

Meeting of the Bar Standards Board

Thursday 23 July 2015, 4.30 pm

**Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ**

Agenda - Part 1 – Public

		Page
1. Welcome and introductions (4.30 pm)	Chair	
2. Apologies	Chair	
3. Members' interests and hospitality	Chair	
4. Approval of Part 1 (public) minutes:		
• 25 June 2015 (*)	Annex A	3-6
5. Matters Arising (*)		
6. a) Action points and progress	Annex B	7
b) Forward agendas	Annex C	9
<u>Items for discussion</u>		
7. Fees and Charges - consultation (4.35 pm)	BSB 054 (15) Amanda Thompson	11-17
8. Insurance requirements for single person entities (4.50 pm)	BSB 055 (15) Kuljeet Chung	19-31
9. Standard contractual terms and the list of defaulting solicitors: undertaking to the LSB (5.00 pm)	BSB 056 (15) Ewen Macleod	33-109
10. Professional Conduct Committee / Professional Conduct Department Enforcement Annual Report 2014/15 (5.15 pm)	BSB 057 (15) Simon Lofthouse QC	111-158
11. Bar Standards Board Annual report 2014-15 (5.30 pm)	BSB 058 (15) Amanda Thompson	159-205
12. Chair's Report on Visits and Meetings: Jun - Aug 15: (*)	BSB 059 (15) Chair	207-208
13. Director General's Report (5.35 pm)	BSB 060 (15) Vanessa Davies	209-222
14. Any other business (5.40 pm)		

**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.*

15. **Dates of next meetings**

- Friday 4 September 2015 (single item) – 2 00 pm
- Thursday 10 September 2015 (budget) – 4.30 pm
- Thursday 24 September 2015 (full meeting) – 4.30 pm

16. **Private Session**

John Picken, Governance Officer

JPicken@barstandardsboard.org.uk

16 July 2015

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

BSB 230715

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 25 June 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair)
Rolande Anderson
Malcolm Cohen
Simon Lofthouse QC
Tim Robinson
Andrew Sanders
Adam Solomon
Richard Thompson
Anne Wright

Note: Rob Behrens was unable to attend for Part 1 of the meeting but was present for Part 2

By invitation: Keith Baldwin (Special Adviser)
Nicola Sawford (Board Member designate)
James Wakefield (COIC)
Emily Windsor (Special Adviser)

Bar Council in attendance: Alistair MacDonald (Chairman, Bar Council)
Stephen Crowne (Chief Executive, Bar Council)

BSB Executive in attendance: Viki Calais (Business Manager)
Kuljeet Chung (Policy Manager)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Supervision)
Sara Jagger (Director of Professional Conduct)
Ewen Macleod (Director of Regulatory Policy)
Sián Mayhew (Policy and Projects Officer) – items 1-7
John Picken (Governance Officer)
Pippa Prangle (Regulatory Risk Manager)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)
Angela Yin (Communications & Press Officer)

Item 1 – Welcome and introductions**ACTION**

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

Item 2 – Apologies

- Justine Davidge (*note: Justine Davidge was in another part of the country at the time of the meeting. She had intended to telephone in but, unexpectedly, could not receive a signal for her mobile phone*)
- Andrew Mitchell QC;
- Sam Stein QC;
- Sarah Brown (Special Adviser);
- Chantal- Aimée Doerries QC (Bar Council Vice Chairman);

- Lorinda Long (Treasurer, Bar Council);
- Mark Hatcher (Special Advisor to the Chairman on Representation and Policy).
- Joanne Dixon (Manager, Qualification Regulations)

Item 3 – Members’ interests and hospitality

3. The following declarations were made:
- Vanessa Davies – CILEX Presidential Dinner (8 June 2015);
 - Vanessa Davies – Dinner hosted by the Institute of Barristers’ Clerks (11 June 2015);
 - Sir Andrew Burns – dinner at Gray’s Inn Magna Carta Lecture with the Chief Justice of Canada (18 June 2015).

Item 4 – Approval of Part 1 (public) minutes (21 May 2015)

(Annex A)

4. The Board approved Part 1 of the minutes of the meetings held on Thursday 21 May 2015.

Item 5 – Matters Arising

None.

Items 6a & b – Action points and Forward Agenda

Action points and progress (Annex B)

6. The Board noted progress on the action list.

Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

Item 7 – Review of the Disciplinary Tribunal Regulations – Consultation Paper

BSB 045 (15)

8. Sara Jagger commented as follows:
- the consultation paper concerns changes to the Disciplinary Tribunal Regulations (DTRs). This follows a comprehensive review carried out by the Professional Conduct Department with support from a Working Group and external legal advice;
 - details of the proposed changes were circulated to Board Members under separate cover at the same time as Board agenda papers;
 - a 16 week consultation is suggested with a final report on the outcome to be presented at the November Board meeting;
9. Members commented as follows:
- there is a potential “bottleneck” of consultations issued by the BSB, given those referring to the Future Bar Training Programme will be issued at the same time;
 - we need an effective communications strategy;
 - we should actively seek the views of other regulators as their own experience of similar regulations will be helpful to know.
10. In response, the following points were made:
- the point concerning multiple consultations is acknowledged though the extended window for replies should assist;
 - a meeting to discuss the communications plan will be held on 26 June 2015. This will identify which stakeholders to target and the action to take. There may also be scope for workshops on the proposed changes to be held over the summer period.

11. Sara Jagger paid special tribute to the work done by Siân Mayhew in preparing the documentation. The Board also expressed its appreciation.

12. **AGREED**

- a) to approve the publication of the consultation paper at Annex 1 of the report setting out proposed changes to the Disciplinary Tribunal Regulations.
- b) to note the proposed changes to the Disciplinary Tribunal Regulation as previously circulated to Board Members under separate cover.

SJ / SM

Item 8 – Equality and Diversity Committee Annual Report 2014-2015

BSB 046 (15)

13. The Board considered the Annual Report from the Equality and Diversity Committee. This highlighted the progress made over the past year, including:

- improved liaison between members of the E&D Committee and other staff / committee members;
- overseeing a compliance exercise for a sample of chambers about the implementation of the Equality and Diversity rules of the Code of Conduct;
- production of the Aggregated Diversity Report on the Profession 2014;
- re-development of the BSB's equality objectives for 2015-16;
- providing input to the Bar Council's Equality and Diversity Officer networking events.

14. It will be three years in September 2015 that the Equality and Diversity Rules were introduced. Nicola Sawford suggested chambers be sent further reminders about compliance. This will be fed back to the E&D Team.

**AP to
note**

15. **AGREED**

to note the report.

Item 9 – BSB quarter report on BTAS and the Browne recommendations

BSB 047 (15)

16. Amanda Thompson highlighted the following:

- the report gives an update on the implementation of the Browne Review recommendations concerning the COIC Tribunal Service;
- very positive progress has been made and the contract management arrangements between the BSB and the Bar Tribunals & Adjudication Service (BTAS) are operating well;
- the Contracts Manager, Chandra Connaghan, is leaving the BSB having completed her task of establishing these satisfactory arrangements. Her contribution to the success of this project has been significant;
- a press release on the paper will be issued at the end of June.

17. Vanessa Davies confirmed that, in view of the progress made, the monitoring visits conducted by the Business Support Team will take place every six months in future (they had previously been undertaken every quarter).

18. **AGREED**

to note the paper.

Item 10 – Chair's Report on Visits and Meetings – June 2015

BSB 048 (15)

19. The Board **noted** the Chair's report on visits and meetings.

Item 11 – Director General’s Report

BSB 049 (15)

20. Vanessa Davies highlighted the following:

- the ASIPRE programme is underway (**A**ccessing **S**taff **P**otential in **I**nspiring **R**egulatory **E**xcellence). This has made a positive staff with a wide range of staff engagement and cross-team working.
- an inaugural Programme Board meeting will take place in the near future;
- there has already been some impact in terms of wider feedback on recent BSB consultations (the Professional Statement and Standard Terms and the Cab Rank Rule).

21. Oliver Hanmer expanded on the ASPIRE project. He commented as follows:

- the project aims to drive through a cultural change as staff to take on more responsibility and accountability for our regulatory work;
- it covers three main areas ie:
 - ❖ consumer engagement;
 - ❖ risk;
 - ❖ governance;
- a meeting has already taken place with the Chair of the Legal Services Consumer Panel which proved very helpful.

22. **AGREED**

to note the report.

Item 12 – Any Other Business

23. None.

Item 13 – Date of next meeting

24. • Thursday 23 July 2015.

Item 14 – Private Session

25. 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 – 21 May 2015 (Annex A);
- (2) Matters arising;
- (3) Action points and progress – Part 2;
- (4) Future Bar Training: Consultation on the Academic Vocational Stage and Professional stages of training for the Bar;
- (5) Employed barristers’ scope of practice;
- (6) Review of standard contractual terms and the cab rank rule: undertaking to the LSB;
- (7) Governance Review Direction and Draft Documents;
- (8) Any other private business.

26. The meeting finished at 5.55 pm.

**BSB – List of Part 1 Actions
23 July 2015**

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

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
12a (25 Jun 15)	publish the consultation paper on proposed changes to the Disciplinary Tribunal Regulations	Sara Jagger	First week of July	06/07/15	Completed – consultation paper published on 6 July
25 (21 May 15)	circulate the key points arising from the Authorisation to Practise exercise to Board Members	Vanessa Davies	immediate	08/06/15	In hand - a draft report was received by the Information Management Programme Board on 4 June 2015. The Bar Council CEO and BSB DG has requested some further proposals on recommendations and future actions before signing it off for circulation
12b (26 Feb 15)	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	08/06/15 18/03/15	Being addressed as part of development of new assurance system (including performance reporting) that will be required to support the new governance system Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.
5 a-b (23 Oct 14)	consult on change: insurance for entities once the entity regulation process is in operation	Ewen Macleod	before Mar 15	08/07/15 12/05/15 18/03/15 17/02/15 20/01/15	Completed Consultation has been issued, closes on 30 June 2015 Draft consultation to be reviewed by HBWG week of 23/3 and finalised before Easter. Work was reviewed by Handbook Working Group on 13 February and remains on track Work is on track

Forward Agendas

Friday 4 September 2015

- Governance Review (single item agenda)

Thursday 10 September 2015

- Budget 2016-17
- Strategy for 2016-21

Thursday 24 September 2015

- PRP Committee Annual Report
- BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- GRA Committee Annual Report. Note: this paper will also include the annual report from the Independent Observer
- Future Bar Training – sign off Professional Statement
- Future of the Bar Course Aptitude Test
- QASA implementation proposals (Part 2)
- Regulatory outlook themes (Private)

Thursday 22 October 2015

- Supervision Committee Annual Report
- Supervision report – high impact chambers
- Standards Committee Annual Report
- Bar Council Standing Orders: Part III amendments

Thursday 26 November 2015

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on the Equality Rules
- Report on recommendations re: immigration thematic review
- Outcome of consultation on Disciplinary Tribunal Regulations

Thursday 17 December 2015 (Board Away Day)

- Presentation by Legal Services Consumer Panel

Thursday 28 January 2016

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

Thursday 25 February 2016

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

Thursday 17 March 2016

- Strategic plan 2016-19 - final

Longer term items (dates to note)

- *April – June 2016 – Approval of Future Bar Training LSB submission (changes to Qualification Rules, Academic Stage regulatory policy, Vocational Stage regulatory policy, Pupillage Stage regulatory policy)*
- *July 2016 – Approval of CPD regime changes (Part 2)*
- *October 2016 – Approval of CPD quality mark scheme proposal (Part 2)*

Fees and Charges - consultation

Status:

1. For discussion and decision.

Executive Summary:

2. The BSB charges fees for some of the services it delivers. This paper concerns how we set the fee structure for those services.
3. During the last discussions on fees and charges, Board members expressed a wish to formally seek the Bar Council's views on the BSB's approach to its fee structure, and to then consult with the profession more widely.
4. This paper presents an outline of the proposed consultation which is split into two parts: a) the principles on which BSB fees should be based; and b) the practical application of the principles to a selection of Qualifications Committee application fees.
5. It is intended that the consultation commences towards the end of the calendar year and then it is anticipated that any changes would come into effect with the new financial year (April 2016).

Recommendations

6. Members of the Board are invited to:
 - a) **Discuss** the principles to be set out in the consultation document;
 - b) **Approve** the approach to the consultation;
 - c) **Agree** that the Planning, Resources and Performance Committee should consider the consultation document before it is signed off by the Director General;
 - d) **Delegate** authority to the Director General to sign off the final consultation document;
 - e) **Endorse** the proposed timescales for the consultation;
 - f) **Agree** to receive the results of the consultation in early 2016 with a view to deciding on the BSB's fee structure going forwards;
 - g) **Make recommendations** to the executive as necessary.

Background

7. The BSB set out in the 2013-16 strategic plan its ambition to achieve "best practice" as an organisation for those who work for us and those whom we serve. For the BSB this means establishing a baseline for regulatory costs and also steadying the rate of increase compared to the last three years. In addition, the BSB aims to develop a more strategic, longer-term approach to raising revenue in support of its regulatory activity.
8. The BSB is primarily funded through Practising Certificate Fee (PCF) funds (£5,862k)¹ from the Bar Council (and the Inns' Subvention (£573k), which in the next couple of years 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 (£1,875k).

¹ Numbers quoted in this paragraph are taken from the BSB's 2015-16 Business Plan https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf

9. 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)²). The income we receive from non-PCF fees (BSB fees and charges) reduces the call on the Bar Council and hence on the PCF.

Existing fees and charges policy

10. When the BSB last considered its approach to fees and charges, it agreed the following general principles in relation to its non-PCF charges:
- a) In many circumstances it is good practice to charge for delivering public services. Controlling access to services by charging encourages rational allocation of services since it limits waste through frivolous or badly targeted consumption;
 - b) In line with the international standard for charges for public services, the BSB will normally charge at full cost. This neutral standard avoids subsidies or profit.
 - c) Full cost charging should always be the starting point in developing a policy for charging for any particular BSB service. But there can be a case for charges which differ from that standard. For example, charging below cost can encourage certain desirable behaviours; charging above cost could match commercial market practice and extract a justifiable market rent; while there can be a public interest in using cross subsidies to get one set of consumers of a service to help others. The practice and experience of other regulators can assist in drawing up the agenda.
 - d) The BSB intends to make public its decisions on setting charges. In each case the decision will be justified, with explanation of any undercharging, overcharging or cross subsidies.
11. While the expressed starting point “is always to establish full costs, including overheads such as rent, IT and HR”, the Board did allow itself the latitude to “decide to vary from full cost charging for some services” provided that the rationale for doing so was decided upon by the Board and documented.

Principles

12. The principles set out in Annex 1 have been drawn up to assist with articulation and documentation of the rationale underpinning the decisions on how non-PCF charges have been set. We are proposing that these principles are the subject on which the BSB should consult later in the year. The Board is asked to consider whether or not these are the right principles to include in that consultation as well as whether there are any missing or additional drivers that should be included. The consultation paper will then be drafted to reflect the Board’s decision.
13. The principles take into account the regulatory objectives set out in the LSA 2007, our strategic aims, and our equality and access to justice objectives. Previously, our initial considerations were based upon the main beneficiaries of a service; ie where regulatory activity can be clearly attributed to only one sector of the profession, as opposed to being in

² http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf

the interests of, or on behalf of, the profession as a whole, the direct costs of that specific activity should be recovered from the relevant sector of the profession.

14. It is not anticipated that there will be one “hard and fast rule” to calculate all non-PCF charges. In most cases, the BSB will be required to work its way through each principle, considering the impacts and effects that each would have. An evidence-based judgement would then be made on what percentage of costs should be recouped from direct charges, and what percentage should be propped up by PCF funds. If it is deemed that 100% of an activities costs should be recovered from non-PCF fees, then this would be described as “full economic cost recovery”. This application has worked particularly well when calculating new fees, such as for entity authorisation and the Bar Course Aptitude Test (BCAT).

Practical application – qualification committee applications

15. Board members discussed last time the practical application of the “full economic cost recovery” principle on the fees associated with the Qualifications Committee applications, which were already in existence when the original charging principles were agreed. The Board noted that strict adherence could result in rises between 25% and 900%. This prompted members to request the principles to be consulted upon more widely, and formally with the Bar Council.
16. The consultation document would be split into two parts. The first part would focus on the principles set out in annex 1. The second part would show how the proposed principles would be applied in practice. A small number of qualification fees would be detailed in the consultation to demonstrate some examples of our considerations against each principle and the associated calculations.
17. In addition, we would ask consultees about qualification application fee waivers. Applicants can apply for a fee waiver, which is granted if the BSB agrees that a waiver would avoid an injustice or real hardship. The consultation on this section would help us to determine whether fee waivers should be: a) funded by revenue from other qualification application fees; b) covered by PCF funds; or c) removed altogether.
18. We intend to carry out the consultation as per the timetable in Annex 2. It is proposed that the consultation is conducted towards the end of 2015 with a view to implementing a new fee structure on 1 April 2016 at the start of the next financial year. It is not considered feasible to undertake this consultation any earlier than is proposed due to resource constraints and being conscious of the possibility of “consultation fatigue” among the profession given the large volume of consultations we already have scheduled in 2015.
19. Board members are asked to endorse the proposed principles and approach. The Board is also asked to delegate the authority to sign off the final consultation paper to the Director General. The Board is also asked to agree that the Planning and Resources and Performance Committee should consider the consultation before it is signed off by the Director General.

Equality Analysis

20. 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. A review of all the types of Qualifications Committee applications will be conducted prior to the new fee structure coming into force.

Risk implications

21. 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 canvassed.

Regulatory objectives

22. 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

23. The consultation will be publicly available as per the timetable.

Annex

24. Annex 1 – Consultation on fee charging principles
Annex 2 – Consultation timetable

Lead responsibility

Amanda Thompson
Viki Calais

Annex 1 – Principles to include in consultation document

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

Timeline	Activity
Summer 2015 (and into 2016)	All qualification application fees analysed (including EIA)
October 2015	Consultation drafted (final version signed off by the Director General)
November 2015	Consultation period starts
December 2015	Consultation period ends
February 2016	Results analysed and recommendations adopted by the Board
March 2016	Communications plan implemented
April 2016	New fees structure in place
July 2017	Review and evaluation

Insurance requirements for single person entities

Status

1. For discussion and decision.

Executive Summary

2. The BSB recently issued a consultation on insurance requirements for single person entities. The consultation closed at the end of June. Single person entities comprise just one barrister who owns and manages that entity. The consultation paper considered whether single person entities (like self-employed barristers) should be required to purchase their primary layer of professional indemnity insurance from a single provider – the Bar Mutual Indemnity Fund (BMIF) or should be allowed to purchase their insurance on the open market. The BSB expressed that its preferred option was to require single person entities to insure with the BMIF and sought views on whether there were any other options in need of consideration, and whether the BSB's preferred option was the correct one. This paper discusses the views the BSB received in response to the consultation, which were unanimous in recommending that the BSB should require single person entities to obtain their primary layer of insurance cover from the BMIF.
3. The BMIF have expressed concerns that if a significant number of barristers or chambers leave to form entities and obtain insurance elsewhere, this would have a significant impact on the viability of the mutual model going forward. Although the risk of this materialising is difficult to assess, if significant numbers of barristers were to leave the mutual in favour of obtaining insurance on the open market, this could pose a serious risk to the viability of the mutual and would impact on insurance requirements for the self-employed Bar. However, given the relatively slow uptake of entities so far, the possibility of extending the BMIF's monopoly to single person entities has been assessed on its own merits, with particular consideration being given to the impact of any change on the regulatory objectives.
4. In light of the analysis below, this paper recommends that the Board agree to an amendment to rule rC77 to require single person entities to obtain their primary layer of insurance from the BMIF in the same way that self-employed barristers are required to. In its consultation response the BMIF has confirmed that it is committed to insuring every single-person entity that the BSB authorises.

Recommendations

5. The Board is asked to:
 - a. **Note** the responses to the consultation;
 - b. **Agree** to a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF;
 - c. **Delegate** responsibility to the Executive with input from the Handbook Working Group for finalisation of the consultation report and a rule change application to the LSB.

Background

6. The BSB began authorising entities in January 2015. To date the BSB has authorised 26 entities, 21 of which are single person entities. All of those single person entities (including one solicitor entity) have taken out their insurance with BMIF. Currently all entities are

required to have adequate insurance, in the light of the legal services they provide, as well as to comply with any minimum terms stipulated by the BSB. The content of the minimum terms was the subject of a separate consultation in July 2014. The BMIF responded to the 2014 consultation with their concerns about the sustainability of the BMIF as a mutual model of insurance cover for the self-employed Bar should large numbers of self-employed barristers choose to become single person entities and seek insurance on the open market. The Board previously considered BMIF's arguments and committed to carrying out further research and consulting on insurance requirements for single person entities.

7. A consultation on the insurance requirements of single person entities was issued in April 2015 and closed on 30 June 2015. It considered whether to remain with the status quo (ie to allow single person entities to purchase insurance on the open market) or whether they should be required to obtain their primary cover from BMIF in the same way that self-employed barristers are currently required to do. The consultation outlined the potential arguments for and against both of these options and outlined evidence from current insurers on the open market about their willingness to insure single person entities. The consultation came to the provisional view that the BSB should require single person entities to insure with BMIF. It sought views as to whether the BSB had considered all of the options, if it was felt the BMIF currently operated in the public interest and whether the BSB's provisional view was the correct one. There were 16 responses to the consultation from barristers, representative organisations, chambers and the BMIF itself. The consultation report is attached at **Annex A**.
8. The responses to the consultation were unanimous in recommending that the BSB should require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF. However, the BSB needs to be satisfied that the proposed regulatory intervention is justified in the light of the regulatory objectives, which are discussed elsewhere in the paper. The consultation confirmed the need for the Board to consider the potential negative impact on the regulatory objectives of continuing with the status quo given there is a risk that it would undermine the viability of the mutual, with wider consequences for the whole of the BSB's regulated community and their clients.

Scope of the consultation

9. The insurance requirements for multi-person entities were not considered as part of this consultation. The issues relating to multi-person entities and the implications of requiring all entities to insure with the BMIF will require further analysis and research. The BSB would also need to gather more evidence about the type of multi-person entities that are being authorised to make an informed decision. The BSB is considering a larger scale review of insurance requirements for entities after April 2016, when the BSB has been authorising entities for a year.

Responses to the consultation

10. The consultation sought views on two options – option one was to maintain the status quo, and option two was to require single person entities to purchase their primary layer of cover from the BMIF. The consultation contained the following four questions:
 - Question 1: Have we correctly identified the range of factors that should be taken into consideration as potential advantages or disadvantages in making a choice between Option 1 and Option 2 or are there any other relevant factors that we should take into consideration?

- Question 2: Should we consider any other options, beyond Option 1 and Option 2 and if so what?
 - Question 3: Do you agree that the existing BMIF monopoly, in respect of the primary layer of cover for the self-employed Bar, has operated in the public interest overall? Please provide reasons for your answer.
 - Question 4: Do you agree (a) with the BSB's provisional conclusion that Option 2 should be preferred and (b) with the BSB's reasons for arriving at that conclusion? If you disagree, please provide reasons for your answer.
11. In response to the above questions all of the respondents agreed that the BSB had correctly identified the range of factors that should be considered and that options 1 and 2 were the only possible options.
12. All respondents also agreed that the existing BMIF monopoly, in respect of the primary layer of cover for the self-employed Bar, has operated in the public interest. The reasons provided included:
- the stability it has provided in the barristers' professional indemnity insurance market;
 - the assistance it provides to the Bar Standards Board in promoting its regulatory objectives;
 - the benefits of the broad scope and generous application of the BMIF's terms of cover; and
 - the experience of the BMIF in the specialist area of insurance for the Bar and its role as a not-for-profit organisation.
13. All respondents agreed with the BSB's provisional conclusion that Option 2 should be the preferred option and with the reasons for arriving at this conclusion. The reasons provided by respondents for arriving at this decision included:
- there is no principled justification for having different insurance requirements for single person entities, as they are providing the same services as self-employed barristers;
 - the experience of solicitors obtaining insurance on the open market, including insurers coming and going, premium increases without justification and an increase in costs for the customer;
 - the potential for open market insurers to cherry pick, to offer only rigid terms or to refuse cover, which could lead to practices closing down and consumer choice declining;
 - concern about the future of the BMIF and the effect that allowing single person entities to seek insurance on the open market could have on the fund; and
 - concern that permitting different insurance arrangements for single person entities could lead to a split in the profession, or at least cause a sense of division which could affect the unity of the Bar (NB this in itself is not a regulatory concern unless it could be shown to have a negative impact on the regulatory objectives).
14. A fuller consideration of the responses to the consultation can be found in the consultation report attached as **Annex A**. A further document with every single response tabulated by question exists and is available on request (the intention is for this to be shared with the LSB and/or published in due course). It should be noted that the responses were overwhelmingly from the profession and BMIF itself. Although attempts were made, no consumer input has been obtained. It is therefore important that the Board reaches its own independent view of

what is appropriate in the light of the regulatory objectives, in addition to considering the arguments made by respondents.

Additional evidence

Consultation with commercial providers

15. In addition to the consultation the BSB also commissioned market research to determine the appetite of insurers on the open market to provide insurance to BSB regulated entities. A total of 26 insurers were approached and 8 commented that they would be happy to provide insurance for BSB regulated entities, however there was some indication that smaller firms may not be of interest. The risk would therefore be that, in the event that BMIF could not continue, some individual barristers in addition to some entities might struggle to get cover.

Evidence from BMIF

16. The working group has sought additional evidence from the BMIF which may assist with the group's further analysis of the issues. Although the information provided is helpful, it has not yet enabled the working group to effectively assess the sustainability of the BMIF going forward if a significant number of barristers were able to seek insurance on the open market. The Board must, however, consider the value of preserving the mutual model and the undesirability of putting it at risk if there is an acceptable alternative (ie requiring single person entities to insure with the BMIF). In order to assess the options, the benefits of the mutual model are discussed below, as well the impact of any change on the regulatory objectives.

Benefits of the mutual model

17. In general the working group believes that the mutual model provides the following efficiencies over a competitive commercial market for insurance:
- a. It is run on a not-for-profit basis;
 - b. It does not incur brokerage fees;
 - c. It does not have underwriting costs;
 - d. It has a number of methods of smoothing potential shocks in the system, which tends to create a more stable premium over time;
 - e. It provides cover for all self-employed barristers and has undertaken to do so for all single person entities thus ensuring all such authorised persons can obtain the basic level of insurance; and
 - f. It provides cover even if premiums are not paid, thus providing certainty of cover for clients.
18. At the time of writing, the working group is seeking to discuss with a broker whether the excess layer of insurance is cheaper for the profession because of the way the primary layer is managed by BMIF.

19. As well as considering available evidence (including consultation responses) detailed consideration has also been given to the impact of the proposed change on each of the regulatory objectives:

Protecting and promoting the public interest

20. The existing rule, under which the BMIF has a monopoly on providing the primary layer of cover to the self-employed Bar has operated in the public interest by providing barristers with a stable source of primary layer cover. An extension of the monopoly to single person entities will help to achieve a level playing field between individual barristers operating on a self-employed basis or through single person entities. By adopting this approach, the BSB will be ensuring that all single person entities are able to obtain insurance cover, which may not be possible if they go to the commercial market to seek insurance (or if they are able to obtain insurance, there is a risk they may have to pay higher premiums) The public interest will ultimately be protected if there is assurance that single person entities are guaranteed insurance at a reasonable cost. Currently the BMIF guarantees insurance to every self-employed barrister that the BSB authorises to practise. In the absence of a similar situation where every entity we are prepared to authorise is guaranteed insurance, there is a danger that a firm we have assessed as appropriate for authorisation according to our view of the risk they pose, cannot get cover because of how commercial insurers assess risk. There are areas of work that entities could undertake which may be more prone to claims, and therefore less attractive to commercial insurers, but there is public interest in ensuring that work continues to be done, if the level of risk to consumers is acceptable from a regulatory perspective.
21. Extending the BMIF monopoly to single person entities will also ensure the viability of the mutual model is not threatened. If the BMIF's viability was undermined to the extent that they had to cease to operate, this would mean all barristers would have to seek insurance on the open market and the experience of solicitors has demonstrated that this would create potential instability in the sector, which is not in the public interest. Ensuring the sustainability of the BMIF is therefore important to ensure the profession can continue to provide legal services in the public interest in future.

Improving access to justice

22. The ability to procure insurance affects whether or not a single person entity is able to practise according to the Handbook. By requiring single person entities to take out insurance with BMIF, they will be assured cover. Having to seek cover on the commercial market could lead to fewer single person entities being able to operate, if they were not seen by insurers as posing a good risk. Access to justice will be enhanced by a greater number of single person entities being able to operate and provide more choice for clients.

Protecting and promoting the interests of consumers

23. Protecting and promoting the interests of consumers means ensuring that they will be compensated when things go wrong, to the extent provided for in the minimum insurance terms. Requiring single person entities to take out their primary cover with BMIF will mean that every single person entity will be insured by a stable provider. This means consumers who go to single person entities will have the same level of protection as those that use self-employed barristers. As the two are entitled to do the same work for clients and therefore pose the same level of risk, it is appropriate that they should also be required to ensure the same level of protection for their clients.

24. It is also in the interests of consumers for the BSB to ensure the BMIF remains viable because of the benefits of mutuality discussed elsewhere. If single person entities do not have to insure with BMIF, and large numbers of self-employed barristers become single person entities, this could undermine the sustainability of the fund. As the primary insurer of the profession, the BSB is concerned to ensure that the BMIF is able to continue to provide stable, well managed cover to the profession. Any collapse of the BMIF could also lead to higher prices for consumers, as barristers seeking cover on the open market would likely have to accept higher premiums. These cost increases would be passed on to consumers. Any reduction in the number of barristers able to practise due to the difficulties of obtaining insurance on the open market, would also mean less choice for consumers.
25. A number of consumer organisations were contacted by email to attempt to get consumer input into the consultation. Unfortunately none chose to respond.

Promoting competition in the provision of legal services

26. Competition in the legal services market may be restricted if single person entities are not guaranteed cover from the BMIF and need to seek insurance on the open market. The result of this would likely be that many single person entities will not be able to gain adequate cover. Insurers are likely to “cherry pick” the best risks, while leaving others without cover or charging high premiums. This will limit who is able to continue operating in the market, and in turn limit competition and the availability of single person entities. This will mean consumers have less choices in the provision of legal services. Requiring single person entities to insure with the BMIF will mean they are guaranteed stable cover and will allow a wider range of single person entities to operate, promoting competition and opening up choice for consumers.
27. Competition in the provision of legal services is distinct from competition in the provision of insurance (the latter is not one of the regulatory objectives). The working group has considered whether introducing competition in the provision of insurance might further the regulatory objectives, but has concluded that the benefits of mutual provision outweigh any greater efficiency that a competitive insurance market might provide. In particular, the working group found the experience of the Bar pre-BMIF and the recent experience of the solicitors market to be persuasive. The effect of market forces is likely to be to reduce claims risk in the profession – this is not the same as reducing instances of incompetent practice. It is possible that a competent practitioner, doing work that is in the public interest, might struggle to find insurance on the commercial market because the type of work makes him or her a high risk for claims. The regulatory objectives would not be furthered by introducing this kind of commercial pressure.

Encouraging an independent, strong, diverse and effective legal profession

28. Requiring single person entities to purchase their primary insurance from the BMIF ensures there is an even playing field for barristers and entities and that all are guaranteed coverage. The profession will then be accessible for the widest number of people as they will be assured coverage regardless of their perceived risk or financial situation.
29. In the consultation respondents also expressed some concerns that having different insurance requirements for self-employed barristers and single person entities could lead to a feeling of division within the profession. This latter point is not a concern for the BSB as it is an issue that is representative in nature and has therefore not been taken into account by the working group.

Increasing public understanding of the citizen's legal rights and duties

30. The amendment will not have any adverse impact on increasing public understanding of the citizen's legal rights and duties.

Promoting and maintaining adherence to the professional principles

31. The amendment will not have any adverse effects on promoting and maintaining adherence to the professional principles.

Equality Impact Assessment

32. An interim equality analysis has not identified any adverse equality impacts on any group.

Risk implications

33. In making a decision on whether single person entities should be required to purchase their primary layer of cover from the BMIF, the Board should consider the risks of not adopting this approach and maintaining the status quo. As stated earlier in the paper there has been some indication that commercial insurers would only be interested in larger premium accounts. If commercial providers are interested in providing cover to single person entities, there is a risk that they will focus on the most attractive accounts, from an insurer's perspective (ie entities involving barristers operating in comparatively lucrative areas of private commercial work with a high insurance spend).
34. The Board should consider the risk that in the absence of a monopoly, the BMIF may face a situation where the commercial market "cherry picks" the most attractive single person entity risks and leaves the BMIF to underwrite those who find themselves unable to obtain insurance, at a reasonable cost, on the open market. If the BMIF was not willing to undertake this role then there is a risk that single person entities would have to accept higher premiums or higher deductibles, which are ultimately costs that could be passed onto consumers, or could not find insurance at all.
35. There is also a greater impact risk that if a significant proportion of barristers seek to incorporate into single person entities in future and purchase their primary layer of insurance on the open market, instead of with the BMIF, this could have a substantial effect on the BMIF's premium volume. This could then affect the cost and availability of insurance for other barristers. The fact that the BMIF can be required to insure every single person entity that the BSB is prepared to authorise means that there will be no entities that are an acceptable risk from a regulatory perspective that cannot find cover because of the perception of a poor claims risk on the part of commercial providers.
36. The Board also needs to be mindful of the fact that if the BMIF's existing monopoly is extended to single person entities, this would be restricting choice for barristers seeking to set up such entities. Although, there has been some indication from the market research that smaller entities may be of less interest to commercial providers, equally there has to be consideration of the fact that such entities may be able to obtain more favourable terms on the open market in comparison to those offered by the BMIF.

Impacts on other teams/departments/projects

37. A rule change will directly impact the Authorisation team in the Supervision department. If the LSB approves a rule change application allowing the BSB to make this change to the Handbook, the Authorisation team will need to update its guidance and procedures in relation to insurance for single person entities. Transitional arrangements will also need to put into place should they authorise any single person entities in the interim who have sourced insurance on the open market (although to date all authorised single person entities are insured with the BMIF).

Consultation

38. Following the Board's decision the consultation report will be finalised and published on the BSB website.

Next steps

39. In the light of the market research and consultation responses it is recommended that the Handbook should be amended to include a rule requiring single person entities to purchase their primary layer of cover with the BMIF. By adopting this position and extending BMIF's existing monopoly to single person entities the BSB will be ensuring a level playing field between individual barristers operating on a self-employed basis or through single person entities. It will also ensure that single person entities are not left without cover as they are unable to source it on the open market and help to ensure the viability of the mutual in the event that a significant proportion of individual barristers (as a proportion of the BMIF's premium income) go to alternative providers. It will still be the case that single person entities can look to the open market for any top-up cover beyond BMIF's maximum (as is the case for the self-employed Bar).
40. If the Board agrees to amend the rules to require single person entities to obtain their primary layer of insurance from the BMIF, a rule change application will need to be submitted to the LSB to approve this change. This would be submitted to the LSB in early August to enable it to make a decision in early November.

Resource implications

41. There are no new resource implications arising from this paper.

Annexes

Annex A – Insurance Requirements for Single Person Entities – Consultation Report

Lead responsibility:

Ewen Macleod
Director of Regulatory Policy

Consultation Paper – Insurance Requirements for Single Person Entities**Summary of Responses****Executive Summary**

1. This paper sets out the responses to the *Insurance Requirements for Single Person Entities* consultation paper. Single person entities comprise just one barrister who owns and manages that entity. The consultation paper discussed whether or not single person entities should be required to purchase their primary layer of professional indemnity insurance from a single provider – the Bar Mutual Indemnity Fund (BMIF) – or should be allowed to purchase their insurance on the open market. It considered the consequences of allowing single person entities to purchase their primary layer of insurance from the commercial market on the BMIF’s future viability and the availability and cost of professional indemnity insurance for barristers as a whole.
2. The BSB’s preferred option, as expressed in the consultation, was to require single person entities to insure with the BMIF and views were sought on whether there were any other options in need of consideration, and whether the BSB’s preferred option was the correct one. This paper discusses the views the BSB received in response to the consultation, which were unanimous in recommending that the BSB should require single person entities to obtain their primary layer of insurance cover from the BMIF.

Background

3. The BSB submitted an application to the Legal Services Board (LSB) in 2014 to allow the BSB to authorise entities for the first time. The application was approved and the BSB began receiving applications from prospective entities in January 2015. The BSB has created a specialist regulation regime for entities whose range of services, risks, and regulatory requirements are similar to those of the self-employed Bar.
4. When the BSB submitted its entity regulation application to the LSB it set out the requirement for entities to have in place adequate insurance, in the light of the legal services they provide, in addition to complying with any minimum terms stipulated by the BSB. The content of the minimum terms was subject to a separate consultation.
5. The BMIF responded to the BSB’s consultation on the minimum terms and, expressed concerns about the BMIF’s sustainability as a mutual model of insurance cover for the self-employed Bar, should large numbers of barrister-only (particularly single person) entities incorporate and significantly reduce the membership of the mutual by going to alternative providers.
6. When considering the BMIF’s response, the BSB considered its arguments to be persuasive, especially as it was then anticipated that most entities are likely to be single person entities, at least in the short term. However, the BSB had not included in its previous consultations on entity regulation any proposal that single person entities must purchase their primary layer of cover from the BMIF. The BSB took the view that further consideration and consultation would be necessary, before adopting any such measure. The Board committed to carrying out further research and consulting separately on the proposal.

Part 1 – Public

7. Rule C76 of the current Code of Conduct requires that BSB-regulated persons have adequate insurance (taking into account the nature of their practice), which covers all the legal services supplied to the public. Rule C77 requires all self-employed barristers to be members of the BMIF. Whilst all self-employed members of the Bar are covered by the BMIF they may need to take out additional cover, depending on their needs.
8. All BSB regulated entities are currently subject to the general duty to have adequate insurance. This is in addition to a condition of their authorisation that they confirm (and provide evidence) that they have obtained adequate insurance, sufficient to meet their obligations under rC76 (the relevant authorisation rules are at rS83). Entities must undertake an annual risk assessment of the legal services they provide, confirm they have undertaken this, and that, based on this assessment, they continue to have an adequate level of insurance.
9. Notably, there is no equivalent to rC77 applicable to regulated entities requiring them to take out primary insurance with the BMIF. The Code of Conduct therefore treats self-employed barristers and regulated entities differently as it permits the latter to take out primary insurance with commercial insurers.

Overview

10. An online consultation was launched in April 2015. The consultation document proposed that single person entities be required to take out their primary layer of professional indemnity insurance with the BMIF, and sought views on whether respondents agreed with this proposal. Four questions were posed in the consultation document. The four questions posed were:

Question 1: Have we correctly identified the range of factors that should be taken into consideration as potential advantages or disadvantages in making a choice between Option 1 and Option 2 or are there any other relevant factors that we should take into consideration?

Question 2: Should we consider any other options, beyond Option 1 and Option 2 and if so what?

Question 3: Do you agree that the existing BMIF monopoly, in respect of the primary layer of cover for the self-employed Bar, has operated in the public interest overall? Please provide reasons for your answer.

Question 4: Do you agree (a) with the BSB's provisional conclusion that Option 2 should be preferred and (b) with the BSB's reasons for arriving at that conclusion? If you disagree, please provide reasons for your answer.

11. The BSB received 16 responses to the consultation. Of the questions asked, 14 responses provided an answer to all four questions.
 - 14 provided an answer to question 1.
 - 14 provided an answer to question 2.
 - 14 provided an answer to question 3.
 - 16 provided an answer to question 4.

12. In summary, all of the responses supported changing the rules to require single person entities to purchase their primary layer of insurance from the BMIF.
13. Of the 16 responses received, 15 were from members of the Bar, those involved in the provision of legal services, or their representative bodies. The remaining response was received from the BMIF. The BSB sought to engage with consumer groups to discuss the consultation and the possible wider implications for the public. An email was sent out to consumer organisations with a short summary of the consultation and a request for responses. The consultation was also available for comment on the BSB website throughout the consultation period.

BSB decision

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Summary of responses to the questions

Question 1: Have we correctly identified the range of factors that should be taken into consideration as potential advantages or disadvantages in making a choice between Option 1 and Option 2 or are there any other relevant factors that we should take into consideration?

14. All of the respondents agreed that the BSB had correctly identified the range of factors that should be considered.
15. COMBAR, while agreeing that the BSB had identified the relevant factors, also wanted to draw attention to the BMIF's approach to claims and claims handling. They noted that self-employed barristers currently receive (i) efficient claims handling from the BMIF as soon as a claim is notified; (ii) an indemnity for defence costs as an automatic feature of the cover provided by the BMIF; and (iii) the BMIF's terms of cover provide an unfettered discretion permitting it to provide cover for claims that fall outside of the scope of cover or which are expressly excluded. COMBAR suggested it was unlikely that insurers on the open market would provide the same level of service.

Question 2: Should we consider any other options, beyond Option 1 and Option 2 and if so what?

16. All of the respondents felt that options 1 and 2 were the only possible options. No respondent offered any other suggested options.
17. COMBAR suggested that further thought would need to be given to the insurance requirements position once more multi-person entities are established. They noted that the insurance of risks posed by multi-person entities is a different challenge and may require the adoption of a different approach. COMBAR acknowledged that issues of multi person entities were beyond the scope of this particular consultation.

Question 3: Do you agree that the existing BMIF monopoly, in respect of the primary layer of cover for the self-employed Bar, has operated in the public interest overall? Please provide reasons for your answer.

18. All respondents agreed that the existing BMIF monopoly, in respect of the primary layer of cover for the self-employed Bar, has operated in the public interest.
19. The majority of respondents highlighted the stability and certainty of cover that the BMIF has provided for barristers, particularly for those working in areas of law that commercial insurers may not consider profitable enough to provide reasonably priced cover. It was also noted that the BMIF has kept costs down and ensured that barristers have sufficient cover from a solvent insurer in order to meet any claims. This in turn has contributed to confidence in the Bar.
20. The experience of the BMIF in the specialist area of insurance for the Bar was also seen as operating in the public interest, as was their role as a not-for-profit organisation. Barristers felt that this meant they were in a unique position to safeguard the interests of service users. Others felt that if cover was able to be sought on the open market, any savings were unlikely to be passed on to the consumer in the form of lower fees.
21. The Bar Council emphasised three particular features of the BMIF which they believed have operated in the public interest: the stability it has provided in the barristers professional indemnity insurance market, the assistance it provides to the Bar Standards Board in promoting its regulatory objectives, and the benefits of the broad scope and generous application of the BMIF's terms of cover.

Question 4: Do you agree (a) with the BSB's provisional conclusion that Option 2 should be preferred and (b) with the BSB's reasons for arriving at that conclusion? If you disagree, please provide reasons for your answer.

22. All respondents agreed with the BSB's provisional conclusion that Option 2 should be preferred and with the BSB's reasons for arriving at that conclusion.
23. Many respondents expressed the view that there was no principled justification for having different insurance requirements for single person entities, as they are providing the same services as self-employed barristers. Many also noted the experience of solicitors obtaining insurance on the open market. This was seen as having led to insurers coming and going, demanding very large premium increases without any scientific justification and an increase in costs for the customer. The potential for open market insurers to offer only rigid terms or to refuse cover, could ultimately lead to practices closing down and consumer choice declining. Concern was expressed that rising insurance could kill off the independent Bar.
24. Some respondents also highlighted concerns about the future of the BMIF and the effect that allowing single person entities to seek insurance on the open market could have on the fund. The risk that the BMIF would lose sustainability was seen as a potential loss to all barristers and the public, as this would mean a rise in insurance costs and smaller entities being unable to obtain cover.
25. 11KBW highlighted the concern that permitting different insurance arrangements for single person entities could lead to a split in the profession, or at least cause a sense of division which could affect the unity of the Bar.

Appendix A: List of respondents

Barristers

8 individual barristers

Bar Associations

Bar Council
Commercial Bar Association
Family Law Bar Association
Bar Association for Commerce, Finance & Industry

Chambers

Ropewalk Chambers
11KBW

Organisations

BMIF

Companies

Elderflower Legal

Standard contractual terms and the List of Defaulting Solicitors: undertaking to the LSB

Executive summary

1. This paper seeks the Board's endorsement of the Working Group's recommendations following detailed consideration of the responses to the recent consultation, the previous call for evidence and the survey of the Bar. The consultation considered possible changes to the cab rank rule following an undertaking given the LSB.

Recommendations

2. The Board is asked to:
 - a. **Note** the Working Group's consideration of the responses to the recent consultation and its analysis of the options with reference to the regulatory objectives and consumer principles;
 - b. **Approve** the working group's recommendation to retain the current rule rC30.9.c in relation to the standard contractual terms for the reasons given at paragraphs 29-34;
 - c. **Agree** that the standard contractual terms continue to be appropriate for the purposes of the cab rank rule;
 - d. **Consider** what governance arrangements might be necessary to ensure that this remains the case in the future;
 - e. **Approve** the amended rule rC30.7.b and associated guidance in relation to the assessment of credit risks by barristers, as an alternative to including the List of Defaulting Solicitors in the Handbook, as discussed at paragraphs 44-46; and
 - f. **Delegate** to the working group responsibility for agreeing by the deadline of 31 July:
 - i. a response to the LSB outlining how we have complied with the undertakings given; and
 - ii. a rule change application in relation to (e) above.

Background

3. The standard contractual terms (and associated amendment of the cab rank rule) were introduced at the beginning of 2013, following approval of the rule change application by the Legal Services Board (LSB) in July 2012. The LSB subsequently launched a formal investigation into the Bar Council's involvement in the rule change. The investigation was resolved informally and the Bar Council gave a number of undertakings, including (via the Bar Standards Board) a review of whether the standard contractual terms should remain part of the BSB's regulatory arrangements by the end of July 2014. The BSB failed to do so by that deadline and therefore must ensure that it has complied with both that and the second part of the undertaking – to submit any application for a change to its regulatory arrangements – by 31 July 2015.
4. At its February meeting, the Board considered responses to a call for evidence and a survey of the Bar to establish the impact that the move towards contractual instruction has had on how the profession is instructed and the impact if any on the cab rank rule. Summary of that call for evidence is attached at **Annex A**. A further consultation closed on Friday 19 June. A summary of responses is attached at **Annexes B and C**.
5. Following consideration of an initial paper at its 25 June meeting, the Board decided in principle that it favoured retaining the status quo in relation to the standard contractual terms. This was because the case against it had not been made with specific reference to the regulatory objectives and it was not clear that any of the other identified options better

satisfied the regulatory objectives. The working group was tasked with conducting a detailed review of the consultation responses and the earlier call for evidence and survey, making any recommendations to the Board in the light of that analysis, in particular which option should be considered in relation to the List of Defaulting Solicitors, whether that list remained fit for purpose from the point of view of our regulatory arrangements and what guidance might replace it if the rule were amended.

Scope of the review

6. The objectives of the review were:
 - a. To ensure that any application for a change to the BSB's regulatory arrangements (or an explanation as to why such change is not necessary) is submitted to the LSB by the 31 July 2015 deadline, in order to meet the second deadline of the undertakings given;
 - b. To enable the Board to understand how the market has developed since the original Board decision was taken in 2011 by gathering evidence of the contractual terms on which barristers are routinely instructed and the extent to which the cab rank rule is being relied on by solicitors when instructing the Bar;
 - c. To review from first principles whether such regulatory interventions as an approved set of terms or the List of Defaulting Solicitors are necessary within the BSB's regulatory arrangements;
 - d. To consult fully on any change to the BSB's regulatory arrangements;
 - e. To ensure that the BSB's decision-making on this issue is transparent, made in the light of the regulatory objectives and its obligations under s28 of the Legal Services Act 2007, and demonstrably independent of the profession.

7. In considering its proposed response, the Working Group adopted the following additional principles:
 - a. Our response to the consultation should not simply focus on justifying the status quo. We should consider from first principles the policy objectives of the BSB before considering the extent to which each option meets those objectives and whether the continuation of those aspects of the rule under review is justified;
 - b. Our response to the consultation should be the result of a decision made independently by the regulator rather than adopting the preferred option of the profession. To ensure this independence, each of the options was analysed for its impact on the regulatory objectives (in particular the working group gave weight to the impact on consumers, access to justice, competition and the need to promote an independent, strong, diverse and effective legal profession).

8. When the working group considered the issues they were discussed first by the lay members of the group and BSB staff without input from the barrister members. It was noted that, in relation to the standard contractual terms, those individuals had initially been of the view that an approach along the lines of "alternative 3 » (see paragraph 14 onwards) would be appropriate, but they had been persuaded, for the reasons outlined below, by the combination of evidence gathered, the arguments presented in the consultation responses and the regulatory objectives analysis that the status quo was the only feasible option, pending a fuller review of the cab rank rule as a whole in due course. The barrister members subsequently agreed with the conclusions reached by the lay members and BSB staff.

High level policy objectives

9. The working group sought to balance a number of objectives when considering the options:
- a. The cab rank rule is an important safeguard for ensuring both access to justice for consumers and the independence of the Bar and the chosen policy option must not put this at risk by reducing the effectiveness of the rule (the rule itself was beyond the scope of the review);
 - b. The cab rank rule is a potentially onerous obligation on the Bar which affects their freedom to contract and their freedom to negotiate with solicitors, neither of which should be fettered beyond what is necessary to ensure the effectiveness of the rule and its public interest benefits;
 - c. There needs to be clarity about the circumstances in which the cab rank rule applies. Clients' interests will suffer if terms cannot be settled quickly or if instructions are wrongly rejected due to uncertainty. Subsequent disciplinary action would not help the client in such circumstances;
 - d. Exceptions to the rule should be tightly defined and not create loopholes which might be exploited by those seeking to avoid the rule's requirements; and
 - e. The cab rank rule is not an obligation to work pro bono and it is not reasonable to expect barristers to work without certainty as to how and when they will be paid (in particular the requirement in the cab rank rule that the professional client accepts responsibility for the barrister's fees was beyond the scope of the review).

The standard contractual terms

10. An overview of responses received from the consultation is attached at **Annex B**. A more detailed analysis of responses by question is attached at **Annex C**. The working group reviewed these in detail. In doing so it noted that the Board had made a decision in principle to retain the status quo in relation to the standard contractual terms, but took the view that it needed to be satisfied that this was the correct decision in the light of all responses and that the maintenance of the status quo was necessary from the perspective of the regulatory objectives. The working group explicitly considered the impact of each of the options in relation to both the consumer perspective and the wider regulatory objectives.

The consumer interest

11. During the consultation, significant effort was made to engage with consumer groups: a meeting of the BSB's Stakeholder Group was informed of and given information about the upcoming consultation and was invited to respond. Those organisations were subsequently contacted directly when the consultation was launched. When it appeared that formal responses were unlikely to be forthcoming, BSB staff crafted targeted communications for each, explaining why it was relevant to their organisation and simplifying the consultation into one key question about whether they thought that it was appropriate for the BSB to continue to refer to the standard contractual terms in its Handbook. Two organisations responded: Citizens Advice and Advice UK. Only the latter expressed a view, which was that the status quo was its preferred option (whilst understanding the arguments about greater flexibility, the respondent felt that the potential restriction of access to justice that may result if the standard terms were removed was more important). As there has been limited consumer input into this debate, the Working Group considered the issues through the lens of the Legal Services Consumer Panel's "consumer principles". This is a toolkit that is intended to assist the approved regulators to consider the issues that policy proposals pose for consumers. **Annex D** includes an analysis of the consumer issues identified by the different options. The working group noted the consumer perspective and considered

whether this impacted on the Board’s initial decision. The primary factor for consumers in relation to the cab rank rule was likely to be prompt access to an appropriate, affordable barrister.

The wider regulatory objectives

12. The remaining regulatory objectives were analysed, as described at **Annex E**. The group was careful to consider the competition impacts of our options in more detail than had been done in previous consultations and Board papers. However, it noted that the impact of this policy on competition was necessarily limited to circumstances where the barrister is compelled to act by the cab rank rule. As such it is not a normal competitive environment. Absent the cab rank rule, all parties are free to negotiate in the normal way. Furthermore, the working group questioned whether an excessive reliance had previously been placed on the objective to encourage an independent, strong, diverse and effective legal profession. The noted that analogous obligations exist in other regulatory regimes (such as universal service obligations in postal or utility services). These tend to be imposed by the regulator at the level of the market as a whole because a particular corporate entity has a dominant market position. However, the cab rank rule is qualitatively different. It is an obligation placed on individuals and as such it could have a detrimental impact on that individual (including a possible disproportionate impact on those with protected characteristics under the Equality Act) but also it has the potential to affect the diversity of the profession overall if those whose practices were less cash rich were obliged to act without certainty of payment. It was therefore appropriate to consider this regulatory objective, and its impact on particular groups at the Bar, in some detail.

The interests of solicitors

13. The key objection to the standard contractual terms comes from the Law Society, which in principle objects to such terms being agreed by a regulator. However, the BSB must consider whether this remains an appropriate intervention through the lens of the regulatory objectives. In any event, the call for evidence suggested that the key objection from solicitors was the requirement for the professional client to accept responsibility for the barrister’s fees. Even if the BSB completely removed reference to the standard contractual terms from the Handbook, this would still be a requirement of the cab rank rule.

Discussion: options that remove references to the standard terms

14. In considering the different options, the working group agreed that in principle it was undesirable for a regulator to specify standard contractual terms (unless it was necessary to do so in the interests of the regulatory objectives). It first therefore considered the two options which did not include standard terms.

Alternative 3: “[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) if you publish standard terms of work, on those standard terms of work; or (B) such other terms as you may reasonably propose for the given instructions and which the professional client is willing to accept; or (C) such alternative terms as the professional client may reasonably propose for the given instructions if unwilling to accept (A) or (B)”

15. The working group considered whether alternative option 3 could potentially further the regulatory objective of promoting competition in the provision of services. In one sense it would open up competition, as both parties would always be free to propose their own terms. While there would appear to be greater flexibility under this option – as solicitors

could suggest “reasonable” terms and thereby trigger the operation of the cab rank rule – it imposes significant restrictions on barristers’ freedom to contract (beyond those already required by the rule). This is because a barrister would in practice find their own “reasonable” terms trumped by a solicitor who had different, but also arguably “reasonable”, terms.

16. There is a further concern that solicitors’ terms may be considered prima facie “unreasonable”, but barristers may nonetheless feel obliged to accept them to avoid the prospect of disciplinary action. While the Law Society acknowledged that alternative option 3 could lead to an undesirable conflict of “reasonable” terms, they took the view that barristers and solicitors should be able to resolve this between themselves (as other professionals are often required to do). However, such disputes are potentially time consuming and might affect the client’s interest in instructing counsel promptly, perhaps in circumstances where delay might cause real harm. The fact remains that the cab rank rule is a public interest restriction on barristers’ normal freedom to contract – in that context the Bar Council identified that alternative option 3 would give professional clients an unfair competitive advantage in negotiations, as while they would not be under a professional obligation to accept “reasonable” terms proposed to them, barristers would be. The working group agreed this would in fact risk undermining the regulatory objective of promoting competition in the provision of services.
17. In practice, this option might mean that although solicitors would continue to be responsible for barristers’ fees if they wished to avail themselves of the cab rank rule, significant variation in payment terms (albeit objectively reasonable) might risk cash flow problems for the Bar. For the more successful end of the profession this may not be problematic, but it could call into question the viability of some barristers’ practices if there is not sufficient certainty about terms (those with protected characteristics may be particularly at risk). These outcomes would serve to undermine the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.
18. In cases of dispute the BSB would be required to adjudicate as to whether the terms proposed by either party had been “reasonable”. The working group does not feel that this is an appropriate use of the BSB’s time and resources (nor would it give a satisfactory outcome for the client whose case a barrister had wrongly refused at the time when they needed legal advice and representation). The Law Society suggested that such disputes could become a function of the Joint Tribunal run by it and the Bar Council. This would not be an acceptable option, as it would delegate to the representative bodies the decision about whether the barrister had met the requirements of reasonableness in the rule.
19. The working group noted that no public interest grounds have been identified for allowing a barrister’s own “reasonable” terms to be trumped by a solicitor who has different, but also “reasonable”, terms. Nor is there any guarantee that requiring a barrister to accept a solicitor’s terms would be in the lay client’s best interests. On balance, the working group agreed with those respondents who were of the view that alternative option 3 would be unworkable.

Alternative 2: “[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) if you publish standard terms of work, on those standard terms of work; or (B) such other terms as you may reasonably propose for the given instructions”

20. Alternative 2 has the advantage of removing the problem that a solicitor's terms will automatically trump a barrister's (with all the restrictions on the barrister's freedom to contract implied by that) but retains the flexibility for the barrister either to publish his own terms or agree terms on a case-by-case basis. This option is unlikely to have a positive impact on promoting competition, other than the possibility of greater variety in the type of terms offered, and hence greater choice for consumers. It would promote barristers' freedom to contract as there would be no terms that they would be compelled to act on, and they would always be free to propose their own. However, without the current safeguard of standard contractual terms, and without the option of solicitors being able to insist on their own reasonable terms, there may be an incentive for barristers to choose terms less acceptable to solicitors and hence frustrate the cab rank rule. Barristers proposing terms on a case by case basis could also lead to uncertainty and inhibit access and transparency.
21. The working group agreed that the concept of agreeing reasonable terms on a case by case basis was unlikely to be satisfactory for the client, as there would be a lack of transparency and there would be opportunities for the barrister to 'game' the rule by seeking to propose terms that would be unacceptable to solicitors. This lack of certainty (without a safeguard option that all parties knew they could rely on) would undermine the guarantee that the rule can always be resorted to, and therefore potentially restrict access to justice. A client who was not offered "reasonable" terms by a barrister could well complain to the BSB, but for reasons discussed above this would not provide a timely resolution (albeit that would act as a deterrent for the barrister). The working group's view is that the client's interests are likely to be served by prompt resolution of any discussion of terms so that their problem can be dealt with when they most need it. It would also be possible for a barrister genuinely to consider that they have proposed "reasonable" terms for a set of instructions, only subsequently to be found to have breached the BSB Handbook (although arguably barristers are required to take such professional judgments as part of their normal business – there are other circumstances where failing to act reasonably could have regulatory implications).
22. Respondents to the consultation identified further problems with regard to how alternative option 2 would work in practice. Under this option, barristers could avoid breaching the BSB Handbook by publishing their own standard terms and insisting on being instructed on those terms, even if those terms were likely to be wholly unacceptable to solicitors. This would not be in clients' interests. The Bar Council therefore correctly identified that if the BSB pursued alternative option 2, it would need to make publication of "reasonable" standard terms mandatory for the purposes of the cab rank rule (because otherwise barristers could avoid the rule). This would put the BSB in the position of being required to:
- a. Establish whether all barristers have published their own standard terms (many will have not to date); and
 - b. Ensure that they are "reasonable".
23. There are some benefits of requiring barristers to publish standard terms for these purposes. It would promote transparency for consumers and avoid the obvious problems with seeking to produce bespoke terms for specific instructions. The requirement to publish in advance would increase the deterrence effect, by increasing the likelihood that unreasonable standard terms would come to the attention of the regulator. The BSB could monitor compliance via its normal supervision visits or by doing spot checks. However, the working group felt that this was not a particularly risk-based or proportionate use of regulatory resources (given the likely proliferation of different terms). In areas of dispute, it would still require in the BSB to adjudicate as to whether terms are "reasonable". The working group considered an alternative: that the BSB could offer to endorse more than one

set of “reasonable” terms. This would enable organisations other than the Bar Council the opportunity to propose terms for general use by the profession, thus avoiding the regulator picking a single “winner”. However, the working group saw no practical way of managing this when in theory each chambers, law firm or representative body might wish to seek BSB endorsement of their particular terms. This would not be a productive use of the BSB’s resources and would result in the BSB having to “pick winners” in any event.

24. Having rejected “alternative 3”, it is suggested that, if the BSB wishes to continue with the cab rank rule as currently drafted, there are no circumstances where it can completely avoid adjudicating on whether some contractual terms are reasonable. The key choice is between whether:
- a. there is one “BSB approved” set of terms;
 - b. there are several “BSB approved” sets of terms; or
 - c. the BSB seeks to enforce after the event where a barrister has failed to produce his own reasonable terms.
25. For the reasons given above, the working group rejected (b) and (c) and hence agreed that option 2 should not be pursued.

Discussion: retention of standard terms

26. The working group then went on to consider the options that would retain the standard terms. The analysis above has explained the working group’s reasons for rejecting the options that omit standard terms. Nevertheless, we need to consider whether there is a positive case for retaining this approach.

Alternative 1 “[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 as published on the Bar Council’s website; or (B) if you publish standard terms of work, on those standard terms of work; or (C) such other terms as you may reasonably propose for the given instructions”

27. In considering alternative option 1, it was noted that that it would expand from two to three the potential routes by which a client can benefit from the cab rank rule. It would make it explicit that the cab rank rule will apply if the professional client is prepared to accept the barrister’s bespoke terms, and not just the standard contractual terms or the barrister’s own standard terms. This would align with the regulatory objectives of protecting and promoting the public interest, and improving access to justice. It arguably makes clearer to clients the flexibility of allowing barristers to propose their own reasonable terms to work on (although it should be noted that there would be no substantive increase in competition as compared with the status quo as a result, as such flexibility is always available if bespoke terms can be agreed).
28. On balance the working group agreed with the Board’s initial assessment, and with the majority of respondents to the consultation, that alternative option 1 adds nothing to the status quo as even with the current rule, barristers are free to propose other terms which a solicitor could then accept. The working group therefore agreed that despite the appearance of potential advantages identified above, alternative option 1 should not be pursued.

Status quo

29. As stated above, the BSB would normally agree with the Law Society that the specification of contractual terms is not an appropriate role for the regulator. However, given the cab rank rule is a public interest restriction on barristers' normal freedom to contract, the BSB's view is that the specification of contractual terms may nevertheless be appropriate, given the dual needs to protect barristers from unreasonable contractual burdens with disciplinary consequences and the need to provide a safeguard for clients to ensure the barrister can be required to act on terms that are objectively fair and reasonable. The working group noted that the Law Society did not in fact identify how the reference to the standard contractual terms in the cab rank rule impedes any of the regulatory objectives. The working group was therefore left to consider afresh whether the status quo was a necessary regulatory intervention from the perspective of the regulatory objectives. In its previous discussions, the Board had provisionally concluded that in order to balance the regulatory objectives of on the one hand, protecting and promoting the public interest and access to justice, and on the other, encouraging an independent, strong, diverse and effective legal profession, the status quo remained its preferred option. The working group agreed that the current reference to the standard contractual terms in the cab rank rule guarantees that the rule can always be resorted to, eg in the absence of a barrister having published any standard terms of their own, or if those standard terms are not acceptable to the client. This has the effect of ensuring a safeguard for the client that would not be present if the standard terms were not there. The key question is then whether the client's interests, as well as the other regulatory objectives, require such standard terms.
30. In addition to the client's interests, given the cab rank rule is a public interest restriction on barristers' normal freedom to contract, the working group does not regard it as reasonable to require barristers to act without a contractual right for barristers to be paid for their services, or clarity as to how and when they are to be paid. Even if the standard terms were removed from the BSB's regulatory arrangements, the requirements in the rule around liability for fees would remain, so this alone is not necessarily a reason for requiring the standard contractual terms. As discussed above, significant variation in payment terms (albeit apparently reasonable) might nevertheless risk cash flow problems for the Bar (and those with protected characteristics or at the more junior end of the Bar may be particularly at risk). Uncertainty as to payment would undermine the regulatory objective of encouraging an independent, strong, diverse and effective legal profession (particularly among sections of the Bar less likely to have substantial, regular income, which may include those with protected characteristics).
31. The working group considered whether the perception of solicitors that the standard terms were unfair may act against the regulatory objectives by creating an incentive for them not to seek to enforce the cab rank rule (even if it might be in their client's interests to do so). It was noted that solicitors' key objection to the status quo – that they assume liability for clients' fees – would continue to apply in any event under another element of the cab rank rule (which is outside the scope of this review). The call for evidence failed to identify any instances of clients who have solicitors being unable to access legal advice and representation from barristers. Therefore it would appear that this is not acting as an impediment to access.
32. With regard to the other regulatory objectives, by ensuring that the cab rank rule can always be resorted to and providing clarity for all parties the status quo increases public understanding of the citizen's legal rights and duties. The group felt that competition in general was largely unaffected by the cab rank rule, as the contracting parties were always free to agree whatever terms they saw fit. The standard terms only applied where the

solicitor sought to compel the barrister to act, in which case the only negative impact was on the barrister, whose freedom to say no (and therefore also to negotiate) was potentially compromised. The standard terms were therefore intended to be an objectively reasonable set of terms on which the barrister might be obliged to act, limiting the extent to which barristers are placed at a commercial disadvantage as compared with other legal professionals. Therefore there is likely to be a small net increase in competition from the client's perspective, by increasing the choice of barristers available to clients. As the call for evidence suggested, this is often applied as a general principle by the Bar, rather than in response to specific requests from solicitors.

33. The working group noted comments in the consultation responses that the current arrangements only came into effect relatively recently, and imposing further change so soon after this may be disruptive to the market. This would ordinarily imply that change should not be introduced without adequate justification on public interest grounds. However, given the nature of the undertaking given to the LSB, the working group agreed that it needed to be satisfied that retention of the status quo remains necessary in order to safeguard the regulatory objectives.
34. Overall, the working group concluded that it was necessary to retain standard terms within the BSB's regulatory arrangements, as compared with a version of "alternative 2" that required compulsory publication of terms for the purposes of the cab rank rule. Standard terms were necessary because without them:
 - a. There would be a risk that the urgency with which barristers sometimes have to be instructed might be affected by delays as professional clients consider possibly unfamiliar standard terms that have been published by the barrister (as opposed to having clear terms of which all parties are aware);
 - b. There would be a risk that, without significant (possibly disproportionate) supervision and enforcement by the BSB, barristers would have an incentive to publish inappropriate terms that are unlikely to be acceptable to solicitors, thus avoiding the cab rank obligation;
 - c. In such situations, the client would be left without a satisfactory outcome: whilst the barrister could be subject to disciplinary action, the client will have lost the opportunity to instruct the most appropriate barrister.
35. Ultimately, the working group was of the view that the retention of standard terms was necessary to protect those interests that had been identified from the client's perspective.

Which "standard" terms should we use?

36. The Board is being asked to look at this issue afresh. In doing so, it should not be taken for granted that even if we need a single "standard" set of contractual terms that the current terms are necessarily the most appropriate. The Board needs to be satisfied that these are the correct terms independently of the Bar Council, who were responsible for drafting them initially (albeit the BSB made some amendments before they originally came into force). The current terms are attached at **Annex F**. The Board has previously taken the view that in addition to being a safeguard for clients, the current standard terms are an appropriate safeguard for barristers in circumstances where they are being obliged to take on work because they have been developed as a result of negotiations involving the Bar Council as the representative body and have been the subject of consultation – hence it is reasonable to require any barrister to act on those terms.

37. The analysis of alternatives 2 and 3 above explains why the working group rejected the options of simply relying on a duty to act on reasonable terms or requiring the Bar to publish their own reasonable terms. Some stakeholders might question, in that case, whether it is appropriate for the standard terms to use the words “reasonable” or “reasonably” (together these terms appear 15 times in the standard terms) given the scope for disagreement over what those terms may mean. Any contractual terms are likely to include provisions that ensure the professional client provides such information and documents as will reasonably be required by the barrister and in reasonably sufficient time to enable the instructions to be complied with. Similarly, the barrister is required under the terms to invoice the professional client as soon as reasonably practicable following completion of the instructions. Debates about what amounts to “reasonableness” within the terms is likely to be a matter for contractual dispute between the parties rather than something that the regulator might be called upon to adjudicate. The concern about reasonableness within the cab rank rule is that the decision by the barrister as to whether to accept the instructions or not might be derailed or delayed by debates as to whether a particular set of terms as a whole is reasonable (and hence whether the barrister is obliged to act). A barrister who failed to act under the terms of such instructions once accepted would be in breach of contract in addition to other Handbook rules concerning duties to the client. On the other side, it would be highly unusual if a professional client, having obliged a barrister to act under the cab rank rule, then failed to give the barrister all reasonable assistance as required by the standard terms (if they failed to do so the barrister would likely be unable to continue and the solicitor would be in breach of their duties to their client – the barrister would not have breached the cab rank rule in such circumstances). It is therefore suggested that such terms are unlikely to be problematic and do not raise the same concerns as a blanket requirement on the Bar to produce reasonable terms.
38. Other elements of the terms that have the potential to be controversial, include:
- a. The exclusion of liability at section 10;
 - b. Provisions in relation to fees at section 11. The terms themselves do not prescribe a fee (save providing for a “reasonable fee” if none is specified – this is compatible with the requirement in the cab rank rule for a reasonable fee to be offered) but they do include a provision that enables periodic review of the fee by the barrister;
 - c. Billing, payment and interest at section 12. This requires payment within 30 days of the delivery of an invoice by the barrister irrespective of whether the lay client has paid (this is consistent with the cab rank rule requirement for the professional client to accept liability for fees, albeit the rules does not specify timescales for payment). It also entitles the barrister to claim interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 if payment is not made within 30 days; and
 - d. The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is excluded.
39. In addition to satisfying itself that the standard contractual terms remain appropriate for the purposes of the cab rank rule, the Board is asked to consider what governance arrangements might be necessary to safeguard the status of the rule in the future. The standard terms are published on the Bar Council’s website – if the Bar Council decided to review the standard terms and amend them without consulting the BSB that would have an impact on the BSB’s regulatory arrangements. The Board may wish to enter into an agreement with the Bar Council to ensure that any updated terms would need BSB approval before being published by the Bar Council.

List of Defaulting Solicitors

40. As above, the consultation responses and summaries are attached at **Annexes B and C**.
41. Putting aside the practicalities, the working group first considered whether it is in principle appropriate for such a function, with a direct impact on our regulatory arrangements, to be administered by the Bar Council in its representative capacity. In such a situation, the BSB should ask whether that is strictly necessary from the perspective of the regulatory objectives and if so whether there is sufficient regulatory oversight of the process.
42. When the Board last discussed the List of Defaulting Solicitors, it was clear that more information was needed about the way that the list currently works and the impact that it has. The BSB's overriding objective is that barristers should not be compelled to work in situations that would be unfair or cause hardship. The intention is that the list should enable a barrister to identify those firms of solicitors who represent an unacceptable credit risk. No other firms may currently be rejected on that basis (although the barrister has the option of requiring payment to be made upfront – whilst this is not actually explicit in the rule, rC30.9 states that the rule does not apply where the barrister has required fees to be paid upfront and those fees have not been paid). The List of Defaulting Solicitors rules are attached at **Annex G**.
43. There is some evidence that the List has been of some use beyond the barristers who seek to put solicitors on it. One of the categories of case for which barristers can make use of the List is in disputes over legal aid fees. The Legal Aid Agency's (LAA's) contracts with solicitors require them to notify the LAA of changes which may affect the contract. There are also specific provisions which require that, for example, contract providers must notify the LAA immediately if they become aware that they have been registered on the withdrawal of credit scheme. That has now been replaced by the List of Defaulting Solicitors and the Legal Aid Agency has recently written to the Bar Council to confirm that it is using the new list to raise concerns with solicitors where they appear not to be forwarding on legal aid fees appropriately. Failing to do so would be a breach of their contractual obligations.

Alternative approach: amended rule and guidance

44. The proposed new rule is:

[The cab rank rule does not apply if the professional client] represents, in your reasonable opinion, an unacceptable credit risk

45. If the Board opts for the alternative approach of providing an exception to the cab rank rule if the barrister has reasonable grounds for serious concern about being paid, it is agreed that it will need to be supported by guidance. One concern expressed by the Board previously was that this should not be the "thin end of the wedge" providing the Bar with increasing opportunities to avoid the application of the rule. With this in mind, it is suggested that initially this guidance should be drafted fairly strictly – the effect of which could be broadly to replicate the types of situations already covered by the List of Defaulting Solicitors. The guidance proposed by the working group is:

You should not conclude that the professional client represents an unacceptable credit risk without first considering alternatives. This will include considering whether the credit risk could be mitigated in other ways, for example by seeking payment of the fee in advance or payment into a third party payment service as permitted by rC74, rC75 and associated

guidance. Examples of when you might reasonably conclude that a professional client represents an unacceptable credit risk include:

- (a) Where they are included on the Bar Council's List of Defaulting Solicitors;
- (b) Where to your knowledge a barrister has obtained a judgment against a professional client, which remains unpaid;
- (c) Where a firm or sole practitioner is subject to insolvency proceedings, an individual voluntary arrangement or partnership voluntary arrangement; or
- (d) Where there is evidence of other unsatisfied judgments that reasonably call into question the professional client's ability to pay your fees.

46. The working group recommends this option, which would retain any benefits of the List of Defaulting Solicitors scheme, but avoids relying on what is essentially a representative function within the BSB's regulatory arrangements and enables the barrister to draw on other evidence to the same effect.

Regulatory objectives

47. A further table analysing the issue in terms of the regulatory objectives is attached at **Annex H**. In addition to the reasons given above, the public interest would suggest a clear separation between regulatory and representative functions unless explicit reference to the list in the Handbook is necessary from the point of view of the regulatory objectives, hence the working group's recommendation that the rule be amended.

Equality Impact Assessment

48. As discussed elsewhere, the BSB is seeking to balance the objectives of widening access to barristers' services and competition, whilst encouraging an independent, strong, diverse and effective legal profession. As the contractual relationship is between the barrister and solicitor (and only the barrister is subject to a regulatory duty to take on the work) the key equality consideration is ensuring that the obligations placed on barristers are fair. If not, the effects may be felt disproportionately by barristers with protected characteristics. The equality and access to justice team is undertaking some further targeted consultation with BME and disabled barristers to get specific feedback on the impact that the proposals for standard contractual terms would have on them. The Equality and Diversity Committee will also have a chance to consider that feedback and the high level equality analysis before the Board meeting.

Annexes

- Annex A – Summary of call for evidence
- Annex B – Overview of responses
- Annex C – Log of responses by question
- Annex D – Analysis of consumer principles (standard terms options)
- Annex E – Regulatory objectives (standard terms)
- Annex F – The standard contractual terms
- Annex G – List of Defaulting Solicitors rules
- Annex H – Regulatory objectives (List of Defaulting Solicitors)

Lead responsibility:

Ewen Macleod
Director of Regulatory Policy

Summary of call for evidence

Part 1 – Public

Review of standard contractual terms and the cab rank rule: summary of call for evidenceHow has the market changed since the standard terms were introduced?

1. When the original decision was made, the profession had no experience of contractual instruction. As evidenced by some of the responses from barristers' representatives, the very introduction of contractual terms (and the requirement to accept them for the purposes of the cab rank rule) drove a significant change in the practices of the profession, which led to a period of considerable logistical challenges for the profession and lengthy negotiations with solicitors. However, as the ChBA has pointed out, a number of the problems encountered have "settled down" now. The resulting change has arguably been beneficial for clients, with the impact that the majority of chambers now contract on a more transparent basis. It is clear, however, that the profession would find the introduction of new or substantially different terms to be problematic in the absence any overwhelming reason to do so.
2. Respondents to the call for evidence identified a number of different bases of contractual instruction (and that instructing on a non-contractual basis also remains common practice in some chambers). The key bases of instruction appear to be:
 - a. The Standard contractual terms (although some stated it was not unusual for specific terms to be varied, eg relating to payment);
 - b. The terms negotiated by COMBAR and the City of London Law Society (the "COMBAR terms");
 - c. Chambers' bespoke terms;
 - d. Solicitors' own terms;
 - e. In some CFA cases, terms agreed by the Association of Personal Injury Lawyers and the PIBA.
3. The Biennial Survey of Barristers Working Lives (published June 2014) to which the Bar Council referred in its response, indicated that the Standard contractual terms were the most often accepted (60% of respondents) with one in nine using COMBAR terms, one in five using non-contractual terms and 9% using others. Barristers working as sole practitioners or with dual roles were most likely to indicate other contractual terms. Barristers working in criminal¹ and family practice were most likely to use the standard terms and barristers working in commercial and chancery practice were most likely to use COMBAR or non-contractual terms.
4. The Bar Council conducted a further survey of the terms set out on 173 chambers websites, of which a very large majority offered the standard contractual terms and a minority offered either COMBAR terms or both. A small number offered other contractual terms or the old non-contractual terms (in the latter case the number seemed to be significantly lower than in the Biennial Survey).

Are there "reasonable" alternatives to the standard contractual terms?

5. There were differences of view as to whether some of the alternative terms available were reasonable. The COMBAR terms in particular attracted significant comment. COMBAR itself notes that these terms were intended for commercial cases and may not be

¹ Although in publicly funded criminal cases instructions are likely to be accepted on the terms used by the Community Legal Service, the Criminal Defence Service or the Crown Prosecution Service.

Summary of call for evidence**Part 1 – Public**

reasonable in all situations. The “COMBAR basis B” terms, which are the most commonly used, are controversial (although not universally so) because they provide that the solicitor does not accept liability for the barrister’s fees. COMBAR noted that if there was a risk of non-payment then it could be unreasonable to require a barrister to act on those terms. Some noted that the “COMBAR Basis B” terms were becoming by default the standard terms on which large city solicitors firms instruct the Bar. The IBC suggested that the “threat” not to instruct the Bar unless on those terms might be an “abuse” and that behaving in such a way might be a conflict of interest on the part of the law firms (the IBC did not specify why it was a conflict, but it is assumed that the conflict would be between the firm’s commercial concerns and their clients’ best interests). It should be noted of course that firms of solicitors regulated by the SRA are subject to their own regulatory obligations and could be subject to regulatory action if they were shown not to be acting in their clients’ best interests.

6. The IBC raised further concerns about the nature of the terms that solicitors were seeking to impose on barristers:
 - a. It was suggested that certain terms might be contrary to barristers’ professional obligations, such as the duty to keep information confidential (examples being a requirement to disclose whether they have acted for any party in a litigation, or what cases they have been involved in that may be contrary to the position the client takes in the new instructions);
 - b. There were concerns about lack of transparency to clients (for example if a barrister refused instructions due to unreasonable terms being imposed by the solicitor, the client would be unaware of the reason they had not received the relevant representation);
 - c. There were also concerns (raised by others also) that solicitors’ suggested terms were seeking to impose a level of contractual liability in excess of the level covered by BMIF (see below for more information).
7. PIBA also claimed that onerous terms were frequently encountered in solicitors’ suggested contractual terms.
8. The Law Society noted that solicitors generally did not feel that they were being required to accept unreasonable terms, although they noted that solicitors would often seek to alter the standard terms (and indeed the Law Society has published guidance for solicitors suggesting some standard amendments to the terms, albeit as PIBA noted the organisations representing the Bar do not necessarily agree with those). In response to the suggestion that solicitors might impose unreasonable terms, the Law Society noted that solicitors themselves are subject to regulatory duties. Whilst a normal (and robust) level of negotiation is to be expected between barristers and solicitors, this was unlikely to be contrary to the solicitors’ professional duties.

The impact of the standard terms on the cab-rank rule

9. It is clear from responses to the call for evidence and survey that it is rare for solicitors to have to avail themselves of the cab rank rule in order to get representation for their clients (however there was no evidence that the standard terms themselves were acting as a disincentive to do so). Suggested reasons why specific reliance on the rule is rare included:
 - a. Barristers are voluntarily applying the cab rank rule (the rule itself would only ever need to be relied on by solicitors if there was a dispute about whether a barrister would agree to act);

Summary of call for evidence**Part 1 – Public**

- b. Market forces (both that there is a good supply of barristers and that they will have a commercial self-interest in accepting work) are likely to be a significant factor in barristers' willingness to accept instructions;
 - c. Solicitors would not consider it to be helpful for their client to force a barrister to accept a case they did not want to undertake.
10. It was suggested that the real value of the cab rank rule was as a general professional principle that guided the decisions of barristers. As COMBAR stated: "the rule does not need to be "invoked" to be effective: it underpins the basis on which every barrister should decide whether or not to accept a case". This was supported by the quantitative data in the survey, which showed that although the instances where barristers had been required to accept instructions under the rule were rare, it was much more common for a barrister to accept cases they might not otherwise want to because of the existence of the cab rank rule. The Law Society disagreed – whilst acknowledging the "background cultural ethos" it felt it would make a difference only in a very small number of cases (noting that there are no examples of people with properly arguable, funded cases being unable to access a solicitor). The Bar Council suggested that cab rank rule issues were resolved voluntarily in the vast majority of cases (in the rare cases where a barrister did not want to accept a case from a particular client they would either self-enforce the cab rank rule or clerks would negotiate with the client and the client would voluntarily instruct another barrister).
11. The call for evidence highlighted a problem with the cab rank rule as drafted that was separate from the standard terms. There appears to be some confusion between rule rC30.7.a (the cab rank rule does not apply where the professional client does not accept responsibility for fees) and the requirement to apply the cab rank rule where requested on the barrister's own published terms (ie does the cab rank rule apply if the barrister's own published terms do not require the professional client to accept such a responsibility?). This might be a matter for additional guidance, although the response may depend on the options considered below.

Other issues raised in the call for evidence

12. One issue that arose in the responses to the call for evidence was the interaction between contractual liability between the barrister and professional client and professional indemnity insurance. The Standard Contractual Terms exclude contractual liability between the barrister and the professional client. COMBAR adopts a different approach that limits liability to claims in tort and if that gives rise to a liability to the professional client, liability is limited to £100,000. This was said to be important because the BMIF terms of cover only provide contractual cover up to £100,000 (this is separate from any liability to the lay client, which will be determined by the standard BMIF limit of cover of £0.5-2.5 million, plus any top up cover). For this reason it is suggested by PIBA that barristers should not deviate from the Standard terms or COMBAR terms without the approval of BMIF (whose terms of cover permits them to exclude contractual cover unless on contracts approved by them). It is suggested by respondents that this is not usually understood by those negotiating contracts (and solicitors may attempt to insert more onerous contractual liability clauses, although BMIF has published guidance for its members on this point). We will discuss these matters further with BMIF in the course of the consultation, but this is thought initially to be a matter for barristers to resolve with their insurers rather than a matter for the BSB's regulatory rules.

Summary of call for evidence

Part 1 – Public

13. It was also noted by a number of respondents that the current protections for barristers, outlined via exceptions to the cab rank rule, should be maintained in order to avoid exposing the profession to unreasonable risks. The Law Society agreed that the cab rank rule cannot be unlimited in its effect and that barristers should not be forced to accept work for inadequate fees, if they are too busy or if the terms of the contract are unfair. However, it states that just as the BSB does not set detailed fee levels or detailed criteria about what amounts to being too busy, so it should not prescribe in detail the contractual terms on which the cab rank rule should depend (such as, for example, the length of time in which the barrister should be paid).
14. The Law Society's suggested alternative approach is that rather than prescribing specific detailed terms, the Handbook should permit barristers to refuse work if the terms of work:
 - a. Are non-contractual;
 - b. Impose inappropriate or unreasonable obligations on the barrister; or
 - c. Provide unusual or wholly unreasonable commercial provisions.
15. The Bar Council did not see how a different approach in principle could be adopted, whilst at the same time maintaining both the cab rank rule and the Bar's right to be instructed on reasonable terms. Both the Bar Council and Monkton Chambers suggested that it was premature to reach any conclusions on the impact that the standard terms had had, given their relatively recent introduction.

Summary of responses to consultation

Part 1 – Public

Standard Contractual Terms

Q1: What are your views on how these options would work in practice and what their impact on the effectiveness of the cab rank rule would be?

Summary of responses

Status quo

[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 as published on the Bar Council's website; or (B) if you publish standard terms of work, on those standard terms of work

The overwhelming preference of the respondents was for the status quo. COMBAR stated it was essential for the certainty of its operation that the cab rank rule be underpinned by some standard terms, and that no good basis had been provided for removing reference to the standard contractual terms published by the Bar Council. They also stated that removing the reference to the standard contractual terms from the cab rank rule would lead to a period of administrative instability, which would be unnecessary and undesirable in their view.

The Chancery Bar Association also noted that under the status quo, barristers are able to fall back on their published standard terms, which in their view is a vital safeguard against barristers later being found to have breached the BSB Handbook. In addition, if a barrister publishes terms which are wholly unreasonable, a client can still insist on the barrister acting on the standard contractual terms. In their view, this ensures that the cab rank rule has “teeth”, whereas removing the reference to the standard contractual terms from the rule would appear to deprive it of much of its content.

However, the Law Society opposed the status quo on the basis that the specification of standard contractual terms is not a role for the regulator. They also stated that while the standard contractual terms arguably protect barristers and solicitors, they are very unlikely to enforce them in practice as they are in a mutually dependent relationship for work.

Alternative option 1

*[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 as published on the Bar Council's website; or (B) if you publish standard terms of work, on those standard terms of work; or (C) **such other terms as you may reasonably propose for the given instructions.***

Summary of responses to consultation

Part 1 – Public

The majority of respondents were of the opinion that this option added little to the status quo. They highlighted that even with the current rule, barristers are still free to propose other terms which a solicitor could then accept. Of the alternative options, most respondents felt that this was the most desirable as it retained reference to the standard contractual terms. There was concern from a number of respondents that introducing the concept of “reasonableness” could add uncertainty to the cab rank rule.

The Law Society opposed this alternative as it retains the reference to the standard contractual terms. Their view is that the specification of contractual terms is not an appropriate role for the regulator.

Alternative option 2

[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) if you publish standard terms of work, on those standard terms of work; or (B) such other terms as you may reasonably propose for the given instructions

A number of respondents felt that alternative option 2 was unworkable. The same concerns were raised as with alternative 1 concerning the introduction of the concept of “reasonableness”. The Chancery Bar Association commented that this could result in a barrister who genuinely considers he is acting in accordance with the BSB Handbook subsequently being found to have breached it. It was felt by some respondents that there was no valid reason for removing reference to the standard contractual terms, and that doing so would give rise to a period of unnecessary administrative instability.

There was also concern that removing the standard contractual terms could mean a barrister proposing reasonable terms on a case by case basis. This was seen as unattractive for both solicitors and lay clients due to the lack of clarity. It was also suggested that this could expose barristers to pressure to accept terms put forward by solicitors seeking to take advantage of the apparent void. Advice UK, one of two consumer organisations who responded to the consultation, stated that the reference to the standard contractual terms should not be removed. They understood that there may be arguments of greater flexibility in favour of their removal, but felt that the potential restriction of access to justice that may result if it is removed was a more important consideration.

It was noted by respondents that under alternative option 2, the choice whether to propose “other terms” is the barrister’s. A barrister could, therefore, avoid the risk of being in breach of the BSB Handbook by publishing standard contractual terms of work and insisting on being instructed on those terms.

The Chancery Bar Association were of the view that alternative option 2 did not provide any checks and balances applicable to the barrister’s published standard contractual terms. A barrister could publish wholly unreasonable terms and then only be compelled to act on those terms.

Summary of responses to consultation

Part 1 – Public

Alternative option 3

[The cab rank rule does not apply if] accepting the instructions would require you to act other than on (A) if you publish standard terms of work, on those standard terms of work; or (B) such other terms as you may reasonably propose for the given instructions and which the professional client is willing to accept; or (C) such alternative terms as the professional client may reasonably propose for the given instructions if unwilling to accept (A) or (B)

Alternative option 3 was considered to be unworkable and unacceptable by all members of the profession who responded to this question. Concern was expressed that this would lead to conflicts of “reasonable” terms, and that a solicitors reasonable terms would “trump” a barristers. This would restrict barristers’ freedom to contract and result in barristers being compelled to work on solicitors’ terms.

Alternative option 3 was the preferred option of the Law Society, who submitted that solicitors should also be able to suggest reasonable terms. The Law Society acknowledged that option 3 could lead to a conflict of terms, but took the view that the barrister and solicitor should be able to resolve this between themselves, and that other professionals are required to do this in similar scenarios.

Q2: Do you have a preference and why?

The overwhelming preference of the respondents was for the status quo and the current BSB Handbook rule referring to the standard contractual terms to be retained. This, combined with responses from the call for evidence would seem to support the view that the status quo works satisfactorily from the perspective of the Bar.

The Law Society continues to oppose the status quo. They state that the specification of standard contractual terms is not an appropriate role for the regulator. Their preference is for alternative option 3.

Q3: If the generic standard terms were retained, are there any elements that are unnecessary or unreasonable?

All members of the profession who responded to this question stated that the standard contractual terms currently worked well, and had no unreasonable or unnecessary elements. The Bar Council noted that their surveys have shown that the standard contractual terms are widely used without any problems.

The Law Society objected to the standard contractual terms seeking to place liability for payment of barristers’ fees entirely on solicitors. They believe that the risk of non-payment should be shared fairly between the solicitor and barrister as, if a client does not pay a barrister, it is likely that they have also not paid the solicitor. They are of the view that there is no reason why solicitors should solely bear the risk of non-payment by the client. The Chancery Bar Association responded to such concerns and commented that the solicitors’ liability for barristers’ fees helps strike a proper balance between the client’s right to insist on the cab rank rule “trump” card and the barrister’s freedom to contract.

List of Defaulting Solicitors

The BSB proposed removing the reference to the List of Defaulting Solicitors from the list of exemptions to the cab rank rule. Rule C30.7.b, which currently reads “The cab rank rule rC29 does not apply if the *professional client* is named on the List of Defaulting Solicitors”, would instead read “The cab rank rule rC29 does not apply if the *professional client* represents, in your reasonable opinion, an unacceptable credit risk.”

Summary of responses to consultation

Part 1 – Public

Question 4: Do you agree that there should be an exception to the cab rank rule if the barrister has formed the reasonable opinion that the professional client is an unacceptable credit risk and that there should be no reference in the rule to the List of Defaulting Solicitors?

Question 5: If there was an exception for unacceptable credit risk, do you have any views as to whether this would risk undermining the cab rank rule by adding to the grounds on which instructions could be refused?

Summary of responses

The Bar Council objected to the proposed new drafting on the grounds that permitting greater flexibility might risk barristers avoiding their obligations under the cab rank rule by claiming that a solicitor or firm represented an unreasonable credit risk. It and others also felt that a change was unnecessary because of the option to require fees to be paid upfront as per rC30.9.b. Furthermore, there was a concern that if the List of Defaulting Solicitors was no longer the basis of an exception to the cab rank rule, it could become obsolete.

However, others generally agreed that the new wording would not cause any detriment to the cab rank rule. The Family Law Bar Association made the point that the value of the rule as a principle was deeply embedded in the profession and that in any event, the competitive nature of the market means barristers are not seeking grounds on which to refuse instructions.

The alternative wording was also welcomed by some, as a recognition that the List of Defaulting Solicitors was a blunt tool which may not be of practical use to the profession in circumstances where there was evidence (eg through a track record of dealing with a particular solicitor or firm) that there was a genuine risk of non-payment, despite the firm not appearing on the list.

That notwithstanding, many were of the view that if the reference to the List of Defaulting Solicitors was removed from the list of exemptions to the cab rank rule, the BSB should publish guidance as to what a barrister might reasonably regard as representing an “unacceptable” credit risk. The guidance could well cite inclusion on the list as one indicator of a poor credit risk.

There was also a concern that the alternative wording would allow barristers to refuse instructions on the basis that the professional client represents an unacceptable credit risk, despite the fact that they or the lay client are willing and able to pay fees upfront. Guidance could clarify that if the professional client or the lay client are willing and able to pay fees upfront, and there is sufficient certainty as to the volume of work, then the barrister should not refuse instructions on the grounds of a poor credit risk.

The Cab Rank Rule: The Future

Q6: Do you have any views on how the BSB could present the cab rank rule in a more principles-based way and whether this would negatively impact the effectiveness of the cab rank rule / principle?

Summary of responses

The majority of respondents stated that the rule worked well as currently drafted. Many emphasised the importance of the rule and the need for it to remain clear and easily understood. The Bar Council and COMBAR were both of the view that the rule is already sufficiently principles based and expressed concern that any attempts to reformulate the rule could result in uncertainty, and negatively affect its application.

Summary of responses to consultation

Part 1 – Public

The Chancery Bar Association and the Law Society commented on the BSB's goal to move towards outcomes focused regulation and were supportive of this. The Chancery Bar Association, however, highlighted that the rule as currently drafted causes little difficulty, and they are not persuaded that there are sufficient reasons for changing its presentation. The Family Law Bar Association advised that changing or adding to the rule would risk leaving it open to interpretation and undermining the rule itself.

The Law Society commented that, from their perspective, the rule was rarely invoked and so framing the rule as a principle would not have a negative impact on consumers.

Log of responses by question

Part 1 – Public

Q1: <i>What are your views on how these options would work in practice and what their impact on the effectiveness of the cab rank rule would be?</i>	Q2: <i>Do you have a preference and why?</i>	Q3: <i>If the generic standard terms were retained, are there any elements that are unnecessary or unreasonable?</i>	Q4: <i>Do you agree that there should be an exception to the cab rank rule if the barrister has formed the reasonable opinion that the professional client is an unacceptable credit risk and that there should be no reference in the rule to the List of Defaulting Solicitors?</i>	Q5: <i>If there was an exception for unacceptable credit risk, do you have any views as to whether this would risk undermining the cab rank rule by adding to the grounds on which instructions could be refused?</i>	Q6: <i>Do you have any views on how the BSB could present the cab rank rule in a more principles-based way and whether this would negatively impact the effectiveness of the cab rank rule / principle?</i>
Barrister					
No answer provided.	No answer provided.	No answer provided.	Does not think reference to the List should be removed from the Cab Rank Rule as it is a useful, objective guide to credit risk. It may be that the rule should deal with credit risk generally, as suggested. In that case (1) the rule should state that inclusion on the List indicates unacceptable credit risk and (2) the BSB should think carefully about what other evidence of credit risk could form the basis for a “reasonable opinion”, eg would it suffice if someone else in Chambers had not been paid after six months?	Thinks that credit risk must be an exception to the Cab Rank Rule, as barristers should not be forced to work for nothing or at a discount.	No answer provided.

Log of responses by question

Part 1 – Public

LAW SOCIETY					
<p>When we consulted members of our committees in December 2014, we found that although most of the respondents used the current standard terms, a minority did seek to alter the terms on payment. Some barristers were also reported as wishing to use non-standard terms. If two parties agree commercial terms, we do not see why they should not be able to use them. Under the current arrangements, although arguably protected by the standard terms, in reality, barristers and solicitors are very unlikely to enforce those terms as they are in a mutually dependent relationship for work. In relation to any given set of instructions, a barrister is unlikely to try to enforce unacceptable</p>	<p>The Law Society is most amenable to alternative version 3. In the consultation document, the BSB directly refers to the Society's view expressed in answer to the December call for evidence, that solicitors should be able to suggest reasonable terms. The Society suggested that the Handbook should allow barristers to decline work if it is non-contractual, imposes inappropriate or unreasonable obligations on the barrister, or provides unusual or wholly unreasonable commercial</p>	<p>The Law Society does not support the standard terms seeking to place the liability for the payment of barristers' fees entirely on solicitors. In any commercial arrangement, there is often a level of risk to manage and any reasonable terms relating to that arrangement, should seek to ensure that any such risk is shared fairly. The liability of solicitors to pay barristers' fees was removed as a regulatory obligation from the SRA Code in recognition of that fact and the relevant obligations that exist in the current</p>	<p>The Law Society agrees that if a barrister has reasonably formed the view that that the professional client is an unacceptable credit risk, then this could be a permissible exception to the application of the Cab Rank Rule. As the consultation paper itself says, the List of Defaulting Solicitors is only one source of intelligence about credit risk; it is reasonable that if a barrister has other intelligence about a professional client, then he/she should not be constrained in acting on it. However, the key word here is 'reasonable': This potential change to the Code should not enable the barrister to use it as a device to evade the obligations that are in place for proper public interest reasons. Any such amendment or related guidance would therefore have to make it quite clear that refusal on this basis for unreasonable reasons could result in a complaint to the</p>	<p>See answer to Q4.</p>	<p>We agree that framing the cab rank rule as a principle rather than a requirement could be a useful way of moving towards a more outcomes focussed approach to regulation. From the perspective of our members, under the current market conditions, the cab rank as a rule is rarely utilised and we forecast little in the way of consumer detriment. It is not, however, within our remit to advise the BSB on how to frame such principles.</p>

Log of responses by question

<p>contractual terms as s/he wishes to obtain the instructions. A solicitor is unlikely to try to enforce unacceptable terms as it may result in the solicitor losing their barrister of choice. Admittedly, this may be less the case in a scenario in relation to standard commoditised work in which the solicitor has a range of barristers to instruct; however, in that scenario, it would be inappropriate for the economic balance of power to be artificially imbalanced by regulatory enforceable terms.</p>	<p>provisions. The BSB explains that this could lead to a conflict if both the solicitor and the barrister feel that the terms they have put forward are reasonable. This may be the case; however, we take the view that the solicitor and barrister should be able to work this out between themselves, just as any other professionals would be expected to in any other similar scenario. It is possible that the BSB could find itself adjudicating on whether terms provided by solicitors were or were not reasonable. This could be a</p>	<p>code should be proportionate. If a client does not pay a barrister, it is likely that they have also not paid the solicitor; the Law Society can see no reason why solicitors should solely bear the risk of non-payment by the client when the professional fees of both the solicitor and barrister are at risk.</p>	<p>BSB and subsequent disciplinary action if refusal was subsequently found to be unfounded.</p>		
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Log of responses by question

Part 1 – Public

	complicated and potentially expensive process if a regulatory one; alternatively, one solution that may be worth exploring is whether the Joint Tribunal Service could be extended to cover disputes over the reasonableness of terms.				
COMBAR					
The alternative options have the following undesirable features: <u>Alternative 1:</u> This appears to add little to the status quo, under which the contracting parties are free to agree alternative terms. However, barristers' professional obligations should not be defined by reference to whether any proposed contract terms are " <i>reasonable</i> "; <u>Alternative 2:</u> This is subject to the same	For the reasons that we have discussed above the only suitable option proposed by the BSB is maintenance of the status quo.	No. The criticism of the Bar Council terms as being too detailed is misguided for the reasons explored at paragraph Error! Reference source not found. above.	Barristers should obviously not be compelled to accept instructions in circumstances where there is an unacceptable risk that the barrister will not be paid. Appearance of a solicitor on the List of Defaulting Solicitors is one indicator that the professional client presents an unacceptable credit risk. Indeed, there may be few other indicators to the barrister of the credit risk that accompanies any given instructions.	Accordingly, there is good reason for expanding the concept of unacceptable credit risk beyond that illustrated by the List of Defaulting Solicitors. We are not persuaded that doing this will, as the Bar Council suggests, lead to barristers avoiding the Cab Rank Rule by claiming that the solicitor/client was an unacceptable credit risk (especially if this can only be done in circumstances	As we have noted, the Cab Rank Rule is of the highest importance and (because of its effect in compelling barristers to work) needs to be expressed in clear and unambiguous terms. In our view, it is already expressed in a principles-based way, in that it sets out a clear principle, with some clear exceptions, each of which would be capable of being tested in the context of professional misconduct proceedings. We are concerned at the prospect that attempts to

Log of responses by question

Part 1 – Public

<p>criticism as Alternative 1. In addition, however, it is essential for the certainty of its operation that the Cab Rank Rule is underpinned by some standard terms. No good basis has been provided for removing reference to the Bar Council terms. Removal of reference to the Bar Council terms will give rise to a period of unnecessary and undesirable administrative instability; <u>Alternative 3</u>: This is subject to the same criticism as Alternatives 1 and 2. Moreover, it would give an unfair negotiating advantage to professional clients and is likely in practice to lead to the adoption of unfair and inappropriate terms in certain cases.</p>			<p>However, the List of Defaulting Solicitors is an incomplete guide to credit risk. Indeed, the frequent adoption of Basis B where the COMBAR/CLLS terms means that professional clients are frequently seeking to transfer to the barrister the credit risk in respect of the lay client.</p>	<p>where reasonable grounds exist for taking such a view). However, if such an exception is to be added to the Cab Rank Rule, the BSB should publish guidance as to what a barrister might fairly regard as suggesting an unacceptable credit risk.</p>	<p>reformulate it might give rise to uncertainty and negatively affect its application. We also do not accept that any case has been made for the rule to be reformulated. However, without greater description of the proposed changes, we are unable to comment on this suggestion any further.</p>
<p>BAR COUNCIL</p>					
<p>Alternative 1: Acceptable, but adds nothing to status quo. Alternative 2:</p>	<p>Of these maintaining the <i>status quo</i> is clearly the best option. As a</p>	<p>The Bar Council does not consider that there are any elements of the standard</p>	<p>This question has given rise to some debate. 1. All barristers and clerks who expressed a view considered that the List of</p>		<p>The Bar Council considers that the cab rank rule is, in its present form, sufficiently principles based. That is to say, it is difficult to set out the</p>

Log of responses by question

Part 1 – Public

<p>Unacceptable, as it defeats the cab rank rule for the consumers.</p> <p>Alternative 3: Unacceptable, as it removes commercial fairness and certainty for the Bar.</p>	<p>general point, it is clear from the BSB's 2014 Review of the standard contractual terms that they are working in practice. Whilst the Bar Council accepts that it is appropriate periodically to review the degree and form of regulatory intervention, it should be recognised that the current provision works, and thereby fulfils the regulatory objectives. Furthermore, an analysis of the alternatives shows that the <i>status quo</i> is clearly preferable.</p>	<p>contractual terms which are unnecessary or unreasonable. As paragraph 11 of our response to the BSB's 2014 Review of the standard contractual terms states, our surveys have shown that they are widely used without any problems. We will, of course, keep this under review. It may be that detailed drafting issues are unearthed in due course. At present, however, the evidence is clearly in support of the current terms.</p>	<p>Defaulting Solicitors is a very useful service for the Bar, highlighting credit risks in an efficient, economical and fair manner. However, it is clearly limited in that in order to be placed on the List a solicitor will have to have failed to pay a judgment or a Voluntary Joint Tribunal's award in full within 30 days, and this could be seen as too high a test of being an 'unacceptable credit risk'. Accordingly, there was some support for expanding the exception to the cab rank rule to include a more general 'unacceptable credit risk' test.</p> <p>2. However, on consideration it was thought that such a change was:</p> <p>2.1. Unnecessary, as the Code of Conduct rC30.9.b allows barristers to demand payment in advance in cases where they feel there is a credit risk and the solicitors is not on the List of Defaulting Solicitors,</p>		<p>principle in any more general a form whilst maintaining clarity of meaning and application. At best it might be possible to insert a pre-ambule to the rule describing the principle it is applying, ie reasonable access to proper representation regardless of personal characteristics or the opinion of the public or the barrister, the only exceptions being circumstances in which or terms on which it would be unethical for the barrister to act, or unfair or unreasonable to require a barrister to act. However, the risk of doing so is that it could in fact make less clear (or at least less certain) that which it is intended to elucidate.</p> <p>6. The Bar Council also considers that the exceptions to the cab rank rule, by their very nature and the impact they have on the cab rank rule, need to be tightly drawn. As such they are one area of the Code of Conduct in which the certainty of clear rules is particularly important. There are several exceptions, but</p>
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Log of responses by question

Part 1 – Public

			<p>and</p> <p>2.2. Undesirable, as it could be used to avoid the cab rank rule by means of barristers simply claiming that a solicitor was an ‘unacceptable credit risk’.</p> <p>3. In particular, it would be difficult to regulate any such exception because what is “unacceptable” is uncertain and might change from case to case, and even from barrister to barrister.</p> <p>4. It may be important to note that the ability to require payment in advance does not mean that barristers will not agree other arrangements where there is a heightened credit risk: it merely means that they cannot be required to accept that risk. Alternative payment arrangements can always be made; but the current formulation allows for this.</p> <p>5. In conclusion, the Bar</p>		<p>they are specific and targeted: they do not detract, and should not be seen as detracting, from what is otherwise a very broad rule in rC29. It would be possible to frame the rule and exceptions in a more general way, but that would inevitably need to be supplemented by Guidance of the same degree of clarity as the current rules, and such an approach would carry with it a clear suggestion that other, less well defined circumstances would justify refusing instructions, which would risk widening the opportunity for arguing that the cab rank rule does not apply. That represents an unnecessary and undesirable risk, which would not appear to work in the public interest.</p> <p>7. The Bar Council has noted with surprise a view in some quarters that the underlying principles are not clear. If this is still the case, then the underlying principles might be set out in Guidance. It is not clear to the Bar Council what this would add which would serve a useful</p>
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Log of responses by question

Part 1 – Public

			Council does not agree with expanding the current exception to the cab rank rule.		regulatory purpose, but perhaps a brief explanation might draw attention to the benefits for the public and the public interest, pursuant to the regulatory objectives.
FAMILY LAW BAR ASSOCIATION					
<p>Superficially Alternative 1 looks to be the most attractive insofar as it would provide to the barrister the option of putting forward different terms on a case by case basis. However, this carries the risk of undermining the cab rank rule by affording the opportunity to put forward alternative terms to those which are advertised on the basis of reasonableness, a concept which although susceptible to objective assessment, this would be only after the fact and entirely at the behest of the barrister at the time.</p> <p>On considering the circumstances in which</p>	<p>The status quo is the best option as it provides sufficient flexibility and has been shown to be working satisfactorily. Barristers have the protection of the Standard.</p> <p>Terms which they are free but not obliged to depart from if the solicitor wishes to negotiate alternative terms, more favourable as far as the solicitor is concerned. In practice this happens regularly</p>	<p>We see no reason not to retain the current standard contractual terms and there are no unnecessary or unreasonable elements.</p>	<p>Again, superficially this proposal looks attractive as far as the Bar is concerned because the test for placing a solicitor on the List is high and beyond what might be considered an “unacceptable credit risk”.</p> <p>However, the importation of the words “reasonable” and “unacceptable” carry the potential for causing more difficulty than assistance. These words are wide open for interpretation and challenge, requiring barristers to provide evidence, which could be awkward. Presumably evidence produced to deal with a subsequent complaint would have to satisfy a third party assessor on a balance of probabilities? Again, that</p>	<p>We do not consider that such a rule would undermine the cab rank rule. It is deeply embedded in barristers from early on in their training that the rule of law requires access to justice for all. Also, the market is highly competitive and barristers want work; they are not looking for excuses to avoid accepting instructions.</p>	<p>Our view is that the rule is presented in a simple and straightforward manner in rC29. The exceptions to it in Cr30 are also clear and straightforward. Readers of the Conduct Rules can be in no doubt what the cab rank rule means and the limited circumstances in which a barrister may decline to act. Adding principles or further grounds would run the risk of providing more words which are open to interpretation and argument, thereby providing potential to undermine the rule itself.</p>

Log of responses by question

<p>such a facility might be invoked by a barrister the only obvious example which comes to mind is if there is an issue about the payment of fees. That potential problem can be dealt with in other ways (see below).</p> <p>It is difficult to imagine how this would work in practice. Presumably barristers would be required to advertise that either (i) the Standard Contractual Terms may be departed from at the behest of the barrister in 'reasonable' but unspecified circumstances or (ii) there are no standard terms and the barrister will propose reasonable terms on a case by case basis. Both options are unattractive for solicitor/client due to the lack of clarity. We believe that this lack of clarity could also expose barristers to pressure to</p>	<p>in financial remedy cases where, for example, counsel agrees to await payment until the conclusion of the case.</p>		<p>could cause great difficulty in practice.</p> <p>Such a change is unnecessary as rC30.9.b enables a barrister to require payment in advance without the need to provide a reason. Barristers use this provision when they have cause to believe that there is a risk that they will not be paid. The reality is that solicitors usually do not accept a personal liability for the payment of fees and agree only to pay when the client pays them. When barristers invoke rC30.9.b it is just as likely to be because they see a risk that the client will not pay the solicitor, and not necessarily a risk that the solicitor will not pay the barrister.</p>		
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Log of responses by question

Part 1 – Public

<p>accept terms put forward by solicitors who seek to take advantage of the apparent void. Alternatives 2 and 3 are unacceptable and unworkable for similar reasons.</p>					
CHANCERY BAR ASSOCIATION					
<p>All three proposed options introduce a level of uncertainty into the cab rank rule, because it would be possible for different individuals to reach different views about whether the terms proposed for the instructions were “reasonable” in any given case. Such uncertainty is unwelcome where it could result in a barrister who genuinely considers he is acting in accordance with the Code of Conduct subsequently being held to have breached it. 2. In relation to the first and second options, however, the choice</p>	<p>The introduction of contractual terms caused considerable disruption to the practice of many members of the Chancery Bar. This is not to say that the change was not desirable, but we are not convinced that there is any need to make further changes and risk yet further disruption. We therefore favour the status quo. 13. If further change is considered</p>	<p>Paragraphs 38 to 43 of the Consultation Paper indicate that this question is primarily aimed at solicitors’ objections to the imposition of liability for barristers’ fees and the exclusion of the barristers’ liability to solicitors. We strongly agree with the views expressed in the Consultation Paper to the effect that these conditions strike a proper balance between the client’s right to</p>	<p>Any changes to the Code of Conduct which enable barristers to avoid credit risk are, of course, welcome. We note, however, that rule rC30.9.b already provides an exception to the cab rank rule if (except where fees are to be paid by the Legal Aid Agency or by the Crown Prosecution Service) “<i>having required your fees to be paid before you accept the instructions, those fees have not been paid</i>”. 19. This exception currently provides very important and (we believe) frequently used protection to barristers if they consider there to be a material credit risk. This protection has taken on</p>	<p>See answer to Q4.</p>	<p>We are in favour of the BSB’s less prescriptive and more outcomes focused approach. Nevertheless, we believe that the cab rank rule has real value in ensuring access to justice and that its existence as a rule, with certain clearly defined exceptions, causes little difficulty in practice. We are not, at present, persuaded that there are sufficient reasons for changing the presentation of so important a principle.</p>

Log of responses by question

<p>whether to propose “<i>other terms</i>” is the barrister’s. As we understand it, neither of the first two options positively obliges the barrister to propose such terms. A barrister can, therefore, avoid the risk of being in breach of the Code of Conduct by publishing standard terms of work and, in any case where there is a doubt, insisting on being instructed on those terms. In relation to the first option, even barristers who have not published standard terms have the protection of being able to insist on the Standard Contractual Terms. Thus, whilst we consider that the addition of the suggested new wording in the first and second options (“<i>such other terms as you may reasonably propose...</i>”) would be acceptable to members of the Chancery Bar, we</p>	<p>desirable, we consider either of the first or second options to be acceptable, as presently drafted. We do not believe they are likely to have much impact, in practice, on the current position.</p> <p>14. The third option, however, would be unworkable, for the reasons explained above, and we are strongly opposed to it.</p>	<p>insist on the cab rank rule “trump” card and the barrister’s freedom of contract.</p> <p>16. We do not consider that any other elements.</p>	<p>particular significance now that many solicitors are unwilling to accept liability for barristers’ fees. Although barristers are not obliged by the cab rank rule to accept instructions on this basis, market forces have dictated that, certainly in substantial commercial matters, terms (such as COMBAR Basis B) which do not involve the solicitor accepting liability for fees are frequently agreed. Insisting on payment in advance is one way of mitigating the effect of such terms.</p> <p>20. It seems to us that this exception can equally be relied upon where a solicitor is prepared to accept liability for the barrister’s fees, but where the solicitor is an unacceptable credit risk. An exception to the cab rank rule which enables barristers to refuse instructions altogether in such circumstances may be thought unfair on the lay client, and unnecessary for barristers, if the lay client (or the solicitor) is willing and</p>		
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Log of responses by question

Part 1 – Public

<p>question whether they would be likely to rely on this exception to the cab rank rule in practice.</p> <p>The disadvantage of the second option, as compared with the first, is that there do not appear to be any checks and balances applicable to the barrister’s published standard terms. At present, if a barrister publishes terms which are wholly unreasonable, the client can still insist on the barrister acting on the Standard Contractual Terms. Since those terms appear to be regarded as acceptable by the substantial majority of (if not all) members of the Chancery Bar (and probably the Bar as a whole), this ensures that the cab rank rule has teeth. Removing the requirement to act on anything other than the barrister’s published</p>			<p>able to pay fees in advance. The proposed exception to the cab rank rule may, therefore, require revision to take account of this possibility.</p> <p>21. So far as the List of Defaulting Solicitors is concerned, it is arguable that the existence of the List, and the ability to refuse instructions from a solicitor who is on it, has some (perhaps limited) deterrent effect. If the List is no longer the basis of an exception to the cab rank rule, it is possible that the List will lapse into abeyance. For that reason, we are not in favour of removing the reference to the List as an exception to the cab rank rule</p>		
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Log of responses by question

Part 1 – Public

<p>standard terms, however, appears to deprive the cab rank rule of much of its content.</p> <p>5. The third option, however, swings the balance too far the other way. It takes choice away from the barrister in two respects.</p> <p>6. First, it gives the professional client the choice whether to accept the barrister’s published standard terms. The barrister’s ability to fall back on his published standard terms is, in our view, a vital safeguard against the barrister later being held unwittingly to have breached the Code of Conduct. If there is a concern as to whether some barristers might publish standard terms which are unreasonable, this can be dealt with by allowing the client to insist upon the approved Standard Contractual Terms, as explained above.</p>					
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Log of responses by question

Part 1 – Public

<p>7. Secondly, this option gives the opportunity to propose alternative terms to the professional client. As explained above, different individuals can legitimately hold different views as to what is reasonable. Thus, a professional client might propose terms which are within the range of possibilities that might later be held to be reasonable, but which the barrister himself would never have put forward.</p>					
<p>8. Experience to date of negotiating contractual terms suggests that professional clients are likely, in practice, to propose terms to which the majority of members of the Chancery Bar would be unwilling to agree. We note that paragraph 52 of the Consultation Paper states that the effect of the third option would be that, in the event of a</p>					

Log of responses by question

Part 1 – Public

<p>disagreement, the barrister would be obliged to accept the solicitor’s terms in preference to his own.</p> <p>9. We do not believe that such an approach is desirable, or that it would be accepted in practice. The BSB would be likely to be inundated with requests for a ruling on whether particular terms are reasonable, in advance of those terms being agreed. The acceptance of instructions would be unnecessarily delayed. The publication of general guidance could not be expected to produce sufficient certainty in all (or even in most) cases. The third option is, in our view, bound to lead to intractable arguments about what is, or is not, reasonable in the circumstances of the particular case and to many unnecessary and unfounded complaints</p>					
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Log of responses by question

Part 1 – Public

<p>about barristers' conduct.</p> <p>10. Further, the barrister would be at risk of acting without insurance (and so in breach of Handbook) if he accepted the solicitor's terms when they are not within the scope of BMIF approval.</p> <p>11. For these reasons, we consider that the third option would be unworkable in practice.</p>					
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Feedback/informal responses to the consultation

Citizens Advice

The operation of the cab rank rule isn't something that we get much evidence about from our local Citizens Advice so we are not in a position to comment in depth of this. We are supportive of the cab rank rule's intention to ensure that everyone is able to secure representation, this is a cornerstone of justice so we are pleased that you are giving due regard to the implications of any changes.

Beyond saying that any rule change needs to ensure that cracks do not open up denying some clients representation, we are not in a position to give an informed opinion about whether the proposed change will on balance be beneficial.

Advice UK

I believe that the reference to the standard terms should not be removed. I recognise and understand the arguments re greater flexibility but feel that the potential restriction of access to justice that may result if it is removed is more important.

Analysis of consumer principles (standard terms options)

Part 1 – Public

Standard Contractual Terms - Consideration of Consumer Interests

	Status Quo	Alternative 1	Alternative 2	Alternative 3
Access	<ul style="list-style-type: none"> Provides a guarantee/bright line rule ensuring the CRR can always be resorted to (eg in the absence of a barrister having any standard terms/bespoke terms of their own, or if those aren't acceptable) and hence ensures access to a barrister on known terms. Possible risk of solicitors who do not like the standard terms refusing to instruct on that basis without informing or consulting their clients. 	<ul style="list-style-type: none"> Retaining the reference to the standard contractual terms ensures that the bright line still exists and can be relied upon by consumers. Expands from one to three the potential routes by which a client can benefit from the CRR. 	<ul style="list-style-type: none"> This alternative could make it easier for barristers to avoid taking cases under the CRR. The barrister could not publish terms and only propose unreasonable terms to avoid being subject to the rule. There is no clear evidence that barristers are trying to evade their obligations under the CRR. Nonetheless, the BSB would need to put arrangements in place to mitigate this risk. Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, are likely to harm the lay client's interest if decision needed quickly. 	<ul style="list-style-type: none"> Consideration of whether the terms proposed are reasonable could take time and negotiation, and could hold up the consumer's access to the barrister. Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, may harm the lay client's interest in case of delay.

Analysis of consumer principles (standard terms options)

Part 1 – Public

	Status Quo	Alternative 1	Alternative 2	Alternative 3
Choice	<ul style="list-style-type: none"> The primary consideration of the client is likely to be price, which is not affected by the Standard Terms. Thereafter the interests of the client are in getting the most appropriate barrister for them (not necessarily the 'best', but the professional client should be able to pick an appropriate barrister for the client and secure his/her services). The reference to the standard contractual terms ensures that any self-employed barrister can be instructed at any time on those terms. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> If barristers are able to evade their obligations under the CRR (even if this is unlikely to happen in practice), it could mean that barristers could attempt to avoid work from certain consumers therefore limiting choice. 	<ul style="list-style-type: none"> In the case of dispute of reasonableness of terms it is likely that the choice is being exercised by the relevant solicitor rather than the client, who may have little or no understanding of the consequences.
Quality/Safety	<ul style="list-style-type: none"> Imposing further change so soon after the current arrangements came into effect could be disruptive (if so that may indirectly impact on consumer experiences). No evidence that the status quo is causing quality problems. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> Removing reference to the standard contractual terms could lead to a period of uncertainty. This could affect the service that consumers receive. 	<ul style="list-style-type: none"> Possibility of barristers being persuaded to accept "unreasonable" terms due to threat of a conduct complaint and this having an indirect impact on quality of service provided.

Analysis of consumer principles (standard terms options)

Part 1 – Public

	Status Quo	Alternative 1	Alternative 2	Alternative 3
Information	<ul style="list-style-type: none"> The rule in its current form is clear and well understood by the professions. Clients may be unaware of contractual basis of instruction if professional client doesn't share that information, but terms are available via the Bar Council and transparent. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> Absence of one single "safeguard" set of terms may reduce transparency. Could be mitigated by requiring barrister to publish their own terms. 	<ul style="list-style-type: none"> Relying on the concept of "reasonableness" makes the rule less clear and open to interpretation. It may not be clear to consumers what form of contract would or would not be reasonable in the circumstances.
Fairness	<ul style="list-style-type: none"> The principle behind the CRR is to make access to a barrister available to everyone who has instructed a solicitor. The rule aims to ensure that everyone is treated equally in obtaining the services of a barrister. This would therefore apply to all of the alternatives, as long as consumers are able adequately to enforce the rule. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> As per status quo. Additionally, consumers in vulnerable situations may need representation quickly. Arguments as to the reasonableness of terms could take up time. Or alternatively, barristers could be forced to take on work under terms that may not be reasonable, as they do not have time to make an informed decision and may fear regulatory consequences. This could adversely affect the service that consumers receive.
Representation	<p>One consumer group who responded to the consultation thought that the reference to the standard terms should be retained: "I believe that the reference to the standard terms should not be removed. I recognise and understand the arguments re greater flexibility but feel that the potential restriction of access to justice that may result if it is removed is more important."</p>			

Analysis of consumer principles (standard terms options)

Part 1 – Public

	Status Quo	Alternative 1	Alternative 2	Alternative 3
Redress	<ul style="list-style-type: none"> Consumers would have the same rights of redress under all of the alternatives if a barrister refused to take on their case, in breach of the cab rank rule, but relying on disciplinary processes after the event is not satisfactory when the client's interests are best served by a prompt decision to accept instructions. A "bright line" ensures that there is a clear standard is applied up front so that there is no need to debate reasonableness before deciding whether the obligation applies or not). It is clear when the CRR has been breached and disciplinary action can be taken. 	<ul style="list-style-type: none"> As per status quo. 	<ul style="list-style-type: none"> The BSB could be required to decide on the "reasonableness" of terms on a case by case basis. If a barrister rejects terms on the basis that they are unreasonable and then the BSB finds otherwise, the possibility of disciplinary action at this point is of no help to the client. The BSB could require a barrister to publish terms up front or approve other "standard" terms 	<ul style="list-style-type: none"> Solicitor's terms would always trump the barrister's in every case of dispute. Barrister then has to decide (maybe quickly) if they are reasonable or risk disciplinary action. The client could only seek redress after the event, at which point they may have been unable to access their barrister of choice.

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Protecting and promoting the public interest	<ul style="list-style-type: none"> Provides a guarantee/bright line rule ensuring the CRR can always be resorted to (eg in the absence of a barrister having any standard terms/bespoke terms of their own, or if those aren't acceptable) and hence safeguards the public interest; Imposing further change so soon after the current arrangements came into effect could be disruptive. 	<ul style="list-style-type: none"> Expands from one to three the potential routes by which a client can benefit from the CRR. 	<ul style="list-style-type: none"> Removing standard terms could give rise to a period of uncertainty/administrative instability. This alternative does not provide any checks and balances in respect of the barrister's published standard terms. This means a barrister could publish terms that were unlikely to be acceptable to solicitors (albeit ostensibly 'reasonable') and then only be required to act on those terms. Unless the BSB were to routinely check for "reasonableness" via supervision, policing would be via enforcement in response to complaints. Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, are likely to harm the lay client's interest. The possibility of 	<ul style="list-style-type: none"> Impinges on barristers' contractual freedom. In the case of any dispute, the solicitor's terms would become the default, with pressure to accept those for fear of disciplinary repercussions. Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, may harm the lay client's interest. The possibility of disciplinary action in due course is of no help to the client.

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
			<p>disciplinary action in due course is of no help to the client.</p> <ul style="list-style-type: none"> • Risk that it becomes easier for barristers to avoid taking cases under the CRR. The barrister could decline to publish terms and only propose terms unlikely to be acceptable to solicitors to avoid being subject to the rule. • Requiring barristers to offer bespoke reasonable terms on a case by case basis likely to be unsatisfactory for all concerned (time consuming, lack of clarity etc.) 	
<p>Supporting the constitutional principles of the rule of law</p>	<ul style="list-style-type: none"> • Retaining the rule in its current form provides certainty and the same access to legal services for clients. 	<ul style="list-style-type: none"> • As per status quo 	<ul style="list-style-type: none"> • Absent a requirement to publish terms before the event, risk of uncertainty as to how a barrister may be instructed (uncertainty for clients and barristers as to what may be enforced by the regulator) 	<ul style="list-style-type: none"> • Restriction on barristers' rights freely to contract

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Improving access to justice	<ul style="list-style-type: none"> Provides a guarantee/bright line rule as a safeguard ensuring the CRR can always be resorted to (eg in the absence of a barrister having any standard terms/bespoke terms of their own, or if those aren't acceptable). This means anyone can have access to a barrister when needed, provided they accept that they will operate on the standard contractual terms. However, perceived unfairness on solicitors may create an incentive for them not to seek to enforce the CRR even if it is in their client's interests to do so. 	<ul style="list-style-type: none"> Expands from one to three the potential routes by which a client can benefit from the CRR. 	<ul style="list-style-type: none"> Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, are likely to harm the lay client's interest. The possibility of disciplinary action in due course is of no help to the client. This alternative could make it easier for barristers to avoid taking cases under the CRR. The barrister could fail to publish terms or only propose terms likely to be unacceptable to solicitors to avoid being subject to the rule. Proposing terms on a case by case basis is not transparent and does not promote access 	<ul style="list-style-type: none"> Arguments about whether the terms are or are not reasonable and therefore whether the barrister has to take the case, are likely to harm the lay client's interest. The possibility of disciplinary action in due course is of no help to the client. Given the key objection from solicitors is liability for barristers' fees (which remains integral to the CRR) there may not be any real increase in access as a result, albeit there could be greater flexibility around payment terms etc.

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Protecting and promoting the interests of consumers	See separate table			
Promoting competition in the provision of services	<ul style="list-style-type: none"> Requires barristers to act in certain limited circumstances. Otherwise none of the options impact significantly on competition as parties are generally always free to negotiate. The deemed fairness of the Standard Terms (both by the regulator and the professional body) limits the extent to which barristers are placed at a commercial disadvantage as compared with other legal professionals when being obliged to act Potentially increases supply for clients with unattractive cases However, perceived unfairness of the terms by solicitors may mean they are 	<ul style="list-style-type: none"> Makes clearer to clients the flexibility of allowing barristers to propose their own reasonable terms to work on (no substantive increase in competition as a result). 	<ul style="list-style-type: none"> Opens up barristers' freedom to contract. No terms they must always act on, always free to propose own. Proposing terms on a case by case basis, however, may lead to uncertainty or inhibit access. Could lead to greater variety in the types of terms offered (and hence greater choice) but without the safeguard option of standard terms there is a risk that such innovation could limit rather than promote access for clients, if there is an incentive for barristers to choose terms less acceptable to solicitors. 	<ul style="list-style-type: none"> May promote competition by enabling the solicitor to suggest own terms. However, Risk of unfair negotiating advantage to professional clients, as clash of "reasonable" terms and conduct duty on barristers puts pressure on them to accept whatever proposed by the solicitor. However, the need for professional clients to accept liability for fees would remain in any event (which is likely to be the key stumbling block in negotiations – although greater variety could lead to more flexible payment terms etc)

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
	less likely to seek to oblige a barrister to take on work (the key objection – that they take liability for client’s fees – would continue to apply in any event though)			
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> The standard contractual terms provide a contractual right for barristers to be paid for their services, and clarity around when and how they are to be paid. Clarity and certainty of payment of fees encourages a diverse and effective legal profession, particularly among sections of the Bar less likely to have substantial, regular income. 	<ul style="list-style-type: none"> As per status quo 	<ul style="list-style-type: none"> Not substantially different from status quo, as long as standard terms continue to be published by the Bar Council or other bodies so that the Bar may choose ‘off the shelf’ products. 	<ul style="list-style-type: none"> Solicitors would continue to be responsible for barristers fees, but variation in payment terms may risk cash flow problems for the Bar: for the more successful end of the profession this may not be problematic, but it could call into question the viability of some barrister’s practice if there is not sufficient certainty about this (those with protected characteristics may be particularly at risk).

Regulatory objectives (standard terms)

Part 1 – Public

	STATUS QUO	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
Increasing public understanding of the citizen's legal rights and duties	<ul style="list-style-type: none"> Bright line means clarity for all 	<ul style="list-style-type: none"> As per status quo 	<ul style="list-style-type: none"> Concept of reasonableness more difficult to understand. Not as clear what terms will be acceptable or not absent the standard safeguard. 	<ul style="list-style-type: none"> Concept of reasonableness more difficult to understand. Not as clear what terms will be acceptable or not absent the safeguard.
Promoting and maintaining adherence to the following professional principles	No significant adverse impact identified on the professional principles for any option.			

THE STANDARD CONTRACTUAL TERMS FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO AUTHORISED PERSONS 2012 –

as referred to in Rule rC30.9c of the BSB Handbook

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STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO
AUTHORISED PERSONS 2012

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions of Contract for the Supply of Services by Barristers to Authorised Persons (as defined below) (“the Conditions”):

1.1.1 reference to a clause is to the relevant clause of these Conditions;

1.1.2 headings are included for convenience only and do not affect the interpretation of these Conditions;

1.1.3 references to “parties” or a “party” are references to the parties or a party to the Agreement;

1.1.4 references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;

1.1.5 references to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;

1.1.6 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.1.7 references to any provision of the Code include references to that provision as amended replaced or renumbered from time to time; and

1.1.8 references to a person or body include references to its successor.

1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

“the Agreement”

the agreement between the Barrister and the Authorised Person for the Barrister to provide the Services on the terms set out in these Conditions;

“the Authorised Person”

the person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees;

“the Barrister”

the barrister, practising as a member of the Bar of England & Wales, who is willing and able in that capacity to provide the Services in connection with the Case and in accordance with the Instructions from the Authorised Person on behalf of the Lay Client;

“the Case”

the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

“the Code”

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the Code of Conduct in the BSB Handbook, as amended from time to time;

“Conditional Fee Agreement”

the meaning ascribed to those words by section 58 of the Courts and Legal Services Act 1990;

“the Instructions”

the briefs, instructions and requests for work to be done (and all accompanying materials) given by the Authorised Person to the Barrister in whatever manner to enable him to supply the Services, and “Instruct” and “Instructing” shall have corresponding meanings;

“Invoice”

includes a fee note not amounting to a VAT invoice

“the Law Society”

the Law Society of England and Wales

“the Lay Client”

the person for whose benefit or on behalf of whom the Barrister is Instructed by the Authorised Person to provide the Services (who may be the Authorised Person where the Case concerns the affairs of the Authorised Person)

“the Services”

the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Authorised Person;

“the SRA”

the Solicitors Regulation Authority; and

“the SRA Code”

the part of the SRA Handbook published by the SRA on 16 September 2011 referred to as the “SRA Code of Conduct 2011” as amended from time to time.

2. APPLICATION OF THESE CONDITIONS

- 2.1 The Barrister provides the Services requested by the Authorised Person on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2) may be varied if, but only if, expressly agreed by the Parties in writing (including by exchange of emails).
- 2.3 By instructing the Barrister to provide further Services in relation to the Case, the Authorised Person accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.4 These Conditions do not apply in the following circumstances:
 - 2.4.1 the Barrister is paid directly (a) by the Legal Services Commission, through the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service; or

- 2.4.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions. **Part 1 - Public**
- 2.5 Nothing in these Conditions nor any variation referred to in clause 2.2 shall operate so as to conflict with the Barrister's duty under the Code or with the Authorised Person's duty under the SRA Code.

3. THE INSTRUCTIONS TO THE BARRISTER

- 3.1 The Authorised Person must ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Authorised Person must respond promptly to any requests for further information or instructions made by the Barrister.
- 3.3 The Authorised Person must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.
- 3.4 Where the Authorised Person requires the Barrister to perform all or any part of the Services urgently the Authorised Person must ensure that:
- 3.4.1 all relevant Instructions are clearly marked "Urgent"; and
- 3.4.2 at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.5 The Authorised Person must inform the Barrister within a reasonable time if the Case is settled or otherwise concluded.

4. RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS

- 4.1 Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Authorised Person whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.
- 4.3 Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Authorised Person will provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007.
- 4.4 In the event that the Barrister reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability
- 4.5 Subject to the preceding provisions of this Clause 4, the Agreement comes into effect upon the Barrister accepting the Instructions.

5. CONFIDENTIAL INFORMATION AND PUBLICITY

- 5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:
- 5.1.1 he is authorised by the Authorised Person or the Lay Client to disclose it;
- 5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or
- 5.1.3 he is required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Authorised Person and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.
- 5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 5.3 Unless the Authorised Person expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with clause 5.1.
- 5.4 Subject to his obligation under clause 5.1, the Barrister may make and retain copies of the Instructions and any written material produced by him.
- 5.5 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Authorised Person and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and (where the law so requires) with the Lay Client's consent.

6. ELECTRONIC COMMUNICATION

- 6.1 Unless otherwise directed by the Authorised Person, the Barrister may correspond by means of electronic mail, the parties agreeing hereby:
- 6.1.1 to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access; and
- 6.1.2 to use commercially reasonable procedures to maintain security of electronic mail and to check for commonly known viruses in information sent and received electronically.

7. DATA PROTECTION

- 7.1 The Barrister is a data controller for the purposes of the Data Protection Act and is bound by the Act amongst other things, to take appropriate technical and organisational measures

against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Authorised Person and others to enable him to provide the Services, to liaise with the Authorised Person in respect of the Lay Client's case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise his activities as set out in clause 5.5 above, to comply with regulatory requirements and as permitted or required by law. The Lay Client and the Authorised Person each have a right of access and a right of correction in respect of their personal data which the Barrister holds about them, in accordance with data protection legislation.

Part 1 - Public

8. PROVIDING THE SERVICES

- 8.1 The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.
- 8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraphs CD7, rC18, rC21 and rC87 of the Code of Conduct in the BSB Handbook.
- 8.3 The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.
- 8.4 The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including all documents, reports, written advice or other materials provided by the Barrister to the Authorised Person or the Lay Client belong to and remain with the Barrister. The Authorised Person and the Lay Client have the right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared. If the Authorised Person or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of his work product are asserted.

10. LIABILITY

- 10.1 Subject to Clause 10.2 below, the Barrister is not liable:
- 10.1.1 For any loss or damage, however suffered, by any person other than the Lay Client;

- 10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;
- 10.1.3 for any indirect or consequential loss however suffered.
- 10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.

11. FEES

- 11.1 The fee for the Services shall in all cases comply with paragraph rC9.7 of the Code and will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Authorised Person, whether prospectively or retrospectively.
- 11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:
 - 11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister, and in addition may be reviewed by the Barrister to reflect any reasonably significant changes in his status or seniority;
 - 11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Authorised Person, and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Authorised Person, subject to the Barrister's obligations under paragraphs rC25-rC27, and related guidance, of the Code.
- 11.3 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.
- 11.4 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

12. BILLING, PAYMENT AND INTEREST

- 12.1 The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof.
- 12.2 The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than 3 months from the earliest of: (a) a request by the Authorised Person; (b) notification by the Authorised Person that the Case has settled or otherwise concluded; or (c) termination of the Agreement.
- 12.3 The Invoice must set out an itemised description of:
 - 12.3.1 the Services provided by the Barrister and the fees charged;
 - 12.3.2 any disbursements incurred and the cost thereof; and
 - 12.3.3 VAT (or any tax of a similar nature), if any.

- 12.4 The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client. The Invoice must be paid without any set-off (whether by reason of a complaint made or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges.
- 12.5 Where the Barrister has delivered a fee note, on request by the Authorised Person the Barrister will deliver a VAT invoice following receipt of payment.
- 12.6 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
- 12.6.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
 - 12.6.2 to sue the Authorised Person for payment; and
 - 12.6.3 subject to the Barrister's obligations to the Court and under paragraphs rC25-rC27 of the Code, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

13. TERMINATION

- 13.1 The Authorised Person may terminate the Agreement by giving notice to the Barrister in writing at any time.
- 13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to paragraphs rC21-rC30 and related guidance of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirements of the Code in so doing.
- 13.3 The Barrister may terminate the Agreement by written notice when he is entitled pursuant to paragraphs rC25-rC27 of the Code or otherwise to withdraw from the Case or cease to act and has complied with any requirements of the Code in so doing.
- 13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause 13 or otherwise, does not affect or prejudice any accrued liabilities, rights or remedies of the parties under the Agreement.

14. WAIVER

- 14.1 Except where expressly stated, nothing done or not done by the Barrister or the Authorised Person constitutes a waiver of that party's rights under the Agreement.

15. SEVERABILITY

- 15.1 If any provision of these Conditions is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.

- 15.2 If any provision of these Conditions is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.

16. EXCLUSION OF RIGHTS OF THIRD PARTIES

- 16.1 This Agreement governs the rights and obligations of the Barrister and the Authorised Person towards each other and confers no benefit upon any third party (including the Lay Client). The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

17. ENTIRE AGREEMENT

- 17.1 Subject to clauses 2.2 and 11.1, the Agreement, incorporating these Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

18. NOTICES AND DELIVERY

- 18.1 Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including fax and email) and shall in the case of a notice to be given to the Barrister be given to him at his last known Chambers' address, fax number or email address and shall in the case of a notice to be given to the Authorised Person be given to him at his last known place of business, fax number or email address.
- 18.2 Notices and other written communications under this Agreement shall be deemed to have been received:-
- 18.2.1 In the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;
- 18.2.2 In the case of documents despatched by second class post, on the fourth working day next following the day of posting;
- 18.2.3 In the case of documents in electronic form, on the working day next following the date of despatch.

19. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 19.1 The Agreement and these Conditions shall be governed by and construed in accordance with the law of England and Wales.

- 19.2 Unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute which arises out of or under this Agreement.[†]
- 19.3 Without prejudice to Clause 19.2, the parties may agree to alternative methods of dispute resolution, including submission of any dispute regarding fees to the Voluntary Joint Tribunal on Barristers' Fees where the Authorised Person is a solicitor.[†]

[†] The parties are reminded that if a judgment or a Voluntary Joint Tribunal's award is not fully paid within 30 days, the Barrister may request the Chairman of the General Council of the Bar to include the solicitor on the List of Defaulting Solicitors.

**RULES RELATING TO THE LIST OF DEFAULTING SOLICITORS AND OTHER
AUTHORISED PERSONS 2012**

as approved by the General Council of the Bar on 20 October 2012 and amended by the General Council of the Bar on 2 March 2013

1. These Rules are intended to be read alongside and to be supplemental to:
 - (1) Any rules or standing orders for the time being in force concerning the Joint Tribunal procedure for fee disputes
 - (2) Instructions accepted under the Terms of Work 1988 where paragraph 2 of these Rules applies; and
 - (3) The Scheme for Complaining to the Bar Council for Publicly Funded Matters
2. Where paragraph 15 of the Terms of Work 1988 applies in respect of instructions accepted before 31 January 2013, the reference in that paragraph to Letter "A" and Letter "B" shall be taken to be a reference to the documents marked Letter "A" and Letter "B" contained in Schedule C to these Rules but without prejudice to the validity of any such letters sent before 31 January 2013.
3. In the event that an Authorised Person fails to pay any fees due to a Barrister in respect of legal services determined by a judgment of a court or an arbitration award (which for this purpose includes an award of the Joint Tribunal) to be due and owing to a Barrister within 14 days of the said judgment or award, then the Barrister shall be entitled to report the matter to the Chairman of the General Council of the Bar pursuant to these Rules. For the avoidance of doubt this is without prejudice to the Barrister's rights to enforce the sums determined by the said judgment or award to be due and owing but remaining unpaid by action at law or otherwise.
4. Where a Barrister has made a report to the Chairman in accordance with:
 - (1) Paragraph 3 of these Rules; or
 - (2) Paragraph 15(3) of the Terms of Work 1988 as modified by paragraph 2 of these Rules above; or
 - (3) The Scheme for Complaining to the Bar Council for Publicly Funded matters,then the Chairman may write to the Authorised Person a letter substantially in the form of Standard Letter 1 contained in Schedule A hereto.
5. Paragraph 6 of these Rules applies where Standard Letter 1 has been sent and either:-
 - (1) Any fees referred to in Standard Letter 1 remain unpaid for more than 14 days after Standard Letter 1 was sent and, in the case of publicly funded matters, there has been no satisfactory explanation provided for the non-payment; or
 - (2) In the event that all such fees have been paid, not more than twelve months have elapsed since payment and circumstances have arisen in which the Chairman would otherwise have occasion to send to the Authorised Person or to any Connected Person a further Standard Letter 1.

6. Where this paragraph applies, the Chairman shall write a letter to the Authorised Person in substantially the form of Standard Letter 2 contained in Schedule B hereto to the effect that, whether or not any fees remain unpaid, he will:-
 - (1) Include the name of the Authorised Person on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons indicating that they are defaulters, who have in the past failed to pay barristers' fees in accordance with contractual terms on which the barrister was engaged or with the Terms of Work 1988, or that they have been subject to a successful complaint to the Bar Council under the Scheme for Complaining to the Bar Council.
 - (2) Circulate the Bar Council's List of Defaulting Solicitors and Other Authorised Persons including the name of the Authorised Person to all barristers suggesting that it would be unwise for any barrister to accept instructions from the Authorised Person or from Connected Persons unless they are paid directly by the Legal Services Commission or such Instructions are accompanied by payment of an agreed fee for the services or unless he agrees in advance to accept no fee for the services.
 - (3) Circulate the Bar Council's List of Defaulting Solicitors and Other Authorised Persons including the Authorised Person's name to the Master of the Rolls, the President of the Law Society and the Solicitors Regulation Authority.
7. If the Chairman is satisfied in any other case that it is appropriate to proceed as provided in paragraph 6 of these Rules, he may do so after giving the Authorised Person (and, if appropriate, any Connected Persons) due notice of why he considers it appropriate to take such course, and after considering any written representations from the Authorised Person, and after consultation with the Law Society.
8. Upon including the Notified Solicitor on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, the Chairman shall report the fact to the Solicitors' Regulation Authority and shall request the Solicitors' Regulation Authority to commence proceedings before the Solicitors' Disciplinary Tribunal (or any equivalent tribunal for any non-solicitor Authorised Person) against the Notified Authorised Person.
9. The Bar Council's List of Defaulting Solicitors and Other Authorised Persons shall be circulated at least 3 times each year to the persons mentioned in paragraphs 6(2) and (3) of these Rules.
10. Any Notified Authorised Person may at any time after the expiration of six months after his name was first included in the Bar Council's List of Defaulting Solicitors and Other Authorised Persons apply to the Chairman for the removal of their name from that list. The Chairman may, after considering any written representations and after consultation with the Law Society, remove the name of any Notified Authorised Person from the Bar Council's List of Defaulting Solicitors and Other Authorised Persons unconditionally or upon such terms as he considers appropriate.
11. The Bar Council's List of Defaulting Solicitors and Other Authorised Persons may include, in addition to the name of the Notified Solicitor, the Instructing Solicitor, any other person liable for the fees shown in the Fee Note, and any Connected Person.

Transitional Arrangements:

12. On the date on which the Bar Council's List of Defaulting Solicitors and Other Authorised Persons comes into force, namely 31 January 2013 the names of all the Firms, Solicitors and other persons on the Withdrawal of Credit Scheme 1988 immediately before that date shall be immediately and automatically included on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons. In such cases, paragraph 10 of these Rules will apply as if those Firms, Solicitors and other persons were first included on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons on the date they were included on the Withdrawal of Credit Scheme 1988

Definitions:

13. The following definitions shall apply to these rules in addition to the definitions contained in the 2012 Terms:-

"Authorised Person": a person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees (a) of which the barrister's Instructing Solicitor is a director, partner, member, employee, consultant, associate or agent and (b) on whose behalf, and in such capacity, the Instructing Solicitor instructs the barrister.

"Bar Council's List of Defaulting Solicitors and Other Authorised Persons": the list of Authorised Persons, Firms and persons referred to in these Rules. For the avoidance of doubt, this shall include Authorised Persons who are not solicitors.

"Chairman" shall mean the Chairman of the General Council of the Bar and shall include any person to whom the Chairman may have delegated either the whole or any part of his responsibilities under these Rules.

"Connected Person": shall mean any Authorised Person or Firm or person who from time to time is either a partner, director, associate, member, or employee of, a consultant to, or a person employing, a Notified Solicitor, save that it shall not include an employee of a Notified Solicitor who was not himself the Instructing Solicitor.

"Firm": a company, partnership, firm, limited liability partnership, association, public authority, professional body, sole practitioner or other person or body (a) of which the barrister's Instructing Solicitor is a director, partner, member, employee, consultant, associate or agent and (b) on whose behalf, and in such capacity, the Instructing Solicitor instructs the barrister.

"Instructing Solicitor": the person who is responsible for instructing the barrister in his capacity as director, partner, member, employee, consultant, associate or agent of the Authorised Person or Firm as the case may be. For the avoidance of doubt, the term "Instructing Solicitor" may include any person, whether employed by an Authorised Person or Firm or not, and whether himself qualified as a solicitor or otherwise as an Authorised Person or not, but who instructs or purports to instruct a barrister either on behalf of a solicitor or any other authorised person for the purposes of s.18(1)(a) of the Legal Services Act 2007;

“Notified Authorised Person”: any Authorised Person or Firm whose name is for the time being included in the Bar Council’s List of Defaulting Solicitors and other Authorised Persons, or any Authorised Person or Firm or person who has, since the said inclusion thereof, been a Connected Person.

“Standard Letter 1”: the pro-forma letter whose text is contained in Schedule A hereto.

“Standard Letter 2”: the pro-forma letter whose text is contained in Schedule B hereto.

“Terms of Work 1988”: the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 (formerly Annexe G1 to the Code of Conduct).

Schedule A: Standard Letter 1

First Chairman's Letter - Privately Funded Cases

To be sent to the Senior Partner, General Manager or equivalent of the Authorised Person:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors and other Authorised Persons: The Rules Relating to the List of Defaulting Solicitors and other Authorised Persons ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by [the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 ("the 2012 Terms")] **or** [contractual terms to which the Rules apply] (the "Agreement"). Copies of the Agreement and of the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that these fees were referred, with your agreement, to a Joint Tribunal. Copies of the Joint Tribunal standing orders and the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988"). The Rules also apply to this case. Copies of the Terms of Work 1988 and the Rules are attached to this letter.

Copies of the relevant invoices or fee notes are attached.

{On [**insert date**] [judgment was entered against you in the Court, case number in the sum of £..... in relation to those fees] **or** [the Joint Tribunal determined that the sum of £..... was due and owing in relation to those fees]. To date [this sum] **or** [£..... of this sum] remains unpaid, with interest accruing thereon daily.} As a result the matter has been referred to the Bar Council under the Rules **or** [paragraph 15.3 of the Terms of Work 1988, as modified by paragraph 4 of the Rules] **or** [paragraph 3 of the Rules].

I would ask you to pay these fees at once and in any event within 14 (fourteen) days of the date of this letter. You will appreciate from paragraphs 5 and 6 of the Rules relating to the List of Defaulting Solicitors and Other Authorised Persons that, unless you pay the fees within 14 days of the date of this letter, or if in any event the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 5(2) of the Rules, then the consequences spelt out in paragraph 6 of the Rules will follow. In other words, the name of your firm will be included on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons.

12.10.20 List of Defaulting Solicitors scheme amended

Furthermore, the Chairman will report the facts to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm before the Solicitors' Disciplinary Tribunal (or any equivalent tribunal for any non-solicitor Authorised Person).

I hope that it will not prove necessary to include your firm's name on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, and that you will pay the fees of barristers instructed by your firm promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay barristers' fees in accordance with your obligations.

Yours faithfully,

First Chairman's Letter - Publicly Funded Cases

To be sent to the Senior Partner, General Manager or equivalent of the Authorised Person:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors and other Authorised Persons: The Rules Relating to the List of Defaulting Solicitors and other Authorised Persons ("the Rules")

I refer to Counsel's fees, particulars of which are set out in the Schedule to this letter. Copies of the relevant fee notes are attached.* Letters have been written regarding payment of these fees. Payment has not been received and no satisfactory explanation has been provided for the non-payment. As a result, the matter has been referred to the General Council of the Bar in accordance with the scheme for complaining to the Bar Council for Publicly funded matters ("the Scheme for Complaining") **OR** [paragraph 15.3 of the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988") as modified by paragraph 2 of the Rules.

Since this complaint relates to a publicly funded matter, I would be grateful if you would supply me with the following information within 14 days of the date of this letter:-

- (a) the date of issue and number of any relevant publicly funded certificates, together with a copy of such certificates;
- (b) the date of any order for assessment of costs under the relevant certificate(s) or other event giving rise to a right to such assessment; and
- (c) what steps you have taken under the relevant regulations for the purpose of obtaining payment of Counsel's fees.

I am also enclosing for your attention a copy of the Rules and [the Scheme for Complaining] **OR** [the Terms of Work 1988]. You will appreciate from reading them that their effect is such that if (1) no satisfactory explanation for non-payment of the fees referred to in the Schedule to this letter has been provided and (2) the Chairman has occasion to write again in respect of other outstanding fees within the period referred to in paragraph 5(2) of the Rules, then the consequences spelt out in paragraph 6(1) of the Rules will follow. In other words, the name of your firm will be included on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons. Furthermore, the Chairman will report the facts to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm before the Solicitors' Disciplinary Tribunal (or any equivalent tribunal for any non-solicitor Authorised Person).

I hope that it will not prove necessary to include your firm's name on the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, and that you will pay the fees of barristers instructed by your firm promptly when due. I am, however, concerned that you should be fully informed in advance of the problems which would arise should you fail to pay barristers' fees in accordance with your obligations.

Yours faithfully,

* The fees referred to in this letter must be unpaid more than 14 days after delivery of Letter “B”, as set out at the Schedule C to these Rules or the Scheme for Complaining to the Bar Council as the case may be, and the Authorised Person must not have provided a satisfactory explanation for the non-payment.

Schedule B: Standard Letter 2

Second Chairman's Letter - Privately Funded Cases

To be sent to the Senior Partner, General Manager or equivalent of the Authorised Person:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors and other Authorised Persons: The Rules Relating to the List of Defaulting Solicitors and Other Authorised Persons ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by [the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012] or [contractual terms to which the Rules apply] (the "Agreement"). Copies of the Agreement and of the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that these fees were referred, with your agreement, to a Joint Tribunal. Copies of the Joint Tribunal standing orders and the Rules are attached to this letter.

OR

I refer to the barrister's fees particulars of which are set out in the schedule to this letter. You will be aware that your agreement with the barrister is governed by the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988 ("the Terms of Work 1988"). The Rules Relating to the List of Defaulting Solicitors and other Authorised Persons 2012 also apply to this case. Copies of the Terms of Work 1988 and the Rules are attached to this letter.

Copies of the relevant invoices or Fee Notes are attached.

{On [**insert date**] [judgment was entered against you in case number in the sum of £..... in relation to those fees] **or** [the Joint Tribunal determined that the sum of £..... was due and owing in relation to those fees]. To date [this sum] **or**[£..... of this sum] remains unpaid, with interest accruing thereon daily.} As a result the matter has [**again**] been referred to the Bar Council under the Rules **or** [paragraph 15.3 of the Terms of Work 1988, as modified by paragraph 2 of the Rules] **or** [paragraph 3 of the Rules].

This is the [second] occasion on which it has been necessary to write to you concerning outstanding fees.

I would ask you to pay these fees at once and in any event within 14 (fourteen) days of the date of this letter.

[The schedule to this letter also sets out particulars of previous barristers' fees which have been reported to the Bar Council as being [unpaid by your firm, or its associates, consultants, employers, or employees (as the case may be)] **AND/OR** [on your firm's instructions and publicly funded but unpaid without a satisfactory explanation for the non-payment].] You will appreciate from reading rules 5 and 6 of the Rules that, since it is now necessary to write to you [again in respect of the outstanding fees referred to in the schedule to this letter] **or** [within the period referred to in paragraph 5(2) of the Rules], this [new] complaint, if properly made, will have the consequences spelt out in paragraph 6(1) of the Rules. This means that the Chairman will include the name of your firm in the Bar Council's List of Defaulting Solicitors and Other Authorised Persons, unless (exceptionally) he is persuaded by any representations you may make not to do so.

The consequence of your firm's inclusion in the Bar Council's List of Defaulting Solicitors and other Authorised Persons will be that all barristers will be told that it would be unwise for any barrister to accept instructions from your firm or from Connected Persons unless they are paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work.

Furthermore the Chairman will report the fact to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm, its partners, associates, consultants, employers, or employees (as the case may be) before the Solicitors' Disciplinary Tribunal (or any equivalent tribunal for any non-solicitor Authorised Person).

Any representations which your firm may wish to make must be made in writing within the next 14 (fourteen) days. You will be informed of the Chairman's decision in any event and before circulation of any list containing your firm's name.

Yours faithfully

Second Chairman's Letter - Publicly Funded Cases

To be sent to the Senior Partner, General Manager or equivalent of the Authorised Person:

Dear Sir or Madam,

Bar Council's List of Defaulting Solicitors and other Authorised Persons: The Rules Relating to the List of Defaulting Solicitors and other Authorised Persons ("the Rules")

I refer to the barrister's fees particulars of which are set out in the schedule to this letter.

Copies of the relevant Fee Notes are attached. Letters have been written regarding payment of these fees. Payment has not been received and no satisfactory explanation for the non-payment has been provided. As a result the matter has [**again**] been referred to the Bar Council.

You will be aware that this matter is governed by [the Scheme for Complaining to the Bar Council for Publicly Funded Matters and the Rules relating to the List of Defaulting Solicitors and other Authorised Persons] **OR** [the Terms of Work on which Barristers offer their services to Solicitors and the Withdrawal of Credit Scheme 1988, as modified by paragraph 2 of the Rules, together with the Rules themselves].

[Since this complaint relates to a publicly funded matter, I would be grateful if you would supply me with the following information within 14 days of the date of this letter:-

- (a) the date of issue and number of any relevant publicly funded certificates, together with a copy of such certificates;
- (b) the date of any order for assessment of costs under the relevant certificate(s) or other event giving rise to a right to such assessment; and
- (c) what steps you have taken under the relevant regulations for the purpose of obtaining payment of Counsel's fees.]*

This is the [second] occasion on which it has been necessary to write to you concerning outstanding fees.

[The schedule to this letter also sets out particulars of previous barristers' fees which have been reported to the Bar Council as being [unpaid by your firm, or its associates, consultants, employers, or employees (as the case may be)] **AND/OR** [on your firm's instructions and publicly funded but unpaid without a satisfactory explanation for the non-payment].] You will appreciate from reading clauses 5 and 6 of the Rules that, since it is now necessary to write to you [again in respect of the outstanding fees referred to in the schedule to this letter] **or** [within the period referred to in paragraph 5(2) of the Rules], this [new] complaint, if properly made, will have the consequences spelt out in paragraph 6(1) of the Rules. This means that the Chairman will include the name of your firm in the Bar Council's List of Defaulting Solicitors and other Authorised Persons, unless (exceptionally) he is persuaded by any representations you may make not to do so.

The consequence of your firm's inclusion in the Bar Council's List of Defaulting Solicitors and other Authorised Persons will be that all barristers will be told that it would be unwise for any barrister

12.10.20 List of Defaulting Solicitors scheme amended

to accept instructions from your firm or from Connected Persons unless they are paid directly by the Legal Services Commission or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work.

Furthermore the Chairman will report the fact to the Solicitors Regulation Authority with a request that it should commence proceedings against your firm, its partners, associates, consultants, employers, or employees (as the case may be) before the Solicitors' Disciplinary Tribunal.

Any representations which your firm may wish to make must be made in writing within the next 14 (fourteen) days. You will be informed of the Chairman's decision in any event and before circulation of any list containing your firm's name.

Yours faithfully

* Delete this section if this is a further complaint about non-payment of fees after Standard Letter 1 has been sent in respect of the same matter.

Schedule C: Letter "A"

LETTER "A" - Privately Funded Cases

Dear Sir,

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a privately funded case in which your relationship with [Name of Barrister] is governed by the Terms of Work on which Barristers offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988 (as amended; "the Terms"). The Bar Council's Rules relating to the List of Defaulting Solicitors and other Authorised Persons, pursuant to rule 2 thereof, will now apply to this case.

Under paragraph 13(1) of the Terms, the fees were due and payable within 1 month of the fee note.

I would be grateful if you could make arrangements for these fees to be paid or let me know when payment may be expected.

[Please note that under paragraph 13(2) of the Terms, any such fees remaining outstanding one month after the date of this letter will carry interest at 2% above the Bank of England base rate from time to time from one month after the date of this letter until payment.]*

Yours faithfully,

Clerk to [name of barrister]

*Words substantially in the form of those shown in square brackets must be included if (but only if) it is wished to charge interest on the fees which are the subject of this letter A.

LETTER "A" - Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I refer to the fee note of [name of barrister] in respect of the above case which was sent to you on [date].

My records indicate that this is a publicly funded case and I would be grateful if you could let me know when payment may be expected.

Yours faithfully,

Clerk to [name of barrister]

LETTER "B" (To be sent not earlier than 3 months after fee note or invoice) - Privately funded cases

Dear Sir,

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been made and no explanation for the non-payment has been forthcoming.

As you know the Bar Council's Rules relating to the List of Defaulting Solicitors and other Authorised Persons ("the Rules") now apply to this case. Unless, therefore, I hear from you within the next 14 days with a satisfactory explanation for the non-payment, I regret that Counsel will make a report to the Chairman of the Bar Council, which will be a report for the purposes of rule 4 of the Rules .

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

LETTER "B" (To be sent not earlier than 3 months after fee note or invoice) - Publicly funded cases

Dear Sir,

[Relevant Public Funding Certificate Number]

[Date of issue]

Re: _____

I have referred to [name of barrister] the letter I wrote to you concerning the fees in this matter. To date payment has not been received.

My records indicate that this is a publicly funded case. I must therefore ask you to notify me of:

- (a) the date of issue and number of the relevant public funding certificate(s);
- (b) the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment; and
- (c) the steps you have taken under the relevant regulations for the purpose of obtaining payment of [name of barrister]'s fees.

Would you also supply me with copies of the relevant Public Funding Certificate(s).

As you know the Bar Council's Rules relating to the List of Defaulting Solicitors and other Authorised Persons ("the Rules") will now apply to this case. Unless, therefore, he receives in response to this letter the information requested above and a satisfactory explanation for the fact that he has not yet been paid within the next 14 days I regret that Counsel will make a report to the Chairman of the Bar Council, which will be a report for the purposes of rule 4 of the Rules.

I sincerely trust that this will not be necessary and look forward to hearing from you in early course.

Yours faithfully,

Clerk to [name of barrister]

Regulatory objectives (List of Defaulting Solicitors)

Part 1 – Public

List of Defaulting Solicitors – Consideration of the Regulatory Objectives

	STATUS QUO	REMOVING THE LIST OF DEFAULTING SOLICITORS
Protecting and promoting the public interest	<ul style="list-style-type: none"> • It is in the public interest that barristers are paid for their work and so continue to operate in the profession. Debate to be had about whether the list actually meets the policy objectives. In any case, rC30.9.b allows barristers to refuse to act if, having requested payment in advance, that payment is not made. • An exception to the cab rank rule which enables barristers to refuse instructions altogether where they believe the solicitor is a credit risk, may be unfair on the lay client, and unnecessary for barristers, if the lay client is willing and able to pay fees in advance. Removing the reference to the list and broadening the exception may allow barristers to reject instructions on the basis of unacceptable credit risk of the solicitor, even where a lay client would be willing to pay in advance. 	<ul style="list-style-type: none"> • It is in the public interest that barristers are paid for their work and so continue to operate in the profession. The current list of defaulting solicitors is an incomplete guide to credit risk. • May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk. Guidance will be key – if too vague, may undermine the CRR. • The concept of “unacceptable” credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words “reasonable” and “unacceptable” carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice. • Public interest in ensuring proper separation between regulatory and representative functions.
Supporting the constitutional principles of the rule of law	<ul style="list-style-type: none"> • Retaining the rule in its current form provides certainty if it is justified in terms of the regulatory objectives. 	<ul style="list-style-type: none"> • Guidance would seek to ensure clarity in the event that the rule changed.

Regulatory objectives (List of Defaulting Solicitors)

Part 1 – Public

	STATUS QUO	REMOVING THE LIST OF DEFAULTING SOLICITORS
Improving access to justice	<ul style="list-style-type: none"> Limiting the situations where a barrister can refuse instructions under the cab rank rule ensures that more clients are able to obtain the services of a barrister. 	<ul style="list-style-type: none"> May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk if the rule and guidance are drafted too loosely. A barrister could inappropriately determine that a solicitor was an unacceptable credit risk and refuse work from them, which could affect the lay client's ability to access the services of a barrister.
Protecting and promoting the interests of consumers	<ul style="list-style-type: none"> Retaining reference to the list makes it clear on what basis a barrister could refuse instructions from a consumer's solicitor. A consumer could be sure that if their solicitor was not on the list, their instructions would be accepted assuming no other exemptions apply. An exception to the cab rank rule which enables barristers to refuse instructions altogether where they believe the solicitor is a credit risk, may be unfair on the lay client, and unnecessary for barristers, if the lay client is willing and able to pay fees in advance. Removing the reference to the list and broadening the exception would allow barristers to reject instructions on the basis of unacceptable credit risk of the solicitor, even where a lay client would be willing to pay in advance. 	<ul style="list-style-type: none"> May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk if drafting of rule/guidance too broad. Introduces an element of uncertainty as to whether instructions will be accepted from a solicitor. The concept of "unacceptable" credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words "reasonable" and "unacceptable" carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice.

Regulatory objectives (List of Defaulting Solicitors)

Part 1 – Public

	STATUS QUO	REMOVING THE LIST OF DEFAULTING SOLICITORS
Promoting competition in the provision of the services	<ul style="list-style-type: none"> If processes not fair and transparent, there could be unfair reputational consequences for a solicitor that could harm their competitive position. 	<ul style="list-style-type: none"> A barrister could inappropriately determine that a solicitor was an unacceptable credit risk and refuse work from them, which could affect the solicitor's ability to compete in the market.
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> May have detrimental impact if list not fit for purpose and doesn't act as a suitable proxy for the policy objective of avoiding exposing the profession to unreasonable credit risks. 	<ul style="list-style-type: none"> Broadening the circumstances in which a barrister could reject work on the basis of credit risk could give barristers more certainty that they will be paid for the work that they undertake. Surety of payment allows greater access to the Bar for those that may otherwise not be able to withstand the financial pressure.
Increasing public understanding of the citizen's legal rights and duties	<ul style="list-style-type: none"> Transparency of having one single list 	<ul style="list-style-type: none"> The concept of "unacceptable" credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words "reasonable" and "unacceptable" carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice.
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> The status quo is well understood and difficult for barristers to evade. It ensures they are acting with integrity and upholding the intent of the rule (assuming the list achieves the intended policy objectives). 	<ul style="list-style-type: none"> May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk, if rules and guidance drafted too loosely.

Professional Conduct Committee / Professional Conduct Department Enforcement Annual Report 2014/15

Status:

1. For noting
2. Public

Executive Summary:

3. Attached is the Annual Report for the Professional Conduct Committee and Professional Conduct Department providing an overview of our enforcement work for the year 1 April 2014 to 31 March 2015.
4. The main statistical findings are as follows:
 - a. We received a similar number of external complaints (297) as in previous years, but opened 33% more internal complaints (144) compared with 2013/14. This contributed to an increase in the caseload of the department during 2014/15 and we ended the year with 39% more active complaints than we started the year with. However, there were some unusual factors within our caseload of internal complaints and we do not expect our caseload to increase further in the short-term.
 - b. We made 70 new referrals to disciplinary action in 2014/15 and imposed 12 administrative sanctions. These were the first administrative sanctions to be issued since the Handbook came into force in January 2014. We concluded 81 cases that had been referred to disciplinary action, with findings of professional misconduct made in 60 cases. Thirteen barristers were disbarred in 2014/15.
 - c. The increased caseload and a number of staff vacancies within our small casework team had an impact on our performance figures. Despite a strong start to the year, we failed to meet our KPI target, concluding or referring to disciplinary action 69% of complaints within service standards compared with a target of 80%. In contrast, the average time taken for Disciplinary Tribunal cases to conclude improved significantly compared with previous years.
 - d. Our survey results were broadly similar to previous years in terms of staff performance and timeliness/efficiency and, following the improvements we made last year, complainants remained similarly positive about the accessibility of our enforcement procedures. However, despite our ongoing work, the improvement we observed in complainants responses in 2013/14 on questions of openness and transparency were not maintained into 2014/15 – our survey results returning close to the level observed in 2012/13. As with previous years, we observed a strong correlation between the outcomes of complaints and the perceived openness and transparency of the system. We will continue to work on this area in 2015/16 to inform and manage the expectations of complainants when they bring potential issues of misconduct to us.

Recommendations

5. There are no specific recommendations but the Board is asked to note the conclusions set out at page 42 of the report and the action points set out at page 43 and below:

Action points

6. Based on the findings of this report, we intend to carry out the following actions during the course of the next twelve months. The focus of these action points is maturing in our approach to enforcement rather than significant change:
 - a. Implement improvements to the enforcement web pages to improve the accessibility of information and to ensure that we properly manage the expectations of complainants (providing the service standards for handling complaints and clarifying the role of the BSB) [by January/February 2016];
 - b. Improve our knowledge management systems, ensuring that the outcomes of cases and lessons learnt are fed back into all aspects of our work in the best possible way. The new Professional Support Lawyer role will support this action point [by March 2016 – depending on recruitment];
 - c. Review and strengthen our current quality assurance systems. Again, the new Professional Support Lawyer role will support this action point [by March 2016 – depending on recruitment];
 - d. Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (with the risk framework and risk index) is reflected in our enforcement work. We are currently working with the Supervision Team and other departments to ensure that we have a common understanding of risk and that our systems support each other. This work will continue throughout 2015/16 [ongoing];
 - e. Continue our KPI monitoring programme to ensure that we can deal with the over-running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcements processes [ongoing – performance indicators are monitored and analysed on a quarterly basis];
 - f. Review and reset the Disciplinary Tribunal service standards at the conclusion of the Disciplinary Tribunal Regulations review [by March 2016 dependent on consultation];
 - g. Review the current service standard for the Determination by Consent procedure and set a target for 2015/16 [by October 2015];
 - h. Contribute our survey results and experience to the wider BSB's consumer engagement project [ongoing - dependent on project timelines];

Background

7. The Professional Conduct Committee and Department produce an Annual Report to provide the Board and the public with a detailed view of our enforcement work. This includes trends in our caseload, the enforcement action we took and our performance throughout the year.

Comment

8. Not applicable.

Resource implications

9. There are no new resource implications associated with this report. Both the project to improve the enforcement section of the BSB website and the new Professional Support Lawyer role are planned for. All other action points will be addressed internally by the Professional Conduct Department.

Equality Impact Assessment

10. Not applicable

Risk implications

11. Not applicable

Impacts on other teams / departments or projects

12. Not applicable

Consultation

13. Not applicable

Regulatory objectives

14. Monitoring and reporting on our enforcement work assists with ensuring the regulatory objectives of protecting and promoting the public interest and the interests of consumers are met.

Publicity

15. The report will be published on the BSB's website.

Annexes

16. The full report is Annex 1 to this paper.

Lead responsibility:

Sara Jagger
Director of Professional Conduct

Simon Lofthouse QC
Chair of the Professional Conduct Committee



Enforcement

Annual Report 2014/15

Professional Conduct Committee
Professional Conduct Department

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Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers comply. Where there is evidence that the Handbook has been breached, the BSB will consider what action may be necessary by way of enforcement or otherwise. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This report provides an overview of our enforcement work for the year 1 April 2014 to 31 March 2015. In this report we focus on the key trends in the new complaints that we received or raised, the caseload that we worked on throughout the period and the outcomes of this work. We then go on to analyse our performance over the year in terms of the time we took to progress cases and also in areas such as the accessibility of our service, staff performance in handling complaints and the openness and transparency of our enforcement system.
- 1.3 In addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2014/15.
- 1.4 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy and expert legal services – in the autumn of 2014 and began accepting applications in January 2015. No complaints about entities or employees of entities were received or opened in 2014/15 and, therefore, the casework and performance sections of this report do not include statistics on entity complaints.

Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all the cases we open. This allows us to report on the types of complaints we receive, the outcomes of our investigations and disciplinary action, and performance information in relation to the progression of complaints.
- 1.6 To gain further insight into our handling of complaints, we also carry out a User Feedback Survey. Upon the conclusion of cases, all complainants and barristers are sent a questionnaire and asked to provide feedback on how we did and how we can do better. We sent out 467 questionnaires in 2014/15 covering cases concluded between January and December 2014 and received 169 responses.

Our approach to cases

- 1.7 We take an outcomes-focused, risk-based approach to our enforcement activities:
- 1.8 Part 2 of the BSB Handbook¹ sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as that “*the proper administration of justice is served*” (oC2). The outcomes are derived from the regulatory objectives defined in the Legal Services Act 2007. The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when concerns are raised about the conduct of a barrister.
- 1.9 Our Enforcement Strategy² sets out our approach to taking enforcement action, underpinned by the provisions of Part 5 of the Handbook. We take a risk-based approach to enforcement – focused on achieving the outcomes outlined in the Handbook. This enables us to concentrate our resources on those issues which present

¹ In January 2014, the 8th edition of the Bar’s Code of Conduct was replaced with the BSB Handbook

² Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page.

https://www.barstandardsboard.org.uk/media/1555518/140105_-_the_enforcement_strategy_-_handbook_-_final.pdf

the greatest risk to the regulatory objectives. When we first receive a complaint or information that may lead us to raise a complaint³, our first step is to assess whether there is any evidence of a breach of the Handbook and whether there is a risk to consumers of legal services or the wider public. This enables us to make a decision on whether or not to carry out a formal investigation.

- 1.10 Where we investigate a complaint, we will write to the barrister and any other people who we consider might provide information of relevance to the complaint, asking for comments and relevant documents. Once we have all the information we need we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook. Where there is, we will decide the appropriate action to take. This could include the imposition of an administrative sanction in the form of a written warning or a fine of up to £1,000⁴, or, for more serious matters amounting to professional misconduct, disciplinary action.
- 1.11 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure

(paragraph 2.48) or an independent Disciplinary Tribunal.

Enforcement structure

Professional Conduct Committee

- 1.12 The Professional Conduct Committee (PCC) has the delegated authority of the Bar Standards Board to take decisions on complaints. It has the power to refer complaints to disciplinary action, impose administrative sanctions and resolve complaints with the Determination by Consent procedure⁵. The PCC – split into two teams – meets every three weeks to make decisions on cases. Individual members of the Committee, both barrister and lay, also provide expert advice on complaints during the assessment and investigation of complaints.

Professional Conduct Department

- 1.13 The Professional Conduct Department (PCD) considers complaints under the authority of the Professional Conduct Committee. The staff of the PCD assess and investigate complaints and, where appropriate, take action against barristers who have breached the BSB Handbook. The

Our aims and objectives

Our main aims are to:

- Act in the public interest;
- Protect the public and other consumers of legal services;
- Maintain the high standards of the Bar;
- Promote confidence in the complaints and disciplinary process; and
- Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed.

Our objectives are to:

- Deal with complaints made against barristers promptly, thoroughly and fairly;
- Ensure appropriate action is taken against barristers who breach the BSB Handbook; and
- Be open, fair, transparent and accessible.

³ Under the Enforcement Regulations we can consider complaints made by persons other than the Bar Standards Board and also raise complaints on behalf of the Bar Standards Board.

⁴ From January 2014 when the Handbook came into force. Prior to this, administrative sanctions under paragraph 901.1 of the 8th edition of the Code of Conduct were fixed at £300.

⁵ The full powers of the Professional Conduct Committee are detailed in Part 5 of the BSB Handbook.

staff also take a lead on drafting policies, managing enforcement projects and the day-to-day work of supporting the PCC and keeping the enforcement system operating efficiently and fairly.

BSB representatives (prosecutors)

- 1.14 When we decide to refer a case to a Disciplinary Tribunal on charges of professional misconduct, it is the BSB's role to bring charges against the barrister before an independent panel convened by the Bar Tribunals and Adjudication Service (BTAS). We rely primarily on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 55 barristers, one of whom will be instructed immediately after a referral to disciplinary action is made and will remain with the case through to the Tribunal.

Casework

2.1 We opened a total of 441 new complaints in 2014/15. As Table 1 illustrates, this represents an 8% increase compared with the previous year. There was no significant difference in the number of complaints being made to the BSB (the “external complaints”); rather the difference was in the number of internal complaints opened on behalf of the BSB. Our overall caseload, having steadily decreased over the previous two years, increased from 223 complaints at the start of the year to 311 at the close of the year.

New external complaints

- 2.2 We receive complaints from clients of barristers (via the Legal Ombudsman⁶), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints, treating the person who made the complaint as the “complainant” and keeping them informed throughout the lifecycle of the case.
- 2.3 Since the Legal Ombudsman started operating in September 2010 we have consistently received around 300 complaints per year from external sources – and 2014/15 was no different as we received 297 complaints. Many of the trends we have

seen in recent years were also repeated in 2014/15:

- Civil litigants were the source of the highest number of individual complaints (25% of external cases) followed by family and criminal law litigants;
- Referrals from the Legal Ombudsman made up 14% [43] of external complaints;
- By far the most common allegations were of discreditable or dishonest conduct (44% of external complaints) and misleading the court (30% of external complaints);
- We immediately put on hold 9% of cases as the litigation underlying the complaint had not concluded;

Legal Ombudsman

- 2.4 In 2014/15 we opened 43 complaints following referrals by the Legal Ombudsman. While this was a similar figure to previous years, it should be noted that just three individual barristers accounted for 30 of the referrals made⁷. Given the small number of complaints that the BSB handles on an annual basis, situations like this where individual barristers are subject to multiple complaints can have a significant effect on the caseload and overall complaint figures.

Complaint Source	2010/11	2011/12	2012/13	2013/14	2014/15
External	295	308	316	300	297
Internal	171	320	175	108	144
Total	466	628	491	408	441

⁶ The Legal Ombudsman receives complaints from clients of barristers: its jurisdiction extends only to investigating issues relating to the service provided. Where the Legal Ombudsman identifies any potential conduct issues arising from service complaints then those matters are referred to the Bar Standards Board.

⁷ All three barristers were already the subjects of ongoing disciplinary proceedings prior to the 2014/15 referrals by the Legal Ombudsman.

2.5 In 2014/15, almost half of referrals from the Legal Ombudsman were for barristers failing to co-operate with the Ombudsman service – an increase compared to previous years purely as a result of the three barristers highlighted above.

Aspects of external complaints

2.6 As we have seen in recent years, the most common allegations in the external complaints received in 2014/15 were of discreditable or dishonest conduct (44%) and misleading the court (30%)⁸. Discreditable or dishonest conduct was something of a “catch-all” for general conduct issues as defined by paragraph 301 of the 8th edition Code of Conduct, covering a wide range of issues from conduct in the handling of cases to conduct outside of barristers’ professional lives. The BSB Handbook takes a different approach, instead referring to a barrister’s honesty, integrity and independence.

2.7 During 2014/15 we used the Handbook and the data we previously collected on discreditable conduct to set up a new list of aspects that will provide more useful information in line with the Handbook. We started using the new categories in early 2015/16. We will, therefore, be able to provide a more detailed view of the allegations made against barristers and provide the best possible information for identifying and monitoring risks to the regulatory objectives⁹. Of course, the fact that an allegation is made does not mean that the BSB Handbook has been breached and a finding of professional misconduct will be made. Where disciplinary findings are made, we already record those under the new rules and Core Duties of the BSB Handbook (paragraph 2.61).

2.8 Last year we reported a decrease in the number of new complaints with allegations of discrimination, following a significant increase in numbers in 2012/13. The figure decreased again in 2014/15 as we received

Table 2		External complaint statistics in 2014/15																	
Total complaints received	297	Referrals from the Legal Ombudsman	43																
Complaint categories		Complaint aspects <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Discreditable/dishonest conduct</td> <td>130</td> </tr> <tr> <td>Misleading the Court</td> <td>88</td> </tr> <tr> <td>Rudeness/misbehaviour in Court</td> <td>24</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>21</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>20</td> </tr> <tr> <td>Discrimination</td> <td>14</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Discreditable/dishonest conduct	130	Misleading the Court	88	Rudeness/misbehaviour in Court	24	Rudeness/misbehaviour out of Court	21	Failure to co-operate with LeO	20	Discrimination	14	...	
Aspect	Complaints																		
Discreditable/dishonest conduct	130																		
Misleading the Court	88																		
Rudeness/misbehaviour in Court	24																		
Rudeness/misbehaviour out of Court	21																		
Failure to co-operate with LeO	20																		
Discrimination	14																		
...																			

⁸ Only two charges pertaining to barristers “knowingly or recklessly misleading the court” were proved during 2014/15. This is in common with previous years: the majority of allegations of “misleading the court” are either unsubstantiated or arise from misunderstandings of the role of the barrister and the adversarial nature of court proceedings. Therefore, the high number of allegations of “misleading the court” is not considered to be indicative of a heightened risk to the public or the regulatory objectives.

⁹ As set out in Part 1 of the Legal Services Act 2007

fourteen complaints alleging discrimination over the whole year. We take these complaints very seriously and frequently obtain expert advice prior to making any decisions on discrimination complaints. However, in many cases the allegations are unsubstantiated or unclear meaning that we cannot consider taking enforcement action. To date we have closed 11 of the 14 cases without making a referral to disciplinary action.

Adjournments

- 2.9 Often we receive complaints about barristers where the parties to the complaint are involved in ongoing litigation and the involvement of the BSB at that stage could be disruptive to the resolution of those proceedings; or where there are other ongoing proceedings which may affect our consideration of a complaint. In these cases (typically 12-15% of external complaints) we contact the parties involved and put our consideration of the complaint on hold. We then regularly review these cases to ensure that it is appropriate that they remain on hold and the parties are kept updated.
- 2.10 Of the 297 new external complaints opened in 2014/15, we immediately put 40 (13%) on hold – 26 because of ongoing legal proceedings, 11 because of ongoing BSB complaints and three because of ongoing proceedings with other organisations. On average, cases put initially on hold remained on hold for 8 months.

New internal complaints

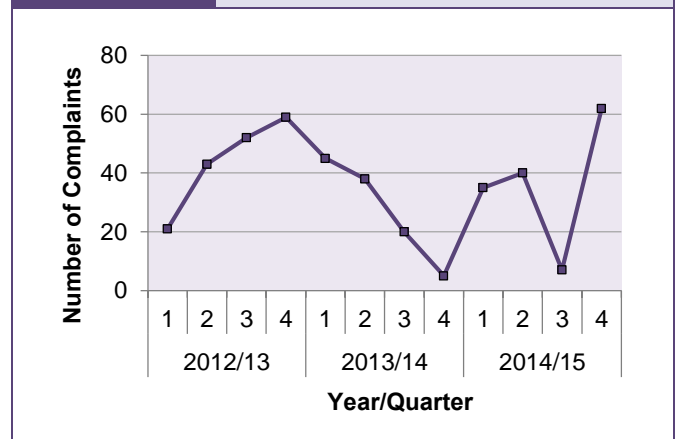
- 2.11 In using the term “internal complaints” we are referring to complaints raised where the BSB itself identifies a potential breach of the Handbook. Where the breach is brought to the attention of the PCD direct – via either a barrister’s reporting obligations under the Code or perhaps an external source such as a press report – a risk assessment is completed and a manager of the PCD or an Office Holder of the Professional Conduct

Committee may authorise the raising of a formal (internal) complaint for investigation. We also receive referrals from other sections of the BSB and the Bar Council such as barristers who have failed to comply with the Authorisation to Practise requirements for the profession.

- 2.12 In our Enforcement Annual Report 2013/14 we highlighted a significant decrease in the number of internal complaints we were opening – primarily due to changes to the BSB’s CPD regime and our new system of risk assessing cases prior to opening them as complaints. To some extent this trend was reversed in 2014/15. We assessed around 300 reports and pieces of information in 2014/15 and opened 144 internal complaints which were assessed to be medium or high risk or a priority area for the BSB – a 33% increase in complaint numbers compared with the previous year. However, as Figure 1 shows, the number of complaints raised each quarter varied considerably.

Figure 1

Internal complaints opened



- 2.13 Table 3 shows the nature of the new issues we investigated in 2014/15. Over 40% of the new internal complaints we opened were against barristers who either failed to renew their practising certificate or practised without a practising certificate – an increase in numbers from 43 in the previous year to 64 in 2014/15. Half of these complaints

related to new barristers who completed their pupillage and began practising but did not realise that they needed to apply for a new practising certificate (inadvertently practising while not authorised to do so). We do not normally see such complaints in any such significant numbers and steps have been taken within the BSB's Education and Training Department to ensure that barristers are well informed of their obligations once they complete pupillage. At the same time, the BSB's Supervision Department is placing greater emphasis in this area when carrying out supervision visits to chambers – checking that systems are in place within chambers to ensure that all relevant barristers are authorised to practise. As a result of this collaborative approach, we have been able to mitigate the risk of this level of non-compliance occurring again¹⁰.

- 2.14 While Table 3 shows that the numbers of complaints involving allegations of “failure to act appropriately towards pupils” and “Discreditable/dishonest conduct” increased,

these included linked complaints, all relating to a pupillage issue in a single Chambers, about 17 separate barristers – another instance where a single issue has a significant impact on our workload and enforcement statistics. We also began nine investigations against barristers with drink driving convictions and opened seven new cases against barristers failing to comply with the BSB's Supervision Department with regards to CPD. Under the old regime, CPD cases used to dominate the work of the PCD – with more than 50 complaints raised each year. The seven complaints in 2014/15 were the first CPD complaints to be raised since the new system of spot-checking and supervision was introduced. To date, administrative sanctions have been imposed in two CPD cases with one complaint still ongoing¹¹.

- 2.15 The increase in the number of internal complaints opened in 2014/15 can be attributed directly to the practising certificate issues and the 17 linked complaints highlighted above. Both were unusual

Table 3 Aspects opened for internal complaints – annual comparison 2013/14 to 2014/15

Aspect	2013/14	%	2014/15	%
Practising without a practising certificate	40	37%	49	34%
Dishonesty/discreditable conduct	15	14%	38	26%
Failure to act appropriately towards pupils	3	3%	17	12%
Failure to renew practising certificate	3	3%	15	10%
Criminal conviction(s) - drink driving	1	1%	9	6%
Criminal conviction(s) - other	11	10%	8	6%
Failure to comply with Supervision - CPD	0	0%	7	5%
Failure to comply with a sentence of a tribunal/panel	8	7%	6	4%
...				

¹⁰ A decision was taken in early 2015/16 to deal with the 2014/15 “pupillage” practising certificate complaints by way of issuing administrative warnings. Details will be published in our Interim and Annual Reports for 2015/16.

¹¹ The remaining four cases were dismissed following investigation: in three cases as there was insufficient evidence of a breach of the Handbook and the remaining case was assessed as low risk.

situations that are not expected to be repeated. So while Figure 1 shows that the numbers of internal complaints opened on a quarterly basis are still quite variable, if we exclude the unusual issues we saw in 2014/15, it is likely that we will be working on around 100 new internal complaints per year going forward.

Reports of serious misconduct

- 2.16 Under the BSB Handbook, barristers are required to report promptly to the BSB when they have committed serious misconduct (rC65.7) and when they believe that there has been serious misconduct by another barrister or a registered European lawyer (rc66).
- 2.17 In 2014/15 – the first full year that the requirements have been in place – we received 30 reports from barristers about themselves and a further 35 reports about other barristers. Of these, 26 were assessed as high or medium risk and converted to internal complaints. Issues reported included: practising without a practising certificate [12]; discreditable conduct [6]; and criminal convictions [3].
- 2.18 A further 14 reports¹² were assessed but not opened as complaints. These included reports of behaviour assessed to be low risk (such as a barrister accidentally sending a document to the wrong individual) and reports of behaviour that did not constitute a breach of the Handbook (such as a barrister failing to keep their record on an IT system up-to-date). Here there is evidence to suggest that we should expect that some reports will not constitute serious misconduct as defined by the Handbook (gC96). However, it is in the public interest that the BSB is made aware of potential instances of serious misconduct and we encourage barristers to continue making reports.

How do we assess risk?

Each case is rated High, Medium or Low risk based on a combination of two tests:

- *Firstly a series of questions covering common areas of risk or possible risk to consumers of legal services and the public (such as whether the information relates to dishonesty on the part of the barrister). The answers are used to calculate a risk level;*
- *Secondly a Case Officer of the PCD will assess the case in context and determine whether the risk level calculated from the answers to the questionnaire is appropriate.*

Interim Suspension

- 2.19 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence¹³ – the PCC will consider whether the barrister should be suspended from practice pending a Disciplinary Tribunal hearing. Where the PCC considers that such a course of action is justified for the protection of the public, the Committee will refer the matter to an Interim Panel convened by BTAS. The PCC (or the Chair on its behalf) may also, in exceptionally high risk situations, impose an immediate interim suspension which will remain in force until the matter can be considered by an Interim Panel.
- 2.20 Two new interim suspension procedures were initiated in 2014/15 in response to information provided to the PCD. An interim suspension hearing took place in one further case during the year. In all three cases the Interim Panels either suspended or placed conditions on the barristers' ability to

¹² 25 reports were still undergoing assessment at the close of 2014/15

¹³ The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

practise, in the interests of protecting the public.

- 2.21 In the majority of cases, barristers finding themselves facing potential Interim Suspension will voluntarily undertake not to practise or to place restrictions on their practice until disciplinary proceedings have concluded; meaning that the Interim Suspension procedure does not need to be invoked. The number of suspensions in 2014/15 was unusually high and we do not expect to be using the Interim Suspension procedure as often in 2015/16.

Fitness to Practise

- 2.22 In the context of barristers, Fitness to Practise refers only to whether a barrister's health impacts on their ability to practise. A barrister's fitness to practise is brought into question if it appears that they have an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister's ability to practice is impaired to such an extent that restrictions on practice are necessary to protect the public.
- 2.23 When the PCC receives information which raises genuine concerns as to a barrister's fitness to practise, the matter will be referred to a Fitness to Practise panel convened by BTAS. The panel – which will include a

medically qualified member – must consider all of the available evidence and act to protect the public.

- 2.24 Where a Fitness to Practise panel has decided that an individual is unfit to practise it may decide to place a restriction on the barrister or place a condition on the individual such as submitting to a regular medical examination.
- 2.25 We began three new Fitness to Practise proceedings in 2014/15, one of which concluded in the same year. Where proceedings were concluded, the Fitness to Practise panel confirmed that the barrister was fit to practise, allowing the barrister in question to continue practising without restriction or conditions. On the basis of an earlier medical report, the panel made clear that the BSB was right to have begun Fitness to Practise proceedings in this case.

Caseload

- 2.26 In our Enforcement Annual Report 2013/14 we highlighted a decrease in the caseload of the Professional Conduct Department over the previous two years. This trend was reversed in 2014/15. We started the year with 223 active complaints within the department and ended with 311 complaints, albeit 82 complaints were either on hold or

Case study

A litigant-in-person, involved in a property-dispute case, complained to the Professional Conduct Department that the barrister acting for the other side had not fully explained the addition of a costs provision to a requested consent order in an attempt to mislead both the complainant and the Court. The complainant also alleged that the judge made a comment expressing disapproval of the conduct of the barrister.

The BSB Handbook states that a barrister has a duty to the court and must not “knowingly or recklessly mislead or attempt to mislead the court”. Identifying a possible breach of the BSB Handbook, The Professional Conduct Department obtained a transcript of the case and sought advice from a barrister member of the Professional Conduct Committee (PCC).

The PCC member reviewed the transcript and found no evidence that the judge had passed comment on the behaviour of the barrister. He further concluded that the litigant-in-person had misunderstood the explanation of a complex legal concept. The complaint was closed without investigation.

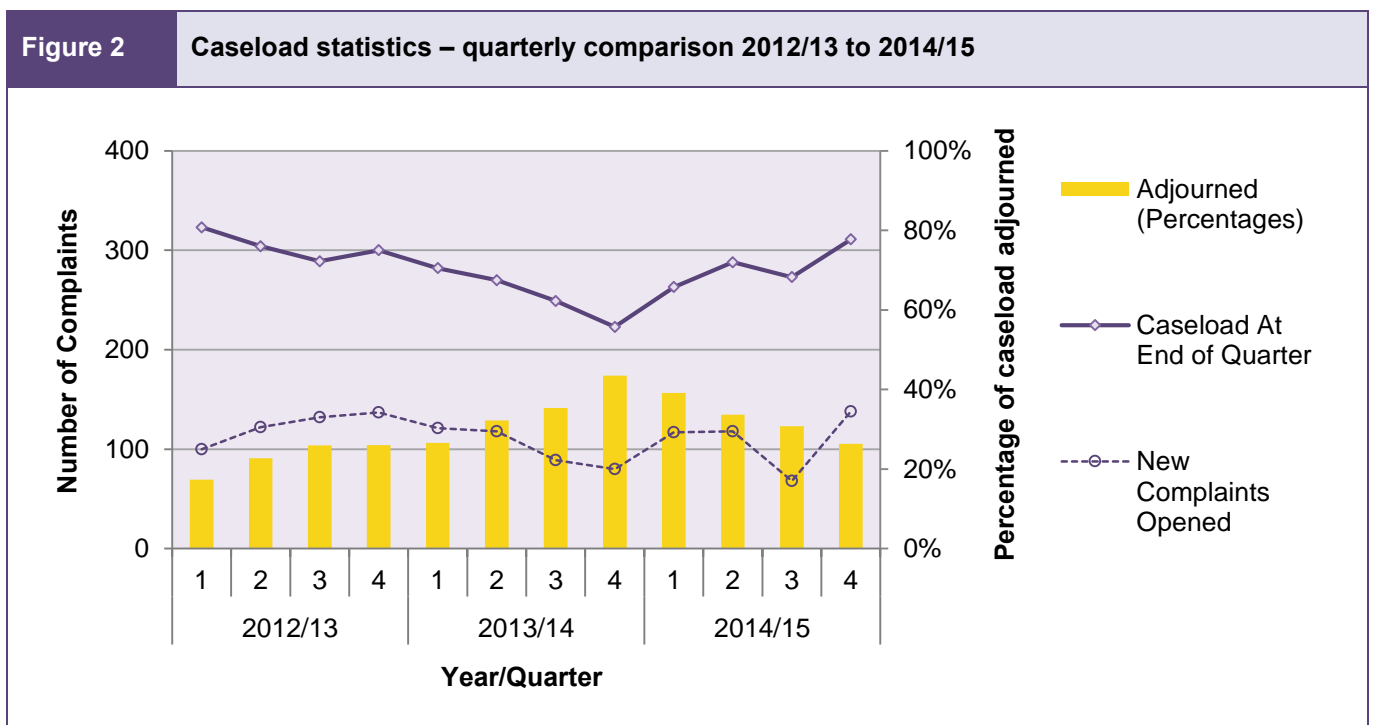
adjourned¹⁴. Essentially, during 2014/15 we opened more complaints than we closed.

2.27 The factors contributing to the increase in our caseload include:

- An 8% increase in the number of complaints being opened (compared with the previous year);
- A different quarterly pattern in internal complaints. As Figure 2 illustrates, we opened 62 internal complaints in the fourth quarter of 2014/15 compared with five in the fourth quarter of 2013/14. This meant that many more internal complaints remained ongoing at the end of the year.
- An increase in the proportion of external cases being referred for investigation, as opposed to being closed without

investigation, from 22% in 2013/14 to 31% in 2014/15.

2.28 We finished the year with an increased figure of 311 complaints ongoing within the department. There are, however, several unusual elements to this figure as 48 complaints (15%) were about a single barrister¹⁵ and the additional linked and practising certificate cases (paragraphs 2.13-2.14) which we would not expect to see going forward. Indeed, we are anticipating a considerable increase in closures of internal complaints in early 2015/16 which will go some way towards balancing the increase in caseload seen in 2014/15.



¹⁴ In total we worked on 675 active cases in 2014/15. Where complaints were on hold or adjourned at the end of the year, 14 complaints were adjourned by Disciplinary Tribunals. The remainder [68] were on hold at the assessment or investigation stages for the following reasons. Full details are included in our Statistical Report 2014/15:

Ongoing legal proceedings	29	Ongoing BSB proceedings	37 (see paragraph 2.28)
Medical reasons	1	Pending judicial review	1

¹⁵ A single barrister has been the subject of 54 referrals from the Legal Ombudsman over the past three years. Disciplinary proceedings were ongoing at the end of 2014/15 and 31 of the complaints on hold at the end of 2014/15 were pending the outcome of those proceedings.

Risk

- 2.29 Where we initially identify some evidence of a breach of the Core Duties or an outcome in the Handbook that has been adversely affected or put at risk, we carry out a risk assessment. This assessment establishes the likelihood and impact of a risk to the Regulatory Objectives and informs our decisions on the enforcement action, if any, that we will take.
- 2.30 In total we completed 282 risk assessments in 2014/15, both to determine whether we would raise internal complaints (based on incoming reports and information) and to inform our decision making on external complaints. The outcomes of these were as follows:

Risk Profile		
High risk	34%	[95]
Medium risk	31%	[88]
Low/no risk	35%	[99]

- 2.31 A further 165 assessments were not rated for risk due to a lack of evidence of a breach of the BSB Handbook or an adverse effect on the outcomes in the Handbook. We have no power to take action where there is no evidence of a breach of the Handbook and cases that are assessed as being low or no risk will not proceed to enforcement action as we focus our resources on the areas which are the greatest risk to the regulatory objectives and the public.

Most common aspects assessed as high risk:	
Discreditable/dishonest conduct	35
Failure to co-operate with Legal Ombudsman	15
Criminal conviction(s) – not drink driving	11
Failure to administer chambers properly	5
Discrimination	5

¹⁶ The option to refer cases to the Chambers of the barrister in question to be dealt with under the Chambers internal complaints procedure is used in low risk cases where the issues raised by complainants might be better resolved by a remedy available to Chambers – such as an apology. We referred eight complaints to Chambers during 2014/15. In these circumstances, if the complainant is not happy with the way in which their complaint has been dealt with by Chambers, it is open to them to ask the BSB to reopen the original complaint and consider any conduct issues.

Complaint decisions

- 2.32 Following the assessment and investigation of complaints we can take enforcement action by imposing administrative sanctions and/or referring complaints to disciplinary action. We came to a decision on 353 complaints during 2014/15, as illustrated by Table 4.
- 2.33 Although the proportion of complaints that we referred to disciplinary action was slightly higher than in 2013/14 (14%), the figures were generally consistent with the trends we have reported in recent years.

Table 4 Complaint outcomes 2014/15		
Outcome	#	%
Closed without investigation	194	55%
Closed after investigation (No enforcement action)	78	22%
Administrative sanction	11	3%
Referred to disciplinary action	70	20%

- 2.34 PCD staff took 66% of decisions – including 21% of decisions to refer cases to disciplinary action – and the PCC took 31%. The remainder of cases were either withdrawn or referred to the barristers' Chambers for consideration¹⁶.
- 2.35 In addition we concluded 81 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 364.

Decisions to close

Risk Profile	No breach	73% [198]
	Low/no risk	18% [50]
	Medium risk	3% [9]
	High risk	5% [15]

2.36 In total we closed 272 complaints without taking enforcement action during the year. Table 5 illustrates the differences in the decisions we made for external and internal cases. The patterns are similar to previous years: complaints from external sources are more likely to be unsubstantiated or do not disclose a breach and therefore not apt for investigation compared with internal complaints, which are only raised where we have some evidence of a breach of the Handbook.

2.37 Despite the decision not to take enforcement action in relation to these complaints, in some cases there was evidence of a breach of the Handbook or conduct/issues requiring action other than a full dismissal. This usually takes the form of advice, but also included six complaints in 2014/15 which were formally referred to the Supervision Department of the BSB.

Most common aspects closed without enforcement action:	
Discreditable/dishonest conduct	121
Misleading the court	87
Rudeness/misbehaviour in Court	22
Rudeness/misbehaviour out of Court	17
Discrimination	12

Referrals to Supervision

2.38 Since January 2014 we have been able to refer complaints and information to the Supervision Department of the BSB where we consider that there are wider concerns about a barrister's individual practice that would warrant supervisory intervention. During 2014/15 we made six formal referrals

to Supervision. Three cases (two of which were linked) related to the overall treatment of the complainants by the barristers' chambers. The remaining three cases (two linked) were assessed low risk for enforcement action but there were outstanding chambers issues – in these cases around the advertising of pupillages and chambers administration – which potentially needed to be resolved. In these circumstances, the Supervision Department can assign actions for chambers to complete and follow up to ensure that they are completed.

2.39 As well as making formal referrals, we pass to the Supervision Department any information we obtain while carrying out our enforcement functions that may be relevant to their supervisory functions. In one recent example, where a barrister was suspended by an Interim Suspension panel, the PCD informed the Supervision Department. This triggered a supervision visit to the barrister's chambers to check how his caseload was being covered during his suspension. This collaborative approach has triggered a number of supervisory visits in the past year and is proving highly effective in protecting the public and maintaining high standards.

Comebacks and reconsiderations

2.40 Under our "comebacks" policy, if a complainant disagrees with a PCD or PCC decision to close a complaint without taking enforcement action – either before or after investigation – they can ask us to review the decision and submit further evidence if it has come to light. Of the 242 external complaints we closed without a referral, to date we have received comebacks in relation to 31 complaints (13%). This proportion is typical of previous years.

2.41 After reviewing the complaints, the original decision was overturned in two cases. In both cases, the original decision not to investigate was reviewed by a member of

the Committee and a decision was taken to reopen the complaints. One complaint was then subsequently referred to a Disciplinary Tribunal while the other – reopened as some evidence had not been taken into account when the complaint was originally closed without investigation – was reassessed and again closed without any enforcement action.

- 2.42 A further nine cases were reopened during the year: three of which were complainants unhappy with the outcome of cases that we had originally referred to Chambers for resolution¹⁷.

Enforcement decisions

- 2.43 Following investigation of a complaint, either the Professional Conduct Committee or the staff of the PCD will make a decision as to whether or not enforcement action should be taken, either by means of an administrative sanction or a referral to disciplinary action. In line with our Enforcement Strategy since January 2014, the decision will be based on, amongst other factors: the risk posed to, or the impact on, one or more of the regulatory objectives; whether any of the outcomes in the BSB Handbook have been adversely

affected and whether there is a realistic prospect of a finding of professional misconduct being made.

Administrative sanctions

Risk Profile	Low risk*	33% [4]
	Medium risk	58% [7]
	High risk	8% [1]

* All downgraded from Medium risk

Key Stats	Barristers	12
	Total fines	£900

- 2.44 Where the PCC or staff of the PCD consider that there is evidence that the BSB Handbook has been breached but the breach is not so serious as to amount to professional misconduct, we will consider whether to impose an administrative sanction in the form of a written warning or a fine of up to £1,000.
- 2.45 We imposed our first administrative sanction in July 2014 and imposed a total of twelve¹⁸ during the year – ten warnings and two fines – on mostly medium to low risk complaints. This number has already been exceeded in

Table 5		External and internal complaint outcomes 2014/15			
External complaints:			Internal complaints:		
Outcome	#	%	Outcome	#	%
Closed without investigation	194	72%	Closed without investigation	0	0%
Closed after investigation	48	18%	Closed after investigation	41	50%
Referred to disciplinary action	29	11%	Referred to disciplinary action	41	50%

¹⁷ The remaining six cases were reopened for the following reasons: two cases that were remitted to fresh Disciplinary Tribunals following appeals (see “Appeals”); two linked cases that were reconsidered by the Committee following an application for Judicial Review and two cases where there were further developments on closed cases.

¹⁸ In one case, involving multiple allegations, the PCC took the decision to impose an administrative warning in relation to one aspect of the complaint and refer the remainder to a Disciplinary Tribunal.

the first quarter of 2015/16 so it is anticipated that administrative sanctions will become more common than the 2014/15 figures suggest, as in many cases they represent a more proportionate form of enforcement action for medium risk complaints.

Most common aspects closed with administrative sanctions imposed:	
Practising without a practising certificate	3
Failure to renew practising certificate	3
Failure to comply with Supervision - CPD	1
Failing to register or have insurance with BMIF	1
Failure to co-operate with the BSB	1

Referrals to disciplinary action

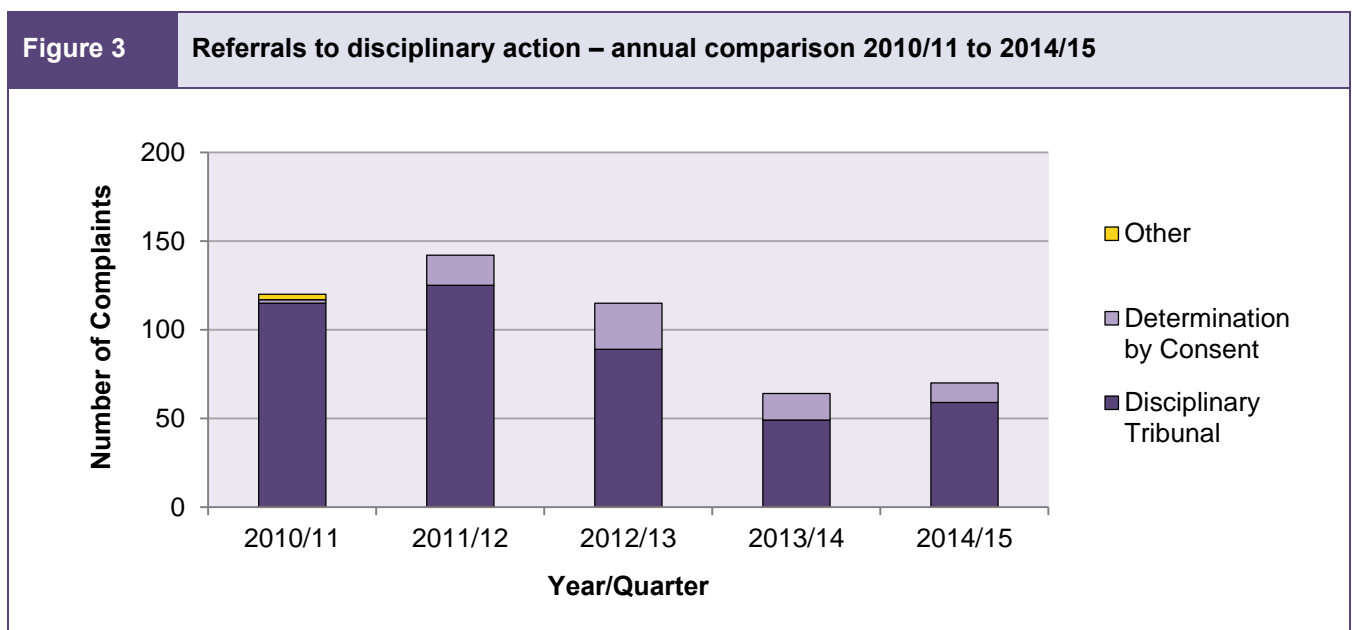
Risk Profile	Percentage	Count
Low risk	0%	[0]
Medium risk	23%	[15]
High risk	77%	[50]

2.46 Over the course of 2014/15, we referred 59 complaints to Disciplinary Tribunals and a further 11 complaints to the Determination by Consent (DBC) procedure. In total this equalled 44% of our post-investigation decisions.

2.47 The number of complaints referred to disciplinary action remained at the lower

level observed in 2013/14 as Figure 3 illustrates. This is directly linked to the lower numbers of internal complaints that we are opening – both because of the changes to the CPD regime and the risk assessment procedures introduced in January 2014. In addition, the 59 complaints referred to Disciplinary Tribunals related to just 38 barristers¹⁹ so the numbers of barristers referred to disciplinary action in 2014/15 is smaller than the complaint figures would suggest.

Most common aspects referred to disciplinary action:	
Discreditable/dishonest conduct	20
Practising without a practising certificate	9
Failure to comply with a sentence of a tribunal	8
Criminal conviction(s) – not drink driving	8
Failure to administer chambers properly	7



¹⁹ One barrister was subject to eight separate complaints and another barrister was subject to seven complaints

Disciplinary action outcomes

Determination by Consent

- 2.48 A total of 14 cases were closed after referrals to the Determination by Consent procedure. This is a procedure by which the Professional Conduct Committee can, with the barrister's agreement, make a finding of professional misconduct. In 11 cases the PCC found the barrister guilty of professional misconduct – in all cases after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.
- 2.49 The remaining three cases were closed by the PCC without a finding of misconduct: one was withdrawn after the barrister resolved his compliance issues with an earlier fine and two were dismissed following reconsideration of the seriousness of the breaches²⁰.

Most common aspects closed at the Determination by Consent stage:	
Discreditable/dishonest conduct	4
Practising without a practising certificate	4
Criminal conviction(s) - drink driving	2
Failure to renew practising certificate	2
Failure to comply with a sentence of a tribunal	1

Disciplinary Tribunals

- 2.50 Where we have made a decision to refer a complaint to a Disciplinary Tribunal, the case is heard before an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudication Service (BTAS) with the BSB acting as prosecutor. Disciplinary Tribunals can make findings of professional misconduct where the barrister disputes the charges and have additional powers of sentencing compared with the PCC – including suspension and disbarment.

- 2.51 A total of 67 cases were concluded at the Disciplinary Tribunal stage in 2014/15: 53 at hearings and a further 14 cases which were withdrawn prior to a Tribunal hearing taking place. We reconsidered four cases²¹ before serving charges on the defendant. The remaining ten cases were concluded at the directions stage.

Directions

- 2.52 The directions stage refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the Disciplinary Tribunal hearing.
- 2.53 Ten of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. In all of these cases we chose to “offer no evidence” – effectively withdrawing the cases without contest. At the suggestion of the Directions Judge in two linked cases

Determination by Consent

The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal.

Under DBC, if the barrister agrees, the case against them will be dealt with on the papers and the PCC decides whether the individual is in breach of their professional obligations as set out in the Handbook and, if so, what sentence to impose. Sanctions can include reprimands or fines, but not suspensions or disbarments which can only be imposed by a Disciplinary Tribunal panel.

The barrister is given the opportunity to accept or reject the PCC's finding(s) and sentence.

The aim of the DBC procedure is to conclude the disciplinary process more quickly than a referral to a Disciplinary Tribunal hearing.

²⁰ In one case the barrister did not hold a valid practising certificate but had not carried out any reserved legal activities during the period in question. The other case – where an unregistered barrister had not complied with the sentence of a Tribunal – was dismissed with advice and will be reconsidered should the barrister return to practice.

²¹ On the advice of the prosecutors assigned to the cases, we withdrew four cases on the grounds that there was no realistic prospect of a successful prosecution before a Disciplinary Tribunal panel.

(concerning serious allegations that were made in court), the barristers voluntarily apologised to the complainants. With the apologies accepted by the complainants, the Office Holders of the PCC were content to accept the approach suggested by the Judge and offer no evidence in support of the charges. Three more cases were reconsidered on the basis of the receipt of further evidence, information and advice²².

- 2.54 The remaining five cases involved long running complaints about a single barrister dating from 2004 – 2007. The disciplinary proceedings arising from these complaints had been subject to numerous challenges by the barrister over many years which had prevented the cases progressing in any meaningful way. With a view to the length of time elapsed, associated evidential difficulties and the relatively low level of sanction that might ultimately be imposed, a decision was taken to discontinue the proceedings on the grounds that it was no longer in the public interest to pursue the matters. This concluded by far the longest running complaints within the BSB.

Most common aspects closed at the Disciplinary Tribunal stage:	
Discreditable/dishonest conduct	22
Criminal conviction(s) – not drink driving	10
Failure to comply with a sentence of a tribunal	6
Rudeness/misbehaviour in Court	6
Unregistered barrister holding out	6

- 2.55 It is clear from our day-to-day work that the overall directions process can be time consuming and susceptible to delays. As part of our review of the Disciplinary Tribunal Regulations, which is currently out for consultation (see paragraph 4.9), we have made proposals for the streamlining and

simplification of the directions processes while not changing the fundamental approach.

Tribunal Hearings

- 2.56 In total 53 complaints were heard before a Disciplinary Tribunal panel in 2014/15. In 46 cases (87%), one or more charges against the barrister were proved²³. In these cases the barristers were found guilty of professional misconduct and sanctions were imposed. The remaining seven cases were dismissed by the Tribunal panels.
- 2.57 In five of the dismissed cases the Tribunal panels accepted the defendants' evidence over that of the BSB or considered that the conduct issues were not serious enough to warrant a finding of professional misconduct. No costs were awarded, indicating that the panels considered that the BSB was acting properly in bringing the cases before the Tribunals.
- 2.58 In one case the barrister provided new evidence on the day before the hearing which we accepted as making a material difference and "offered no evidence" before the Tribunal – effectively withdrawing the complaint. This brought the total number of complaints where we "offered no evidence" to eleven for the year – or 16% of all cases closed at the Disciplinary Tribunal stage. This is a similar level to previous years where we withdrew 10-12% of complaints in this way.

²² Two cases were reconsidered on the grounds that medical and personal difficulties for the barristers subject to disciplinary proceedings – one non-practising – meant that there was no public interest in pursuing the matters further. In the third case, new evidence meant that there was no longer a realistic prospect of a finding of professional misconduct being made. In all three cases, the PCC took the final decision to offer no evidence.

²³ 11 out of the 37 barristers facing charges at Disciplinary Tribunals pleaded guilty to one or more charges of professional misconduct (30%).

- 2.59 In the remaining case the Tribunal panel was critical of the BSB in that some material evidence was not investigated until after charges were served on the barrister and charges were not precisely drafted. On dismissing the case on the grounds that the complaint was not properly investigated, the Tribunal awarded costs to the barrister in the sum of £20,000. Following the hearing, we carried out a post-case review to fully establish the reasons for the failure and the lessons to learn. These identified both improvements that needed to be made to our internal quality monitoring systems and the drafting of charges. The details were reported back to the PCC to ensure that these issues are not repeated.
- 2.60 Whenever charges are dismissed at hearings or we offer no evidence, we conduct a review of the case to establish where we could improve and what lessons we can learn. However, we need to ensure that the lessons really are learned and fed back effectively into improvements in our enforcement processes. There is more that we can do in relation to knowledge management and quality assurance and, therefore, a Professional Support Lawyer will shortly be joining the PCD to both support

our existing systems and to drive improvements (see Action points).

Charges proved and sentencing

Key Stats	Barristers	41
	Disbarments	13
	Total fines	£28,000

- 2.61 In total, 41 barristers had one or more charges against them proved in 2014/15. Table 6 illustrates the most common charges that were proved during the year. While the majority of the charges related to the 8th Edition of the Code of Conduct, charges under rules or Core Duties of the BSB Handbook began to be heard towards the end of the year.
- 2.62 All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.
- 2.63 Where findings of professional misconduct are made against barristers, it is open to the Disciplinary Tribunal panel (or the PCC for Determination by Consent case) to impose sanctions on the barristers in question. Table 7 illustrates the sanctions that were imposed during the year.

Table 6		Charges proved in 2014/15		[Charges under the Handbook in bold]
Charge		Cases	%	
301(a)(i) Being dishonest or otherwise discreditable		14	25%	
301(a)(iii) Acting in a manner likely to bring prof into disrepute		11	19%	
905(d)/ rC64.1 Failing to provide information to BSB promptly		10	18%	
905(b) Failing to report criminal charges or convictions		7	12%	
905(f)/ rC64.2 Failing to comply with a decision or sentence of BSB/BTAS panel		6	11%	
202(c) Failure to renew practising certificate		5	9%	
Other Breach of duties		5	9%	
302 Knowingly or recklessly misleading the court		2	4%	
...				

2.64 The most severe sanction available is disbarment and thirteen barristers were disbarred in 2014/15. These were the most serious cases heard at Disciplinary Tribunals and included charges relating to criminal convictions, dishonesty and barristers repeatedly failing to comply with the practising requirements of the profession. In the past, the most common sanctions imposed by Disciplinary Tribunal panels were always fines, reprimands and suspensions. However, during 2014/15, Disciplinary Tribunal panels were more likely to impose a sanction of disbarment than any other sanction. This is an indication that only the most serious and highest risk cases are being referred to Disciplinary Tribunals now that we have options to take more proportionate enforcement action by way of both the Determination by Consent procedure and administrative sanctions.

Appeals

2.65 Where administrative sanctions are imposed or findings of professional misconduct are made by a Disciplinary Tribunal, barristers have the right to appeal against either the findings or the sentence imposed. Appeals

against administrative sanctions are heard by an Appeal Panel convened by BTAS whereas appeals against Disciplinary Tribunals are made to the High Court.

2.66 In total we received one new appeal against an administrative sanction and seven barristers appealed to the High Court against Tribunal decisions²⁴. To date, five of the 30 barristers sentenced at Disciplinary Tribunals in 2014/15 have appealed. We concluded appeals in relation to eleven cases in 2014/15, with five allowed.

2.67 Two of the allowed appeals were linked with a further appeal which was dismissed: a Disciplinary Tribunal panel had made findings against three joint Heads of Chambers. On appeal, the Visitors to the Inns of Court²⁵ found that only one of the barristers was responsible for the Pupillage Committee at the heart of the complaint and, therefore, overturned the findings in relation to the other two barristers. A further appeal had been allowed in 2013/14, uncontested by the BSB, but the costs were not settled until the start of 2014/15.

2.68 Another appeal, heard by the High Court in 2014/15, was allowed on the basis that the judge agreed with the appellant that an

Table 7

Sanctions imposed by Disciplinary Tribunal panels or the Professional Conduct Committee (DBC) – annual comparison 2013/14 to 2014/15

Sentence	2013/14		2014/15	
	Barristers	%	Barristers	%
Disbarred	17	24%	13	32%
Suspended	14	19%	8	20%
Fined	31	43%	18	44%
Reprimanded	27	38%	15	37%
Advised as to Future Conduct	3	4%	4	10%
Other	5	7%	4	10%

²⁴ Relating to 8 individual cases

²⁵ The Visitors to the Inns of Court ('the Visitors') heard appeals before jurisdiction passed to the High Court. Appeals that started with the Visitors remained with the Visitors when the jurisdiction changed.

adjournment of the Disciplinary Tribunal at which he was disbarred should have been granted to allow him to attend. The Tribunal hearing had gone ahead in the absence of the appellant. The result of the appeal was that the case was remitted to a new Disciplinary Tribunal. A further appeal against a sentence of disbarment – on an entirely separate case – resulted in the case being remitted to a fresh Disciplinary Tribunal for sentencing on the grounds that the barrister should have had an opportunity to make representations in mitigation prior to sentencing. In both cases the barristers were disbarred by the Disciplinary Tribunal hearings that followed.

- 2.69 At the close of the year, nine barristers had appeals against disciplinary findings, sentences or administrative sanctions pending. However, even though the number of appeals ongoing at any one time is small, these cases often take up a significant amount of PCD and PCC resources.

Legal action

- 2.70 Beyond our appeal and comeback procedures, barristers and complainants have the right to challenge decisions, or the

way we made decisions, through the courts. These normally take the form of judicial reviews of the decisions taken.

Judicial reviews

- 2.71 Judicial reviews are a challenge to the way in which enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel. At the start of 2014/15 we were handling four judicial reviews and six new applications were received during the year (although permission in one case was refused and a further case was discontinued).
- 2.72 One judicial review judgement was handed down in 2014/15 following an application made in 2010. In a challenge to the regulations on cost claims against the BSB, the Court decided that the BSB's regulations were valid and that the wording of the regulations had correctly been construed in the past. A further judicial review application relating to a PCC decision to dismiss complaints about two barristers without investigation was struck out by the Administrative Court.
- 2.73 Two Court of Appeal hearings took place during the year in relation to judicial review applications that had been refused by the

Case study:

The Bar Council Records Team reported to the Professional Conduct Department a barrister who had not properly complied with the “authorisation to practise” process by practising without a current practising certificate.

Practising without a practising certificate is a failure to comply with a regulatory obligation and a breach of the BSB Handbook. Barristers not observing their regulatory obligations are identified as a strategic risk by the BSB and are normally considered to be ‘high risk’.

During investigation, it came to light that the barrister had failed to renew her practising certificate on time and had practised in a limited capacity for a period of five days. When asked to comment, the barrister was genuinely apologetic for her actions.

A risk assessment was carried out and the risk was assessed as medium on the basis that although the BSB Handbook had been breached, (1) the barrister had taken all reasonable steps to remedy the breach; (2) there had been no adverse consequences for the public or the profession; and, (3) the barrister had fully apologised for her oversight. Taking these factors into account, the barrister was issued with an administrative warning in accordance with the Complaints Regulations.

Administrative Court²⁶. In our 2012/13 Annual Report we gave particular focus to a number of issues with Council of the Inns of Court (COIC) disciplinary and appeal panel appointments that came to light in late 2011. In one Court of Appeal case, three applications relating to “time-expired” panel members were refused and as there is no ability for the decision to be appealed further, the matters are concluded.

- 2.74 In the second hearing, the Court of Appeal set aside the decision of the Administrative Court and quashed the Visitors’ decision to dismiss an appeal against a Disciplinary Tribunal finding made in 2010. At the close of the year the case was back with the Visitors to consider whether the quashed findings should be referred to a fresh Tribunal. Early in 2015/16 the decision was taken that the case will be reheard.
- 2.75 The Court of Appeal was highly critical of a failure by the BSB to disclose a draft statement of the principal witness against the defendant before the Disciplinary Tribunal. This failure was first identified, and rectified, prior to the initial appeal to the Visitors in 2011 and we implemented policy changes at the time to try to prevent the situation arising again.

Compliance and revenue

- 2.76 In 2014/15 we issued administrative fines totalling £900 and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £28K. We received payments totalling £36K in payment of fines imposed both in 2014/15 and outstanding amounts from previous years.
- 2.77 Currently we have no express powers to reclaim debts, so if a barrister fails to pay a fine, our normal recourse is to raise an internal complaint about the barrister for

failing to comply with a disciplinary finding²⁷. While in many cases this will be the right course of action, in some it is disproportionate. Further, disciplinary proceedings do not provide a means to enforce payment. Thankfully, such events are the exception rather than the rule. Of the fines that were due in 2014/15, 81% of barristers have complied to date. We closely monitor compliance with administrative and disciplinary fines: of the four barristers who have not yet complied, two are paying by instalments and payments are expected shortly in relation to the remaining two barristers.

²⁶ Both of the decisions by the Administrative Court were highlighted in our Enforcement Annual Report 2013/14 at paragraphs 2.43 and 2.44.

²⁷ One of the core values of the BSB is “value for money” so while the option to make a debt recovery claim to the courts is available, in practice this process is prohibitively expensive.

Performance

- 3.1 We are committed to providing a high-quality service. In particular, we are committed to:
- Dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
 - Making sure the action we take fits the circumstances of the case and is necessary to protect the public, by acting proportionately and taking an outcome focused and risk based approach to maintaining the standards of the profession;
 - Working in an open way which takes account of the need to protect, as far as possible, the confidentiality of clients, complainants and barristers;
 - Giving clear and well-reasoned explanations for decisions; and
 - Being polite and professional in all our dealings with people.
- 3.2 We make every effort to track our performance, particularly by tracking the timeliness of our casework using our Enforcement Database and by surveying both barristers and complainants with recent experience of our service. In our User Feedback Survey we ask questions in five

key areas: accessibility; staff performance; timeliness and efficiency; transparency and openness; and quality of service.

- 3.3 There are also checks and balances in place in the form of an Independent Observer – whose role is to check that the enforcement system is operating in line with its aims and objectives; and the Quality Review Sub-Committee – a sub-Committee of the PCC tasked with checking the quality of the decision-making within the Professional Conduct Department.
- 3.4 The combined approach of database monitoring, surveying and the checks and balances we have in place ensures that we identify both areas where we are performing well and areas where we need to improve. As mentioned above, we will be employing a Professional Support Lawyer in 2015/16 who will contribute to improving our quality assurance systems further.

Timeliness

Key Performance Indicator

- 3.5 One of our main aims is to ensure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. We have three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. We then have an

Table 8 KPI performance in 2014/15

Indicator	Description	Performance	Target
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	68.7%	80%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	65.0%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	83.6%	80%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	75.3%	80%

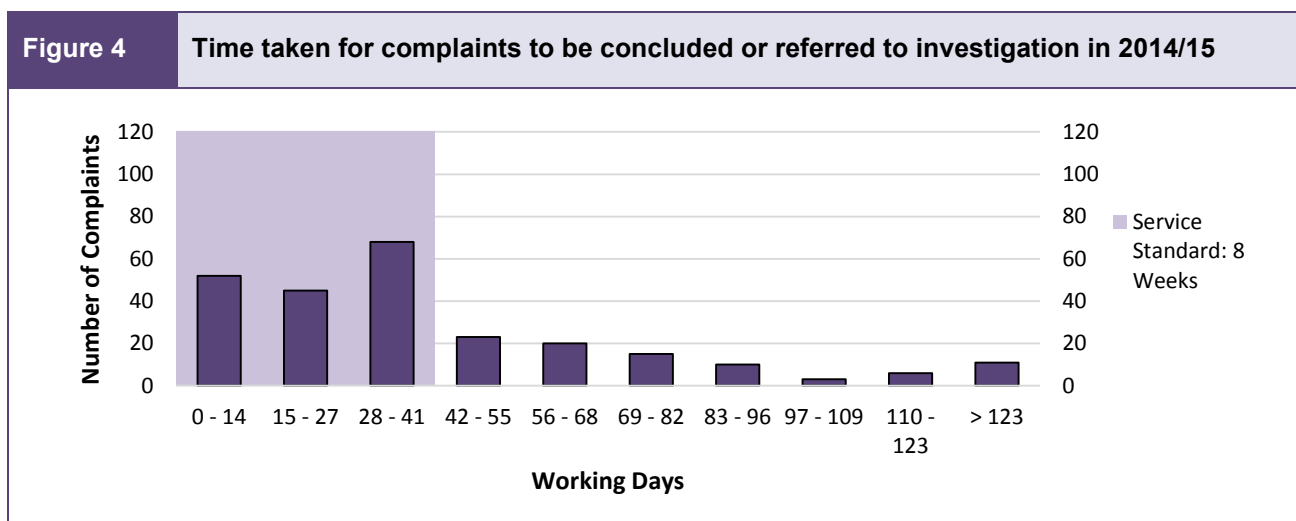
overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action.

- 3.6 Our Performance Indicators for 2014/15 are set out in Table 8 along with our performance figures for the year. Our KPI target for the year was to conclude or refer to disciplinary action 80% of cases within our service standards – increased from a target of 75% in 2013/14²⁸.
- 3.7 In our Enforcement Interim Report for 2014/15 we highlighted that we were on course to meet the target for the year but that there were factors affecting our assessment of complaints that could impact on our performance in the second half of the year. Disappointingly, at the close we failed to meet the KPI target for 2014/15, concluding or referring 68.7% of cases within service standards. The operational performance indicators show that, as our forecast suggested, the main reason why the target was missed was an issue at the assessment stage where two key members of our small Assessment Team left the organisation. While we made an effort to spread the assessment work across the other teams within the PCD, the

Investigations and Hearings Team was also carrying staff vacancies at the same time.

First OPI: Assessment

- 3.8 When we receive an external complaint, we aim to make a decision as to whether or not to investigate the complaint within eight weeks. We measure how long it takes from the point at which we receive a complaint until the point at which the complaint is either accepted for investigation or the complainant is provided with the reasons why we do not intend to carry out a formal investigation.
- 3.9 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We met this target in both the first and second quarters and narrowly missed the target in the third quarter. The real impact came from the fourth quarter performance figures where only 27 of the 77 complaints (35%) were assessed within eight weeks.
- 3.10 In our Enforcement Interim Report 2014/15 we indicated that a staff shortage within the PCD’s Assessment Team would likely have a short-term impact on performance as vacancies for both of our two Assessment Officer roles had to be filled and the new staff trained. The effect of these staffing issues can be seen in further analysis of the



²⁸ In 2013/14 we concluded or referred to disciplinary action 76.7% of complaints within service standards. Our target for that year was 75%. In order to challenge ourselves to improve, we increased the target to 80% for 2014/15.

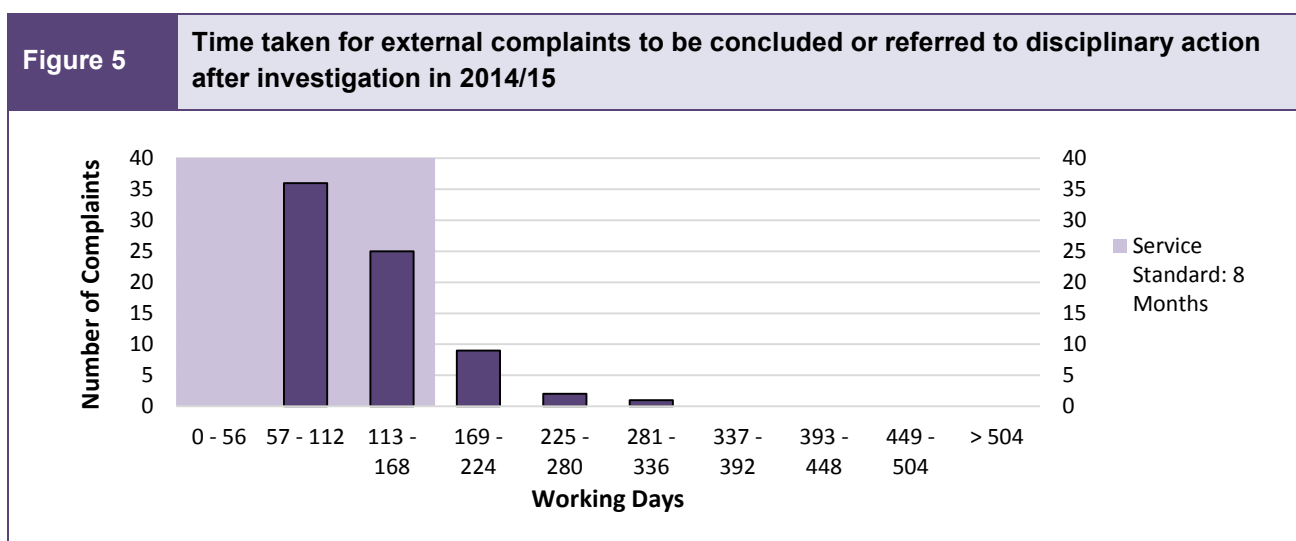
cases worked on in the fourth quarter; showing that the time taken for the Assessment Team to carry out an initial assessment of the information increased from an average of 7 days in the first and second quarters to 20 days in the fourth quarter. The time taken to carry out further enquiries also doubled in the fourth quarter compared with the first half of the year. The eight week timeframe we aim for in the assessment of complaints leaves very little room to make up for any delay, so these factors were enough to prevent more than half of complaints in the fourth quarter being assessed within the time limit.

3.11 In the fourth quarter we also had to seek expert advice from members of the PCC in 38% of cases compared with 21% in the first half of the year. In the main this was, again, related to staffing issues as in order to keep complaints progressing and maintain the quality of our decision making, we asked Committee members to consider some of the cases undergoing assessment. While we do allow some time for seeking advice, and set the target at 80% for circumstances such as where advice might take longer than expected, the assumption is that the majority of complaints will not require advice. We expect the numbers of complaints requiring advice to return to the usual level now that our Assessment Officers are more

experienced, but if we continue to need to seek advice in more than a third of cases, this may have an impact on our ability to complete assessments within eight weeks and may also have an impact on the resources of the PCC.

3.12 The effect of the fourth quarter figures meant we missed our target of 80% for the year, concluding or referring for investigation 65% of complaints within eight weeks. Figure 4 illustrates how long each of our assessments took in 2014/15.

3.13 Of the 102 complaints undergoing assessment at the close of the year, we still had 31 that had already exceeded the eight week limit. These will all contribute negatively to performance figures in early 2015/16 when we are able to make a decision on them, making it unlikely that we will meet our 80% target in the first and potentially second quarter. However, now that we have a full staff complement again, if we allow for a period of training and the clearing of the backlog it is fully anticipated that we will return to performance figures above 80% as the nature of the external caseload has not changed over recent years. We are closely monitoring the situation (see “Forecast of performance” at paragraphs 3.20 – 3.24).

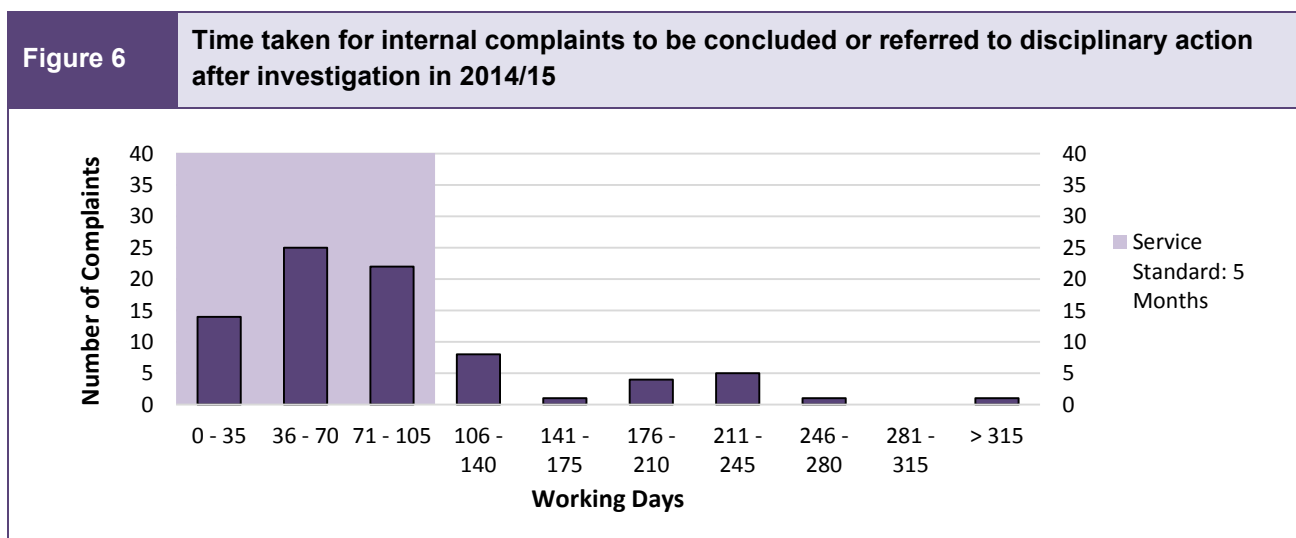


Second OPI: Investigation of external complaints

- 3.14 For external complaints, we aim to conclude the investigation and make a decision as to whether or not to refer the complaint to disciplinary action within eight months. We measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation. This includes the Professional Conduct Committee stage of the process if the decision is made by the PCC.
- 3.15 Our target for the year was to conclude or refer to disciplinary action 80% of external cases within eight months – increased from a target of 70% in 2013/14. We failed to meet this target in the first quarter of 2014/15 as we cleared a small backlog of complaints that were over-running at the end of the previous year. However, a strong performance in the remaining quarters meant that overall we met the target and matched our performance figures from the previous year in concluding or referring 84% of external complaints within eight months.
- 3.16 Figure 5 illustrates how long it took us to assess and investigate external complaints in 2014/15.

Third OPI: Investigation of internal complaints

- 3.17 For internal complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within five months. We reason internal complaints should take less time than external complaints as we do not need to take the time to clarify the complaint and correspond with a complainant. As with external complaints, we measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation.
- 3.18 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We narrowly missed this target with an overall performance figure for the year of 75%. The issue – which was highlighted in our Enforcement Interim Report 2014/15 – was our performance in the first quarter (63%). To a large extent the first quarter figures were affected by the nature of the caseload at the end of 2013/14. Normally a small number of over-running complaints would be balanced by the new complaints received. But in the last quarter of 2013/14 we opened only five internal complaints (compared with a typical quarterly figure of 40 complaints). This meant that at the end of the year a



significant proportion of the caseload was over-running the five month service standard – despite numbering just 11 cases. We anticipated at the time that by clearing this backlog we would negatively impact on our performance figures at the start of 2014/15. A similar situation presents itself at the end of 2014/15 (see “Forecast of performance” below) and is likely to happen from time-to-time given the small and irregular nature of our current internal caseload. Still we do not expect to be operating significantly below our 80% target in 2015/16.

- 3.19 Figure 6 illustrates how long it took us to investigate internal complaints in 2014/15.

Forecast of performance for 2015/16

- 3.20 There will always be some instances where we need to obtain more information from complainants or barristers, seek expert advice or have to deal with other factors which will cause a case to over-run our service standards. To account for some of these instances we set our targets at 80%. In 2014/15 we added additional monitoring tools to our case management system which help us to track our caseload and identify possible issues. These help us both to take action in advance and see where cases are already over-running our service standards – forecasting the impact this will have on our future performance figures.
- 3.21 At the end of 2014/15, 25% of complaints undergoing assessment or investigation were over-running our service standards. These complaints will contribute negatively to future performance figures when we are able to make a decision on them and would suggest that it is likely we will narrowly miss our 80% KPI target in the first and potentially

second quarters of 2015/16. The over-running cases relate to our OPIs as follows:

- OPI 1:** 31 cases outside eight weeks (30%);
OPI 2: 8 cases outside eight months (14%);
OPI 3: 26 cases outside five months (27%);

- 3.22 Our case management system allows us to monitor each stage of the enforcement process in detail and identify the reasons why these complaints came to be over-running at the end of the year. The delays associated with the assessment caseload (OPI 1) can be seen to relate to the staffing issues at the end of 2014/15 – the initial assessment of complaints taking 20 working days on average. This on its own would not normally cause complaints to take more than 8 weeks to assess but combined with the fact that half of the complaints also required further enquiries (average 23 working days) and a third of complaints required expert advice (average 14 working days) this has created a backlog.
- 3.23 The complaints that are over-running our investigation performance indicators reveal different sources of delay. Amongst the 26 internal complaints that were beyond the five month mark at the end of the year were the 17 linked complaints (highlighted at paragraph 2.14)²⁹. Considerable delays in obtaining advice – combined with the need to correspond with a complainant at the early stages of the complaint³⁰ – meant that we could not progress these cases as quickly as we would have liked. All of the complaints were closed shortly after the end of the year, which has immediately put us in a position where – given the numbers of complaints we handle – we will not be able to the make up the difference and meet the 80% target for

²⁹ The investigations of just eight external complaints were over-running at the close of the year. Here we experienced delays in corresponding with the complainants on the cases and in most cases had to both obtain advice and carry out further enquiries. However, we set the target to 80% to account for such circumstances and we are on course to continue to meet this target. It should be noted that six of the external complaints at the investigation stage at the end of the year had experienced delays of at least two weeks at the assessment stage and may, therefore, not be concluded within the service standards.

³⁰ The 17 linked complaints started as external complaints but were re-registered as internal complaints. This meant that the performance target level was reduced to five months from eight months – despite the fact that some assessment and correspondence with the complainant had already taken place,

this performance indicator in the first quarter. This is another example of one reported issue (or multiple issues with one individual barrister) having a significant effect on our caseload and performance figures, due to the relatively small numbers of complaints we handle.

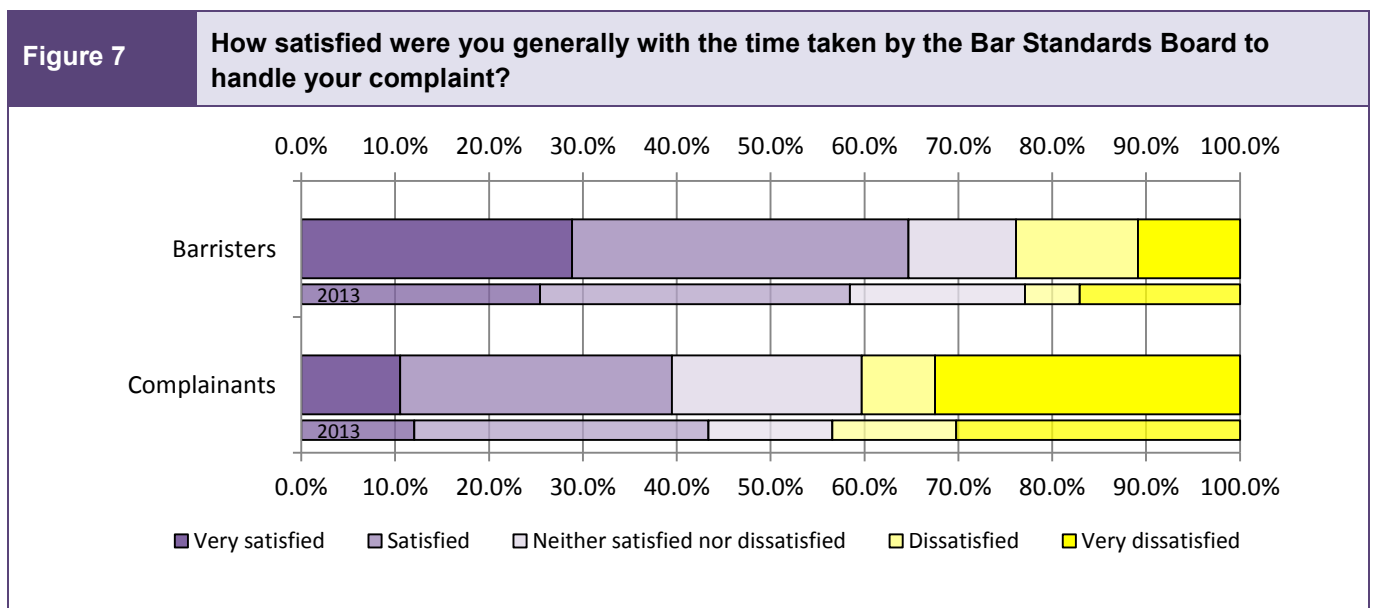
3.24 Once the over-running complaints across the three OPIs have been cleared – which should be in the first half of 2015/16 – we expect to be back to meeting our performance targets. However, as we will miss our targets in the first quarter, it is very unlikely that we will be able to meet the overall KPI target for the year and conclude or refer to disciplinary action 80% of complaints within service standards³¹. Our aim for the end of the year is to be back to regularly meeting the targets for each operational performance indicator on a quarterly basis.

Feedback survey results

“Time limits should not “protect” misconduct.
Complainant response #12219

3.25 To accompany our performance figures in 2014/15, we asked barristers and complainants how satisfied *they* were generally with the time we took to handle their complaints. There was no significant change compared with the previous year, with 60% of complainants and 76% of barristers either responding that they were satisfied or having no strong opinion. However, this still leaves over a third of complainants dissatisfied with the time we took to handle their complaints.

3.26 We also asked some specific questions about timeliness which show some improvements in the time we took to acknowledge complaints (or notify barristers of the complaints against them) and both complainants and barristers tended to agree that the time taken to respond to calls, emails and letters was acceptable. The big issue for complainants – and the biggest area of disparity between complainants and barristers – was the time taken to come to a final decision on their complaint. Half of complainants responded that they were either very dissatisfied or dissatisfied, which points to a more general dissatisfaction with the overall timescale of our enforcement



³¹ Current projections suggest that we would have to be concluding or referring to disciplinary action 90% or more of complaints within service standards in each of the second, third and fourth quarters to meet the overall target for the year.

procedure. In contrast, two-thirds of barristers were either satisfied or very satisfied with the time we took. This result is consistent with our survey results in previous years, although in contrast to the 2013/14 results for complainants, there was a stronger correlation with the outcome of the complaints. Complainants whose complaints were closed without investigation were the most likely to be very dissatisfied compared with complaints that were investigated or referred to disciplinary action (despite the fact that disciplinary action takes significantly longer than the assessment of complaints)³².

“ I rate the timing as dissatisfied only because it seemed to take a long time to end.

Barrister response #02263

3.27 The consistency of our survey results across recent years shows that the dissatisfaction amongst complainants is not due to any performance issues specific to 2014/15. Still, it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of assessment and investigation could take up to eight months – as per our second Operational Performance Indicator – or whether they consider our service standards

to be too long. We took considerable care in setting our performance indicators at a realistic level; taking into account all of the relevant factors that impact on our consideration of a complaint. These include the need to operate a fair and transparent system (obtaining responses from both barristers and complainants and keeping all parties updated), the high proportion of cases which require further enquiries to be carried out or require expert advice and the need to refer many cases to the Committee for a decision to be made.

3.28 In our survey report last year, we established that further qualitative research into user experiences should be carried out – looking into issues such as timeliness and the fairness of our procedures. This work is now being considered as part of a wider BSB project into consumer engagement which will begin in 2015/16.

Disciplinary action service standards

3.29 Our KPI provides a measure of the time it takes us to come to a decision on whether to refer a case to disciplinary action. We also monitor the time taken for the Determination by Consent procedure and Disciplinary Tribunals so that we can give barristers and complainants an indication of how long

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Determination by Consent	Internal	11	93	55%
Three-person Disciplinary Tribunal	Internal	14	86	7%
Three-person Disciplinary Tribunal	External	13	166	54%
Five-person Disciplinary Tribunal	Both	26	197	77%

³² Notably, in 2013/14 complainants whose complaints were investigated were more likely to be dissatisfied than complainants whose complaints were closed without investigation. This points to the outcome being less important than the time taken – in contrast to the results in 2014/15.

disciplinary proceedings take and also to identify areas where we can improve. Where a referral to a Disciplinary Tribunal has been made, the BSB acts as the prosecutor in each case and the timely progress of the cases becomes less under our control. This makes Disciplinary Tribunals less suitable for setting key performance indicators but nevertheless it is imperative that we monitor the time taken and set internal standards. In contrast, the Determination by Consent procedure is substantially within our control. Table 9 compares our figures for 2014/15 for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.

- 3.30 Following on from the trend observed in 2013/14, Determination by Consent procedures continued to take longer than the service standard, with only half of cases concluding within the time limit. As with last year, in two of the five cases that took longer, there were delays in the barristers agreeing to the charges and facts of the cases which made it impossible to complete the cases within the time limit³³. However, as we highlighted in our Enforcement Annual Report 2013/14, the DBC process cannot continue without the barristers' involvement and the alternative – should we terminate the DBC process – would be a more costly and time consuming Disciplinary Tribunal. Therefore, we must endeavour to conclude rather than stop the process.
- 3.31 As the Determination by Consent procedure is substantially within our control, there are opportunities for improvement and we must be aiming to conclude more than half of complaints within the service standard. To help us to focus on completing the DBC process as efficiently as possible, we intend to review the service standard and set a

target for 2015/16 (which will apply for the year). We will also adapt our case management system so that complaints at the DBC stage are monitored against targets in the same way as complaints undergoing assessment or investigation. We will report against this target in our Interim Report 2015/16 which will review the first six months of the year.

- 3.32 The time taken for Disciplinary Tribunals to progress from referral to hearing improved compared with 2013/14, with 54% of external three-person Tribunals concluded within our service standard³⁴ along with 77% of five-person Tribunals. The issue continues to be the service standard for three-person Tribunals in internal cases which we established in our last Enforcement Annual Report is no longer set at an appropriate and realistic level due to changes in the nature of the caseload within the PCD. When the service standard was set, the majority of three-person internal Tribunals were CPD cases where multiple cases could be heard on the same day by the same Tribunal panel. By “block-booking” cases in this way we were able to progress individual complaints significantly faster than we otherwise could. As we have highlighted, CPD cases are now rarely heard at Tribunals and it is not often that we can progress any other complaints within the same timescale. We will be reviewing all of the Disciplinary Tribunal service standards following our current review of the Disciplinary Tribunal Regulations as the procedures (applying to all types of complaints) will be changing.

³³ The longest running case was unusual in that the PCD had to seek additional advice from a Committee member during the course of the DBC procedure. The service standard does not allow any time for seeking advice. A further two cases fell only a matter of days outside the service standard.

³⁴ In our Enforcement Annual Report 2013/14 we reported that 27% of external three person Disciplinary Tribunals concluded within the 166 day service standard.

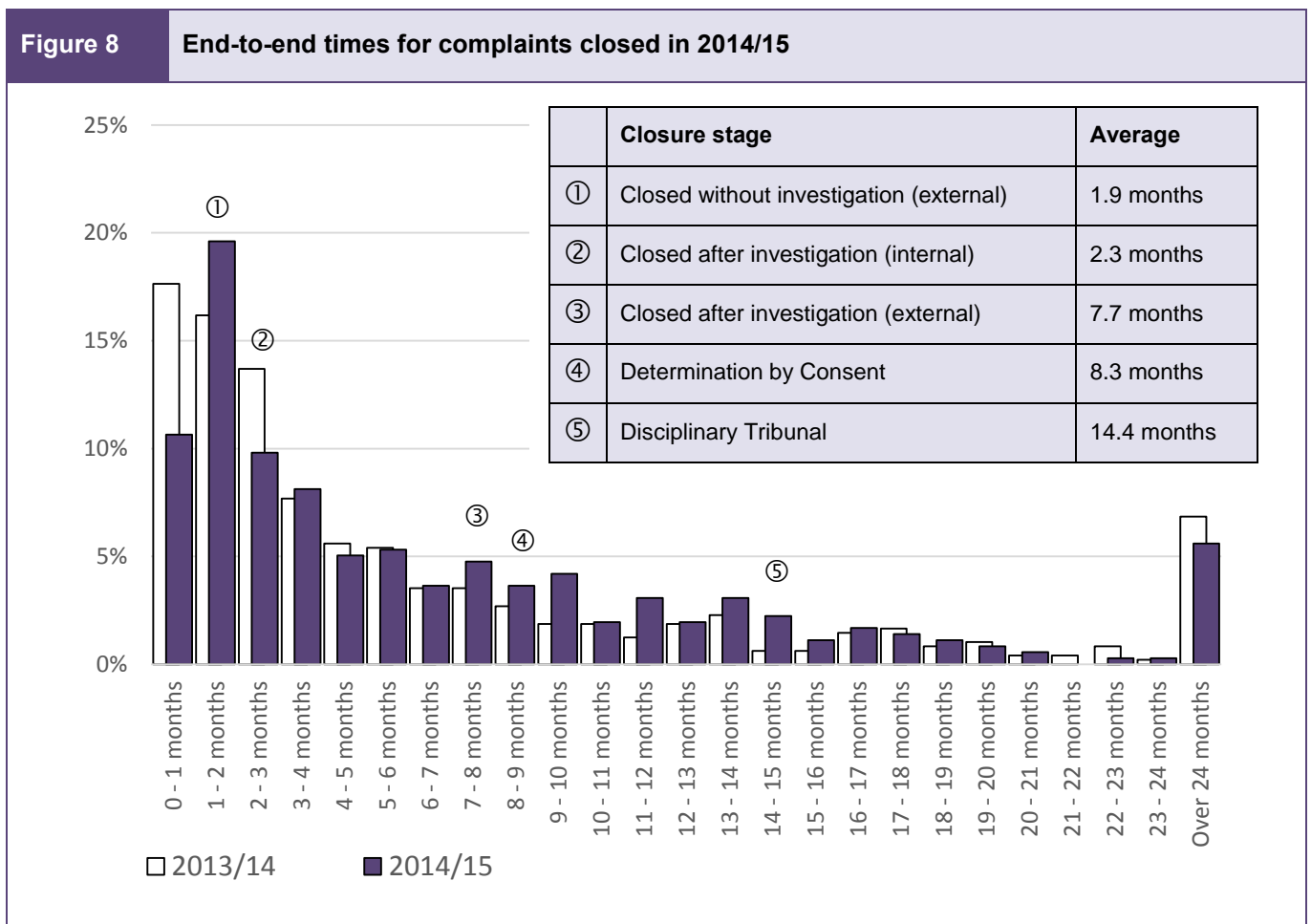
End-to-end times

3.33 Our performance indicators have been designed to give an accurate indication of the length of time complainants and barristers should expect for complaints to be assessed (eight weeks) and investigated (five or eight months). However, in our reporting we only indicate what proportion of complaints fell inside or outside of these indicators. To provide further information, we also publish end-to-end times for our entire enforcement process. These indicate how long – in real time – complaints took to close in 2014/15³⁵.

3.34 Figure 8 illustrates how long each of the complaints closed in 2014/15 took from opening to final closure: whether this be at

assessment, investigation or a Disciplinary Tribunal. Also marked on the chart are the average times taken for different complaint outcomes³⁶.

3.35 The general pattern reflects our performance indicators, with an increase in the average time for a complaint to be concluded from 3.2 months in 2013/14 to 4.4 months in 2014/15. However, the average time taken for complaints referred to Disciplinary Tribunals (from first opening to final hearing) came down from 16.7 months in 2013/14 to 14.4 months in 2014/15. This is a significant improvement and can be seen in Figure 8 by the smaller proportion of complaints taking more than 18 months to conclude.



³⁵ Periods of adjournment are included in the figures, so if, for example, a complaint was on hold for 10 weeks pending the outcome of a court case and then assessed in 6 weeks, the reported figure will be 16 weeks,

³⁶ As the data is skewed to the right, the figures given are median averages rather than mean averages.

Accessibility

- 3.36 We aim to make it as easy as possible for someone to make a complaint to the Bar Standards Board. We also aim to ensure that barristers are able to access everything they need when they are facing a complaint against them. Our approach is to try to ensure everyone knows how our enforcement system works, thereby allowing complaints to be progressed efficiently and managing expectations.

“ You could teach the SRA a thing or two! Your service is user friendly and accessible and, most importantly, fast.

Complainant response #02321

- 3.37 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.
- 3.38 We asked complainants where they first heard about the BSB's enforcement procedure. In common with last year's result, a third of respondents told us that the internet was where they first heard about us.

However, there remained quite a spread of different sources³⁷. The most important thing is that potential complainants find out about the BSB and that they can complain to the regulator. In that respect it is positive that complainants hear about us in a variety of ways. Only two respondents commented that they had difficulties in finding out about us – saying we need to do more to get information into courts and prisons.

- 3.39 Just over a third of complainants telephoned the PCD before making their complaint seeking advice or assistance and all but two respondents were able to speak to someone. In rating the advice or assistance they received, satisfaction levels increased compared to the previous year. The number of complainants who were satisfied increased to 65% and only 13% of respondents indicated that they were not satisfied³⁸.
- 3.40 We asked complainants whether making a complaint to the BSB was easy and 68% of respondents agreed that it was easy. This was a similar result to the previous year where we saw an improvement in this area.

Case study:

A complaint about the conduct of a barrister was referred to the Professional Conduct Department by the Legal Ombudsman. The Legal Ombudsman reported that the barrister had: (1) breached the public access rules by accepting public access instructions when not entitled to do so; and, (2) falsely claimed to have paid a subsequent compensation order.

To undertake public access work, a barrister must complete qualifying training and register with the Bar Council.

The Professional Conduct Department carried out a full investigation which revealed evidence that the barrister had undertaken public access work despite not being registered to do so and that he had deliberately claimed to have paid the compensation order, knowing that he had not made the payment. Satisfied that the barrister had breached the BSB Handbook the Professional Conduct Department referred the case to the Professional Conduct Committee. The Committee, taking into account the risk posed by the barrister to the public, considered the breaches serious enough to be heard by a five-person Disciplinary Tribunal.

Agreeing with the Committee, the Tribunal found the barrister guilty of two charges of professional misconduct. A six month suspension was imposed on the barrister and he was further prohibited from undertaking public access work for three years.

³⁷ Other sources include: solicitors [11%], friends/relatives [9%]; the Legal Ombudsman [7%]. Full results are included in the Statistical Report accompanying this report.

³⁸ In 2013/14, 20% of respondents indicated that they were dissatisfied with the advice they received.

Where complainants disagreed, the main issues were that information was not easy to obtain and the complaints procedures were not made clear. However, on the whole complainants and barristers gave similar responses to previous years: two-thirds of complainants felt that our complaints form was easy to fill in and information was easy to obtain. In addition, 58% of complainants and 67% of barristers felt that the procedures for handling complaints were made clear. There is, however, more that we can do for the 21% of complainants and 15% of barristers who still felt unclear about our procedures and we are addressing this as part of our ongoing Public Information Project (see paragraph 3.44).

“ *It is hard to grasp some legal concepts – possible examples or explanations to back up statements would be useful.*

Complainant response #12399

- 3.41 We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

Leaflets

- 3.42 In our Enforcement Annual Report last year we identified that only around a third of complainants and barristers recalled receiving leaflets on the BSB’s enforcement procedures. A further third could not recall whether or not they received anything. Of those that did, however, 95% of respondents found them easy to understand and informative. We made a commitment to ensuring that leaflets are sent out with our first communications to all complainants and barristers regardless of whether they have already accessed our website.
- 3.43 Our 2014/15 results show that 56% of complainants could recall receiving a leaflet

and 88% found them easy to understand and informative. This is a significant improvement³⁹.

Website

- 3.44 Almost 70% of complainants and 40% of barristers recalled looking for information on our enforcement procedure on the BSB website. The survey results show a slight improvement in the percentage of complainants who were able to find the information they were looking for without too much trouble (72%), but still 21% of complainants and 26% of barristers could not easily find the information and 7% of complainants could not find the information they needed at all. Overall, this indicates that the information is there but we could do more to make it more accessible. Clearly the BSB website is a vital resource and information needs to be easy to find. To this end we worked on a project during 2014/15 to overhaul the publicly available information about the enforcement process on the website – taking expert advice with the aim of improving the accessibility, layout and clarity of the information on the enforcement webpages. In 2015/16 we will move onto the implementation of the required changes with a view to having new webpages for our enforcement work online in January/February 2016.

“ *Just have a simple section on the BSB website with a few links to the guidance, and people who can help. The site is too “busy” and not easy to use.*

Barrister response #12513

Staff Performance

- 3.45 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall,

³⁹ The figures for barristers did not improve and while in the majority of cases this was because the complaints were closed without investigation – and in those circumstances we would only contact the barrister to say the complaint was dismissed – we will ensure that in 2015/16 the barrister receives a leaflet whenever a complaint about them is investigated.

82% of barristers rated their experience as good or excellent. Complainants' ratings were lower with 43% giving our staff a positive rating but 29% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous three years. Further analysis reveals a correlation with the outcomes of complaints – where complaints were referred to disciplinary action, all of the complainants responding in 2014/15 rated the staff as excellent, good or average.

“ I would like to thank the staff of the BSB for handling my complaint, particularly the people involved on the day of the hearing. They were all very respectful and supportive, making a very stressful situation (I had to be cross-examined) more endurable.

Complainant response #02376

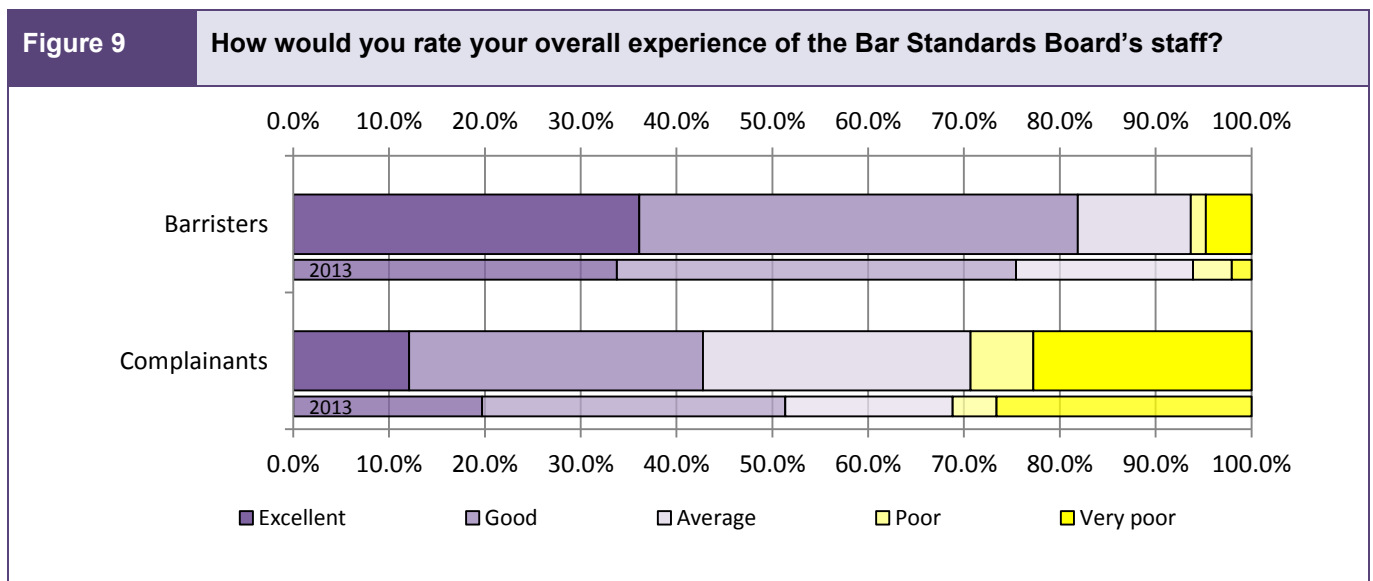
3.46 We also asked some specific questions about staff performance. The majority of complainants and barristers rated our staff as good or excellent at being polite and professional and handling calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.

3.47 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). This was the area, as with previous years, where our staff received their lowest ratings. Although 85% of barristers rated the staff average or above average, only 61% of complainants agreed.

“ It is fair to say the pace at which the process moves by the BSB is impressive, and many statutory regulators cannot currently hope to achieve similar service levels. However, in my view, work remains to be done to bring the investigatory processes of the BSB up to the same standard of other regulators.

Barrister response #02327

3.48 So where complainants have issues they tend to be around our performance in providing updates and, to some extent answering queries; both of which suggests that complainants may be looking for a more personalised service than we currently provide. Whether or not this is appropriate in the context of our role as a regulator, as opposed to a complaints handling body, has been an issue of concern in recent years. Nonetheless, we want complainants to feel that they can come to us with issues and we



continue to train our staff to help us to achieve this.

In-house training

3.49 We are always looking for ways to improve our staff performance. The BSB has a training programme for all staff members, which this year included legal training for members of staff without legal qualifications. In addition, we run our own training programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2014/15 we ran nine training sessions on topics such as:

- Legal Aid;
- Judicial reviews;
- Disclosure in regulatory proceedings.

3.50 We intend for our in-house training programme to continue in this forthcoming year with a particular emphasis on casework and casework administration skills.

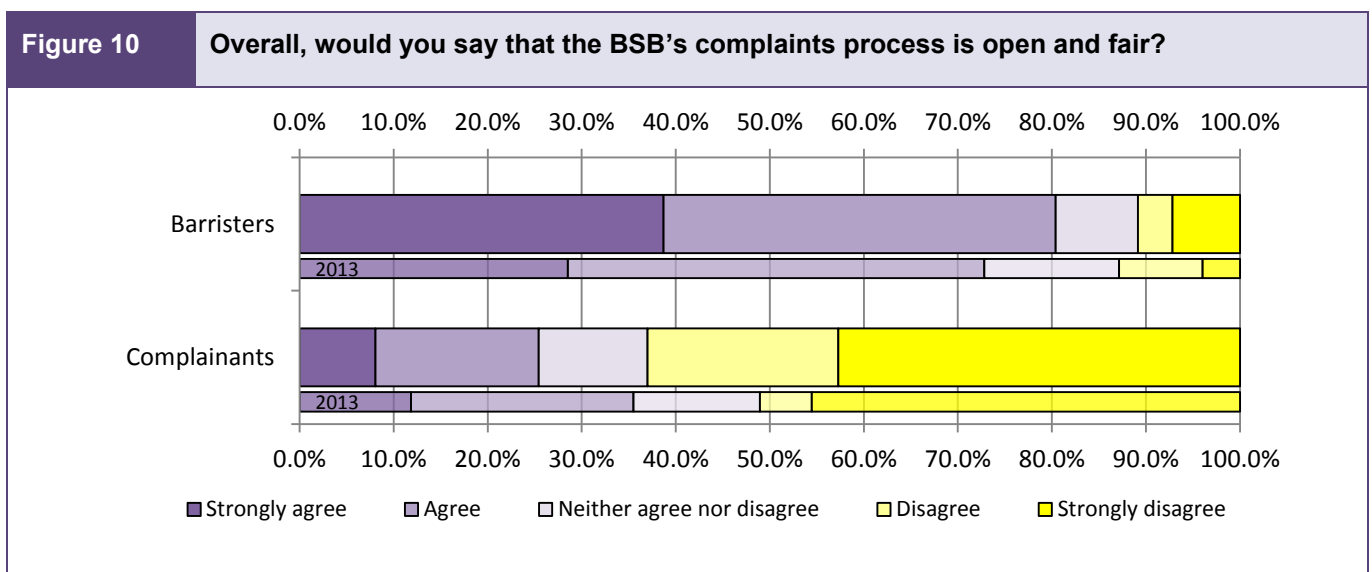
Transparency and openness

3.51 Openness, fairness and transparency are of critical importance to our enforcement work. A legal regulator cannot operate any other way. We asked barristers and complainants whether they would agree that the BSB’s

complaints process is open and fair. In past surveys this question has revealed a marked difference between the views of barristers and complainants and our past research has shown that the outcome of a case often has a considerable impact on responses⁴⁰.

3.52 Figure 10 shows that this year 80% of barristers agreed that our enforcement process is open and fair and only 11% disagreed. For complainants, 26% agreed and 63% disagreed. Last year we saw an improvement in the responses of complainants but in 2014/15 the responses have been less positive – returning to close to the level observed in 2012/13. So the disparity between the views of complainants and barristers is still there and the gap between them has increased. For complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, 75% of complainants agreed that we were open and fair.

3.53 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and transparency of the enforcement system. The big issues for complainants remain the same: 56% of



⁴⁰ Bar Standards Board (2011): “Understanding Complaints Data”

complainants felt that we did not consider all of the evidence relating to their complaint and 59% of complainants disagreed that the reasons for the final outcome were clear⁴¹. We also saw a familiar pattern in the comments left by complainants, whereby upon receiving a decision that we do not intend to refer a complaint to disciplinary action, some complainants say that we did not take their concerns seriously or suspect that we are siding with the barristers.

“ *In general I felt as with all other organisations dealing with complaints by whistle blowers that there was always a reason why nothing could be achieved. I do still feel they should have been able to help.*

Complainant response #12456

- 3.54 When we close a case without a referral to disciplinary action we inform the complainant of the precise reasons why we took that decision. This is an area where we have completed a considerable amount of work over recent years – particularly at the initial assessment stage. Despite our ongoing commitment and work towards improvements, the survey results show that more complainants than last year felt that the complaints process is not open and fair. The work of the Independent Observer (see below) assures us that the issue is one of perception rather than a systemic problem but it remains an issue nonetheless. It may be no coincidence that our move towards taking a risk-based and outcomes-focussed approach has come at the same time as an increase in the dissatisfaction of individual complainants.
- 3.55 Understandably, dissatisfaction levels are highest amongst those complainants whose complaints we deemed unsuitable for disciplinary action, but a large proportion of external complaints we receive are unsubstantiated, do not represent a breach

of the Handbook or represent very little, if any, risk to the public or the regulatory objectives. We cannot take action in these cases but we must endeavour to demonstrate clearly that our processes are open and fair. To not do so would run the risk of dissuading members of the public from bringing issues of concern to the attention of the BSB in the future. But we have to recognise that the purpose of the enforcement system is not to provide a personalised resolution service that is characteristic of complaints handling bodies. Our role is in maintaining the high standards of the profession rather than working with complainants to provide the outcomes they want. As part of our work in 2015/16 on public information and in developing our approach to risk, we will look at the terminology we use and the way we communicate to manage the expectations of complainants better and ensure our role is clear. In this way we can keep complainants involved with our processes but may be able to reduce the perception that we should be working in their best interests rather than the public interest.

“ *[The] BSB conducted a very fair and thorough examination of a complaint brought against me by my former employer and reached a conclusion that I believe reflected the underlying truth in the case. I am grateful for the time and care taken.*

Barrister response #02409

Checks and balances

- 3.56 Our PCD staff carry out regular checks on our caseload (including spot-checking and case review meetings to ensure cases are progressing as they should), but often a review from outside the PCD is the most effective means of identifying potential issues and driving improvements. To this end we have an Independent Observer

⁴¹ In addition, 45% of complainants disagreed that they were given adequate opportunity to put forward their case.

taking an overview of our enforcement system and a sub-committee of the PCC reviewing staff decisions.

Independent Observer

- 3.57 The BSB appoints a lay Independent Observer (IO) to ensure that the enforcement system is operating in line with its aims and objectives. The second IO, Isobel Leaviss, was appointed in May 2011.
- 3.58 The latest IO report to the Governance, Risk and Audit Committee (covering the period July 2014 to December 2014) spanned six months of 2014/15. In it she gave the work of the PCD and PCC a positive assessment commenting that:
- “I have continued to observe good administrative standards in the handling of complaints, clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision making and a demonstrable commitment to fairness when responding to queries and challenges from complainants and/or barristers.”
- 3.59 All reports by the Independent Observer are published on the Bar Standards Board website.
- 3.60 Based on her observations, the IO made four new recommendations which were accepted by the PCD. These included:
- Carrying out a review of our handling and monitoring of “pre-complaints” – information that could potentially result in a complaint being opened or raised;
 - Developing reports to better enable monitoring of compliance with disciplinary fines;
 - Formalising the principles that should be applied when handling complaints about barristers undertaking work on behalf of the BSB.

- 3.61 The work of the Independent Observer is highly beneficial in ensuring the enforcement system is operating effectively and the recommendations made to date have resulted in many improvements to the enforcement processes and the public facing work of the PCD.

Quality Review Sub-Committee

- 3.62 Members of the PCD staff are authorised by the Professional Conduct Committee to make certain decisions to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the decision making remains high, the Quality Review Sub-Committee (QRSC) of the PCC – a three member panel with a lay chair – spot-checks these staff decisions twice a year. The QRSC assess the timeliness, thoroughness, transparency and accessibility of PCD decision-making along with the decision itself.
- 3.63 The QRSC reviewed 10% of dismissed cases and referrals to disciplinary action made during 2014/15. The QRSC also reviewed all five administrative sanctions imposed by PCD staff (without Committee involvement) throughout the year, as this was the first time that these sanctions had been imposed since their introduction with the BSB Handbook in January 2014.
- 3.64 The QRSC agreed that all of the dismissal cases had been handled in accordance with the relevant regulations and procedures and were fairly dismissed. They also agreed that the decisions to refer cases to disciplinary action were appropriate given the circumstances of the cases.
- 3.65 In reviewing the administrative sanctions, the QRSC agreed that four of the five sanctions imposed were appropriate and that the handling of the cases was open, honest and accessible. However, in one case – relating to a criminal conviction for drink driving – the sub-committee disagreed that a written warning was an appropriate sanction in this

particular case. There were some concerns that a warning (although it could be appropriate in some cases) as the first administrative sanction to be applied in this type of case, might result in the benchmark for action in relation to a drink driving conviction being reset too low. Since this case, all drink driving convictions have been referred to the PCC for consideration and the Committee have agreed that normally drink driving convictions are not suitable for administrative sanctions. To support this, we made amendments to our case management system to provide guidance when PCD staff are processing drink driving complaints.

3.66 This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place – not only in providing quality checks but also in driving improvement.

Quality of Service

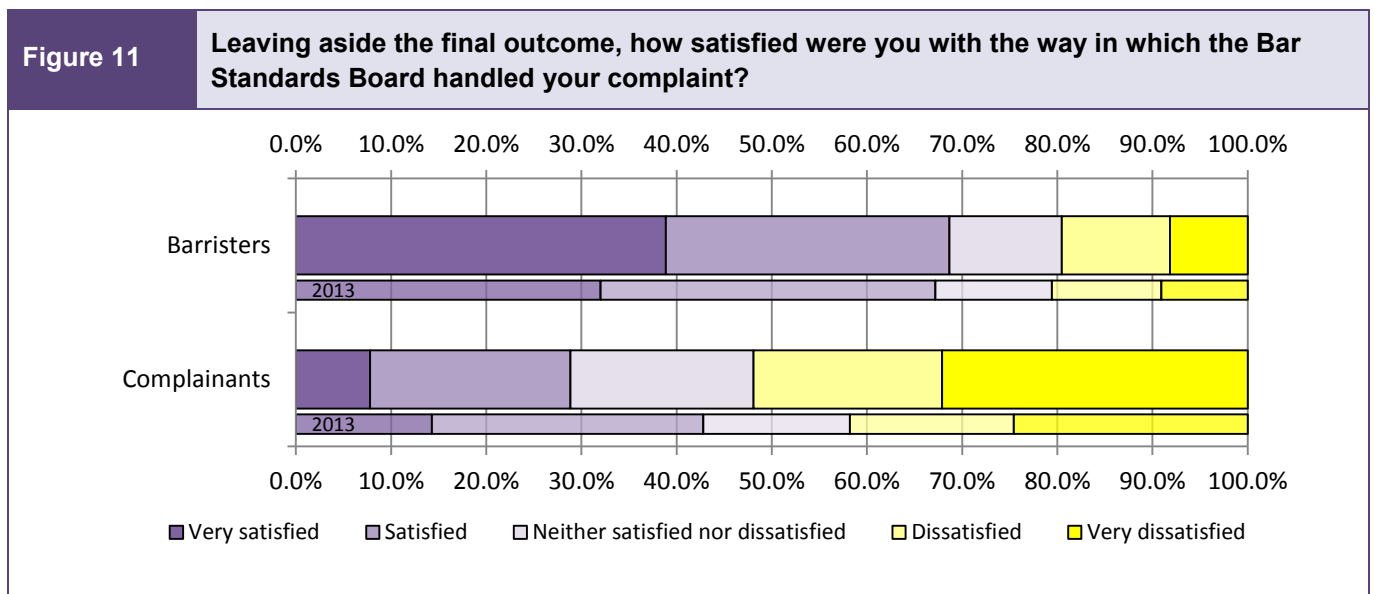
3.67 As an overall measure, we asked complainants and barristers to leave aside the final outcome⁴² and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 69% of barristers were satisfied with our handling of

the complaints against them compared with 29% of complainants. While this was a slight improvement for barristers, the views of complainants fell back to a similar level to two years ago after an increase in performance last year.

“ Whilst I was dissatisfied with the outcome of my complaint against [...], the complaint was handled in an efficient and thorough manner.

Complainant response #02533

3.68 So in two fundamental areas – the openness and fairness of the complaints process and the overall quality of service – complainants responding to our survey were less satisfied than in the previous year and the gap between the views of barristers and complainants increased. Realistically, the high proportion of external complaints which we close without a referral to disciplinary action and the impact this has on the perceived fairness of the system makes it impossible to achieve parity in this area. In addition, our 2011 research indicated that it is reasonably common for there to be a difference between the satisfaction levels of complainants and the



⁴² Our 2011 study: “Understanding Complaints Data” by IFF Research highlighted that, as the outcome of a complaint may have a significant bearing on the response to the question, any general question relating to “quality of service” should be clearly separated into satisfaction with the outcome of the complaint and satisfaction with the level of service

professional/commercial object of their complaints. However, we are committed to improving and it is disappointing that despite the work that has been carried out in recent years, the views of complainants have only really improved in the area of the accessibility of our service.

“ *The decision regarding my complaint, whilst disappointing, wasn't unexpected. Professional standards bodies have a public perception of acting harshly on infractions of their rules but taking no action on matters of public abuse and misusing their profession, as was shown in the decision on my complaint.*

Complainant response #02458

3.69 There is no doubt that the information provided by complainants is extremely valuable and we need potential complainants to feel confident in bringing potential issues of misconduct to our attention. However, we are no longer the same complaints handling body that we were in 2010 when we dealt with complaints about poor service and made findings in support of the complainants. Our role now is in taking action for breaches of the Handbook where there is a real risk to the regulatory objectives and maintaining the high standards of the profession. If anything, though, our connection with complainants is now stronger than it was in 2010 as we have made considerable efforts to engage with complainants and develop the detailed reasons we give for the decisions we make. At the same time, the introduction of outcomes-focused and risk-based regulations is taking us in a direction that may be perceived by complainants as dismissive of their concerns. Dismissing a complaint where there is evidence of a breach but the risk is too low to warrant enforcement action may be a hard concept for complainants to understand and lead to greater levels of dissatisfaction.

3.70 The issue is one of managing expectations: inviting complainants to provide information and still keeping them up to date and informed, but making it very clear that we operate in the public interest, that we may not be taking action in relation to their individual issues and not using terminology that encourages complainants to think that we act for them. We may still not see the improvements in the feedback we receive, but the enforcement system will be more transparent and stronger. As we work in 2015/16 on our approach to risk, making changes to our webpages and collaborating more closely with the BSB's Supervision Department, we will be keeping the role of the complainant in mind and the need to manage expectations in relation to the public function that we provide.

“ *It seems you got a right balance between doing something to make the complainant feel listened to, while sensibly pressing your own reasons and saving me time and anxiety by dealing with it quickly and without requiring my active input.*

Barrister response #02577

Other work streams

- 4.1 While our primary function is in taking action where the BSB Handbook has been breached, our work throughout the year encompasses a number of other work streams:

Disciplinary history checks

- 4.2 A disciplinary history check is where we cross reference a barrister against our Enforcement Database and report on any disciplinary findings made against the barrister. This is usually for the purpose of issuing a Certificate of Good Standing but we also respond to requests from the Judicial Appointments Commission (for use in handling applications for judicial office) and the Inns of Court (pupil supervisors).
- 4.3 In addition we have a memorandum of understanding with the Queen’s Counsel Appointments body in which we agree to report on any disciplinary findings or ongoing disciplinary proceedings for each Queen’s Counsel applicant. These are then taken into consideration when QCA are assessing applications.
- 4.4 We completed 573 disciplinary history checks in 2014/15, including checks on 215 QC applicants.

Information provided to the public

- 4.5 Although we are not currently subject to the Freedom of Information Act 2000, we work in the spirit of the Act when we receive requests for enforcement data. We regularly receive requests from researchers, reporters, complainants and other members of the public, typically asking for numbers for different types of complaints or outcomes and sanctions we have imposed. Where the information is available we always comply with the request and provide anonymised data.
- 4.6 We want our enforcement data to be as transparent as possible and so

accompanying this Annual Report is a Statistical Report of data that will address many of the data requests that we anticipate receiving. This will allow for fast access to information for the public without us having to generate custom reports each time.

Projects

- 4.7 In our Enforcement Annual Report for 2013/14 we highlighted two projects that we would be focussing on in 2014/15: entity regulation and the Disciplinary Tribunal Regulations review.
- 4.8 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy, litigation and expert legal services – in the autumn of 2014 and began accepting applications in January 2015. The PCC and PCD spent the year working towards being able to take enforcement action once the first complaints about entities or employees of entities are received by the BSB. This took the form of a Working Group to establish the procedures for handling complaints about entities, their owners and managers and employees of entities; and then project strands including making changes to policy documents and amending our Enforcement Database so that we are ready to open and begin processing a complaint as soon as one is received.
- 4.9 Our Disciplinary Tribunal Regulations are published in the BSB Handbook and detail the procedures that are followed when we refer complaints to Disciplinary Tribunals. We began undertaking a review of the Regulations in 2014/15 to ensure that they remain fit for purpose and to address specific points including: amendments proposed by the COIC DTR Working Group in 2013/14 and giving Tribunals the power to impose administrative sanctions. The Working Group for the project began meeting in early 2014/15, supported by staff within the PCD, and throughout the year worked on a proposed set of issues that might require

amendments. The proposed revised Disciplinary Tribunal Regulations were completed in early 2015/16 and are currently published on the BSB website as part of an open consultation. Some of the proposed revisions include:

- Modernising terminology;
- Setting out more clearly the procedure to be followed at hearings and including robust rules for the treatment of witnesses and vulnerable witnesses;
- Addressing potential gaps in the Disciplinary Tribunal powers.

4.10 Amongst our other project work throughout the year both within the PCD and across the BSB, we made upgrades to our Enforcement Database to allow for more flexibility in risk assessing complaints and more efficient handling of complaints, updates to policies and procedures and also began time recording within the department – recording the actual time spent on casework which will feed accurate information into other projects. One of the core values of the Bar Standards Board is “value for money” so one of the uses of this time-recording information will be to allow us to calculate the cost per complaint that we handle. This is useful information for budgeting and driving improvements but also feeds into a bigger project on the cost of regulation as a whole.

Conclusions and action points

- 5.1 The first edition of the BSB Handbook was introduced towards the end of 2013/14 and brought with it many changes to the way in which we handle information and complaints about barristers – risk assessments, administrative sanctions and a more outcomes focussed approach to regulation. As the first full year since the introduction of the Handbook, 2014/15 was a chance to consolidate and refine the new policies and procedures and determine the nature of our caseload going forward. At the same time we undertook a wide ranging review of our Disciplinary Tribunal regulations and prepared for a whole new area of work as the BSB successfully applied to become a regulator of entities (see “Looking forward”). As a whole, the enforcement system has been working well but we are committed to improving and will be focusing on quality assurance and knowledge management – both in casework and the administration of casework – in the coming year.
- 5.2 Our caseload, which had steadily decreased over the previous two years increased considerably and we ended the year with 39% more active cases than we started the year with. The difference came less from the numbers of external complaints – our external caseload has varied very little over the past four years – but from an increase in the numbers of internal complaints we opened and the pattern of complaints throughout the year. However, there were some unusual factors: multiple complaints about one barrister, complaints about multiple barristers from a single source and a batch of practising certificate cases that we are unlikely to see again. Given the relatively small number of complaints we handle, these had an impact on both our caseload and performance figures, especially towards the end of the year. In concluding complaints we issued our first administrative sanctions under the new Handbook as a means of taking enforcement action. We also saw evidence that only the most serious complaints are being heard at Disciplinary Tribunals – the costliest and most time consuming form of enforcement action – as, for the first time, disbarment was the most common sanction imposed by Tribunal panels.
- 5.3 In the third and fourth quarters, the increased caseload and a number of staff vacancies within our small casework team hit our performance figures for the year. We concluded or referred to disciplinary action 69% of complaints within service standards, missing our 80% target. We ended the year with a high proportion of complaints already over-running our service standards that we will need to clear at the start of 2015/16 before we can get back on track – but evidence from our caseload monitoring tools suggest that we will return to the position in 2013/14 and early 2014/15 where we were regularly meeting our performance targets.
- 5.4 Our User Feedback Survey continues to be a useful tool for gaining feedback on where we are performing well and where we can improve. For complainants, many of the improvements we saw in our survey results last year were not maintained into 2014/15 and it appears that only in the area of the accessibility of our service has our improvement work made a genuine difference. We still have issues around the perceived openness and fairness of our enforcement procedures and while it is clear that the decisions that we take on external complaints has a significant bearing in this area, we need to continue to try to address these concerns. We hope that the BSB’s upcoming work on consumer engagement will reveal ideas for a fresh approach, but in the meantime we will concentrate on managing the expectations of complainants – ensuring that they understand our role as a regulator.

5.5 While this report looks back on our casework and performance across the past year it also looks forward. We have identified areas where we can improve and we are already working hard towards clearing the longer-running cases, stabilising our caseload where we can, training and developing new and existing staff and looking towards the point where we start receiving complaints about entities. This was a year of considerable change and work for the PCD and PCC but all focussed towards improvement and embedding our risk-based and outcomes-focused approach to enforcement.

Action points

5.6 Based on the findings of this report, we intend to carry out the following actions during the course of the next twelve months. The focus of these action points is maturing in our approach to enforcement rather than significant change. However, ongoing wider BSB work to continue raising our regulatory standards may lead to more fundamental change, the need for which will be determined later in the year.

- Implement improvements to the enforcement web pages to improve the accessibility of information and to ensure that we properly manage the expectations of complainants (providing the service standards for handling complaints and clarifying the role of the BSB);
- Improve our knowledge management systems, ensuring that the outcomes of cases and lessons learnt are fed back into all aspects of our work in the best possible way. The new Professional Support Lawyer role will support this action point;
- Review and strengthen our current quality assurance systems. Again, the new Professional Support Lawyer role will support this action point;

- Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (with the risk framework and risk index) is reflected in our enforcement work. We are currently working with the Supervision Department and other departments to ensure that we have a common understanding of risk and that our systems support each other. This work will continue throughout 2015/16;
- Continue our KPI monitoring programme to ensure that we can deal with the over-running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcements processes;
- Review and reset the Disciplinary Tribunal service standards at the conclusion of the Disciplinary Tribunal Regulations review;
- Review the current service standard for the Determination by Consent procedure and set a target for 2015/16.
- Contribute our survey results and experience to the wider BSB's consumer engagement project;

Looking forward

- 6.1 In this section we look ahead to some of the projects that we will be working on in 2015/16 and some of the background to the enforcement work we will be carrying out in the near future.

Entity regulation

- 6.2 The BSB is now an approved regulator of entities. Although we would hope that no complaints will be made about entities in their first year of operation, we may receive our first complaints in 2015/16. Going forward we will be addressing new areas of work and new challenges and we must be prepared for new ways of working. In the meantime, the BSB will be making a proposal to regulate Alternative Business Structures (ABS) – organisations that may not be owned by a barrister – which again would require a review of our policies and procedures to ensure that where we need to take enforcement action we can continue to take a risk based and outcomes focussed approach.

Caseload

- 6.3 To some extent the increase in our caseload that we saw in 2014/15 will be balanced by a significant increase in case closures in early 2015/16. We expect to close more than 150 complaints in the first quarter which will bring the overall caseload down to a more manageable level and go some way towards clearing the backlog of complaints. But given the slightly unpredictable nature of our internal caseload since the introduction of the BSB Handbook and its associated new ways of working, we cannot predict with any great accuracy how many complaints we should expect to open in 2015/16. However, we have tools on our Enforcement Database to monitor the situation and we have shown in 2014/15 that we can handle an increase in complaints with only a short term impact on performance.

Regulatory Risk

- 6.4 The BSB has undertaken a considerable amount of work during 2014/15 in developing a Regulatory Risk Index, providing a catalogue of risks that could impact on us meeting the regulatory objectives. In our enforcement work we have been risk assessing complaints since the BSB Handbook came into force into January 2014, before this wider work took place, and there is now work to do to develop our approach and ensure that a consistent approach is being used throughout the organisation. We will be working closely with other departments of the BSB, particularly the Supervision Department, in 2015/16 in developing our common understanding of risk and a shared approach to assessing risk in incoming information to the BSB. We have already begun work in this area and anticipate that a number of improvements to the collaborative approach taken to enforcement and supervision can be made during 2015/16. This report has highlighted that this approach is extremely useful to the functioning of the whole organisation and we look forward to continuing to develop a shared approach to risk throughout the BSB.

Sara Jagger

Director of Professional Conduct

Simon Lofthouse QC

Chair of the Professional Conduct Committee

July 2015

Bar Standards Board Annual Report 2014-15

Status

1. For discussion.

Executive Summary

2. This paper contains a near final draft of the text from the 2014-15 Annual report for consideration by the Board. The draft reflects comments and direction given by the Planning, Resources and Performance Committee, as well input from the Chair and Director General. A mock-up of the proposed design of the final version is also provided.

Recommendations

3. The Board is invited to:
 - a. **Discuss** the content of the report;
 - b. **Agree** that the report be published on 31 July, and promoted accordingly.

Background

4. Board members received the end of year report at the May meeting which gave details of the performance against last year's business plan.

Comment

5. The Planning, Resources and Performance Committee considered the 2014-15 Annual Report at its meeting on 18 June. Members provided direction as to the content and tone of the report at that meeting, and have since seen an earlier draft of the text for comment.
6. A mock-up of the design for the 2014-15 Annual Report is also included within this paper. If Board members agree the content of the report, the final text will be inserted into this design template and a final designed version will be produced and checked, in time for publication on 31 July. Comments are of course welcome regarding any element of the report's content which requires further attention.
7. Members are also asked to agree that, like last year's report, it should be published in electronic format only. No paper copies will be produced.

Resource implications

8. No additional resource is required. We have a budget for production of the designed annual report.

Equality Impact Assessment

9. No equality impact assessment is necessary as there is no policy element to this report.

Risk implications

10. There are no significant risks associated with this report.

Impacts on other teams / departments or projects

11. All BSB departments have had input into the content of this report.

Consultation

12. All BSB departments have had input into the content of this report. The Finance team has also contributed significantly to those sections pertaining to our financial performance.

Regulatory objectives

13. The report relates to performance against the Strategic Aims in the Strategic Plan 2013-16. Those aims in turn were developed in the light of the regulatory objectives.

Publicity

14. The report will be published on the website following the July Board meeting, together with associated press releases.

Annexes

15. Annex 1 – draft annual report.

16. Annex 2 – mock-up of design.

Lead responsibility:

Amanda Thompson, Director of Strategy and Communications



Annual Report 2014-15

The Bar Standards Board regulates barristers in England and Wales in the public interest

Bar Standards Board – Annual Report 2014-15

The Bar Standards Board is the independent regulator of barristers in England and Wales. Our mission is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest.

Our values

Integrity

- We operate to the highest ethical standards
- We are honest, open and inspire trust
- We consider the social and environmental impact of our actions

Excellence

- We are committed to quality
- We are creative, innovative and lead change
- We are responsive, accessible and accountable for our actions

Fairness

- We act responsibly, proportionately, and in the public interest
- We promote equality of opportunity and equal access to justice for all
- We value inclusion and diversity

Respect

- We respect and support others
- We value expertise, learning and knowledge-sharing
- We foster a collaborative and developmental working environment

Value for money

- We are cost-effective and accountable for our use of resources
- We work efficiently with an entrepreneurial and commercial mind-set
- We strive for clarity, simplicity and straightforwardness

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Page numbers will be reviewed and added in final designed version.

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Introduction

Welcome to the 2014-15 Annual Report of the Bar Standards Board.

This was the second year in our current three-year strategic plan. It was a year of significant progress as we built on the foundations which were laid in 2013-14 and one where the objective of becoming a fully modern and efficient regulator by 2016 came clearly into focus.

The plan to transform nearly every aspect of the way in which we regulate barristers in just three years was ambitious. We needed to realign our rules and structures in order to meet the regulatory objectives set out in the Legal Services Act 2007, and to meet our obligations to the Legal Services Board. To do so in a way which simultaneously provides value-for-money to the profession that funds us, and which addresses the biggest risks to the public who rely on the services provided by the Bar, has been a tall order. However, as this report will demonstrate, two-thirds of the way through, we remain firmly on track.

This report provides a summary of some of our key achievements during 2014-15. It demonstrates the progress we have made against each of our five strategic aims. It explains some of the lessons that we have learned along the way and, as you would expect from an annual report, provides an overview of our financial performance during the year.

We began 2014-15 having just launched the new BSB Handbook and with a fledging Supervision team raring to become the embodiment of our new risk-based approach to regulating barristers; providing support and advice to members of the self-employed Bar in their chambers. This has meant encouraging chambers to have open and honest discussion with us during Supervisory visits, so that we can be better placed to help the profession to comply with our rules and expectations. A profession used to a regulator with a very prescriptive rule book and a reputation for strong enforcement action if things did go wrong, was unsure what to expect.

We ended the year with the Supervision team having rated every set of barristers' chambers for the likelihood of non-compliance, and on a scale of adverse impact to the public if things did go wrong. Our pilot programme of supervisory visits to high-risk, high-impact chambers was overwhelmingly successful and feedback from the people we visited has been positive. In the words of one, "We were able to have an open conversation about the issues that all chambers face these days".

By the end of 2014-15, we were on the brink of becoming an authorised regulator of entities; a new form of barrister-led businesses. We are now successfully regulating entities and this development is a significant milestone, not only in our strategic plan, but also in the long history of the Bar. Allowing barristers to incorporate effectively – either as single-person entities or by combining with other barristers – provides the Bar with another mechanism by which it can compete in an ever changing legal services marketplace, and against the backdrop of considerable challenges for those in practice. Of course, the provision of barrister-led entities also provides more choice for the legal consumer. We believe this is a

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worthwhile contribution to two of the regulatory objectives: encouraging an effective legal profession and, in the longer-term, seeking to improve access to justice.

Speaking about the importance of the long-term health of the profession, we took steps during 2014-15 to work out how the next generation of barristers might better be educated and trained. Our Future Bar Training (FBT) programme was launched in the autumn. In a fast-moving legal services market, we must make sure that our regulation does not get in the way of training being delivered effectively. It must meet the needs of both the profession and the public; and allow the best candidates – no matter what their background – to succeed. FBT is a programme that is geared to gather pace significantly during 2015-16.

There is still much more to do, of course, and we have learned some important lessons during the year. For example, we have become better at planning and forecasting; clearer about what we are in control of, stricter about prioritisation and more careful to give ourselves sufficient time and resource to do our work well. We realise the heavy demands which our consultation processes can lay on members of the Bar who care so deeply about the future of their profession. There is no alternative if we are to build a new regulatory structure which will command the confidence of barristers, consumers and public alike. But we shall endeavour to make our proposals as easy to understand and digest as possible.

This involves too making sure that we better anticipate factors outside of our direct control which could impact on our plans. Events move on – especially during a period of unprecedented change for an ancient profession – and we need to become more flexible in how we respond to these developments. For example, the cuts to legal aid and the rise in litigants in person are significant factors that could affect our regulatory objectives by impairing access to justice. We need to be able to adapt our priorities more quickly as the landscape around us changes. The work we have been doing to develop a risk based approach to regulation will be instrumental in this. We have been working to produce a Risk Outlook; a key evidence-based regulatory tool to enable us to demonstrate how we are focusing our attention and resources on issues which pose the biggest threat of harm to the public we serve. You can expect to hear much more from us about our risk-based approach to regulation during the final year of our strategic plan.

Other priorities for 2015-16 and beyond, include conducting an internal review of our governance arrangements, enhancing our consumer knowledge and stakeholder engagement, and completing the process to allow us to license alternative business structures; much to do and all of it vital.

Finally for this note of welcome, it would be remiss of us not to include a note of thanks to all our hard-working staff, committee members, Board members and key stakeholders, without whom none of our achievements would have been possible. Particular thanks go to Sarah Clarke who left the Board this year after four years of contributing very strongly to the development of our regulatory approach.

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Unarguably however one of the most important developments during 2014-15 was the transition from our outgoing Chair, Baroness Ruth Deech QC (Hon), who left us on 31 December 2014. Her time as Chair of the BSB, falling as it did fairly early on in our role as an independent regulator, was often challenging. But Ruth's belief in the sort of regulator we needed to become, and her determination to make it happen, was fundamental in placing us in a strong position to conceive and deliver the current strategic plan. Her experience, courage and companionship are greatly missed by those who worked with her. We are glad to pay tribute to her work. We hope that with a non-lawyer now in the Chair we shall continue to act at all times, first and foremost, in the public interest.

Signature

Sir Andrew Burns KCMG

Chair, Bar Standards Board

Signature

Dr Vanessa Davies

Director General, Bar Standards Board

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What the BSB does

We regulate barristers in England and Wales in the public interest.

We are responsible for:

- Setting standards of conduct for barristers and authorising barristers to practise;
- Monitoring the service provided by barristers to assure quality;
- Setting the education and training requirements for becoming a barrister as well as setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- Handling complaints against barristers and taking enforcement or other action where appropriate.

We aim to do this in a way which, where possible reduces the regulatory burden, is less prescriptive, promotes innovation and encourages competition.

Regulatory Policy

We set standards for barristers and provide a Handbook that, within part two, sets the rules for practice at the Bar – the Code of Conduct. The Handbook includes detailed guidance addressing particular aspects of professional standards. We also develop policy on professional conduct in areas such as chambers' complaints handling and direct public access to barristers.

Supervision

Our aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the quality of both individual barristers and the chambers and entities in which they practise. This includes a risk-based approach to supervision of chambers and the authorisation of new entities and the regulation of Continuing Professional Development (CPD).

Education and training

We oversee the Academic, Vocational, and Pupillage stages of training that must be completed in order to qualify as a barrister. We are responsible for accrediting the providers of barristers' CPD. We also look at individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

Enforcement

We investigate professional conduct and take action against barristers who have breached the provisions of our Handbook.

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Our strategy 2013-2016

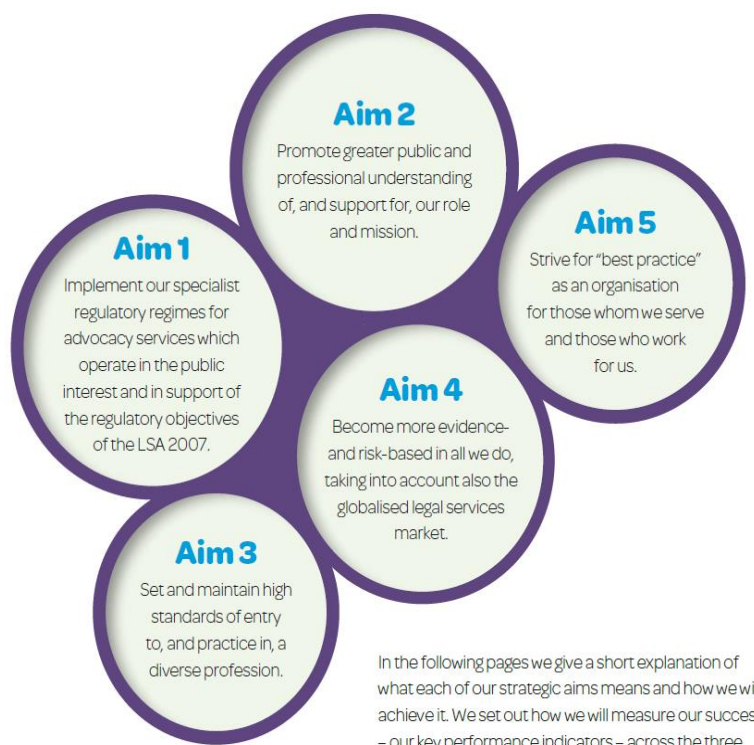
Our vision by the end of 2016 is to become a more modern and efficient regulator, operating to externally agreed high standards, fulfilling our mission and upholding and promoting the regulatory objectives and professional principles. How we plan to achieve that vision is set out in our Strategic Plan 2013-16, with key programmes of work and annual milestones for each of them.

This Annual Report reflects on what we have achieved in the second year of our strategy. It looks at each of our aims, explaining what we have done during the 2014-15 year and the difference it will make to the profession that we regulate and the clients they serve.

Our strategic aims

The BSB has developed five strategic aims which encompass all the work we intend to undertake over the three years from 2013-14 to 2015-16.

Our aims also reflect how we are going to improve our performance against the Regulatory Standards Framework (RSF) laid down by the Legal Services Board (LSB). That framework has four key pillars – outcomes-focused regulation; risk assessment; supervision; enforcement – and requires a regulator to demonstrate sufficient capacity and capability to regulate in those key areas. We hope and expect to be rated by the LSB as “satisfactory” when we are next due to be assessed in March 2016.



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Achievements in 2014-15

Strategic aim 1

Implement our specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the Legal Services Act 2007.

The world in which we operate as the regulator of barristers is changing. The legal services market is opening up, competition is increasing and consumers are demanding more from legal service providers. We have to make sure that we are responsive to those changes by providing a regulatory structure that enables barristers to meet the changing demands of the market.

2014-15 Progress Report

At a glance:

- BSB Handbook embedded across the Bar
- First BSB-authorized entities apply and are on the verge of becoming authorised
- Review of the “cab rank rule”

Significant progress was made against this strategic aim during the second of our three year plan; indeed, it was always intended as a key year in this area.

Our regulatory arrangements were fundamentally updated during the first year of our plan; most notably, with the introduction in January 2014 of the new BSB Handbook. Outlining a number of Core Duties, the Handbook is much less prescriptive than the previous Code of Conduct which it replaced. It focuses on the desired outcomes that barristers should aim for, rather than stipulating a set way in which that outcome must be achieved.

The past twelve months have seen the new Handbook being bedded-in throughout the profession. Much work was undertaken in the lead up to, during and after its introduction to communicate the new provisions to the profession.

As the Bar began to appreciate the change in regulatory direction typified in the Handbook, so its opportunities to diversify were further encouraged in 2014-15. When considering the earlier revisions to the rules on public access and the opening up of rules which allowed barristers to conduct litigation, the need to permit a wider range of business models from which barristers could operate was paramount. An effective, efficient and diverse profession is essential, because of the role it plays in upholding the rule of law and providing access to justice. Furthermore, increased competition amongst barristers and other legal services providers leads to greater consumer choice.

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The above reasons are why in 2014-15 we implemented a new regime for the authorisation and regulation of specialist advocacy-focused entities. We started officially regulating entities on 8 April 2015, following a lot of preparatory work conducted during the year. We worked closely with a number of applicants who helped us pilot and test our systems. This meant that 15 entities had already been through the assessment process during early 2015 and thus were able to become fully authorised immediately on the go-live date.

The assessment of an entity's suitability to become authorised is closely aligned with our risk-based approach to regulation. In other words, the information supplied by each applicant is reviewed to determine how effectively it can be managed and governed, with careful consideration given to the suitability of the key persons involved; namely the entity owner and its manager.

The go-live date for entity authorisation was later than originally planned. This was because the process of preparing our application to the Legal Services Board took longer than intended. There were a number of complex issues to resolve in order to ensure that we have sufficient regulatory powers should we ever need to "step in" and take over an entity in order to protect its clients. Another issue involved seeking the permission of the administrative court in relation to possible appeals against entity authorisation.

As a consequence of the above, our application to the Legal Services Board to become a licensing authority for Alternative Business Structures was also delayed. However, a draft application was submitted in December 2014, and the full application submitted in April 2015. It is likely that our desired timeline to become a full licensing authority by the end of this strategic plan may slip by a few months, however every effort and resource is being applied to bring this about as quickly as possible.

Finally in this section, following an undertaking we made to the Legal Services Board, we reviewed some aspects of the cab rank rule during 2014-15. Our review is due to continue until July 2015. The emphasis during our work has been on reviewing the impact of the standard contractual terms and whether there is a continuing need for both those terms and the list of defaulting solicitors to remain as part of the BSB Handbook within the cab rank rule. A call for evidence was issued in October 2014 and a consultation on the topic was launched in March 2015.

The cab rank rule is an important safeguard of access to justice, ensuring that solicitors are able to access suitable barristers on behalf of their clients. We would not normally concern ourselves with the contractual terms between a barrister and a solicitor, but the cab rank rule compels barristers to accept work in certain circumstances. This means we need to make sure that any regulatory obligation we put on a barrister to accept work, must be on terms that are fair and reasonable.

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In focus: The first tranche of BSB-authorised entities

Of the first 15 BSB-authorised entities, the majority were single-person entities. These included one solicitor owned-and-managed entity. There was an almost even split between those based inside and outside of London.

We have been liaising directly with prospective entities, helping and guiding them through the application process. During 2014-15 we developed the whole system with the help of four pilot “testers” whose feedback was very useful in enabling us to devise a system of authorisation that works best for all those wishing to be regulated by us.

Feedback has been positive. Here are just some of the quotes taken from an interview with one of the first entity owners that we authorised:

"I have decided to become a BSB entity, rather than an SRA regulated one, because the final result is very much one that resembles the kind of business structure that suits barristers."

"I just think that to build that same level of service into a more expandable and commercial format means that clients get access to justice in a more flexible way."

"I have found the BSB assessment process to be rigorous whilst being consultative, transparent and, I have to say, friendly."

You can read the full interview on our website at: www.barstandardsboard.org.uk/regulatory-requirements/regulatory-updates/june-2015-issue/case-study-one-of-our-first-bsb-authorised-entities/

Further reading:

You can read more about some of the topics in this section on our website:

Entity regulation: www.barstandardsboard.org.uk/regulatory-requirements/for-prospective-entities/

The BSB Handbook: www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/

The CAB rank rule: www.barstandardsboard.org.uk/about-bar-standards-board/consultations/closed-consultations/

Please note that, as in all of our work, we aim for an open and transparent approach. You can monitor all of our progress by reading our detailed Board papers on our website at: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/ In particular, the Director-General's report to every meeting is a good way to keep tabs on our progress.

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Strategic aim 2

Promote greater public and professional understanding of and support for our role and mission.

Understanding and awareness of what we do and why we do it is crucial if we are to be effective. We know from the Biennial Survey that there is scope to improve understanding of our role amongst the profession. Judging from feedback and media coverage, we also think that we could improve the information we provide so members of the public are easily able to find out where to go when things go wrong.

2014-15 Progress Report

At a glance:

- Improved approach to communications
- Established an outreach programme with consumers via regular engagement with legal consumer representative organisations
- Pro-active press releases on enforcement outcomes (disbarments)

Communicating what we do and why we do it in the way we do, is a particular challenge for the BSB. This is because, being partway through a three-year plan, not all of the pieces of the jigsaw are in place yet. The work which we are going to be finalising in 2015-16 with the publication of our Risk Framework and Outlook is a case in point. These public facing documents will provide the foundation and basis for much of the work we are already doing in other areas.

Having said this however, much progress has been made in the way in which we communicated our work during 2014-15. This applies not only to communication with our regulated community of barristers, but with all of those who are impacted by our work, not least of which amongst ourselves.

To coincide with the changeover of the Chair at the turn of the calendar year, we introduced a new direct communication channel with the profession in the form of a new-look monthly “Regulatory Update” email. Unlike previous versions, the new format allows us to include more general information for the profession about who we are and what we do. It also enables us to include regular features such as “The Handbook explained”, which provide us with an opportunity to explain our rules in a clear and concise way.

Our media relations approach seeks to protect and enhance the BSB’s reputation as an efficient and modern regulator, whose actions to protect the public are proportionate, but sufficiently tough when they need to be. One such way in which we did this in 2014-15 was by continuing to issue press releases proactively to the media whenever our regulatory investigations lead to a barrister being disbarred. Any media coverage generated should help give the public confidence in our ability to prevent unsuitable practitioners from

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continuing to represent clients in the future. During 2015-16 we intend to increase our communications around other disciplinary outcomes, such as suspensions.

A key area of progress in 2014-15 against this strategic aim – and also, towards our drive to become more evidence-based in everything we do (discussed further under strategic aim 4) – was the continued work we did to develop our relationships with a range of legal consumer organisations (such as the Legal Services Consumer Panel and Citizens Advice).

Organisations such as these are becoming an established and critical source of information for our regulatory policy teams. For example, during the year we consulted the group on topics as wide-ranging as our Youth Court advocacy review and the implications for consumer protection given the high number of barristers now authorised to undertake direct public access work.

One area which needs improvement is the information on our website about complaining about a barrister. Work is underway to review this information, to make it more navigable and easier to understand for both members of the public wishing to complain, and for barristers facing the prospect of a complaint.

In focus: key facts about our communication channels

- The BSB had over 11,000 followers on Twitter at the end of 2014-15.
- On average over 21,000 unique visitors visited our website each month during 2014-15.
- We issued 75 press releases and media statements during 2014-15.
- Over the course of 2014, 80% of the media coverage we received was positive or neutral.
- We launched six consultations during 2014-15 and published responses to three consultations from other organisations.
- There were 48,771 searches made on the online register of barristers during 2014-15.

Why not follow us on Twitter? @barstandards

Further reading:

You can read more about some of the topics in this section on our website:

For more information about our approach to media and communications, please visit the “media centre” on our website: www.barstandardsboard.org.uk/media-centre/

Please note that, as in all of our work, we aim for an open and transparent approach. You can monitor all of our progress by reading our detailed Board papers on our website at: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/ In particular, the Director-General’s report to every meeting is a good way to keep tabs on our progress.

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Strategic aim 3

Set and maintain high standards of entry to and practice in a diverse profession.

High standards of advocacy are crucial to the maintenance of the rule of law and promoting and protecting access to justice. Our role as the regulator is to ensure that those high standards are maintained by setting entry and training requirements, and monitoring standards of practice during the course of a barrister's career.

2014-15 Progress Report

At a glance:

- Future Bar Training programme commences
- Barristers apply for authorisation to conduct litigation
- Legal challenge to QASA continued
- Review of Youth Court advocacy
- Continuing to investigate complaints against barristers

“Setting and maintaining high standards of entry to and practice in a diverse profession” really does represent the cornerstone of everything that we do at the BSB. In this section, we cover two major aspects of our work: our “business as usual” activities and some of the changes that we are making to aspects of our work that will help set and maintain those high standards in the future.

We make regular announcements about the many reviews, projects and programme launches that we undertake, but “business as usual” takes up the majority of our time and resources; as indeed it should do. We are a regulator, and we need to make sure that we undertake the business of being a regulator, whether that is taking enforcement action or authorising someone to undertake litigation. To give a flavour of the wide range of regulatory activities which we do on a day-to-day basis, the “in-focus” section below provides an insight into some of that work.

Moving on to explain some of the important new initiatives which form part of our strategic plan, let us turn first to the significant progress made during 2014-15 in the area of reviewing entry standards to the Bar. In October 2014 we launched our Future Bar Training (FBT) programme, a major review of everything to do with the way in which a barrister first qualifies and how practising barristers ensure their training and skills remain relevant and up-to-date.

In February 2015, we published a discussion document on the future of training for the Bar, setting out our aspirations to develop our regulatory role – protecting standards, increasing flexibility and improving access to training.

Since FBT launched, we have been developing a Professional Statement for barristers through an open and consultative process. This has included contributions from barristers,

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academics and other interested parties around the country. The Professional Statement seeks to set out the skills, knowledge and attributes that all barristers need on “day one” when they first become fully authorised.

In December 2014, we also recruited for participants in, and are now running, a pilot scheme of barristers to try out our new more flexible approach to CPD. A full version of that scheme is due to roll-out across the profession from 2017.

Our FBT programme is geared to gather pace in 2015-16. This will include undertaking a major consultation about possible reforms to the academic, BPTC and pupillage stages of qualification required to become a barrister.

No strategic discussion about “setting standards” would be complete without mentioning the Quality Assurance Scheme for Advocates (QASA). It is a system designed to provide a high level of public protection by assuring the level of competency of all advocates in criminal trials. QASA was originally scheduled to be operational by now, but due to the legal challenges which continued throughout 2014-15, no implementation work could be undertaken during the year.

While our intended review of immigration advocacy services has been pushed back into 2015-16, we did commission a major piece of research into the standards of Youth Court advocacy. Undertaken in collaboration with CILEx Regulation, the findings and associated recommendations are due to be published in mid-2015.

The introduction of the new BSB Handbook in January 2014, permitted barristers to apply to us for authorisation to conduct litigation. Widening the pool of lawyers able to perform an activity traditionally reserved for solicitors, represents a significant opening up of the market and benefits consumers who may be confused or concerned about having to employ more than one legal professional to fulfil their requirements.

Since 1 January 2014, 214 barristers have been authorised to conduct litigation; fewer than we had anticipated but nonetheless, a number which is gradually increasing. We ran a well-attended session about conducting litigation at the 2014 Bar Conference and the Bar Council continues to promote the new rules amongst the profession. At the Bar Conference session, one barrister, already embracing her ability to conduct litigation, said *“I am much closer to my client as I have a direct relationship with them from day one”* and *“conducting litigation is a gift that should be taken!”*

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In focus: The day-to-day work of the BSB during 2014-15

The following facts and figures demonstrate the range and scope of the “business as usual” work undertaken by the BSB:

- Over **15,000** barristers were regulated by the BSB
- **794** chambers and sole-practitioners were assessed during 2014-15
- **214** barristers have been authorised to conduct litigation since 1 January 2014
- **107** expressions of interest for entity authorisation were received by April 2015. Of these **15** had been fully authorised by 8 April 2015.
- **618** barristers had their CPD records “spot checked” during 2014-15. Of these **28** barristers were set corrective action in relation to their non-compliance and a further **seven** barristers were referred for enforcement action in respect of persistent non-compliance with CPD requirements
- The previous, course-based scheme of accreditation for CPD was closed at the end of 2014 and replaced by a provider-based scheme for the start of 2015
- In 2014, **1,494** students were enrolled onto the BPTC
- We undertook **six** site visits to monitor the performance of BPTC providers
- We conducted the third full cycle of centralised assessments for the BPTC
- In 2014, we handled a significant spike in applications to the Bar of England & Wales from foreign qualified lawyers, most of whom were required to undertake parts of the Bar Transfer Test. **293** candidates took the Test, compared with 151 in 2013
- We took steps to delegate more decision-making on applications from our Qualifications Committee to staff. The team handles around **1,500** applications a year of diverse types, from waivers of the standard qualification requirements to authorisation to conduct litigation.
- A total of **441** complaints against barristers were received during 2014-15.
- Of these complaints, enforcement action was taken in **80** cases; **11** resulting in administrative sanctions and **70** being referred to disciplinary action.
- **13** barristers were disbarred during 2014-15 and **eight** barristers were suspended.
- **69%** of complaints were concluded or referred to disciplinary action within agreed service standards (against a target of 80%).

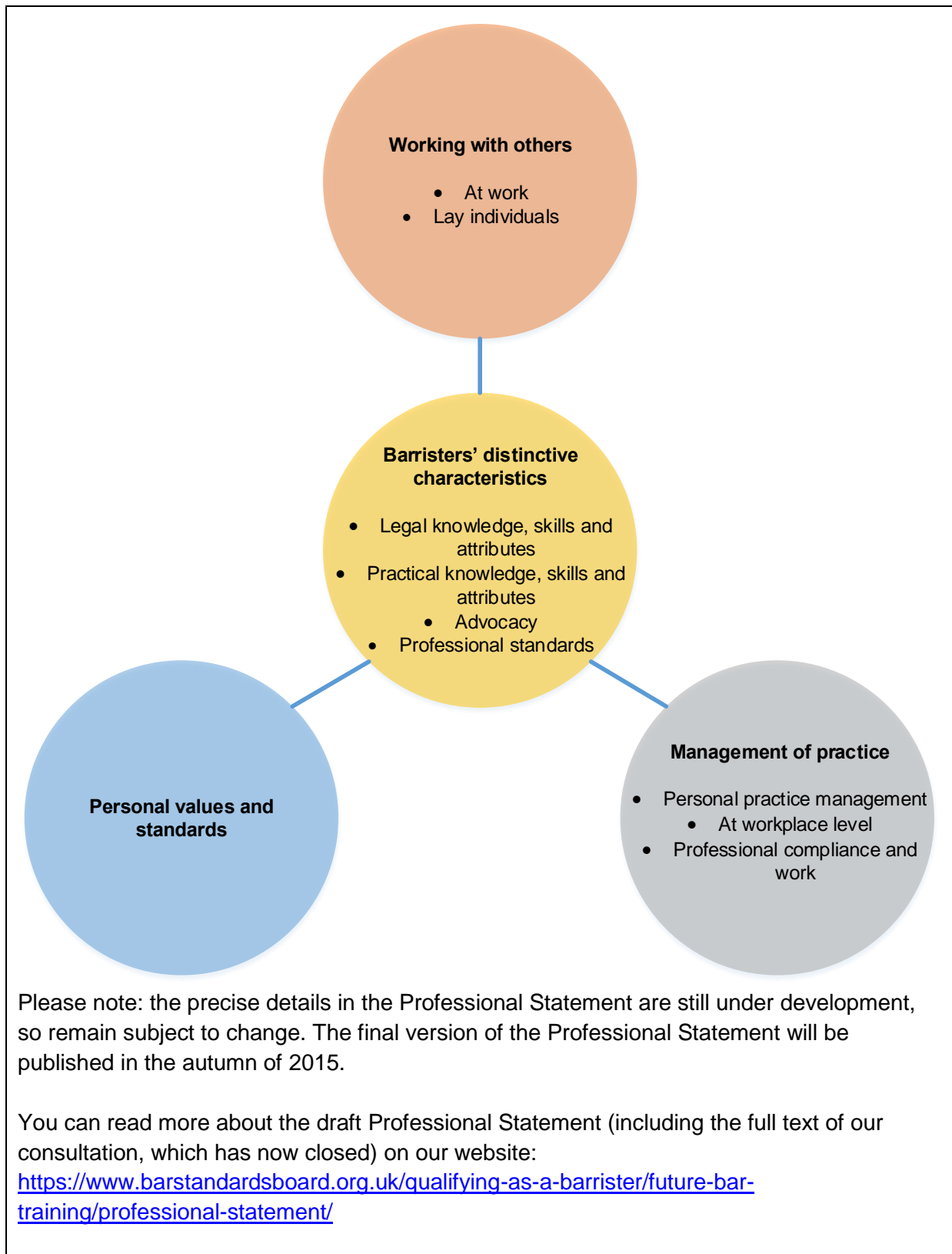
In focus: Future Bar Training, A Professional Statement

We are developing a Professional Statement that will describe the knowledge, skills and characteristics that all barristers should possess in order to operate effectively on their first day of fully authorised practice. The diagram below represents an overview of the key elements within the Professional Statement.

The Professional Statement will help the profession, those who aspire to join it, the public who use the services provided by barristers and others such as training providers, to:

- understand the minimum standard required for those called to the Bar;
- develop new qualifications;
- revise existing qualifications.

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Further reading:

You can read more about some of the topics in this section on our website:

Our research and statistics: www.barstandardsboard.org.uk/media-centre/research-and-statistics/

Future Bar Training: www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/

QASA: www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/quality-assurance-scheme-for-advocates/

Authorisation to conduct litigation: www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/authorisation-to-conduct-litigation/

Complaints about barristers: www.barstandardsboard.org.uk/complaints-and-professional-conduct/ (including annual and quarterly reports covering the performance of our Professional Conduct department www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/professional-conduct-department/performance-reports/annual-and-quarterly-performance-reports/)

Please note that, as in all of our work, we aim for an open and transparent approach. You can monitor all of our progress by reading our detailed Board papers on our website at:

www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/ In particular, the Director-General's report to every meeting is a good way to keep tabs on our progress.

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Strategic aim 4

Become more evidence- and risk-based in all we do in the context of a globalised legal services market.

The LSB framework for regulatory standards requires us to identify risk and use evidence as the basis for our regulatory decisions. Becoming more risk- and evidence-based is therefore a priority for the BSB and is a theme that runs through all of our objectives. It also requires us to establish systems to enable us to gather evidence and assess risk.

2014-15 Progress Report

At a glance:

- Supervision begins monitoring high-impact, high-risk chambers
- New policy development framework introduced
- Work begins in earnest to develop a regulatory risk index

We have already covered several key developments during 2014-15 which show our shift towards becoming a more evidenced-based regulator. For example, the formation of our consumer engagement group and the research project we commissioned to help us conduct our Youth Court advocacy review. All of our relevant staff recognise the importance of gathering evidence and assimilating knowledge, before making policy decisions.

One such way in which we have sought to embed this evidence-based approach is via the introduction of a new policy development framework. This is an internal procedure that all staff must now follow whenever new policies are to be introduced or existing policies reviewed. A clear component of the framework is the need to gather appropriate evidence. Externally, one of the ways in which this new approach may be evident is in the number of consultations and “*calls for evidence*” across a wide range of topics that we have issued recently. This volume of consultations is set to continue into 2015-16 and beyond.

Having been formed in early 2014, our new Supervision Team has had a very busy year assessing almost 800 chambers and sole practitioners according to *impact*. Assessing impact is an important part of our risk-based approach to regulation. It allows us to focus our attention on chambers where the most significant risks to the achievement of the regulatory objectives exist. Almost one in four chambers were assessed as “high” impact. These chambers then conducted a self-assessment to help us determine the likelihood or risk of something going wrong.

The team began visiting a selection of the highest impact, highest risk chambers during 2014-15. Such supervisory visits are a key tool in our new approach. They provide the basis for constructive engagement between the regulator and the regulated. A pilot programme of

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visits took place over the summer of 2014. Chambers received the visits very positively and demonstrated an appetite to work with us to improve their management of risk and compliance. Please see the inset “In focus” section for more detail about our supervisory approach.

Our three-year strategic plan intentionally prioritised the establishment of a supervisory function, because we knew that starting to effectively monitor chambers was a key component of the type of regulator we needed to become. However, we also knew that we would need to develop the thinking, systems and evidence-base to produce a full Regulatory Risk Outlook.

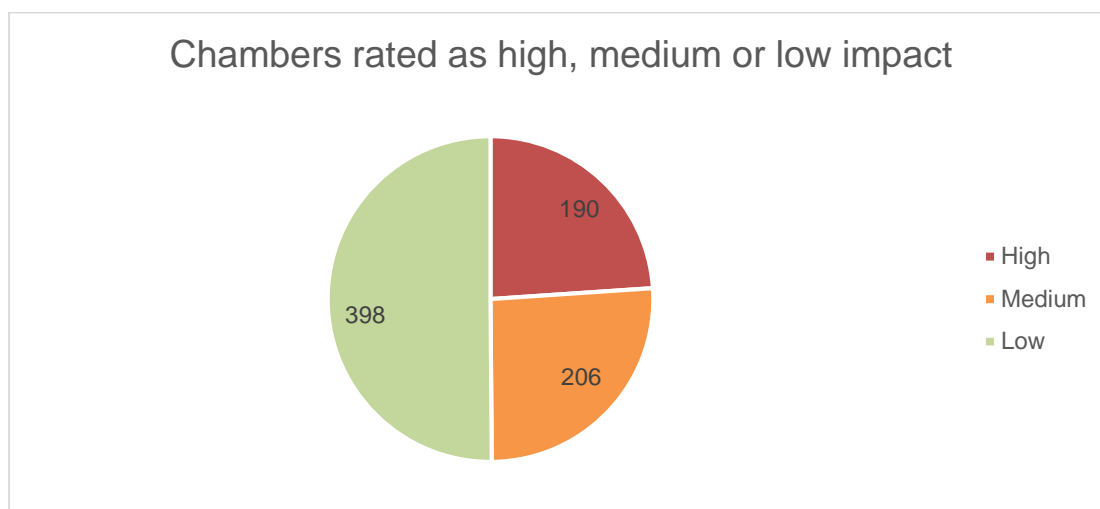
Maintaining a Risk Outlook is the basis by which we will monitor all of the threats and risks to us being able to deliver the regulatory objectives. It will be a consequence of all the evidence we gather through all of the antennae we have into the market we regulate, and it will distil all of this information into an easy to digest register of where the greatest threats exist. The Outlook will be made available as a public document, so will be a key way in which we will demonstrate how we are focusing our attention and resources on issues which pose the biggest risk to the public we serve. In short, it will be a key tool to help us explain how we intend to protect members of the public who come into contact with barristers and the justice system in general.

The first version of our Risk Outlook will be published during 2015-16. During 2014-15, a lot of work was done behind the scenes in preparation for this crucial area of our work. Specialist members of staff were recruited and we sought to embed the necessary thinking and processes across all of our teams. This is an area in which our new intranet site will prove its value.

In focus: Supervising chambers

794 chambers and sole practitioners were assessed according to “impact” during the year. Assessing “impact” allows us to focus our attention on chambers where the most significant risks to the achievement of the regulatory objectives exist. For example, inadequate complaints handling processes would have more significant consequences at a chambers with a large and vulnerable client base than at a chambers with a very small corporate client base. “Impact” is a different measurement to “risk”. “Impact” shows only what the impact would be were things to go wrong; it is not an indication as to how likely this is to happen or how effectively a chambers is managing risk.

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All chambers and entities must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook. This includes a requirement to have appropriate risk management procedures in place. We have identified a number of key processes that we expect competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. These can be summarised into the following five key areas:

1. Governance and administration of chambers.
2. Provision of services to clients.
3. Equality and diversity.
4. Pupillage.
5. Financial management.

Through the Supervision Return, 190 *High Impact* chambers were asked to submit a self-assessment about how they are administered and how regulatory compliance is achieved in these five areas. Essentially, this was an opportunity for them to describe their key risks and explain how effectively they are being managed, to help us determine the likelihood of these risks materialising and to establish the level of supervision and support that chambers might need.

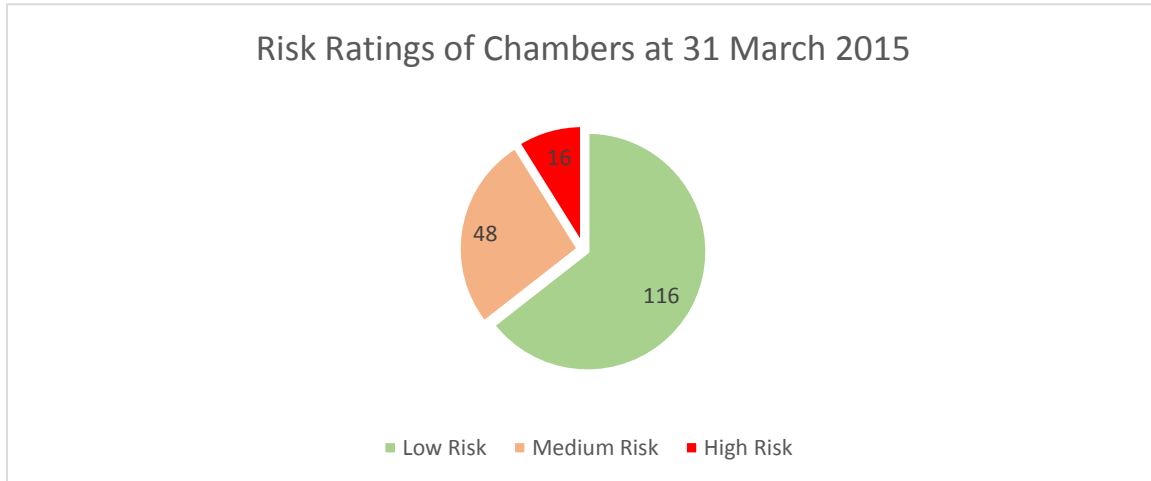
A pilot programme of Supervision visits to chambers was rolled out to test the new approach, with a focus on the five key areas described above. Chambers received the visits positively and have shown an appetite to work with the Supervision Team to improve their management of risk and compliance with the BSB Handbook.

“We were able to have an open conversation about the issues that all chambers face these days.”

Following the pilot, a programme of visits commenced to chambers identified as “high risk” through the assessment of the Supervision Returns and other incoming information. 24 chambers were visited in the year.

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By the year end, we had risk-assessed 180 chambers through the Supervision Returns and on the basis of other incoming information.



We are already seeing tangible improvements in policies, procedures and controls as a result of the Supervision work with chambers. A number of chambers have had their risk rating reassessed and the level of risk reduced as a result of action taken to improve key risks identified. We believe that the Supervision programme can help to drive significant improvements in the market.

The work is also helping us to identify themes that will help to inform areas that we want to focus on.

Further reading:

You can read more about some of the topics in this section on our website:

Supervision: www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/

Our research and statistics: www.barstandardsboard.org.uk/media-centre/research-and-statistics/

Please note that, as in all of our work, we aim for an open and transparent approach. You can monitor all of our progress by reading our detailed Board papers on our website at:

www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/ In particular, the Director-General's report to every meeting is a good way to keep tabs on our progress.

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Strategic aim 5

Strive for “best practice” as an organisation for those whom we serve and those who work for us.

In order to deliver on our strategy and meet our obligations as a regulator, we need people who are equipped to do the job, processes that are efficient and effective, and sufficient resources to support the implementation of our work programme.

2014-15 Progress Report

At a glance:

- Internal change programme (known to us as “TRIP”) formally closes after successful delivery
- Key HR policies implemented
- Bar Tribunals and Adjudication Service contractual arrangements deliver effective results

Our drive towards excellence and best-practice in everything we do, gathered momentum during 2014-15.

Most notably our internal change programme, known as “The Regulatory Improvement Programme” or “TRIP” for short, was formally closed, but not before it had successfully delivered its key remaining objectives during the early part of 2014.

The TRIP programme encompassed a number of broad areas for improvement throughout the BSB. These included “capacity and capability” (increasing education and support for staff and Board members to enable us to work more effectively), setting us on our way to becoming a more “outcomes-focused regulator” (the primary delivery in this area was the introduction of the new BSB Handbook discussed above), establishing our Supervision function and doing all of this in a way which delivered value for money to the profession which funds us.

This year saw two key appointments being made, that will undoubtedly help us achieve this particular strategic aim. A new Human Resources (HR) Director and a new Chief Information Officer (CIO) both took up their roles in the autumn. Subsequently, a major information architecture project has been established by the new CIO which aims to review all of our information and data systems and to make key improvements where necessary. This is a key step in helping us to become more evidence-based, because it will allow us to better store the data we acquire about the market and to share it consistently around our organisation. On the HR side, 2014 saw the introduction of a new staff competency framework and a revised appraisal system; initial feedback has been encouraging. Internal

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communications have been revitalised with a new intranet launching in April 2015. Our committee and governance arrangements are now due to be reviewed during 2015-16.

Progress has been made too, in relation to many of our business critical contractual arrangements. Most notable is the continuing implementation of the 82 recommendations made in the 2012 Browne Report into the independent operation of the Bar Tribunals and Adjudication Service (BTAS), which arranges and hears disciplinary tribunals for barristers. Recently completed recommendations include improvements to the governance status of BTAS, including it having been made a separate but integral arm of The Council of the Inns of Court (COIC), and the launch of the BTAS website.

These improvements, together with our robust complaints handling processes, mean that the public can continue to have confidence that if a barrister behaves inappropriately, then disciplinary proceedings can be instigated where this is the appropriate course of action. Our move to become a more risk-based, outcomes-focused regulator also means that if it is more appropriate to do so, a Supervisory approach may be adopted instead.

Further reading:

You can read more about some of the topics in this section on our website:

The BSB Board and governance: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/

Annual report on the Browne Review recommendations:

www.barstandardsboard.org.uk/media/1629201/08_bsb_083_14_bsb_annual_report_on_btas_and_update_on_browne_review_recommendations.pdf

BTAS website: www.tbts.org.uk/

Complaints about barristers: www.barstandardsboard.org.uk/complaints-and-professional-conduct/ (including annual and quarterly reports covering the performance of our Professional Conduct department www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/professional-conduct-department/performance-reports/annual-and-quarterly-performance-reports/)

Please note that, as in all of our work, we aim for an open and transparent approach. You can monitor all of our progress by reading our detailed Board papers on our website at: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/ In particular, the Director-General's report to every meeting is a good way to keep tabs on our progress.

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Equality update

The BSB is committed to encouraging an independent, strong, diverse and effective legal profession. It is important that the composition of the Bar reflects the community it serves and that the public has confidence in the legal system and the role of barristers within it.

We are committed to improving diversity - both externally in the profession and internally within our organisation – and to ensuring that equality is taken into account in everything we do. We have a legal duty to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, sex, sexual orientation, religion or belief and marriage and civil partnership.

During 2014-15 we took action in a number of areas in order to meet that duty, including:

- Conducting a monitoring project at barristers' chambers. This focused on the implementation of the Equality Rules of the Code of Conduct for the Bar, which came into force in September 2012. Equality and diversity was positively discussed with chambers and our team produced sample action plans and policies to help chambers comply with the Equality Rules;
- Producing an equality and diversity online training session for our Board and Committee members. This focused on updating their knowledge and ensuring that the principles of equality are upheld in our governance structures;
- Publishing a diversity report on the profession in January 2015. The report highlighted important diversity trends at the Bar from pupillage to QC level. The report made recommendations to improve disclosure rates and carry out research into the retention and progression of women;
- Embedding equality and diversity considerations into our new policy development framework and our ongoing work around risk; and,
- Working with the Institute of Barristers Clerks (IBC) to understand further the challenges clerks and barristers have faced when implementing the equality rules.

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Further reading:

You can read more about some of the topics in this section on our website:

Equality and Diversity: www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/

Diversity information about the profession (Jan 2015):

www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-publication-of-information/

Governance

The Board is responsible for shaping our strategy; it has ultimate responsibility for what we do, and for carrying out all regulatory functions of the Bar Council.

In 2014-15 our Board consisted of 15 people, a combination of lay members (non-barristers) and barristers. The Board met 12 times during the year: there were 10 ordinary meetings, and two Away Days.

During 2014-15 the following people sat on our Board:

Chair:

Baroness Deech QC (Hon) – term ended in December 2014

Sir Andrew Burns KCMG – term commenced January 2015

Vice-Chair:

Patricia Robertson QC

Barrister Members:

Sarah Clarke – term ended in December 2014

Justine Davidge

Simon Lofthouse QC

Andrew Mitchell QC – term commenced in January 2015

Adam Solomon – term commenced in January 2015

Sam Stein QC

Lay Members:

Rolande Anderson

Rob Behrens

Dr Malcolm Cohen

Tim Robinson

Prof Andrew Sanders

Richard Thompson OBE

Dr Anne Wright CBE

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Special Advisors to the Board (with no voting powers)

Keith Baldwin – commenced as advisor in January 2015

Sarah Brown

Matthew Nicklin QC

Emily Windsor

Further reading:

You can read more about some of the topics in this section on our website:

More about our Board members: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-member-biographies/**Board meeting agendas and minutes:****2014:** www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/board-meetings-2014/**2015:** www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board/board-meetings-2015/

Accountability

This section sets out some of the changes we made to the way in which we manage and govern ourselves.

The BSB has its own constitution and standing orders and some minor revision were made to these instruments throughout the year. For example, Board and committee members' terms of office were reviewed; for the former some flexibility has been given to extend terms beyond six years, but not beyond nine; and for the latter, the terms were extended so that a Governance Review scheduled to take place during 2015-16 could be conducted seamlessly. A new Scheme of Delegations was approved to complement the Governance Manual that was published in 2013-14.

In addition, the Board approved the principles on which information from its meetings would be made public or kept private. In essence, we have made a presumption that all material should be made public unless there are obvious reasons that justify private discussion.

The BSB has a protocol in place with The Bar Council to ensure that the profession's representative functions do not exert undue influence over the regulatory functions. Minor revisions were made to this protocol to state that the Bar Council is entitled to be provided with assurance by the BSB that it is fulfilling its undertakings made to the Legal Services Board.

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We independently control our allocated resources, and these operations are monitored quarterly by the Planning, Resources and Performance (PRP) Committee. The Committee also scrutinised performance of the executive on the implementation of projects and of end-to-end time indicators (such as how quickly we deal with complaints about barristers). The Committee oversaw the development and monitoring of a revised Service Level Agreement between the Bar Council's Resources Group and the BSB. This arrangement sets out how the Bar Council provides non-financial resources (eg HR, IT and Finance etc) to the BSB. PRP members noted that performance levels were good.

The Governance, Risk and Audit (GRA) Committee keeps under review, and advises the Board, on the risk management framework. The Director General and senior managers are responsible for the areas of risk that relate to their departments. The corporate risk register is reviewed at least quarterly by our Senior Management Team, GRA Committee and the Board as set out in the Risk Management policy. The GRA Committee also conducts in-depth risk reviews at each ordinary meeting.

The BSB's lay Independent Observer provides independent assurance that our enforcement system is operating in line with its aims and objectives; currently Isobel Leaviss is employed in this role. The GRA Committee received two of her reports in 2014-15 which can be found on the BSB's website at www.barstandardsboard.org.uk/complaints-and-professional-conduct/professional-conduct-resources/

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Measuring our performance

This report has already covered the key progress which we have made against the activities set out in our 2014-15 Business Plan. However, for the sake of completeness, this section provides a brief overview of progress against the objectives that were set in our three-year Strategic Plan (2013-16). This identified what success would look like, so the following tables summarise the progress made by the end of year two.

Strategic aim 1:

What success will look like by 2016	Progress made against measure in 2014-15
a) We will be a licensing authority under the Legal Services Act 2007	We are expecting to have been approved as a licensing authority by the LSB by the end of 2015-16, although the legislation designating us as such may not have been passed by then.
b) We will be regulating barrister-led / advocacy focused entities	This was achieved on 8 April 2015.
c) In a timely and financially sustainable way (both to regulator and regulated)	We expect to complete all applications within the six-month service standard, and typically within two to three months. Our agreed cost recovery model is dependent on the accuracy of our projections for the volume of entities we authorise. If volume turns out to be lower than projected, a review may be needed of this financial model.
We spent £450k on Strategic Aim 1 (9% of total BSB direct spend)	

Strategic aim 2:

What does success will look like by 2016	Progress made against measure in 2014/15
a) An increased percentage of the profession will have a positive view of the role and effectiveness of the BSB	Progress was due to be measured by way of a biannual survey which was not scheduled to be undertaken in this financial year.
b) We will have established collaborative relationships with the public and consumers through our user network	We established good working relationships with a variety of consumer organisations during this year, with a view to increased engagement with them during the next financial year.
We spent £349k on Strategic Aim 2 (7% of total BSB direct spend)	

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Strategic aim 3:

What success will look like by 2016	Progress made against measure in 2014/15
a) We will be supervising and enforcing on the basis of a new Code of Conduct/Handbook	The new handbook was launched in January 2014.
b) The regulated community, including education and training providers, will be achieving high levels of compliance, and delivering quality services to the public	We assessed all chambers and self-employed barristers for “impact” and “risk” during 2014-15 and are now working closely with high-impact, high-risk chambers to help them achieve compliance. Six monitoring visits took place with BPTC providers during 2014-15.
c) We will have more complete information on the diverse make-up of the regulated community	Information on the diverse make-up of the profession was published in January 2015.
We spent £3,118k on Strategic Aim 3 (60% of total BSB direct spend)	

Strategic aim 4:

What success will look like by 2016	Progress made against measure in 2014/15
a) We will have established systems, including research programmes, for collecting and managing information and evidence to support regulatory policy and decision making	We have made some progress in this area, commencing a number of research activities. This will be allied to our risk programme in the coming year, when we expect to make more systematic progress.
b) We will have attained a “satisfactory” rating against the LSB’s standards framework in this area	We hope and expect to attain a “satisfactory” rating from the LSB in 2016.
We spent £724k on Strategic Aim 4 (14% of total BSB direct spend)	

Strategic aim 5:

What success will look like by 2016	Progress made against measure in 2014/15
a) We will have established a baseline for regulatory costs and steadied the rate of increase compared to the previous three years	Needs an update
b) We will have improved turn-around times in relation to case handling in complaints and qualifications / waivers	In terms of qualifications and waivers, our performance measures for handling applications were first reported in 2014 and met in the first full annual cycle. The measures are due to be reviewed in light of this first full year of monitoring. Our complaints handling performance against service standard targets is reported regularly and published here: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-

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	staff/professional-conduct-department/performance-reports/annual-and-quarterly-performance-reports/
c) The organisation will have a different, improved “feel” for users and staff	We have established a new complaints system to enable people to make complaints about our service. To date we have received very few, perhaps indicating a good “feel” for users. Anecdotal feedback from users, especially through our supervisory work, indicates a positive response to our changed approach.
We spent £555k on Strategic Aim 5 (11% of total BSB direct spend)	

Our income and expenditure

Our budget year ran from 1 April 2014 to 31 March 2015. The Bar Council’s and BSB’s full financial statements can be found on the Bar Council’s website (normally published in September).

2014-15 Direct expenditure £5,195k (meaning we spent 2% less than we had in the budget)
 2014-15 Direct income from sources other than Practising Certificate Fee (PCF) £1,611k (meaning we received 11% less from income sources other than the PCF than we thought we would)

Some financial context

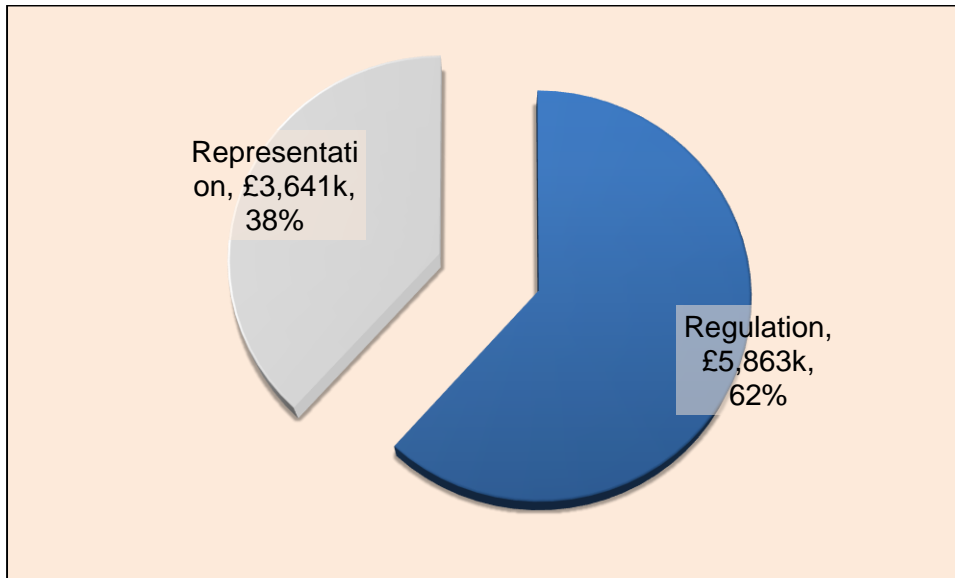
The Legal Services Act 2007 requires the Bar Council (as Approved Regulator) to provide “such resources as are reasonably required for or in connection with the exercise of regulatory functions”. In practice that means that funds are raised by the Bar Council through the Practising Certificate Fee (PCF) to fund the BSB’s activities. However, the Practising Certificate Fee raises money for some of the BSB’s regulatory activity as well as for some of the Bar Council’s representative activities (as permitted under s51 of the Legal Services Act 2007).

How much of the Practising Certificate Fee fund did we spend?

A proportion of the Practising Certificate fee is spent on regulation by the BSB and a proportion is also spent by the Bar Council on representation functions.

What were the Practising Certificate Fee funds spent on?	£k
Regulation (Bar Standards Board)	5,863
Representation (Bar Council)	3,641
Total	9,504

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The demands on the regulator, whether driven by statutory obligations or public and professional expectations, are increasing. Even with these challenges, we have been able to steady the rate of increase of the overall regulatory costs as we set out to do in our Strategic Plan, and this can be seen in the three year trend diagram on page XX. In addition, we have been working on a more strategic approach to revenue raising. We have already adopted broad brush principles which mean that where regulatory activity can be clearly attributed to only one sector of the profession, as opposed to being in the interests of or on behalf of the profession as a whole, the direct costs of that specific activity will be recovered from the relevant sector of the profession. We see no reason currently to change that approach. Over time we expect to see a PCF based on both an individual and a chambers or entity-based contribution, better reflecting our evolving approach to regulation.

Income**How is the BSB funded?**

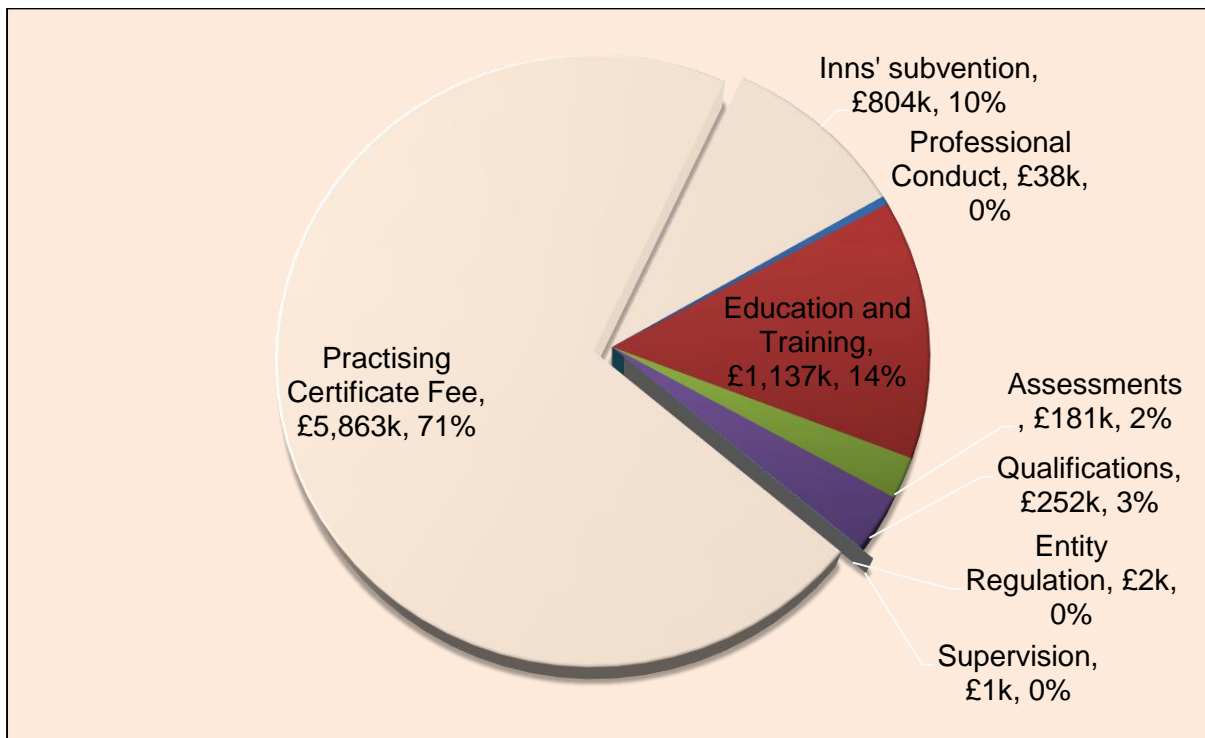
Part of our income comes from charges we make for the services we provide. We describe this kind of income as “income streams directly controlled by the BSB”. Directly controlled income streams include the fees from Bar Professional Training Course (BPTC) Providers, the Bar Transfer Test (BTT) and Continuing Professional Development (CPD) accreditation. The remainder of the BSB’s funding comes from Practising Certificate fees together with contributions from the Inns of Court. These latter two income streams are not directly controlled by the BSB.

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Where did the BSB get its income from?	
<i>Income streams directly controlled by the BSB</i>	£k
Fines & Cost Recovery	38
Education and Training (including CPD Accreditation)	1,137
Exams and Assessments (including BPTC, BTT, BCAT)	181
Qualifications Regulations (including Qualifications Committee Applications)	252
Entity Regulation	2
Supervision	1
Total BSB generated income	1,611
<i>Income streams not directly controlled by the BSB</i>	£k
Practising Certificate Fee contributions	5,863
Inns' subvention	804
Total	8,278

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Where did the BSB get its income from?



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Expenditure

Regulation – the costs explained

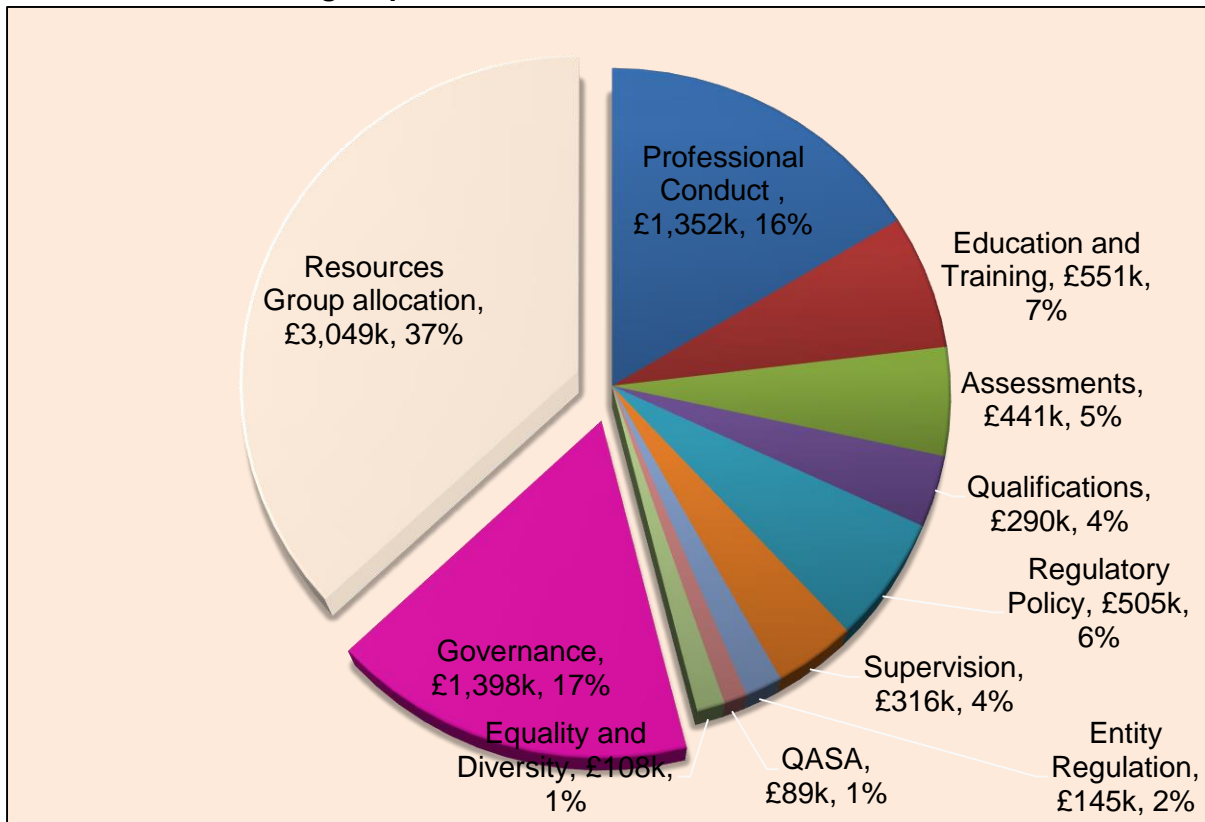
The Bar Standards Board spent £5,195k against a budget of £5,313k meaning that we were underspent by 2%. However, this does not reflect the full cost of regulation. We share the costs of common services with the Bar Council including a share of the premises at 289-293 High Holborn, as well as relying upon the Resources Group (previously Central Services) to carry out support work (HR, IT and Finance etc). The Resources Group budget is managed separately and part of it is apportioned to the BSB.

What is the BSB's budget spent on?	
<i>Budgets controlled directly by the BSB</i>	£k
Professional Conduct (Disciplinary)	1,352
Education and Training	551
Exams and Assessments	441
Qualifications	290
Regulatory Policy	505
Supervision	316
Entity Regulation	145
QASA	89
Equality and Diversity	108
Governance / Management (Executive, Strategy and Communications, Research)	1,398
Total BSB Budget	5,195
<i>Budgets not directly controlled by the BSB</i>	£k
Resources Group allocation (inc premises costs)	3,049
Total cost of regulation	8,224
<i>Surplus for the period</i>	34

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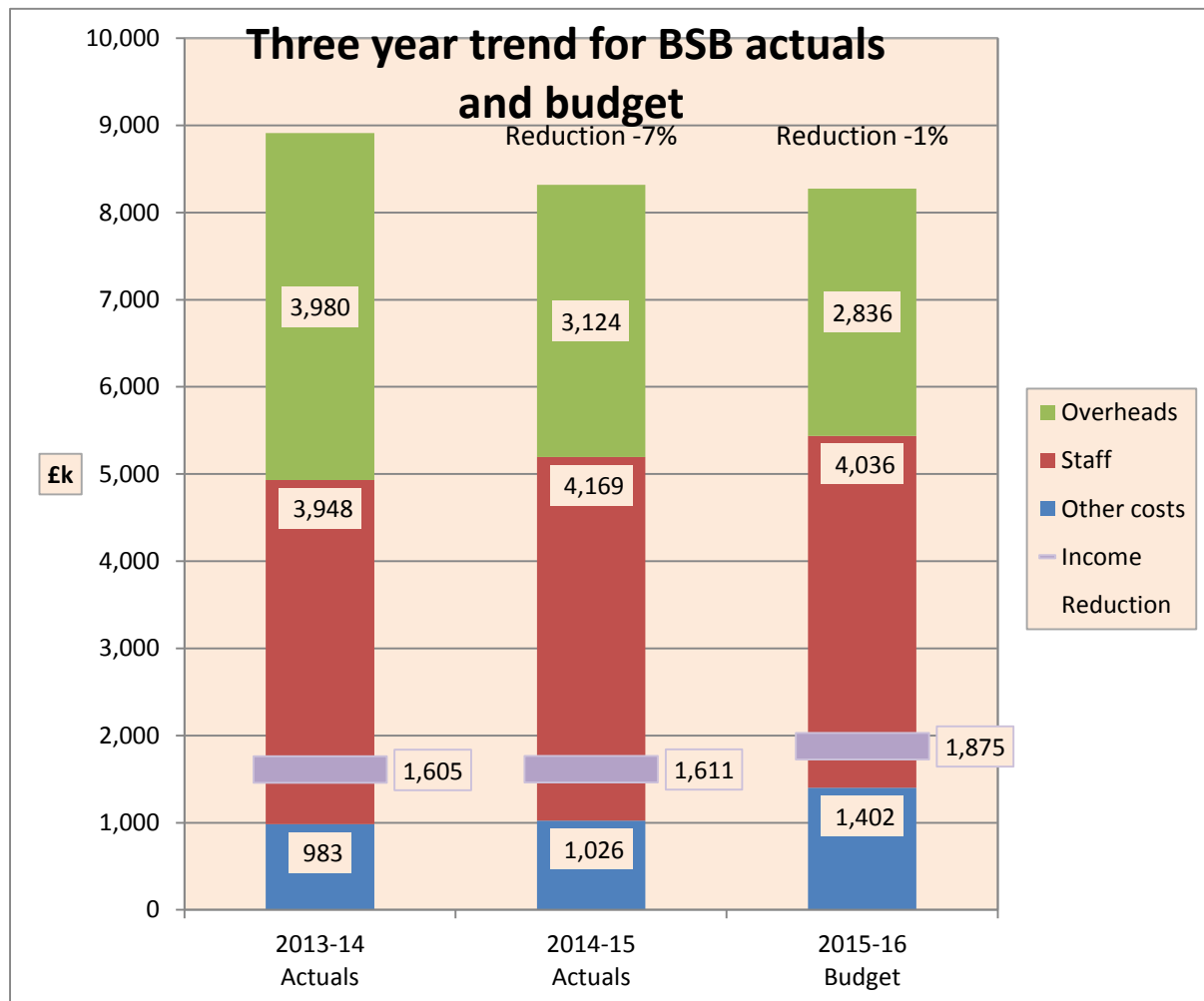
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What is the BSB’s budget spent on?



Three-year trend for BSB actuals and budget

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Our Strategic Aim 5 sets out that we will have by 2016 steadied the rate of increase of our regulatory costs. And this three-year trend diagram shows the reasons why:

- Our overheads have significantly decrease and the main reason for this is reduction in property costs;
- Staff costs remain steady, there has been a small reduction in headcount however there has also been increased salary costs.;
- Other costs (non-staff costs) have significantly increased as we have changed the way we contract services;

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Commentary on 2014-15 budget performance

Overall, our performance against the directly controlled budget broadly reflects delivery of the Business Plan ie where there have been delays to projects, our accounts show a delay in spend and receipt of income.

Bar Standards Board – Annual Report 2014-15

Explanations of the main variances are set out below:

Education and Training

The number of Bar Course Aptitude Test (BCAT) applications was down ~20% on 2013-14, meaning that we generated a shortfall in this area. At first glance, it looks like a similar trend has been experienced across the education market. Next year's projection is set at a much more modest level.

Qualifications

Although the number of Qualification Committee applications increased in 2014, the fees collected decreased significantly compared to those received in 2013; this was because of a one-off "spike" in the numbers of applications for "Admission to the Bar for Qualified Foreign Lawyers". Also the number of applications for the right to conduct litigation was much fewer than originally projected. This resulted in a shortfall in expected revenue.

Entity Regulation

The delay in becoming an entity authoriser, has meant that in the first three months of operation, we did not receive many entity related fees and there is still some uncertainty on our forecast for 2015-16.

Staffing

In total there is a staff overspend mainly due to additional resource required for a number of key project areas such as Communications and Education and Training. Temporary members of staff were recruited in the Professional Conduct Department to alleviate some one-off pressures there.

Project delays

The delays caused to the Entity Regulation and Alternative Business Structures (ABS) programmes meant that expenditure was also delayed. The monies we would have spent in 2014-15 have been re-phased pushing the planned expenditure into the future, leaving the "other costs" budget underspent.

The QASA judicial review appeals process continued, meaning we did not spend the 2014-15 QASA operational budget. Staffing changes and redeployments were carried out to reflect the current situation. This led to an underspend, and in addition we did not receive any income in 2014-15 in this area.

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Remuneration and expenses (to be finalised)

Financial Table with Remuneration and expenses	Salary	Pension and Life Assurance	Expenses	Allowance
Baroness Deech QC (Hon) – term ended in December 2014	£67,014	0+£55	£1,618	
Sir Andrew Burns KCMG – term commenced January 2015	£22,316	0+0	0	£323
Patricia Robertson QC	£35,525	0	0	0
Sarah Clarke – term ended in December 2014	0	0	0	0
Justine Davidge	0	0	0	0
Simon Lofthouse QC	0	0	0	0
Andrew Mitchell QC – term commenced in January 2015	0	0	0	0
Adam Solomon – term commenced in January 2015	0	0	0	0
Sam Stein QC	0	0	0	0
Rolande Anderson	£9,135	0	0	£350
Rob Behrens	£9,135	0	0	£32
Malcolm Cohen	£9,135	0	0	0
Tim Robinson	£9,135	0	0	0
Andrew Sanders	£9,135	0	0	£1,326
Richard Thompson	£9,135	0	0	0
Anne Wright	£9,135	0	0	0
Keith Baldwin – commenced as advisor in January 2015	0	0	£16	0
Sarah Brown	0	0	0	0
Matthew Nicklin QC	0	0	0	0
Emily Windsor	0	0	0	0
Vanessa Davies	£131,950	£18,473+ £442	£12	£1,294

Notes:

- Barrister members are not paid a salary (exception of Vice Chair)
- Board member positions do not attract a pension
- Professor Sanders commutes from Birmingham
- All staff members receive this allowance in addition to basic salary

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Annex 1

Professional Conduct Department: Enforcement Statistics 2014-15

New external complaints opened	297
New internal complaints opened	144
TOTAL NEW COMPLAINTS OPENED	441

Total risk assessments completed*	282
High	95
Medium	88
Low / no risk	99

*Noting that risk assessments are only carried out where there is evidence of a breach of the Handbook or an outcome affected

Complaints where enforcement action was taken	80
Administrative sanctions	11
Referrals to disciplinary action	70

Disciplinary action against	41 barristers
Disbarred	13 barristers
Suspended	8 barristers

KPI Performance

Percentage of complaints concluded or referred to disciplinary action within service standards	69%
Target	80%

Complaints concluded without an investigation: 8 weeks

External complaints concluded or referred to disciplinary action following investigation: 8 months

Internal complaints concluded or referred to disciplinary action following investigation: 5 months

Bar Standards Board – Annual Report 2014-15

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Contact us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent and proportionate. We welcome feedback on our services, particularly where the level of service has exceeded or fallen below expectations. Comments and suggestions are important to us as they will help us to meet our obligations and improve our performance.

Write to us:

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Tel: 020 7611 1444
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BAR
STANDARDS
BOARD

REGULATING BARRISTERS



ANNUAL REPORT

14-15

Introduction

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Sir Andrew Burns KCMG
Chair, Bar Standards Board



Dr Vanessa Davies
Director, Bar Standards Board

Achievements in 2014-15

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Further reading

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Chair's Report on Visits and Meetings June 2015 – August 2015**Status:**

1. For noting

Executive Summary:

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

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

24 June	Attended the Modernising Justice Summit Met with the Chair and CEO of the Solicitors Regulatory Authority
30 June	Attended the Regulator Chairs' meeting
2 July	Met, marshalled, and lunched with His Honour Judge Ader at Wood Green Crown Court Attended Lincoln's Inn Garden Party
6 - 8 July	Represented the UK at Holocaust related meetings in Brussels and Strasbourg
9 July	Met with Legal Aid Policy officials at the Ministry of Justice Met with the President of the Queen's Bench Division (Sir Brian Leveson) Attended a lecture with light refreshments at Lincoln's Inn Attended the Inner Temple Summer Party
11 July	Attended the meeting of the Bar Council
21 and 22 July	To join Independent Appointments Panel to select new Barrister members of the BSB
23 July	To meet with Lord Neuberger at the UK Supreme Court
24 July	To attend Gray's Inn Summer Party
25 July – 29 July	To attend the Legal Regulators' Conference in Toronto, Canada
4 August	To meet with the Chair and CEO of the Legal Services Board (LSB)
5 August	To meet with the executive team and staff at the Legal Ombudsman (LEO) in Birmingham

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 23 July 2015

For consideration and noting.

Director General

1. The Director General is on annual leave until 23 July.

Regulatory Policy

Standards

2. Over the course of the summer the team will be developing a consultation paper on employed barristers’ scope of practice, with a view to deregulating this area. The paper will be developed in conjunction with a small working group made up of staff and Standards Committee members.
3. A roundtable event on the provision of immigration advice and services has been held to feed into the immigration thematic review. The roundtable drew together a diverse group of participants including significant consumer representation and those from other regulators. The discussions from the roundtable will feed into a report that will present the results of a series of evidence gathering activities that have been taking place over the summer. The event has generated some very useful, if complex, evidence. The team is currently analysing this and considering next steps – a number of the stakeholders who were present at the workshop have volunteered to be involved in this work going forward. We are exploring how we can share information with other regulators (the SRA in particular is conducting similar research on asylum services at the moment). A report will be presented to the Board in due course.
4. Consultation responses are being prepared for the standard contractual terms and cab-rank rule and insurance requirements for single person entities consultations and will be published in due course.
5. The team has also been working on producing a consumer friendly guide which will set out what barristers are, how they work, information about fees and charging, information about entities, protections for consumers and complaints. A draft framework of the guide was sent to various consumer organisations and positive and constructive feedback was received. The staff team will be working on populating the content of the guide over the summer with a view to publication in the autumn.

Regulatory risk

6. We are planning a formal launch event for the Regulatory Risk Framework and Index in September. We are currently meeting with key stakeholders to test language and impact before final publication.
7. The development of the BSB’s first Risk Outlook, a milestone publication for the organisation, remains to plan. The project team continues to undertake initial analysis of key themes to identify the three or four that will provide the focus of the Outlook publication. The proposed selection will be presented to the Senior Management Team and to representatives from the BSB Board and GRA Committee in order to reach agreement on priorities for content.
8. The launch of the Regulatory Risk Framework will be used to announce a series of roundtable workshops to discuss potential Risk Outlook themes.

9. We are currently working with the ABS Project Manager in order to identify the key risks posed by these entities and to develop a risk based control approach.
10. Employee engagement around risk developments include a short session on Risk Outlook themes in August (which will be used to validate the proposed selection for the SMT), Risk Framework and Index workshops to embed key principles and a training and awareness video currently in production for launch in September.

Equality and Access to Justice

11. The 11 objectives continue to be delivered by the Equality and Access to Justice (E&AJ) Team, a proposal and timescales for the research into the impact the Equality Rules have had on Women at the Bar was sent to the Equality and Diversity and Committee last week. The proposal recommended that a task and finish group is set up with input from members of the E&D committee in support of the research.
12. The E&AJ team has designed new equality impact assessment training for BSB staff members as part of the objective to ensure equality analysis is integrated into policy, projects, strategy and business plans. Two pilot sessions are planned for July and further training will be delivered after this. Meetings with key project leads continue take place to undertake equality analyses, notably the Governance Review has been subject to initial equality screening and the E&AJ manager is a member of “Governance Guru” group and provides specialist EA support, similarly supports the consumer programme (ASPIRE) and wider programmes as necessary with the E&D Senior Policy Officer.
13. The E&AJ team supported Patricia Robertson QC and Rolande Anderson with speaking notes and research for the Widening Participation in the Legal Professions Conference at City University. They spoke as part of panel discussions addressing issues of progression and initiatives for shattering the glass ceiling at the Bar. All the speakers’ presentations stimulated considerable debate both within and outside the panel sessions. The conference organisers are now working with delegates and panelists on actions raised at the conference
14. The E&AJ team worked on the initial equality impact analysis for the Future Bar Training consultations that were taken to the Board last month. Equality impacts were outlined along with actions that will need to be taken based on the challenges and opportunities identified across each stage of education and training for the Bar. A full equality impact assessment will be created for each stage (academic, vocational and pupillage) when the consultation is closed and proposed changes are being formulated.
15. The E&AJ team has confirmed a meeting in with the Equality and Diversity team at the Solicitors Regulation Authority in Birmingham to discuss common objectives and partnership working to address issues of race equality within the sector.
16. Work is underway to access support for our commitment to working with people with diverse abilities. Meetings are in place with disability specialists, a barrister who is an expert on disability issues and a leading deaf solicitor in Wales – this development further supports the implementation of ASPIRE and the consumer engagement strategy.
17. As an outcome of the E&AJ Knowledge Sharing Session in June, the SMT has agreed specific E&AJ leadership actions further raising the profile of the leadership commitment to the agenda.

18. The Bar Council has requested the BSB to equality impact assess the regulations for pupillage recruitment, in response the E&AJ team set up a mini BSB project group to consider any adverse impact on the sector and to identify if there is a need for further regulatory intervention.

Supervision

Risk profiling of “Medium Impact” Chambers

19. The Supervision Team has started risk assessing the first of the Supervision Returns that have been submitted by the 192 chambers and sole practitioners categorised as “Medium Impact”. Chambers have until 17 July to complete their Returns and the assessment process will continue over the coming months.

Immigration Thematic Review

20. The Supervision Team has commenced visits to chambers and sole practitioners as part of the thematic review of immigration services. The visits have been well received so far and chambers have welcomed the opportunity to contribute their views about the market.

CPD spot check

21. The team has commenced the annual spot check of barristers’ compliance with CPD requirements. The sample of barristers selected is part risk-based and part random. Where non-compliance is identified, barristers will be required to take corrective action. Exceptions may be reported to the Professional Conduct Department for disciplinary action.

Income validation spot check

22. Following the introduction of new basis for calculating practising fees, the Supervision Team is working with the Records Team to carry out a spot check of income declarations made by barristers. The sample of barristers selected is part risk-based and part random selection. Where incorrect declarations are identified, barristers will be required to pay the difference. Exceptions may be reported to the Professional Conduct Department for disciplinary action.

Entity authorisation

23. At time of writing authorisation decisions have been issued to 20 entities with a number of additional decisions imminent.
24. Whilst almost 150 applicants have registered their interest and been given access to the online portal, the conversion and completion rate continues to be low.
25. The IT automated end to end system will go live in mid-July. Testing has been carried out with external parties and the feedback has been extremely encouraging. Communications will issue to publicise the launch of the new system and it is expected that this will have a positive impact on both the levels of interest and the numbers of completed applications.
26. The application to license Alternative Business Structures was submitted to the Legal Services Board in late April. The indicative launch date was originally posited as 1 June 2016. However due to Ministry of Justice consultation periods, this may not be achievable. Timeframes for implementation are currently under review.

ASPIRE - Consumer Engagement – Customer Feedback

27. The Supervision Department has commenced scoping a project on Customer Feedback as part of the Consumer Engagement strand of the ASPIRE project. The team will be reviewing how chambers/entities gather feedback from clients on the performance of their barristers and how they use that information constructively to improve the service provided in order to promote good practice.

Equality & Diversity

28. Supervision are working with the BSB Equality & Diversity team. They have compiled a report on the themes arising from the review of the Supervision Returns of the “High Impact” chambers for consideration by the BSB Equality & Diversity Committee. The themes will be incorporated into a full report on the High Impact Supervision Returns, which will be brought to the Supervision Committee and Board in September.

Education and Training

29. The 2015 BPTC Conference was held on 17 July, with a reception held the night before for delegates. The conference provides an annual forum for the development of best practice amongst BPTC providers.
30. A revised syllabus for the BPTC Criminal and Civil Litigation modules has been introduced, following its commission from a review team led by Prof Marc Howe. The revised syllabus is supported by a curriculum, which is intended to improve clarity over the level of detail to be assessed, between course providers and examiners. The syllabus will take effect for candidates embarking on the course in September 2015.
31. BPP University, contracted to deliver the Bar Transfer Test, has appointed Stephen Wells as Programme Leader, replacing Paul Wetton. Steve is a barrister and experienced BPTC tutor and will be working closely with the BSB team to coordinate and plan the test for transferring qualified lawyers.
32. A new Assistant Chief Examiner for Criminal Litigation was appointed in May, joining the BPTC Centralised Examination Board.
33. The Final Examination Board for 2015 First Sit assessments took place on 26 June. Results were released to Providers on 30 June.
34. Following disquiet expressed by some providers about results in the BPTC First Sit Professional Ethics assessment, and consequent press attention, the following statement was made by the BSB:
- “The First Sit 2015 BPTC Ethics exam was set, marked and moderated in accordance with the same stringent processes which we apply to all centrally assessed BPTC modules. We are confident that this examination, like all of those comprising the centrally assessed modules, was a fair and appropriate assessment.”*
35. We will publish the usual full report of the Chair of the Examination Board on the assessments in August.
36. Following a request from the Bar Council, a review of pupillage recruitment has been initiated to assess the market impact of trends away from the widely-adopted common recruitment timetable that is offered by the Bar Council (but which is not prescribed by

the BSB). At the same time, the Bar Council has announced that it intends to change the timetable, with the intention of opening applications in January instead of April.

37. The CPD Provider Accreditation Scheme 2015's first monitoring round ("Interim Cycle") is well underway. Monitoring reports and supporting barrister delegate feedback forms are being filed by the some 440 accredited CPD Providers.
38. A significant number of barristers are expected to undertake the Public Access Top-Up Training or cease to accept Public Access instructions between July and October 2015. Direct communication (in the form of an email) has been issued to those barristers with a reminder to complete training prior to the deadline.

Qualification Regulations

39. The Qualifications Committee is due to meet on 14 July 2015. It will be considering proposed amendments to some of its "Criteria and Guidelines" documents and undertaking reviews of nine applications.

Staffing

40. Natasha Ribeiro started working part-time as permanent Assessments Manager on 5 May, and has been full-time since 1 July. She has a wealth of experience from similar roles with medical professional bodies.
41. Maya Chopra (Legal and Policy Assistant for the Future Bar Training programme) left the BSB at the end of her contract in July; a successor is being recruited to start at the end of the summer.

External liaison

42. The Director spoke on 13 July at a briefing session for members of the Bar Association for Commerce, Finance and Industry (BACFI), together with Anne Wright (BSB Board member appointed to liaise with BACFI) and Ewen Macleod, Director of Regulatory Policy. BACFI members showed strong interest in the Future Bar Training programme and prospects for change that might better accommodate the interests of the employed Bar.

Professional Conduct

General

Staffing changes

43. Last month we reported that the second Casework Supervisor post had been recruited to and that the new recruit would be joining the PCD in August 2015. Since then, the candidate identified has decided not to accept the role and the PCD is, once again, in the process of advertising the post. Interviews will be held at the end of the month.
44. The revised Professional Support Lawyer (Enforcement) role has attracted 22 candidates following a successful advertising campaign. 7 candidates have been shortlisted and interviews will be taking place in the week beginning 20 July.

PCD work

45. Work in the PCD has been largely focussed on business as usual this month with staff working hard to ensure that cases are progressed within the departmental KPIs.
46. The PCD Annual Report 2015/16 is included in the Board papers for this month. In the report we forecast that the first quarter KPI target would be missed while the staff worked to clear the numbers of overrunning cases caused by staff shortages towards the end of the last financial year. This has come to fruition but early indications are that we are on course to meet the Q2 figures.
47. Aside from casework, PCD staff are involved in the progression of a number of projects including the Public Information Project and the PCD Entity Implementation Project.

Time recording

48. The PCD has now recorded 6 months' worth of information on time spent on each aspect of our work in order to establish a sound basis for calculating the cost of complaints. Whilst time recording is continuing, we will now be reviewing this data to determine whether or not the current number of complete cases recorded are enough for accurate calculating purposes.

Disciplinary Tribunal Regulations review

49. The consultation on the Review of the Disciplinary Tribunal Regulations was launched on 7 July 2015 and will close on 12 October 2015. The BSB will be holding two workshops for anyone interested in feeding back their views on the proposed changes in an open forum on 21 September and 1 October.

Judicial Reviews

50. The PCD is currently involved in 5 JR proceedings, 4 are at the permission stage and the other is listed before the CA for hearing in May 2016.

Strategy and Communications***Communications***

51. Since this report was prepared for the June Board meeting, the following press releases and announcements have been issued:
 - 24 June: BSB statement on the QASA Supreme Court judgment
 - 24 June: Press release to confirm that an immigration barrister was disbarred for acting dishonestly towards a client
 - 26 June: Press release following the June Board paper concerning the implementation of the Browne Review and announcing that Bar Tribunal arrangements are nearing completion
 - 7 July: Launch of the consultation paper regarding reforms to the disciplinary tribunal system
 - 10 July: Launch of the FBT consultation paper about possible approaches to reforming the academic, vocational and pupillage stages of bar training.
52. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

53. At the time of writing, the following pro-active communications activities are scheduled over the next few weeks and months:
- Developing communications material in support of the publication of the BSB's regulatory risk framework as well as working on a range of subsequent communication activity to support the risk programme. This includes planning an event in the early autumn to launch the Risk Index and kick-off the process of evidence gathering required before the first Risk Outlook is published at a later date.
54. The team is working on finalising the 2014/15 Annual Report.

Online and social media

55. During June, 23,722 users visited the BSB website. At the time of writing, we have 11,843 followers on Twitter.

Business Support

Strategic Planning

56. The executive is working up the strategic themes that the Board discussed at its April 2015 Away Day and this will be presented back to Board members at the July meeting.

Governance

57. Further work has been undertaken to firm up the Governance Review plan to specify timelines and resource commitments, and this will be discussed by Board members in the private session.

Business Plan and Budget

58. The Business Support Team has set up the systems needed to monitor the BSB's performance against its Business Plan objectives. The suggestions made by the PRP Committee on tracking progress across quarterly reports, and weighting the activities, will be integrated into the performance Dashboard.
59. The 2014-15 Annual Report has been drafted and a version is being presented to the Board at the July meeting.

Fees and charges

60. The team is preparing a consultation document on the BSB's fees and charges policy and the Board will receive an outline at its July 2015 meeting.

Resources Group

Current Key Business Projects and Programme

61. ***CPD Regulation Implementation***
- BSB Board approved CPD Consultation; 50 response so far.
 - CPD Pilot launched and planning statements have been reviewed and feedback being compiled.
 - Initial scoping around development of the Quality Mark Scheme underway.

62. ***Property Strategy 2018/19***

- The first phase of the project is underway to research the drivers and options available to us.
- A timetable has been drawn up to achieve an agreed option in a business case for the end of March 2016.

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

63. ***Authorisation to Practise 2015***

- Process successfully completed at end of March 2015.
- Over 15,279 practising certificates issued.
- Lesson learnt completed and review of ability to handle ATP in 2016 as business usual is underway.

64. ***Intranet***

- Intranet launched 29 April 2015.
- Planning for phase 2 underway, to include training, a plan for business managed content and application release.
- Project closure process underway.

65. ***Human Resources Information System (HRIS)***

- Supplier selected and contract signed
- Initial preparatory work underway around preparing data and processes for implementation of the system
- Kick of planning session with supplier planned for w/c 20th July

66. ***Data Cleansing***

- Initial audit of the quality and integrity of data across the organisation underway in conjunction with the information architecture project.
- Planned cleansing of data stored in our current systems is planned.
- A review of the scope of this project is underway to look at the inclusion of data governance more widely.

67. ***Supervision and Entities regulation***

- Supervision system operational and live and well received by the team - project review underway and looking at how we can showcase the success there.
- Entities Application System is live and undergoing some testing with barristers.

68. ***BSB Alternative Business Structures Implementation***

- Participation in initial planning and scoping sessions.
- Assumed role to manage the analysis and implementation of the technology strand.

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

- All 127 business processes have been reviewed across the entire business.
- Technological options narrowed down.
- Analysis of information and data and business functional requirements for the single solution completed and first draft of Information Architecture agreed.
- First draft of business requirements for systems complete and under review.
- Investment Business case planned for review at the Finance Committee at the end of July 2015.

70. **Document Management System Review**

- A report is being compiled around usage and benefits realised from the Objective Document Management System in order to derive an action plan.

71. **Management Information**

- Business case awaiting sign off before we commence implementation of this project.
- Scoping around the role required within the IT Team to provide this service underway.
- Scoping around using an existing asset in the IT team entitled SSRS to give the reporting capability.

72. **PCI Compliance**

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

Key Resource Group Updates**Project Management Office – Richard Thompson**

73. All key business projects and programmes involve the Project Management Office

Project Management Standards Training

74. An Introduction to Project Management Training course has been completed. The PMO is analysing feedback and looking at how it can build on this work to offer more in depth training opportunities to the organisation.

Human Resources – Catherine Shaw75. **Recruitment – current activity**

Role	Division	Open since	Status
Regulatory Policy Manager X2	BSB	08/09/14	Amit Popat joined 13 April
Supervision and Authorisation Officer X2	BSB	07/10/14	DB Lenck joined 20 January 2 nd role on hold
Senior Supervision and Authorisation Officer	BSB	15/1/15	Faryal Khurram joined 13 May
Senior Project and Information Officer	BSB	15/1/15	Andrew Cohen moved to role 1 April
Business Support Officer X 2	BSB	27/2/15	Natasha Williams joined 1 May 2015 John Hall joins 17 July 2015
Assessment Manager	BSB	18/3/15	Natasha Ribeiro joined 1 May
Senior Policy Officer (1 year FTC)	BSB	20/3/15	Jonathan Slater joined 11 May 2015

Role	Division	Open since	Status
Professional Conduct Assistant, Assessment Team (Maternity Cover)	BSB	27/3/15	Jake Ames joined 27 May 2015
Casework Supervisor (Maternity Cover)	BSB	27/3/15	Sandhya Kapila joined 8 June 2015
Head of Supervision and Authorisation	BSB	30/3/15	Clíodhna Judge moved to role 18 May 2015
Professional Conduct Assistant, Operational Support (Maternity Cover)	BSB	31/3/15	Opemipo Akisanya joined 1 June 2015
Regulatory Risk Analyst	BSB	9/4/15	Nicholas Bungard joins September 2015
Financial Controller	RG	17/4/15	Mark Ennals joined 22 June 2015
Senior Management Accountant	RG	21/4/15	Peter Edwards made permanent 6 May 2015
HR Assistant (5 months FTC)	RG	24/4/15	Janleigh Silcott joined 6 July 2015
Communications & Press Officer	BSB	28/4/15	Angela Yin joined 1 June 2015
Policy & Project Officer	BSB	1/5/15	Courtney Brown joined 1 June 2015
Senior Risk Officer, Authorisation & Supervision	BSB	18/5/15	At interview
Professional Support Lawyer	BSB	5/6/15	Shortlisting
Supervision Administrator (Maternity Cover)	BSB	18/6/15	Advertised
Training Regulatory Assistant	BSB	19/6/15	Advertised
Legal and Policy Assistant (1 year FTC)	BSB	19/6/15	Advertised

76. **Headcount**

	RPS	BSB	Resources Group	Total
As at 30 June 2015	41	79	30	150
As at 30 June 2014	43	75	31	149

77. **Staff Turnover**

These figures relate to total staff turnover including all voluntary and involuntary leavers.

	RPS	BSB	Resources Group	Total
July 2014 – June 2015	56.1%	36.1%	39.3%	42.3%
July 2013 – June 2014	32.6%	36.9%	33.3%	35.0%

78. **Sickness Absence**

These figures relate to average days per person of total sickness absence including all short term self-certified sickness absence, all certified sickness absence and all long term sickness absence. Long term sickness absence is defined as more than 4 weeks.

	RPS	BSB	Resources Group	Total
January 2015 – June 2015	6.71 (4 LTA)	2.60 (1 LTA)	2.67	3.78
July 2014 – December 2014	2.36	3.61 (2 LTA)	2.26	2.97

Performance Management Process

79. The year-end performance review moderation meeting was held on 28 May. It was agreed that we had met our targets in terms of spread of ratings across the organisation and that there were no adverse E&D impacts of concern.

Compensation and Benefits

80. Our new benefits broker has completed their governance review of our pension scheme and confirmed that our pension provided by Standard Life and the current default fund within that pension are appropriate for our organisation and the staff we employ. The first 1-1 sessions to provide benefits advice have taken place with recent new joiners.

HR Policies

81. Further line manager training completed for the Dignity at Work Policy.
82. New TOIL policy published to all managers and supervisors.
83. Updated Annual Leave Policy published to all staff. All part time workers issued with individual letters confirming how their annual leave and public holiday entitlement will be calculated going forward from 1 October 2015.

Employee Relations

84. Our staff survey was carried out in April 2015. People Insight presented the results to the SLT in early June. People Insight facilitated a discussion group to identify the action plans needed in response to the survey results. The survey results and action plans were presented to all staff at the end of June.
85. Second meeting of our new staff committee, The Forum, was held in April. The group will continue to meet quarterly.

Progress against statutory obligations (where applicable)

86. SLT has approved our suggested approach to parental leave in light of the recent legislative changes which make this available to all employees with children up to the age of 18.

Records – Smita Shah

87. Planned annual database housekeeping is underway which includes auditing the rights of audience and ensuring that the qualified person data is up to date etc.
88. Audits of the BMIF status and Income declarations are underway with any issues to be referred to Supervision and/or PCD.
89. A clean-up of the database is underway to ensure data held is complete and clearly identified including a full composite of chambers data, updating records with data from historic “Notes” fields into individual records fields and loading of older data sets held separately into the core database.

Finance – David Botha

90. The final audit was completed at end of May and the accounts reviewed in June with Audit committee with no adjustments required. Final accounts will be approved in July.
91. Revised Management accounting reports are to be rolled out starting June 2015 to enable better focus on income and cost risks and to provide better insights into our financial forecasting process this year.

Facilities – Sam Forman

92. Data Protection – three large subject access requests were recently completed.
93. All statutory obligations against health and safety have been met. An automated external defibrillator has been purchased and will be installed on the 1st Floor Reception. Key staff will be trained on the equipment.
94. Works to lower floor common areas completed on 19 June.
95. Tenants on floors five and six completed fit out and have taken residence. Fit out for tenants on floors seven and eight is due to complete early August.
96. Property Strategy – initial meeting of property strategy group took place and project concept was discussed. The group will meet on a monthly basis. Quarterly reports to be produced on market trends and space available in the current vicinity.
97. The FM team has commenced work gathering historical information from energy providers in order to benchmark the carbon footprint output. The next phase will create the Green House Gases accounting policy documents.
98. Webcams and microphones for the StarLeaf Video/Audio Conferencing System have been purchased for distribution to committee secretaries and 1-2-1 training will be provided on the system.
99. A project plan is in place for the relaunch of the external printing services. The new go live date is early August and the project status is on track for that date.

IS Department – Tony Cook***Case Management system (Flosuite)***

100. We have been informed by our Case Management system provider, Thomson Reuters that they are to cease support for the product at the end of 2016. Therefore, we been in discussion with the organisation (Infographics) who initially developed the system to seek their assistance in providing support post 2016.
101. Following the initial discussions Infographics have confirmed that they are able to provide us with the support we require post 2016. The agreement is currently being finalised.

PCI Compliance

102. We have received a proposal from a supplier to carry out the work required to ensure we are compliant, this proposal is currently being evaluated, and dates to begin the work are being sort.
103. The supplier will be speaking with relevant members of staff e.g. Finance Director and IT Manager as part of the process.

Find A Lawyer

104. We are currently working with the supplier who developed the Entity & Supervision systems to plan the work required to deliver this project. We have received a quote from them for the work and are currently evaluating this to ensure value for money is achieved.

Objective DMS Review

105. We have now received the full report from Objective following their review on how we are using the system, this includes identifying areas for improvement both technically and culturally.
106. The IS Department and PMO are working through the report to ascertain the most significant areas we can focus on to deliver improved benefits to the organisation with the system and how we can achieve a good return on investment.

Other Key projects

107. ***Change Management Process***
- The IS Department have introduced a new process to capture information system change requests.
 - The main purpose of this is to make sure we are investing wisely in our current systems and to provide clarity around how they are managed.
 - This process is also a stepping stone to how we manage change more sensibly and in-line with the IM Strategy programme of work
108. ***Direct Access Portal***
- The IS Department are currently working with RP&S and their suppliers to implement this initiative.
109. ***IS Corporate Policies***
- The IS polices policies have now been proofread and are ready for implementation. These will be made available to all staff via Verity and the DMS.

110. ***Objective uEngage***

- The IS team is to undertake a benefits review of the system to ensure it is delivering the services required.

111. ***CheetahMail***

- The IS team is to undertake a benefits review of the system to ensure it is delivering the services required.

Vanessa Davies
Director General BSB
16 July 2015