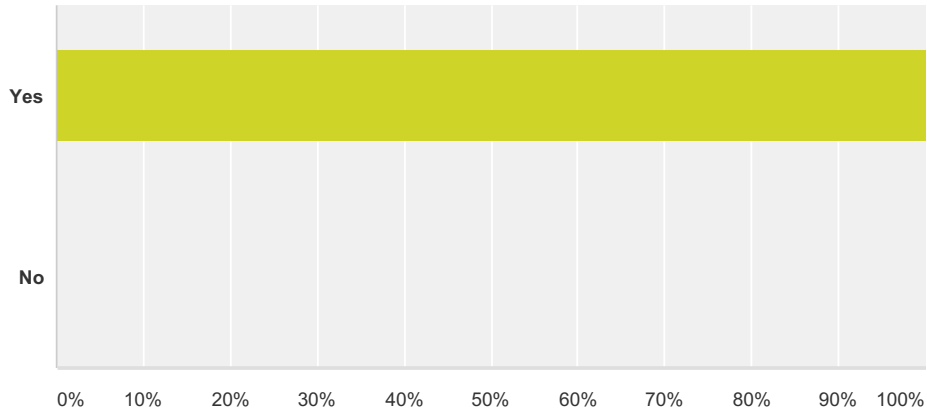
Answered: 1 Skipped: 2

#	Responses	Date
1	The cost of delivering the service; The cost of equivalent services provided by other regulators, to avoid regulatory arbitrage; The quality of services provided (e.g. time taken to process applications, ability to respond to questions from applicants).	5/4/2016 4:00 PM

### Q7 Should the BSB use a “sliding scale”

(see illustration 5.4.7 of the consultation document) to make a decision on fee levels?

Answered: 2 Skipped: 1

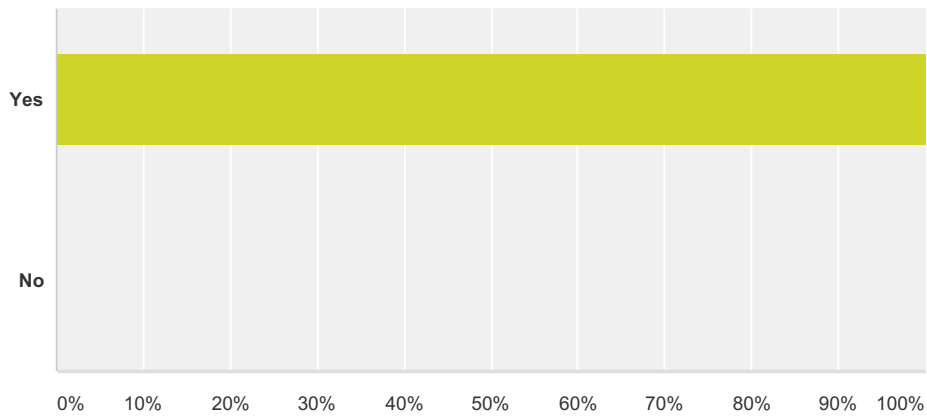


Answer Choices	Responses
Yes	100.00% 2
No	0.00% 0
<b>Total</b>	<b>2</b>

#	Additional comments	Date
1	The principle is correct and we agree that fee level decisions should be evidence- based.	5/4/2016 4:00 PM

Q8 In your opinion, should the BSB publish more detail than it does currently with regard to fees or funding?

Answered: 2 Skipped: 1



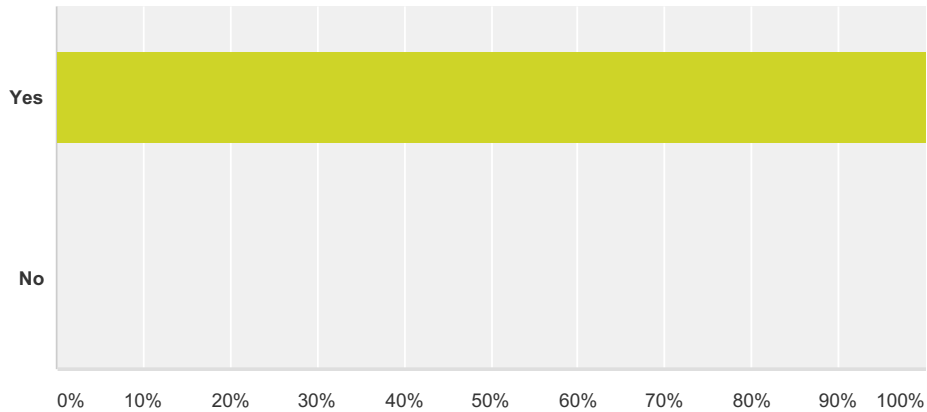
Answer Choices	Responses
Yes	100.00% 2

No	0.00%	0
<b>Total</b>		<b>2</b>

#	Additional comments	Date
1	We strongly think that clearer information about fees is required. Information about fees and funding is frequently located in many different word documents linked to the website and is consequently currently difficult to locate. We would like to see all fees more prominently and clearly displayed on the relevant webpages and a new consolidated list of all the fees charged on a designated webpage. It should also be made clearer to whom the various information and application forms are aimed at (e.g. domestic barrister/foreign lawyer). All documents should include information about when they were last updated and clearer information is needed about the full range of services the qualifications team offers (ideally on one webpage). This should include information about who to contact for specific queries and services, with full contact details.	5/4/2016 4:00 PM

### Q9 Is the BSB’s website the right place to make this information available?

Answered: 2 Skipped: 1



Answer Choices	Responses
Yes	100.00% 2
No	0.00% 0
<b>Total</b>	<b>2</b>

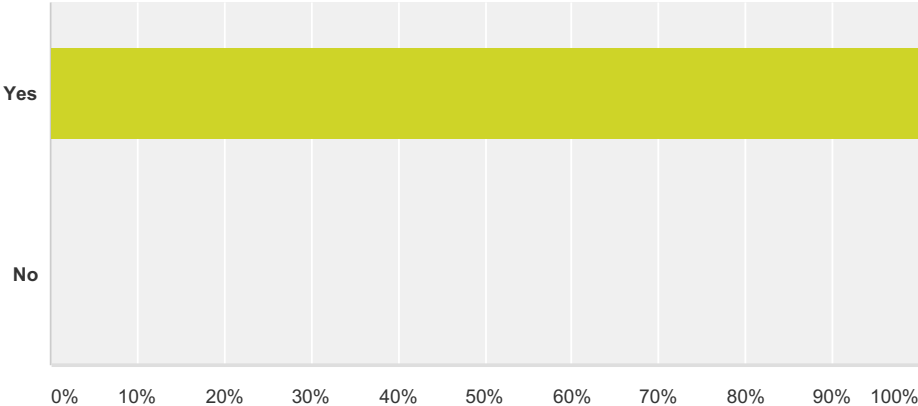
#	Additional comments	Date
1	Subject to our answer to question 8 and making the information available in other formats to those who need it if requested.	5/4/2016 4:00 PM

### Q10 Would you expect the BSB to consult on fee changes in any additional circumstances other than those listed in paragraph 5.6.1 of the consultation document?

Answered: 2 Skipped: 1



Fees and Charges

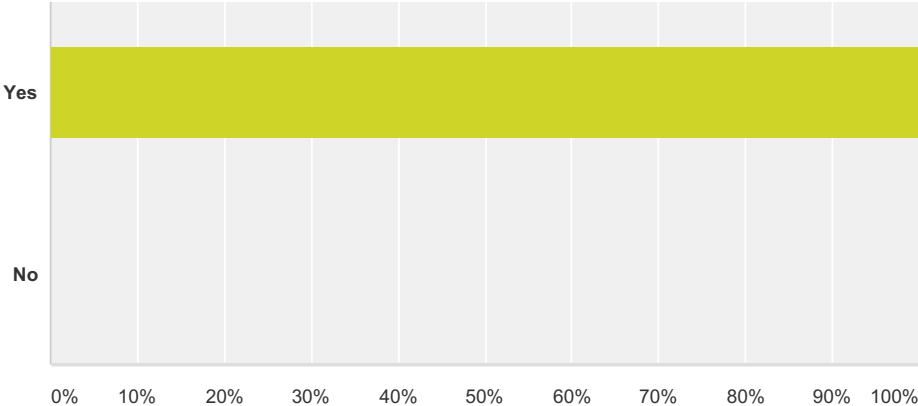


Answer Choices	Responses
Yes	100.00% 2
No	0.00% 0
<b>Total</b>	<b>2</b>

#	Additional comments	Date
1	If they were likely to impact on the amount of PCF income required by the BSB.	5/4/2016 4:00 PM

**Q11 Do you think the BSB should continue with its fee waivers policy?**

Answered: 2 Skipped: 1



Answer Choices	Responses
Yes	100.00% 2
No	0.00% 0
<b>Total</b>	<b>2</b>

**Q12 What are the arguments for and against continuing with the fee waivers policy?**

Answered: 2 Skipped: 1

Answer Choices	Responses
For	100.00% 2
Against	50.00% 1

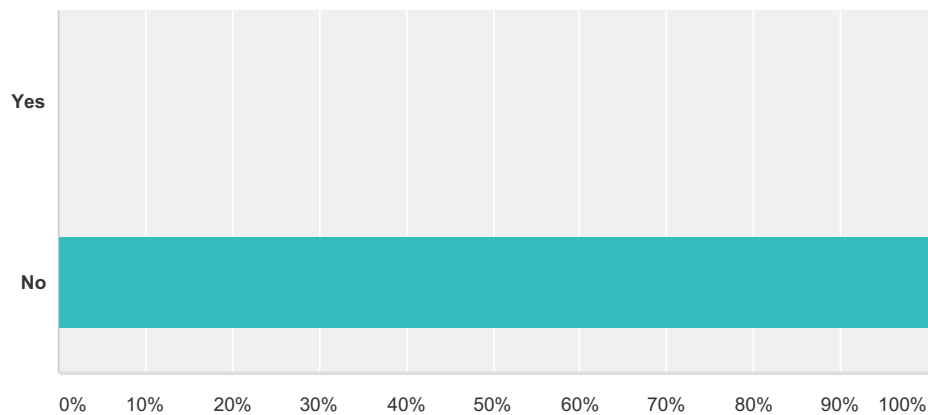
#	For	Date
1	Low financial impact on rest of profession if funded through PCF; Low administrative burden; Currently a low level of demand; Supports barristers with protected characteristics which is consistent with the statutory regulatory objectives of promoting competition in the provision of legal services and encouraging an independent, strong, diverse and effective legal profession and the Bar Council's equality and diversity objectives.	5/4/2016 4:00 PM

2	fairness to applicants, particularly in times of hardship	1/4/2016 2:57 PM
---	-----------------------------------------------------------	------------------

#	Against	Date
1	It contravenes the polluter pays principle and imposes a financial burden of members of the profession who may not believe it is fair, calling into question the legitimacy of the PCF level.	5/4/2016 4:00 PM

### Q13 In your opinion, should the BSB introduce discounts (instead of fee waivers)?

Answered: 1 Skipped: 2



Answer Choices	Responses
Yes	0.00% 0
No	100.00% 1
<b>Total</b>	<b>1</b>

### Q14 If discounting were to be introduced, in percentage terms, what level of discount do you think the BSB should set?

Answered: 0 Skipped: 3

! No matching responses.

Answer Choices	Responses
100 % (full fee waiver)	0.00% 0
80 %	0.00% 0
60 %	0.00% 0
40 %	0.00% 0
20 %	0.00% 0
0 % (no fee waiver)	0.00% 0
<b>Total</b>	<b>0</b>

#	Additional comments	Date
1	We think that for such a system to be meaningful there would have to be various levels of discount available. We are concerned that any change to a discount-based system could increase the administrative burden to the BSB, and consequently, the cost of implementation and could outweigh any potential benefits especially given the low numbers of applicants currently applying for waivers. If the number of applications increases dramatically for any reason, this policy ought to be reviewed. We suggest that the BSB explores the implications of fee discounts in greater depth. This if for the BSB to decide, based on research. Any discounts should be comparable to those offered by other approved regulators.	5/4/2016 4:00 PM
2	perhaps vary according to the circumstances?!?	1/4/2016 2:57 PM

### Q15 What are the arguments for and against introducing discounts?

Answered: 1 Skipped: 2

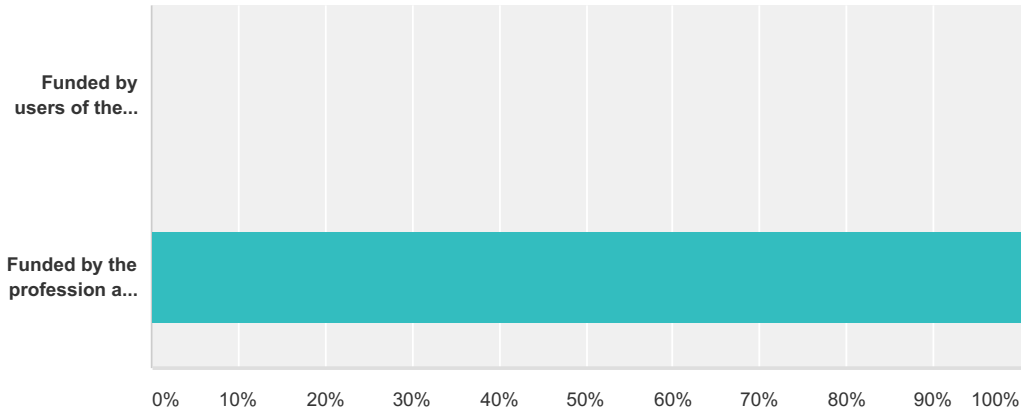
Answer Choices	Responses
For	100.00% 1
Against	100.00% 1

#	For	Date
1	Supports barristers with protected characteristics, albeit to a lesser extent than a waiver system. This is consistent with the statutory regulatory objectives of promoting competition in the provision of legal services and encouraging an independent, strong, diverse and effective legal profession and the Bar Council's equality and diversity objectives; It is less contrary to the polluter pays principle than the waiver system and may be more acceptable to the wider Bar; The discounts can be set at a level that balances the need to support some individuals' access to BSB services at minimal cost to the rest of the profession.	5/4/2016 4:00 PM
#	Against	Date
1	The reduced fee may still be too high for individuals with protected characteristics and consequently act as more of a barrier to the waiver system; There may be an increase to the cost of regulation because of a greater administrative burden; It may be difficult to assess the correct level of discount.	5/4/2016 4:00 PM

### Q16 Do you think waivers or discounts

**should be funded by the users of the same service, or by the profession as a whole?**

Answered: 2 Skipped: 1

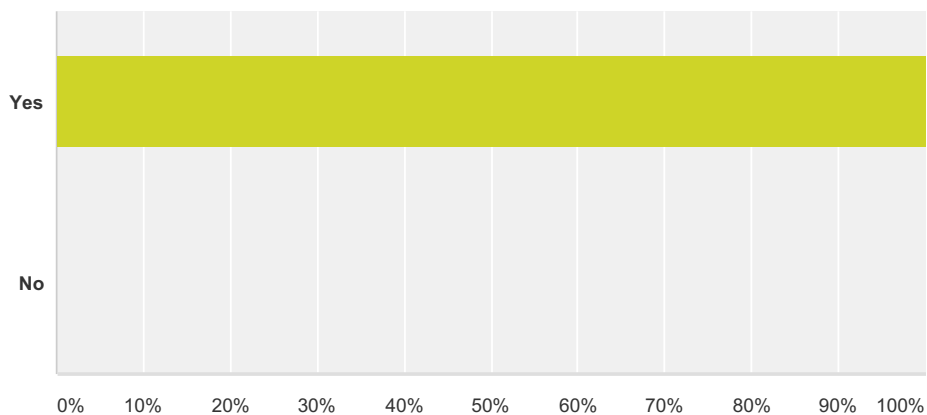


Answer Choices	Responses
Funded by users of the same service	0.00% 0
Funded by the profession as a whole	100.00% 2
<b>Total</b>	<b>2</b>

#	Additional comments	Date
1	The profession as a whole on the basis that it meets the regulatory objective of encouraging an independent, strong, diverse and effective legal profession that is arguably to the benefit of the whole profession and because the cost per barrister is extremely low when spread across the whole profession. If it were only funded by users of the same service then the burden would be disproportionately high, particularly where a service had a low number of users and a high fee.	5/4/2016 4:00 PM

**Q17 In your opinion, should the BSB apply the Full Cost Recovery method to Qualification Committee application fees?**

Answered: 1 Skipped: 2



Answer Choices	Responses	
Yes	100.00%	1
No	0.00%	0
<b>Total</b>		<b>1</b>

#	Additional comments	Date
1	Probably, subject to price elasticity particularly where any significant drop in demand (and subsequent increase in price) had a disproportionate impact on domiciled applicants with a protected characteristic – in particular BAME students/young practitioners and women taking or returning from a pregnancy related career break. We believe the profession has a responsibility to support diversity in the profession in the public interest. However we recognise that this issue could also be addressed by a waiver or discount system. Retention of women after a career break to have a family is a particular problem for the Bar. Fees should reflect the cost of equivalent services provided by other European Bar Associations for the following qualifications services so as to not be discriminatory and to prevent breach of the EU directives on freedom of movement and establishment of lawyers: a) Registration as a European lawyer; b) Admission to the Bar for a European lawyer; c) Certificate of Academic Standing (Overseas or UK Non-standard).	5/4/2016 4:00 PM

### Q18 What reasons would justify the BSB not applying the Full Cost Recovery method for Qualifications Committee application fees?

Answered: 1 Skipped: 2

#	Responses	Date
1	If any of the following occurred: Where any significant drop in demand (and subsequent increase in price) had a disproportionate impact on domiciled applicants with a protected characteristic (as stated above); Applying the method results in detriment to the regulatory objectives; The activity under consideration falls within the permitted purposes; The service is unaffordable and a neither a waiver nor a discount system are in place.	5/4/2016 4:00 PM

### Q19 In your opinion, which protected characteristic groups are likely to be negatively impacted by Qualification Committee application fee increases?

Answered: 1 Skipped: 2

#	Responses	Date
1	BAME students; women taking a maternity career break (pregnancy) and younger students/barristers based on their likely income/earning capacity.	5/4/2016 4:00 PM

### Q20 Why do you think particular protected characteristic groups would be negatively impacted by qualification committee application fee increases?

Answered: 1 Skipped: 2

#	Responses	Date
1	The profile of those likely to require exemptions etc. will be disproportionately made up of people with these characteristics.	5/4/2016 4:00 PM

### Q21 Do you think the negative equality impacts are significant?

Answered: 0 Skipped: 3

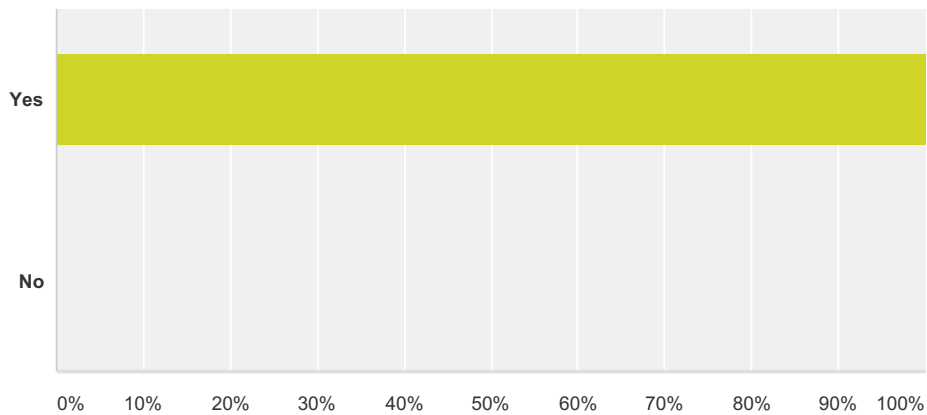
! No matching responses.

Answer Choices	Responses
Yes	0.00% 0
No	0.00% 0
<b>Total</b>	<b>0</b>

#	Additional comments	Date
1	The impact of any fee increases will be dependent on the ability to pay the fees amongst those who commonly apply for exemptions. We would anticipate high fees might prove a barrier to those less able to pay, e.g. young lawyer starting out in practice, students or women returning from a career break having had a family.	5/4/2016 4:00 PM

### Q22 In your opinion, should the BSB take any action to mitigate the negative equality impacts?

Answered: 1 Skipped: 2



Answer Choices	Responses
Yes	100.00% 1
No	0.00% 0
<b>Total</b>	<b>1</b>

#	Additional comments	Date
1	Where the BSB identifies that the fee significantly reduces demand for an exemption (based on comparison with average numbers of applications over previous years) the BSB should take steps to review the costing model particularly if there is evidence this has a disproportionate impact on BAME and women barristers practising at the Bar.	5/4/2016 4:00 PM

### Q23 What do you think the most appropriate mitigating actions might be?

Answered: 1 Skipped: 2

#	Responses	Date
1	The BSB might want to avoid imposing fees by making specific provision for career break returners with respect to CPD. Fee waivers or reducing the fees charged (discounts) should also be considered.	5/4/2016 4:00 PM





**Chair's Report on Visits and External Meetings, March – May 2016****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 April	Chaired a shortlisting of candidates for interview for appointment as Chair and members of the BSB Independent Appointments Panel
5 April	Chaired a roundtable discussion on Youth Court Advocacy
9 April	Briefed the Bar Council on BSB work
12 April	Introduced the BSB Strategic Plan at an open Symposium on the launch of the BSB Strategic Plan and Risk Outlook
13 April	Chaired interviews for the appointment of a Chair and members of the Independent Appointments Panel
15 April	Chaired interviews for the appointment of a Chair and members of the Independent Appointments Panel
15 April	Attended a meeting with the President of the Queen's Bench Division, Sir Brian Leveson
19 April	Attended the Chairmen's Committee meeting with the Bar Council
21 April	Chaired the BSB Away Day
11 May	Chaired the Chairmen's Committee meeting with the Bar Council
19 May	To attend a meeting with the Chair of the Bar Council following the recruitment of two independent members of the Finance Committee
19 May	To attend a lunch hosted by the Bar Council to mark the retirement of Sir Roger Jackling from the Finance Committee.
21 May	To brief the Bar Council on BSB work

**Equality Impact Assessment**

3. No Impact

**Risk implications**

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

**Consultation**

5. None

**Regulatory objectives**

6. None

**Publicity**

7. None

**Lead responsibility:**

Sir Andrew Burns KCMG

**Director General's report - BSB meeting 19 May 2016**

For consideration and noting.

**Director General**

1. External engagement since late March has included presenting on the BSB approach to regulating “law firms” at a conference for legal businesses hosted by Symphony Legal; speaking to a roundtable event at Inner Temple on the Roles and Responsibilities of Employers and Professional Associations in Social Mobility; briefing the President of the Court of Appeal of Victoria (Australia) in relation to our work on women’s experiences at the Bar; and of course chairing the 12 April Strategic Plan and Risk Outlook launch event.
2. I have attended routine meetings with all regulatory CEOs and the LSB, and helped finalise handling of the LSB report on the BSB’s assessment against the Standards Framework. I have overseen the recruitment of the Independent Appointments Panel, delivered to a high degree of competence by the internal staff team led by Amanda Thompson: the outcome of this will be announced publicly shortly. We will soon be commencing the next round of Board recruitment and I have been working with the team on this.
3. I have ensured a further round of responses were delivered to the CMA following Board discussions: these will be made public by the CMA.
4. Internally, I have led or contributed to a number of all staff workshops: on the independence protocol; on the new Strategic Plan, and on the forthcoming Annual Report. I also had the pleasure of introducing an excellent Knowledge Share Session organised by the E and A to J team, on the *First 100 Years* project. The project, which aims to “celebrate the past to shape the future for women in law” was founded by Dana Denis Smith and is supported by the Bar Council and Law Society; Dana gave generously of her time to present the project and participate in a lively Q and A session with staff.
5. By 20 May all appraisals reviews for 15/16 should be completed: I am grateful to Board members who have provided 360 degree feedback for me and the SMT. We will be reflecting on themes arising and on staff development plans in June.

**ASPIRE**

6. A more detailed account of progress on the Programme is contained in the q4 / year-end report elsewhere on the agenda.

**Regulatory Policy*****Equality and Access to Justice***

7. In June 2016 the BSB will hold a joint event with the Bar Council, Solicitors Regulation Authority and the Law Society on promoting race equality in the legal profession. The invitation-only event will bring together representatives from BME groups, academics, law firms, legal professionals and voluntary sector organisations to help us better understand how we can improve access and progression for BME legal professionals. Information gathered during the event will be used to produce a report which will contain recommendations and an action plan aimed at supporting race equality.

8. The E&AJ team worked with the Education and Training department in analysing diversity data relating to the 2015/16 BPTC. This piece of work forms part of the Future Bar Training programme and aims to improve transparency in our work and support our risk-based approach to regulation. The analysis identified some disparities in the data, and an action plan is being developed to investigate the issues more fully. The work is an example of how the BSB has improved its information management capability.
9. A proposal for a new approach to developing equality objectives has been prepared by the E&AJ team for consideration by the Board. The new approach will ensure greater involvement with BSB departments, the Board, committees, the SMT as well as engagement with consumer/voluntary organisations. It is proposed that the new equality objectives for 2017 will be presented to the Board for approval and publication in December 2016.
10. The E&AJ team have formed a Task Completion Group to advise on the potential introduction of a rule to the BSB Handbook giving self-employed barristers in multi-tenant chambers access to Shared Parental Leave (SPL). The current parental leave rules in the Handbook limit provisions to the 'main' carer of a child, so the BSB will explore potential changes that could support the stated objectives of SPL statutory provisions for self-employed barristers.
11. In March the E&AJ team organised a visit to the Swaminarayan Hindu temple in Neasden for the Regulatory Policy Department. The visit was designed to broaden staff experiences of diversity and raise awareness of the importance of considering faith perspectives in Equality Impact Assessments. A valuable discussion was had about how the BSB can further develop its approaches to consumer and community engagement, particularly with regards to diverse organisations.
12. In March the Board reviewed the initial quantitative results of the women at the Bar survey. Since then the Research and Regulatory Policy teams have analysed the qualitative responses from the survey and this has been compiled in a report. The Task Completion Group has reviewed the full report and contributed to potential recommendations. The findings have been assessed against the BSB's Risk Index by the BSB's Policy Forum and an action plan in response has been formulated. Once the Board has reviewed the full report it is intended that it will be published in June.

### **Professional Standards**

13. We held a workshop with the Board at its away day in April to discuss the key themes that have arisen from the immigration thematic review. The Board discussed potential options in relation to each of the themes and discussed the BSB's proper role in any options. Feedback from the Board has been considered when formulating the recommendations for the final report that is being presented to the Board for approval this month.
14. We have established a project to review the governance of our relationship with the Bar Mutual Indemnity Fund and to procure an economic analysis of the impact that the mutual is having on the market for professional indemnity insurance at the Bar. The aim of the project is to establish whether there is a continued need for a compulsory mutual and the extent to which such arrangements can be justified with respect to competition law. The Board's clear view has been that the current arrangements are in the public interest, but it is necessary to conduct more robust analysis taking into account Competition and Markets Authority (CMA) guidance on competition impact assessments.

**Part 1 – Public**

15. We have provided further evidence to the CMA as a contribution to its market study on legal services. Members of the BSB Senior Management team will be meeting the CMA on 27 May to discuss the study further.
16. We are close to finalising the order under s69 of the Legal Services Act 2007 to amend the Bar Council's (and hence the BSB's) statutory powers. The order has been drafted by the Ministry of Justice (MoJ) in order to give effect to the policy on which we consulted last year. This has led to the order being drafted slightly differently than we originally envisaged in places, albeit there is no change in policy by the BSB – we are therefore arranging meetings with key stakeholders to discuss the reasons for this in advance of the LSB's consultation on the draft order. We are seeking to ensure that the delay over finalising the s69 order does not impact our designation as a Licensing Authority for ABS entities, which has been approved by the LSB. The LSB has consulted on the associated s80 order, which will in due course permit the First Tier Tribunal to act as an appellate body for certain licensing authority decisions.
17. As part of our Public and Licensed Access review, Law for Life has been reviewing our Public Access Guidance for Lay Clients and testing it with members of the public. The aim is to have guidance which is much clearer and easier to understand for members of the public. Following the completion of research with barristers into public access work, which we commissioned jointly with the LSB, the research company (Pye Tait Consulting) has undertaken some further research with clients who have complained to the Legal Ombudsman about public access barristers. At the time of writing we are about to receive the second report. On 22 April we launched a survey on Licensed Access for both barristers and clients. This will close on 20 May and we hope will provide insight into how the Licensed Access regulatory regime is working. The next steps for the Public and Licensed Access Review will be reviewing all the evidence that has been collected and preparation of a report for the July Board meeting.

***Regulatory Risk***

18. Our Risk Framework, Index and Outlook have now been launched and are available on the BSB's website (<https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-risk-based-approach/>).
19. We were pleased to welcome a wide range of BSB stakeholders to a launch event for the Outlook and Strategic Plan held at the Royal College of Surgeons on 12 April. We built time into the event for discussion groups to start a dialogue on our regulatory approach and risk themes, with guests sharing a wide range of insights into these topics. A report summarising discussions will be published shortly and we are working on opportunities to engage further on specific topics across BSB activity. Articles have been included in Regulatory Update bulletins to the Bar introducing the risk topics.
20. Engagement with staff on the Outlook themes and new Index in order to build understanding continues, with a series of all staff training sessions now completed. A new induction programme is being considered by the Senior Management Team which will ensure systematic introduction for all staff on our regulatory approach, including risk. Our refreshed network of champions will be meeting soon.
21. The team is also focused on development of some key tools for application of the approach – risk reporting, a risk assessment strategy which will set out in more detail the principles behind our assessment methodology for regulatory risks and supporting the re-design of our approach to assessment and handling of incoming information.

22. We are also working on developing a knowledge base for the organisation where key risk and market information can be found, and we can continue to build our evidence base.
23. The BSB is engaging other regulators on approaches to risk based regulation and further opportunities for collaboration or sharing of ideas through the Regulators' Forum meeting in May 2016.

## **Professional Conduct**

### ***Performance against KPIs***

24. The performance in Quarter 4 was well above the 80% target. However, as predicated, this high performance in Q4 was not sufficient to counteract the reduction in performance in quarters 1 and 3 to allow the overall 80% target at year end to be met. The year-end outturn on the KPI was only 4.3% off target at 75.7% against a target of 80%. For further details, see the PRP Year End Report.

### ***Enforcement Report***

25. We are currently reviewing our performance data from 2015-16 in order to compile the annual Enforcement Report. The report will include further detail about performance against KPIs. This will be presented to the Board at the meeting in July 2017.

### ***Roll-out of BSB email addresses for PCC members***

26. The PCC is next in line for the roll-out of BSB email accounts, for data security reasons. Accordingly, we have been working with the Information Services Department (IS) to create BSB accounts for all PCC members. Email addresses, passwords, and guides to setting up accounts have been emailed out to all members, and support provided. The system will be live from 23 May 2016.

### ***Litigation***

27. There are currently 3 Judicial Review Cases within the PCD. One of those, relating to a costs order, is to be heard at the Court of Appeal on 11 May 2016. The other 2 are from the same barrister and are listed for a permission hearing on 10 May 2016, with the defendants' attendance excused.
28. In addition to this, the discrimination claim that is due before the Court of Appeal in July remains listed. The Employment Tribunal claim (brought by the same barrister as the 2 Judicial Reviews listed for permission) is still at the preliminary stage and due to be before the ET for a preliminary hearing in October 2016.

## **Supervision**

### ***Department Update***

29. The new (and improved!) Supervision Department came formally into being at start April with the integration of the existing supervision and qualifications teams. Including the Director, there are now 14 staff members carrying out various supervisory, authorisation and CPD activities.

30. Recruitment in April was successful. An officer level vacancy was filled by an external candidate who started on 3 May. The candidate has considerable experience with other regulatory bodies and will initially focus on authorisations.

#### ***Work Smart Pilot***

31. Flexible working has been extended indefinitely in the Department following the success of the 8 week pilot. Workshops were held in April by the Programme team to review and address all staff feedback and to communicate ongoing developments and improvements. The prompt and positive support provided by the Programme team during the pilot was noted.

#### ***Alternative Business Structure (“ABS”) Implementation***

32. The BSB’s application to become a licensing authority for ABS was approved at the end March by the Legal Services Board and a recommendation will be made to the Lord Chancellor to approve the designation of the Bar Council as a licensing authority.
33. Detailed planning and development are well underway with an anticipated launch date in late 2016. The launch is dependent on the timeframe for approval of the designation and having the necessary secondary legislation in place. The Ministry of Justice and the LSB have indicated that they expect to be in a position to provide this clarity over the coming month. On receipt, we will communicate more comprehensively to the market and the profession.

#### ***Statutory Interventions***

34. The BSB has sought the LSB's recommendation that the Lord Chancellor grant an order pursuant to Section 69 of the Legal Services Act 2007 (“LSA”) giving it the statutory powers set out in Schedule 14 to intervene in, or take control of, a BSB authorised body or chambers to protect and promote the public interest.
35. The Regulatory Policy Department is engaged with the Ministry of Justice and the LSB about the granting of the order.
36. In anticipation of the powers afforded by the order, the BSB is developing its policy and operational processes. We have spoken with the SRA which has considerable expertise in this area and other experienced external bodies to get insight on how best to approach this. A Project Board has been put in place with oversight by the SMT.

#### ***Delivery of Barrister Services – Research Project***

37. Through our supervision activities we are increasingly observing the emergence of new models to deliver barristers’ services. These non-traditional models differ from more traditional models in key aspects such as governance structure, marketing strategy and service procedures.
38. We believe it is crucial for the BSB to have a clear understanding of the current and trending market for barristers’ services so we can target our resources where most required. To this end we have commissioned an external company to help us with a piece of research. The first key part of this is a roundtable discussion to be held on 12 May (update can be provided at the meeting) with experts in the broader legal services market. We would like to note our appreciation to these individuals for their valuable participation and contribution.

39. The results of the research will be used to inform how we regulate into the future.

***Entity Authorisation***

40. As of 9 May 2016 49 entities have been authorised with a further three entities about to complete the authorisation process.
41. The Entity Renewals process has been completed and all renewal payments made. There were no instances of substantial material changes that had not already been reported to us during the year. One single person entity did not wish to continue to be authorised and we are in the process of withdrawing their authorisation.

***CPD***

42. Development of the new CPD scheme is continuing. The consultation report and pilot assessment went to the Board and was approved. The rules and regulations for the new scheme are currently being drafted. It is anticipated they will go to consultation later this month. In addition the CPD guidance will be updated and published as part of the consultation.

***CPD Accreditation***

43. 394 CPD Providers have renewed their accreditation for calendar 2016 to date. Revenue recorded for this activity totals £144,000. This compares with £188,000 generated in calendar year 2015. Reasons for the decrease are likely to be based on the scheme closing in December 2016, resulting in some CPD Providers being discouraged to engage in the final year of accreditation. However, some CPD Providers will inevitably subscribe for the remainder of 2016 having overlooked their invitation to renew issued in January.
44. CPDCast.com is a large online commercial provider which tends to dominate the CPD market in October – December each year by offering a convenience of accredited CPD podcasts. This year, CPDCast.com decided not to renew its accreditation but continued to refer to itself as an accredited CPD provider throughout its website. Requests to amend their website content were ignored until a letter demanding immediate action was issued from the Director General to the company's CEO.
45. A communication strategy concerning the closure of the CPD accreditation scheme has been created by the Communications team and will involve emails to CPD providers in the coming months.

***Other Supervision activity***

46. Supervision officers have been supporting the transition of the qualifications team to the department and two staff have been cross-trained in assessing applications pending the appointment of the new officer. These staff have also been cross-trained to assess entity applications. This will have benefits for developing a shared understanding of processes and regulatory risks, as well as ensuring flexibility in resourcing peaks in activity.
47. Supervision have been working with IS to develop reporting functionality from the Supervision database that will support the new risk and governance frameworks.



***Pupillage Handbook***

48. Supervision are in the process of updating the Pupillage Handbook for the 2016 season. It is being re-written in a more outcomes-focussed style, and because the current Handbook still reflects the role of the Bar Council prior to establishment of the BSB's regulatory role. That obscures our central regulatory messages. In line with our regulatory approach as a whole, we need to move from a 'prescriptive' to an 'outcomes-focussed' Handbook. Also, the current Handbook focuses mainly on pupils in chambers; the language needs to reflect that pupillage also takes place within the employed Bar. We will also signal anticipated changes following the introduction of the Professional Statement. Further changes to the Handbook will be required in 2017 to reflect implementation of these changes.

***Central Assessment Team – proposed new unit for risk assessing incoming information***

49. The Project Team has agreed the risk assessment principles and is continuing to work on the methodology for processes to be followed. A number of key points of principle have been developed and agreed by the Project Board and will be taken to SMT in May.

***Qualification Authorisations***

50. Each Panel of the Qualifications Committee has been working with staff to revise its Criteria and Guidelines so as to facilitate full delegation of decision-making to staff by the end of the year.

**Education and Training**

51. The Exams team have delivered the BPTC 2016 Centralised Examinations with confidence, in the first year for implementation of the new syllabus that been introduced for Civil and Criminal Procedure, and with changes in the Examiner team bedding down, with recent changes to the teams in each of the centrally examined areas. Work also progresses in our implementation of the changes to examination format for 2017, which were announced earlier in the year.
52. Work has continued on the reconstruction of the BPTC Handbook. This project aims to simplify and provide clear rationale for our requirements, and render the publication more consumer-friendly. It is also an opportunity to articulate requirements in the context of our changing approach to regulation.
53. *BPTC Key Statistics* was published on 5 May. This updated edition includes data from the 2014/15 cohort of students and provides a clearer picture of trends: performance of UK/EU compared with overseas students, and a better analysis of equality and diversity in the training. The report highlights the strong correlation between high achievement on the BPTC and success in securing pupillage. It also suggests that there may be lower prospects for BME candidates: more research is required in order to understand this better.
54. Staff changes within the team reflect the wider organisational restructure process, with the Qualifications team moving to create part of the new Authorisations team. Tim Keeling (Future Bar Training Programme Manager) departed in May at the end of his contract, and Nargees Choudhury (Operations Administrator, maternity cover) left in May to take on an assessments position elsewhere.

55. The appointment of a Policy Manager to the Regulatory Policy team in May strengthens the cross-organisation team that is now contributing to the development of Future Bar Training.
56. Work has continued to prepare for submission of our application to the Legal Services Board to change the cut score for the Bar Course Aptitude Test, following the public announcement of our intention to do so in March. The Test reopened on 4 April, with candidates now provided with their Test score and summary statistical information on their consequent prospects for success on the BPTC.

### **Governance Review**

57. Work has continued on developing the assurance framework, with subject matter experts across the organisation engaged in how the performance of internal systems can be measured, and how these measures can be used consistently across functions. Worked examples of how measures of internal systems (performance) and external impact (effectiveness) can then be used to build an optimal assurance system for the organisation have been circulated to the Governance, Risk and Audit Committee for discussion. This discussion will inform the assurance framework update which the Board will receive at its June meeting.
58. Work has also continued on the Advisory Pool of Experts (APEX), with the SMT approving the expertise to be recruited to APEX in the first round (May – September 2017). General competencies for APEX members, and competencies specific to each area of expertise, are being developed prior to the commencement of the first round of recruitment.
59. The Governance Champions, a new staff group to support the governance reform programme, have met for the first time and will assist with the development of the assurance framework and APEX.

### **Communications and Stakeholder Engagement**

#### ***Communications***

60. Since this report was prepared for the March Board meeting, the following press releases and announcements have been issued:
  - 9 March: BCAT announcement concerning changes to the test in 2016 and 2017.
  - 11 March: New York attorney Soma Sengupta disbarred for charges, including dishonesty.
  - 14 March: Launch of the consultation about the Professional Statement threshold standards and competencies.
  - 22 March: Launch of the new Strategic Plan for 2016-19.
  - 29 March: Announcement about a new online forensic accounting course for pupils and new practitioners.
  - 30 March: Announcement about the LSB's approval for us to license Alternative Business Structures.
  - 1 April: Publication of the report on the BSB symposium on cross-cultural competence.
  - 5 April: Launch of our Risk Framework, Risk Index and Risk Outlook.
  - 13 April: Criminal barrister Desmond Rosario disbarred, following conviction for sexual assault.
  - 14 April: Press release about the new flexible CPD regime and publication of the consultation responses and the pilot programme.

- 15 April: Constance Briscoe disbarred for charges relating to perverting the course of justice.
- 19 April: Publication of research findings amongst barristers about public access work.
- 22 April: Launch of survey on the licensed access scheme.
- 25 April: Barrister Dominic Brazil suspended from practice for 14 months
- 4 May: Anupama Thompson appointed as a new board member.
- 5 May: Publication of the latest BPTC student statistics.

61. The Board will have seen the fortnightly media coverage that the above announcements generated.

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

62. 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:

- Publication of a report from the event on 12 April to launch the Strategic Plan and the Risk Outlook.
- A wide range of communication activity to raise awareness between now and January 2017 about the changing CPD requirements for barristers.
- Publication of the 2015-16 BSB annual report.
- A wide range of communication activity to promote the BSB's ABS launch.
- Plans to develop a full BSB Public Engagement strategy, and specific ongoing work on current engagement activities including preparation for the forthcoming FBT options consultation.
- Development of a new external and internal communications strategy.

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

63. During March, 32,205 users visited the BSB website. 26,006 users visited during April. At the time of writing, we have 14,118 followers on Twitter.

64. The Annual Communications Team Metrics Report can be found at the Private session of the Board - Paper 042.

### **Research**

65. Since the meeting in March, work has progressed as follows:

- Providing detailed statistics on the profession in response to the Competition and Markets Authority review of the legal market
- Supporting the development of policy responses to the Immigration Thematic Review, including supporting the Board Away Day discussion
- Completion of the full report on the "Women at the Bar" online survey, with findings reported to the Task Completion Group on 14 April
- Launch of an online survey for Licensed Access barristers and clients as part of the Public and Licensed Access Review
- Preparing the detailed findings of the review of the BCAT for the submission to the LSB to raise the pass mark, alongside preparing a new feedback report for BCAT candidates
- Launch of the research on the governance models for barrister services, with Pye Tait selected as the external provider. Desk research will be finished this week and roundtable consultation with experts across the sector will take place at the

BSB next week to initiate primary research (online surveys and in-depth interviews)

- Drafting an ITT on the client care letters project initiated with other legal regulators
- Rescoping our consumer research focus by updating existing literature review with new project sponsor, the Communication and Public Engagement Department, in order to evaluate specific research areas we should focus on
- Continuing work on the Consumer Research project to explore new research approaches and to link overall project with other ongoing, consumer-focused projects.
- Continuing work on User feedback project to reshape initial research proposal with a consumer angle.

### **Corporate Services**

#### ***Business Planning***

66. Board members will note the 2015-16 year end performance report in this meeting's set of papers, which the team has compiled. We are finishing off our year-end processes and also starting to draft the 2015-16 Annual Report – due to be published at the end of July.
67. We launched our 2016-17 Business Plan in March, and the team continues to work on the systems that we will use to monitor progress and performance against the Plan and budget. Team members will be crafting a new dashboard and structure of accounts to align with our objectives.
68. Our three-year contract with the Bar Tribunals and Adjudication Service (BTAS, the independent body responsible for making decisions on professional misconduct, eg disbarment) expires at the end of 2016. The team is starting to draft a paper to help the Board make a decision on reviewing the arrangements. Board members can expect to see a paper in June 2016.

### **Resources Group**

69. RG updates are captured in the year-end performance report (see Board paper 032 – BSB End of Year Performance Report). A further quarterly report will be presented to the Board with the BSB's next quarterly update.

**Vanessa Davies**  
**Director General BSB**  
**12 May 2016**