

**Meeting of the Bar Standards Board**

**Thursday 28 January 2016, 4.30 pm  
Room 1, First Floor, Bar Standards Board Offices,  
289-293 High Holborn, London, WC1V 7HZ**

**Agenda - Part 1 – Public**

*Note: An IT workshop will be available before the meeting for BSB email accounts*

|     |  |              |                            | <b>Page</b>    |
|-----|--|--------------|----------------------------|----------------|
| 1.  | <b>Welcome and introductions<br/>(4.30 pm)</b>   |              | Chair                      |                |
| 2.  | <b>Apologies</b>   |              | Chair                      |                |
| 3.  | <b>Members' interests and hospitality</b>  |              | Chair                      |                |
| 4.  | <b>Approval of Part 1 (public) minutes</b>   |              |                            |                |
|     | • <b>26 November 2015 (*)</b>  | Annex A      | Chair                      | <b>3-8</b>     |
| 5.  | <b>Matters Arising (*)</b>   |              |                            |                |
| 6.  | a) <b>Action points and progress</b>   | Annex B      | Chair                      | <b>9</b>       |
|     | b) <b>Forward agenda</b>   | Annex C      | Chair                      | <b>11-12</b>   |
| 7.  | <b>Aggregated Diversity Data on the Barrister<br/>Profession<br/>(4.35 pm)</b>   | BSB 001 (16) | Amit Popat                 | <b>13-35</b>   |
| 8.  | <b>Future Bar Training: Analysis of<br/>Consultation on Pathways to Qualification<br/>(4.45 pm)</b>                                      | BSB 002 (16) | Simon<br>Thornton-<br>Wood | <b>37-44</b>   |
| 9.  | <b>Review of the Disciplinary Tribunal<br/>Regulations – Consultation responses and<br/>final regulations for approval<br/>(5.05 pm)</b> | BSB 003 (16) | Sara Jagger                | <b>45-105</b>  |
| 10. | <b>Costs of Authorisation of a Bar Standards<br/>Board Alternative Business Structure<br/>("ABS")<br/>(5.20 pm)</b>                      | BSB 004 (16) | Clíodhna<br>Judge          | <b>107-112</b> |
| 11. | <b>Education &amp; Training: Annual Report to the<br/>Board for 2015 (*)</b>   | BSB 005 (16) | Andrew<br>Sanders          | <b>113-124</b> |
| 12. | <b>Qualifications Committee: Annual Report to<br/>the Board for 2015 (*)</b>   | BSB 006 (16) | Rob Behrens                | <b>125-135</b> |

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

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|-----|---|--------------|----------------|----------------|
| 13. | <b>Chair's Report on Visits and External Meetings, November 2015 – January 2016 (*)</b>                 | BSB 007 (16) | Chair          | <b>137-138</b> |
| 14. | <b>Director General's Report (5.30 pm)</b>  | BSB 008 (16) | Vanessa Davies | <b>139-148</b> |
| 15. | <b>Any other business</b>   |              |                |                |
| 16. | <b>Date of next meeting</b> <ul style="list-style-type: none"><li>• Thursday 25 February 2016</li></ul> |              |                |                |
| 17. | <b>Private Session</b>  |              |                |                |

**John Picken**  
**Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
21 January 2016

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

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| <p><b>BAR<br/>STANDARDS<br/>BOARD</b></p> |
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REGULATING BARRISTERS

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

Thursday 26 November 2015, Room 1.1, First Floor  
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Patricia Robertson QC (Vice Chair)  
Rob Behrens  
Aidan Christie QC  
Malcolm Cohen  
Justine Davidge – items 7-15  
Andrew Mitchell QC  
Tim Robinson  
Andrew Sanders  
Nicola Sawford  
Adam Solomon – items 9-15  
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)  
Judith Farbey QC (prospective Board Member)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)  
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)  
Chloe Dickinson (Governance Support Officer) – items 1- 10  
Joanne Dixon (Manager, Qualification Regulations)  
Oliver Hanmer (Director of Supervision)  
Ewen Macleod (Director of Regulatory Policy)  
John Picken (Governance Officer)  
Amanda Thompson (Director of Strategy & Communications)  
Simon Thornton-Wood (Director of Education & Training)  
Natasha Williams (Business Support Officer)  
Angela Yin (Communications and Press Officer)
- Press:** Nick Hilborne (Legal Futures)  
Chloe Smith (Law Society Gazette)

*Note: Emily Windsor (Special Adviser) was not present for Part 1 of the agenda but did attend for some of Part 2.*

**Item 1 – Welcome**

1. The Chair welcomed members and guests to the meeting, in particular Judith Farbey QC who will formally join the Board on 1 January 2016. He also paid tribute to the very significant contribution of two Members who are retiring from the Board at the end of the year after six years of service ie:
  - Patricia Robertson QC, and
  - Sam Stein QC.
2. He reminded Members that a formal thank you dinner for all of this year's departing Board Members and Special Advisers will take place subsequent to the Board Away Day on 17 December 2015.

**Item 2 – Apologies**

3.
  - Rolande Anderson;
  - Naomi Ellenbogen QC;
  - Sam Stein QC;
  - Matthew Nicklin QC (Special Adviser);
  - Alistair MacDonald QC (Chairman, Bar Council);
  - Chantal-Aimée Doerries QC (Bar Council Vice Chairman);
  - Lorinda Long (Treasurer, Bar Council);
  - James Wakefield (Director, COIC);
  - Sara Jagger (Director of Professional Conduct);
  - Andrew Lamberti (Communications Manager).

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

4. None.

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

5. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 22 October 2015.

**Item 5 – Matters Arising**

6. None.

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

7. The Board noted progress on the action list.

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

8. The Board noted the forward agenda list.

**Item 7 – PRP Committee Report for Q2 (July 2015-September 2015)**

BSB 091 (15)

9. Anne Wright highlighted the salient points of the report ie:
  - income received remains well below the budgeted target (-24%);
  - expenditure is slightly below budget. This compares favourably with the same point of the previous year;
  - 11 business plan objectives are currently off target but most are within the control of the BSB and are likely to be completed at least by the end of the year. Even so, we may need to look still more closely at our forecasting methods;
  - the original timeline for the immigration thematic review has been changed. This followed feedback from a roundtable event with stakeholders (July 2015) where the need for a revised approach became apparent;
  - the Finance Committee has now approved the 2016/17 budget;
  - the performance indicators (PIs) for the Professional Conduct Department have improved now due to the conclusion of several long running cases and a return to full staffing in the Assessments Team;
  - staff turnover rates remain high but the PRP Committee has been encouraged by the response to this and other issues contained in the HR Operating Plan.
10. Malcolm Cohen commented that the shortfalls in budgeted income are especially acute in entity regulation (-95%). Notwithstanding the initial developmental costs, he suggested we need to monitor ongoing costs closely as we need to be able to justify our continued financial input for this service.

## Part 1 - Public

11. In response the following comments were made:
- high staff turnover rates are a common problem for all regulators. This was recently borne out from widespread comments on this issue at a meeting of regulators hosted by the Committee for Standards in Public Life (24 November);
  - the figures quoted in the report overstate the position as they record all leavers including short term contracts / maternity. When these exceptional factors are discounted the figure is 19% (compared to a sector average of 14%);
  - the BSB's senior management team has discussed staff turnover at length and will re-assess recruitment procedures to see if these can be improved;
  - forecast income from entity regulation has been scaled back for next year's budget. There remains a fundamental question of policy as to the minimum level of staffing we need to have to meet requirements for entity regulation applications. However, the job descriptions of the staff concerned are flexible to allow re-deployment to the Supervision Department if required.

12. **AGREED**  
to note the report.

**Item 8 – Fees and Charges - consultation**

BSB 092 (15)

13. Viki Calais highlighted the following:
- Part A of the draft consultation document sets out the general principles for the BSB's fees and charges. This includes "full cost recovery", which the Board has previously discussed;
  - Part B comments on the impact of full cost recovery on fees for applications made to the Qualifications Committee and it would be helpful to have Members' views on this section in particular;
  - the consultation is due to be issued on 7 December 2015 with a closing date of 15 February 2016. The aim is to have a new fee structure in place as from 1 April 2016.
14. Members commented as follows:
- we must additionally survey service users (past and present) on what the consequential impact on behaviour would be if we moved to a full cost recovery model. Without this the consultation looks too theoretical and does not indicate how sound our projected costings would be;
  - paragraph 6.2.6 refers "blanket increases" and quotes very high percentage rate rises. This needs greater explanatory detail to give a fuller and more accurate picture. Without this, there is a risk that the responses we receive will not be sufficiently informed to be helpful;
  - we need to articulate the pros and cons of this approach in terms of budgeting and the call on the PCF;
  - the section on fee waivers (5.7) is unsatisfactory as currently drafted. The following points are relevant:
    - ❖ it is much too brief and too leading in its tone (particularly the last paragraph);
    - ❖ it does not clearly define what is meant by "injustice" or "hardship";
    - ❖ the questions posed are longer than the narrative and, as worded, might elicit just yes / no answers;
    - ❖ the questions do not address the issue of whether we should have waivers and, if so, what for?
    - ❖ it states that there could be a "small" increase to the PCF if they were funded by the profession but it is not clear why it would be "small" what would limit the potential rise;

## Part 1 - Public

- there is too little time between the consultation response deadline and the date for introduction. An April start date may be unrealistic.
15. The Chair asked if the BSB is obliged under E&D legislation to subsidise waiver applications from those based outside the UK. In response, the following points were made:
- we need to consider the impact of our proposals in terms of E&D. That said, a decision that could result in a negative impact might still be made if outweighed by other related factors that justified the course of action;
  - we should be conscious of the fact that any subsidy we offer will need to be paid for eventually as the overall cost will remain.
16. **AGREED**
- a) to note the draft consultation and to request that this is re-drafted to take account of the above comments. VC
  - b) to note the Planning, Resources and Performance Committee is also considering the consultation document for subsequent sign off by the Director General.
  - c) to ask that the proposed timetable be monitored and adjusted if required, given the short timeframe between the consultation deadline and the proposed implementation date. VC to note

**Item 9 – Governance Review Update and Revised Standing Orders**  
BSB 093 (15)

17. Amanda Thompson highlighted the following:
- work on other aspects of the governance review is underway. This includes:
    - ❖ development of the assurance framework;
    - ❖ establishment of the Advisory Pool / Panel of Experts (“APEX”);
    - ❖ the use of Task Completion Groups;
  - the proposed Standing Orders are an interim measure to take effect from 1 January 2016. They reflect earlier decisions by the Board to disestablish a number of its committees;
  - the Standing Orders will be further revised once the latter stages of the governance review have been finalised next year;
  - the scheme of delegation will need to be amended as a result of the new Standing Orders. In the absence of a formal Board meeting in December, the Chair should be authorised to sign off the changes.
18. Members commented as follows:
- it would be helpful to know the timetable for APEX implementation and the fee structure involved;
  - the Terms of Reference for the remaining committees will need amendment but it is not clear when this will occur.
19. In response, the following comments were made:
- we are currently identifying the skill requirements for APEX and there is insufficient time for an open procurement process to take place in time for January 2016. In consequence, we shall implement a transitional arrangement using transfers from the existing committee structure. A fee structure has yet to be decided;
  - proposals should be sufficiently advanced for discussion in time for the February Board with a view to recruitment during Spring and early Summer 2016;
  - the committee Terms of Reference will be updated in early Autumn 2016 at the same time that the Standing Orders are further revised.

20. **AGREED**
- a) to approve the revised Standing Orders as set out in Annex 1 of the report. **AT to note**
  - b) that the revised Standing Orders come into force on 1 January 2016. **note**
  - c) that the Professional Conduct and Qualification Committees have no responsibility for policy making in those areas ie that responsibility for this lies with the Board or Executive as appropriate but that the committees retain their role in relation to individual case decisions. **JD / SJ to note**
  - d) to establish two new roles in the current financial year to support the changes in education and training ie: **STW**
    - a “Visitor” to hear challenges against Centralised Examination policy and procedures;
    - an increased role for the Independent Observer to the Centralised Examination Board.
  - e) to delegate sign off of the details and appointment of the “Visitor” role to the Chair of the Board. **SAB to note**
  - f) that the Chair of the Board be awarded delegated authority to sign an amended scheme of delegations to underpin the revised Standing Orders. **SAB**
  - g) that the Executive make consequential amendments to the Declaration of Interests and Gifts and Hospitality policies. **AT / CD**
  - h) to note the updates on other aspects of the governance review implementation.

**Item 10 – Bar Council Standing Orders – proposed amendments**

BSB 094 (15)

21. The Board considered proposed amendments to establish a separate set of Standing Orders for those bodies on which the Bar Council and Bar Standards Board are jointly represented ie Chairmen’s Committee, Emoluments Committee, Finance Committee, Budget Review Group and Audit Committee.
22. Amanda Thompson referred to the proposed membership of the Emoluments Committee sub-group. The BSB representative in this case is one lay member of the Emoluments Committee nominated by the Chair of the BSB and agreed by both the Chair of the BSB and the Bar Council. This person at present also happens to be a BSB Board member. It may be advisable that all future BSB representatives on the Emoluments Committee are also BSB Board Members.

23. **AGREED**
- to approve the proposed new Bar Council Standing Orders. **AT to note**
- Note: assuming the proposed Standing Orders are approved at the Bar Council in January 2016, they will take effect immediately thereafter.*

**Item 11 – Chair’s Report on Visits and Meetings (Oct-Nov 15)**

BSB 095 (15)

24. The Board received the Chair’s Report on visits and meetings (Oct- Nov 15).

25. **AGREED**
- to note the report.

**Item 12 – Director General’s Report**

BSB 096 (15)

26. Vanessa Davies commented as follows:
- the meeting on “ethics for regulators” organised by the Committee on Standards in Public Life (24 November 2015) was helpful. A report on the outcome will be circulated to Members in due course;

## Part 1 - Public

- the Cross-Cultural Communication event referred to in paragraph 19 of the report will take place on 12 January 2016 at the Royal College of Surgeons. Board Members are invited to attend;
- more responses to the consultation on Future Bar Training have been received bringing the total to 66. It is gratifying that stakeholders have responded in such a comprehensive and diligent manner. A summary of the responses will be presented to the BSB meeting in January 2016.

27. **AGREED**

to note the report.

**Item 13 – Any Other Business****Proposal to change the regulation on maximum completion time for the Bar Professional Training Course (BPTC)**

28. Vanessa Davies advised that since the dispatch of Board agenda papers, a further item had arisen requiring the Board's ratification. This concerns a proposed change to the regulation of the maximum completion time for the BPTC. The effect of the recommendation is:
- (i) to harmonise the maximum period for completion of the course for full-time and part-time students to three years beyond the anticipated completion date in each case, and
  - (ii) to allow the BSB discretion to allow students to proceed to one further sit beyond the maximum time limit where they have documented mitigating circumstances that have been accepted by their BPTC provider.

She advised that a paper (BSB Paper 102 (15)) will be mailed out to Members for their comment in the immediate future.

*Post meeting note: the above paper was emailed to Members on 30 November 2015. A majority approved the recommendation (12 in favour – 6 barrister members; 6 lay members). No member voted against.*

**Item 14 – Date of next meeting**

29. • Thursday 17 December 2015 (Board Away Day).  
• Thursday 18 January 2016 (Board meeting).

**Item 15 – Private Session**

30. The following motion, proposed by the Chair and duly seconded, was agreed: That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes;
  - (2) Matters Arising:
    - Youth Proceedings Advocacy Review – update from Task & Finish Group;
    - Feedback of meeting with BMIF;
  - (3) Action points and progress – Part 2;
  - (4) Future of the Bar Course Aptitude Test;
  - (5) Corporate Risk Report;
  - (6) BSB response to MoJ Consultation: *Preserving and Enhancing the Quality of Criminal Advocacy*;
  - (7) BSB email addresses;
  - (8) Quality Mark scheme for the planned revised CPD scheme for the Bar;
  - (9) Any other private business.

The meeting finished at 5.25 pm.



**BSB – List of Part 1 Actions  
28 January 2016**

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

| Min ref  | Action required  | Person(s) responsible | Date of action required | Progress report                          |  |
|--|--|-----------------------|-------------------------|--|--|
|  |  |                       |                         | Date                                     | Summary of update  |
| 16a<br>(24 Nov 15)   | re-draft the consultation on fees and charges taking account of the comments raised at the November Board meeting  | Viki Calais           | before end Dec 15       | 11/01/16                                 | <b>Completed</b> – survey published. At the time of the update we had had four responses.  |
| 20d<br>(24 Nov 15)   | establish two new roles to support the changes in education and training ie <ul style="list-style-type: none"> <li>• a “Visitor” to hear challenges against Centralised Examination policy and procedures</li> <li>• an increased role for the Independent Observer to the Centralised Examination Board.</li> </ul> | Simon Thornton-Wood   | before 31 March 16      | 19/01/16                                 | <b>In hand</b> – proposal before GRA on 19 January 2016  |
| 20f<br>(24 Nov 15)   | sign an amended scheme of delegations under delegated authority from the Board   | Sir Andrew Burns      | before 31 Dec 15        | 19/01/16                                 | <b>Completed</b>   |
| 20g<br>(24 Nov 15)   | make consequential amendments to the Declaration of Interests and Gifts and Hospitality policies arising from the new Standing Orders  | Chloe Dickinson       | immediate               | 19/01/16                                 | <b>Completed</b>   |
| 21b<br>(23 July 15) – insurance for single person entities | seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF   | Kuljeet Chung         | by 31 Jul 15            | 19/01/16<br><br>16/11/15<br><br>04/09/15 | <b>Ongoing</b> – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board.<br><br><b>Ongoing</b> – update in private session<br><br><b>Ongoing</b> A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September. |



## Forward Agendas

### Thursday 25 February 2016

- A review of the Bar Standard Board's Enforcement Decision Making – revised proposals (*Part 2 – Private*)
- BSB Business Plan for 2016-17 and new Strategic Plan 2016-19
- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Future Bar Training: Consultation on Professional Statement Threshold Standards (*Part 2 – Private*)
- Future Bar Training: outline proposals for academic, vocational and professional stage reform (*Part 2 – Private*)
- CPD: consultation on regulations / outcome of pilot
- Future of the Bar Course Aptitude Test
- Qualifications Committee Review – Capsticks Report (*Part 2 - Private*)
- MoJ comments on responses to its consultation document: *Preserving and Enhancing the Quality of Criminal Advocacy* – may move to March agenda depending on publication date
- QASA update (Part 2)
- Employed Barristers Consultation – outcome

### Thursday 17 March 2016

- Strategic plan 2016-19 – final
- Public and licensed access review
- Outcome of Fees and Charges Consultation
- Women's experience at the Bar
- APEX recruitment

### Thursday 21 Apr 2016 (Board Away Day)

- Discussion on MoJ consultation outcome
- Future Bar Training

### Thursday 19 May 2016

- Report on recommendations: Immigration Thematic Review
- BSB Year-End Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

### Thursday 23 Jun 2016

Draft BSB Annual Report 2015-16

### Thursday 28 Jul 2016

- Approval of CPD regime changes (Part 2)
- PCD Annual Report

### Thursday 15 Sept 2016 (budget) – *date may be altered as now clashes with the International Regulatory Conference*

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

### Thursday 29 Sept 2016

- GRA Annual Report – includes the Report from the Independent Observer
- Approval of consultation on future model for training regulation, for publication

**Thursday 27 Oct 2016**

**Thursday 24 Nov 2016**

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

**Thursday 15 Dec 2016 (Board Away Day)**

**Thursday 26 Jan 2017**

**Thursday 23 Feb 2017**

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

**Thursday 23 Mar 2017**

## Aggregated Diversity Data on the Barrister Profession

### Status:

1. For discussion and approval.

### Executive Summary:

2. The Equality Act Specific Duties Regulations 2011 require the BSB to publish, every January, equality information relating to those who are affected by our policies and practices. The Legal Services Board (LSB) requires the BSB annually to publish aggregated diversity data on the barrister profession broken down by the following strands: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
3. This paper details how the BSB has collected diversity data from individual barristers via the online *Barrister Connect* portal and the Pupillage Registration Survey in 2015. The data has been collected on the diversity strands mentioned above and has been broken down by seniority and set out in the Diversity Data Report at Annex A.
4. The BSB Equality Access to Justice (E&AJ) team extracted and analysed the data in December 2015 which showed that completion rates for the monitoring questionnaire have increased by an average of 6.2% since 2014. However it is advised that due to low disclosure levels, the data in the areas of religion or belief, sexual orientation, socio-economic background and caring responsibilities is not reliable and cannot be used for drawing statistical conclusions. Good levels of data exist in the categories of gender, race, and age. Fairly good levels of data exist for disability.
5. The E&AJ team met with members of the Bar Council's Resources Group in December 2015 to agree changes to the *Barrister Connect* portal that will be implemented before the 2016 Authorisation to Practise round with the aim of increasing completion rates for the diversity monitoring questionnaire. The agreed changes are included in this paper at paragraph 19.
6. The E&AJ team will be closely involved in the design of the new online Authorisation to Practise (ATP) portal that is due for launch in late 2017. This is so the new system can be designed in a way that encourages, as far as possible, barristers to complete their diversity monitoring questionnaire and therefore increase the quality of diversity data held by the BSB.
7. The BSB is already undertaking a number of different pieces of work that aim to address some of the equality issues raised by this Diversity Data Report, namely the underrepresentation of women and disabled practitioners at the Bar and a lack of progression for Black and Minority Ethnic (BME) practitioners. A selection of key activities is set out at paragraph 23. The 2015 diversity data will also be used to inform the BSB's new 3-year Equality Strategy and new organisational equality objectives.

### Recommendation

8. That the Board approves for publication on the BSB website the Diversity Data Report 2015 prepared by the E&AJ team at Annex A.

## Summary of Legal and LSB Regulatory Requirements

### Legal Requirements

9. The Equality Act 2010 Specific Duties Regulations 2011 came into force in September 2011. The regulations require that listed public authorities publish information annually, beginning in January 2012, to demonstrate compliance with the general equality duty (s.149 Equality Act 2010). The general duty requires public bodies to pay due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation;
  - Advance equality of opportunity between different groups; and
  - Foster good relations between different groups.
10. The information published should include information relating to those who are affected by the public bodies' policies and practices. In the BSB's case, this means data on those we regulate and those to whom we provide services.

### LSB Regulatory Requirements

11. In July 2011 the LSB issued guidance stipulating that Approved Regulators (ARs) must collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession. ARs must publish this data by the end of 2012, and at one year intervals thereafter. Data must be published on the following strands: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities. The BSB must publish the numbers of individuals in each group, and as a percentage of the total bar. The data must be anonymised, aggregated, and broken down by seniority (i.e. QC, practising Bar, pupil).

## Background

### Collection of Diversity Data

12. Up until 2012, the Bar Council Records Department collected data on the gender, age, race and disability of every barrister in England and Wales. This was done on application for a practising certificate. In March 2012 the Bar Council introduced a new ATP system which requires individual barristers to renew their practising certificate via the online *Barrister Connect* portal. This online system contains a voluntary monitoring page which allows barristers to input their personal diversity data. This data automatically populates the Bar Council's 'Core Database', which contains an electronic record on every individual barrister.
13. Since the introduction of *Barrister Connect* in 2012, the completion rates for the diversity monitoring page have been low in some areas. For example, in 2012 only 4.7% of barristers completed the question about sexual orientation and 3% of barristers completed the question about caring responsibilities for children. Since 2012, regular reminder emails have been sent from the BSB to the profession encouraging them to log back into the portal and submit their diversity data. In 2013 the *Barrister Connect* portal was amended so that a 'pop up' reminder about completing the monitoring form appears before a barrister exits the ATP process. Explanatory text was also added to the portal itself setting out the reasons why diversity data collection is important for the BSB and how the data is used. Following these interventions, completion levels have increased but in some areas remain below what is required for drawing conclusions.

14. Diversity data on pupils is collected through the Pupillage Registration Survey (PRS). This survey is administered annually to enable diversity monitoring of pupils, as they do not register via *Barrister Connect*. The data in the Diversity Data Report 2015 was supplied by pupils who completed the voluntary survey during the BSB pupillage registration process 2014-15. Completion rates for this survey are high, with approximately 98.6% of pupils completing their diversity monitoring questionnaire.
15. The BSB E&AJ team extracted the anonymous diversity data on the profession from the Core Database on 1<sup>st</sup> December 2015. The data were cross-checked for anomalies by the BSB Research team and presented as the Diversity Data Report at Annex A.

### Diversity Data Report 2015

#### Summary of Data

16. Completion rates across all monitoring categories have increased by an average of 6.2% since 2014, with the largest increase being 7.8% for religion or belief. As a result of the data collection exercise, there is comprehensive data in some areas and poor data in other areas due to the low completion rates. The BSB has relatively high levels of data in the following areas, and hence some conclusions can be drawn:
- a) Gender
    - The Core Database has gender data on 99.5% of barristers
    - The data shows an underrepresentation of women at all levels of seniority; 35.9% of all barristers are female and at QC level 13% are female.
  - b) Ethnicity
    - The Core Database has ethnicity data on 91.4% of barristers
    - The data shows there is an issue with career progression of BME barristers through the different levels of seniority; 15.4% of pupils are BME, but only 12% of the practising Bar are BME and 6.3% of QCs are BME.
  - c) Age
    - The Core Database has age data on 86.4% of barristers
    - The data shows no significant under or overrepresentations, other than those for which there is a reasonable explanation e.g. the majority of pupils are aged 25-34.
  - d) Disability
    - The Core Database has disability data on 31% of barristers
    - 1.5% of barristers declared a disability, out of a total profession of 16,336.
17. There are low levels of data in the following areas, and reliable conclusions cannot be drawn:
- e) Religion or belief
    - The Core Database has religion or belief data on 27.8% of barristers
    - The highest responses were in the following categories: 12.9% of all barristers declared they are Christian, 6.9% declared they have no religion, and 2.5% said they are Agnostic.

- f) Sexual orientation
- The Core Database has sexual orientation data on 27.6% of barristers
  - 24.2% of barristers declared that they are straight, 0.9% declared they are a gay man, 0.2% declared they are a gay woman and 0.3% declared they are bisexual.
- g) Socio economic background
- 26.9% of barristers completed the question about what type of school they attended, and 26.7% of barristers answered the question about whether they were the first generation of their family to attend university.
- h) Caring responsibilities
- 27.5% of barristers answered the question about caring responsibilities for children, and 26.3% of barristers answered the question about caring for others.
18. The BSB Research team has advised that the data in the categories above at paragraph 17 is unreliable due to the low completion rates and therefore cannot be used for statistical analysis or for formulating areas for action. This is problematic because the BSB has statutory and regulatory duties to promote equality and diversity in relation to all the protected characteristics listed in the Equality Act 2010. There is no set figure for the point at which the disclosure rates of diversity monitoring data become reliable, but it is suggested that response rates of around one third should be the minimum achieved. As a very rough rule of thumb, a one third response rate provides fairly good accuracy under most assumptions and parameters of a monitoring exercise, and hence why this figure has been selected as relevant for this particular exercise. A 95% response rate would be required in order to apply the monitoring results with total confidence across the whole barrister profession.

#### Action to Improve Quality of Diversity Data

19. It is accepted that it can take years for a profession to become familiar and comfortable with providing their diversity data on a range of strands. Although it is positive to see that completion rates have increased since 2014, the current rates in some areas remain too low for statistical analysis to be undertaken. In light of this, the E&AJ team worked in partnership with the Bar Council Resources Group to implement the following changes to *Barrister Connect* prior to the 2016 ATP round commencing, with the aim of improving completion rates:
- Additional explanatory text was included on the Authorisation to Practise homepage and on the monitoring page itself setting out in greater detail the importance to the BSB of data collection and the ways in which the data is used; and
  - A reminder for individuals to update their diversity data was included on the automatic email that will be sent to barristers once they have completed the 2016 ATP process.
20. A reminder to all barristers to update their monitoring information on Barrister Connect was included in the BSB's January edition of the electronic *Regulatory Update* newsletter.
21. A new ATP portal using a different software provider is due to be designed and implemented by the Bar Council in 2017. The E&AJ team see this as a good opportunity to design a more visible and effective method of diversity data collection that will encourage a greater number of barristers to complete their monitoring questionnaire. This course of



action, combined with the activities listed above in paragraphs 19 and 20, should go some way to the BSB achieving at least a one third completion rate across all monitoring categories.

#### Publication and Promotion of Diversity Data

22. Once approved by the Board the Diversity Data Report will be published, by the 31<sup>st</sup> January at the latest, in the Equality and Diversity section of the BSB website. It is intended that the data will be publicised to the profession and the public through the BSB's monthly *Regulatory Update* email newsletter and the BSB Twitter feed.

#### Activities to Address Equality Issues Raised by the Report

23. The Diversity Data Report 2015 makes three main conclusions, namely that there is an underrepresentation of women and disabled practitioners at the Bar and that there is a problem with career progression for BME barristers. The BSB is already undertaking a number of activities aimed at addressing these issues, and the latest 2015 data will be used to update the project plans and evidence bases. A selection of key current BSB activity in these areas can be found below.
24. **Women at the Bar:** In January 2016 a survey was sent to all female barristers enquiring about their experiences of the Bar. The survey is specifically aimed at assessing the effectiveness of the equality rules of the Handbook and how they support the progression and retention of women at the Bar. The results of the survey will be used to ascertain how the BSB's regulatory tools can be used to better support female practitioners.
25. **BME and disabled practitioners:** In January 2016 the BSB held a symposium for both internal and external delegates on cross-cultural communication at the Bar. The symposium was not focused solely on issues of ethnicity, but on all protected characteristics including disability. The findings from the symposium will be used to inform the BSB's 2016 Risk Outlook, the Future Bar Training programme and future E&AJ team activities.
26. **BME and disabled practitioners:** The E&AJ team has embarked upon a programme of outreach and stakeholder engagement with external groups such as Bar Diversity Groups and voluntary sector groups to better understand the challenges facing both barristers and consumers with certain protected characteristics. This is to ensure that BSB policy-making in these areas is more evidence-based and targeted.
27. As part of the E&AJ team's 2016 work programme, the findings of the Diversity Data Report 2015 will be used to inform the production of a new 3-year Equality Strategy and the development of new organisational equality objectives.

#### Resource implications

28. The amendments to *Barrister Connect* discussed at paragraph 19 have already been agreed and implemented within the Resources Group budget. Expenditure was kept low by making these particular changes at the same time as other changes to *Barrister Connect* that were requested by other BSB departments. Design and implementation costs for the new ATP portal will be covered by the general budget for the Core Database/ATP project.

## Equality Impact Assessment

29. It is anticipated that the publication of diversity data and the changes to *Barrister Connect* (and any future ATP portal) will not have any adverse impact on equality because these activities have been designed specifically to promote and advance equality and diversity. Accessibility issues will be taken into consideration when publishing diversity data and when designing a monitoring section for the new ATP portal.

## Risk implications

30. The collection and publication of diversity data on the profession provides the BSB with an evidence base which is used to inform policies aimed at widening access to the profession and promoting diversity and social mobility. Analysis of the data enables the BSB to identify trends and is key to assisting the BSB in meeting its Public Sector Equality Duties. Failure to collect and publish diversity data would be a reputational risk for the BSB. Organisationally, the BSB would be left without an equality and diversity evidence-base for its decision-making and would be lacking in transparency.
31. The BSB Regulatory Risk Index lists a 'lack of a diverse and representative profession' as a significant market risk. The annual production of the Diversity Data Report is a key way in which the BSB attempts to mitigate this risk.
32. There are two key compliance issues relevant to the publication of the Diversity Data Report:
- a) Failure to comply with the Equality Act 2010 Specific Duties Regulations could lead to the BSB being issued with a compliance notice; and
  - b) Failure to meet the LSB deadline for publication of aggregated diversity data under the Section 162 guidance could lead to enforcement action.

## Regulatory objectives

33. The collection and publication of diversity data on the Bar relates directly to the BSB's regulatory objectives, as defined in Section 1 of the Legal Services Act 2007, namely objective 1 (f): "encouraging an independent, strong, diverse and effective legal profession".

## Annexes

34. Annex A: Report on Diversity at the Bar, December 2015

## Lead responsibility:

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



REGULATING BARRISTERS

**Report on Diversity at the Bar  
December 2015**

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## 1. Executive Summary

This report presents a summary of the latest diversity data available on the Bar. The report assists the Bar Standards Board (BSB) in meeting our statutory duties under the Equality Act 2010 and sets out an evidence base from which relevant and targeted policy can be developed.

Two distinct datasets were used to compile the findings: the Core Database 2015 and the Pupillage Registration Survey 2014-2015.

Key points from the report are outlined below;

- Response rates have increased across all categories since 2014 (see Table 2 below for a breakdown of increases). The response rate is highest for Gender at 99.5% and lowest for Caring Responsibilities for Others at 26.3%.
- There has been a significant increase in response rates since 2012 when the BSB began collecting diversity data from individual barristers through the online *Barrister Connect* portal. In 2012 there were very low levels of data in a number of areas such as disability (5% response rate), sexual orientation (4.7% response rate) and Caring Responsibilities for Children (3% response rate).
- Gender representation in the profession still remains an issue as women account for 35.9% (an increase of 0.9% since 2014) of the practising Bar while men account for 64% (an increase of 1% since 2014). In addition, women account for just 13% of QCs while men account for 87%.
- There appears to be an underrepresentation of disabled practitioners at the Bar. Completion rates (31% in 2015) for this question have reached a level from where conclusions can begin to be drawn, and only 1.5% of the Bar disclosed a disability, compared with the percentage of disabled people in the UK population (approximately 19%<sup>1</sup>).
- There remains an issue in relation to the progression of Black and Minority Ethnic (BME) practitioners at the Bar, with only 6% of QCs declaring that they are BME and 90% declaring that they are white. There is no change in these figures since 2014.
- “Prefer not to say” responses are minimal across all categories; the highest rates of prefer not to say are in relation to disclosure of religion or belief (2.1%) and sexual orientation (1.8%).

## 2. Introduction

This Diversity Data Report summarises available data on the diversity of the barrister profession as of December 2015. The data is presented in an anonymised and aggregated format. This report is published annually to meet the requirements of equality legislation, namely the Equality Act 2010 Specific Duties Regulations and the statutory guidance of the Legal Services Board. It gives a snapshot overview of diversity at the Bar and establishes evidence for both policy development and assessing the effectiveness of current initiatives aimed at increasing equality and diversity. The BSB is committed to providing clear and transparent statistical diversity data across every stage of a barrister’s career.

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<sup>1</sup> *People with Disabilities in the Labour Market 2011*, Office for National Statistics, [www.ons.gov.uk](http://www.ons.gov.uk)

In total there are 16,336 practitioners at the Bar. Table 1 below shows how many people are at each level of the profession and that have been analysed in this report:

*Table 1: Total number of people at the Bar (numbers)*

| Seniority            | Numbers |
|----------------------|---------|
| Pupil                | 421     |
| Practising Bar       | 14,288  |
| Queen’s Counsel (QC) | 1,627   |

The main body of the report is in three sections, showing diversity data for each of the following areas: protected characteristics, socio-economic background and caring responsibilities.

### 3. Methodology

The data sources used in this report are:

- Data contained in the Bar Councils’ membership records (The Core Database);
- the Pupillage Registration Survey 2014-15

#### **The Core Database**

The Bar Council’s Core Database receives data on the profession via the online “authorisation to practise” system, *Barrister Connect*, which was introduced in 2012. When renewing their practising certificate, the online portal includes a section which allows barristers to input their diversity monitoring data which automatically populates the Core Database. The rate of completion varies for individual monitoring strands, as each question is voluntary and some can be left blank if desired. Barristers can access the *Barrister Connect* portal at any time and update their diversity monitoring information. The diversity monitoring information used in this report was extracted from the Core Database on 1st December 2015.

Data on gender, ethnicity, age and disability that prior to 2012 had been collected by the Bar Council Records Department was transferred to the Core Database to supplement the new monitoring data. This data includes gaps referred to as ‘unknown data’ where respondents’ left fields unanswered.

All numbers have been rounded to one decimal place, so in some cases the figures may not total 100%.

#### **The Pupillage Registration Survey (PRS)**

The Pupillage Registration Survey is administered on an annual basis to enable diversity monitoring of pupils, as they do not register via *Barrister Connect*. The data in this report was supplied by pupils who completed the voluntary survey during the BSB pupillage registration process. The data was analysed anonymously and covers the period 2014-15.

## Response Rates

Although rates of response have improved this year, in comparison with the 2014 statistics, there is still a large proportion of the Bar that did not disclose their diversity information in relation to certain characteristics:

- **Disability:** 69% of the profession did not disclose their disability status.
- **Religion or belief:** 72.2% of the profession did not disclose their religion or belief.
- **Sexual orientation:** 72.4% of the profession did not disclose their sexual orientation.
- **Caring responsibility information:** 72.5% of the profession did not disclose whether they had caring responsibilities for children. 73.7% of the profession did not disclose whether they had caring responsibilities for family members, friends, neighbours or others.
- **Socio Economic Background:** 73.1% of the profession did not disclose the type of school they attended and 73.3% did not disclose whether they were part of the first generation of their family to go to University.

It should be noted that each question on both Barrister Connect and the PRS contains a 'prefer not to say' option, allowing each individual the option of giving a response without disclosing any information. 'Prefer not to say' responses are minimal in general, with the highest rate of 'prefer not to say' responses being in relation to questions on religion or belief (2.1%) and sexual orientation (1.8%). Due to the generally low response rates, the use of these two datasets together cannot provide an in-depth understanding of the diversity of the Bar.

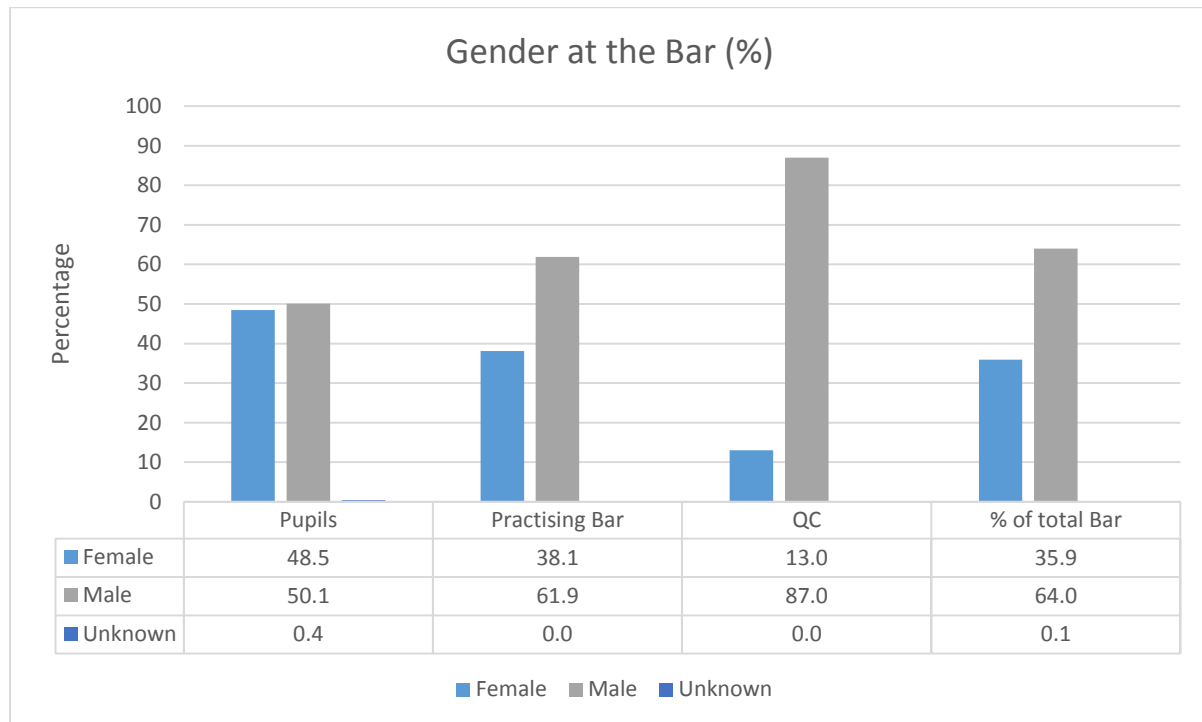
Table 2: Response Rates in 2014 and 2015 (percentages)

| Category                              | 2014 | 2015  | % difference |
|---------------------------------------|------|-------|--------------|
| Gender                                | 98%  | 99.5% | + 1.5%       |
| Ethnicity                             | 89%  | 91.4% | +2.4%        |
| Age                                   | 79%  | 86.4% | +7.4%        |
| Disability                            | 24%  | 31%   | +7%          |
| Religion or belief                    | 20%  | 27.8% | +7.8%        |
| Sexual orientation                    | 20%  | 27.6% | +7.6%        |
| Type of school attended               | 20%  | 26.9% | +6.9%        |
| First generation to attend university | 19%  | 26.7% | +7.7%        |
| Care of children                      | 21%  | 27.5% | +6.5%        |
| Care for others                       | 19%  | 26.3% | +7.3%        |

## 4. Protected Characteristics

### Gender

Graph 1 below shows a summary of gender at the Bar, broken down by seniority. There has been a slight increase since 2014 in the percentage of women at the Bar overall (35.9% up from 35% in 2014). The number of men at the Bar has increased by 1% (64% up from 63% in 2014). The gender breakdown of QCs has remained the same since 2014.



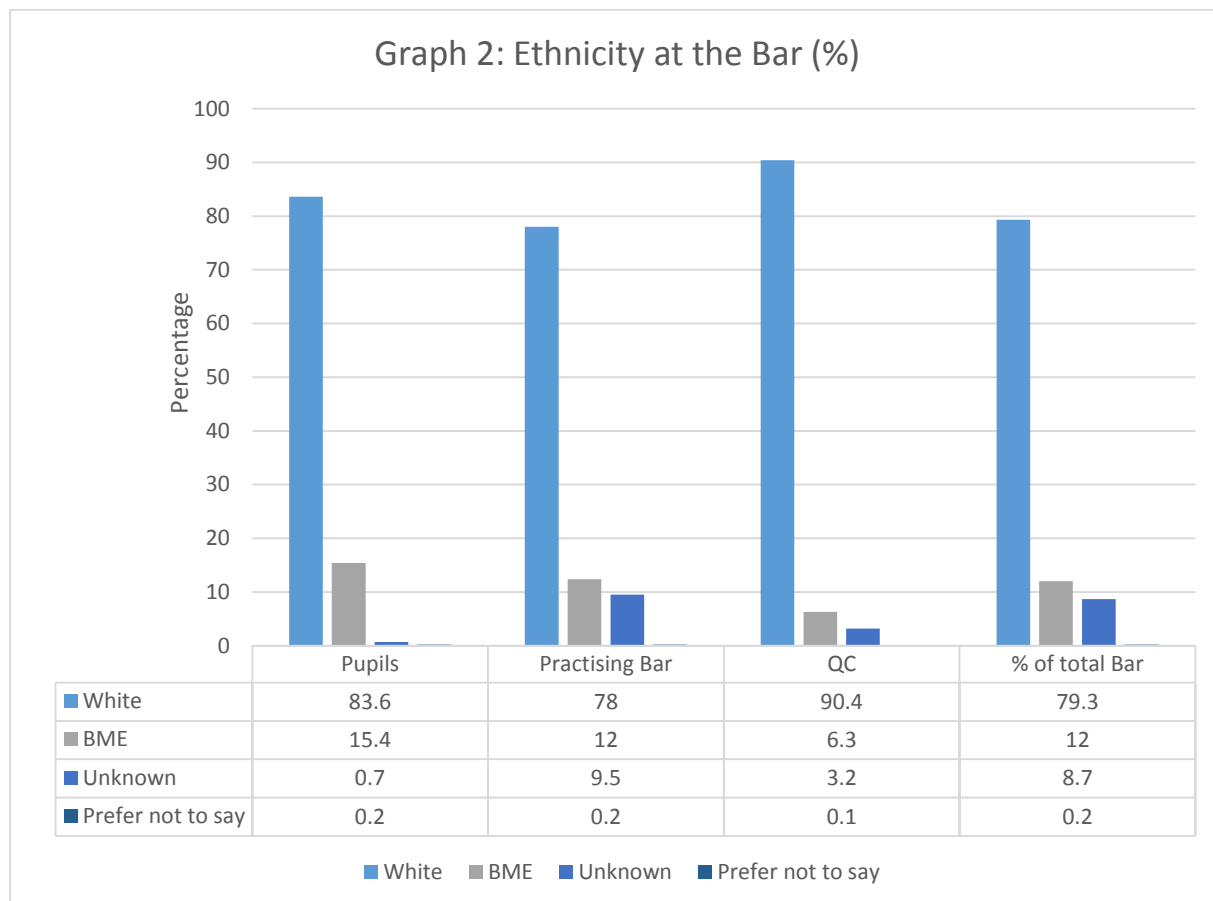
*Table 3: Gender at the Bar (numbers)*

|                | Female | Male   | Unknown | Total  |
|----------------|--------|--------|---------|--------|
| Practising Bar | 5,455  | 8,833  | 0       | 14,288 |
| QC             | 212    | 1,415  | 0       | 1,627  |
| Pupils         | 204    | 211    | 6       | 421    |
| Totals         | 5,871  | 10,459 | 6       | 16,336 |



## Ethnicity

Graph 2 below shows a summary of ethnicity at the Bar, broken down by seniority. The number of BME practitioners have increased by 1% since 2014 (12% up from 11% in 2014). The number of BME QCs have increased by 0.3% since 2014 (6.3% up from 6% in 2014).



*Table 4: Ethnicity at the Bar (numbers)*

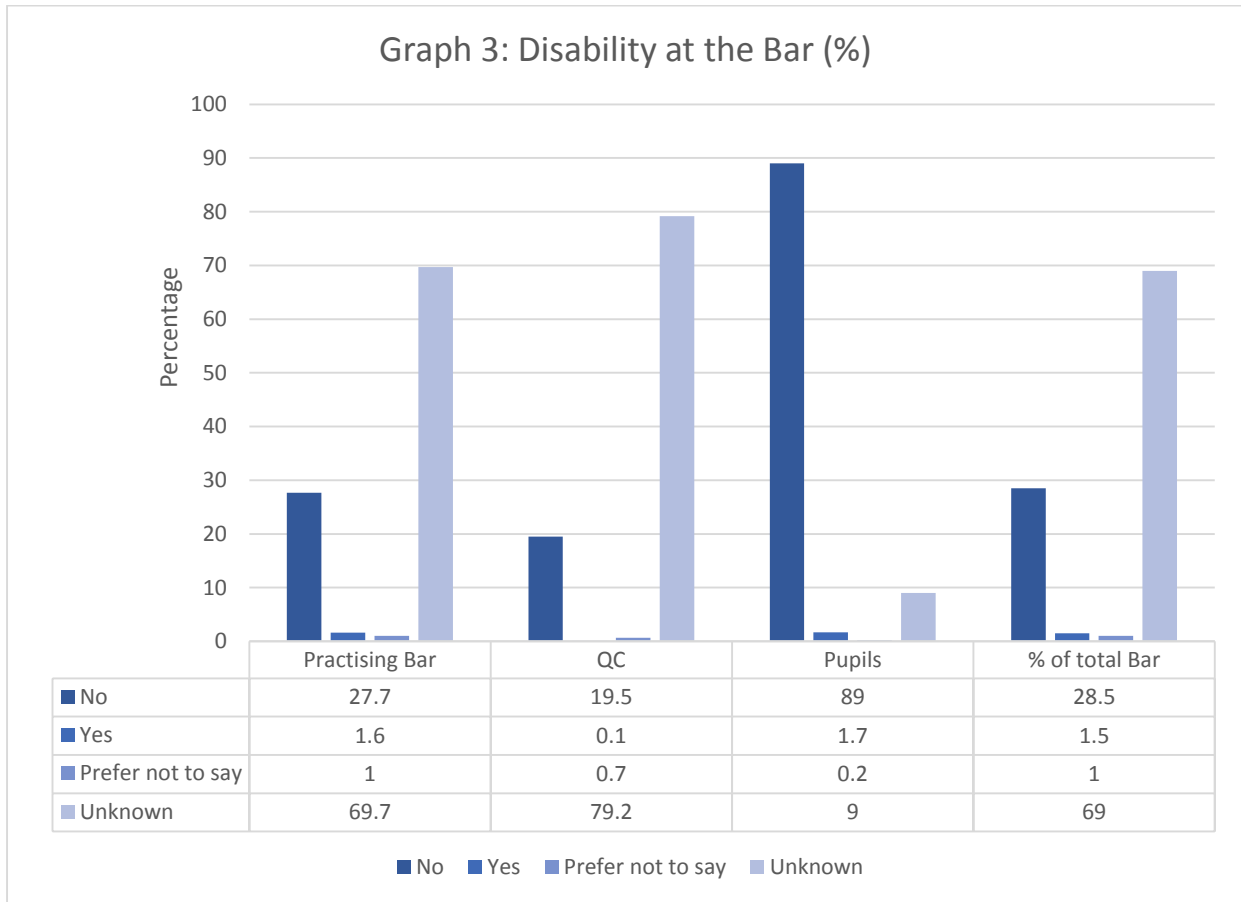
|   | Practising Bar | QC    | Pupils | Totals |
|---|----------------|-------|--------|--------|
| White - English/Welsh/Scottish/Northern Irish/British | 10,302         | 1,413 | 322    | 12,037 |
| White - Irish   | 317            | 22    | 11     | 350    |
| Any other White background                            | 517            | 36    | 19     | 572    |
| White - Gypsy or Irish Traveller                      | 2              | 0     | 0      | 2      |
| White and Black Caribbean                             | 46             | 1     | 0      | 47     |
| White and Black African                               | 33             | 0     | 3      | 36     |

## Part 1 – Public

|                                     |        |       |     |        |
|-------------------------------------|--------|-------|-----|--------|
| White and Chinese                   | 100    | 7     | 3   | 110    |
| Any other mixed/multiple background | 153    | 6     | 6   | 165    |
| White and Asian                     | 2      | 0     | 3   | 5      |
| Black/Black British - Caribbean     | 169    | 10    | 5   | 184    |
| Black/Black British - African       | 203    | 5     | 8   | 216    |
| Any other Black background          | 41     | 4     | 0   | 45     |
| Asian/Asian British - Indian        | 395    | 24    | 15  | 434    |
| Asian/Asian British - Pakistani     | 214    | 13    | 9   | 236    |
| Asian/Asian British - Bangladeshi   | 75     | 3     | 3   | 81     |
| Any other Asian background          | 141    | 3     | 6   | 150    |
| Asian/Asian British - Chinese       | 59     | 3     | 2   | 64     |
| Any other ethnic group              | 141    | 23    | 2   | 166    |
| Arab                                | 5      | 0     | 0   | 5      |
| No Information                      | 1,338  | 52    | 0   | 1,390  |
| Prefer not to say                   | 22     | 2     | 1   | 25     |
| Unknown                             | 13     | 0     | 3   | 16     |
| Total                               | 14,288 | 1,627 | 421 | 16,336 |

**Disability**

Graph 3 below shows a summary of disability at the Bar, broken down by seniority. There has been little change in the disability status of the whole Bar, with 1.5% of the Bar disclosing a disability in 2015 compared with 1% in 2014.



*Table 5: Disability at the Bar (numbers)*

|                | No    | Yes | Prefer not to say | Unknown | Totals |
|----------------|-------|-----|-------------------|---------|--------|
| Practising Bar | 3,962 | 232 | 145               | 9,949   | 14,288 |
| QC             | 317   | 8   | 14                | 1,288   | 1,627  |
| Pupils         | 375   | 7   | 1                 | 38      | 421    |
| Totals         | 4,654 | 247 | 160               | 11,275  | 16,336 |

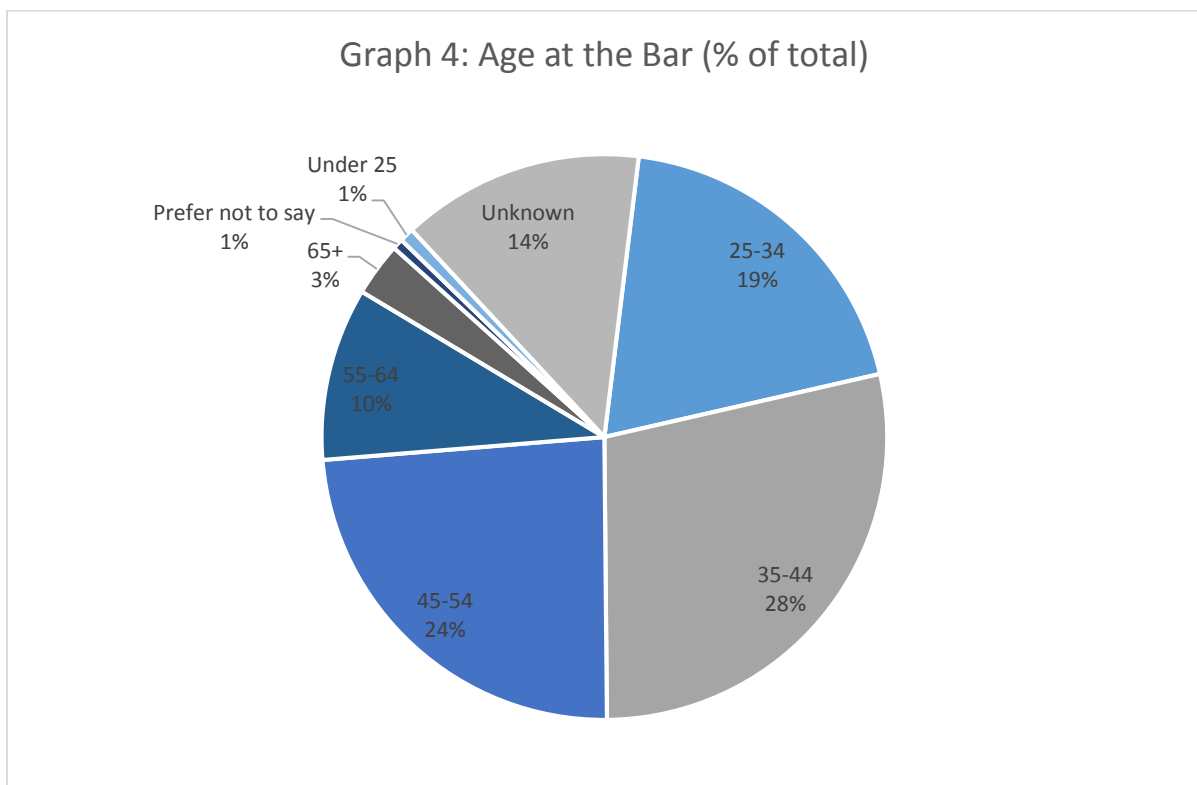
## Age

As Table 6 and Graph 4 show, age is fairly evenly distributed at the Bar as a whole. There has been little change in the statistics since 2014.

Table 6: Age at the Bar (numbers)

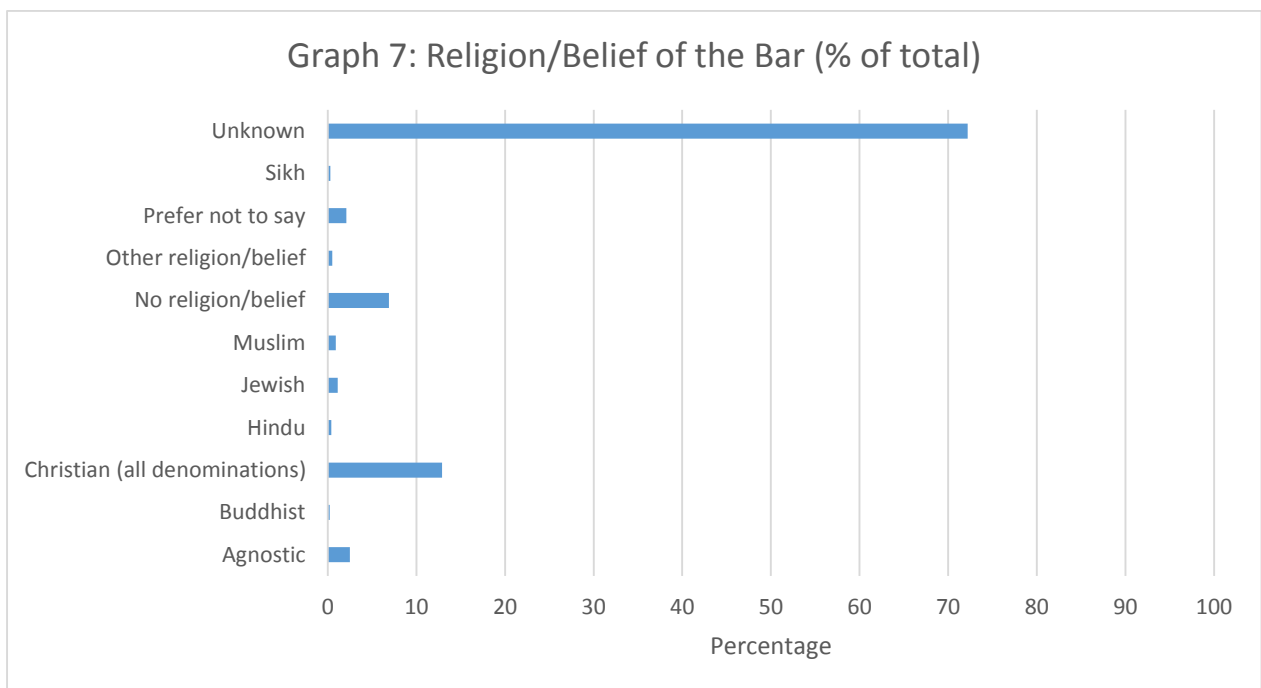
|                   | Practising Bar | QC  | Pupils | Totals | % of the total Bar |
|-------------------|----------------|-----|--------|--------|--------------------|
| Under 25          | 30             | 0   | 94     | 124    | 0.8%               |
| 25-34             | 3,122          | 0   | 281    | 3,403  | 20.8%              |
| 35-44             | 4,450          | 102 | 31     | 4,583  | 28.1%              |
| 45-54             | 3,321          | 500 | 9      | 3,830  | 23.4%              |
| 55-64             | 1,341          | 237 | 2      | 1,580  | 9.7%               |
| 65+               | 374            | 117 | 2      | 493    | 3.0%               |
| Prefer not to say | 91             | 11  | 0      | 102    | 0.6%               |
| Unknown           | 1,559          | 660 | 2      | 2,221  | 13.6%              |

Graph 4 below shows a summary of the age of practitioners at the Bar, as a total of the whole profession.



## Religion and Belief

Graph 5 below shows a summary of the religion or belief of practitioners at the Bar, as a total of the whole profession. The statistics remain largely similar to 2014, with the largest change being for practitioners who identify as 'Christian (all denominations)', an increase of 1.2% since 2014.



*Table 7: Religion and Belief at the Bar (numbers)*

|                               | Practising Bar | QC  | Pupils | Totals | % of total Bar |
|-------------------------------|----------------|-----|--------|--------|----------------|
| Agnostic                      | 379            | 26  | 3      | 408    | 2.5%           |
| Buddhist                      | 28             | 1   | 0      | 29     | 0.2%           |
| Christian (all denominations) | 1,822          | 152 | 140    | 2,114  | 12.9%          |
| Hindu                         | 67             | 2   | 3      | 72     | 0.4%           |
| Jewish                        | 136            | 28  | 11     | 175    | 1.1%           |
| Muslim                        | 132            | 5   | 13     | 150    | 0.9%           |
| No religion/belief            | 900            | 62  | 166    | 1,128  | 6.9%           |

## Part 1 – Public

|                       |        |       |    |        |      |
|-----------------------|--------|-------|----|--------|------|
| Other religion/belief | 73     | 2     | 2  | 77     | 0.5% |
| Prefer not to say     | 296    | 33    | 14 | 343    | 2.1% |
| Sikh                  | 39     | 3     | 4  | 46     | 0.3% |
| Unknown               | 10,416 | 1,313 | 65 | 11,794 | 72.2 |

**Sexual Orientation**

Graph 6 below shows a summary of the sexual orientation of practitioners at the Bar, as a total of the whole profession. The statistics remain largely similar to 2014, with the largest change being for practitioners who identify as 'Heterosexual/Straight', an increase of 5.2% since 2014.

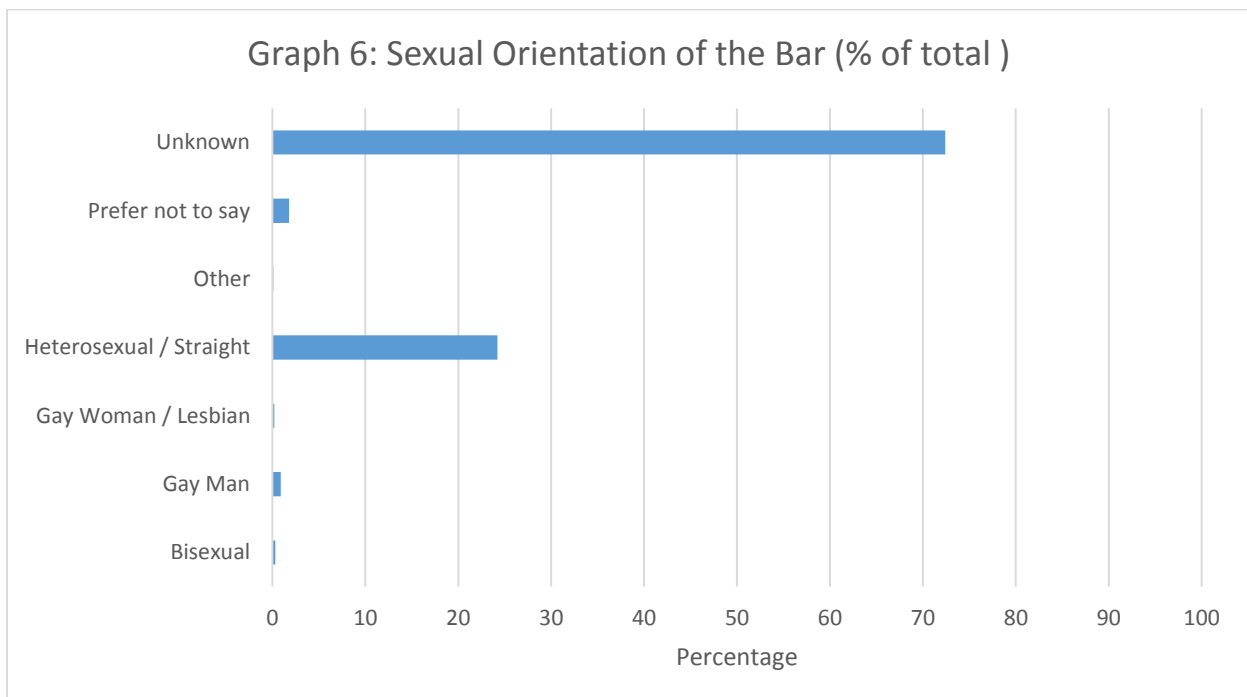


Table 8: Sexual Orientation of the Bar (numbers)

|                         | Practising Bar | QC  | Pupils | Totals | % of Total Bar |
|-------------------------|----------------|-----|--------|--------|----------------|
| Bisexual                | 50             | 1   | 4      | 55     | 0.3%           |
| Gay Man                 | 131            | 5   | 10     | 146    | 0.9%           |
| Gay Woman / Lesbian     | 26             | 0   | 7      | 33     | 0.2%           |
| Heterosexual / Straight | 3,349          | 277 | 329    | 3,955  | 24.2%          |

|                   |        |       |    |        |       |
|-------------------|--------|-------|----|--------|-------|
| Other             | 16     | 2     | 0  | 18     | 0.1%  |
| Prefer not to say | 257    | 22    | 15 | 294    | 1.8%  |
| Unknown           | 10,459 | 1,320 | 56 | 11,835 | 72.4% |

## 5. Socio-Economic Background

There is no universally recommended way of gathering data on socio-economic background. Methods vary depending on the type of profession and traditional entry routes into a given profession. The socio economic questions provided to the BSB by the Legal Services Board are used on the *Barrister Connect* monitoring questionnaire, and hence are used in this report. Educational background is used as one of the main ways of determining a barrister’s social class. There is also a strong correlation between a person’s social background and a parent’s level of educational attainment – particularly when choosing the type of school to attend, type of university, and career choice.

### Type of School Attended

Graph 7 below shows a summary of the type of school attended by practitioners at the Bar, as a total of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question ‘Did you mainly attend a state or fee-paying school between the ages 11-18?’ is asked. The spread of these statistics remains largely unchanged from 2014.

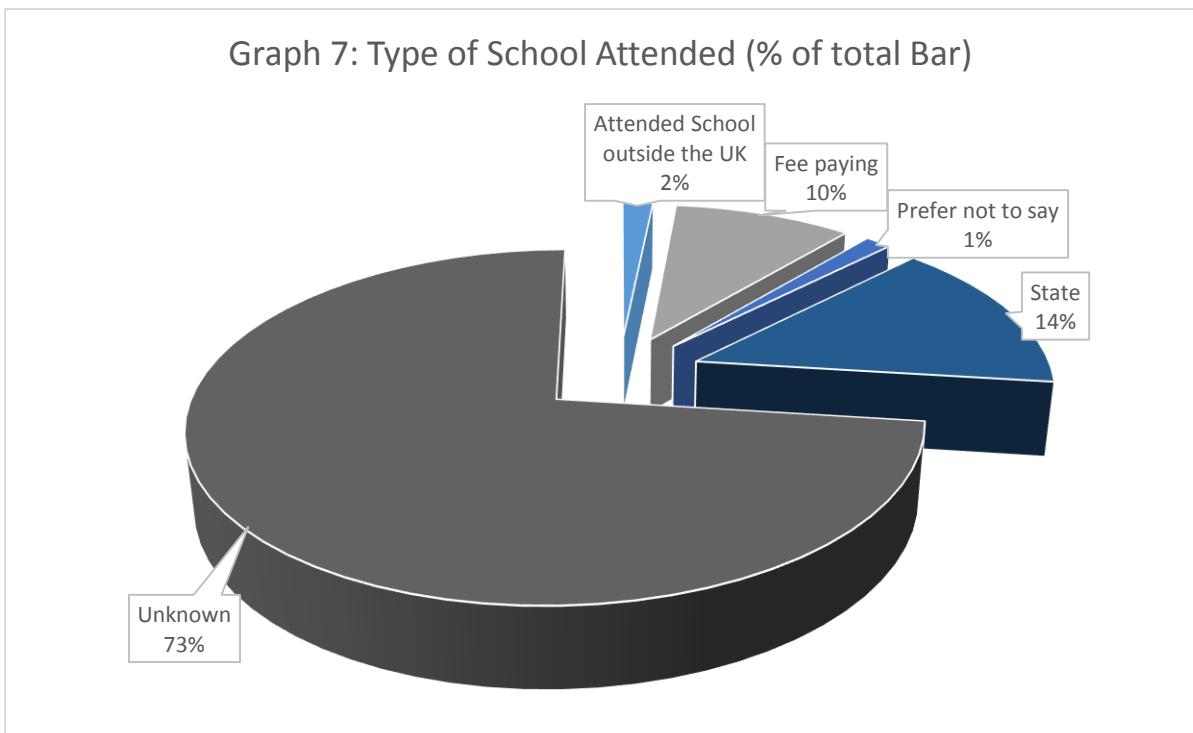


Table 9: Type of School Attended by the Bar (numbers)

|                                | Practising Bar | QC    | Pupils | Totals | % of Total Bar |
|--------------------------------|----------------|-------|--------|--------|----------------|
| Attended School outside the UK | 208            | 8     | 39     | 255    | 1.6%           |
| Fee paying                     | 1,253          | 168   | 131    | 1,552  | 9.5%           |
| Prefer not to say              | 195            | 21    | 6      | 222    | 1.4%           |
| State                          | 2,066          | 106   | 198    | 2,370  | 14.5%          |
| Unknown                        | 10,566         | 1,324 | 47     | 11,937 | 73.1%          |

**First Generation to Attend University**

Graph 8 below shows a summary of the type of school attended by practitioners at the Bar, as a percentage of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question ‘If you went to university (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?’ is asked. The spread of statistics remains largely similar to 2014, but the percentage of practitioners stating that they were part of the first generation of their family to attend university has increased from 9% in 2014 to 12% in 2015.

Graph 8: First Generation to Attend University (% of Total Bar)

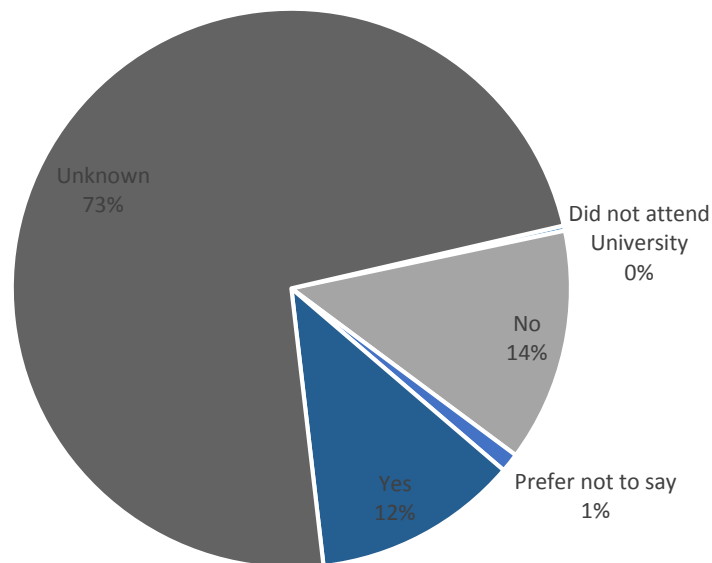




Table 10: First Generation to Attend University at the Bar (numbers)

|                           | Practising Bar | QC    | Pupils | Totals | % of Total Bar |
|---------------------------|----------------|-------|--------|--------|----------------|
| Did not attend University | 34             | 12    | 1      | 47     | 0.3%           |
| No                        | 1,816          | 126   | 257    | 2,199  | 13.5%          |
| Prefer not to say         | 159            | 18    | 2      | 179    | 1.1%           |
| Yes                       | 1,687          | 139   | 118    | 1,944  | 11.9%          |
| Unknown                   | 10,592         | 1,332 | 42     | 11,966 | 73.3%          |

## 6. Caring Responsibilities

The caring responsibilities categories used in this report are those provided to the BSB by the Legal Services Board. These questions are aimed at ascertaining whether or not an individual has child or adult dependants for whom they care.

### Caring Responsibilities for Children

Graph 9 below shows a summary of childcare responsibility at the Bar, broken down by seniority. On the *Barrister Connect* monitoring questionnaire, the question 'Are you a primary carer for a child or children under 18?' is asked. The spread of statistics remains largely the same since 2014, with the biggest change being for practitioners who declare they do not have caring responsibilities for children (20.8% of the total Bar compared with 16% in 2014).

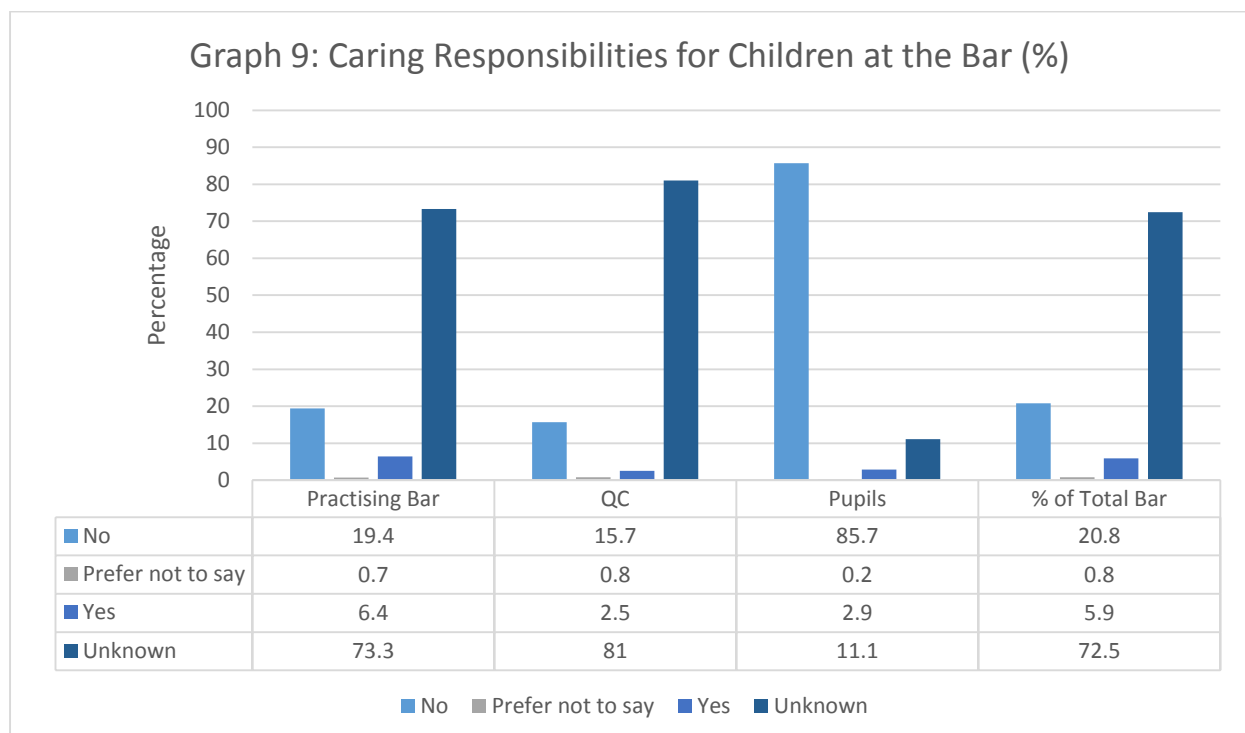


Table 11: Caring Responsibilities for Children at the Bar (numbers)

|                   | Practising Bar | QC    | Pupils | Totals |
|-------------------|----------------|-------|--------|--------|
| No                | 2,778          | 255   | 361    | 3,394  |
| Prefer not to say | 124            | 13    | 1      | 138    |
| Yes               | 909            | 41    | 12     | 962    |
| Unknown           | 10,477         | 1,318 | 47     | 11,842 |

### Caring Responsibilities for Others

Graph 10 below shows a summary of practitioners at the Bar who have caring responsibilities for people other than children, as a percentage of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question 'Do you look after, or give any help or support to family members, friends, neighbours or others because of either long-term physical or mental ill-health/disability or problems related to old age (not as part of your paid employment)?' is asked. The spread of statistics has remained largely the same since 2014, with the biggest change being for practitioners who stated they had no caring responsibilities for others (16% in 2014 to 21.8% in 2015.).

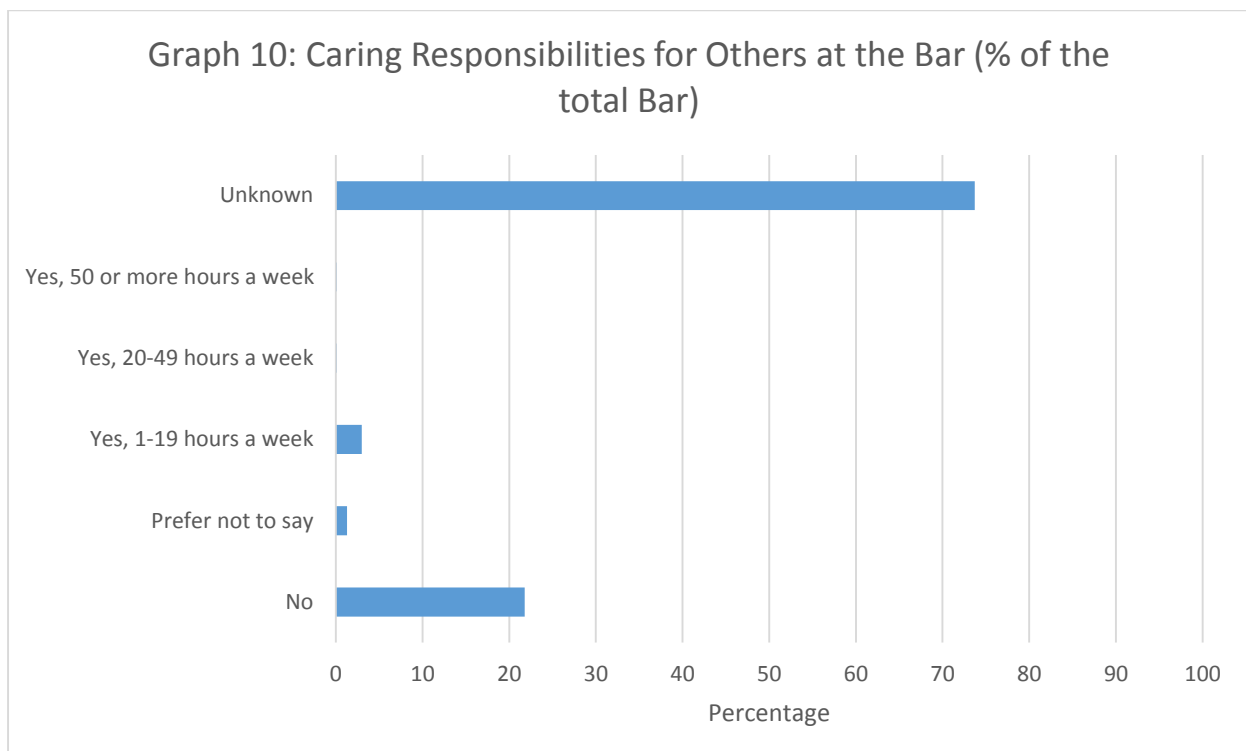


Table 12: Caring Responsibilities for Others at the Bar (numbers)

|                              | Practising Bar | QC    | Pupils | Totals | % of total Bar |
|------------------------------|----------------|-------|--------|--------|----------------|
| No                           | 2,962          | 243   | 358    | 3,563  | 21.8%          |
| Prefer not to say            | 186            | 14    | 5      | 205    | 1.3%           |
| Yes, 1-19 hours a week       | 438            | 41    | 11     | 490    | 3%             |
| Yes, 20-49 hours a week      | 23             | 1     | 0      | 24     | 0.1%           |
| Yes, 50 or more hours a week | 17             | 2     | 0      | 19     | 0.1%           |
| Unknown                      | 10,662         | 1,326 | 47     | 12,035 | 73.7%          |

## 7. Conclusions

There has been little or no change in the profile of the Bar since 2014 across all categories, based upon the data collected. This is to be expected when monitoring demographic changes in a profession on an annual basis.

The disclosure of diversity data has improved across all categories since 2014 but remains significantly low in some areas. In those categories where disclosure rates remain below approximately one third of the whole profession, it is not possible to form reliable statistical conclusions. The category with the highest completion rate is Gender with 99.5% and the lowest completion rate is Caring Responsibilities for Others with 26.3%.

“Prefer not to say” responses are minimal across all categories; the highest rates of prefer not to say are in relation to disclosure of religion or belief (2.1%) and sexual orientation (1.8%).

Gender underrepresentation in the profession still remains an issue as women account for 35.9% (an increase of 0.9% since 2014) of the practising Bar while men account for 64% (an increase of 1% since 2014). In addition, women account for just 13% of QCs while men account for 87%.

There remains an issue in relation to the progression of Black and Minority Ethnic (BME) practitioners at the Bar, with only 6% of QCs declaring that they are BME (compared with 12% of the practising Bar) and 90% declaring that they are white. There is no change in these figures since 2014.

There appears to be an underrepresentation of disabled practitioners at the Bar. Completion rates (31% in 2015) for this question have reached a level from where conclusions can begin to be drawn, and only 1.5% of the Bar disclosed a disability, compared with the percentage of disabled people in the UK population.



## Future Bar Training: Analysis of Consultation on Pathways to Qualification

### Status:

1. For **decision**.

### Executive Summary:

2. This paper summarises the analysis of a consultation on the academic, vocational and professional stages of training for the Bar, which was conducted between July and October 2015. The analysis itself is provided as a separate document accompanying these papers. With the agreement of the Board, it is planned that the analysis will be published immediately on the BSB website, together with its accompanying executive summary.

### Recommendations

3. The Board is asked to **agree** publication of the consultation analysis.

### Background

4. In summer 2013, the Bar Standards Board (BSB), the Solicitors Regulation Authority (SRA) and ILEX Professional Standards (IPS; now called CILEX Regulation) published the Legal Education and Training Review (LETR). This was a large, independent review of the system of training legal professionals in England and Wales.
5. The review recognised many good features in the system for training barristers. It also looked to the future and recommended reform so that training would be better matched for barristers and clients in 2020 and beyond.
6. In February 2015, we published [our vision for the future of training for the Bar](#). In that paper, we set out our proposal for a Professional Statement that describes the standards that should be expected of all authorised barristers upon entry to the profession. In addition, we explained why we were embarking on a review of how we are involved in setting education and training requirements for barristers.
7. The Future Bar Training consultation, launched in the summer of 2015, built on that paper, exploring what changes might be made to the current system. It examined possible approaches to reform of the system and regulatory requirements, and considered the current three-stage formulation of training.
8. The consultation was published in July 2015 and extended beyond the usual twelve week period, closing on 30 October 2015.

### Comment

9. The consultation analysis has been conducted by Courtney Brown, Senior Policy Officer. The summary set out below reflects the executive summary of the consultation analysis document, separately supplied.

Responses to the consultation

10. There were 58 responses to the consultation. The responses were received from the following:
- six from individual barristers;
  - 10 from Law Professors or Lecturers;
  - 14 from University Law Schools;
  - 11 from legal representative organisations;
  - seven from other organisations;
  - two from Chambers;
  - one from another regulator; and
  - seven from individuals who did not specify their occupations.

Summary of key findings***Part 1: Academic Stage***

11. Part 1 of the consultation concerned the Academic stage. It considered:
- the way in which the academic stage may or may not contribute to the achievement of the Professional Statement requirements;
  - the topic of degree classification and whether to move towards requiring a minimum 2:1;
  - a possible move away from the “eight core subjects” requirement;
  - how we could make sure that those completing the academic stage have sufficient legal knowledge and understanding to start the next stage of training.

*Demonstrating abilities*

12. The majority of respondents were supportive of the BSB permitting alternative means of demonstrating the necessary abilities to become a barrister, other than through the completion of a law degree or GDL. Respondents suggested that to have no other route into the profession would risk undermining the diversity of the Bar and homogenising the pool from which future barristers are drawn. However, some respondents did express a strong attachment to the concept of “graduateness”. These respondents were of the view that removing the requirement to have a degree would result in a downgrading in professional standards, and would diminish public confidence in the profession. It was also noted that because other professions of equal standing in the public confidence, such as doctors, architects and veterinarians, require a degree, it would be important for the Bar to continue to do so also.

*Degree classification*

13. There was much opposition to the idea of raising the required degree classification from 2:2 to 2:1. This was largely due to concerns about reducing diversity at the Bar, and the perceived inconsistencies between the standards of different universities.
14. A particular concern for a number of respondents was that the requirement of an upper second class degree may unduly restrict access to the profession and have a disproportionate impact on students from disadvantaged backgrounds. As the Bar has an important role in promoting the interests of, and access to, justice, it was seen as vital that

the composition of the Bar should be as representative as possible of the community it serves. Many respondents cautioned the BSB against making any changes to the requirements for degree classification without gathering and assessing evidence to ensure that students from particular universities, or personal circumstances would not be unfairly penalised.

#### *Core subjects*

15. Many respondents supported the continuation of the specification of core subjects. The core subjects were regarded by many as the foundation of the law of the land.
16. There was concern that if the core subjects to be studied were not prescribed by the BSB, the “equality of content” that a Qualifying Law Degree provides would be lost. This could lead to a lack of consistency and rigour in the scope and level of legal knowledge obtained by future barristers, and therefore a degradation of the high standards of the Bar.

#### *Compatibility*

17. A significant number of respondents expressed a concern that any consideration of what should be required from a law degree would need to be considered in light of the SRA’s approach to training of solicitors. Respondents felt that the two branches of the legal profession appear to be diverging from the Joint Statement approach and that there may no longer be a consistent approach to the academic stage by the two regulators. There was concern that law schools may not be able to provide different routes through an LLB that would satisfy both regulators and that it would be unfair for students starting out to have to decide from the beginning which route they would want to take. There was also concern expressed, particularly by university law schools, that the more complex the BSB approach, and the more it diverges from the statement of legal knowledge in the SRA’s competence statement, the more problematic it will be for Law Schools to design programmes which comply with both regulators’ demands.

#### ***Part 2: Vocational Stage***

18. Part 2 of the consultation concerned the vocational stage, and sought endorsement of the proposition that such a stage of training should not be abandoned. It considered:
  - the strengths of the current vocational stage;
  - the perceived and actual issues of the current vocational stage;
  - the role of the regulator in the vocational stage of training;
  - possible future approaches to how we regulate this stage.

#### *Retaining vocational requirements*

19. All respondents agreed that some form of vocational stage was necessary in the training of future barristers, though not all thought it should remain in its current form. There was suggestion from some respondents that this stage could be more integrated with both the academic and professional stages.

*Bar Course Aptitude Test (BCAT)*

20. Many respondents raised issues with the BCAT, which was seen by a significant number of respondents as not being fit for purpose and lacking credibility. Many respondents suggested that if it was to remain, it would need redesigning to ensure it could function as an effective filter for those going on to further study in the vocational stage.

*The Bar Professional Training Course (BPTC)*

21. Responses relating to the value of the current BPTC were mixed, with some respondents feeling it operated well and gave students the foundation they needed to proceed to pupillage, and others expressing dissatisfaction with the way the BPTC currently operates and the costs involved for students in undertaking it.
22. Respondents were generally glad that the issue of cost and affordability of the BPTC was being recognised. It was agreed that the cost of legal education is a serious issue to the extent that it may deter good candidates from less privileged backgrounds from pursuing a career at the Bar.
23. There was disagreement on whether the BPTC represented value for money. While many respondents thought the BPTC was prohibitively expensive and could be deterring students from considering a career at the Bar, not all respondents thought it did not offer value for money. It was noted that the BPTC is made from intensive ‘people-led’ training, and some respondents thought it would be difficult for this to be made cheaper without compromising on quality or increasing cohort sizes.
24. A number of respondents commented that the BSB should be focusing on outcomes in relation to the BPTC, and therefore lessening how prescriptive the BSB should be in its requirements. However, concern was also raised that without some level of prescription, there may be a “race to the bottom” and that high standards need to continue to be encouraged. As well as being outcomes-focussed, there was some support for the BSB considering a model that would be innovative, able to respond quickly to change, and offer quality assurance and choice for students.
25. A number of respondents rejected the idea that the BPTC qualification is not widely recognised, and that the skills learned on the BPTC do not have ‘wider recognition’. This was seen as ignoring the presentational and analytical skills that are learned on the course, and that are highly valued by employers outside of the Bar. There was a question raised of whether it needed to be an aim of the BPTC to provide “wider value” considering the aim of the course is to prepare students for a career at the Bar. There was also suggestion that widening the BPTC from its current purpose could make it longer and more expensive.

*BPTC “Approach 1”*

26. A number of respondents believe that the BPTC as it currently stands is as an educationally sound programme which is fit for purpose and provides good preparation for pupillage. There was therefore some support for maintaining something similar to the status quo, with the continuous improvement approach (Approach 1) outlined in the consultation.



27. Other respondents expressed strongly that they did not believe Approach 1 went far enough in addressing the problems with the BPTC and was only “tinkering around the edges” of the current position. They felt that the BPTC has been the subject of a number of reviews in the past but is still experiencing problems, and a more radical approach is required.

*BPTC “Approach 2”*

28. Approach 2, where the BSB would approve programmes in which the provider could demonstrate achievement of our required outcomes, was seen by some as being most in keeping with the requirement that regulators adopt an outcomes-focussed approach.
29. Approach 2 was also seen as providing the greatest scope for innovation in delivery of vocational training, and some respondents suggested that its flexibility would provide greater agility in meeting the changing demands of the market in legal services.
30. It was seen by some as an advantage of this approach that providers would need to compete on quality, which would drive up the standards of all providers. If certain “gold standard” providers did emerge, this was seen as forcing those providing lower quality courses to improve to stay in the market. However, concern about Approach 2 centred on the idea that without standardisation of training too many candidates would fail to achieve the required standard.

*BPTC “Approach 3”*

31. There was support from a number of respondents for something akin to Approach 3, which many respondents identified with the proposed approach of the Council of the Inns of Court (COIC). This two-stage approach was seen as addressing the issue of too many students undertaking the BPTC, with the proposed test at the end of a preliminary part filtering out students whose written and analytical skills are insufficient, and who are therefore likely to fail or are extremely unlikely to obtain pupillage.
32. It was suggested that the adoption of Approach 3 could also make at least the preliminary part of the vocational stage significantly cheaper, both in terms of fees and living costs, by allowing students to prepare for it in whatever manner they chose, rather than being required to attend an expensive course.
33. While a very small majority of respondents preferred Approach 3, almost the same number of respondents specifically stated that Approach 3 should not be adopted, concerned that its potential disadvantages would outweigh its advantages. The potential disadvantages included potential diversity implications, lower expectations of students, the potential emergence of a two-tier pathway and the separation of knowledge and skills training.

**Part 3: Pupillage****Part 3**

34. Part 3 of the consultation concerned pupillage. It considered:
- the strengths of current pupillage requirements;
  - the perceived and actual issues of current pupillage requirements;
  - possible future approaches to how we regulate pupillage.
35. Almost all respondents to the consultation agreed that the undertaking of a period of work-based training should be a pre-requisite for authorisation. However, there were mixed opinions about the way pupillage is currently structured and regulated. The majority of respondents agreed that pupillage should be more flexible in its content and that the BSB should take a more permissive approach to content as long as the requirements in the Professional Statement were being met.
36. A number of respondents discussed the need for requirements to be changed to allow new forms of pupillage to be undertaken. It was particularly emphasised that it should be made easier for more pupillages to be undertaken outside of chambers, in a wider range of organisations. This was seen as one way to address the problem, noted by almost all respondents, that there is currently an extreme shortage in the number of pupillages available. A number of respondents felt there would be value in young barristers spending some or all of a pupillage with a commercial organisation, and that the framework for qualification, recruitment and training should be flexible enough to allow individuals to move between traditional chambers, law firms and commercial organisations. However, some risks of this more permissive approach were identified including the potential for more consumer complaints, diminishing public confidence in the profession and the risk that pupils would be placed in solicitors' firms or other entities to work for free and in ways that are not addressing the learning outcomes in the Professional Statement.
37. Many respondents discussed equality and diversity issues in the recruitment and selection of pupils and access to pupillage. However, it was clear from responses that there are many complex factors which affect the reduction of opportunity at the Bar for applicants from a diversity of backgrounds, other than just the scarcity of pupillages.
38. Concerns were expressed by respondents that the quality of pupillage recruitment is variable between chambers and that while some are very aware of social mobility and diversity issues, this is not consistent across the board.
39. There was also general agreement with the idea that the responsibility for pupillage should be rebalanced between the entity and the individual pupil supervisor, with respondents noting that this was likely to improve the consistency of the experience of pupillage. The majority of respondents also agreed that there should be a more systematic initial validation, and more periodic re-validation, of Pupillage Training Organisations (PTOs) and supervisors.
40. In relation to future approaches to pupillage, responses were mixed. Most respondents preferred either a "continuous improvement" approach, where the current system would be broadly maintained, or expressed no preference as to the options outlined in the consultation. Those who disagreed with the continuous improvement approach saw it as

too conservative, lacking in flexibility compared to other approaches and failing to address the present imbalance of pupillages to well-qualified candidates.

#### *Part 4: Data*

41. Part 4 of the consultation concerned data. It considered:
- our approach to the collection, analysis and publication of key data.
42. The large majority of respondents stated that they thought the responsibility for publishing relevant statistics on a regular basis, to enable students to make informed decisions, lies with the BSB. A large majority of respondents were also satisfied with the information the BSB currently collects and analyses. However, a number of respondents suggested further categories of information that could be usefully captured, including information that would reflect the Bar's commitment to equality and diversity in the widest sense.

#### **Equality and diversity implications**

43. The consultation paper was designed actively to seek views on equality and diversity considerations in the regulation of standards and implications for training. The policy development process will draw upon this evidence and a structured approach will be taken at each stage, including a full equality impact analysis of any proposals that ensue.

#### **Risk implications**

44. Publication of this consultation at an early stage in our thinking will support the soliciting of evidence to support the development of policy options, and mitigate the risk of a lack of engagement with stakeholders in the process. A stakeholder engagement plan will support the continuing process, and we propose to consult formally again once any proposal has been formulated.

#### **Regulatory objectives**

45. This activity will contribute to the achievement of the following regulatory objectives:
- a. protecting and promoting the public interest by ensuring that all newly qualified barristers are competent to understand and fulfil their public interest obligations;
  - b. protecting and promoting the interests of consumers by ensuring that all newly qualified barristers are sufficiently competent to meet the needs and expectations of the consumer of their services, in an open and competitive market;
  - c. encouraging an independent, strong, diverse and effective legal profession by equipping newly qualified barristers with the knowledge and skills to understand and fulfil their professional role and responsibilities;
  - d. promoting and maintaining adherence to the professional principles by ensuring that newly qualified barristers understand the theory, principles and practice of their professional responsibilities.

**Publicity**

46. It is proposed that the full consultation analysis will be published on the BSB website.

**Lead responsibility**

Simon Thornton-Wood, Director of Education and Training

*The full consultation analysis is supplied as a separate document with the papers for the meeting*

## Review of the Disciplinary Tribunal Regulations – Consultation responses and final regulations for approval

### Status:

1. For **discussion** and **approval**.

### Executive Summary:

2. The Board is asked to consider the attached paper at Annex 1 outlining the results of the consultation responses to the Disciplinary Tribunal Regulations Review, conducted from July – October 2016 and approve the revised Regulations (Annex 2) subject to a decision on the issues outlined at paragraphs 7.1 and 7.2 below.
3. The Review was conducted with the support of a Working Group consisting of representatives from: the Bar Tribunal and Adjudication Service (BTAS), the Disciplinary Tribunal panel, the Professional Conduct Committee (PCC); the Professional Conduct Department (PCD) and the BSB's Prosecution Panel. It was carried out to ensure that the BSB continues to meet its obligations to promote the regulatory objectives under the Legal Services Act 2007.
4. The consultation paper included a series of questions on: changes to terminology and clarification of roles; straightforward changes to the disciplinary processes; and, more fundamental and/or complex changes to the disciplinary process and powers of the Tribunal. Also included was a section on issues of principle not intended to be covered in the revised Regulations but on which early views were considered beneficial in order to inform potential future changes to the disciplinary system.
5. The BSB received ten written responses and one verbal response from:
  - Institute of Barristers' Clerks (IBC)
  - Professional Negligence Bar Association (PNBA)
  - Bar Council
  - Council of the Inns of Court (COIC)
  - Bar Mutual Indemnity Fund (BMIF)
  - Chancery Bar Association (CHBA)
  - 4 individual barristers
  - The Legal Ombudsman (LeO) – verbal response
6. The attached paper at Annex 1 summarises the responses to each of the questions and sets out the final recommendations. While no firm response has been made to the questions relating to the issues of principle, the comments received have been summarised and noted for future discussion.
7. For the majority of the questions posed, the Working Group has been able to reach a consensus on the final decision and these views are reflected in Annex 1. However, there are two issues on which the Working Group has been unable to form a clear view on the way forward due to persuasive opposing opinions from those who responded to the consultation paper and/or due to an almost even split amongst the Working Group as to which approach should be recommended. The Board are asked to take a decision on these two issues which are:

- 7.1. Whether a Tribunal should be able to ‘refer’ back cases to the PCC to impose an administrative sanction in circumstances where the Tribunal is not able to find professional conduct proved to the criminal standard of proof but is satisfied, on the balance of probabilities that a breach of the Handbook has occurred. (Question 5 of the Consultation Paper). The current position is that no such power is available and the revised Regulations are drafted on the basis that this position is maintained taking into account the responses to the consultation. However, there remain concerns that it is not in the public interest for a Tribunal to dismiss a disciplinary case in circumstances where a breach of the Handbook can be proved and it would be appropriate for some action to be taken. A summarised explanation of the advantages and disadvantages is provided at paragraph 45 of annex 1.
- 7.2. Whether or not the Regulations should include additional powers for the Tribunal to publish full details of *all* findings online, regardless of the outcome (Question 11 of the Consultation Paper). The views of the Working Group and respondents were split with some raising concerns about the subsequent damage to a barristers’ reputation following publication of a dismissal and others citing the principle of open justice and pointing to the healthcare regulators that publish all findings. Having taken into account the response and the public interest issues, the view is that the Regulations should include additional powers for the Tribunal to publish details of *all* findings online, regardless of the outcome but where charges have been dismissed, the report should be anonymised. The outstanding issue is whether this is the right approach or whether the BSB should require that BTAS go one step further and publish reports with the details of the respondent included. Further details are provided at paragraphs 66-70 of annex 1.

## Recommendations

8. The Board is asked to:
- **consider** the Consultation Response Paper at Annex 1
  - **take a decision** on the two issues outlined at paragraph 7 above
  - **approve** the Disciplinary Tribunal Regulations as set out at Annex 1
  - in the event that the Board decides further amendments should be made to the DTRs, **authorise** the Director General of the BSB and the Chair of the Professional Conduct to approve those amendments without further recourse to the Board.

## Background

9. The aim of the Disciplinary Tribunal Review was to “review the current DTRs and produce a robust set of revised Regulations that address all identified concerns, are not overly prescriptive and reflect modern and best regulatory practice”, taking into account the regulatory objectives and Enforcement Strategy.
10. The Board had sight of the revised Regulations at its meeting in June 2015 when it approved the publication of the Consultation Paper. The Consultation Paper was published in July 2015 and the consultation period closed in October 2015. A total of 11 responses were received: 10 written and 1 verbal, and these responses have been collated and summarised in attached paper (Annex 1).
11. The responses have been carefully considered by the Working Group and a number of changes have been made to the draft Regulations which are summarised in the ‘comment’ section below and detailed in the Consultation Response Paper. Otherwise the draft Regulations remain the same as those presented to the Board in June 2015.

## Comment

12. Following the responses to the Consultation Paper, some amendments have been made to the revised Regulations put before the Board in June 2015 and the updated draft Regulations are attached as annex 2. The reference numbers in this covering paper and the text of annex 1 make clear which set of Regulations they refer to.
- **Publication of dismissals at oral Hearings:** rE243.b (annex 2) has been amended to reference explicitly publication at the request of the respondent where charges are dismissed prior to a final hearing.
  - **Direction 3bii:** Direction 3bii has been amended to state that where charges are not admitted, the disputed issues of fact or law should be identified by the respondent in advance of the final hearing.
  - **Non/late-compliance with Directions:** A new provision was added to the revised Regulations to allow for evidence not be admitted and/or adverse inferences drawn where the evidence is submitted late and not in compliance with relevant Directions. The responses indicated some concern about this as it could open the door to relevant evidence being excluded. Therefore, a slight amendment has been made to rE168 to allow the power to be retained but to ensure that this does not apply to “relevant” evidence by removing word ‘relevant’ in the revised Regulation.
  - **Vulnerable witnesses:** the revised Regulations included specific provisions about the treatment of vulnerable witnesses. There was strong support for this but a new rule rE178 (annex 2) has been drafted to clarify that the power to make an application for adjustments in the way evidence is presented should be given to the party calling the witness and allowing any person to apply for adjustments.
  - **Imposition of deferred sentences:** The power to impose deferred sentences was removed in the revised Regulations and this remains the case. However, a new rule rE221 (annex 2) has been drafted to state that the Tribunal has discretionary powers, in exceptional circumstances, to postpone the start of a period of suspension for such a period it sees fit.
  - **Removal of Tribunal’s ability to remove a barrister’s “rights and privileges as a member of his Inn”:** Under the current regulations, any suspension orders made by a Tribunal are accompanied by an Order to remove the barrister’s “rights and privileges as a member of his Inn”. The power to remove this aspect of a Tribunal’s sentencing powers has been removed from the Regulations (rE170).
  - **Format and distribution of reports of findings and sentence:** The revised Regulations incorporate a streamlined reporting system requiring only one ‘decision report’ and distillation of the distribution lists into one consolidated list, to avoid the distributing three different reports at three different stages.
  - **Rate for claiming costs for respondents acting in person:** the revised Regulations included a provision limiting cost claims from self-representing respondents to the hourly rate for litigants in person as set out in the Civil Procedure Rules. In light of the responses, this provision has been removed but rE246 (annex 2) has been amended to make it clear that there the Tribunal should have the discretion to decide on the assessment of costs.

## Equality Issues

13. An equality screening of the impact of the proposed changes to the Regulations was undertaken prior to the revised Regulations being put out to consultation and it did not identify any adverse impacts in relation to any of the protected groups under the Equality Act 2010. The consultation subsequently asked those who responded to identify any equality issues that might arise from the changes. While no serious impacts were identified, the following points were raised:
  - The potential impact of the Regulations in general on those with mental health issues and the need for additional protection for these individuals; and
  - The potential for adverse impacts on those with protected characteristics who are not on the list of vulnerable witnesses
14. In relation to the first point, the view is that the Regulations already give the Tribunal discretion to direct the conduct of proceedings which would include making adjustments for those with mental health issues. There are also specific provisions now included in the Regulations in relation to vulnerable witnesses as well as the ability for any other witness to make an application for adjustments. It is not clear what other specific provisions might be beneficial in relation to those with mental health issues and therefore, for the time being, no further changes have been made. However, the PCD will continue to monitor the progress of cases for any problems in this area: if necessary further revisions to the Regulations can be made once there is a clear evidence base as to the type of revisions that might be required.
15. In relation to the second point, the Regulations have now been revised in light of the consultation responses to allow any person who is not classed formally as a “vulnerable witness” to apply for any of the measures available to vulnerable witnesses (see rE176).
16. The PCD will monitor the impact of the new Regulations for any equality issues that might arise and will ensure that impact assessments are carried out in relation to the new policies that will be required to underpin the implementation of the Regulations

## Risk implications

17. No apparent risks, operational, reputational or financial, arise from the approval and introduction of the new Regulations except in relation to the issues identified at paragraph 7 above where there are potential risks to the maintaining the interests of the public. The Board will want to take this into account when making the final decision on these issues.
18. On a wider level, as stated in the paper presented to the Board in June 2015, there is a risk that if do not proceed with approving the revised Regulations, and thereby addressing the issues identified in the Disciplinary Tribunal Regulations Review, our ability to meet the regulatory objectives may be undermined. Further, the disciplinary system will gradually become out of step with modern practice and thus impact on public confidence in the system particularly in relation to anachronistic provisions and the current lack of specific provisions in relation to the treatment of witnesses and the procedure to be followed at hearings.



### Impacts on other teams / departments or projects

19. Operationally, no BSB Departments, other than the PCD, will be impacted by the proposed changes. The amendments to the Regulations set out in Sections A-C of the consultation paper will require consequential changes to be made to other parts of the Handbook, namely the Complaints Regulations and several definitions included at Part 6. These changes have not yet been made but will be after the Board has approved the revised regulations.
20. Members of the Regulatory Policy department have been kept advised of the proposals through their involvement in the Working Group. Outside the BSB, the greatest impact will be on BTAS, which will be required to adapt their procedures and working practices particularly in relation to the move to the production of only one report of the outcome of Disciplinary Tribunal hearings. The Registrar of BTAS and the Chair of the Disciplinary Tribunal were members of the Working Group and are apprised of the additional work necessary to implement the revised Regulations. Nevertheless, the PCD will continue to work closely with BTAS to ensure that the supporting infrastructure is in place.
21. The PCD will also need to ensure that relevant supporting policies are developed prior to the new Regulations coming into force.

### Consultation

22. No further consultation is required in relation to the revised regulations but internal consultation on the detail of the implementation programme will need to take place.

### Regulatory Objectives

23. The approval of the revised Regulations, amended in light of the consultation responses, is central to the BSB meeting the regulatory objectives of protecting and promoting the public and consumer interest and promoting and maintaining adherence to the professional principles.

### Publicity

24. It is important that the Consultation Response Paper is actively put in the public domain and therefore a press release has been prepared by the Communications Team. Thereafter, further publicity will take place once the Regulations have been approved by the Legal Services Board and at the time when they formally come into effect.
25. There are no publicity issues at this stage, however, once the Regulations are approved by the LSB they will be published and publicised to the profession and any other relevant stakeholders. It is likely that the proposals to a) remove the ability of the Inns of Court to “pronounce” sentences; and b) publicise the outcome of all findings may court some controversy and consideration will need to be given as to how best to manage this.

### Annexes

- Annex 1 – The Consultation Response Paper
- Annex 2 - The revised Disciplinary Tribunal Regulations

### Lead responsibility:

**Sara Jagger**  
Director of Professional Conduct

**Natalie Zara**  
Operational Support Team Manager



## Consultation Paper – Review of the Disciplinary Tribunal Regulations Summary of Responses

### Executive Summary

1. In July 2015, the Bar Standards Board ('BSB') conducted a consultation on changes to the Disciplinary Tribunal Regulations (Part 5 of the BSB Handbook).
2. A Review of the Regulations, conducted with the support of a Working Group, was carried out to ensure that the BSB continues to meet its obligations to promote the regulatory objectives under the Legal Services Act 2007. The Working Group consisted of representatives from: the Bar Tribunal and Adjudication Service (BTAS), the Disciplinary Tribunal panel, the Professional Conduct Committee (PCC), the Professional Conduct Department (PCD) and the BSB's Prosecution Panel.
3. The Regulations were amended with a view to ensuring the production of "a robust set of revised Regulations which address all identified concerns, are not superfluously prescriptive and reflect modern and best regulatory practice".
4. The consultation paper, published in July 2015, included questions on: changes to terminology and clarification of roles; straightforward changes to the disciplinary processes; more fundamental and/or complex changes to the disciplinary process and the powers of the Tribunal; and, issues of principle not covered in the proposed Regulations but on which views were sought to inform future considerations of other changes.
5. The changes to the Disciplinary Tribunal Regulations are, in some cases, considered controversial and, in other cases, are fairly straightforward. The BSB received 11 responses to the consultation spanning a range of differing viewpoints and opinions. The responses have been considered in accordance with the regulatory objectives as set out in the Legal Services Act 2007, alongside the regulatory principles.
6. This consultation response paper is issued by the BSB and summarises the main points raised by the consultation and the responses. It also sets out the BSB's analysis and comments in relation to the responses received on each question. This paper identifies areas where the BSB has agreed to amend the Regulations - which will be actioned and included in the finalised version of the BSB Handbook – for submission to the LSB for approval.
7. The BSB's intention is to publish and implement the new Disciplinary Tribunal Regulations following approval by the LSB and the production of any relevant supporting policies and guidance.

### Background

8. In January 2014, the new 'BSB Handbook' came into effect, replacing the Bar's Code of Conduct for England and Wales (the Code). The Handbook now consists of six parts and brings together all the BSB's regulations and guidance into one place, including the BSB's Enforcement Regulations at Part 5. Part 5, which was previously set out as Annexes to the Code, contains the regulations governing the procedures that must be followed when considering alleged breaches of the Handbook and subsequent enforcement action.
9. The Enforcement Regulations are further broken down into 5 sections, and include the Complaints Regulations and Disciplinary Tribunal Regulations (DTRs). The latter sets out the procedures for dealing with complaints referred to Disciplinary Tribunal.

## The Current Review

10. The DTRs have not been substantively reviewed since 2009 (at which time the 'Directions' section was drafted), although they have been amended piecemeal since then. They were again amended in part in February 2012 to bring them into line with the provisions of the Legal Services Act 2007 (LSA) and to reflect the end of the BSB's jurisdiction over Inadequate Professional Service complaints. They were also amended in January 2014 to incorporate changes under the new Handbook; the amendments were limited to updating the reference numbering to accord with the numbering included in the new Handbook, as well as any consequential updating of terminology, and, again more recently in January 2015 to reflect the BSB's extended jurisdiction to regulate entities.
11. Since they were last reviewed, a number of issues with the current Regulations had been identified, as listed below, and it was decided that a substantive review was required to ensure that the Regulations remained fit for purpose:
  - Where a breach of the Handbook not amounting to professional misconduct is identified by the Tribunal, there is currently no provision for the Tribunal to impose administrative sanctions, nor to refer the matter back to the BSB to be dealt with. Instead, the case must be dismissed;
  - There is no express provision in the Regulations requiring the President of COIC to nominate a person from a pool selected by the Tribunal Appointments Board<sup>1</sup>;
  - The Regulations do not currently require the individual subject to tribunal proceedings to disclose details of their financial circumstances in advance for sentencing purposes;
  - There is currently no provision to allow the Bar Tribunals and Adjudication Service (BTAS) to make fixed cost claims at Tribunal.
12. A project was subsequently launched and a detailed analysis of the Regulations was carried out through consultation with key persons involved in the disciplinary system. In addition, a separate Council of the Inns of Court (COIC) Working Group was established to consider any implications for the Regulations arising from the 'Browne Review'<sup>2</sup> and a benchmarking exercise was conducted with other professional regulators. In excess of 60 issues were considered and debated by the Review Working Group throughout this process and a set of revised Regulations were drafted with the assistance of external legal advice.
13. In accordance with the BSB's commitment to openness and transparency, a consultation exercise was conducted to obtain the views of any party who has an interest in, or will potentially be impacted by, the changes to ensure that no areas have been overlooked. The consultation paper posed 19 questions, 14 of which were for immediate attention. Five were about issues of principle, not covered in the revised Regulations, on which the BSB wanted to seek views to inform future consideration.
14. More specifically the proposals in the revised Regulations include:
  - removing, where possible, references to technical complexities;
  - softening references to adversarial terminology, given that the proceedings are not criminal for example referencing the 'directing of restrictions' rather than 'imposing penalties' and 'questioning' rather than 'cross-examining';

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<sup>1</sup> This issue was highlighted in the case of [Leathley, Mehey and Hayes v. Visitors to the Inns of Court and BSB \[2013\] EWHC 3097 \(Admin\)](#)

<sup>2</sup> In November 2011 the Council of the Inns of Court (COIC) established a review of its disciplinary functions, chaired by Desmond Browne QC. The review was asked to make recommendations to ensure that COICs procedures were in line with the best regulatory practice and that there was a proper degree of independence from the BSB. The review led to the establishment of the Bar Tribunals and Adjudication Service (BTAS).

- modernising and streamlining the drafting style and terminology, for example, replacing 'Chairman' with 'Chair', replacing 'Complaints Committee' with 'Professional Conduct Committee' (in light of the name change, effective from January 2012), and replacing the term 'defendant' with 'respondent';
- Clarifying the Inns of Courts' role in the imposition of Tribunal sanctions, except in relation to disbarments;
- Addressing potential gaps in the Disciplinary Tribunal powers;
- Extending, in the public interest, the regulator's ability to appeal the outcome of disciplinary tribunals;
- Limiting the costs that can be claimed by barristers who represent themselves at Tribunals;
- removing, where possible, details of administrative matters that might more appropriately appear in supplementary guidance; and,
- increasing clarity, particularly in relation to the anticipated outcomes of the Regulations.

### Analysis of consultation responses

15. The consultation period ran from 7 July 2015 to 12 October 2015. In addition, two workshops were held on 21 September 2015 and 1 October 2015 for anyone interested in feeding back their views on the proposed changes in an open forum.
16. Ten written responses were received and one verbal response from the Legal Ombudsman (LeO) was recorded at the first workshop. Although the second workshop was well attended, those present subsequently submitted written responses with the exception of the representative from the Queen's Council Appointments (QCA) who attended in an observational capacity only. Written responses were received from:
  - Institute of Barristers' Clerks (IBC)
  - Professional Negligence Bar Association (PNBA)
  - Bar Council
  - Council of the Inns of Court (COIC)
  - Bar Mutual Indemnity Fund (BMIF)
  - Chancery Bar Association (CHBA)
  - 4 individual barristers
17. All responses have been given careful consideration by the BSB and full analysis of the responses to individual questions is set out below.

### Responses to questions

***Question 1: Do you agree with the changes to terminology and the clarification of roles outlined above? Are there other changes in these areas that you consider would be beneficial?***

18. The consultation considered the suitability and accuracy of the language/terminology used within the regulations, given that the disciplinary process has historically reflected the language of the criminal prosecution process. Consideration was also given to clarifying roles throughout the Regulations to update inaccurate references and amend titles where a particular action is more appropriately performed by a different person/body.
19. Ten of the 11 respondents responded to this question. The majority were in favour of the changes with Barrister 1 finding the change from 'prosecutor' to 'case presenter' unnecessary and the Bar Council suggesting 'Board's representative' instead. Barrister 4 objected to the exclusion of the use of the male pronouns. While the majority of respondents made no further suggestions for changes, COIC suggested that the Regulations are amended to make it clear that a Tribunal should be chaired by a senior individual.

**Comment**

20. The BSB query what COIC mean by a 'senior individual' and conclude that this is a point for accompanying guidance rather than the Regulations themselves.
21. In light of the consultation responses received, the majority of which agree with the changes to language/terminology, the BSB will proceed with the amendments as drafted.

***Question 2: Do you agree with the changes that have been made to the 'Directions' section (at rE106 – rE126) and the Standard Directions at Annex 6 of the revised Regulations (see annex 2)?***

22. The consultation addressed a number of points in relation to amending the provisions on 'Directions' (rE106 – rE126 – annex 2). Those who regularly apply the processes set out in these Rules agree that they require streamlining and simplification although no changes are proposed to the fundamental approach. In summary, the Directions section has been amended to separate out standard directions from 'special directions', renaming them 'non-standard directions'. The revised Regulations include an additional regulation stipulating that oral directions will be held in private (rE123 – annex 2), and, an amendment to rE168 (annex 2) to give the Tribunal the power to exclude evidence or draw an adverse inference against a party if the Directions have not been properly complied with.
23. Ten of the 11 respondents responded to this question and the majority agreed with the changes. The main points of controversy are around Hearings being held in private, the removal or amendment of Direction 3bii, and, the power of a Tribunal to draw adverse inferences.
24. In contrast to the current practice, for reasons of protecting the public interest and confidence, the PNBA, the Bar Council and COIC are united in agreement that all Hearings should be held in public, unless there is a good reason otherwise.
25. The BMIF suggest the removal of Direction 3bii or, alternatively, that the BSB specify the facts they are asking the Respondent to admit by serving a Notice to Admit Facts with the bundle.
26. PNBA, COIC and CHBA are all of the opinion that Tribunals should not be given the power to draw adverse inferences as this may prevent the admission of important evidence and the ability of a barrister to fully defending himself/herself against a charge.

**Comment**

27. The BSB considered carefully the points raised in the consultation responses but are satisfied that Directions Hearings should continue to be held in private. It would not be fair to the barrister to make public a Hearing about which nothing has previously been published and could result in the case being dismissed.
28. With regards to the specific issue of oral directions Hearings, the manner in which the rule in the current Regulations rE199.3, but (rE243.b in annex 2) is drafted states that the BSB will not publish details of a case that has been dismissed unless the barrister requests it. Taking into account the views expressed in the consultation, the BSB will amend rE243b to reference explicitly publication at the request of the respondent where charges are dismissed prior to the final hearing.
29. The BSB agree, to some extent, with the points raised by BMIF on Direction 3bii but consider that a blanket rule to specify the facts is too wide. Instead, the BSB will redraft Direction 3bii to state that where charges are not admitted, the disputed issues of fact or law will be identified.

30. The BSB have taken into account the points raised about adverse inferences and while the strong arguments against the introduction of such a power have been noted and broadly accepted, the BSB consider that there is a need to include at least some power in the Regulations. To this end, rE168 will be reworded to remove the word 'relevant' and make it clear that the evidence need not be relied on if it is submitted late ie:

*“Where a party has previously failed to comply with any direction made by the Directions Judge, or has failed to do any act, including the submission of evidence, within the time periods specified in a direction, the Disciplinary Tribunal may, at its discretion:*

1. *Decide to exclude the ~~relevant~~ evidence; or*
2. *Draw an adverse inference against that party.”*

**Question 3: Do you agree with the list of those people who may be treated by the Tribunal as ‘vulnerable witnesses’ (rE176 – annex 2) and should the list be extended to include reference to victims of other types of allegation, and not just allegations of a violent or sexual nature?**

31. The current Regulations lack specific provisions concerning the process for taking witness evidence at Hearings and the treatment of vulnerable witnesses. The revised Regulations at annex 2 include two new sections covering these issues as the BSB consider it important, as a matter of public interest, for these practices to be set out in the Regulations.
32. Nine of the 11 respondents responded to this question. Respondents were in unanimous agreement with the list of those treated as “vulnerable witnesses”.
33. The majority of the respondents made no extensions to the list. CHBA queried the necessity for a blanket restriction on preventing a respondent from cross-examining a witness and suggested allowing such a power to prevent cross-examination only when the Tribunal would appropriately want to make an order. The Bar Council suggested an amendment to the wording of rE181 to clarify that the power to make an application should be given to the party calling the witness.

#### **Comment**

34. Taking into account the responses received, the BSB is content that list of ‘vulnerable witnesses’ is complete and requires no further amendment.
35. In response to the point raised by CHBA, the BSB is of the opinion that a blanket restriction on a respondent personally cross-examining witnesses is necessary and reflects the practice in other regulators/jurisdictions. Furthermore, there is a caveat in rE180 making clear that the respondent is not being denied the chance to cross-examine.
36. The BSB agree with the Bar Council and will, instead, draft a new Regulation to read: “Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the Disciplinary Tribunal to receive his or her evidence” (rE178).

**Question 4: Do you have any comments on the changes to the Regulations outlined about above in Section B which are not subject to specific questions?**

37. The consultation sought opinions on any other changes to the Regulations outlined in Section B of the paper namely: nomination of Tribunal panel members; removal of the prohibition on Directions Judges sitting as Tribunal Chairs; recommendations by the PCC that a judge should Chair a three person panel; applications to adjourn proceedings; joinder provisions; procedure at

the Hearing; action taken by the BSB/Bar Council; keeping complainants informed; and, other minor straightforward points.

38. Nine of 11 respondents answered this question. The responses proposed no further changes but the Bar Council consider a general requirement should be imposed on the BSB to ensure that complainants are given appropriate information throughout the life of a case; and, the BMIF are of the view that the respondent should be allowed the same opportunity as the PCC to submit their views on the composition of the Panel.

### **Comment**

39. The BSB consider that the Bar Council's suggestion would be better placed in the accompanying guidance and will take this into account when drafting the guidance.
40. The BSB considers that the point made by the BMIF is one for consideration in the Complaints Regulations due for review in 2016/17, given that the relevant regulation falls within this part of the Handbook. The BSB will ensure that this point is considered when updating the Complaints Regulations.

***Question 5: Do you agree that Tribunals should be given the power to refer matters back to the BSB for consideration of the imposition of administrative sanctions? If not, which of the other options above do you consider would be more appropriate?***

41. The consultation paper outlines a potential gap in the Tribunal's powers of disposal. The power to impose administrative sanction lies solely with the PCC in the current regulations and the imposition of an administrative sanction for a breach of the Handbook is proved on the civil standard. Tribunals do not have the power to impose administrative sanctions. A Tribunal, where it is not satisfied to the criminal standard that professional misconduct has been proved, only has the option to dismiss a charge even if it considers that a breach of the Handbook has occurred. In contrast, the Professional Conduct Committee may impose an administrative sanction where it is satisfied, on the balance of probabilities, that there has been a breach of the Handbook. The lack of power for a Tribunal to impose an administrative sanction on the same basis as the Professional Conduct Committee can result in no action at all being taken by a Tribunal against a respondent who has clearly breached the Handbook but in circumstances where that breach does not amount to professional misconduct. The issue therefore was whether the Tribunal should be able to refer a case back to the PCC for consideration of the imposition of an administrative sanction, be given powers itself to impose administrative sanctions or retain the status quo of all or nothing.
42. Nine of the 11 respondents responded to this question with the majority disagreeing that Tribunals should be afforded the power to refer matters back to the BSB. While the Bar Council wishes to retain the current system, it would accept a provision allowing the Tribunal to make a formal finding that a breach has occurred in order that the BSB impose an administrative sanction. PNBA have more general concerns about the imposition of administrative sanctions, believing they should only be imposed by Tribunals, and, CHBA suggest referring back in the public interest, based on risk, and not simply because a finding could be made on a lower standard.

### **Comment**

43. The Working Group considered the risk-based suggestion offered by CHBA and decided that, while it is a valid argument, its implementation would be unrealistic in practical terms.



44. The Working Group also appreciated the Bar Council's suggestion which is, in part, aligned to the original views of the Working Group that tended towards the view that the preferred system would be to refer cases back to the BSB for consideration of the imposition of an administrative sanction. However, taking into account the other responses, the Working Group were persuaded that the current system should be maintained ie the Tribunal should not have the power to impose an administrative sanction or refer a case back to the PCC for consideration of such an imposition.
45. The Working Group recognised the advantages of maintaining the status quo in that it requires the PCC to continue to focus on effective risk assessment and on referring to Tribunal only those cases that are serious enough to warrant professional misconduct proceedings. It also recognised the disadvantages of this option is that it goes against the public interest for a Tribunal to dismiss a case in circumstances where a breach of the Handbook can be proved on the balance of probabilities and it would be appropriate for some action to be taken. However, it took into account that since the introduction of the Handbook in January 2014, there have been no relevant cases where the power to impose an administrative sanction clearly could have been exercised by a Tribunal were it to have existed. Another advantage of maintaining the status quo is that any perception of the BSB being afforded "two bites at the cherry" by allowing a Tribunal to refer a case back to the BSB, would not arise. The Working Group fell on the side of maintaining the status quo but was cognisant that the issues are difficult ones and ultimately the decision on what approach to take should be decided by the Board of the BSB. Therefore, no firm decision was taken and the revised Regulations remain the same ie maintaining the status quo pending further consideration by the Board.

***Question 6: Do you agree the power to impose deferred sentences should be removed from the Regulations?***

46. The consultation put forward the suggestion that the power to impose deferred sentences should be removed from the Regulations, especially given that it has not been exercised for nearly three years and is of little practical use.
47. Nine of the 11 respondents responded to this question and while the majority agreed with the removal of the power there were some points raised by those opposing or partly agreeing.
48. In particular, the IBC argued that deferred sentences should remain an option where there are mitigating circumstances and Barrister 1 raised the point that there will likely be situations where the Tribunal decides that suspension from practice would be appropriate, but defers the start of the period of suspension.

**Comment**

49. In light of the consultation responses received, the BSB intends to remove the power to impose deferred sentences from the Regulations. However, the BSB are persuaded by the points raised by the IBC and Barrister 1 and will draft a new rule stating that the Tribunal has discretionary powers to postpone the start of a period of suspension for such a period it sees fit in exceptional circumstances, but only where the period of suspension is less than 3 months. It would not be in the public interest for lengthier suspensions to be postponed given that they would reflect more serious behaviour.

***Question 7: Do you agree that the formal restrictions on the BSB mounting appeals against decisions of Tribunals should be removed?***

50. The consultation explained that new restrictions on the BSB's right to appeal against decisions of Tribunals were introduced with the BSB Handbook. The BSB's current view is that it is not in the

public interest to retain such prescriptive requirements in relation to appeals, and, the BSB should have the ability to mount an appeal if it is in the public interest to do so.

51. Nine of 11 respondents answered this question and opinions were almost split. Of those opposed, the PNBA request further information as to why the BSB feels the current powers are limited and the CHBA called for greater consideration to be given to the policy behind the existing restrictions.
52. COIC is not in favour of removing the restrictions but argue that the current wording in rE185 and rE187 is inconsistent.

#### **Comment**

53. The BSB notes the divided opinions but considers that the formal restrictions should be removed to allow decisions on appeals to be based on the public interest and also reflect generally accepted best practice. The BSB will ensure that any concerns will be addressed in the relevant policy and guidance documents.

#### ***Question 8: Do you agree with the removal of the regulations in relation to the involvement of the Inns of Courts in the disciplinary system except in relation to the pronouncement of disbarments?***

54. The consultation asked for consideration of the removal of the regulations in relation to the involvement of the Inns of Court in the imposition of disciplinary sanctions particularly the task of 'pronouncing' sentences, which is currently carried out by the Inns. It also put forward the suggestion that the Tribunal's ability to remove the barrister's "*rights and privileges as a member of his Inn*" when suspended is removed on the grounds that it is not a regulatory matter. The consultation paper, however, made clear that the disbarments should continue to be pronounced by the Inns in line with the Inns' statutory responsibility for calling (appointing) relevant candidates to the Bar.
55. Eight of 11 respondents answered this question with six in agreement with the proposals set out in the consultation paper.
56. Barrister 1 strongly opposed the proposals stating that the BSB has no "role to perform in the actual calling, disbarment or disciplining of barristers; it merely prescribes the rules and regulations to which they must conform." COIC raise clear concerns about the removal of the Inns from the disciplinary process and state that "the adoption of this proposal would represent a profound change in the discipline of the profession". To this end, COIC calls for the BSB to fully articulate its aims and rationale to all interested parties.

#### **Comment**

57. The BSB has noted COIC's concerns but remain of the opinion the current Regulations contain anachronistic provisions which give sanctioning functions to the Inns that are no longer appropriate or needed. Under the current Regulations, the Inns are tasked with 'pronouncing' all sentences imposed by Tribunals including the imposition of reprimands, fines and suspensions. No sentence of a Tribunal can therefore come into effect until "pronounced" by the relevant Inn. The Inns also have the power under the current Regulations to set the dates on which sentences are to take effect. However, there is no longer any clear rationale for Inns to perform these functions except in relation to disbarments and it is particularly incongruous in relation to suspensions where only the BSB has the power to suspend a practising certificate.

58. The BSB notes the agreement by the majority of respondents to remove the Inns role in imposing sanctions and considers that its practice should mirror that of other regulators who control their registrants' authorisation to practice. S.20(6) of the LSA 2007 states that, "An approved regulator may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator." The BSB is the body nominated by the approved regulator to so authorise barristers and the Inns play no role in that authorisation. Therefore in the case of suspensions or conditions on practice it is more appropriate for these functions to be exercised under the auspices of an independent Tribunal rather than the Inns. Taking into account the majority opinion expressed in the responses, the BSB remains of the view that it is appropriate to remove the regulations in relation to the Inns sentencing functions (except disbarment).

***Question 9: Do you agree with the proposed amendments to streamline the reporting process?***

59. The BSB is of the view that the system for reporting on Tribunal outcomes, that currently produces reports at three different stages, should be streamlined into one single 'decision report' (judgment) for each case, regardless of the outcome.
60. Eight of 11 respondents answered this question with all eight concurring with the BSB's 'single decision report' proposal.

**Comment**

61. In light of the responses, the BSB is satisfied that the reporting system should be streamlined as proposed.

***Question 10: Do you agree with the proposal to remove reference to the full list of bodies to which the final report should be sent and allow the distribution of such reports to be determined at the discretion of BTAS/the President?***

62. Under the current Regulations, the three different reports at three different stages are distributed to detailed lists of individual/bodies. It is the view of the BSB that these lists should be distilled into one list applicable to the single 'decision report'. The President, and therefore by policy BTAS, would retain the discretion to send the report to other appropriate people or bodies.
63. Eight of 11 respondents answered this question. A majority of seven agreed with the proposal to distil the lists into one.
64. COIC and the Bar Council recognise that a policy will be drafted if the proposal is accepted and the Bar Council would welcome the opportunity to comment on the draft policy.

**Comment**

65. Taking into account the responses which mainly agree with the proposal, the BSB are content to move forward with the proposal to distil the lists into one.

***Question 11: Do you agree with the BSB's current approach to the publication of decisions of Disciplinary Tribunals online, or are you of the view that our approach should be amended to allow for the publication of all Tribunal decisions online, regardless of the outcome?***

66. In the consultation paper, the BSB questioned the current approach to publishing decisions of Disciplinary Tribunals online. At present, findings are published online only where the charges have been found proved by a Tribunal and where charges are dismissed, the decision may only

be published in anonymised form (rE243.c - annex 2). Taking into consideration the interests of the public and of transparency, the BSB welcomed views on publishing full non-anonymised details of all findings online, regardless of the outcome.

67. Nine of 11 respondents answered this question. A slim majority of five were in favour of retaining the current system with IBC, Barrister 2, BMIF and CHBA largely in agreement due to concerns about the damage to a barristers' reputation.
68. The Bar Council does not agree that all decisions should be published, but it acknowledges that there are cases where the respondent would want an acquittal published and believes their wishes should be respected.
69. There are, however, opposing views. Both PNBA and COIC are of the opinion that details of all decisions should be published. PNBA cite the principle of open justice and the practices of healthcare regulators. COIC find the current approach problematic arguing that to remove all mention of the case from the public domain after the decision was taken in public could prompt more questions. LeO suggest that the amendment is re-drafted to state that all outcomes will be published unless the respondent makes representations otherwise.

#### **Comment**

70. The Working Group were of the view that the current system should be retained ie no reports on dismissed cases are published. However, they recognised the concerns raised by some of those responding about the potential lack of transparency in the current system and the arguments in support of publishing all outcomes, which could, in the case of dismissals, be anonymised. The view, therefore, is that this is an issue that needs to be considered by the Board. No firm decision has been taken and the revised Regulations (annex 2) still reflect the current publication system pending further consideration by the Board.

#### ***Question 12: Do you agree with the changes introduced, which allow for the granting of a fresh hearing on application in any circumstance where the respondent has a good reason for not attending the original Hearings?***

71. The BSB consider that the current circumstances whereby a re-hearing may be granted are too restrictive. The consultation sought views on whether a fresh hearing should be granted if a respondent has a good reason for not attending the hearing.
72. Nine of 11 respondents answered this question. No issues of concern were raised and all nine respondents agreed to the introduction of the changes.

#### **Comment**

73. In light of the responses received, the BSB will effect the proposal.

#### ***Question 13: Do you agree with the amendment to the Regulations limiting the hourly rate that self-representing barristers can claim to the rate applicable to litigants in person under the CPRs?***

74. In the consultation paper, the BSB sought views on limiting the hourly rate that self-representing barristers can claim to the rate applicable to litigants in person under the CPRs. The reason for this question arises from a case in which an unregistered barrister, acting in person, claimed costs at professional hourly rates.
75. Nine of 11 respondents answered this question. Views were split with a slim majority disagreeing with the proposed changes.

76. PNBA, BM, CHBA and COIC disagree with the comparison with litigants in person in civil claims. The Bar Council agree, in principle, that barristers should be able to recover costs but believe that, in exceptional circumstances, there should be a higher level of recovery. Barrister 2 suggests removing the option for either party to claim costs.

#### **Comment**

77. Given the responses, the BSB has decided not to change the current position. The BSB will remove rE244 (annex 2) “where the respondent has represented himself/herself in the proceedings and intends to make an application for payment of his or her costs by the Bar Standards Board, the rate payable to the respondent will not exceed the rate from time to time specified in respect of litigants in person”, but will make it clear that there should be discretion as to the award and level of costs in rE246 (annex 2).

***Question 14: Do you have any other comments on any of the proposed amendments to the Regulations set out in Section C above which are not specifically covered by specific questions?***

78. No substantive comments were received.

#### **Issues of principle**

79. The last five questions in the consultation paper were on issues not intended to be covered in the revised Regulations but on which opinions were sought to allow the BSB to decide how to move forward with the issues in the future. The various issues are rehearsed in the paragraphs below but in summary relate to: costs, size of Tribunal panels; re-admittance to the Bar; and, settlement agreements.
80. For each of the remaining questions the BSB has taken on board the comments and has noted them to ensure that they inform out thinking when considering future changes to the disciplinary tribunal system. However, we have not commented individually on the responses although we are very grateful for the comments received which will be invaluable in shaping our approach to the issues in the future.

***Question 15: What are your views on potential changes to the current regime for claiming BSB costs, taking into account the alternative approaches set out at paragraphs 75 – 77 (of the Consultation Paper)?***

81. Under the current Regulations, the BSB is prohibited from claiming the costs of preparation for Hearings and the ability to recoup the costs of successful prosecutions is limited. However, the BSB also runs the risk of exposure to cost orders covering respondent’s full costs. There are clear arguments in favour of removing the current prohibition on the BSB claiming the preparatory costs for Hearings. An alternative approach, adopted by a number of other regulators, would be to remove the ability for either party to claim costs.
82. Views expressed in the responses were varied. IBC are supportive of the removal of ability of either party to claim costs, while PNBA consider that the recoverability of costs should be symmetrical. Most of the respondents think that the BSB should be able to recover “something” for the costs of preparation but the Bar Council question the need for a formal billing system and the BMIF do not agree with the alternative approaches. Both LeO and COIC believe that costs should be a matter for the Tribunal.

**Question 16: What are your views on removing the jurisdiction of five-person Tribunal panel and replacing them with three person panels potentially Chaired by a Judge?**

83. The current regime of three and five person panels allows for more serious cases to be dealt with by a panel of five people with a Judge acting as Chair. Most other regulators use three person panels only, with the option to use a Judge as Chair in more serious cases. In light of this, the consultation asked for the initial view of interested parties.
84. The responses indicated clear support for the change although one respondent, Barrister 2, would opt to retain five person panels for serious cases. The Bar Council support the change on the grounds that it is comparable with other regulators and other respondents are content for Judges to Chair more serious cases as long as the Chair is legally trained (COIC) and has a current ticket (BMIF). LeO suggest that an option to call in extra expertise, where necessary, is introduced.

**Question 17: Do you agree that the decision to re-admit a barrister to the Bar following disbarment should be a matter for the BSB as the regulator and taken by Tribunals not the Inns of Court?**

85. It is the responsibility of the Inns of Court to call persons to the Bar and disbar barristers on the order of a Tribunal. They also decide if a disbarred barrister may be recalled to the Bar. The BSB is of the opinion that the recalling of a disbarred barrister is a regulatory matter that should be transferred to Tribunals. In the consultation paper, the BSB points to the strong public support for this for reasons of consistency and independence.
86. Responses to this question suggest that opinions on this matter are evenly split with five respondents in favour, five respondents opposed and one in part agreement. It should also be noted that this was the only question answered by all eleven respondents.
87. The individuals who responded to the consultation, Barrister 1, Barrister 2 and Barrister 3 all oppose the suggestion of Tribunals deciding to re-admit disbarred barristers. They are supported by COIC who argue that, as the BSB will have been the prosecutor at the Tribunal where the decision was made, for the Tribunal to make this decision would represent a conflict of interest. COIC also make a separate point that the decision to re-admit a barrister is delegated to an independent Tribunal.
88. The Bar Council agrees with the proposal in principle but calls for a wider examination of the relationship between the Inns and the BSB to avoid causing confusion for the public and the profession.
89. The remaining respondents agree with the proposal with BMIF saying that it would bring the system into line with other regulators.

**Question 18: Do you support the introduction of “settlement agreements” as an alternative means of determining the outcome of disciplinary cases?**

90. Some other regulatory bodies give the respondent the option of agreeing the outcome of the disciplinary proceedings and the sanction to be applied prior to a hearing. Such arrangements are normally known as ‘settlement agreements’ which subsequently require approval by the Tribunal panel to allow them to come into effect with the Tribunal panel having the power to reject the terms of the settlement. In the consultation paper, the BSB asked for views on adopting this mechanism within the DT Regulations.
91. Nine of the 11 respondents answered this question. Responses were mixed with three respondents supporting the introduction of settlement agreements and one, Barrister 1,

disagreeing with the principle for the 'reasons set out in the consultation paper' namely, that such agreement may lengthen proceedings and the public may see them as lacking transparency.

92. The majority of the respondents were in part-agreement. IBC would support the proposal if misconduct is accepted at an early stage. PNBA, the Bar Council, BM and CHBA would all like to see more details before offering full support.

***Question 19: Do you consider that any of proposed changes to the Regulations could create adverse impacts for any of the equality groups?***

93. The Bar Council express concerns on the impact of those with mental health issues and encourage the BSB to consider the possibility of additional protection for these individuals.
94. CHBA make the point that there may be adverse impacts on those with protected characteristics who are not on the list of vulnerable witnesses and suggest that they are afforded the same rights as those on the list in relation to cross examination.
95. LeO suggests that those who are and are not offered settlement agreements could be a point of concern.

**Comments**

96. The BSB is committed to promoting equality and diversity throughout the Bar and within the BSB as an organisation. Every effort is made to ensure that processes and procedures are fair, objective, transparent and free from unlawful discrimination. The BSB also aims to promote awareness of the obligations under the Equality Act 2010. An equality screening of the impact of the proposed changes to the Regulations was carried out. No adverse impacts in relation to any of the protected characteristics were identified.
97. In relation to the point made by the Bar Council, the view is that the Regulations already give the Tribunal discretion to direct the conduct of proceedings which would include making adjustments for those with mental health issues. However, the BSB will continue to monitor the progress of cases for any problems in this area: if necessary further revisions to the Regulations can be made once there is a clear evidence base as to the type of revisions that might be required.
98. With regards to the point made by CHBA, the Regulations have now been revised in light of the consultation responses to allow any person who is not classed formally as a "vulnerable witness" to apply for any of the measures available to vulnerable witnesses (see rE178 annex 2).
99. The suggestion by LeO has been noted for future discussion.
100. The BSB will monitor the impact of the new Regulations for any equality issues that might arise and will ensure that impact assessments are carried out in relation to the new policies that will be required to underpin the implementation of the Regulations.

**Additional observations from the Bar Council**

101. The Bar Council has submitted additional observations on the Regulations relating to the order of proceedings at a hearing. Although they are not covered by any of the questions posed, the Bar Council asked the BSB to consider the following issues:
- The Bar Council queried the necessity for the proposed new rE189 which suggests that it is obligatory for the Disciplinary Tribunal to retire into private session to consider any submissions from the parties;

- The Bar Council asserted that the procedure followed at rE199 onwards after the respondent has admitted the charge (rE193) makes no provision for the BSB to provide an outline of the case, or for either party to call evidence;
- The Bar Council raised concerns that the procedure set out from rE203, providing that the Disciplinary Tribunal may receive evidence of previous findings against the respondent, includes no general power to hear evidence at the sanction stage;
- The Bar Council suggested that the Regulations clarify whether receipted email counts as service (see rE248.1) and provides reasons why if not.

### Comment

102. The BSB consider that rE190 (annex 2) reflects good practice in the conduct of such hearings where the decision is one to be made by a panel after discussions. It is further noted that the Chair does have an overriding discretion as to the conduct of proceedings and it may be that in the context of straightforward decisions this is exercised in response to submissions which are not contentious and the panel does not need to retire. The current Regulations are silent on the procedure to be followed at Tribunal Hearings and the BSB consider that it is in the public interest to enshrine these basic procedural details in the Regulations.
103. New regulations from rE188 onwards (see annex 2) have been added to the Regulations to bring them into line with the approach of other regulators that include such rules to assist those appearing before panels. They are intended to provide clarity for people attending Tribunals who are not barristers. rE188 gives the power to the Tribunal to vary this in any way it considers appropriate.
104. It is the case that receipted email counts as service provided that the respondent agrees to service by email. This provision mirrors that of the Civil Procedure Rules.

### Summary of Policy Decisions

105. The following is a summary of the main decisions taken by the BSB in response to this consultation:

#### Publication of dismissals at oral Hearings:

- The BSB will amend rE243.b (see annex 2) to explicitly reference publication at the request of the respondent where charges are dismissed prior to the final hearing.

#### Amendment to Direction 3bii:

- The BSB will redraft Direction 3bii to state that where charges are not admitted, the disputed issues of fact or law will be identified.

#### Non/late-compliance with Directions:

- To ensure that some power is retained to exclude evidence or draw and adverse inference against that party if Directions have not been complied with, the BSB will remove the word 'relevant' from rE168 (see annex 2) and make it clear that the evidence need not be relied on if it is submitted late.

#### Vulnerable witnesses:

- The BSB will draft a new rule to clarify that the power to make an application for measures to adjust the way in which evidence is presented should be given to the party calling the witness (rE178 – annex 2).

#### Imposition of deferred sentences:

- The BSB will draft a new rule stating that the Tribunal has discretionary powers to postpone the start of a period of suspension for such a period it sees fit in exceptional circumstances (rE221 – annex 2).



**Removal of Tribunal’s ability to remove a barristers “rights and privileges as a member of his Inn”:**

- The BSB will remove this aspect of a Tribunal’s sentencing powers from the Regulations (rE170 in the current Regulations).

**Format and distribution of reports of findings and sentence:**

- The BSB will streamline the reporting system by requiring only one “decision report” and distillation of the distribution lists into one consolidated list.

**Rate for claiming costs for respondents acting in person:**

- The BSB will remove rE244 “where the respondent has represented himself/herself in the proceedings and intends to make an application for payment of his or her costs by the Bar Standards Board, the rate payable to the respondent will not exceed the rate from time specified in respect of litigants in person”, but will make it clear that there should be discretion for the Tribunal to decide the level of fees applied in an assessment of costs as in rE246 (annex 2).

**Next Steps**

106. In line with the consideration of the responses received to the consultation paper, as outlined above, the draft Regulations have been revised to include the changes made as result of the consultation. There are two outstanding issues that need to be considered by the Board of the BSB (see paragraphs 41 – 45 and paragraphs 66 – 70 above) and a decision taken as to the final content of the Regulations.
107. Thereafter, the BSB will make an application to the LSB for approval of the Regulations in line with the requirements of the Legal Services Act 2007. The revised Regulations (annex 2) will come into effect following this approval and once the supporting policies and guidance referred to above and in the consultation paper are developed and put in place.

**List of respondents**

**Barristers**

3 individual barristers

**Bar Associations**

Institute of Barristers’ Clerks (IBC)  
Bar Council  
Council of the Inns of Court (COIC)  
Professional Negligence Bar Association (PNBA)  
Chancery Bar Association (CHBA)  
Bar Mutual Indemnity Fund (BMIF)

**Organisations**

The Legal Ombudsman (LeO)



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**.B. THE DISCIPLINARY TRIBUNALS REGULATIONS 201X**

**B1. THE REGULATIONS**

**rE101** These Regulations will apply following the referral of a matter by the *PCC* to a *Disciplinary Tribunal*, in accordance with Part 5 Section A.

***Service of Charges and/or Applications***

**rE102** The *Bar Standards Board* must ensure that a copy of the charge(s) and/or application(s):

- .1 is served on the relevant *respondent(s)*, together with a copy of these Regulations not later than ten weeks (or five weeks if the *PCC* has directed that the prosecution of the charges be expedited) after the date on which the *PCC* decides to refer the matter to a *Disciplinary Tribunal*; and
- .2 at the same time, ensure that copies of the charge(s) and/or application(s) are sent to *BTAS*.

***Documents to be served on the respondent***

**rE103** As soon as practicable after the issue of the charge(s) and/or application(s) to the *respondent(s)*, the *Bar Standards Board* must serve on the *respondent(s)* and file with *BTAS*:

- .1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, may be a formal witness statement or an informal document such as a letter or attendance note); and
- .2 a copy of any other documents intended to be relied on by the *Bar Standards Board*; and
- .3 the *standard directions* and/or *non-standard directions*, which, subject to rE111, the *Bar Standards Board* proposes to apply to the case and which must include such timetable as may be considered reasonable by the *Bar Standards Board*, having regard to the facts of that case.

**rE104** If the documents referred to in rE103.1 and/or rE103.2 are not sent to the *respondent(s)* within 28 days of the service of the charges on *the respondent(s)* in accordance with rE102 above, then the *Bar Standards Board* must provide to the *respondent(s)* within that period:

- .1 details of the evidence that is still being sought; and
- .2 details of when it is believed that it will be practicable to supply that evidence to the *respondent(s)*.

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**rE105** Nothing in rE103 or rE104 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *respondent(s)* in accordance with rE103 or rE104, provided that the *Disciplinary Tribunal* is of the opinion either that this does not materially prejudice the *respondent(s)*, or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

**Directions**

**rE106** Within 21 days of the date of service of the directions under rE103.3, the *respondent(s)* must:

- .1 agree the *standard* and/or *non-standard directions*; or
- .2 provide to the *Bar Standards Board* written submissions explaining why the directions sought by the *Bar Standards Board*, should be amended, withdrawn or added to; and/or
- .3 indicate to the *Bar Standards Board* whether they intend to make any of the applications referred to in rE127.

**rE107** Within fourteen days of the date when the *Bar Standard Board* receives any written submissions from a respondent in accordance with rE106.2, the *Bar Standards Board* must consider them and must during that fourteen day period:

- .1 inform the *respondent(s)* of those changes to the *standard directions* or *non-standard directions* (as appropriate) which the *Bar Standards Board* is able to agree; and
- .2 seek to agree with the *respondent(s)* such other changes to the *standard directions* or *non-standard directions* (as appropriate) as may be acceptable to all parties.

**No reply from respondent**

**rE108** Where *standard directions* are sought by the *Bar Standards Board* and the *respondent* does not reply to a request to agree directions within the relevant 21 day period referred to in rE106, the *respondent* will be deemed to have accepted the *standard directions* and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other *respondent* to the same proceedings which was made within the relevant 21 day period. The *Bar Standards Board* must forthwith serve on the *respondent* and file with *BTAS* any directions which are deemed to apply to the matter.

**rE109** Where *non-standard directions* are sought by the *Bar Standards Board* and the *respondent* does not reply within the 21 day period referred to in rE106, the *Bar Standards Board* must send to the *President* a copy of the *non-standard directions* and invite him or her to appoint a *Directions Judge* to endorse the directions in accordance with rE114 to rE126.

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**Agreement of directions**

**rE110** Where *standard directions* are sought in a case by the *Bar Standards Board* and the parties agree the directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case and the *Bar Standards Board* must forthwith serve the agreed directions on the *respondent* and file them with *BTAS*.

**rE111** The parties may agree *non-standard directions*, save that where any *non-standard direction* would have the effect of preventing *BTAS* from carrying out any function given to it by these Regulations, the said direction cannot be agreed without endorsement of a *Directions Judge*. In these circumstances, the *Bar Standards Board* must send to the *President* a copy of the *non-standard directions* and invite him or her to appoint a *Directions Judge* to endorse the directions in accordance with rE114 to rE126.

**rE112** Where *non-standard directions*, which do not include matters under rE111, are sought by the *Bar Standards Board* in a case and the parties agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case. The *Bar Standards Board* must forthwith serve the agreed directions on the *respondent* and file them with *BTAS*.

**Non-agreement of directions**

**rE113** Where *standard* and/or *non-standard directions* are sought in a case by the *Bar Standards Board* and the *respondent* does not agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, the *Bar Standards Board* must write to the *respondent* to confirm that the directions have not been agreed and must send to the *President* the following (where relevant):

- .1 a copy of the directions, including any *standard directions* and/or *non-standard directions* which have been agreed;
- .2 any written submissions received from the *respondent(s)* in accordance with rE106.2;
- .3 any notice from the *respondent(s)* that they may be intending to make an application referred to at rE106.3; and
- .4 the *Bar Standards Board's* response to any such request(s) and/or submissions.

**Agreement/endorsement of directions by a Directions Judge**

**rE114** When the *President* has received the documents referred to in rE109 or rE111 above, the *President* must designate either a Queen's

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Counsel or *Judge*, to be determined at *the President's* sole discretion ("*the Directions Judge*"), to exercise the powers and functions conferred on the *Directions Judge* in these Regulations.

**rE115** *The President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE109 or rE111 above, are sent to the *Directions Judge* once he or she has been designated.

**rE116** When he or she receives the relevant documents, the *Directions Judge* must consider any submissions about the directions and will determine whether an oral directions hearing is necessary.

**rE117** If the *Directions Judge* considers that no oral hearing is necessary, then:

- .1 he or she must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and his or her own findings; and
- .2 he or she may consider and decide any other issues which may be necessary in accordance with rE129.

**rE118** If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *Bar Standards Board* and the *respondent(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he or she considers suitable for the clarification of the issues before the *Disciplinary Tribunal* and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide the *Bar Standards Board* and the *respondent(s)* with a time estimate for the oral directions hearing.

**rE119** Within seven days of receiving the notice referred to in rE118, the *Bar Standards Board* and the *respondent(s)* must notify *the President* and the other party of their and, where relevant, their representative's available dates and times during the six week period immediately after the date of that notice.

**rE120** The *Directions Judge* must try to find a date and time within that six week period which is convenient for all parties. If that is not possible, the *Directions Judge* must fix a date and time for the oral directions hearing within that six week period and must notify the *Bar Standards Board* and the *respondent(s)* of that date and time.

**rE121** Once the *Directions Judge* has set a date for the oral hearing, *BTAS* must appoint a *person(s)* in accordance with rE136 to act as Clerk at the hearing to take a note of the proceedings; draw up a record of the directions given and/or any admissions made at it.

**rE122** *BTAS* must arrange for a record of the oral hearing before a *Directions Judge* to be made.

**rE123** The oral hearing before a *Directions Judge* will be in private.

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**rE124** After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) *BTAS* must ensure that copies of the directions order are served on the *Bar Standards Board* and on the *respondent(s)*.

**rE125** The directions order served under rE124 is final, and there is no appeal against it.

**rE126** Any variation sought by a party to an order for *standard directions* made and served under rE108 or rE110, or to an order for *non-standard directions* made and served under rE112, must be endorsed by a *Directions Judge*, who shall be designated by the *President* in accordance with the requirements of rE114.

**Applications**

**rE127** At any time before the hearing, either party can make any of the following applications and thereafter file with *BTAS* and serve on the opposing party written submission in support of the applications, namely:

- .1 an application to sever the charges and/or applications;
- .2 an application to strike out the charges and/or applications which relate to the respondent who makes the application;
- .3 an application to stay the proceedings;
- .4 an application about the admissibility of documents;
- .5 an application for disclosure of documents;
- .6 an application to extend or abridge any relevant time limits;
- .7 an application for the hearing to be held in private;
- .8 an application for separate hearings or an application that proceedings pending against separate *respondents* be dealt with at the same hearing; or
- .9 any other application to vary *standard or non-standard directions* (which either party considers reasonable, having regard to the facts of the case).

**rE128** The *Directions Judge* or Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* will consider how any of the applications referred to rE127 are to be dealt with.

**Extent of powers to order directions**

**rE129** The *Directions Judge* or the Chair of the *Disciplinary Tribunal* designated in the *Convening Order* (or failing the *Directions Judge* or the Chair of the *Disciplinary Tribunal*, any other *Judge* nominated by the *President*) may, at any stage, make such directions for the

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management of the case or the hearing as he or she considers will expedite the just and efficient conduct of the case.

**Setting the hearing date**

**rE130** This regulation applies where, after the deemed acceptance or later agreement of directions, or the service of a directions order by *the President*, the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to *BTAS* in accordance with the directions. After he or she receives such details, or, where no such details are provided once the time for providing such details has expired, *the President* must fix the date of the substantive hearing, having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the *respondent(s)*, in accordance with the provisions of these Regulations.

**rE131** *BTAS* must inform all parties of the date fixed for the hearing as soon as reasonably practicable after *the President* has fixed the date.

**Appointing a Disciplinary Tribunal and issuing a Convening order**

**rE132** On

- .1 the deemed acceptance or later agreement of the directions by the parties;  
or
- .2 the service of the directions order by *BTAS*; or
- .3 the fixing of the date of the hearing in accordance with rE130 above,

*the President* must, in all cases,

- .a appoint an appropriate *Disciplinary Tribunal* to sit on the relevant date(s), taking into account the requirements of these Regulations;
- .b appoint a *person* or *persons* to act as Clerk or Clerks to the *Disciplinary Tribunal* in accordance with rE136;
- .c not less than fourteen days before the date of the substantive hearing, serve an order on the *respondent(s)* ("*the Convening Order*") specifying:
  - .i the name of the *respondent(s)* to the proceedings and such other information as may be relevant to the *respondent(s)*, for example:
    - (1) where any *respondent* is a *barrister*, details of the *barrister's* Inn, his or her date of call and (if appropriate) the date of his or her appointment as Queen's Counsel, and details of whether or not the *barrister* was acting as a



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*self-employed barrister* or an *employed barrister* (and, in the latter case, details of his or her *employer*, including whether or not it is a *BSB authorised body*) and if the *barrister* was acting as a *HOLP* or *manager* of an *authorised body*, identifying this fact and identifying the *authorised body* and whether or not it is a *BSB authorised body*;

- (2) where any *respondent* is a *BSB authorised body*, details of the date when that body was so authorised or licensed with a summary of the number of *barristers* and other individuals working within that *BSB authorised body*;
- (3) where any *respondent* is another type of *BSB regulated person*, details of whether or not the *BSB regulated person* is an *authorised (non-BSB) person* or is otherwise subject to regulation by any other regulator and, if so, the identity of that regulator, and the role of that individual, including whether he or she was acting as a *HOLP*, *HOFA*, *manager* or *employee* of an *authorised body* and identifying that *authorised body* and its Approved Regulator; and
- (4) where any *respondent* is a *non-authorised individual* employed by a *BSB authorised person*, details of the role of that individual and identifying the *BSB authorised person* who directly or indirectly employs the *respondent*;

- .ii the date, time and venue of the sitting of the *Disciplinary Tribunal* at which it is proposed the charge(s) and/or application(s) should be heard;
- .iii the names and status (that is, as Chair as *lay member*, as *barrister* or other) of those *persons* who it is proposed should constitute the *Disciplinary Tribunal* to hear the case; and
- .iv the name of the Clerk,

and send copies of that *Convening Order* to the nominated members of the *Disciplinary Tribunal*, the *Bar Standards Board*, and the Clerk. In the Order the attention of the *respondent(s)* will be drawn to:

- (1) their right to represent themselves or be represented professionally, with or without instructing a *solicitor*, as they shall think fit; and
- (2) their right to inspect and be given copies of documents served pursuant to rE103 above; and
- (3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

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**rE133** The *respondent(s)* may, when they receive the *Convening Order*, give notice to *the President* objecting to any one or more of the proposed members of the *Disciplinary Tribunal*. The *respondent* must give this notice as soon as is reasonably practicable and must specify the grounds for his or her objection.

**rE134** When *the President* receives such an objection, he or she must, if satisfied that it is justified (but subject to rE135), exercise the power conferred on him or her by rE148 to nominate a substitute member or members of the *Disciplinary Tribunal*, and must notify the *respondent(s)* accordingly. When they receive that notification, the *respondent(s)* may object to any substitute member or members, in the same way as they may object under rE133.

**rE135** No objection to any member of the *Disciplinary Tribunal* may be made, or if made, may be upheld, on the grounds only that he or she knows, or might have known, about a charge of *professional misconduct*, or of breach of proper professional standards, or a previous application to disqualify, or a charge consisting of a *legal aid complaint*, against the *respondent(s)*, or any finding on any such application or charge, or any sentence imposed on the *respondent(s)* in connection with any such application or charge.

***Appointment of Clerk(s)***

**rE136** BTAS shall appoint a Clerk(s) to perform the functions specified in these Regulations and such other functions as the *President*, *Directions Judge* or the Chair of any *Disciplinary Tribunal* may direct.

**rE137** The *President* may publish qualifications or other requirements for those appointed to be Clerks.

**rE138** No person who has been engaged in the investigation of a complaint or application against a respondent in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that complaint or application.

***The Disciplinary Tribunal***

***Composition of Disciplinary Tribunals***

**rE139** A *Disciplinary Tribunal* must consist of either three persons or five persons.

**rE140** A five-person panel must include the following *persons* nominated by *the President*:

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- .1 as Chair, a *Judge*; and
- .2 two *lay members*; and
- .3 two *practising barristers* of not less than seven *years' standing*.

**rE141** A three-person panel shall include the following *persons* nominated by *the President*:

- .1 as Chair, a Queen's Counsel or a *Judge*; and
- .2 one *lay member*; and
- .3 one *practising barrister* of not less than seven *years' standing*.

**rE142** With the exception of judicial Chairs, the persons nominated by *the President* to sit on a *Disciplinary Tribunal* must be selected from the pool appointed by the *Tribunal Appointments Body*.

**rE143** In deciding who will sit on the panel, *the President* may have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *respondent(s)* against whom the charges have been made. When constituting the panel, *the President* shall take into account the requirements of rE140 and rE141 above, and rE144 and rE145 below.

**rE144** A person must not be nominated to serve on a *Disciplinary Tribunal* if they:

- .1 are a member of the *Bar Council* or of any of its committees; or
- .2 are a member of the *Bar Standards Board* or of any of its committees; or
- .3 were a member of the *Bar Standards Board* or of any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

**rE145** The person nominated by *the President*, in accordance with rE140 and rE141, to be Chair of the *Disciplinary Tribunal*, may be the *Directions Judge* as appointed under rE114, unless the *Directions Judge* considers there to be any reason why he or she should not Chair the hearing.

**rE146** *The President* may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal*.

**rE147** If a vacancy in the *Disciplinary Tribunal* arises before the substantive hearing of the charge, *the President* must nominate another member of the relevant class to fill that vacancy.

**rE148** At any time before the substantive hearing of the charge starts, *the President* may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of his or her discretion, he or she deems

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necessary or expedient, provided always that *the President* notifies the *respondent(s)* of the identity of such substitutes as soon as is reasonably practicable after he or she has chosen them. The *respondent(s)* may object to such substitute members in the same way as they may object under rE133.

**rE149** The proceedings of a five-person panel will not be invalidated on the sole ground that after the *Convening Order* has been issued (in accordance with rE132 above), one or more of the members becomes unable to act or is disqualified from acting, provided that:

- .1 the Chair and at least one *lay member* and one barrister member are still able to act and are present throughout the substantive hearing; and
- .2 the number of members present throughout the substantive hearing of the charge is not reduced below three.

**rE150** A member of a *Disciplinary Tribunal* who has been absent for any time during a sifting shall take no further part in the proceedings.

***Provision of documents to the Disciplinary Tribunal***

**rE151** The *Bar Standards Board* and the *respondent* must send to *BTAS*, at least fourteen days before the hearing:

- .1 in the case of a *five-person Disciplinary Tribunal*, six copies of the evidence they intend to rely on at the hearing;
- .2 in the case of a *three-person Disciplinary Tribunal*, four copies of the evidence they intend to rely on at the hearing.

**rE152** The evidence referred to in rE151 must be indexed and paginated.

**rE153** *BTAS* shall provide to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

- .1 the *Convening Order*,
- .2 the charge(s) and/or application(s) and any particulars of them;
- .3 any documents which the *Bar Standards Board* or the *respondent(s)* propose to rely on, unless a direction has been made that copies of such documents be withheld;
- .4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the respondent(s);
- .5 such other documents as have been agreed or directed to be laid before the *Disciplinary Tribunal* before the start of the hearing; and
- .6 all orders for directions which have been made in relation to the case.

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***Applications for adjournment before the commencement of the hearing***

**rE154** Any application by a party for an adjournment of the substantive hearing before the date on which the hearing is scheduled to commence must be in writing and accompanied by any evidence upon which the party relies in support of his or her application.

**rE155** An application under rE154 must be submitted to the Chair of the *Disciplinary Tribunal* which has been convened to hear the case and served upon the other party. The Chair must make reasonable attempts to seek any representations in response to the application from the other party. The Chair must consider the application for adjournment taking into account any response submitted by the other party and may:

- .1 grant the adjournment; or
- .2 direct that the application must be renewed before the *Disciplinary Tribunal* on the first day fixed for the hearing; or
- .3 refuse the application; and
- .4 may make such directions as he or she considers appropriate for the further conduct of the case.

***Hearing in public***

**rE156** The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that all or part of the hearing is not to be held in public, and that direction has not been over-ruled by the *Disciplinary Tribunal*.

***Recording of proceedings***

**rE157** BTAS must arrange for a verbatim record of the proceedings before a *Disciplinary Tribunal* to be made.

***Joinder***

**rE158** Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine charges against two or more respondents at the same hearing where:

- .1 the charge(s) against each respondent arises out of the same circumstances;  
or
- .2 in the view of the *Disciplinary Tribunal*, a joint hearing is necessary or desirable.

**rE159** Where a joint hearing is held:

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- .1 these Regulations are to have effect in relation to the hearing with the necessary modifications as directed by the Chair; and
- .2 each *respondent* concerned is to be able to exercise any of the rights granted to that *respondent* under these Regulations whether or not any other *respondent* concerned wishes to exercise that right.

**rE160** Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine at a single hearing two or more matters which have been separately referred to the *Disciplinary Tribunal* in respect of the same *respondent*, whether or not those matters arise from the same circumstances.

***Amendment and addition of charge(s) and/or application(s)***

**rE161** A *Disciplinary Tribunal* may at any time before or during the hearing grant permission to the *Bar Standards Board* to amend the charge(s) and/or application(s) against any *respondent*, or grant permission for new charge(s) and/or application(s) be added, provided that:

- .1 the *Disciplinary Tribunal* is satisfied that no *respondent* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of his or her defence; and
- .2 the *Disciplinary Tribunal* will, if so requested by a *respondent*, adjourn for such time as the *Disciplinary Tribunal* considers reasonably necessary to enable that *respondent* to meet the amended charge(s) or application(s).

***Adjournment of the hearing***

**rE162** Subject to rE163, the *Disciplinary Tribunal* must sit from day to day until it has made a finding and, if any charge or application is found proved, until sentence has been determined.

**rE163** A *Disciplinary Tribunal* may, if they decide an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

***Standard of proof***

**rE164** The *Disciplinary Tribunal* must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

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***Rules of natural justice***

**rE165** The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*.

***Evidence***

**rE166** The *Disciplinary Tribunal* may:

- .1 (subject to rE167 below) admit any evidence, whether oral or written, whether given in person, or over the telephone, or by video link, or by such other means as the *Disciplinary Tribunal* may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a *court* of law;
- .2 give such directions with regard to the admission of evidence at the hearing as it considers appropriate, ensuring that a *respondent* has a proper opportunity of answering the charge(s) and/or application(s) made against him or her;
- .3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

**rE167** Any party may refer to the fact (if relevant) that the *determination by consent* procedure was used before the *complaint* was referred as a charge before a *Disciplinary Tribunal*. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the *determination by consent* procedure ended), unless and until the *respondent* refers to the substance of the procedure in the course of presenting his or her case, or when he or she is being sentenced.

**rE168** Where a party has previously failed to comply with any direction made by the *Directions Judge*, or has failed to do any act, including the submission of evidence, within the time period specified in a direction, the *Disciplinary Tribunal* may, at its discretion:

- .1 decide to exclude the relevant evidence; or
- .2 draw an adverse inference against that party.

***Decisions of courts or tribunals***

**rE169** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was a party, the following Regulations shall apply:

- .1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the *respondent* committed the offence;

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- .2 any *court* record of the findings of fact upon which the *conviction* was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;
- .3 the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sentence and the findings of fact upon which that finding or sentence was based shall be proof of those facts, unless proved to be inaccurate; and
- .4 the judgment of any civil *court* may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate.

**rE170** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was not a party, the provisions of rE169 do not apply.

***Witness evidence at the Disciplinary Tribunal***

**rE171** Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

**rE172** Subject to rE176, witnesses:

- .1 if giving oral evidence-in-chief, shall first be examined by the party calling them;
- .2 may be cross-examined by the opposing party;
- .3 may be re-examined by the party calling them; and
- .4 may at any time be questioned by the *Disciplinary Tribunal*.

**rE173** Any further questioning of the witnesses by the parties shall be at the discretion of the *Disciplinary Tribunal*.

**rE174** The *Disciplinary Tribunal* may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

**rE175** A witness of fact shall be excluded from the hearing until he or she is called to give evidence, failing which he or she will not be entitled to give evidence without leave of the *Disciplinary Tribunal*.



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***Vulnerable Witnesses***

**rE176** For the purpose of these Regulations, any person falling into one or more of the following categories may be treated by the *Disciplinary Tribunal* as a vulnerable witness in proceedings before it:

- .1 any witness under the age of 18 at the time of the hearing;
- .2 any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- .3 any witness who is significantly impaired in relation to intelligence and social functioning;
- .4 any witness with physical disabilities who requires assistance to give evidence;
- .5 any witness, where the allegation against the *respondent* is of a sexual or violent nature and the witness was the alleged victim; and
- .6 any witness who complains of intimidation.

**rE177** Subject to hearing representations from the parties, the Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

**rE178** Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive his or her evidence.

**rE179** Measures adopted by the *Disciplinary Tribunal* for receiving evidence from a vulnerable witness may include, but are not to be limited to:

- .1 use of video links;
- .2 use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the *Disciplinary Tribunal*;
- .3 use of interpreters (including signers and translators) or intermediaries;
- .4 use of screens or such other measures as the *Disciplinary Tribunal* consider necessary in the circumstances in order to prevent:
  - .a the identity of the witness being revealed to the press or the general public; or
  - .b access to the witness by the respondent.
- .5 the hearing of evidence (either whole or in part) by the *Disciplinary Tribunal* in private.

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**rE180** No *respondent* charged with an allegation of a sexual or violent nature may cross-examine in person a witness who is the alleged victim, either:

- .1 in connection with that allegation, or
- .2 in connection with any other allegation (of whatever nature) with which the said *respondent* is charged in the proceedings.

**rE181** In the circumstances set out in rE180, in the absence of the respondent's written consent, *BTAS* must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on the respondent's behalf.

**rE182** A witness who is not regarded as a vulnerable witness under rE177 may apply for one or more of the measures set out in rE179 to be put in place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive his or her evidence.

***Absence of respondent***

**rE183** Where the *respondent* has not attended at the time and place appointed for the hearing, the *Disciplinary Tribunal* may nevertheless, subject to compliance with rE234.1 respect of that *respondent*, proceed to hear and determine the charge(s) or application(s) relating to that *respondent*, if it considers it just to do so and it is satisfied that the relevant procedure has been complied with (that is, the respondent has been duly served (in accordance with rE249 of these Regulations) with the documents required by rE102, rE103, and rE132.3.c (as appropriate)).

**rE184** If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that *respondent*, if it considers it just to do so, subject to compliance with rE234.2 in respect of that *respondent* if the *Disciplinary Tribunal* finds any charge or application proved.

***Application for a fresh hearing***

**rE185** Where the *Disciplinary Tribunal* proceed in the *respondent's* absence, in accordance with rE183 or rE184, the *respondent* may apply to *BTAS* for a *Directions Judge*, appointed by the *President*, to consider an application for a fresh hearing before a new *Disciplinary Tribunal*.

**rE186** The *respondent's* application under rE185 must be supported by a statement setting out the facts and/or circumstances upon which the *respondent* relies in support of his or her application.

**rE187** The *Directions Judge* may grant a new hearing if he or she considers it just to do so and if he or she is satisfied that:

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- .1 the *respondent* submitted his or her application for a new hearing promptly upon becoming aware of the decision of the *Disciplinary Tribunal*; and
- .2 the *respondent* had good reason for not attending the hearing.

***Order of proceedings at a hearing***

**rE188** The order of proceedings at a hearing shall be as set out in these regulations unless the *Disciplinary Tribunal* decides, having considered the interests of justice and fairness to the parties, that the procedure should be varied. The *Disciplinary Tribunal* may then give such directions with regard to the conduct of, and procedure at, the hearing as it considers appropriate.

**rE189** At any time during the hearing when it considers it desirable, the *Disciplinary Tribunal* may retire into private to deliberate.

**rE190** The *Disciplinary Tribunal* shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the *Disciplinary Tribunal* will retire into private session to consider the submissions and shall thereafter announce its determination.

**rE191** After the *Disciplinary Tribunal* has dealt with any submissions or applications under rE190, the Clerk shall read the charge(s) in public.

**rE192** The Clerk shall ask the respondent(s) whether the charge(s) is admitted or denied. The respondent(s) plea to the charge(s) will be entered on the record.

**rE193** Where the *respondent(s)* admit the charges(s), the Chair of the *Disciplinary Tribunal* shall announce the charge(s) proved and the *Disciplinary Tribunal* shall record in writing its finding on the charge(s) and its reasons. The matter shall then continue in accordance with the procedure set out at paragraph rE199 onwards.

**rE194** Where the *respondent(s)* denies the charge(s), the *Bar Standards Board* will present the case against the *respondent(s)*, which may include producing any evidence and calling any witness in person.

**rE195** After the evidence against the *respondent* has been called, the *respondent* shall be entitled to submit that he or she has no case to answer. The *Bar Standards Board* shall be entitled to respond to such a submission. If such a submission is upheld the *Disciplinary Tribunal* shall dismiss the charge(s), either in whole or in part. If the entirety of the case against the *respondent* is not dismissed and some charges remain the proceedings shall continue as set out at rE196 to rE198.

**rE196** The *respondent* shall then be entitled to call any witness, give evidence on his or her own behalf and adduce any other evidence in support of the *respondent's defence*.

**rE197** The *Bar Standards Board* shall be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.

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**rE198** After the *respondent* has called any witness in person and adduced any evidence, the *Bar Standards Board* may address the *Disciplinary Tribunal*, and thereafter the *respondent*.

**The finding**

**rE199** At the end of the hearing, the *Disciplinary Tribunal* must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the *Disciplinary Tribunal*.

**rE200** If the members of the *Disciplinary Tribunal* do not agree on any charge or application, the finding to be recorded on that charge or application must be that of the majority. If the members of the *Disciplinary Tribunal* are equally divided on any charge or application, then, as the burden of proof is on the *Bar Standards Board*, the finding to be recorded on that charge or application must be that which is the most favourable to the *respondent*.

**rE201** The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority. The *Disciplinary Tribunal* is free to reserve its judgment.

**rE202** In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *respondent* about his or her future conduct

**The sentence**

**rE203** If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *respondent*, it may hear evidence of any previous:

- .1 finding of *professional misconduct* by a *Disciplinary Tribunal* or under the determination by consent procedure; or
- .2 disqualification order; or
- .3 finding of a breach of proper professional standards by the *Bar Standards Board* or any other regulator; or
- .4 adverse finding on a charge consisting of a *legal aid complaint*;

made in respect of the *respondent*, or, where the proved *charge(s)* concerns a *BSB authorised body*, in respect of that body or any person employed in the *BSB authorised body* directly implicated by the charges.

**rE204** After hearing any representations by or on behalf of the respondent(s), the *Disciplinary Tribunal* must decide what sentence to impose on a *respondent*, taking into account the sentencing guidance and must record its sentence in writing, together with its reasons.

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**rE205** If the members of the *Disciplinary Tribunal* do not agree on the sentence to be imposed on a *respondent*, the sentence to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sentence to be imposed on a *respondent*, the sentence to be recorded must be that which is the most favourable to the *respondent*.

**rE206** The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunals* decision on sentence and state whether the decision was unanimous or by a majority.

**rE207** Subject to rE208 below:

- .1 a *respondent* against whom a charge of *professional misconduct* has been found proved may be sentenced by the *Disciplinary Tribunal* as follows:
  - .a in the case of *barristers*, in accordance with Annex 1 to these Regulations;
  - .b in the case of a *BSB legal services body*, in accordance with Annex 2 to these Regulations;
  - .c ~~in the case of a licensed body, in accordance with Annex 3 to these Regulations;~~
  - .d in the case of *registered European lawyers*, in accordance with Annex 4 to these Regulations;
  - .e in the case of all other *BSB regulated persons*, in accordance with Annex 5 to these Regulations;
- .2 in the case of a *respondent* who is a *relevant person* in respect of whom the *Disciplinary Tribunal* finds the *disqualification condition* to be established, the *Disciplinary Tribunal* may make a *Disqualification Order* if the *Disciplinary Tribunal* considers that the making of such a *Disqualification Order* is a proportionate sanction and is in the public interest (there being no other available sentence in respect of a *relevant person* who is a *non-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

**rE208** In any case where a charge of *professional misconduct* has been found proved, the *Disciplinary Tribunal* may decide that no further action should be taken against the *respondent*.

**rE209** In any case where a charge of *professional misconduct* has not been found proved, the *Disciplinary Tribunal* may direct that the matter(s) be referred to *Bar Standards Board* for it to consider whether an *administrative sanction* should be imposed in accordance with the provisions of rE37.3 of the *Complaints Regulations*, where:

- .1 The *Disciplinary Tribunal* is satisfied there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by the *respondent*; and

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- .2 The *Disciplinary Tribunal* considers that such referral to the *Bar Standards Board* is proportionate and in the public interest.

**rE210** A three-person panel must not:

- .1 disbar a *barrister* or suspend a *barrister's practising certificate* for a period longer than twelve months; or
- .2 revoke the authorisation or licence ~~(as appropriate)~~ of a *BSB authorised body* or suspend it for a period longer than twelve months; or
- .3 remove a *registered European lawyer* from the *register of European lawyers*; or
- .4 impose a sentence of suspension on any *BSB regulated person* for a prescribed period longer than twelve months; or
- .5 impose a *Disqualification Order* for more than twelve months.

This Regulation does not prevent a three-person panel making an order in accordance with rE211 below.

**rE211** In the event that a three-person panel considers that a case before it merits the imposition on a *respondent* of any of the sentences referred to in rE210 or the three-person panel otherwise considers that the case of a particular *respondent* is complex enough to warrant sentencing by a *five-person* panel:

- .1 the three-person panel must refer the case to a *five-person* panel for it to sentence that *respondent* (but may proceed to sentence any other *respondents* to the proceedings in respect of whom this regulation does not apply); and
- .2 the three-person panel must, in order to help the *five-person* panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *respondents* to the proceedings). The *respondent* cannot challenge the facts found by the three-person panel; and
- .3 the three-person panel must direct within what period of time the sentencing hearing before the *five-person* panel is to be held and make appropriate directions for the parties to provide *the President* with their dates of availability.

**rE212** Following a referral by a three-person panel under rE211, the *five-person* panel must be constituted in accordance with rE140. *The President* must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that *the President* may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably practicable after he or she has fixed the sentencing hearing, *the President* must inform all the parties of that date.

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- rE213** The *respondent* must be informed by *BTAS* as soon as practicable of the names and status (that is, as Chair, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the *five-person* panel. The *respondent* may, when he or she is so informed, give notice to *the President* objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE134 and rE135.
- rE214** If the five-person panel is satisfied that the requirements of rE212 and rE213 have been complied with, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sentence the *defendant*, provided that it complies with rE234.1.
- rE215** If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE212 and rE213 above, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the *five-person* panel may nonetheless sentence the *respondent*, provided that it complies with rE234.2.
- rE216** If the procedure under rE215 has been followed, the *respondent* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel and the procedure for the *respondent's* application shall be as set out at rE185 to rE187 in these Regulations.
- rE217** Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the *Legal Aid Agency* in connection with services provided as part of the Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid) on a *Disciplinary Tribunal* in the cases to which those Sections apply). Accordingly:
- .1 any *Disciplinary Tribunal* which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *respondent* who is a *barrister* may if it thinks fit (and whether or not it sentences the *respondent* in accordance with rE206.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;
  - .2 where a *Disciplinary Tribunal* hears a charge of *professional misconduct* against a *respondent* who is a *barrister* it may (in addition to, or instead of, sentencing that *respondent* in accordance with rE206.1) order that he or she be excluded from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service, or Criminal Defence Service, either temporarily, or for a specified period, if it determines that there is a good reason to exclude him or her arising from:

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- .a his or her conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or
- .b his or her professional conduct generally.

**rE218** Whether or not a *Disciplinary Tribunal* finds any charge or application proved against a *barrister* who is a *pupil supervisor*, if the *Disciplinary Tribunal* considers that the circumstances of the *complaint* are relevant to the *respondent* in his or her capacity as a *pupil supervisor*, it may notify the *respondent's Inn* of those concerns in such manner as it sees fit.

**rE219** If a *barrister* is a member of more than one *Inn*, each *Inn* of which he or she is a member must be mentioned in the sentence imposed on him or her.

***Sentence of suspension from practice or from authorisation or licensing or imposition of conditions***

**rE220** For the purposes of rE222 to rE224:

- .1 The effect of a sentence of suspension for a *BSB authorised individual* is that:
  - .a the *respondent's practising certificate* is *suspended* by the *Bar Standards Board* for the period of the suspension;
  - .b the *respondent* is prohibited from practising as a *barrister*, or holding himself/herself out as being a *barrister* when providing *legal services* or as otherwise being authorised by the *Bar Standards Board* to provide *reserved legal activities* or when describing himself/herself as a *barrister* in providing services other than *legal services* (whether or not for reward) unless he or she discloses the suspension.
- .2 The effect of a sentence of suspension for a *registered European lawyer* shall mean that the *respondent* is *suspended* from the *register of European lawyers* maintained by the *Bar Standards Board* and is, for so long as he or she remains *suspended*:
  - .a prohibited from holding himself/herself out as registered with the *Bar Standards Board*; and
  - .b not authorised to *practise*.
- .3 The effect of a sentence of suspension for a *BSB authorised body* shall mean that the body's authorisation or licence is *suspended* for the period of the suspension such that the *respondent* is not an *authorised person* for that period;
- .4 The effect of a sentence on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be



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In addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook*.

**rE221** In exceptional circumstances, where the total suspension is three months or less, the Tribunal may postpone the commencement of the suspension for a period as it deems fit.

**rE222** The period for which a sentence of suspension from *practice* is expressed to run may be:

- .1 a fixed period; or
- .2 until the *respondent* has complied with any conditions specified in the order imposing the sentence of suspension.

**rE223** Conditions may be imposed on a *barrister's practising certificate* or on the authorisation or licence of a *BSB authorised body*

- .1 without its being *suspended*; or
- .2 to take effect on a *barrister's practising certificate* or on the authorisation or licence of a *BSB authorised body* when a period of suspension ends.

**rE224** Conditions may (depending on the circumstances) include:

- .1 conditions limiting the scope of the *respondent's practice* (after the end of any suspension, if relevant ) to such part as the *Disciplinary Tribunal* may determine, either indefinitely or for a defined period; and/or
- .2 imposing requirements that the *respondent*, or in the case of a *BSB authorised body*, its managers or employees, undergo such further training as the *Disciplinary Tribunal* may determine; and/or
- .3 prohibiting the *respondent* from accepting or carrying out any public access instructions; and/or
- .4 such other matters as the *Disciplinary Tribunal* may consider appropriate for the purpose of protecting the public and/or preventing a repetition of the conduct in question.

***Suspension/withdrawal of practising rights pending the hearing of any appeal***

**rE225** rE226 to rE233 below apply to any *respondent* who:

- .1 is a *barrister*, who has been sentenced to be disbarred or to be *suspended* or to be prohibited from accepting or carrying out any public access work or *instructions* for more than twelve months;
- .2 is a *BSB authorised individual*, who has been sentenced to be *disqualified* or to be *suspended* for more than twelve months;

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- .3 is a *BSB authorised body*, which has been sentenced to have its authorisation or licence-revoked or *suspended* for more than twelve months; or
- .4 is a *BSB authorised person*, who has been sentenced to have conditions placed on his or her *practising certificate*, authorisation or licence (as appropriate) prohibiting him or her from accepting any *public access instructions* or *conducting any litigation* or for more than twelve months.
- rE226** Where rE225 applies, the *Disciplinary Tribunal* must seek representations from the *respondent* and from the *Bar Standards Board* on the appropriateness or otherwise of taking action under rE227 below.
- rE227** Having heard any representations under rE225 the *Disciplinary Tribunal* must (unless in the circumstances of the case it appears to the *Disciplinary Tribunal* to be inappropriate to do so), either:
- .1 in relation to rE225.1 to rE225.3, require the *respondent* to suspend his or her *practice* immediately, in which case the *Bar Standards Board* must suspend that *respondent's practising certificate* with immediate effect; or
- .2 in relation to rE225.4 decide that the condition prohibiting the *respondent* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or
- .3 where the *respondent* has been sentenced to be *disbarred* or to be *suspended*, and where that *respondent* does not currently hold a *practising certificate*, require the *Bar Standards Board* not to issue any *practising certificate* to him or her.
- rE228** If the *Disciplinary Tribunal* decides that it would be inappropriate to require immediate *suspension* or immediate imposition of conditions (as the case may be) it may nonetheless require the *respondent* to suspend his or her *practice* or to impose conditions, from such date as the *Disciplinary Tribunal* may specify.
- rE229** Where the *respondent* is permitted to continue to practise for any period before being *suspended* under rE228 the *Disciplinary Tribunal* may require the *Bar Standards Board* to impose such terms on the *respondent's practice* as the *Disciplinary Tribunal* deems necessary to protect *the public* until the suspension comes into effect.
- rE230** Where an order is made in respect of a *respondent* under rE225 and that *respondent* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, he may apply to *the President* in writing for it to be varied.

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**rE231** When *the President* receives an application made under rE230, he must refer it to the Chair and to one of the *lay members* of the *Disciplinary Tribunal* which originally made the order to make a decision on the application.

**rE232** Any application made under rE230 must be sent by the applicant, on the day that it is made, to the *Bar Standards Board*. The *Bar Standards Board* may make such representations as they think fit on that application to those to whom the application has been referred by the *President*.

**rE233** The persons to whom an application made under rE230 above is referred may vary or confirm the order in relation to which the application has been made.

***Wording of the sentence when defendant not present***

**rE234** If a *respondent* has not been present throughout the proceedings, the sentence in respect of that *respondent* must include one or more of the following statements:

- .1 if the relevant procedure under rE183 has been complied with, that the finding and sentence were made in the absence of the *respondent* in accordance with rE183;
- .2 if the procedure under rE184 has been complied with, that the finding and the sentence were made in the absence of the *respondent* and that he or she has the right to apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*;
- .3 if the relevant procedure under rE213 has been complied with, that the sentence was made in the absence of the *respondent* in accordance with rE214;
- .4 if the procedure under rE215 has been complied with, that the sentence was made in the absence of the *respondent* and that he or she may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

***Report of Disciplinary Tribunal Decisions***

**rE235** As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the Chair must prepare a report in writing of the finding(s) on the charge(s) of *professional misconduct* and/or on any applications, and the reasons for those findings and the sentence. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the *Disciplinary Tribunal*, appear to require investigation or comment. He or she must send copies of the report to:

- .1 the *respondent*; and
- .2 the Director General of the *Bar Standards Board*; and

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- .3 the Chair of the *Bar Standards Board*; and
- .4 where a *barrister* has been disbarred, the *respondent's Inn of Call* and of any other Inns of which he or she is a member; and
- .5 where a *HOLP* or *HOFA* or *manager or employee of a licensed body* has been disqualified, the *LSB*; and
- .6 in cases where one or more charges of professional misconduct have been found proved:
  - .a the respondent's head of chambers, *HOLP*, or employer (as appropriate); and
  - .b in the case of a registered European lawyer, his or her home professional body; and
- .7 in cases where one or more charges of *professional misconduct* have been found proved and any such charge constitutes, or arises out of, a *legal aid complaint*, and/or the sentence includes an order under rE217, the *Legal Aid Agency*; and
- .8 any other person or bodies that *the President* deems, in his or her absolute discretion, to be appropriate, taking into account the circumstances.

**Appeals**

**rE236** In cases where one or more charges of *professional misconduct* have been proved, and/or a *disqualification order* has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

- .1 by the *respondent* against *conviction* and/or sentence;
- .2 with the consent of the Chair of the *Bar Standards Board* or the Chair of the *PCC*, by the *Bar Standards Board* against sentence.

**rE237** In any case where any charge of *professional misconduct* or application to *disqualify* has been dismissed, the *Bar Standards Board* may (with the consent of the Chair of the *Bar Standards Board* or of the Chair of the *PCC*) lodge an appeal with the High Court, in accordance with the Civil Procedure Rules.

**rE238** Where a *respondent* lodges an appeal against a disbarment or *disqualification order* or the revocation of a ~~license~~ or authorisation, he or she may at the same time lodge with the High Court an appeal against any requirement imposed under rE227 to rE229 as appropriate.

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**Action to be taken by the Inn (in circumstances where a barrister has been sentenced to be disbarred)**

**rE239** The Treasurer of the respondent's *Inn of Call* must not fewer than 21 days, or more than 35 days, after the end of the *Disciplinary Tribunal's* proceedings (or, where the respondent has given notice of appeal to High Court against the finding and/or sentence, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the sentence of disbarment decided on by the *Disciplinary Tribunal*, and take such further action as may be required to carry the sentence into effect. The Treasurer must inform the *persons* specified in rE235 of the date on which the sentence is to take effect, (which must be no later than two working days after the date when that sentence is pronounced).

**rE240** In any case in which the *respondent* has given notice of appeal to the High Court against the finding and/or sentence of the *Disciplinary Tribunal* on the charges of *professional misconduct*, no action referred to in rE239 may be taken until the appeal has been heard by High Court, or otherwise disposed of without a hearing.

**Action to be taken by the Bar Council/Bar Standards Board**

**rE241** Subject to rE242, the *Bar Council/Bar Standards Board* must take the appropriate steps to put the finding and/or sentence of the *Disciplinary Tribunal* into effect, except that in any case in which a *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sentence of the *Disciplinary Tribunal* on the charges of *professional misconduct* or *disqualification order*, no action may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

**rE242** Where the finding and/or sentence of the *Disciplinary Tribunal* is that the *BSB authorised person* should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE226 the actions of the *Bar Council/Bar Standards Board* must not be deferred even if the *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sentence of the *Disciplinary Tribunal* on the charges of *professional misconduct*.

**Publication of finding and sentence**

**rE243** The following procedures apply to the publication of the finding and sentence of a *Disciplinary Tribunal*:

.1 *BTAS*:

- .a must, where charges are proved, publish the finding and sentence of the *Disciplinary Tribunal* on its website within fourteen days of the date when the *Disciplinary Tribunal's* proceedings end, unless, on application by the

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*respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the finding and/or sentence; and

- .b must, where charges have been dismissed, including following an application under rE127.2, not publish the finding on its website, unless the *respondent* so requests; and
  - .c may, where charges have been dismissed, publish the decision of the *Disciplinary Tribunal* on their websites at any time, provided that in this case all details of the relevant parties involved in the hearing are anonymised.
- .2 The *Bar Standards Board* is free to publish the findings and sentence of a *Disciplinary Tribunal* on its website in accordance with rE243.1.

**Costs**

**rE244** A *Disciplinary Tribunal* may make such orders for costs, whether against or in favour of a *respondent*, as it shall think fit.

**rE245** A party who wishes to make an application for costs must, no later than 24 hours before the commencement of the hearing, serve upon any other party and file with *BTAS* a schedule setting out the costs he or she seeks.

**rE246** Where it exercises its discretion to make an Order for costs, a *Disciplinary Tribunal* must either itself decide the amount of such costs or direct *BTAS* to appoint a suitably qualified *person* to do so on its behalf.

**rE247** Any costs ordered to be paid by a *respondent* must be paid to the *Bar Standards Board*.

**rE248** All costs incurred by the *Bar Standards Board* preparatory to the hearing before the *Disciplinary Tribunal* must be borne by the *Bar Standards Board*.

**Service of documents**

**rE249** Any documents required to be served on a *respondent* in connection with proceedings under these Regulations shall be deemed to have been validly served:

- .1 If sent by guaranteed delivery post or other guaranteed or acknowledged delivery, or receipted hand delivery to:

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- .a in the case of a *BSB authorised individual*, the address notified by him or her in accordance with the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it) as his or her *practising address*,
- .b in the case of a *BSB authorised body*, its registered office address or its principal office; or
- .c in the case of a *BSB regulated person* or *non-authorised individual* acting as an ~~manager~~ or *employee* of a *BSB authorised body*, the address provided by the *BSB authorised body* as his or her home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified in accordance with to the requirements of Part 2 of this *Handbook*; or
- .d in either case, an address to which the *respondent* has asked in writing that such documents be sent; or
- .e in the absence of any of the above, to his or her last known address; or
- .f in the case of a *BSB regulated person* or *non-authorised individual* acting as an ~~manager~~ or *employee* of a *BSB authorised body*, the last known address of the relevant *BSB authorised body*,

and such service shall be deemed to have been made on the second working day after the date of posting or on the next working day after receipted hand delivery;

- .2 If served by e-mail, where:
  - .a the *respondent's* e-mail address is known to the *Bar Standards Board*; and
  - .b the *respondent* has asked for or agreed to service by e-mail, or it is not possible to serve by other means;

and such service shall be deemed to have been made on the second working day after the date the e-mail is sent;

- .3 If actually served;
- .4 If served in any way which may be directed by the Directions Judge or the Chair of the *Disciplinary Tribunal*.

**rE250** For the purpose of rE249.1, "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *respondent* or by a relevant representative of the *respondent* (including, for example, his or her Clerk, a *manager* or *employee* of the *BSB authorised body* at which he or she works).

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**Delegation**

- rE251** The powers and functions conferred by these Regulations on a *Directions Judge* may be exercised by any other *Judge* or Queen's Counsel nominated by *the President*, including the *Judge* or Queen's Counsel designated in the *Convening Order* as Chair of the *Disciplinary Tribunal* appointed to hear and determine the charge or charges against the *respondent*, if the *Directions Judge* is unable to act due to absence, or for any other reason.
- rE252** Any duty or function or step which, under these Regulations, required to be discharged or carried out by *the President* may, if he or she is unable to act due to absence or to any other reason, be discharged or carried out by the Registrar of *BTAS*, the Chair of the *Tribunal*, or by any other *person* nominated in writing by *the President* for any specific purpose.
- rE253** Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* may be done or exercised by, or given to, any person authorised by the *President*, either prospectively or retrospectively and either generally or for a particular purpose. Any authorisations given by the *President* under this regulation must be in writing.

**Exclusion from providing representation funded by the Legal Aid Agency - Application for termination**

- rE254** A *respondent* who, under rE217, has been excluded from legal aid work in accordance with Section 42 of the Administration of Justice Act 1985 may apply for an order ending his or her exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid in accordance with rE256 below.
- rE255** Any such application must be in writing and addressed to the Chair of the *Disciplinary Tribunal* that made the original order.
- rE256** The Chair of the *Disciplinary Tribunal* may dismiss the application, or may decide that the *respondent's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date.
- rE257** The Chair of the *Disciplinary Tribunal* must notify his or her decision in writing to all those *persons* who received copies of the report of the *Disciplinary Tribunal* under rE235.
- rE258** The *Disciplinary Tribunal* may make such order for costs in relation to an application under rE244, as it thinks fit and rE244 to rE248 apply with all necessary modifications.



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***Interpretation***

**rE259** In this Part 5 Section B1 of the Handbook, all italicised terms shall be interpreted in accordance with the definitions in Part 6.



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**B3 Annexes to the *Disciplinary Tribunals* Regulations 2015**

**ANNEX 1 — SENTENCING POWERS AGAINST BARRISTERS**

Where a charge of *professional misconduct* has been found proved against a *barrister*<sup>1</sup> by a *Disciplinary Tribunal*, the *Disciplinary Tribunal* may decide to:

1. order that he or she be disbarred;
2. order that his or her *practising certificate* be suspended for a prescribed period;
3. order that his or her *practising certificate* should not be renewed;
4. order that conditions be imposed on his or her *practising certificate*;
5. order that he or she be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;
6. order that his or her authorisation to *conduct litigation* be removed or suspended, or be subject to conditions imposed;
7. order him or her to pay a fine of up to £50,000 to the Bar Standards Board (~~or up to £50,000,000 if the charges relate to his or her time as an employee or manager of a licensed body~~);
8. order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
9. reprimanded him or her;
10. give him or her advice about his or her future conduct;
11. order him or her to attend on a nominated *person* to be reprimanded; or
12. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

<sup>1</sup> If an application to disqualify the *Barrister* from acting as *HOLP*, manager or employee of an *authorised person* is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify the *Barrister* in accordance with the provisions of Annex 5.

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**ANNEX 2 — SENTENCING POWERS AGAINST BSB LEGAL SERVICES BODIES**

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *BSB legal services body*, the *Disciplinary Tribunal* may decide to:

1. order that its authorisation to practise as a *BSB legal services body* be removed;
2. order that conditions be imposed on its authorisation to practise as a *BSB legal services body*;
3. order that its authorisation to *practise* for a prescribed period be suspended (either unconditionally or subject to conditions);
4. order that it, as a *licensed body*, be re-classified (either unconditionally or with conditions imposed on its licence to practise as a *licensed body*);
5. order that its authorisation to *conduct litigation* be withdrawn or suspended, or be subject to conditions on it;
6. order it to pay a fine of up to £250,000 to the *Bar Standards Board*;
7. order that its *managers* or *employees* complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
8. reprimanded it;
9. give it advice about its future conduct; or
10. order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

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**~~ANNEX 3 – SENTENCING POWERS AGAINST LICENSED BODIES~~**

~~If a Disciplinary Tribunal finds a charge of professional misconduct proved, against a licensed body the Disciplinary Tribunal may decide to:-~~

- ~~1. — revoke its licence to practise revoked;~~
- ~~2. — suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);~~
- ~~3. — impose conditions on its licence to practise;~~
- ~~4. — withdraw or suspend its *right to conduct litigation* or to impose conditions on it;~~
- ~~5. — order it to pay a fine of up to £250,000,000 to the *Bar Standards Board*;~~
- ~~6. — order it to ensure that its *managers or employees* complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *supervision team*;~~
- ~~7. — reprimand it;~~
- ~~8. — give advice to it about its future conduct; or~~
- ~~9. — order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.~~

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**ANNEX 4 — SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS**

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *registered European lawyer*, the *Disciplinary Tribunal* may decide to:

1. order the he or she be removed from the *register of European lawyers*;
2. order that he or she be suspended from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);
3. order a condition to be imposed on him or her prohibiting him or her, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;
4. order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to his or her time as an *employee* or *manager* of a *licensed body*);
5. order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
6. reprimanded him or her;
7. give him or her advice about his or her future conduct;
8. order him or her to attend on a nominated *person* to be reprimanded; or
9. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

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**ANNEX 5 — SENTENCING POWERS AGAINST ALL OTHER *BSB REGULATED PERSONS***

if a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against any other *BSB regulated person*<sup>2</sup>, the *Disciplinary Tribunal* may decide to:

1. order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an *employee* or *manager* of a *licensed body*);
2. reprimanded him or her;
3. give him or her advice about his or her future conduct;
4. order him or her to attend on a nominated *person* to be reprimanded;
5. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

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<sup>2</sup> If an application to disqualify is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify a *BSB regulated person* in accordance with these Regulations.

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**ANNEX 6 - STANDARD DIRECTIONS**

The *standard directions* as referred to in rE103.3 are as follows:

1. The hearing will be in public;
2. This timetable will commence on the second working day after filing of these directions with the *BTAS* and all time limits will run from that date, unless stated otherwise.
3. Within 28 days, ie by [date]:
  - a. all parties will provide to *BTAS* with dates when they are available for the substantive hearing in the period between [month/year] and [month/year], failing which *BTAS* may fix the hearing without reference to the availability of any party;
  - b. the *respondent* will specify:
    - i. whether he or she admits the charges;
    - ii. if not, which areas of fact and/or law are in dispute.
4. Within 42 days, ie by [date], the *respondent must* provide a copy of the documents and a list of witnesses, on which and on whom he or she intends to rely, and copies of any witness statements on which he or she intends to rely. The BSB is to provide copies of any witness statements on which it intends to rely within 42 days, i.e. by [date], if required;
5. Within 56 days, ie by [date], both the *Bar Standards Board* and the *respondent must*:
  - a. serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
  - b. provide a schedule setting out details of the witnesses he or she intends to call and a time estimate for the evidence of each of his or her witnesses.
6. At least fourteen days before the date fixed for the substantive hearing:
  - a. the *respondent* will provide to *BTAS* [four/six] copies of any defence bundle already provided under direction (5) for circulation to the *Disciplinary Tribunal* members, and at the same time send a copy to the *Bar Standards Board*;
  - b. where the *respondent* has indicated an intention to admit the charge(s), the *respondent* will provide to *BTAS* [four/six] copies of any financial documents or



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- other documentation the *respondent* wishes to rely on in mitigation, in the event that the charge(s) is found proved;
- c. the *Bar Standards Board* will provide to *BTAS* [four/six] copies of any bundle of evidence as originally served under rE103 for circulation to the *Disciplinary Tribunal* members;
7. If either party seeks reasonable adjustments, to enable a person with a disability to participate in the hearing, or measures under rE179 to rE184, they must notify *BTAS* as soon as possible and no later than 21 days before the date fixed for the substantive hearing.
8. The estimated duration of the hearing is [number] days/hours;
9. Any skeleton argument to be relied on at the hearing be filed with *BTAS* and served on the other parties at least 48 hours before the time fixed for the hearing.
10. There is liberty to apply to the *Directions Judge* for further directions.



## Costs of Authorisation of a Bar Standards Board Alternative Business Structure

### Status:

1. For approval.

### Executive Summary

2. The BSB submitted an application to the Legal Services Board (“LSB”) in April 2015 which, if approved, will permit it to license, or authorise, bodies where there is non-lawyer management of ownership-type interest as provided for in the Legal Services Act 2007. The types of Alternative Business Structure (ABS) that the BSB envisages authorising are described in the Entity Regulation Policy Statement.
3. The consultation, attached at Annex 1, sought views on the proposed fee structure for the authorisation of BSB ABS. It is aligned with the wider consultation the BSB is currently conducting on Fees and Charges. A summary of the responses received is provided within the body of the paper.

### Recommendations

4. Members of the Board are asked to:
  - a. **Note** the consultation and responses;
  - b. **Approve** the proposed fee structure.

### Consultation Results

5. A consultation was issued on 9 December 2015 inviting comments on the proposed fee structure for entity regulation. It closed on 15 January 2016.
6. The single response was from the General Council of the Bar of England and Wales.
7. In summary the Bar Council takes the view that:
  - a. It is right to operate ABS on a full-cost recovery basis with those deriving the benefit of regulation through the setting up of an ABS covering the costs of regulation;
  - b. A “sliding scale” where fees are higher for larger ABS is appropriate as this ensures proportionate fees are paid for each application;
  - c. The rates need to be competitive with those charged by other regulators for ABS authorisation;
  - d. The recurring fee for annual authorisation should be set taking into the consideration annual turnover of the ABS. This approach is consistent with the SRA approach.
8. By way of clarification, the BSB’s Entity Regulation and ABS Licensing regimes are not intended to duplicate or compete with those of other approved regulators. Our stated intention is to influence the market by acting as an alternative niche regulator for bodies that are relatively low risk and straightforward.
9. That said, we believe the proposed fee levels are competitive and set at a level which would not deter applicants or limit the extent to which the BSB offers a meaningful alternative to other approved regulators.

## Part 1 – Public

10. For example, the Solicitors Regulation Authority's ("SRA") fee calculator indicates that a 4 person ABS with a turnover of £200,000 and not holding client monies would incur an annual fee of £2,566 which covers individual practising fees and an amount (£128) for compensation fund contribution. This can be compared with the BSB's annual fee for a 2-5 person ABS of £1,725. The SRA's fee calculator can be found at <http://www.sra.org.uk/mysra/fees/fee-calculator-2014-2015.page>
11. The response also notes that the fees for ABS are considerably higher than those charged for lawyer only entities. Current entity fees are based on a full cost recovery model with anticipated take-up significantly higher than that realized. The ABS fees reflect an evidence-based approach to the estimated number of applications.
12. Given the actual level of take-up since launch (40 to date), the BSB will review the entity regulation fees in 2016.

**ABS Proposed Fees – Updates**

13. We were advised during the consultation period by the Ministry of Justice that the anticipated average costs per appeal to the First Tier Tribunal billed to the BSB have been revised downwards from £3,500 to £2,650 on the assumption that 90% of cases would be decided on the papers. The BSB will pay for the first 10 appeals along with appropriate start up costs then recover these in entity fees over time. In addition to billing the BSB for these appeals, the First Tier Tribunal will also charge the applicant an administration fee of £100 for appeals decided on the papers and an additional £500 where an oral hearing is required. This is a slight change from the proposal in the consultation, which envisaged a £500 admin fee being collected by the BSB in each case.
14. The impact of these reduced costs is that the proposed ABS fees are lower than those in the consultation. The revised / adjusted ABS fee structure is set out in the table below.

| <b>ABS Category</b>    | <b>Application Fee</b> | <b>Authorisation Fee</b> | <b>Total Costs of Authorisation</b> | <b>Annual Fee (£)</b> |
|------------------------|------------------------|--------------------------|-------------------------------------|-----------------------|
| <b>2-5 person ABS</b>  | 1,460                  | 1,190                    | 2,650                               | 1,725                 |
| <b>6-15 person ABS</b> | 2,475                  | 2,025                    | 4,500                               | 2,925                 |
| <b>15+ person ABS</b>  | 3,550                  | 2,900                    | 6,450                               | 4,195                 |

**Publicity**

15. The consultation was publicly available from 9 December 2015 to 15 January 2016.
16. The final approved fee structure will be published when the Board of the LSB issues its recommendation as to whether the BSB should be designated as a licensing authority and the timetable for the launch of the BSB ABS regime has been agreed.

**Annex**

Annex 1 – ABS Fee and Charges consultation.

**Lead responsibility:**

Clíodhna Judge / Oliver Hanmer



**Consultation on the cost of licensing of a Bar Standards Board regulated Alternative Business Structure (“ABS”)  
December 2015**

**Introduction**

1. The Bar Standards Board (“BSB”) submitted an application to the Legal Services Board (“LSB”) in April 2015 to permit the BSB to license ABS. It was made with a view to extending our entity regulation regime launched in April 2015.
2. The application is made in accordance with Part 1 of Schedule 10 of the Legal Services Act 2007 (“LSA”) which enables the Lord Chancellor, on the recommendation of the LSB, to make orders designating bodies as licensing authorities. It is available on the LSB’s website through the following link [http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/current\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_designation_applications.htm)
3. If the application is approved, the BSB will be able to license, or authorise, bodies where there is non-lawyer management or ownership-type interest as provided for in the LSA. The types of ABS we envisage licensing are described in the policy statement attached at Annex A.
4. This consultation invites comments on the proposed fee structure for the licensing of ABS by the BSB.

**The approach to licensing of ABS**

5. The BSB’s proposal to become a licensor of ABS is part of a wider programme of reform. The first step was a major revision of the Handbook, shifting focus to outcomes and removing unnecessary restrictions whilst retaining the rules necessary to maintain appropriate standards. The next step was the introduction of non-ABS entities in April 2015 which liberalised the business models and structures through which barristers and other lawyers could provide legal services. The application to become a licensing authority for ABS completes this programme of reform to further facilitate innovation in service delivery.

**The approach to fees**

6. The infrastructure established to authorise and supervise ABS builds upon the BSB’s existing systems and resources, most particularly those already in place for entities. However, the extension of the scope of entity regulation to include ABS licensing has increased our overall operating costs.
7. The BSB intends to operate ABS regulation on a full cost recovery basis. This is to ensure that the entire practising Bar does not subsidise, through the payment of the practising certificate fee, those barristers, other lawyers and lay individuals who wish to provide legal services through an ABS.

8. Based on recent quantitative and qualitative research, we estimate the number of applications to total 60 over the next 3 years, ie 20 ABS applications per annum x 3 years. The level of fees has been based on these estimates. As with entity regulation, we have divided the fees into categories to operate a tiered fee structure. The larger the ABS the higher the fee. This reflects the resource required to assess an application and, if authorised, supervise an ABS.

#### What the fees will cover

9. The BSB has undertaken detailed financial and resource planning to establish what additional costs will be incurred to license ABS. We have also considered our experience with entity regulation. Below is a high level break down of the anticipated annual operational costs.

| Category          | Cost (£)      |
|-------------------|---------------|
| Direct Costs      | 26,000        |
| Investment Costs  | 9,000         |
| Executive Support | 9,500         |
| Central Services  | 13,000        |
| <b>TOTAL</b>      | <b>57,500</b> |

10. A more detailed description of each of the above cost categories is set out below.

#### Direct Costs

11. The BSB's Supervision Department currently manages the authorisation and subsequent supervision of entities and will similarly manage ABS licensing activities. Whilst all staff have experience of entity regulation, there will be specific resources dedicated to ABS related activities. The figure above reflects the amount of staff time (across a range of levels of seniority) involved in considering applications, taking authorisation decisions and supervising ABS. It also includes an amount covering the cost of an appeal to the First Tier Tribunal based on an estimated one appeal per 20 applications.

#### Investment Costs

12. The total costs of IT development and legal advice relating to the licensing of ABS have been allocated over a 3 year period in line with the full operational cost recovery approach. The figure above reflects the annual allocated amount. The amount also reflects the set-up costs of the First Tier Tribunal, allocated over the same period.

#### Executive support

13. When considering full operational cost recovery, in addition to the cost of resourcing our licensing and supervision functions, a proportion of the total cost of executive support (including Board and Director General input) attributable to ABS regulation needs to be taken into account.

#### Central services

14. This category of costs relates to the corporate services provided to the BSB in relation to HR, IT and Finance and includes a percentage of the costs of the premises.

**The fee structure**

15. The BSB proposes that the fee structure will be separated into three elements reflecting the approach to entity regulation:
- An application fee – payable by all applicants;
  - An authorisation fee – payable by those who have been successful in their application and wish to be authorised by the BSB. The fee will cover the cost of regulating the ABS in its first year of authorisation;
  - An annual fee – payable by those authorised ABS who wish to retain their authorisation. This fee covers a review of the ABS and the on-going cost of supervision.
16. The table below sets out the proposed fee structure using the estimated number of applicants in the table at paragraph 8.

| <b>ABS Category</b>    | <b>Application Fee</b> | <b>Authorisation Fee</b> | <b>Total Costs of Authorisation</b> | <b>Annual Fee (£)</b> |
|------------------------|------------------------|--------------------------|-------------------------------------|-----------------------|
| <b>2-5 person ABS</b>  | 1,485                  | 1,215                    | 2,700                               | 1,755                 |
| <b>6-15 person ABS</b> | 2,530                  | 2,070                    | 4,600                               | 2,990                 |
| <b>15+ person ABS</b>  | 3,575                  | 2,925                    | 6,500                               | 4,225                 |

17. For the purposes of determining the category, a “person” is an authorised person / individual as defined within the BSB Handbook.
18. The fees are based on the ABS size to ensure that the operational costs of authorisation and supervision are borne proportionately by those who require the greatest level of BSB resources.

**Other costs**

19. In addition to the fees listed above, we are likely to carry out additional checks to establish certain things about the owners or managers of a proposed ABS. Such checks will include confirmation of identity and whether there are any criminal or adverse findings on record for them. The costs of these checks will be passed to the applicant.
20. Should an ABS wish to conduct litigation it will need to be authorised to do so. An ABS wishing to be authorised to conduct litigation will need to pay an additional fee of £90 (which is the same fee as for individual barristers seeking authorisation to conduct litigation).
21. The BSB has put in place staff with a wide range of skills and experience to consider applications for authorisation. However there may be instances, if an ABS application is particularly complex or unusual, that external advice will be required. The applicant will bear the cost of this external expertise. In all cases, before commissioning any external assistance, we will discuss doing so with the applicant.
22. Should an applicant decide that they wish to take an appeal to the First Tier Tribunal against our decision to refuse to authorise, an administration charge of £500 will be payable by them towards the cost of the hearing.

23. As with entity regulation fees, all ABS fees will be reviewed annually as part of the BSB's budgeting process. As the fees are based on the estimated numbers in the table at paragraph 8, it will be important to consider the actual level of take up.

#### **Annual fee process**

24. In order to aid administration, it is proposed that the annual fee will be charged in April of every year, irrespective of the point in the preceding period that the ABS is authorised. This reflects the approach to entity regulation and the first annual is scheduled for March / April 2016.

#### **Practising Certificate fees**

25. Lawyers and other regulated persons will be required to pay practising certificate fees in addition to any fees associated with licensing as an ABS.

#### **Questions**

**Do you have any comments on the BSB's proposed approach to ABS fees?**

**In particular, do you have any views on the apportioning of fees between application, authorisation and annual fees?**

#### **Response to consultation**

26. Responses to the consultation should be sent to [EntityRegulation@BarStandardsBoard.org.uk](mailto:EntityRegulation@BarStandardsBoard.org.uk).
27. The deadline to respond is midnight Sunday, 10 January 2016.



## Education & Training: Annual Report to the Board for 2015

### Status

1. To **note**.

### Executive Summary

2. The Education & Training Committee has had delegated oversight of all regulatory activity relating to education & training for the Bar.
3. This is a report on the work of the Committee since it last reported to the Board, in January 2015. The Committee has met eight times in 2015, including special meetings in January and March.
4. This has been a year of continued developmental activity, as the first products of the Future Bar Training programme have come to fruition. Achievements during this period include:
  - Production of the Professional Statement, following extensive consultation;
  - Publication of a major consultation on the future of training for the Bar, encompassing the academic, vocational and professional stages of training;
  - Completion of a full analysis of the Bar Course Aptitude Test after its first full year of operation;
  - Progress in the development of reforms to CPD regulation, including the delivery of a pilot scheme and publication of a consultation on the delivery of the scheme.
  - Delivery of the first full year of a substantially revised CPD accreditation scheme, with a focus on quality of delivery by course providers, rather than accreditation of individual courses
  - A special cycle of monitoring for BPTC course providers in which every provider has been visited
  - Production and publication of an extensive set of statistical information on the BPTC
5. The staff team has continued to evolve, with reassessment of the capabilities required in a number of roles to support changing ways of working.
6. The committee will have priorities in 2016 and beyond to oversee key decisions on the approach to future regulation of training and its implementation.

### Recommendation

7. The Board is requested to **note** the report.

### Comment

#### Membership for 2015

##### *Members*

Professor Andrew Sanders (Chair, Board Member)  
 Nerys Jefford QC (Vice Chair, Barrister)  
 Dr Stuart Weinstein (Vice Chair)  
 Emily Windsor (Vice Chair, Barrister)

Tope Adeyemi (Barrister)  
Richard Davies  
David Fleming  
Andrew Lyons (Barrister)  
Benjamin Wood (Barrister)  
Dr Anne Wright (Board Member)  
Prof Paul Kohler  
Justine Davidge (Barrister, Board Member)  
Rolande Anderson (Board Member, appointed September 2014)

*Non-voting Attendees*

Robin Field-Smith (Equality and Diversity Committee Representative)

8. The Pupillage Subcommittee, which has acted strictly in an advisory capacity following its reconstitution in 2014, has been chaired by Justine Davidge with the following membership:
  - Andrew Lyons (Barrister)
  - Kristian Garsed (Barrister)
  - Jonathan McNae (Barrister)
9. The BPTC Subcommittee has been delegated oversight of all matters related to the Bar Professional Training Course (BPTC) and Bar Transfer Test (BTT) and has been chaired by Emily Windsor, with the following membership:
  - Ben Wood (Barrister)
  - Dr James Lee
  - Tim Godfrey (Barrister)
  - Joanna Robinson
  - Rebecca Foulkes (Barrister)
  - Samantha Pullin (Barrister)
  - David Fleming
  - Richard Davies
10. Both subcommittees were disbanded at the end of 2015 in accordance with wider governance reform at the BSB.

Future Bar Training

11. A Programme Board was constituted in September 2014 to oversee delivery of a change programme for training regulation, chaired by Prof Andrew Sanders. The Programme Board reports to the Education & Training Committee and met seven times in 2015.
12. A Change Manager (Tim Keeling) was appointed in July 2014 to deliver the change programme, supported by a temporary Legal and Policy Assistant, Maya Chopra, who left at the end of her contract in July 2015. A successor was recruited at the end of 2015 to support the next stage of policy development.
13. Detailed planning of the agreed changes to CPD has progressed, including the delivery of a pilot scheme and formal consultation. Further details are set out in the relevant section below.

14. The Professional Statement was published in October after extensive consultation. Work has started on development of the Threshold Standards that will support the Professional Statement and provide a key point of reference for the designers of future training provision.
15. The BPTC Key Statistics publication was issued at the end of November, reflecting substantial progress in the BSB's data management and analysis capability. The report was well received and will be updated in spring 2016.
16. We published a substantial consultation on our future approach to training regulation in July. This is the first time in a number of years that we have invited such wide contributions to thinking on the development of pre-qualification training regulation, and the first time we have done so in our independent regulatory role.

#### Academic requirements



17. The Director and Qualification Regulations Manager contributed to a working party established to revise the Quality Assurance Agency (QAA) Law Benchmark Statement, which was published in the summer of 2015.

#### *Governance and staffing*

18. Management of the Qualifying Law Degree / Graduate Diploma in Law "Joint Statement" requirements and course accreditation is undertaken by the SRA on behalf of both regulators, with referral of queries that are not addressed by the standard guidelines to the Qualification Regulations Manager or Director.

#### *Delivery of the work plan*

19. The following priorities were established for the Academic Stage in 2015:

|  |   |  |
|--|---|--|
| Complete the policy review through the Post LETR programme and implementing as appropriate |  | Policy options were published in a wider consultation on future pathways for training, in July 2015                      |
| Participate in the completing stages of the review of the QAA Law Benchmark Statement      |  | The Law Benchmark Statement was published in 2015, with the role of regulators clearly delineated throughout the process |

20. Priorities for 2016 will be to:
  - Establish the regulatory framework within which future vocational training will be set, and make progress thereafter with detailed planning for implementation of initial changes affecting students in 2017/18.

Vocational training and assessment*Governance*

21. Oversight of curriculum and quality assurance for the Vocational Stage of training, including the Bar Transfer Test (BTT), has been delegated to the BPTC Sub-Committee until the end of 2015.
22. The Centralised Examinations Board oversees the delivery of assessments in the three knowledge area subjects of the BPTC, and the Board has reported through its Chair to the Education & Training Committee. In future, the Committee will continue to set policy but governance changes will result in the Examination Board reporting elsewhere.

*Staffing*

23. Marion Huckle (Education Manager) left in April 2015. Dr Victoria Stec, who had been appointed as a temporary Education Manager in February 2015 took on the role in an acting capacity, and subsequently accepted the position of Head of Training Supervision in August 2015.
24. Sahib Marwaha (Legal Education Officer) left in February 2015. Poonam Sharma (Vocational Training Administrator) was promoted to Vocational Training Officer in June 2015. Hayley Gault took up the role of Senior Training Supervision Officer in December 2015. Over time, then, we have been able to strengthen the team with more senior appointments than hitherto, reflecting the increased level of skills required as systems change, committees step back and the market becomes more complex.
25. Adrian Coleman (Assessments Manager) left the BSB in March 2015, and was replaced by Natasha Ribeiro. Nana Omoako (Assessments Administrator) also left in March 2015, and was replaced by Kirsten Leslie, who herself left in August 2015. Following appraisal of demands within the team, the post was made redundant and replaced by a Data Analyst, for which recruitment was undertaken at the end of 2015.
26. This continued high level of turnover had some impact on business in the first half of 2015, and has been addressed with the reassessment of a number of roles.

*Bar Course Aptitude Test (BCAT)*

27. The BCAT opened to candidates for its third cycle in November 2014, closing in August 2015. Pass rate data for the first two cycles of assessment, coupled with emerging data from evaluation, has been analysed as a basis for consideration of any adjustment. The Committee and Board have both reviewed the initial evidence, and this work is being concluded; opening of the Test has been deferred until March 2016.

*BPTC Provider institutions*

28. A comprehensive monitoring exercise for all BPTC Providers was undertaken in 2015, where visits have normally been undertaken biennially for each institution. Coverage of all provider institutions and sites has pointed to improving standards relating to English language skills over time.
29. Systematic development of data on candidates and their progression has been undertaken in 2015; alongside the BPTC Key Statistics publication, the groundwork has been laid for more effective monitoring.

*BPTC Candidate enrolment*

30. The number of registered candidates has declined nationally for a third successive year in 2015 (to 1403, of which 160 are part-time; Table 1). Potential causes of the decline include:
- Changing perception of career opportunities (though we do not have direct evidence of this at this stage)
  - Perception of the BPTC as a high risk qualification, due to high failure rates
  - Cumulative impact of fees and student loans, the current (England) policy extending from first degrees (for this cohort) through the past two years and BPTC costs continuing to rise;
  - Impact of BSB quality assurance in relation to English language and other requirements;
  - Impact of UK immigration policy on recruitment of overseas students.
  - Uncertainty about future regulation (though we doubt this is a causal factor)

**Table 1. Enrolled BPTC candidates, 2010-2014**

| 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 | <b>2015/16</b> |
|---------|---------|---------|---------|---------|----------------|
| 1681    | 1669    | 1803    | 1619    | 1494    | <b>1409</b>    |

*BPTC examination performance*

31. The report relating to performance in the first sitting of centralised examinations was published by the Chair of the Centralised Examination Board (CEB) (available on the BSB website). The report for the second sitting was published in early December.
32. The Final Examination Board (FEB) reported confidence in the integrity of the 2015 assessments (Table 2, below).
33. This was the first year in which the Professional Ethics examination based on the new BSB Handbook and this led to a higher pass rates in Professional Ethics MCQs in both sittings. The First Sit national pass rates present a mixed picture when compared with the previous year. The Professional Ethics and Civil Litigation MCQ pass rates were up compared to 2014, but all other MCQ and SAQ pass rates were down. In terms of combined pass rates (MCQ and SAQ), the national pass rates were largely unchanged on the previous year in Professional Ethics and Civil Litigation, but noticeably lower in respect of Criminal Litigation.
34. A challenge on the results of the First Sit Professional Ethics SAQ examination was brought by a student from BPP London, with 64 other signatories. The main thrust of the student's argument was that the BSB did not ensure consistency of pass rates year on year. The Review Panel rejected this and other arguments made by the student. There is no right of appeal.
35. The Second Sit national pass rates for all three knowledge areas present a noticeable increase when compared with the previous year. There was a marked improvement in overall results for both Criminal and Civil Litigation and overall results for all three assessments in 2015 were more similar to those of 2013.

**Table 2. Summary of overall passing rates (%) in the centralised assessments, 2015**





|                     | First Sit    |       |        | Second Sit   |       |        |
|---------------------|--------------|-------|--------|--------------|-------|--------|
|                     | 2015         | 2014  | change | 2015         | 2014  | change |
| Professional Ethics | <b>56.7%</b> | 59.6% | -2.9%  | <b>66.8%</b> | 56.0% | 10.9%  |
| Criminal Litigation | <b>62.5%</b> | 72.8% | -10.3% | <b>54.5%</b> | 34.1% | 20.4%  |
| Civil Litigation    | <b>58.0%</b> | 57.4% | 0.6%   | <b>61.1%</b> | 30.1% | 30.1%  |


*Financial implications*

36. Following significant rises in candidate fees charged by the BSB in 2013/14, 2014/15 and 2015/16 (now £550), no increase has been declared for 2016/17. Full cost recovery has been established at this fee level, with current numbers of candidates enrolling.

*Delivery of the work plan*

37. The following priorities were established for 2015:

|  |   |  |
|--|---|--|
| Progress the policy review for the BPTC as part of the Post LETR programme: deciding upon high level options for the future structure of the qualification and completing first stages of planning any changes |    | <i>Future policy options were explored in an important consultation document which was published in July 2015; the responses will be analysed through the remainder of 2015 with an initial proposition to be set out for the Board's consideration early in 2016.</i> |
| Finalise the initial round of evaluation of the BCAT and implement any initial policy responses  |  | <i>The Board considered a thorough analysis of the first year of implementation at its meeting in September 2015, together with information on passing rates for the subsequent two years</i>  |
| Further develop syllabi for Civil Litigation and Criminal Litigation   |  | <i>A completely revised syllabus for both subjects was published in the summer of 2015, and adopted by providers and examiners for the academic year 2015/16</i>   |
| Complete the review of centralised assessments, and implement any agreed changes   |  | <i>The Committee received the review group's report in June 2015, and agreed on a high level plan for implementation in September 2015.</i>  |

|   |   |   |
|---|---|---|
| Publish data on BPTC Providers and plan the development of data quality to support future publication |  | <i>The publication of the BPTC Key Statistics report is scheduled for 30 November 2015, ahead of the opening of admissions in December.</i> |
|---|---|---|

38. Priorities for 2016 will be to:
- Establish the regulatory framework within which future vocational training will be set, and make progress thereafter with detailed planning for implementation of initial changes affecting students in 2017/18.
  - Introduce changes in the system for external examination, to improve its contribution to assurance systems, achieve value for money and reduce cost;
  - Align current BPTC requirements with the Professional Statement
  - Further improve the standard of BPTC data gathering and analysis to inform regulation

#### Bar Transfer Test (BTT, for transferring solicitors and overseas lawyers)

##### *Governance*

39. The BTT is overseen by an Examination Board that has reported to the BPTC Sub-Committee until the end of 2015. The Examination Board meets in June and October, with additional meetings as required. A Review Board is convened to consider any challenges to Examination Board decisions.

##### *Staffing*

40. The vocational training team administer the contract and relationship with BPP for delivery of the Test.

##### *Candidates*

41. Following a peak in the number of candidates in the First Sit Test in 2014, the number reverted in 2015 to a level consistent with 2013. This may be related to the high failure rate in that exceptional sitting, deterring those overseas candidates that had been given an impression that the BTT was easy to pass. However, the previous pattern of more steady growth has not been matched either.
42. 20 Requests for Review were made in 2015, one for the April sitting and 19 for September. The April application was rejected. Of those that relate to the September sitting, at least four are expected to be eligible for consideration (the review process is not yet complete).

**Table 3. Bar Transfer Test candidates, 2010-15**

| 2010 | 2011 | 2012 | 2013 | 2014 | <b>2015</b> |
|------|------|------|------|------|-------------|
| 86   | 82   | 102  | 151  | 293  | <b>157</b>  |

**Table 4. Summary BTT results 2015**

|            | May sitting |      |        | September sitting |      |        |
|------------|-------------|------|--------|-------------------|------|--------|
|            | Pass        | Fail | Other* | Pass              | Fail | Other* |
| First sit  | 17          | 21   | 12     | 16                | 24   | 18     |
| Second sit | 7           | 11   |        | 2                 | 18   |        |
| Third sit  | 3           | 4    |        | 0                 | 4    |        |

\*Mitigating circumstances or academic misconduct

*Provider*


43. BPP Law School deliver the Test for the BSB. The Programme Leader changed in 2015, with Paul Wetton handing over to Stephen Wells after a number of years in the role.

*Financial implications*

44. The Bar Transfer Test yields income based on a proportion of the fees charged by the Provider. From 2014, the BSB levies a fee of 33% of the total charged by BPP (increased from 25%). Fees relate to the number of parts of the test taken, rather than simply the number of candidates.

*Delivery of the work plan*

45. The following priorities were set for 2015:

|  |   |  |
|--|---|--|
| Complete the implementation of recommendations from the 2012/13 review |  | Important changes to the Test were implemented in 2014; further changes now await the outcome of the more strategic assessment of training overall, encompassed by Future Bar Training |
|--|---|--|

46. The following priorities have been established for 2016:
- Improve quality assurance of Test provision;
  - Further align standards and assessment of the Test with those of the BPTC;
  - Confirm the role of the Test in a reformed regulatory framework from 2017.

Pupillage*Governance*

47. The Committee has been advised on Pupillage policy matters by a Pupillage Subcommittee until the end of 2015, chaired by Justine Davidge. Monitoring and supervision of pupillage is undertaken by the Supervision team. Administration of pupillage qualification matters is undertaken by the Qualification Regulations team.

*Staffing*

48. Dennis Bonsu (Qualification Regulations Assistant) undertakes pupillage registration activities.

*Pupillages and Approved Training Organisations*

49. Pupillage registrations are set out in Table 5 and 6, below, to indicate trends in recruitment over the past six years. With a cut-off date for registration of pupillage in the period end September / start October, the calendar year presentation of data provides a different perspective on trends.
50. Headline data suggests that the past legal year has seen a slight rise in the number of new pupils from the previous year, but remaining significantly lower than the peak achieved (since compulsory funding arrangements were introduced) in 2012/13.



**Table 5. Pupillages registered by calendar year**

|                | 2010 | 2011 | 2012 | 2013 | 2014 | 2015       |
|----------------|------|------|------|------|------|------------|
| Non-practising | 443  | 444  | 435  | 431  | 422  | <b>427</b> |
| Practising     | 446  | 456  | 449  | 445  | 455  | <b>430</b> |

**Table 6. Pupillages registered by academic/legal year**

|                | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/2015  |
|----------------|---------|---------|---------|---------|---------|------------|
| Non-practising | 431     | 443     | 422     | 514     | 397     | <b>432</b> |
| Practising     | 439     | 447     | 459     | 449     | 448     | <b>427</b> |

*Delivery of the work plan*

51. The following priorities were established for 2015:

|  |                                     |  |
|--|-------------------------------------|--|
| Progressing the Post LETR review of pupillage, as part of the programme of work to improve access routes to the Bar; | <input checked="" type="checkbox"/> | <i>Future policy options were explored in an important consultation document which was published in July 2015; the responses will be analysed through the remainder of 2015 with an initial proposition to be set out for the Board's consideration early in 2016.</i> |
| Improving the quality of data and of administrative processes that support pupillage regulation                      | <input checked="" type="checkbox"/> | <i>Changes to the system of data gathering that were established in 2014 were implemented in 2015, and have yielded (for instance) substantially improved data on equality &amp; diversity</i>   |
| Progressing the revision of governance arrangements for Pupillage Training Organisation approval.                    | <input type="checkbox"/>            | <i>Changes have been delayed by wider review of governance, concluded late in 2015</i>   |

Continuing Professional Development*Governance*

52. Decisions on authorisation and renewal of CPD providers are delegated to the executive, with periodic performance reporting to the Education & Training Committee. There is no longer a sub-committee overseeing the accreditation scheme, which was disbanded in November 2014, following implementation of a revised CPD accreditation scheme for providers launched in January 2015. The Board has decided that CPD accreditation will cease when the current regulatory system is replaced at the end of 2016.

*Staffing*

53. The restructured CPD accreditation scheme is administered by 1 FTE band 5 staff member, Elizabeth Prats, a reduction of 1 FTE from the previous scheme.

*CPD Provider Accreditation Scheme*

54. The CPD Provider Accreditation Scheme is based on a system of self-accreditation by accredited CPD providers in accordance with our accreditation policy. CPD providers accredited in calendar year 2014 transitioned to the 2015 Provider Accreditation Scheme without having to apply afresh for authorisation. However, new CPD providers were required to apply for authorisation. The application process requires new providers to satisfy detailed qualifying criteria which includes demonstrating their capacity to deliver credible training. In 2015, nearly 470 providers were accredited. Early evidence in 2016 suggests that take-up will be sustained through to the closure of the scheme at the end of the year, with 345 having already indicated an intention to renew at the time of writing.

*Monitoring CPD Providers*

55. Two audits are carried out per year. The first monitoring cycle occurs after the first six months of course provision. The second occurs at the end of the calendar year. The first 'interim' cycle allows us to intervene early where issues are detected, thus reducing or removing a negative impact on barristers. We have adopted a risk-based approach to monitoring which means that not all CPD providers will be reviewed in any one given year. However, a random sampling of 10% ensures that any CPD provider could be subject to audit.
56. In July 2015, the first monitoring cycle was conducted and CPD providers were selected for review according to our risk-based approach. No major concerns were detected, although there were one or two cases where the calculation of CPD hours was incorrectly awarded. These providers will be automatically included the second monitoring cycle, which opened at the end of December 2015. Providers have until 31 January 2016 to file their second monitoring report which focuses on 1 June to 31 December 2015 CPD provision. On the whole, positive feedback on the revised scheme has been received by providers and barristers.
57. Table 7 provides data on the first interim monitoring cycle.

**Table 7. Monitoring of CPD Providers in 2015**

|              | Accredited Providers                           | Interim Monitoring Cycle | Reports Submitted | Reports Reviewed |
|--------------|--|--------------------------|-------------------|------------------|
| New          | 1 successful; 4 applications currently pending | 1                        | 1                 | 0                |
| Transitioned | 466  | 450                      | 443               | 75 (16%)         |

*Public Access Training*

58. In January 2015, all three authorised providers of Public Access training complied with the quality assurance arrangements by submitting a quality assurance report.





59. The 24 month deadline established in transitional arrangements for top-up training was extended by a month to 4 November 2015 in light of the scale of demand for training reported by providers as the deadline approached.

*Forensic Accounting Course (FAC)*

60. An online replacement for the compulsory Forensic Accounting Course is being implemented, that replaces the previous two day face-to-face course; the latter closed in December 2015. The new course will be available from March 2016.

*Delivery of the work plan*

61. The following priorities were established for 2015:

|  |   |  |
|--|---|--|
| Implementation of first stages in regulatory reform                      |    | A consultation on the full proposal for change in regulation was published for the summer of 2015.   |
| Implementation of the interim provider-level accreditation scheme        |    | The scheme was fully implemented, with a smooth transition from the previous, course-based scheme  |
| Delivery of a pilot scheme for the proposed revised rules for CPD        |   | A pilot was established with more than 70 barristers reflecting the diversity of practice.   |
| Completion of review of the Forensic Accounting Course, and its retender |  | The review led to significant adjustment to the scheme, as an interim measure before the wider policy context of Future Bar Training is established. |

62. Priorities for 2016 include:

- Delivery of the second year of the revised accreditation scheme
- Clear communications with the profession in relation to implementation of the CPD changes from 2017
- Delivery of a restructured Forensic Accounting Course from March 2016
- A review of the contract with Public Access training providers

### Resource implications

63. Almost all activities covered by this report are subject to the BSB full cost recovery policy, which has led to systematic review of fees and charges for the BPTC (including centralised assessments), BTT and CPD, through to 2014. Since then, the Board has developed a more nuanced approach to cost recovery and we have developed an assessment system to decide upon the future implementation of cost recovery measures.

**Equality & Diversity Implications**

64. Equality information is gathered in relation to each of the stages of training. Following a period of low response rate to surveys until 2013, more success in data gathering has been achieved from 2014 (particularly in relation to pupillage). The first year of this richer data was analysed and reviewed by the Equality & Diversity Committee early in 2015, and early in 2016 we will have the opportunity to assess changes in 2015 from that 2014 “baseline”.

**Consultation**

65. A draft of this report was reviewed by the Education & Training Committee at their November 2015 meeting.

**Lead responsibility**

Simon Thornton-Wood

**Qualifications Committee: Annual Report to the Board for 2015****Status:**

1. For **noting**.

**Executive Summary:**

2. This is a report on the work of the Qualifications Committee during 2015.

**The Work of the Committee**

3. The Qualifications Committee is responsible for determining a range of applications made to the Bar Standards Board, including applications for waiver from the requirements for qualification as a barrister, for authorisation as a pupillage training organisation, for waiver from the rules governing entitlement to practise as a barrister and for the grant of licensed access. It also determines applications for review of its own decisions, of decisions of the Record Office on the issue of practising certificates and of decisions of the Inns Conduct Committee on student admission and discipline.

**Committee Membership**

4. At the beginning of the year, Adam Solomon replaced Sarah Clarke as Board member and Barrister Vice-Chair.
5. During 2015, the Committee had a total of 21 members (11 barrister; 10 lay).

**How the Committee Works**

6. The Committee has delegated all of its decision-making powers, except for its review function, to Panels. There are five Panels, each responsible for different types of application and each comprising four or five members of the Committee, at least two barrister and two lay.
7. The Committee has also approved proposals put forward by each Panel for delegation of some decision-making to staff, within defined criteria.

**Numbers of Applications Considered**

8. The numbers of applications considered in 2015 are set out in Annex A.
9. The figures show that, in 2015, 57% of decisions were taken by staff.
10. The total number of applications is 1,306, around 10% lower than 2014. The main areas where we have received fewer applications than last year are as follows:
  - Applications for rights to conduct litigation. 2014 was the first year in which self-employed barristers were able to apply for authorisation to conduct litigation, so it is not surprising that there were a greater number of applications that year than 2015.

- Applications from transferring qualified lawyers. The number of applications from qualified foreign lawyers peaked in 2013, but appear to be returning to the level prior to that date.
  - Applications for licensed access by immigration advisors. The reasons for this are unclear, but may be connected to reductions in public funding.
  - Applications relating to the Academic Stage of training, particularly students applying for Certificates of Academic Standing on the basis of overseas degrees. This is likely to be related to the overall reduction in numbers of students registering for the Bar Professional Training Course
11. The figures do not include numbers of applications “approved” and “refused”. This is because a number of application types have a range of potential decisions for which a crude “approval”/“refusal” categorisation is misleading. For example, applications from transferring qualified lawyers are rarely refused outright, but “approval” covers a broad spectrum of decisions, from full exemption from all standard training requirements to approval conditional on passing the whole of the Bar Transfer Test and completion of 12 months pupillage.

### **Pupillage Registration**

12. At the beginning of 2015, the Qualification Regulations team took on responsibility for registering pupillages and for issuing Full Qualification Certificates to those who complete or are exempted from pupillage. The numbers of registrations and certificates are set out at Annex B.

### **Appeals to the High Court**

13. The hearing of an appeal to the High Court against a decision of the Qualifications Committee taken in 2014 was heard on 29 January 2015. The subject of the appeal was a decision of the Inns Conduct Committee (affirmed by the Qualifications Committee) to refuse readmission to an Inn to an applicant who had previously been disbarred. The Court dismissed the appeal.
14. There have been no appeals against decisions of the Qualifications Committee taken in 2015.
15. It is surprising that there has only been one appeal to the High Court in the two years since jurisdiction passed to the High Court from the Visitors to the Inns of Court in January 2014, given that there used to be about 10 appeals to the Visitors against decisions of the Qualifications Committee per year. It is unclear why this is, although it could be that applicants are either daunted by the prospect of appealing to the High Court or deterred by the fee.

### **Key Performance Indicators**

16. The Committee has set itself the following Key Performance Indicators:
- i) The percentage of applications determined within six weeks of receipt of the complete application, including all required documentation and the application fee.  
Target: 75%

- ii) The percentage of applications determined within twelve weeks of receipt of the complete application, including all required documentation and the application fee.  
Target: 98%

17. The Committee's performance against these KPIs are set out at Annex C.

**Governance**

18. As part of the Board's overall governance changes, the Committee will continue for around 12 more months, during which it will work on delegating all remaining first instance decision-making to staff.

**Resource Implications**

19. The direct costs of the Qualifications Committee are covered by the application fees charged for applications made to it. It is likely that application fees will be raised in order to come closer to full cost recovery, following the consultation on Fees and Charges.

**Equality Implications**

20. Equality monitoring data is collected for all applications and there will be a report on this data later in the year.

**Lead responsibility:**

Rob Behrens  
Joanne Dixon





## Number of Applications Considered by Qualifications Committee 2015

|  | Determined by Staff | Determined by Panel | Total (2014 figure in brackets) |
|--|---------------------|---------------------|---------------------------------|
| <b>Transferring Qualified Lawyers Panel (“Panel 1”)</b>                                      |                     |                     |                                 |
| Qualified Foreign Lawyers  | 18                  | 109                 | 127 (151)                       |
| European lawyers applying for Call to the Bar  | 12                  | 0                   | 12 (19)                         |
| European lawyers applying for Registration under the Establishment Directive                 | 4                   | 1                   | 5 (7)                           |
| Registered European Lawyers applying for Call to the Bar                                     | 0                   | 0                   | 0 (0)                           |
| Legal Academics applying for dispensation from the standard requirements for Call to the Bar | 0                   | 3                   | 3 (3)                           |
| Applications for Temporary Membership of the Bar   | 0                   | 1                   | 1 (2)                           |
| Solicitors applying for Call to the Bar  | 78                  | 20                  | 98 (108)                        |
| Reduction in Pupillage for a Barrister who has also qualified as a Solicitor                 | 31                  | 8                   | 39 (38)                         |
| Extension of time in which to Pass Bar Transfer Test   | 94                  | 2                   | 96 (39)                         |
| General Exemption  | 0                   | 2                   | 2 (2)                           |
| <i>Total Panel 1</i>   | <i>237</i>          | <i>146</i>          | <i>383 (369)</i>                |
| <b>Pupillage Panel (“Panel 2”)</b>   |                     |                     |                                 |
| Applications for approval to undertake external training                                     | 0                   | 9                   | 9 (28)                          |
| Applications for reduction in pupillage  | 0                   | 77                  | 77 (59)                         |
| Applications from pupils for dispensation from the pupillage regulations                     | 27                  | 15                  | 42 (41)                         |
| Applications for retrospective registration of pupillage                                     | 5                   | 16                  | 21 (32)                         |
| <i>Total Panel 2</i>   | <i>32</i>           | <i>117</i>          | <i>149 (160)</i>                |
| <b>Practising Rules &amp; CPD Panel (“Panel 3/4”)</b>  |                     |                     |                                 |
| Applications for extension of time for completion of the New Practitioners Programme         | 1                   | 22                  | 23 (23)                         |

## Part 1 – Public

|  |            |            |                  |
|--|------------|------------|------------------|
| Applications for waiver of the NPP Requirements  | 0          | 8          | 8 (8)            |
| Applications for extension of time for completion of the Established Practitioners Programme | 0          | 68         | 68 (70)          |
| Applications for waiver of the EPP Requirements  | 4          | 25         | 29 (32)          |
| Applications for rights of audience/waivers of the practising rules                          | 37         | 21         | 58 (42)          |
| Applications for rights to conduct litigation  | 149        | 0          | 149 (191)        |
| Applications for waiver of the Public Access Rules   | 13         | 7          | 20 (26)          |
| Applications for exemption from the Vocational Conversion Course                             | 0          | 0          | 0 (1)            |
| Applications for licensed access   | 15         | 8          | 23 (23)          |
| Applications for licensed access – renewals  | 17         | 2          | 19 (24)          |
| Applications for licensed access – reapplications  | 7          | 0          | 7 (12)           |
| Registration for licensed access – immigration advisers                                      | 67         | 0          | 67 (100)         |
| <i>Total Panel 3/4</i>   | <i>310</i> | <i>161</i> | <i>471 (552)</i> |
| <b>Pupillage Training Organisation Panel (“Panel 5”)</b>                                     |            |            |                  |
| Applications for authorisation as a pupillage training organisation                          | 0          | 24         | 24 (22)          |
| Applications for waivers of the Pupillage Funding & Advertising Requirements                 | 0          | 38         | 38 (33)          |
| <i>Total Panel 5</i>   | <i>0</i>   | <i>62</i>  | <i>62 (55)</i>   |
| <b>Academic Stage Panel (“Panel 6”)</b>  |            |            |                  |
| Applications for Partial Exemption from the Academic Stage – QLD Provider                    | 11         | 0          | 11 (13)          |

## Part 1 – Public

|   |            |            |                      |
|---|------------|------------|----------------------|
| Applications for Partial Exemption from the Academic Stage – non-QLD Provider                     | 2          | 4          | 6 (20)               |
| Applications for Exercise of Discretion to Waive Requirement to obtain lower second class honours | 0          | 6          | 6 (15)               |
| Application for Certificate of Academic Standing on the basis of overseas or non-standard degrees | 103        | 3          | 106 (125)            |
| Applications for reactivation of stale qualifications   | 13         | 8          | 21 (18)              |
| Application for approval of credit transfer   | 30         | 2          | 32 (51)              |
| Application for approval to exceed permitted study-time   | 1          | 2          | 3 (6)                |
| Application for approval for exceeded attempts  | 0          | 3          | 3 (0)                |
| Application for permission to commence Vocational Stage before completing Academic Stage          | 0          | 5          | 5 (3)                |
| Application for condonation   | 0          | 2          | 2 (5)                |
| Application for approval of deemed pass/aegrotat  | 0          | 1          | 1 (0)                |
| Bar Examination Transcript/Certifying Letter  | 7          | 0          | 7 (18)               |
| Mature Non-Graduate   | 0          | 9          | 9 (10)               |
| <i>Total Panel 6</i>  | <i>167</i> | <i>45</i>  | <i>212 (284)</i>     |
| <b>TOTAL APPLICATIONS – Initial decisions</b>   | <b>746</b> | <b>531</b> | <b>1,277 (1,420)</b> |
| <b>Full Committee – Applications for Review</b>   |            |            |                      |
| Qualified Foreign Lawyers   |            | 3          | 3 (7)                |
| European lawyers applying for Registration under the Establishment Directive                      |            | 1          | 1 (0)                |
| Temporary Admission   |            | 1          | 1 (1)                |

## Part 1 – Public

|   |            |            |                      |
|---|------------|------------|----------------------|
| Legal Academics applying for dispensation from the standard requirements for Call to the Bar      |            | 1          | 1 (1)                |
| Solicitors applying for Call to the Bar   |            | 2          | 2 (2)                |
| Reduction in Pupillage for a Barrister who has also qualified as a Solicitor                      |            | 1          | 1 (0)                |
| General Exemption   |            | 2          | 2 (2)                |
| Applications for reduction in pupillage   |            | 5          | 5 (5)                |
| Applications for external training  |            | 1          | 1 (1)                |
| Applications for waivers of the practising rules  |            | 1          | 1 (0)                |
| Waiver of the Public Access Rules   |            | 2          | 2 (2)                |
| Waiver of the Pupillage Funding & Advertising Requirements  |            | 2          | 2(0)                 |
| Applications for Partial Exemption from the Academic Stage  |            | 1          | 1 (1)                |
| Applications for Exercise of Discretion to Waive Requirement to obtain lower second class honours |            | 1          | 1 (1)                |
| Applications for Certificate of Academic Standing   |            | 1          | 1 (3)                |
| Reactivation of Stale Qualifications  |            | 1          | 1 (1)                |
| Mature Non-Graduate   |            | 1          | 1 (0)                |
| Decisions of the Inns Conduct Committee   |            | 1          | 1 (7)                |
| Decisions on Issue of Practising Certificate  |            | 1          | 1 (0)                |
| <b>TOTAL APPLICATIONS FOR REVIEW</b>  |            | <b>29</b>  | <b>29 (34)</b>       |
| <b>TOTAL APPLICATIONS</b>   | <b>746</b> | <b>560</b> | <b>1,306 (1,454)</b> |

## Pupillage Numbers 2015

|              | <b>Number of Non-Practising<br/>Periods of Pupillage Registered</b> | <b>Number of Full Qualification<br/>Certificates Issued</b> |
|--------------|---|---|
| January      | 9   | 12  |
| February     | 6   | 17  |
| March        | 6   | 37  |
| April        | 19  | 15  |
| May          | 2   | 9   |
| June         | 11  | 15  |
| July         | 8   | 22  |
| August       | 5   | 12  |
| September    | 131   | 114   |
| October      | 193   | 208   |
| November     | 28  | 40  |
| December     | 8   | 18  |
|              |   |   |
| <b>Total</b> | <b>426</b>  | <b>519</b>  |



**Qualifications Committee - Key Performance Indicators**

The following KPIs were agreed in August 2014:

- i) The percentage of applications determined within six weeks of receipt of the complete application, including all required documentation and the application fee.  
Target: 75%
- ii) The percentage of applications determined within twelve weeks of receipt of the complete application, including all required documentation and the application fee.  
Target: 98%

The following table shows performance against these KPIs for each quarter of 2015.

|                        | Target | 1 January to 31 March 2015 |       | 1 April to 30 June 2015 |       | 1 July to 30 September 2015 |       | 1 October to 31 December 2015 |       |
|------------------------|--------|----------------------------|-------|-------------------------|-------|-----------------------------|-------|-------------------------------|-------|
| <b>Within 6 weeks</b>  | 75%    | 285                        | 82.6% | 242                     | 75.2% | 261                         | 76.5% | 229                           | 76.1% |
| <b>Within 12 weeks</b> | 98%    | 342                        | 99.1% | 316                     | 98.1% | 338                         | 99.1% | 295                           | 98%   |
| <b>Total</b>           |        | <b>345</b>                 |       | <b>322</b>              |       | <b>341</b>                  |       | <b>301</b>                    |       |





**Chair’s Report on Visits and External Meetings, November 2015 – January 2016****Status:**

1. For noting

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last board meeting.

**List of Visits and Meetings:****Sir Andrew Burns**

|                                   |   |
|-----------------------------------|---|
| 30 November                       | Attended the Inns’ Strategic Advisory Group meeting   |
| 30 November                       | Attended a COIC reception at Inner Temple   |
| 1 December                        | Attended a joint board meeting between the LSB and BSB followed by a drinks reception at the BSB.         |
| 7 December                        | Attended the Bar Council Chairman’s inaugural address   |
| 9 December                        | Attended the Chairmen’s Committee meeting   |
| 16 December                       | Met with the Chair and CEO of the Solicitors Regulation Authority   |
| 23 December 2015 – 4 January 2016 | The BSB offices closed for the Christmas break  |
| 12 January                        | Attended and spoke at a BSB external event titled “Does Cross-Cultural Communications Matter at the Bar?” |
| 13 January                        | Met and had lunch with Edward Braham and Kate Burns of Freshfields Bruckhaus Deringer LLP                 |
| 13 January                        | Hosted a dinner at the Garrick Club in honour of the former BSB Vice Chair, Patricia Robertson QC         |
| 16 January                        | Attended the Bar Council meeting  |
| 20 January                        | To attend a Law Commission conference at King’s College titled “Misconduct in Public Office”              |
| 21 January                        | To attend a meeting with the Chairs and CEOs of CILEx Regulation and SRA                                  |
| 21 January                        | To meet and have lunch with former BSB member, Matthew Nicklin QC   |
| 27 January                        | To chair the Chairmen’s Committee meeting   |

- |            |  |
|------------|--|
| 27 January | To attend a dinner at Lincoln's Inn hosted by the COIC President for Treasurers, Chairman of the Bar Council and BSB Chair |
| 28 January | To meet with the Chairman and senior management team of the Youth Justice Board at the Ministry of Justice                 |

**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 28 January 2016**

For consideration and noting.

**Director General**

1. Work has continued since November to respond to a range of strategic developments, including the Treasury / BIS Command paper and prospective MoJ consultation relating to legal services regulatory reform; and the CMA market study on legal services, announced last week. These policy developments will be provided for in our draft Strategic Plan 2016-19, on which I have been working since Christmas. We will make this available for consultation with the public and the profession for a short period, before Board sign off and formal publication in April. It has been especially important to align the Strategy with the emerging risk outlook, work on which has intensified over the last month as we proceed to late March publication.
2. Externally, I was pleased to participate in the fourth annual Civil Justice Forum on litigants in person in December, noting in particular reforms to the Civil Procedure rules that may impact on those involved in the court system, as well as Briggs LJ's "interim" report on the Civil Court Structure, which was published last week. This latter has at its core a proposal (a plan) for an on-line court to settle civil claims worth up to £25,000 and will be the first ever "court" to be designed from the outset on the assumption that lawyers as we have known them are not directly involved. We are building our understanding of the implications of this and I have, for example, arranged a demonstration of "digital courtrooms" for staff and Board members on 27 January – and, appropriately, as a webinar on 28<sup>th</sup>.
3. I have also attended a symposium launching the Law Commission's proposals for reform of the law of Misconduct in Public Office, (led at the LC by our Board member Justine Davidge). The Board will be updated in due course as to whether there are any implications for our governance arrangements arising out of the reform proposals. We have initiated the recruitment process for a new chair and members of our Independent Appointments Panel and will of course ensure that the process complies not only with LSB Internal Governance Rules but also wider accepted principles relating to standards in public life.
4. I joined fellow CEOs of front-line regulators and the new LSB CEO to discuss and agree further areas of collaborative work – more details will be announced in due course once terms of reference for projects are finalised. I have now also met the new LSB CEO, Neil Buckley, on a one on one basis: such meetings happen on a routine monthly basis.
5. Internally, I have made several presentations to groups of staff on the governance reforms and on the structural changes within the BSB. The establishment of a Corporate Services team under Viki Calais has been announced, and we expect shortly to be able to announce the appointment of a new Director of Communications and Public Engagement, following a very successful recruitment competition: the field was of a very high quality.
6. I hope that the new Director will be as pleased as I am with the launch of an organisation-wide training programme in plain English. This has been designed and will be delivered by an entirely in-house team who draw on external expertise as needed. This is an innovative, highly creative response to building our capability in this area and I am very grateful to the staff concerned for their enthusiastic contribution.

7. Finally, I welcomed to the team a new executive assistant to the DG and Chair/ Vice Chair: Jeanette Fordyce-Harvey joined us following a number of similar senior roles including with consumer bodies and regulators. Her familiarity with the sphere has helped her make an excellent start and I know she will give Board members every assistance.

***ASPIRE***

8. We will be meeting the LSB on 26 January to discuss their initial views of our submission, and for them to seek further information in certain areas so as to complete their regulatory standards assessment. They will be formally reporting by the end of March.
9. In advance of this meeting, the LSB has sent us their key areas for discussion and summaries of feedback they collected on the BSB from our stakeholders. This was broadly positive and contained few surprises.
10. We are currently completing a strategic plan for consumer engagement. This will inform and feed-into the organisation-wide Strategic Plan.
11. Training for staff has been completed in consumer engagement, with similar training provided to the Board at its December away day. Training on the risk framework has begun and will continue over the next few weeks.
12. As part of the Governance Programme, the new standing orders have been agreed which disestablished the E&D, Standards and Supervision Committees and substantially altered the Terms of Reference of the Education and Training Committee.
13. An external consultant is conducting a review into the structure and operations of the Qualifications Committee. This will be received by the Board in February 2016 for discussion, alongside proposals for the governance of decision making in relation to professional conduct issues.
14. A joint meeting of all “Consumer Champions”, “Risk Reps” and “Governance Gurus” will be held on 22 January to thank them for the role they have played in ASPIRE so far, and also to discuss the role they can play in further embedding the work from ASPIRE within their teams and departments. SMT have also been considering its role in embedding the changes to our ways of work and how we make sure that we act in a consistent and coherent way.

**Regulatory Policy*****Standards***

15. Work on the immigration thematic review is progressing well. The project team have been carrying out detailed analysis of information gathered so far and aligning this with the risk index and framework. As a result of the analysis, three key themes have emerged that the review will focus on. These are misinformation and lack of accurate information; access to justice; and poor quality advice and standards of service. Staff from across the organisation will be drawn upon to assist in the next stage of the review – option development. Once some viable options for each of the three key themes have been identified these will be tested with the reference group towards the end of February.
16. Work is also progressing on the public and licensed access review. The joint research with the LSB has now been launched. A report is also being developed that draws together and analyses data from supervision returns, complaints information and Legal Ombudsman data. The next stage will be to carry out some targeted stakeholder engagement.

17. Work on the consumer guide is almost complete. The guide has been shared with consumer organisations for comment and is currently being finalised. The guide should be publicly available by the end of January.

### **Equality and Access to Justice**

#### ***Research on Women at the Bar***

18. Co-produced with a task and completion group, a survey questionnaire was sent to all women barristers with a current practising certificate earlier this month to assess the impact of the equality rules. The survey asks women at the Bar about their experiences of: flexible working, parental leave policies, harassment policies, chambers structures and governance, recruitment practices, work allocation monitoring, organisational culture and external practices. We have had over 1,000 responses to the survey. The survey closes on Monday 8<sup>th</sup> February and a report will be compiled and presented to the Board in March.

#### ***Knowledge Sharing Session – Cross Cultural Communication (CCC)***

19. The E&AJ team held a Knowledge Sharing session in December. 54 BSB staff attended the event which was led by Ranjit Sondhi CBE (member of our PCC committee) and Jonathan Twitchin, a leading expert on CCC. Over 35 members of staff attended from across the BSB and BC. They watched video case studies to explore the challenges of CCC in the workplace, as well as a presentation that introduced the CCC subject. Overall the session received positive evaluations.

#### ***Cross-Cultural Communication Event***

20. The E&AJ and Regulatory Risk teams, with the support of the Communications team and all BSB Directors, jointly delivered an event on the 12<sup>th</sup> January 2016 for leaders and experts in the field of “cross-cultural communication” (CCC) - appropriate and effective communication between individuals from different cultures. There were 39 people in attendance including barristers, consumer organisations, BSB Board and staff. The symposium was hosted by the BSB Chair and Director General, was entitled “Does Cross-Cultural Communication Matter at the Bar?” Over 15 external people offered to continue to engage with our E&AJ team to support future work in this area. An event report will be published in February with recommendations for BSB to consider as part of its future Risk, Consumer, E&AJ and Future Bar training agendas.

#### ***Equality Objectives 2015-16 Progress Review***

21. A progress update of the BSB’s equality objectives and wider projects undertaken by the E&AJ team was presented to the final meeting of the Equality and Diversity Committee in December. The Equality Act 2010 stipulates that public bodies must publish one or more equality objectives every four years as a minimum guideline. The majority of the 11 published equality objectives are complete and the remainder are on track to be completed by their respective deadlines. A new approach to developing future objectives that will include involvement with external stakeholders and consumer organisations will begin in March 2016.

### **Regulatory Risk**

#### ***Risk Outlook***

22. Work is on track to publish the BSB’s first Regulatory Risk Outlook in March 2016, providing context for our Strategic and Business Plans with a market overview and priority risk areas. We are nearing completion of the final phase of detailed research and analysis which began in November 2015, and editorial work is now underway.

23. A Task Completion Group of Board and Committee members has been formed to support the work and provided extremely valuable input at their first meeting in mid-January. Further detail on the Regulatory Risk Outlook will be provided separately to Board members.

#### ***External engagement & market insights***

24. We have continued to explore key areas of consumer risk and as part of this, attended the Civil Justice Council's fourth National Forum on Access to Justice for Litigants in Person. This offered a fascinating insight into the challenges faced and the wide range of organisations involved in seeking to bring change. Operating in a truly joined-up, strategically-aligned way was a challenge for all, especially where resources are stretched.
25. The team has also attended external events on the impact of artificial intelligence on the professions and impact of institutional clients upon lawyer independence.
26. The jointly-hosted event on cross-cultural communication mentioned above was well-received by guests and provided important insights into the impact of cross-cultural communication problems in a legal context and some early views on how the sector might best respond. It was encouraging to see this model of joint working, and involving stakeholders at an early stage in our thinking bearing early fruit.

#### ***Risk Framework & Index***

27. We will be making the Risk Framework (outlining our approach) and Index (listing the risks to our regulatory objectives that we have identified) available on our external website from March 2016. In advance of this, we have refreshed the Index and an update is provided for the Board's approval elsewhere on the agenda.
28. The Future Bar Training (FBT) and risk teams have also been working closely to explore how we might best structure a risk based approach to the market for legal training and have made significant progress on this front.

#### ***Risk Forum***

29. The fortnightly Risk Forum chaired by the team brings together staff representatives from across the organisation to discuss regulatory risks and market development. As well as building collective understanding of issues, informed by greater range of perspectives, we have seen a very positive impact on knowledge sharing and collaborative working. There is potential to build the group's role further through 2016.

#### **Supervision**

30. Visits to High Risk, Medium Impact chambers are in progress, in addition to following up actions agreed with Medium Risk chambers during review of the Supervision Returns.
31. Work is underway on reviewing consumer feedback mechanisms in chambers, with a view to producing new guidance. This is part of the Consumer Engagement strategy within ASPIRE.
32. A dedicated resource has been allocated from within the team to commence work on Youth Court Advocacy and QASA.

33. Team members delivered a workshop for clerks on the Institute of Barristers Clerks training programme, covering key themes from the Supervision Returns, risk management in chambers and customer feedback.
34. A project is underway to establish a new unit that will be responsible for risk assessing all incoming information. The aim is to improve consistency in the way that incoming information is risk assessed, prioritised, recorded and to ensure consistency of the regulatory response. Implementation will dovetail with the Information Management Programme and the governance changes. The core project team comprises representatives from Supervision, PCD, Education & Training and Risk, but will also draw on input from other areas.
35. Team members are involved in a wide range of other cross-departmental projects, most notably as members of the various ASPIRE project groups, the Immigration Thematic Review and the development of the Risk Outlook.
36. The 2014 CPD spot check has been completed. The spot check focused on High Risk barristers, including those barristers who were previously non-compliant with their CPD. It also included more New Practitioner Programme barristers who were under-represented in the 2013 spot check. 100 barristers were spot checked in total. 91 barristers were assessed as compliant with their CPD requirements. 9 barristers were non-compliant and either given Corrective Action or referred to PCD.
37. Development of the new CPD scheme continues. The Consultation report is currently being completed and will be presented to the Board in due course.
38. The new scheme CPD pilot participants have been returning their record cards and the CPD assessment team will be assessing the pilot CPD records.
39. An Income Validation Audit was carried out last year. This was completed early this year. 151 barristers were spot checked to determine that they had correctly declared their income when required to do so under Authorisation to Practise. 11 were found to have under declared their income and 7 were found to have over declared their income. 6 barristers were ultimately referred to PCD but these were for not responding to requests for information.

#### ***Entity Authorisation***

40. As of 13 January 2016 39 entities had been fully authorised. A further 6 were in the assessment phase, 2 had submitted their applications but had not paid their application fee and 2 had been authorised but had not yet paid the final authorisation fee.
41. The Entity Renewals process where entities pay their annual fee is in the final phase of development. The launch date should be early February 2016.

#### ***ABS***

42. The data-gathering phase of the ABS implementation project will close at the end of January. There have been regular meetings between us and the LSB since May and we have provided a significant amount of information in addition to the licensing application. The LSB visited 3 times between September and November and viewed our operational authorisation, supervision and enforcement processes.
43. The LSB has set out what final pieces of information it requires in order for its Board to be "*positively satisfied*" and recommend to the Lord Chancellor that the BSB's designation as a licensing authority should be approved. One of the key assurances we

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will deliver is that a risk-based approach to the design of the end to end ABS operational process has been adopted from the outset. An integral part of this approach has been to evaluate our available evidence and experience with entity authorisation to allow us develop a targeted and proportionate approach to the regulation of authorised bodies. The approach is aligned and informed by the ongoing governance and quality assurance framework review.

44. We expect the LSB Board's decision at the end March 2016. The delivery phase of the implementation project will commence thereafter with an anticipated launch date for the ABS regime of late 2016. We have scheduled a provisional date at the end May for communications to the profession and the market generally about ABS. We will keep the Board updated throughout and engage in a more significant way about risk and ABS at this time.

**Education and Training*****Future Bar Training***

45. "Phase 1" of the Future Bar Training Programme was completed at the end of 2015 with the completion of an analysis of consultation responses on pathways for qualification (the subject of a paper at this meeting), approval of the Professional Statement, and completion of the pilot period for a new CPD regime. The programme for "Phase 2" has been agreed with the Programme Board, establishing the policy development process and timetable that will draw upon the evidence acquired.
46. A Task Completion Group is being convened to advise on the development of options for future training pathways, meeting at the end of January. The group involves barristers, academics, and contributors with experience in delivery of professional legal training.
47. Good progress is being made in the initial drafting of the Threshold Standards that will underpin the Professional Statement. Drafting is being undertaken with experienced lawyers, and supported by barrister advisors, drawing upon experience in both self-employed and employed practice.

**Operational update**

48. Annual monitoring of BPTC Course Providers has started, with visits planned to each Provider. This is the first round of monitoring to be conducted since publication of BPTC Key Statistics, which now provides an important resource for students and staff to engage with the quality assurance process.
49. A project has been initiated to revise the structure of the BPTC Handbook, reflecting the current framework for the qualification but preparing the ground for changes that arise from the Future Bar Training programme. Initial changes to the Handbook are planned for publication in July 2016.
50. Following the announcement of changes to the centralised examinations at the end of 2015, meetings are planned with Course Providers in the coming weeks to plan implementation in 2017.
51. BSB staff continue to contribute to training through the Inns of Court for new pupils, those advancing to the practising period of pupillage and pupil supervisors. These sessions provide useful feedback on the clarity and effectiveness of requirements set out in the Pupillage Handbook, which itself is scheduled for comprehensive review in 2016.



52. Two staff movements have arisen: Liz Prats (Training Officer, CPD) has moved to the Supervision Team, reflecting the need for greater integration of CPD activity as we plan for changes from January 2017, and Ben Margerison (Temporary Data Analyst) continues in role to complete work on updating the BPTC Key Statistics report and integrating new, standardised data from BPTC course providers.

### **Qualification Regulations**

53. The Qualifications Committee met on 13 December 2015. It considered five applications for review, upholding the original decision of the Panel in four cases and reversing the original decision in one case. It also had a very useful discussion with Neil Marshall as part of his review of the Committee's procedures, which has also involved discussions with Office holders and staff.

### **Professional Conduct**

#### ***Staffing***

54. There are a number of changes in the staffing of the Professional Conduct Department to report this month.
55. Petula Southgate-Smith joined the Professional Conduct Department as a Professional Conduct Assistant on 4 January 2016. Her role, in part, covers the remainder of a maternity cover post in the Operational Support Team. However, she is employed on a full time basis for six months to provide wider support across the PCD.
56. The PCD have successfully recruited to the post of Reports and Data Analysis Officer in the Operational Support Team and Allister Kempton will commence in the role on 25 January 2016. Allister brings with him technical and regulatory experience as he joins the Department from the Nursing and Midwifery Council.
57. After three and a half years, Natalie Zara, the Operational Support Team Manager, is leaving the PCD on 29 January 2016 to take up the post of Head of Governance in the Bar Council. Her post is due to be advertised in the near future and the PCD hope to replace her in the role as soon as possible.
58. The Investigations and Hearings Team have recruited to the post of Casework Supervisor. The PCD are looking forward to welcoming the successful candidate, Lauren Steele, at the beginning of February 2016. Lauren is a qualified solicitor from Queensland, Australia. She currently works at the General Dental Council where she managed a team dealing with financial regulations.

#### ***DT Regulations Review Project***

59. A total of ten written and one verbal responses to the Disciplinary Tribunal Review Consultation Paper were received by the BSB. The Consultation Response Paper summarising responses and setting out the recommendations of the Working Group and the revised Regulations are separate items for this meeting.
60. Once Board approval has been obtained, an application to agree the changes to the Disciplinary Tribunal Regulations will be made to the Legal Services Board.

#### ***Public Information Project***

61. Stage one of the project to improve the publicly available information about the enforcement system on the BSB's website has concluded with the two sections produced by Law for Life now live on the website. Stage two of the project is on track with Project Group members working hard to produce copy for the remaining four sections. Once

checked and reviewed by the testing panel and staff members, this copy will be uploaded onto the website in mid-late March 2016, marking the end of the project. However, the web pages will continue to be evaluated in light of user feedback.

### ***Time recording***

62. The PCD have continued to record time spent on each aspect of our work. We now have enough recorded information to accurately calculate the cost of most complaints, with the exception of complaints referred to disciplinary tribunals. For this reason, from mid-January 2016, time recording has ceased for the majority of our work. We are however continuing to record time spent working on disciplinary tribunals until we are satisfied that enough information has been collated.

### ***Judicial reviews***

63. Since the last update the BSB has received confirmation that the one matter at the permission stage has been dismissed. One new application for Judicial Review was received in December. This named six parties but relates to the decision by the PCC to dismiss a number of aspects of a complaint prior to investigation. We await a decision on permission. There remain two matters before the Court of Appeal listed for May and July 2016 respectively.

### **Governance Review**

64. As noted above, the new Standing Orders took effect on 1 January to start to give effect to the governance review. Work continues on the reviews in the areas of professional conduct and authorisation. The Board will receive papers on those two proposals in February. The proposals for APEX will follow in March, as they are affected by the decisions that the Board will take in relation to professional conduct and authorisations.
65. The GRA Committee started looking at the assurance framework at its meeting on 19 January. There is a joint GRA and PRP meeting on 4 February which will start looking at the responsibilities of each of those committees and how they will interact in the future. The assurance framework will then be more fully developed over the coming months.

### **Communications and Stakeholder Engagement**

#### ***Communications***

66. Since this report was prepared for the November Board meeting, the following press releases and announcements have been issued:
- 12 November: A barrister is suspended for three months for failing to take reasonable steps to manage his practice as a barrister;
  - 19 November: Publication of the report highlighting mixed advocacy standards in youth court proceedings;
  - 24 November: Announcement about the new BSB governance structure;
  - 1 December: Important developments announced about the 2016 BPTC. This included publishing statistics about students and providers of the BPTC, changes to the formats of the centralised assessments, and finally an announcement that BCAT will be deferred until at least March 2016, pending completion of a review;
  - 4 December: Barrister suspended for a total of 18 months for accepting instructions without a practising certificate, not supplying client care letters as a public access barrister and for his conduct relating to his bankruptcy;
  - 10 December: Launch of two consultations on the cost of regulatory activities, including ABSs;

- 14 December: Announcement seeking members for the Professional Conduct, Qualifications and Education & Training committees;
  - 18 December: A barrister is disbarred following a criminal conviction for fraud;
  - 23 December: BSB and LSB launch new survey on the operation of the Public Access scheme for barristers to complete;
  - 4 January: Naomi Ellenbogen QC appointed as new Vice-Chair of the Bar Standards Board;
  - 12 January: BSB launches a new survey to better understand women's experiences of the equality rules of the BSB Handbook.
67. The Board will have seen the fortnightly media coverage that the above announcements generated.

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

68. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- Publication of a draft version of the new BSB strategy, seeking feedback;
  - Publication of a post-event review of the recent “Does cross-cultural communication at the Bar matter?” symposium;
  - Publication of the report summarising responses to the recent BSB Future Bar Training consultation;
  - Work on drafting the 2016 Risk Outlook and preparing for its publication. This includes holding a communications focus group on barristers' thoughts on tone and language used in communications about risk;
  - Planning for an event in April to publish the Risk Outlook and the new BSB strategy;
  - Recruitment for the new post of “Communications and Public Engagement Officer”. (This is in addition to the recruitment of the new Communications and Public Engagement Director).

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

69. During November, 29,752 users visited the BSB website, and a further 29,049 visited in December. At the time of writing, we have 13,298 followers on Twitter.

## **Research**

### ***Staffing***

70. A new Research and Evaluation Officer, Anatole Baboukhian, has been recruited and joined the BSB's Research Team on 11 January.

### ***Projects***

71. Since the meeting in October, work has progressed as follows:
- The Complaints Diversity Analysis report has been completed and was presented to the meeting of the Equality and Diversity Committee in December. It is being considered by the Board elsewhere on this month's agenda.
  - Both the quantitative and qualitative elements of the ABS research have now been completed in cooperation with Supervision to inform the ABS project.
  - Continuing work supporting the development of the Data Dictionary as part of the Data Foundation Project.

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- Continuing work on stage two of the Risk Outlook, specifically the market overview section, with the draft going to the Task and Finish Group in January.
- Providing feedback on the proposed survey for barristers as part of the supply side public access research tenders submitted to the BSB and LSB.
- Providing statistics on the profession for 2015, both for the annual Equality and Diversity report and also to be added to the online statistics page in January 2016.
- Supporting the delivery of the “Cross-Cultural Communication” event for barristers and other stakeholders.
- Continuing work on the Immigration Thematic Review to develop the key themes and provide research background.
- Developing and launching the “Women at the Bar” online survey in cooperation with Regulatory Policy and the project Task and Finish group.

**Corporate Services**

***Staffing***

72. The new Corporate Services department was created at the start of the year. Viki Calais was promoted to the Head of the department and we are currently recruiting a Corporate Support Manager to backfill the vacancy created.

***Business Planning***

73. Aligned with the drafting of the new Strategy, the Corporate Services staff members are working with the other BSB departments to compile the Business Plan for 2016-17, and in parallel we are finalising the budget for the next financial year.
74. Quarter three for 2015-16 finished at the end of December and team members have been compiling management information reports including a year-end outturn forecast for our financial performance.

***Cost of Regulation***

75. We are working very collaboratively and productively with the Legal Services Board on its current research project into the cost of legal services regulation; a report is due to be published at the beginning of this calendar year.

**Resources Group**

76. Following the most recent quarterly reporting meeting with Resources Group and in the light of the development of a new assurance framework, a consolidated report from RG does not appear here this month. We are agreeing a more rational and succinct set of reports with RG and will include those in future. In the meantime, major projects remain broadly on plan, including:-
- Authorisation to Practise which will launch in early February
  - Work Smart – a project to develop options for when we must move to new premises
  - Information management: the Programme Board on 19 January noted progress according to plans across all of the workstreams, with prospective supplier presentations now completed and successful roll-out of the new HR system.

**Vanessa Davies**  
**Director General BSB**  
**21 January 2016**