

Regulatory Update August 2018

Blog:

I am writing to you this month as our Chair, Baroness Blackstone, is on annual leave.

At our July meeting, the Board considered the responses we have received to our consultation earlier in the year about proposals to modernise our regulatory decision-making. We will be publishing a report soon summarising those responses and how we considered them. The report will also explain our decisions to change how we deal with the information we receive as your regulator and to revise our decision-making structures in relation to professional conduct issues.

One aspect of the consultation which has generated a lot of debate was our proposal to remove the existing rule about the time limit for disciplinary investigations. We have never believed that barristers, clients and others should feel unable to report a possible breach of the Code just because twelve months has passed since the alleged breach.

The existing rules already provide that the Professional Conduct Committee can look at a complaint brought outside the current limit if it decides that further consideration of the complaint is “justified in the public interest, having regard to the regulatory objectives”. There may be very good reasons for delay - in cases of alleged bullying or harassment, for example - and we want to assure the public and the profession that all alleged breaches of the Code will be properly assessed and investigated provided there is sufficient evidence.

We would still encourage early reporting, which usually makes evidence easier to obtain, but the key test must be whether a matter can be fairly and properly investigated, not the time that has elapsed since the alleged breach. We of course recognise that if documentation has been destroyed in line with legal requirements such as the GDPR that can make such an investigation impossible.

Having made a number of important policy decisions earlier in the year about the future of Bar training, we have published the proposed new rules that will replace Part 4 (also known as the Bar Training Rules) of the current BSB Handbook. We are seeking views as to whether they provide the right framework to give effect to the new policies announced as part of our Future Bar Training (FBT) programme. The new rules will be finalised in the autumn and, subject to approval by the Legal Services Board, are expected to take effect in early 2019. You can read more about this consultation on our website. [\[LINK\]](#)

At the end of July, we held a very interesting and useful roundtable to discuss how we and others can best combat bullying and harassment at the Bar, including sexual harassment. Several members of the Board attended along with representatives from the Bar, including the Chair of the Bar Council, and other regulators. There was a valuable and important discussion of the issues, which will be of considerable use to us as we prepare to review our rules, including the current obligation to report harassment as a form of professional misconduct.

If you offer pupillages, do please also look out for our email questionnaire this month which will help you to find out how to become authorised as an Approved Education and Training Organisation under our new Bar training rules which will take effect next year. If you don't receive such an email and want to offer pupillages next year please do get in contact with us by emailing contactus@barstandardsboard.org.uk.

Finally, we have published our latest [Annual Report](#). If you want to know more about our work during 2017-18, I do hope that you will read it.

BSB seeks views on draft of new Bar training rules

Last month we [launched a consultation](#) to seek views as to whether our proposed new rules for the training and qualification of barristers provide the right framework to give effect to the new policies announced recently by the regulator as part of our Future Bar Training (FBT) programme.

The rules themselves set a high-level framework and much of the policy implementation will be achieved by additional supporting documents, the overall effect of which will be:

- the authorisation of a limited number of future training routes for students to qualify as barristers in England and Wales. This policy was first announced in the BSB's [Statement in March 2017](#) and will be facilitated by the new rules. A separate Authorisation Framework outlines in more detail the basis by which the BSB will authorise training courses within any of the new training routes;
- confirmation of the role of the Inns of Court in the training and qualification of barristers, as announced in the BSB's [Policy Statement in March 2018](#); and
- provision for the future of pupillage and other forms of work-based learning including the policy changes announced in the BSB's [Policy Statement in May 2018](#).

The consultation presents a new, simplified set of qualification rules that will replace Part 4 (also known as the Bar Training Rules) of the current BSB Handbook. The consultation paper provides more detail about the specific rules that it is proposed will be introduced.

The new rules will be finalised in the autumn and, subject to approval by the Legal Services Board, are expected to take effect in early 2019. The closing date for this consultation is 17 September 2018.

BSB publishes its Annual Report for 2017-18

Last month we published our latest [Annual Report](#) summarising our achievements during the 2017-18 business year.

Highlights of our work during the second year of our current three-year Strategic Plan included:

- continuing with our Future Bar Training (FBT) programme, including consulting on the rules governing pupillage and the role of the Inns of Court in the training and qualification of barristers;
- responding to the Competition and Markets Authority's (CMA's) recommendations, including consulting on proposals to introduce new transparency standards for the Bar so consumers can make more informed decisions about barristers' services;
- deciding to change the standard of proof applied in professional misconduct proceedings from the criminal to the civil standard to bring our disciplinary arrangements in line with most other professions;
- beginning to implement a new regulatory approach for barristers working in the Youth Courts, so that the BSB can work closely with them to help improve advocacy standards for young people; and
- publishing new guidance for the public and for professionals on immigration and asylum related legal issues to help people to navigate the legal system more easily.

The report also describes the day-to-day tasks we undertake when regulating barristers and specialised legal businesses in England and Wales in the public interest. This work includes supervising barristers' chambers, assessing complaints about barristers' professional conduct, complying with statutory equality and diversity responsibilities, and a range of tasks associated with overseeing the qualification of new barristers.

We also published a separate document alongside our Annual Report containing the [Cost Transparency Metrics for 2017-18](#) specified by the Legal Services Board.

Update for the New Authorisations Framework – Are you a Pupillage Training Organisation (PTO)?

In March 2017, we announced proposed changes to the way in which we regulate qualification as a barrister, these proposals have now been agreed.

From January 2019, we will introduce a new [Authorisation Framework](#), which will govern the authorisation of Approved Education and Training Organisations (AETOs). This means that providers of any element of training, including pupillage, will need to have been authorised explicitly by the BSB under the new Authorisation Framework.

Although the new arrangements come into effect in January 2019 they will impact on pupilages starting in the autumn of 2018. We will be contacting you to ask whether you intend to continue to take pupils under the new framework.

If you are not authorised under the new scheme you will be unable to continue as a Pupillage Training Organisation or AETO.

For further details, please [see our website](#).

Have we got correct details of your practice address?

Please ensure that you have informed us of your correct practice address in accordance with rS69 of our Handbook. If your practice address changes, you must inform our Records Department within 28 days.

Give us your feedback

If you have any thoughts about how we can improve the Regulatory Update or what content you would like to read, please email contactus@barstandardsboard.org.uk.