



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 29 September 2016, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

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1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes <ul style="list-style-type: none">• 28 July 2016 (*)	Annex A Chair	3-9
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	11-13
	b) Forward agenda	Annex C Chair	15
7.	Annual report of the Governance, Risk & Audit Committee (GRA) to the Board (4.35 pm)	BSB 061 (16) Malcolm Cohen / Isobel Leaviss	17-30
8.	PRP Committee Report for Q1 (April 2016 – June 2016) (4.55 pm)	BSB 062 (16) Anne Wright	31-45
9.	Future Bar Training – Continuing Professional Development Consultation Report (5.10 pm)	BSB 063 (16) Bernard MacGregor	47-98
10.	Equality rules: shared parental leave (5.25 pm)	BSB 064 (16) Amit Popat	99-103
11.	Chair's Report on Visits and Meetings: July-September 2016 (*)	BSB 065 (16) Chair	105
12.	Director General's Report (5.35 pm)	BSB 066 (16) Vanessa Davies	107-116
13.	Schedule of Board Meetings: January 2017 - March 2018 (5.40 pm)	BSB 067 (16) Amanda Thompson	117

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

BSB 290916

14. **Any other business**

15. **Date of next meetings**

- Thursday 27 October 2016

16. **Private Session**

John Picken

Governance Officer

JPicken@barstandardsboard.org.uk

22 September 2016

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

BSB 290916

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 28 July 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Aidan Christie QC
Malcolm Cohen
Justine Davidge
Judith Farbey QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford (by FaceTime link – items 10-16)
Adam Solomon
Anu Thompson
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
Jane Chapman (Consultant) – items 1-8
Emily Windsor (Special Adviser) – items 1-10
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – items 1-9
Mark Hatcher (Special Adviser to the Chairman of the Bar Council) – items 1-8
- BSB Executive in attendance:** Sam Benton (Professional Support Lawyer)
Viki Calais (Head of Corporate Services)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Supervision)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Bernard MacGregor (Senior Supervision and Authorisation Officer) – items 1-9
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amanda Thompson (Director for Governance Reform)
Simon Thornton-Wood (Director of Education & Training)
Rob Wall (Head of Policy Programmes)
Wilf White (Director of Communications and Public Engagement)
Christopher Young (Policy Manager - Quality Assurance)

Item 1 – Welcome

1. The Chair welcomed Members to the meeting. He introduced Jane Chapman who helped draft the paper on threshold standards - BSB 052 (16). Jane trained as a solicitor and was formerly employed at the University of Law. She now works as a consultant. He also welcomed Chris Young, Policy Manager – Quality Assurance, who was attending his first meeting.

Item 2 – Apologies

2.
 - Rolande Anderson
 - Rob Behrens CBE
 - Andrew Mitchell QC
 - Chantal-Aimée Doerries QC (Chairman, Bar Council)

Part 1 - Public

- Andrew Langdon QC (Vice Chairman, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (COIC representative)

Item 3 – Members’ interests and hospitality

3. Malcolm Cohen made a declaration in respect of his attendance at the Middle Temple Garden Party (5 July 2016).
4. Sir Andrew Burns confirmed he had received invitations to all of the Inns’ Garden Parties but he had been unable to attend any of these due to conflicting commitments.

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 23 June 2016.

Item 5 – Matters Arising

6. None.

Item 6a – Action points and progress

7. The Board noted progress on the action list. Oliver Hanmer referred to minute 27c (19 May 2016) concerning the Youth Proceedings Advocacy Review. The Taylor Review into Youth Justice will not now be published until September so further discussions with the MoJ will be moved back accordingly, probably to October 2016.

JP to
note**Item 6b – Forward Agenda (Annex C)**

8. The Board noted the forward agenda list.

Item 7 –Statutory Intervention

BSB 051 (16)

9. Rob Wall highlighted the following:
 - the BSB will gain statutory intervention powers for alternative business structures (ABSs) if Parliament approves its application to be designated a licensing authority (the LSB and MoJ have both recommended that this occur);
 - the BSB is also seeking similar powers in respect of entities and individual barristers. A draft interventions strategy has been written (Annex A of the report) and a final version will follow;
 - intervention is a tool of last resort and will only be used when it is necessary and proportionate to do so. The guiding principle is to prevent harm to consumers rather than to act punitively against barristers;
 - it would be helpful to have the Board’s initial views so that the strategy is in place by the time BSB licensing of ABSs begins in Autumn 2016.
10. Members commented as follows:
 - in normal circumstances it should only be the Director General who takes the decision to intervene. It should only be delegated to a Director on an exceptional basis. The section under the “decision-maker” (paragraphs 17 and 18 of the report) should make that clear;
 - the process for keeping intervention decisions under review needs further thought. It might usefully involve input from a third party rather than solely relying on the views of the original decision-maker;
 - it would be helpful to hear more on the BSB’s obligations where a licensed body is holding client money.

11. In response, the following comments were made:
- responsibility for decisions on interventions will lie with the Director General and would only be delegated in extreme circumstances ie the DG's unavailability, incapacity or conflict of interest when a speedy decision is required. The final draft will make this point in stronger terms;
 - should the Board decide to establish an Independent Regulatory Decision Making Body (IDBM), this body could also review intervention decisions;
 - the BSB's role to protect client's money forms part of the statutory process of intervention and funds would be held in trust by it for that purpose.
- RW to note**

12. **AGREED**

- a) to note the work underway on interventions.
 - b) to note the draft interventions strategy and to review final strategy in Autumn 2016.
- RW**

Item 8 – Professional Statement Threshold Standard and Competences
BSB 052 (16)

13. Simon Thornton-Wood highlighted the following:
- the paper sets out a revised version of the Threshold Standard and Competences document following the BSB's consultation and a meeting of the E&T Committee;
 - the consultation prompted considerable interest including helpful and detailed responses from the Inns and the Bar Council in particular;
 - the task of working though the comments received and incorporating these into a new draft has been carried out on a consultancy basis by Jane Chapman and Carol Wadsworth-Jones.
14. Andrew Sanders stated that the document is primarily for the benefit of training providers who will be able to tailor their programmes so that they enable participants to acquire the skill sets identified in the document.
15. The Board discussed the proposal to replace “must have” with “should have” in the context of the skills identified. A minority view suggested that this undermined the document insofar as it makes permissive what ought to be compulsory. The consensus view was that the change reflects the purpose of the Statement as described in Annex 1 (paragraph 32) of the paper ie that “the Statement does not set out what a barrister must do but may be used as an evidential point of reference” in the case of a complaint. The document should therefore be regarded as a tool for guidance to distinguish it from the mandatory nature of the Code of Conduct.
16. The Board also agreed that the language used throughout the document should reflect this point of principle and do so consistently. As currently written, there are other instances where Board members were concerned that it might be interpreted as unduly directive in tone.
17. Members also commented as follows:
- the inclusion in the Threshold standard (Annex 3) of a new line (b) has been prompted by the response of just one consultee and it is worded in too broad a fashion to be meaningful. Its deletion should therefore be considered;;
 - the proposed line about competent assessment of financial remedies in section 1.3 sits uncomfortably in its sub-heading of “understanding law and procedure”. The exercise of appropriate numeracy skills is included in section 1.5 which should be sufficient;

- the words “where appropriate” might be added after the descriptor of section 1.5 ie “apply effective analytical and evaluative skills to their work” on the grounds that the skills required will differ according to the varying instructions received;
 - section 1.12 suggests there may be a need to “research areas beyond the law”. In practice, it was suggested that this would not be an appropriate way to spend a barrister’s time, especially as, ordinarily, barristers are not permitted to conduct litigation. The wording should therefore be considered for deletion;
 - section 3.1 should be moved earlier in the document because of its importance, ie the need for barristers to serve the best interests of their clients;
 - in section 4.4, the reference to “understanding business development activity” relates to marketing and it was observed that this is not an essential requirement at day one of a barrister’s professional career;
 - section 1.6 refers to giving clear, accurate advice both in writing and orally. It is not clear why the words “and take responsibility for it” appear afterwards. One option is to use the term “be accountable”. If the original wording is to be retained, then it was suggested that an illustrative example might help to give context.
18. In response, the following comments were made:
- the new line at (b) in Annex 3 was considered at length by the Education & Training Committee and was supported as being a useful addition on service standards. There was thus an argument for it to be retained;
 - taking responsibility for advice (section 1.6) refers to preparedness to stand by that advice when challenged, but the point would be reviewed.
19. The Board agreed that further work on the document is required to address the points raised and that it should see the final version prior to publication. This could be circulated electronically prior to the next meeting.
20. **AGREED**
- a) to approve in principle the revised Threshold Standard and Competences for publication subject to further amendment to the text as identified above. **STW**
- b) that the final version of the document be circulated to the Board prior to external publication. **STW**
- Item 9 – Entity Authorisation – Report on Activity**
BSB 053 (16)
21. The Board received a report on activity concerning entity authorisation for the period 5 April 2015 – 4 April 2016. The salient points were:
- 47 entities were authorised during the period, the significant majority of which were barrister single person entities. All but two were rated as low risk and all but one renewed for 2016-17;
 - the KPI standards for assessment turnaround were achieved;
 - the Supervision Department managed its resources flexibly in response to the low application rate. This meant that just 1 FTE staffing was used (rather than the 2.75 FTE originally anticipated).
22. **AGREED**
to note the report.

Item 10 – Enforcement Annual Report

BSB 054 (16)

23. Sara Jagger highlighted the following:
- in overall terms, the report is broadly positive. The KPIs show an improvement in performance compared to last year and though some targets were still missed, the period in question also saw a 40% rise in the throughput of cases;
 - there has been a significant increase in the use of administrative sanctions;
 - the user feedback survey results were similar to previous years and, in common with other regulators, satisfaction rates reflect the outcome. People whose complaints are dismissed are much more likely to be unhappy with the system.
24. Members commented as follows:
- the first quarter results were well below the KPI target as a result of earlier staffing shortages. The subsequent improvement is therefore greatly to the Department's credit;
 - the policy to delegate decision making to the lowest appropriate level appears to be working effectively;
 - it is not clear what prompted the significant rise in case numbers;
 - the report states that staff took 67% of decisions on cases. This is encouraging but it would be useful to know what type of cases these cover and how decisions are verified;
 - the BSB investigates complaints in the context of the Code of Conduct. It does not operate as an Ombudsman. The satisfaction survey results may indicate a continuing misunderstanding of the BSB's role on the part of complainants;
 - we may need to re-visit our approach to complaint management and how we respond to individual complainants ie treat incoming correspondence as "sources of information" against which the regulator can decide whether or not to raise a formal complaint;
 - 125 of the 299 external complaints received were from other barristers / solicitors or judges. It may be more accurate to at least regard those from the judiciary as internal, rather than external, complaints.
25. In response, the following comments were made:
- the 40% increase reflects a sudden increase in multiple complaints about the same set of chambers;
 - the cases determined by staff varied but tended to be straightforward and low or medium risk in nature. A high proportion were dismissal decisions. Serious or complex cases are still referred to the Professional Conduct Committee;
 - the process of staff decision taking come under the scrutiny of the Independent Observer. In addition, the Quality Review Sub-Committee of the Professional Conduct Committee carries out random checks on the quality of decision making (cf. paragraphs 3.58-3.63 of the report);
 - the Professional Conduct Department is already reviewing its categorisation and approach to complaints along the lines described above. This may result in a change of emphasis in standard correspondence with complainants, similar in style to other regulators eg Nursing and Midwifery Council.

Part 1 - Public

26. The following points were also raised:
- the actions points suggest a review of KPIs and OPIs. These should not be changed unless there are convincing reasons to do so ie only if they are intrinsically wrong;
 - the “key stats” table under the section “administrative sanctions” could be misread. It quotes 76 administrative sanctions carried out by staff but needs to be clearer that only 6 of these were fines (the remainder being warnings);
 - the reference to satisfaction rates, paragraph 3.22 should state a third of complainants remain *very* dissatisfied. This would make the data consistent with the data in Figure 7;
 - it may be helpful in future to include a section on lessons learned if the report identifies issues that warrant a change in procedure.
27. In response, the following comments were made:
- the purpose of the KPI review is to identify whether we are collating data on the right issues or whether alternative measures would give a more accurate picture. There is no intention to change targets just so that they become more achievable;
 - any lessons learned tend to relate to individual cases with unique circumstances rather than general policy issues. However, if certain cases do provide useful precedents and these could be summarised in a “lessons learned” section.
28. **AGREED**
to note the report and the associated conclusions and action points.
- Item 11 – Bar Standards Board Annual Report 2015-16**
BSB 055 (16)
29. Wilf White referred the Board to the draft Annual Report. This still requires some fine tuning but a final version will be published in week commencing 1 August 2016.
30. The Board approved the content of the report but asked for some minor alterations to be made to the appearance of the infographics
31. **AGREED**
to approve the report for publication on the BSB website subject to further necessary amendments and changes to the appearance of infographics.
- Item 12 – Chair’s Report on Visits and Meetings: June – July 2016**
BSB 056 (16)
32. **AGREED**
to note the report.
- Item 13 – Director General’s Report**
BSB 057 (16)
33. Vanessa Davies referred to paragraph 9 of her report which confirmed Simon Thornton-Wood will leave the BSB on 16 September 2016. She was joined by the Board in thanking him for his past service and his significant contribution in developing the BSB’s strategy on education and training.

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note

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34. Vanessa also highlighted the following:
- internal restructuring of the BSB will continue with the integration of the Education & Training Department and the supervision and authorisation functions to create a new Regulatory Assurance Department; with the education and training policy aspects being integrated with Regulatory Policy.
 - we are currently recruiting for the BSB's Advisory Pool of Experts (APEX); with applications received immediately after applications opened and a steady rate of expressions of interest being received.
 - the new Lord Chancellor was formally appointed at a ceremony on 21 July 2016. The new Minister of State for Courts and Justice is Sir Oliver Heald QC MP and the spokesperson for the Lords is Lord Keen of Elie QC.

35. **AGREED**
to note the report.

Item 14 – Any Other Business

36. None.

Item 15 – Date of next meeting

37. • Thursday 29 September 2016.

Item 16 – Private Session

38. 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:
 - CMA update;
 - ABS consultation;
 - (3) Action Points and Progress;
 - (4) Communications & Public Engagement Strategy;
 - (5) Assurance framework update;
 - (6) Future Bar Training: autumn 2016 consultation on options for routes to qualification;
 - (7) Any other private business;
 - (8) Review of the Board meeting in terms of conduct and outcomes.
39. The meeting finished at 6.00 pm.

**BSB – List of Part 1 Actions
29 September 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
12b (28 Jul 16) – Statutory Intervention	undertake further work on the Statutory Interventions policy document for its reconsideration by the Board in Autumn 2016	Rob Wall	by 20 October 2016	21/09/16	On track – work on revising the strategy, and on drafting the accompanying operational guidance, progressing well. The final strategy will return to the board for formal approval in October.
20a & b (28 Jul 16) – FBT Threshold Standards & Competences document	amend the Professional Statement with Threshold Standard and Competences document as agreed at the July Board meeting. Circulate the final version to the Board prior and then arrange for external publication	Chris Young	before end August 16	05/08/16	Completed – to be published W/C 19 September 2016.
31 (28 Jul 16)	update the draft Annual Report as agreed at the July Board meeting and publish on the BSB website	Wilf White	immediate	02/08/16	Completed – published on BSB website
27c (19 May 16) – Youth Proceedings Advocacy Review	seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system	Oliver Hanmer	by end Oct 16	28/07/16 20/07/16	Board advised at July meeting that the Taylor Review into Youth Justice will not now be published until September so further discussions with the MoJ will be moved back accordingly, probably to October 2016. On track for completion by end of September. In part the approach to this issue and the timing is dependent upon the outcome of the Taylor Review into Youth Justice which is due to be published before the end of July. A review of this action will follow that report.
20d (26 Nov 15) – Gov review & revised SOs	establish two new roles to support the changes in education and training ie <ul style="list-style-type: none"> a “Visitor” to hear challenges against Centralised Examination policy and 	Victoria Stec	before 31 March 16	20/09/16	In hand – title of “Independent Reviewer” rather than “Visitor” has been agreed and interim Independent Reviewer is in place on an ad hoc basis from July 2016; recruitment processes for permanent role not yet complete.

**BSB – List of Part 1 Actions
29 September 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
	procedures <ul style="list-style-type: none"> an increased role for the Independent Observer to the Centralised Examination Board. 			20/07/16	See separate Board paper on Assurance Framework regarding Independent Observer. On track – recruitment processes not yet complete; interim appointments made for 2016 cycle, previously reported
				28/04/16	On track – recruitment in progress
				09/03/16	On schedule – role descriptions agreed and recruitment about to start
				16/02/16	In hand – agreed at GRA and recruitment being built into schedule; assurance framework in development.
				19/01/16	In hand – proposal before GRA on 19 January 2016
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.
				20/07/16	On track – the LSB has now published its thematic review of restrictions on insurance provider. We are taking this into account as the economic analysis and other work is scoped.
				13/06/16	On track – tender issued for economic analysis to support policy development

BSB – List of Part 1 Actions

29 September 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
				11/05/16	On track – internal project initiated
				09/03/16	On track – initial neutral response from LSB on our submission
				16/02/16	In hand – legal advice being used for submission to LSB on competition law aspects being prepared.
				19/01/16	Ongoing – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board.
				16/11/15	Ongoing – update in private session
				04/09/15	Ongoing. A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.

Forward Agendas**Thursday 27 Oct 2016**

- Public and Consumer engagement communications plan – sign off
- Prioritisation of regulatory risks – an approach to the next phase of work
- Independent regulatory decision making at the Bar Standards Board (Part 2) – update on progress
- Statutory Interventions (Part 1)
- Public and licensed access review (Part 2)
- Amending the definition of in-house employed practice (Part 1)
- Centralised Assessment Team Project (Part 2)
- Approval of BSB position on professional indemnity insurance and compliance with competition law. Approval of rule change in relation to SPEs (if necessary)

Thursday 24 Nov 2016

- Protocol on International working
- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Corporate Risk Register (Part 2)
- Independent regulatory decision making at the Bar Standards Board – final proposals (Part 2)
- New equality objectives 2017-18

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

- Response to FBT Consultation
- APEX update
- Publication of diversity data
- CMA review discussion

Thursday 23 Feb 2017

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Draft BSB Business Plan for 2017-18 (Part 1)
- Corporate Risk Register (Part 2)
- Regulatory risk prioritisation

Thursday 23 Mar 2017

- Revised Standing Orders

Annual report of the Governance, Risk & Audit Committee (GRA) to the Board

Status: For noting.

Public paper: Public account of the work the GRA Committee undertakes for the Board.

Executive Summary

1. The GRA Committee is required to update the Board on its activities on an annual basis and this paper also includes the Independent Observer's Assurance Report.

Recommendations

2. The Board is asked to:
 - a) **note** the contents of the update report;
 - b) **receive** the GRA Committee's assurance on the Independent Observer's report; and
 - c) **agree** to publish the IO's Assurance Statement on the BSB's website.

Background

3. Currently the Committee's Terms of Reference include: reviewing corporate governance standards, integrity of internal controls, the risk management framework and the internal audit function; and providing opinion on the effectiveness of monitoring processes and whether reliance can be placed upon internal controls.

Update

4. The Committee met seven times over the year since the last report in September 2015.

Membership

5. The membership of the Committee includes:

Malcolm Cohen	Chair (lay, Board member) whose terms ends in December 2016
Naomi Ellenbogen QC	Vice Chair (barrister Board member; commenced as VC in January 2016)
Nicholas Dee	Barrister member
Judith Worthington	Lay member
Tim Fry	Lay member

Regulatory Standards Framework

6. During the latter part of 2015, the Committee oversaw the work undertaken to achieve progress against the LSB's Regulatory Standards Framework, and it provided assurance on the BSB's Self-Assessment process. GRA members reviewed the detail provided by the Senior Management Team (SMT) on progress against the five pillars: outcomes-focussed regulation, risk-based regulation, enforcement, supervision, capability and capacity. The process was ratified by an external party and the Self-Assessment was subsequently submitted to the Legal Services Board (LSB). The LSB stated that the BSB had demonstrated significant improvement and had a good understanding of its own performance; the LSB's ratings mirrored those that the BSB awarded itself.

BSB Service Complaints

7. The BSB's service complaints policy sets out the process service users should follow if they have a service complaint against the BSB (eg if the BSB takes too long to respond to requests,

or if it responds to users otherwise unhelpfully. NB this is quite separate from complaints against barristers). The Committee received a service complaints monitoring report at its October 2015 meeting; eight complaints had been processed during the 12-month period of which seven had been resolved and one was at the time ongoing. Seven service complaints related to the Professional Conduct Department and one to Education and Training.

Corporate Risk Management

8. The Corporate Risk Register was presented to the Committee at quarterly intervals. GRA members scrutinised the risks and the associated mitigating actions, provided assurance to the Board that these were being properly managed, and gave recommendations as necessary. In addition, the Committee was provided with “in-depth risk reviews”, which focussed on pertinent corporate risks: much more detailed analyses, operational plans and information were presented in these reviews, and the “Risk Owners” attended the relevant meetings. Risks that the Committee focussed on over the last 12-month period included: QASA, Entity Regulation; insurance requirements; competition law; knowledge retention; the BC’s pension scheme; and ASPIRE¹.

Regulatory Risk

9. GRA members were kept up to date with developments on the Regulatory Risk Framework and Regulatory Risk Outlook, which were both published in April 2016.

Governance Review and Assurance Framework

10. GRA members considered the progress made against the BSB’s Governance Reform plans. Lengthy discussions were held on the remit of both the Planning, Resources & Performance and GRA committees. The Board will be discussing the Assurance Framework in the private session.

Independent Observer

11. The BSB’s lay Independent Observer provides independent assurance that the BSB’s enforcement system is operating in line with its aims and objectives. The Committee received two Independent Observer reports: from July to December 2015; and from January to June 2016. The latter report stated that the complaints and disciplinary proceedings are being handled in line with the BSB’s Enforcement Strategy and in accordance with the PCD’s policies and procedures. The Independent Observer also observed that the PCD and PCC have high regard to fairness and procedural integrity.
12. The Committee agreed that the current incumbent’s (Isobel Leaviss) contract should be extended to 31 December 2016 to align with reporting requirements and the development of the BSB’s assurance framework.

Next update report

13. The next routine GRA Committee report is due to be presented to the Board in September 2017.

Annexes

14. Annex 1 – Independent Observer’s report

Lead responsibility

Malcolm Cohen, Chair of the GRA Committee

¹ Accessing Staff Potential in Inspiring Regulatory Excellence – internal work programme set up to help us progress against the LSB’s regulatory standards framework.

**Bar Standards Board
Independent Observer's Annual Report July 2015 – June 2016**

Introduction

1. My role as the Bar Standard Board's (BSB's) Independent Observer is to provide independent assurance to the Governance, Risk & Audit Committee and ultimately the BSB's Board that its enforcement system is operating in line with its aims and objectives (see Appendix 1).

Overview

2. During the period July 2015 – June 2016 (my fifth year in post), I spent 56 days observing the BSB's enforcement system. My activities included;
 - observing 13 Professional Conduct Committee (PCC) meetings
 - observing a PCC Office Holders' Meeting
 - observing a Professional Conduct Departmental meeting
 - observing training sessions for Professional Conduct Committee members
 - reviewing samples of case files and raising queries with case officers
 - observing 8 Disciplinary Tribunals and 3 Appeal Hearings
3. Over the course of the year, as agreed with the Governance, Risk & Audit Committee, I focused in particular on the following
 - reviewing the new BSB website pages relating to the enforcement system
 - reviewing cases outside KPIs (including the longest running cases)
 - reviewing cases that had been subject to Appeal and/or Judicial Review
4. Overall, I have continued to observe that the enforcement system is operating in line with the BSB's Enforcement Strategy and in accordance with its policies and procedures. I have not identified any major systemic issues or individual cases giving rise to serious concerns.
5. I have made eleven recommendations (see Appendix 2), all of which have been accepted.

Limit on Assurance

6. My observations are made as a lay independent observer and my conclusions are necessarily limited by the sample size of cases reviewed.
7. The Professional Conduct Department prepares and publishes detailed annual performance reports that are available on the BSB's website. I refer to these but I have not sought to audit or otherwise verify the data. Having said that, on the basis of my enquiries and reviews of samples of cases, I have confidence in the accuracy of the data.

8. I am not tasked with examining the merit of individual decisions, but rather the application of policies and procedures in the context of the BSB's overarching aims and objectives.

General observations

9. I continue to observe concerted effort on the part of the PCD and the PCC to ensuring that rules, policies and procedures are duly applied and that the handling of complaints and disciplinary proceedings is prompt, thorough and fair.
10. Many cases are complex. Some become protracted. Complainants and barristers can be upset or angry. Most are anxious for a conclusion. Some do not engage constructively with the process. My observation is that in the face of these challenges, the PCD maintains a robust, courteous and professional approach.
11. The consideration of risk to the BSB's regulatory objectives has become a central feature of the enforcement system. The new Handbook and Complaints Regulations, supported by formal risk assessments during the process, are enabling the PCD and PCC to take more proportionate forms of enforcement action for less serious breaches of the Handbook that pose lower risk to the BSB's regulatory objectives and focus disciplinary proceedings on the most serious higher risk cases. I have observed how thoughtful guidance notes, carefully designed report templates, the training of all those involved and effective leadership are ensuring that decisions taken throughout the process are risk-based and outcome focused.
12. The PCD and PCC pay close attention to detail. For example, I have observed due care taken to ensure that complaints and allegations are clarified, new evidence is taken account of, relevant technical issues are fully understood by decision makers, full account is taken of relevant policies and that the reasons for decisions are clearly explained. Whenever I raise queries about cases, the case officers and managers respond swiftly and thoroughly. They demonstrate detailed familiarity with the particular aspects of each case as well as general principles at stake.
13. There were recently a handful of instances where I read Case Examiner reports prepared for PCC meetings and found myself questioning whether the analysis template had been followed closely enough, the reasoning expounded fully enough and/or a recommendation expressed sufficiently clearly to command the support of the full Committee. I can give assurance that in all the cases I identified, I observed these issues being addressed either at or in advance of the PCC meeting. A couple of papers were referred back for further enquiries, others were tackled through direct questioning and discussion at the meeting and clarifying amendments made to the reports. I subsequently observed a PCC Office Holders' Meeting and was reassured that concerns about the quality of reports were aired, there was a frank discussion and follow up actions were agreed.
14. In my experience, the PCD is receptive to constructive criticism and my observation is that the department has a healthy appetite for continuous improvement. Case officers are quick to identify and share examples of best practice and learning points from their cases. A breakout discussion at the most recent quarterly departmental meeting generated lots of

constructive suggestions to prepare the department to assume greater responsibilities for report writing from across the department. The Professional Support Lawyer facilitates departmental learning and knowledge management, including ensuring that the PCD stays abreast of relevant developments in other fields, such as other professional regulatory spheres.

15. The PCD has undertaken a time recording exercise to provide a clearer picture of how departmental resources are deployed. There is now a survey to ascertain the time taken by Case Examiners to prepare reports for the PCC. It will be interesting to see the results of these and how they inform departmental strategy and planning going forward, particularly in the context of the BSB's governance changes and the goal of ensuring that regulatory resources are focused on areas posing the greatest risk to the regulatory objectives.

Equality and Diversity

16. The BSB has stated publically that it is committed to demonstrating 'best equalities and anti-discrimination practice and to embed the principles of equality and fairness into the day to day running of BSB business'¹.
17. In the course of my work, I have not observed anything that has given me cause for concern about the fairness of the application of the enforcement process vis-à-vis equality and diversity. I have observed that staff within the PCD and members of the PCC are alert to potential issues in terms of policy development, general practice and in the context of specific cases. I have observed that case officers are proactive in enquiring whether reasonable adjustments are needed for complainants, barristers and witnesses.
18. However, I was unable to find any publically available equality and diversity data for the PCD or the PCC and upon further enquiries was surprised to discover that up-to-date recording and monitoring of equality and diversity data for the BSB Board and Committee members was not in place and that equality and diversity induction training for new members appeared to have lapsed. I have recommended that the BSB addresses both [15/16 H2R1 and H2R2 High Priority].
19. Notwithstanding the credentials, knowledge and collective experience of its members, I have also recommended that the PCD and Equality Team expedite plans to design and deliver tailored equality and diversity training for all PCC members (e.g. addressing unconscious bias in decision-making) [15/16 H2R3 Medium Priority]. This is not because anything I have observed has given me cause for concern but simply because it has been some time since the last training and there were no concrete plans in place.
20. I have recommended that it would be good practice for the PCD to monitor the diversity of its prosecution panel, including to inform its recruitment strategy for new panel members [15/16 H2R4 Medium Priority].

¹ <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/>

21. I have recommended that (like barristers), complainants should not be named in PCC reports in order to help reduce any potential for unconscious bias [15/16 H2R5 Medium Priority].

Enforcement webpages

22. The BSB relies heavily on external complainants to bring breaches of the Handbook to its attention and its website is an important resource for potential complainants and barristers facing complaints.
23. In previous reports, I have commented that whilst key information was clear and prominent, lots of additional detailed information had been added in a piecemeal fashion and that overall the pages were somewhat cumbersome and difficult to navigate, particularly for those unfamiliar with the process and terminology.
24. The PCD recently revised and simplified its enforcement webpages with input from specialist consultants, consumer representatives and members of the profession. The new pages are much clearer and the language is much plainer. In particular, I think the FAQs are much more useful. I have provided the PCD with a few detailed comments and suggestions for their consideration. Overall, the pages are vastly improved and should help those with concerns, and barristers facing them, to better understand and navigate the process.
25. The entire BSB website is due to be reviewed next year including introducing clearer 'entry points' for consumers (and other key user groups) to help them more readily access information they are most likely to need. I understand that the BSB is planning to modernise the site including make greater use of infographics and other mechanisms to convey information. The current enforcement pages are still very text heavy. The BSB should also continue to engage with third parties (e.g. consumer groups) to improve online signposting from other sites.

Cases outside KPIs

26. The PCD has set performance indicators to track how long it takes to assess (eight weeks) and investigate cases (eight months for external complaints, five months for internal complaints).
27. I reviewed samples of cases that had not met these standards. I focused particularly on 'long running' cases i.e. those that had exceeded the service standard for a process stage by more than 50%. As well as reviewing samples of case files, I reviewed the management reports and review mechanisms in place.
28. I saw clear evidence on file of case officers chasing up and progressing matters where possible, including cases that had been put on hold pending related legal proceedings. In some cases, the PCD had secured voluntary undertakings not to practise or interim suspensions in the meantime.

29. The only significant instance of what I would describe as ‘avoidable’ delay that I identified was for a case that required advice from two Experienced Members of the PCC before it could be dismissed because it had been referred to the BSB by the Legal Ombudsman (rather than coming direct). There were difficulties – and hence delays - finding two available members. I understand that this was in part because there had been two cases requiring advice and the other one had been afforded higher priority.
30. The PCD are proposing a policy change that would remove the *requirement* for the PCD to obtain Experienced Member advice before dismissing cases arising from LeO referrals and instead, as for cases received directly, give case officers discretion about whether to seek advice or not (i.e. reserving this for particularly complex or ‘borderline’ cases). This could help avoid such delays in future.

Appeals and Judicial Reviews

31. All defendant barristers have the right to appeal Administrative Sanctions and finding(s) and/or sentences imposed by a Disciplinary Tribunal. The BSB provides data on the number of Appeals received and the outcomes in its Enforcement Annual Report.
32. I reviewed samples of case files for allowed, discontinued and dismissed appeals dating back to 2012/13. I also observed three Appeal hearings this year. I did not identify any systemic issues behind the appeals or serious concerns about how the appeals processes are being followed.
33. Where I identified learning points, these had already been identified by the PCD and appropriate action taken. For example, the one case that I reviewed that was successfully appealed on what I would describe as ‘substantive’ grounds, involved allegations of misconduct that the original Tribunal had described as ‘a borderline line case’. The Appeal judgment noted that whether the incident crossed ‘the line of seriousness’ i.e. constituted misconduct, was ‘in the end’ ‘a matter of judgment’ but, unlike the original Tribunal, concluded that in this particular case ‘it really is not’. The Appeal judgment expounded factors it thought were relevant to assessing the seriousness of a breach. Since then, this judgment has formed part of the induction pack for new PCC members.
34. I observed a couple of instances at Appeal Hearings I attended of Judges having to request copies of key documents to be handed up during proceedings (e.g. Sentencing Guidance, BSB Handbook!). Whilst I understand that it is the appellant’s responsibility (rather than the BSB’s) to prepare and submit documents in support of their appeals, I have recommended that in the interests of efficiency, the PCD takes a more proactive approach to ensuring that key documents are provided in advance [15/16 H1 R1 Low Priority - Implemented].
35. The BSB has been involved in a number of Judicial Review proceedings in relation to its enforcement role. The PCD publishes information about these in its Enforcement Annual Report, including any lessons learnt and action taken.

36. All JR applications are logged and tracked on a corporate 'Litigation Register'. When I reviewed the Register I found that it was not entirely up-to-date. I found the format cumbersome and some of the narrative confusing. Whilst I can give assurance that the staff responsible for particular cases and the PCD management team were clear about the status of individual proceedings, I recommended that the PCD introduced measures to ensure that the Litigation Register is complete and regularly updated for its cases [15/16 H1 R3 Medium Priority – Implemented] and that the BSB reviews the format of the Register to ensure that it is fit for purpose [15/16 H1 R4 Low Priority - due Jan 2017].
37. I have also recommended that the PCD considers how best to more systematically identify, address and disseminate any lessons arising from JR proceedings [15/16 H1 R5 Low Priority - Implemented].
38. A list of Appeal and JR judgments is available on the BSB's website with links to download the full judgments. However, unless one is already familiar with the case, it is difficult to know which cases might be of interest or relevance. In the interests of transparency, I have recommended that user friendly case notes (i.e. distilling the central issues) are put on the website [15/16 H1R2 Low Priority – due Jan 2017].

Assurance

39. In my opinion and based on my observations reported to the Governance, Risk & Audit Committee and summarised above, I am able to provide the BSB Board with a substantial level of assurance that during the period covered in my review the enforcement system has operated in accordance with its aims and objectives.
40. Specifically, I can assure the Board that
 - potential breaches of the Handbook are being identified and appropriately pursued
 - due care is being taken to ensure that policies and procedures are followed
 - appropriate mechanisms are used to ensure that decisions risk-based, fair and consistent
 - communications are clear
 - decisions are well reasoned
 - staff are polite and professional in their written contacts
41. Based on my observations, I made eleven recommendations designed to further enhance the BSB's handling of complaints and disciplinary processes (see Appendix 2). All have been accepted.
42. I would like to thank the Professional Conduct Department, the Professional Conduct Committee and all the other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.

Current work programme

43. My contract concludes at the end of December 2016.
44. As agreed with the Governance Risk and Audit Committee, until then I will continue to observe the enforcement system and report any new observations. I will also review the status of all my previous recommendations and use my final report to offer reflections on my past five years in post.

Isobel Leaviss
INDEPENDENT OBSERVER
September 2016

Independent Observer Role Profile

Key responsibilities include:

- Establishing whether in respect of the BSB's enforcement system
 - Cases are handled in a timely manner in line with service standards;
 - Investigations of complaints are carried out, in accordance with policies and procedures, thoroughly and fairly and with appropriate consideration of equality and diversity issues;
 - Decisions of the Professional Conduct Committee and staff are made consistently and in accordance with agreed criteria;
 - The reasons for decisions are explained fully and clearly to the parties;
 - Cases are transferred effectively, efficiently and correctly between the BSB and the Legal Ombudsman
 - The arrangements made for holding disciplinary hearings are handled effectively by the BSB;
 - The handling of the BSB of the prosecution of disciplinary cases and appeals and the BSB's treatment of all parties is fair, effective and in accordance with laid down procedures; and
 - In all other respects, complaints are being dealt with in accordance with the intended outcomes and hallmarks of the BSB's Enforcement Strategy (see below)

- Developing an appropriate quality assurance programme; agreeing it with the Governance, Risk and Audit Committee (GRA); and working in accordance with the agreed plan.
- At the request of the (GRA) or the Bar Standards Board, conduct enquiries into identified issues of concern and report on such enquiries.
- To prepare and submit to the (GRA) six monthly reports containing
 - A summary of activities
 - Evidence based rational, robust observations and conclusions
 - Recommendations to address any systemic weaknesses identified or areas for improvement
 - An annual general assessment of performance in relation to the relevant aspects of the enforcement system for publication on the BSB's website.
- The IO should report findings and/or seek advice from the GRA Chair or Vice-Chair as necessary between formal reporting, for example in relation to urgent matters. In circumstances where it would be inappropriate to seek advice from the Committee Chair or one of its members, the IO should approach the Chair or a Vice-Chair of the Board.

The Independent Observer does not act as an independent adjudicator and is not tasked with reviewing the merits of individual decisions but rather the application of policies and procedures.

The Independent Observer has no powers to review the progress or outcome of individual complaints and cannot respond to individual parties about complaints.

The BSB's Enforcement Strategy (published January 2014)

Intended Outcomes

The main objective is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions.

Enforcement action is intended to meet the objectives of:

- a) promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
- b) providing a credible deterrence to non-compliance with the BSB's regulatory arrangements;
- c) preventing further breaches; and
- d) preventing those who represent a serious risk to the public from practising.

Hallmarks

The hallmarks of the BSB's Enforcement Strategy are as follows:

- a) **Risk-based** – We will focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.
- b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
- e) **Flexibility** – We will use a range of enforcement tools to promote compliance with our regulatory arrangements.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond.

Recommendations made during 2015-16 and status as at September 2016

Ref	Priority	Recommendation	Status
15/16 H2 R1	High	the BSB resumes equality and diversity data collection, recording and monitoring for its Board and Committee members	Accepted
15/16 H2 R2	High	the BSB resumes equality and diversity induction training for its Board and Committee members	Accepted
15/16 H1 R3	Medium	That the PCD introduces measures to ensure that the Litigation Register is complete and regularly updated for its cases.	Implemented
15/16 H 2R3	Medium	the PCD and Equality Team expedite plans to design and deliver tailored equality and diversity training for all PCC members (e.g. unconscious bias).	Accepted
15/16 H2R4	Medium	the PCD monitors the diversity of its prosecution panel, including to inform its recruitment strategy for new panel members.	Accepted
15/16 H2R5	Medium	the PCD and Case Examiners anonymise complainants (i.e. do not name them) in the reports presented to the PCC	Accepted
15/16 H1 R1	Low	In the interests of efficiency, the PCD liaises with the High Court to ensure that it has ready access to copies of relevant BSB rules (e.g. Handbook, DT Regulations) and guidance (e.g. Sentencing Guidance)	Implemented
15/16 H1 R2	Low	That user friendly summary case notes (i.e. distilling and analysing the central issues, points, facts and decisions) are prepared for judgements made available on the BSB website and for those circulated internally and to PCC members and prosecutors so that users can more readily identify cases and issues of interest or relevance to them.	Due Jan 2017
15/16 H1 R4	Low	Corporately the BSB reviews the format of the Litigation Register to ensure that it is fit for purpose.	Due Jan 2017
15/16 H1 R5	Low	The PCD considers how best (within the Litigation Register or elsewhere) to identify, address and disseminate any lessons arising from JR proceedings.	Accepted
15/16 H1 R6	Low	That PCD consider engaging consumer organisations and/or consumers on issues raised in the consultation particularly the	Implemented

Ref	Priority	Recommendation	Status
		'issues of principle' that will inform 'the potential direction of travel in the medium term' and/or any supporting guidance that is developed as part of the implementation of the new DT Regulations.	

PRP Committee Report for Q1 (April 2016 – June 2016)

Status

1. For discussion and decision.

Executive Summary

2. This paper provides an update to members of the Board on the BSB's progress and performance in Q1 against the aims and activities set out in its 2016-17 Business Plan. It covers a wide range of information (see the dashboard in Annex 1) relating to projects, financial position and performance measures, and it provides the Board with an assessment of progress against our plans.
3. As reported to the Board during the budget setting process, this is a very tightly resourced year; and the budget does not have any contingencies, so we are monitoring costs particularly closely. In addition, the Bar Council received less PCF revenue than projected for 2016-17, meaning that all areas of the organisation need to find ways to offset this shortfall. We have made a commitment to reduce our in-year drawdown on PCF funds (by around £60k).
4. The main "exception" areas highlighted in this report are:
 - a) We expect our tightly controlled expenditure to remain roughly on track. With regard to income, it is unlikely that we will receive income from QASA or use resource to develop the scheme this year. Last year we did not project income from BCAT as we had made some assumptions about changes to the test, however BCAT will be continuing so will generate previously unbudgeted revenue. For year-end we are currently forecasting:
 - (i) **Non PCF Income:** £912k against a projection of £947k (variance £47k or -4%);
 - (ii) **Expenditure:** £5,155k against a budget of £5,213k (variance £59k or +1%).
 - b) Out of the 27 business plan activities, six are at the moment flagged as amber (although most are expected to be green by the next quarter), two have been combined and three have been completed.
 - c) Staff turnover remains a concern with a turnover rate of 34% (although voluntary turnover is 17%). The HR report provides an update into some of the initiatives the organisation is taking to address this, see BSB paper 070 (annex 4).
 - d) PCD OPI 3 performance (internal complaints referred to disciplinary action) for Q1 was 76.5% against a target of 80%. All other departmental service targets have been met or exceeded.

Recommendations

5. Members of the Board are invited to:
 - a) **scrutinise** the detail of the report;
 - b) **discuss** the main areas highlighted;
 - c) **note** the Executive will be continuing to monitor expenditure particularly closely;
 - d) **make recommendations** to the Executive or the Committee as necessary.

Background

6. We have just commenced the first year of our new Strategic Plan. The 2016-19 Strategic Plan¹ sets out the way in which we will regulate barristers and specialised legal services businesses. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. The work which is to take place over this three-year period has been organised into the following three strategic aims:
 - a) Regulating in the public interest;
 - b) Supporting those we regulate to face the future; and
 - c) Ensuring a strong and sustainable regulator.
7. The Business Plan² for 2016-17 outlines our key activities for the year, as well as our budget and staffing requirements. This report describes our performance against our objectives and budget, as well as the overall performance within the BSB.

Reporting process

8. On a quarterly basis, the Corporate Support Team gathers information, in liaison with the Senior Management Team (SMT), and then reviews the activities in the Business Plan and provides progress updates. It is SMT members' responsibility to provide explanations for delays or overspends and the associated risks or impacts and how they are being addressed. Resource Group colleagues provide the figures underlying the HR and IT performance data on a quarterly basis. A new report has been designed with the aim to increase accountability and to rationalise how management information is presented (see BSB 070, annex 4).
9. In the BSB's Performance Dashboard (annex 1) the up and down arrows, which showed the importance of the business plan activities have been replaced by a numbering scale from 1 – 4, four being the highest importance.
10. The live document against which business activities are reported was last updated on 28 July 2016, whereas our performance indicators and management accounts are for Q1 only (as at 30 June 2016).

Areas for further consideration

11. Activity is reported to the Board and to the PRP Committee by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below, and have been listed in the order that they appear in the 2016-17 Business Plan.

¹ 2016 – 19 Strategic Plan

https://www.barstandardsboard.org.uk/media/1746768/bsb_strategic_plan_2016-19.pdf

² Business Plan - https://www.barstandardsboard.org.uk/media/1750592/bsb_business_plan_2016-17_31.3.16.pdf

These include:

- a) Scope of Practice and Employed Barristers rules
- (i) Board members will recall that the 2015-16 Business plan stated our intention to review the three-year rule and any other scope of practice restrictions in relations to the employed barrister to ensure that our rules are fit for purpose. The Legal Services Board (LSB) has published guidance to s15 of the Legal Services Act (LSA), which requires approved regulators to examine restrictions on employed barristers working in-house. That narrow rule issue was therefore prioritised and we have consulted on a proposal to broaden the definition of employment for barristers working in organisations that are authorised by law firms.
 - (ii) The responses to the consultation identified some particularly challenging drafting issues that need to be considered. We have informally consulted those who responded on some proposed alternative drafting and are now working through their additional comments before making recommendations to the Board.
 - (iii) This activity, which is currently within our control, is showing as amber, as our recommendations were not taken to the Board in July as originally planned. The proposals will be presented in October 2016 instead, meaning this activity will slip by a quarter. We are however confident that we will complete this activity by the end of the business year.
- b) Public and Licensed Access
- (i) Public and Licensed Access rules enable barristers to be instructed by a client directly without a professional client (usually a solicitor) also being instructed.
 - (ii) The aim of the Public and Licensed Access review is to assess whether the current regulatory regime with regard to public and licensed access is suitably transparent, accountable, proportionate, consistent and targeted. The review involves gathering and analysing evidence, setting up a Task Completion Group, and drafting a final report with recommendations to the Board. This report should inform decisions on whether specific policy or other regulatory responses are required to effectively manage risk in this area; whilst the report will make recommendations in this regard, the actual decision making and implementation of any decisions will be outside of the scope of the initial review and separate consultation (and an application to the LSB) will be needed prior to any changes to regulatory arrangements.
 - (iii) Board members will recall that this business plan activity was reforecast into this business year. The evidence gathering activities have taken place (for example, evidence has been gathered from supervision activity and independent research was commissioned to gather views from barristers and clients) and is now completed. Analysis of the evidence has taken place and has met its target of completion by Q1 as set out in the 2016-17 Business Plan.

- (iv) When we originally planned the review, we had asked Law for Life to rewrite the guidance for lay clients and review our standard client care letter. The latter did not proceed as originally planned as we agreed to work jointly with other regulators on a project to review the content of client care letters. It has therefore taken longer than planned to get the agreement for the scope of work, which then had to go out to tender (the contract has just been finalised). We have decided that it would be best to wait for the result of the work on the client care letters, in order for us to feed any findings into the recommendations to the Board.
- (v) Presently we are in the process of reviewing our timeline. Our timeline is likely to be delayed by a quarter; we intend to take analysis and options to the Task Completion Group shortly, with our recommendation coming to the Board in October 2016.
- c) Chambers' Governance
- (i) The aim of this project 'Delivery Models Used by Barristers' is to gather information on the different models used by practising barristers to deliver legal services, including how barristers receive instruction. This project also aims at providing information on delivery models using the term barrister, or claiming to be barristers, to deliver legal services. The research objectives are as follows:
- To provide an understanding of the different models used by barristers to provide legal services;
 - To provide an up to date overview on how barristers receive instruction; and
 - To identify the risks and the benefits associated with each delivery model.
- (ii) Following a tendering process, an external research body has been appointed. Using an external partner will help to ensure an independent and confidential data collection process, and will help to receive information from the widest range of legal suppliers possible. To date the researchers have carried out a desk-based exercise and have identified a number of potential delivery models in the market. .
- (iii) On 12 May we invited external experts in legal services to a workshop in order to get their views on the research objectives and the findings of the desk research. Based on the feedback that we received, we are currently in the process of reviewing the methodology and the project timeline. A survey of the profession was launched in early September. This activity is within our control (C1) and we anticipate that the final report will be completed by the end of Q2 and will be submitted to the Board after that.
- d) Future Bar Training (FBT)
- (i) Board members will recall that our FBT programme focusses on changing the way we regulate, in order to foster innovation, protect the rule of law, protect access to justice and safeguard standards for all those who rely on barristers' services. FBT is a programme that consists of six work streams which are:

- clearly defining the benchmark that describes the knowledge and skills that all newly qualified barristers should possess on their first day in practice;
 - making our rules covering education and training less prescriptive and ensuring that they are proportionate, and transparent and address the main risk;
 - establishing a more flexible approach to continuing professional development;
 - reviewing how the BSB manages and shares data to support its regulatory objectives in education and training;
 - improving access routes to the profession by reviewing the vocational stage of training for the Bar and pupillage; and
 - re-assessing the regulation of the academic stage of qualification.
- (ii) We should have stated much more accurately in the Business Plan our original timelines. The up-and-coming consultation, which is due to run for 12 weeks, was always scheduled to end on 31 December 2016. Therefore the analysis and review of the consultation will take place in Q4 (rather than Q3 as shown in the Business Plan). Nevertheless we are confident that we will complete this activity by the end of Q4.
- e) Ministry of Justice consultation on regulatory independence
- (i) In November 2015 the Treasury announced that the Ministry of Justice (MoJ) will be consulting on the independence and full separation of the Legal Services Regulators from their representative bodies. The consultation is yet to commence. The Competition and Markets Authority (CMA) has also launched a market study to:
- examine the long standing concerns about the affordability of legal services and standards of service; and
 - complexity of the current regulatory framework.
- (ii) The CMA interim report appears here:
- <https://assets.publishing.service.gov.uk/media/577f76daed915d622c0000ef/legal-services-market-study-interim-report.pdf>
- The CMA report provides opportunities for the BSB to continue to develop its consumer focus and ensure value for money in regulatory costs. The report however does not enter further into the separation/independence debate other than to state that separation must be right in principle, and that the MoJ consultation will deal with the issue.
- (iii) Discussions have taken place with the MoJ, which indicate that a significant change to the regulatory architecture remains on the horizon, but this is subject to political interest / prioritisation, as well as MoJ policy, capacity and parliamentary time. There is a range of potential impacts on the BSB, from little more than a superficial change to much wider existential changes.

- (iv) We will continue to actively engage with MoJ officials and other regulators in order to gain further insight into the content of the consultation and are fully engaged with the CMA's continuing work. The Board is considering the LSB's latest paper on legislative reform in private session.
- f) Assurance Framework
- (i) The BSB's assurance framework is aiming to:
- assess the performance of our internal systems;
 - ensure we are able to assess our effectiveness as a regulator in terms of our market impact; and
 - combine our assessment and management of the corporate and regulatory risk.
- (ii) In June 2016 a joint meeting was held between the Governance, Risk & Audit Committee and the PRP Committee, where members discussed and agreed in principle the direction of travel on development of the assurance framework. The Board is receiving a paper on this in the private session.
- (iii) This activity, which is within our control, is marked as amber in relation to the timeline. The reason for the current delay is because of the need to align this work with other projects and developments (eg wider regulatory reporting). The size of the project and the time needed to liaise with committees, were larger and longer than first anticipated. This has meant that the timeline stated in the business plan is now unrealistic.
- (iv) Presently we are confident that we will agree our first version of the framework in Q2 and not Q1 as originally stated in the business plan. We expect to complete the rollout of final iteration by Q4.

HR Dashboard

12. Turnover continues to hover above 30% at 34.4% and remains a concern for BSB, although voluntary turnover is at half of this value (17%). From the seven leavers in Q1, three were temporary staff covering maternity leave and one finished a fixed-term contract.
13. The HR section within the Resources Group Q1 report (BSB paper 070 annex 4) provides some further insight into organisation-wide statistics.

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

14. The service level agreement between the BSB and the RG is working well. On a whole the majority of the aims, objectives and deliverables have been met and are on track.
15. As mentioned above a new quarterly report has been designed as is currently being piloted. It is intended that this will improve accountability and will be shared across the organisation. Currently it focusses on the year's activities that the RG aim to deliver and uses quarterly milestones much like those we have for our own Business Plan activities. The HR section is more developed than the others as it provides more statistical information. We intend to work with RG colleagues to embed this way of reporting across all of the teams. The full report can be found in BSB paper 070 Annex 4.

PCD Performance Indicators

16. For the full PCD Performance Indicators table see Annex 4. The PCD department has improved since Q4 of the 2015–16 business year, which is to be commended. OPI 3 (the percentage of internal complaints concluded or referred to disciplinary action with five months following investigation) missed its target of 80% by 3.5 percentage points, however all other indicators met or exceeded targets. Of a total of 17 cases, four fell outside of the service standards. The reasons for these were varied and there is no over-arching theme.

Qualifications (Authorisations)

17. We measure the percentage of applications determined within 12 weeks of receipt of a completed application. In Q1 the target of 98% for this indicator was missed by 0.2 percentage points. Within this quarter the Authorisations team (previously Qualification Regulations team) faced the challenges of a staff restructure, a subsequent reduction in headcount and an increased workload with regard to the governance changes. We welcome that we have maintained high performance during this time.

2016-17 Budget and Forecast

18. Below are the headline figures for Q1 and further detail can be found in Annex 2:
- a) In the first three months for the period ending 30 June 2016 (Q1 of 2016-17), the BSB received £60k in non-PCF income against our budgeted projection of £73k (-18%). We have conservatively estimated a year-end forecast of £912k against a budgeted figure of £947k (-4%).
 - b) For expenditure, in Q1 we have spent £1,046k against a budget of £1,053k (+1%). Our overall expenditure for 2016-17 is forecast as being £5,155k against a budget of £5,213k, giving a projected underspend of £59k (+1%).
19. Detailed information on each departmental budget, which sets out the departmental forecasts and commentary on each line of the budget, can be provided upon request. The key pressures and challenges have been summarised from these documents and are set out below:
- a) Staff costs:
 - (i) We are closely managing our staff costs and the small underspend here is due to some vacancies. This year was the first year that performance related pay was introduced and the scale of the anticipated increase in staffing costs had been difficult to gauge, although our estimates look to be pretty accurate.
 - (ii) We have lost some programme management capability, particularly in relation to FBT, and at the moment we have not decided how to replace or source these skills. There is likely to be a gap here for a few months as the current focus for FBT is on drafting policy. As the programme progresses, staffing may become an issue (staffing is flagged as amber on BSB dashboard, annex 1). We will be reviewing our needs as part of the 2017-18 business planning process.

b) Income

- (i) As mentioned in the executive summary, the Bar Council did not achieve the level of PCF revenue that it had forecast. The BSB has committed to help offset this shortfall and will be looking to reduce the drawdown on PCF funds by around £60k.
- (ii) This will be challenging as we are unlikely to receive any income from QASA this year (we had projected receipt of £80k), although spending on the development of the scheme (£60k) is also likely to be delayed.
- (iii) We had not this year anticipated any income from the BCAT. We made an assumption on the changes that the BCAT review would bring about. The Board agreed that the BCAT should continue so there will be a level of income here and at the moment we are conservatively forecasting a surplus of £30k.

c) Non-staff Expenditure

- (i) Board members will recall the executive asking last year for advice on whether the BC Finance Committee should be approached to approve an additional resource bid. This was in relation to pressures and challenges expected to arise this year, and in particular the review of BMIF arrangements (PII) and competition law.
- (ii) We have commenced work on this project and are scoping a full market impact assessment. We have needed to look externally for specialist expertise and a tendering exercise has been carried out, and it is likely that we will spend £50k more on the assessment than first anticipated.
- (iii) We agreed with the BC FC that we would try to manage such pressures in-year and would only ask for additional resource if this proved too difficult. It is early on in the financial year, and we are not at this stage recommending to approach the BC FC again. With careful and tight management we should be able to accommodate the additional cost mentioned above, but that is of course assuming that unforeseen external shocks do not knock us off track.

Equality Impact Analyses

20. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our performance against various E&D measures.

Risk implications

21. The Corporate Risk Register and the associated private information relating to this report can be found in paper 070 and annexes.

Regulatory objectives

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

Publicity

23. This report will form the outline of a paper presented to the Board, which will be presented in the Public part of the agenda.

Annexes

24. Annex 1 – Q1 Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators

Lead responsibility

Dr Anne Wright CBE, Chair, PRP Committee
Viki Calais, Head of Corporate Services
Stephen Clifford, Senior Corporate Support Officer
Natasha Williams, Business Support Officers

Q1 Dashboard																
Business Plan Activities (2016-17)					Service Standards (Core activity)											
Strategic Programme 1					Professional Conduct Indicators											
Regulating in the public interest					Q1 Target											
	TIME	BUDGET	STAFF	CTRL	IMPRT	SIZE	BSB paper reference	KPI - % of complaints concluded or referred to disciplinary action within service standards	88.5%	80%	✓					
Consumer Engagement* (combined with as below)	X	X	X	C1	3	2		OPI - % of complaints concluded or referred to investigation within 8 weeks	89.5%	80%	✓					
Research	✓	✓	✓	C1	3	1		OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation	86.7%	80%	✓					
Stakeholder Engagement (combined with *)	✓	✓	✓	C1	3	2		OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation	76.5%	80%	⚠					
Independent regulatory decision making	✓	✓	✓	C1	3	2		Qualification Committee Applications								
International work	✓	✓	✓	C1	1	1		Time taken to determine applications from receipt of the complete application:								
Disciplinary system	✓	✓	✓	C1	4	1		Up to 6 weeks	79.4%	75%	✓					
Regulatory Interventions	✓	✓	✓	C1	3	3		0 to 12 weeks	97.8%	98%	⚠					
								Over 12 weeks	2.2%	2%	✓					
Strategic Programme 2					Entity Authorisation Decisions											
Supporting barristers and those the BSB regulates to face the future					Q1 Target											
Entity Regulation and ABS	✓	✓	✓	C1	2	1		The % of authorisation decisions made within service standards								
Scope of Practice & Employed Barrister rules	⚠	✓	✓	C1	2	2	Paragraph 11a	Within 6 Months	94%	90%	✓					
Public Access	⚠	✓	✓	C1	3	2	Paragraph 11b	Within 9 Months	100%	100%	✓					
Chambers' governance	⚠	✓	✓	C1	3	2	Paragraph 11c	Number of Service Complaints closed								
Professional Indemnity Insurance arrangements	✓	⚠	✓	C1	4	2	Paragraph 19c	2016 - 17 Q1 YTD actuals against budget			2016 -17 YE fcst against budget					
Immigration thematic review	✓	✓	✓	C1	3	2		Act	Bud	Var	Act	Bud	Var			
Youth Courts	✓	✓	✓	C1	4	2		Income	£60k	£73k	£13K	⚠	£912k	£947k	£35k	✓
QASA	✓	✓	✓	C1	1	1		Expenditure	£1,194k	£1,198k	£4k	✓	£5,155k	£5,213k	£59k	✓
Future Bar Training	⚠	✓	⚠	C1	4	4	Paragraph 11d/19a	Staffing (Rolling figures)			HR					
Continuing Professional Development	⚠	✓	✓	C1	3	3		Sickness (days/FTE)	1.1	5.46	✓	Recruitment times (approval to start date (weeks))	14	10	✓	
Diversity	✓	✓	✓	C1	4	2		Sickness (days/long term)	0.0	0.73	✓	Turnover (%)	34.4	31.7	⚠	
								Voluntary Turnover (%)	17	17.5	✓	IT Response times				
Strategic Programme 3					Corporate Risk Register											
A strong and sustainable regulator					2016 - 17 Q1											
MoJ consultation in regulatory independence	⚠	✓	✓	C1	3	2	Paragraph 11e	2016 - 17	Q1		19 Apr 16					
Assurance Framework	⚠	✓	✓	C1	4	2	Paragraph 11f	Response to high priority calls	100%	✓	18 Jul 16					
Board Governance	✓	✓	✓	C1	2	2		Response to medium priority calls	100%	✓	Likelihood					
ASPIRE	✓	✓	✓	C1	3	2					Impact					
Advisory Pool of Experts	✓	✓	✓	C1	4	3					Impact					
HR strategy	✓	✓	✓	C1	4	3					Impact					
Risk-based Regulation	✓	✓	✓	C1	4	4					Impact					
Information Management Programme	✓	✓	✓	C1	3	4					Impact					
BSB future Premises	✓	✓	✓	C1	1	1					Impact					
					Service level agreement with BC (Resources Group)											
					% of aims and objectives met											
					Project Management Office					96%	✓	HR	89%	⚠		
					Records Office					100%	✓	Facilities Management	99%	✓		
					IT					95%	✓	Finance	95%	✓		
Key																
Control			Importance			Size			Weighting			Business Activities				
C1 - BSB Control			4 More important			↑ 1 Small piece of work			Higher weighting			Completed				
C2 - RG control			1 Less important			↓ 4 Large piece of work			Lower weighting							
C3 - External control																

2016-17 BSB Management Accounts									
	Q1 YTD Actual £k	Q1 YTD Forecast £k	Variance £k	Variance %	YTD Forecast £k	YTD Budget £k	Variance £k	Variance %	PRP Paper Reference
Income									
Entity Regulation and Alternative Business Structures	1	13	12	-93%	34	36	2	-4%	
Authorisations - Waivers & Accreditations	54	44	10	22%	185	254	68	-27%	
Examinations	0	0	0		30	0	30		
Supervision - Education and Training	0	16	16	-100%	657	657	0	0%	
Professional Conduct Department	5	0	5		5	0	5		
Total directly controlled income	60	73	13	-18%	912	947	35	-4%	Paragraph 19b
PCF and Inn's Subvention	1,704	1,751	47	-3%	6,957	7,004	47	-1%	
Total income	1,764	1,824	60	-3%	7,869	7,951	82	-1%	
Expenditure									
Entity Regulation and Alternative Business Structures	21	20	1	0	83	83	0	0%	
Staff Costs	21	20	1	-3%	83	83	0	0%	
Other costs	0	0	0	0%	0	0	0	0%	
Authorisations - Waivers & Accreditations	48	53	5	9%	212	271	59	22%	
Staff Costs	44	48	4	8%	193	197	4	2%	
Other costs	4	5	1	20%	19	74	55	74%	
Examinations	74	72	2	-5%	346	330	16	-5%	
Staff Costs	30	34	4	12%	135	129	6	-5%	
Other costs	44	38	6	-16%	211	201	9	-5%	
Supervision - Post Qualification	113	118	5	4%	456	484	28	6%	
Staff Costs	115	118	3	3%	446	481	35	7%	
Other costs	1	0	1	100%	10	3	7	-244%	
Supervision - Education and Training	80	79	1	-1%	337	363	26	7%	
Staff Costs	70	68	2	-3%	243	271	28	10%	
Other costs	10	11	2	15%	94	93	1	-1%	
Professional Conduct Department	317	319	2	1%	1,275	1,279	4	0%	
Staff Costs	283	280	3	-1%	1,145	1,145	0	0%	
Other costs	34	39	4	11%	131	134	3	3%	
Strategy and Policy	206	210	4	2%	1,020	992	28	-3%	
Staff Costs	197	188	10	-5%	811	832	21	3%	
Other costs	8	22	14	63%	209	159	50	-31%	
Communications and Public Engagement	83	82	1	0	360	356	4	0	
Staff Costs	62	69	7	11%	277	281	4	1%	
Other costs	21	13	8	-64%	83	74	8	-11%	
Corporate Services	165	165	0	0%	728	728	0	0%	
Staff Costs	141	148	7	5%	575	582	7	1%	
Other costs	25	18	7	-40%	153	146	7	-5%	
Chair and Director General	87	80	7	-9%	338	328	10	-3%	
Staff Costs	83	80	4	-5%	329	322	7	-2%	
Other costs	3	0	3	100%	9	6	3	-60%	
[Staff costs]	1,046	1,053	7	1%	4,236	4,323	87	2%	Paragraph 19a
[Non-staff costs]	148	146	2	-2%	918	890	28	-3%	Paragraph 19c
Total directly controlled expenditure	1,194	1,198	4	0%	5,155	5,213	59	1%	
Net	570	625	64	-4%	2,715	2,738	23	-1%	

PCD Key Performance Indicators

PCD Measure		2016-17		2015-16 YE	2015-16 Target
		Q1	Target		
Complaints	Number of complaints received	113	n/a	481	n/a
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	88.5%	80%	75.7%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	89.5%	80%	72.6%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	86.7%	80%	81.3%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	76.5%	80%	79.2%	80%

Over-Running Cases

Snapshot at the close of Q1 of 2016-17

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	55	11	20%
External Investigation (8 months)	47	10	21%
Internal Investigation (5 months)	68	12	18%
Total	170	33	19%

Note

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

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

Future Bar Training – Continuing Professional Development Consultation Report

Status:

1. For approval.
2. This paper is **discussion and approval** of the latest CPD consultation report, and the proposed Rules and Guidance in the light of consultation responses. If approved by the Board, an application will be made to the Legal Services Board (LSB) for approval of changes in regulatory arrangements.

Executive Summary

3. In 2013 the Board agreed to revise the approach to CPD and to move from a prescribed number of hours to an “outcomes” based approach. This approach will place the responsibility on individual barristers to determine the type and amount of CPD that they should do each year in order to maintain their competence and standards of practice.
4. The new approach to CPD is one pillar of the Future Bar Training (FBT) programme. An initial consultation ran from June to September 2015. The Board agreed to implement the next phase of the development of the new CPD scheme, subject to some amendments to take account of the consultation responses and the experiences of those who participated in a pilot. In particular, it was agreed that supporting guidance would be amended to take account of feedback.
5. A further consultation on draft rules ran from 31 May to 1 September 2016. The attached consultation report sets out the responses received, which were principally but not exclusively from members of the profession. The report highlights a number of common themes and concerns raised. It also provides the BSB’s proposed responses to this feedback. In addition the consultation report also includes at Annex [2] the proposed guidance and rules which have been further updated in light of the consultation responses.
6. The BSB has begun discussing the potential rule change with the LSB. The attached regulatory arrangements continue to be a work in progress – the guidance in particular will be subject to further review as we continue to discuss the new arrangements with the profession and seek LSB approval. Following Board approval, an application will be submitted for a change to our regulatory arrangements. It is anticipated that this will be approved in time to enable the new scheme to begin on 1 January 2017.

Recommendations

7. It is recommended to the Board that it:
 - a. **notes** the consultation report;
 - b. **approves** the updated rules and guidance, for the purposes of proceeding with an application to the LSB (subject to further minor drafting edits, noting that the guidance in particular may be subject to further improvements as we discuss the scheme further with the profession); and
 - c. **notes** the communication and engagement plan.

Purpose

8. The purpose of this paper is to provide an overview of the responses to the CPD rules change consultation and to seek Board approval for a rules change.

Brief overview of the CPD Consultation responses

9. The consultation report is attached at Annex 1. 7 responses were received. The responses were received from across the profession and practice areas. Generally the responses were from organisations rather than individuals. Only one individual barrister responded. The organisations that responded were the Chancery Bar Association (ChBA), The London Common Law and Commercial Bar Association (LCLCBA), the Bar Council, the Government Legal Service Bar Network (GLS Bar Network), the Youth Justice Board for England and Wales (YJB), and the Council of the Inns of Court (COIC) Training Reform Working Group.
10. There was a more limited response than for the 2015 consultation (to which there were 84 responses). This was anticipated as this consultation had a narrow technical focus on how the proposed Handbook rules would support the agreed principles of the scheme.
11. The responses indicated a varied reception to the proposed new scheme but with a general support for the new approach. Most responses indicated that they did believe the proposed rules provided the necessary framework to support the new scheme but put forward drafting suggestions to enhance clarity.
12. Concerns about the proposed rules principally focused on
 - the role that the number of hours completed in the proposed new CPD scheme should play
 - the definition of CPD
 - how activity should be recorded
 - how the New Practitioner Programme and Established Practitioner Programme should be described within the proposed rules
 - how the new scheme will apply to the employed Bar.
13. Individual responses also provided further useful input and suggestions as to how the guidance could best support barristers in complying with the proposed rules.
14. Some of the responses also looked back to discuss questions not raised in the consultation, particularly around the merits of the scheme and of CPD as a whole. These questions had been discussed at length in the previous 2015 consultation and the BSB's response to it.
15. Some of these concerns were a result of confusion about what was required under the new scheme, this was despite many of these points being covered in the 2015 consultation response and updated guidance. Perhaps more concerning some responses indicated a misunderstanding of what was required in the current CPD scheme.
16. Respondents did feel there was a need for further clarity in some aspects of the guidance materials. These points were more narrow and technical in focus around quite specific parts of the guidance rather than a general need for more clarity about the scheme as a whole. This is a positive development and the guidance will go through further revision to ensure this input is appropriately captured. In particular we will want to work on providing

concrete examples of how to plan and record activity, relating that to specific areas of practice and stages of a barrister's career.

17. The consultation responses were very valuable. They have indicated broad support for the rules underpinning the new scheme and provided helpful suggestions on how the detail of the scheme can be improved so that it is clear and accessible.

Next steps

18. The new proposed CPD rules and guidance will be revised to reflect the valuable input received from the consultation.
19. An application to the LSB for approval will then be made with the new Scheme taking effect from January 2017.
20. An education and engagement programme will be run until the end of the year so that the profession is clear about what is expected of the new CPD scheme. It is anticipated that further engagement with the profession will be necessary in the first year of the new scheme to support the profession with their new CPD requirements.
21. As previously noted the focus of regulation will be on supervision rather than enforcement. A percentage of barristers will be sampled each year, on a random basis and also on a targeted risk basis (where there is for example a history of non-compliance). Sampled barristers will be required to provide their CPD record and to explain their choices to the BSB. Where the BSB is of the view that further CPD is required, because the explanation lacks merit or the barrister has done very little CPD without any explanation as to why, the barrister will be required to complete an action plan set by the BSB. The BSB executive will be able to call on members from APEX where expert advice is needed in the assessment of CPD returns. Failure to enter into an action plan or to complete that action plan within a reasonable period of time could result in referral for enforcement action. Enforcement would therefore be a last resort.

Resource implications

22. The final development of the Scheme will be managed within the Regulatory Assurance Department with support from all other BSB departments as required. For example, the Professional Conduct Department will be engaged on any further development of the operational enforcement policy and the Communications Department will lead on the communication and engagement programme.
23. It will be critical that there are appropriately skilled members of staff within the Supervision Department to undertake that assessment of CPD returns, and APEX members to advise. These resources have been planned for within the current and subsequent business years.

Equality Impact Assessment

24. Further to responses received from the consultation and the previous 2015 consultation our Equality Impact Assessment has been updated and the Equality Action Plan will be progressed to take into account new impacts that are identified including any that are raised during the communication and engagement process.

25. The identified impacts to equality are divided between those negative impacts the current scheme may have (which may be ameliorated by the new scheme) and the impacts the new scheme could have.
26. The current EPP scheme may not be helpful for barristers returning to practise following parental leave and barristers with caring responsibilities, primarily child care. This could have a disproportionate impact on women at the Bar. This is due to lack of flexibility of the current scheme, particularly for barristers returning to practise. In order to avoid prescriptive CPD requirements such a barrister is required to suspend their practising certificate or seek a waiver from their CPD requirements.
27. In addition the prescriptive nature of the required and permitted CPD activities under the current scheme might disproportionately affect certain groups, including for example those barristers who will have difficulty attending CPD activities and particularly accredited activities, either due to mobility difficulties, caring responsibilities or cost.
28. The proposed new CPD scheme heavily mitigates these adverse impacts. The proposed scheme means there is no longer a need to apply for waivers or suspend a practising certificate because a barrister has gone on parental leave. The planning stage of CPD means barristers will be able to identify where they will not be working full time and the amount of CPD required can reflect that.
29. The proposed new scheme provides increased flexibility in the types of CPD activities that are permitted. A barrister will more easily be able to develop a CPD programme around their specific circumstances rather than the need to achieve 12 hours of CPD activities. Practice management courses are now permitted, for example, which will broaden the range of training needs that might be met.
30. The adverse impact the new scheme could have is primarily that because formal planning and reflection is required it creates a greater administrative burden on barristers than the current scheme. This could disproportionately impact those barristers who have caring responsibilities and do not have additional time.
31. This impact is mitigated by the fact that forward planning will aid barristers in prioritising the CPD activities they complete and avoid irrelevant CPD activities completed only to make up 12 hours of CPD. This will save barristers time and money across the CPD calendar year. For example barristers will no longer need to pay for one off accreditation at the end of the year in order to be compliant with their 4 hour of accredited activities requirement.
32. These impacts were primarily identified during the development, pilot and 2015 consultation process. No new equality impacts were identified during the 2016 consultation. However the 2016 consultation did identify the need for the BSB to do more in communicating with the profession about the adverse impacts of the current CPD scheme and how these will be mitigated with the proposed new CPD scheme.

Risk implications

33. There is a risks that the new CPD scheme is not properly explained to the profession or that people struggle to undertake the new requirements of planning and reflection, which may lead to higher levels of non-compliance and reduced public assurance that barristers are keeping up to date and maintaining high standards of practice. There is also a risk that the assessment process fails satisfactorily to assess barristers' compliance with the

new CPD requirements. If the scheme is perceived by the profession to be more onerous and / or less effective over time than the current scheme then there may be damage to the relationship between the BSB and those it regulates as well as wider reputational harm.

34. These risks will be mitigated through improving the clarity of the guidance to the profession on the new Scheme and through effective engagement with the profession about what will be expected of them. We may wish at a future point to review specifically the effectiveness of the scheme but this is not planned in the current strategic plan cycle i.e. not before 2019.
35. Failure to implement the new scheme would also present reputational risks for the BSB. The new scheme is more in line with the BSB drive towards becoming more risk and outcomes focused in its regulation.

Impacts on other teams / departments or projects

36. The Communications and Public Engagement Department has developed a communications strategy for the consultation and the future implementation of the Scheme. This will be instrumental in ensuring that the proposed new regime is given the publicity and profile required. Details of this are at Annex 4.
37. Regulatory Assurance, Regulatory Policy and Professional Conduct will be the departments primarily involved in helping to draft any updated guidance for the new CPD scheme.

Regulatory objectives

38. The further development of the new CPD Scheme will better assist the BSB in being able to show how all of the activities it undertakes address the regulatory objectives and also the regulatory principles. In particular, demonstrating that barristers are keeping their knowledge and practice up to date is in the public interest – it will help to ensure an independent, strong, diverse and effective legal profession and to ensure that barristers meet the professional principle of maintaining proper standards of work.

Publicity

39. Once approved the consultation report will be published on the BSB's website. The communications and engagement plan outlines further activities to promote and publicise the new scheme.

Annexes

Annex 1 - Consultation Report
Annex 2 - Updated proposed new rules
Annex 3 - Updated new CPD scheme Guidance
Annex 4 - Communications and Engagement plan

Lead responsibility:

Bernard MacGregor
Oliver Hanmer

Continuing Professional Development– Consultation Report

The Bar Standards Board’s report on responses to the consultation on the proposed new Continuing Professional Development Scheme

INTRODUCTION

1. This report summarises the responses received to the Bar Standards Board’s (BSB) consultation paper *Continuing Professional Development* which was published on 31 May 2016. It also seeks to address some of the comments made by respondents and to demonstrate how the Board’s policy position has evolved in light of the consultation.
2. The consultation closed on 1 September 2016. Responses have been given careful consideration by members of Supervision Team and by members of the Board.
3. The original consultation paper is available [on the BSB website](#).
4. 7 responses were received. These were from 6 organisations and 1 individual barrister.
5. The organisations that responded were:
 - The Bar Council
 - Government Legal Service (GLS) Bar Network
 - Youth Justice Board (YJB) for England and Wales
 - Council of the Inns of Court (COIC) Training Working Group
 - Chancery Bar Association (ChBA)
 - The London Common Law and Commercial Bar Association (LCLCBA)

NEXT STEPS

6. An application to the Legal Services Board (LSB) under s4 of the LSA07 for approval for the proposed new CPD rules will be made following publication of this report.
7. There will be an extensive programme of engagement with the profession about the new scheme until the New Year when the scheme is expected to go live. Beyond January 2017 we will aim to provide further support for the profession to adjust to the new arrangements.

ANALYSIS OF CONSULTATION RESPONSES

8. The consultation asked a single question;

Do you think the proposed rules and regulations provide the necessary regulatory framework to support the new CPD scheme? Please explain your views.
9. There was not a specific response form for this consultation. Respondents were asked to provide their responses to a designated email address.
10. In answering this question four of the respondents were positive about proposed new rules and the scheme in general, though provided additional input and feedback.
11. One of the respondents indicated that the rules in and of themselves provided the necessary framework to support the new CPD scheme but was critical of the proposed changes to the CPD scheme.

12. Two of the respondents were more critical both of the scheme and the proposed rules but provided useful input as to how the rules and guidance could be amended to better support the new CPD scheme.

13. Some of the positive comments were that:

‘the proposed rules and regulations broadly do provide the necessary regulatory framework. They are succinct and refer appropriately to CPD Guidance and NPP Guidance’

and

“...the examples of compliant PDPs are very helpful, particularly in demonstrating the SMART aim and learning outcomes that the BSB expects to see.”

14. The YJB noted that they wanted to

‘...emphasise the role that continuing professional development must play in ensuring that barristers practising in youth proceedings build and maintain specialist youth advocacy and engagement skills. We would want to see CPD providing the types of soft skills which truly enable legal professionals to understand, work with and provide the best possible support and advocacy to children and young people.’

15. More critical feedback and comments along with specific queries are noted and addressed below.

16. Some of the same points were raised in a number of the consultation responses, while other points were only raised by a single respondent.

Definition of CPD

17. A number of respondents raised various concerns with rQ130.2 of the proposed rules which sets out the definition of CPD.

18. LCLCBA stated that the BSB made an error in stating that the definition of CPD had not changed.

“..it is stated at p.8 that “the definition of CPD has not changed”. However, the current Code has no definition of CPD”.

19. The Bar Council stated:

“Our first reservation is that the definition of CPD is wrong in so far as it seeks to require or encourage barristers to *develop* their practices. Some – indeed many – barristers have found a practice niche where they are entirely content; do not wish to advance their learning (beyond keeping abreast of developments in their field); and are revered for their existing breadth and depth of specialism”.

20. Both the LCLCBA and the ChBA provided alternative CPD definitions;

ChBA suggested definition:

“continuing professional development” (“CPD”) means work undertaken over and above the commitments of a barrister to the barrister’s clients on their cases and is work undertaken with a view to developing the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, including the proper running and management of that practice and providing training to pupils, in order to keep the barrister up to date and maintain the highest standards of professional practice”.

LCLCBA suggested definition:

“CPD means educational and training activities undertaken other than in the course of acting in relation to individual sets of instructions, with a view to developing etc [the barrister’s skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, including the proper running and management of that practice and providing training to pupils, in order to keep the barrister up to date and maintain the highest standards of professional practice]”

BSB response

21. The current definition of CPD is found in the current regime’s detailed guidance on CPD ‘Compliance with CPD Regulations. A General Guide to CPD’ pg 3. The guide is on the BSB website and can be found at:
https://www.barstandardsboard.org.uk/media/1751041/a_general_guide_to_cpd_2016.pdf
22. The current definition of CPD is:
- “CPD is work undertaken over and above the normal commitments of barristers with a view to such work developing their skills, knowledge and professional standards in areas relevant to their present or proposed area of practice, and in order to keep themselves up to date and maintain the highest standards of professional practice”.**
23. Proposed rule rQ130.2 gives the definition of CPD as:
- Continuing professional development" ("CPD") means work undertaken over and above the normal commitments of a *barrister* and is work undertaken with a view to developing the *barrister's* skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the *barrister* up to date and maintain the highest standards of professional practice.**
24. The BSB does not see a substantive difference between these two definitions. The BSB notes that the previous (substantively identical) description of CPD has been in use for many years, indeed it predates the existence of an independent regulator and was formulated by the Bar Council.

25. In so far as the BSB currently assess the relevance of CPD activities and determines which activities can count towards CPD this definition has been satisfactory. Therefore the BSB considers the current definition of CPD fit for purpose to apply the principles of the proposed new CPD scheme.
26. Finally the BSB is not altering the NPP scheme which uses the current definition of CPD. Changing the definition of CPD that applied to EPP barristers would mean having two different definitions of CPD - one that applied to NPP barristers and one that applied to EPP barristers. It would be inconsistent to have two different definitions of CPD.

The status of hours of CPD completed

27. rQ134.1 of the proposed rules makes reference to barristers setting out the number of hours they propose to complete during a calendar year:

'rQ134 An EPP barrister who is required to undertake CPD must:

- 1. prepare a CPD Plan setting out the barrister's learning objectives and the number of hours and types of CPD activities he or she proposes to undertake during the calendar year'.**

28. The inclusion of hours within the rules raised concerns from a number of respondents. These concerns were summarised by the ChBA:

"...we would delete the reference to "number of hours" in rQ134(1). This appears to be contrary to the new policy and also none of the guidance attached actually complies with this supposed requirement".

29. There was also concern about the assessment section of the Guidance which noted that completing less than 10 hours of CPD activities would likely draw additional scrutiny from assessors.

30. COIC commented that the presumption by barristers may be that 10 hours was the new minimum, while the ChBA stated that:

"Fourthly, we would add to the Guidance on rQ133 and rQ134 that, although there is no minimum number of hours of CPD "completing fewer than 10 hours of CPD is likely to draw additional scrutiny from our assessment team which may require justification". This appears at page 21 of the document the BSB has produced and is sufficiently important to appear in the formal guidance to the rule itself"

BSB response

31. One of the major proposed changes to the CPD requirements is the removal of a mandatory set number of hours that barristers need to complete. Within the guidance to the new scheme barristers are asked to consider the amount of training and CPD activities they need to complete.
32. The guidance notes that there is not a set number of hours that would be considered non-compliant or a number of hours that would automatically ensure compliance. It is noted that completing fewer than 10 hours may invite more scrutiny as to whether a barrister had fully considered their training needs for the year.

33. It is in the context of ensuring barristers had fully considered the amount of CPD they should complete in a year that the proposed rules included a requirement that the proposed number of hours be included in the planning statement.
34. However taking into account the responses from the consultation this requirement likely focuses too much of a barrister's attention on completing a set number of hours rather than considering their training requirements as a whole. On this basis the BSB will amend this rule to remove the requirement to provide a proposed number of hours and remove the reference to a suggested minimum number of hours.

Employed Bar

35. A number of respondents raised concerns with how the new scheme would apply to the employed Bar.
36. The Bar Council stated that:

'...the proposal takes insufficient account of the nature of practice at the employed Bar. Although that practice varies, many employed barristers (a) will not provide any advocacy services; (b) will not be involved in practice management; (c) will often work to corporate or employment goals which may be quite inconsistent with those set out in the proposed rules; (d) will wish to engage in business and management training to a far greater degree than is reflected in the proposed rules.'

37. On the other hand the GLS welcomed the new scheme:

'The GLS welcomes a more flexible and outcome focused approach to CPD. A flexible approach is likely to be more suitable to a diverse bar encompassing the needs of both the employed and self-employed bar.'

38. However, along with other respondents the GLS queried the role of practice management in the new scheme:

'We would also appreciate confirmation that an individual's role, for the purpose of the 'practice management' area, could include the management of other lawyers. At the more senior levels of the GLS one of the most important aspects of our role is managing and delivering legal advice through others. This role is carried out by our managers, team leaders and directors and it would be helpful if this was reflected in the 'practice management' box.'

39. The GLS also noted that they would like to see more examples of learning objectives that related directly to the employed Bar.
40. COIC wanted assurance that members of the employed Bar could use the relevant parts or perhaps the whole of their in-house record which they or their employer keeps in order to comply with CPD requirements.

BSB response

41. The BSB intends for the new CPD scheme to apply to all barristers who hold a practising certificate, this includes members of the employed Bar. The BSB sees no difficulty in principle with the employed Bar being able to comply with the new scheme. Indeed during

the development of the proposed new scheme it was the experiences of members of the employed Bar that acted as one of the drivers for creating a more flexible scheme.

42. During development the BSB recognised that the employed Bar regularly completed valuable and relevant training. Often however they were unable to claim the full number CPD hours completed because of current restrictions on the types of CPD activities that were permitted or because their CPD activities were accredited by alternative regulators such as the SRA.
43. The BSB can confirm that barristers including members of the employed Bar can use relevant parts or the entirety of in-house records where this is appropriate to satisfy the proposed new scheme's requirements.
44. With regard to comment (a) that the Bar Council have made the BSB would note that the guidance asks barristers to consider the knowledge and skill areas when planning their CPD requirements. There is no prescriptive requirement for every knowledge or skill area to be included within the plan as a proposed activity. Indeed the examples of compliant plans do not include every knowledge and skill area.
45. With regard to comment (b) the guidance clearly states that

“Your approach to CPD in relation to the way you manage your practice will depend upon the nature of your practice”

and

“You should also take into account your individual role or roles in your practice when planning and undertaking your CPD activities.”
46. Furthermore one of the stated aims of the new scheme is to ensure that barristers do not need to attend irrelevant CPD activities.
47. The guidance therefore provides the framework to allow a barrister to consider and then reject practice management as a topic for further training if that is appropriate to their practice.
48. With regard to Bar Council comment (c) the BSB notes no examples have been given of corporate or employment goals which would fall within the definition of CPD but are prohibited by the proposed rules or supporting guidance.
49. With regard to the Bar Council's comment (d) there is nothing in the proposed scheme which prohibits business and management training. The *current* CPD scheme, which the Bar Council appears to wish to preserve, specifically prohibits these activities as counting towards CPD¹.
50. The proposed new CPD scheme does not prohibit practice management training. This includes practice management training relating to how others are managed or how legal services are provided through others. This could include how a barrister in employed practice manages other barristers or other legal service providers such as paralegals. It could also include how a barrister in the role of Head of Chambers or a member of a management committee administers their practice.

¹ pg 9 'Compliance with CPD Regulations. A General Guide to CPD'
https://www.barstandardsboard.org.uk/media/1751041/a_general_guide_to_cpd_2016.pdf

51. Practice management can also include training designed to improve fitness to practice, including training on managing stress and anxiety in the work place or self employed practice.
52. There is only a limited number of prohibited CPD activities under the proposed new Scheme. They are listed on pg.12 of the guidance.
53. However for clarity the BSB will amend the guidance to specifically include reference to business and management training, including management of individuals.
54. Similarly the BSB will also include one or more examples of planning that relates directly to the employed Bar.

Recording CPD Plan and activities and retaining evidence

55. There were a number of comments from respondents about CPD planning and how activities would be recorded and how evidence would be retained under the new scheme.
56. Specifically a number of respondents wondered whether there would be a prescribed form that needed to be used to record the planning stage and the activities completed.
57. The LCLCBA stated that :

‘The draft Code of Conduct provisions refer to a CPD Plan; to maintaining a record of CPD activities undertaken; and to a declaration of completion. However, it is not clear whether the BSB intends to produce a form in which these records can be kept. It seems to us to be vital, if the new CPD scheme is to work, that barristers should be provided with a form which can be filled in, and which provides the necessary structure for completing the new CPD exercise. The example CPD Plans in the Annex to the consultation could provide the basis for such a form. If the BSB does not propose to create such a form, the LCLCBA will consider creating an example CPD Plan in electronic document format and making it available to its members.’

58. The LCLCBA also queried whether an online tool would be developed to aid with recording and submission.

‘We also note in this respect that the BSB appears previously to have considered creating electronic plan and record cards, to be submitted via an online portal. Reference is made to this proposal in the BSB’s CPD Pilot Results of April 2016. Paragraph 28 of that paper suggested that whilst the new CPD system would come into effect in 2017, the online portal would not be operational until 2018. For its part, however, the Consultation Paper makes no reference to any online portal, or indeed to any other standard form documents or forms on which barristers are to maintain their CPD records. That is a rather odd lacuna.’

59. The LCLCBA also queried whether the CPD plan and record of activities needed to be in writing as this was not stated in the proposed rules.
60. A number of respondents also had comments about retention of evidence. This was summarised by COIC:

“Under rQ134.2 barristers must keep a “record” of the CPD activities undertaken in each year and retain “evidence” of completion of CPD for a period of three years. This appears to suggest that the “record” and the “evidence” are not the same thing. This is borne out by the terms of rQ134.3, which states what a “record” must contain. If it is correct that the “record” and the “evidence” are different, for how long must the “record” be kept?”

BSB Response

61. The BSB does not intend to produce a prescribed form that barristers must complete in order to be compliant. In due course the BSB does intend to produce examples of CPD Plans and Record Forms. Membership organisations are also free (and encouraged) to produce their own examples.
62. The BSB will engage with membership organisations to produce examples of completed Plans and Record Forms that are focused on particular practice areas and reflect different stages of a barrister’s career.
63. It is extremely unlikely that the format of a CPD submission would by itself lead to non-compliance with the scheme. If a CPD plan and record was submitted in a format (including some examples of handwritten forms) that was unreadable the BSB may request a barrister resubmit in a format that was legible. In practice this is the same position that exists under the current scheme.
64. The BSB hopes to create an online portal for maintenance and submission of CPD records however for resourcing reasons it is not currently a priority in the Bar Council’s Information Management Programme and no date has been determined for when such a facility might be available. In the meantime, we propose to work with representative bodies, as discussed above, to ensure that barristers have appropriate electronic forms on which they may record their CPD activities. We expect that this will be a more cost effective way of providing assistance to the profession.
65. The intention is that all stages of the completion of CPD, including the planning stage, recording activities and reflection should be in writing. The CPD rules and guidance will be amended to reflect this.
66. A CPD record refers to information about the activities that have been completed; dates, venue, CPD provider and so forth.
67. Evidence refers to information that confirms the barrister completed the stated activity. This could include for example (but not as an exhaustive list) a certification of completion, a copy of the registration, email confirmation from the provider, course materials and so forth.
68. The intention is that the CPD Plan and record of activity including reflection is retained for three years but there is no regulatory requirement to keep specific pieces of evidence. The rules and guidance will be amended to reflect this more clearly.

The NPP and EPP rules, guidance and definitions

69. A number of respondents had comments about the way in which the rules had been drafted to differentiate between the New Practitioners Programme and the Established Practitioners Programme.

70. The ChBA commented that they considered it:

‘...more user friendly to group the NPP and the EPP rules in separate sections’.

71. The individual respondent commented that:

“In rQ132, reference is made to an NPP barrister who is in the first 3 practising years after any pupillage year. This does not cover the situation where a barrister has not completed pupillage e.g. because they were formerly a solicitor. Where a person transfers to the Bar midway through a year. Does that situation count as a pupillage year, or do the Rules need to be expanded to cover the transfer year situation?”

72. The same respondent also noted:

“The NPP guidance is not included in Annex 1. When this is published, it would be useful if it is in similar form to the guidance for the current scheme, i.e. setting out any limits on what may be claimed as CPD (as well as identifying the compulsory courses as explained in the consultation document).”

73. LCLCBA was rather critical of the way the distinction between NPP and EPP barristers had been drafted:

“it appears to us that the drafting of the relevant Code provisions is unnecessarily tortuous. Is it really necessary to use terms like ‘EPP barrister’ and ‘NPP barrister’? Is it necessary to retain a provision which is exclusively concerned with barristers who entered practice prior to October 2001 and only partially completed the Continuing Education Scheme? The BSB claims that its regulatory approach is risk-based and outcomes-focussed. October 2001 is now nearly 15 years ago. Does the risk created by such individuals (if there are any at all) justify this transitional rule having pride of place in the Code?”

74. Finally COIC commented that:

‘If the BSB should at any time in the future propose changes to the NPP the Inns and Circuits, who deliver the programme, will wish to be fully consulted.’

BSB Response

75. The BSB has no intention currently to alter the NPP scheme. As such for the purposes of the development of the new EPP scheme the NPP rules and guidance have been left entirely untouched.

76. Barristers who are familiar with the current scheme, including its guidance, will be familiar with the terms New Practitioner Programme and Established Practitioner Programme barristers. As the NPP scheme is not changing the BSB did not see a compelling reason to remove these terms altogether as they serve the purpose of allowing a barrister to ascertain which CPD schemes they are on.

77. The term NPP appears in the current CPD rules and guidance but the term Established Practitioner Programme only appears in the current guidance. The new rules can be seen as an opportunity to achieve consistency by setting out the two schemes together.

78. For this reason the transitional arrangements found under rQ131 have been retained. Barristers for whom the rule applies are effectively completing an earlier version of the NPP. The BSB can confirm that this rule is still used albeit it now applies to a very small number of barristers.
79. In response to the specific question raised about a barrister who began half way through the year, they would have three years from 1 January in the year after they obtained their full practising certificate to complete the NPP. The remaining time between actually receiving their practising certificate and the next 1 January is not counted towards the NPPs three year limit but CPD activities can still be completed during this period and would count towards the completion of the NPP requirements.
80. NPP will continue to use the current guidance that can be found on the BSB website by following this link to the [CPD guidance](#)
81. It is anticipated that the current NPP guidance will be updated in early 2017 to provide further clarification around the NPP scheme.

Status of Guidance

82. COIC had concerns that there was ambiguity as to how Guidance should be treated, particularly as to whether there were mandatory parts of the Guidance.

‘This part of the Guidance may be contrasted with earlier passages on page 11 of the Annex which repeatedly says what a barrister “should” do to comply with the various requirements: the word “should” is used eight times. It may also be contrasted with the Guidance on Recording and Evidence on page 19 of the Annex which states that “you are encouraged” to keep a note of evidence of CPD activities which “may include” a number of pieces of information. It is said that the BSB recognises that “retaining evidence may not always be practicable”. It therefore not a “requirement”, although there will be an onus on a barrister to produce such evidence if challenged.’

83. The ChBA made a distinction between the ‘formal’ Guidance found in the Handbook and the further ‘informal’ guidance document that described the CPD scheme.

BSB Response

84. In order to ensure there is no ambiguity as to the status of Guidance the rules have been amended so that the Guidance is referred to as something barristers ‘should have regard to’.
85. The Guidance is presented as a best practice framework for barristers to use in order to aid with compliance but has been amended to remove any suggestion that it is a prescribed set of mandatory provisions.
86. It is also worth highlighting the provisions of the Handbook with regard to guidance and particularly 16.4.b and c:

.b The Guidance set out in this Handbook is not the only guidance which is relevant to BSB regulated persons. In addition to the Guidance, the Bar Standards Board has published and will publish from time to time various guidance on its website which supplements this Handbook, including (but not limited to):

.i the Pupillage Handbook;

and

.ii the BSB’s Supporting Information on the BSB Handbook Equality Rules

.c In carrying out their obligations or meeting the requirements of this Handbook, BSB regulated persons must have regard to any relevant guidance issued by the Bar Standards Board which will be taken into account by the Bar Standards Board if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a BSB regulated person under this Handbook. Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the BSB regulated person will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance

87. On this basis the Handbook does not make a distinction between the guidance in the Handbook and guidance found in supplementary documents such as CPD guidance.
88. Nor would the Handbook guidance be described as formal guidance and additional guidance found in supporting materials be described as informal guidance.

Knowledge and Skills areas

89. COIC reiterated some of their previous concerns where they had commented about the knowledge and skills area that:

“The Inns in their Response to the earlier Consultation Paper on CPD (see para.9(3) of the Response and the Answer to Question 3 (2) (para. 12) warned the BSB against confusing CPD with the possession of all the knowledge skills and attributes required of a barrister as set out in the Professional Statement and the proposed Threshold Standard. Not all of these matters lend themselves easily to CPD, and barristers may struggle to find appropriate CPD which will satisfy some of these requirements. For barristers what CPD is really about is keeping up to date with the law and new thinking about professional practice, and improving forensic skills. Deciding to expand into other areas of work may count as practice development, but not CPD as it is generally understood. The examples given of good Planning will strike some as vague and naive. It is felt that the Inns’ earlier warning has not been properly heeded.”

90. The ChBA noted some inconsistencies in how different knowledge and skill areas were described, with the Advocacy section using the phrase ‘**This includes the ability to**’ and the Practice Management section using the phrase ‘**This may include topics such as**’

91. The LCLCBA stated that one of the errors in the guidance was:

“It is stated at p.13 that barristers must be able to be transparent about their fees, but most barristers’ fees are dealt with by their clerks. Barristers will often not be in a position to be transparent about their fees, since they are not party to the negotiation of such fees.”

BSB response

92. The BSB understood the Inns point in the 2015 consultation and responded to it.
93. The response in the BSB 2015 CPD Consultation report may be worth repeating for clarity.

“The BSB would broadly agree that there should be clear a distinction between the general skills and competencies that Barristers require and the technical legal knowledge which should be a positive and necessary part of CPD.

The BSB is unlikely to be as prescriptive as dictating a clear separation of the two. Maintaining adequate knowledge of technical skills is an important part of CPD and it is likely that all barristers will routinely include this as part of their CPD plan. However we wouldn’t penalise a barrister who wanted to use some of their CPD learning to develop core knowledge skills and attributes that all barristers need.”

94. The BSB will amend the knowledge and skills areas to ensure consistency of terminology.
95. The BSB was somewhat surprised and concerned at the assertion that barristers will not be in a position to be transparent about their fees. There are a number of provisions in the Handbook that provide for this as one of the responsibilities of individual barristers. These include rC18, rC19, rC20 and rC125.7 amongst other provisions.
96. The BSB does not propose to repeat the substance of all of these Handbook provisions in this consultation report but would strongly encourage respondents to remind themselves of their obligations to their clients.

Compliance Examples

97. There were some queries and concerns about how compliance with the new scheme would be achieved.
98. In addition COIC felt that the compliant examples could be seen as vague and naïve.
99. The GLS stated:

“We query the first example of circumstances leading to an assessment of non-compliance, relating to CPD activities not relevant to a barrister’s practice. The range of topics on which barristers in government advise is often reactive, reflecting needs that arise within government from time to time. Training for such queries requires a very wide range of topics, which may seem irrelevant to the current practice of the barrister concerned. We would also be concerned if it was not possible for at least some of a barrister’s CPD to be comprised of topics which were new or interesting to that barrister, irrespective of if the barrister planned to practice them or not. Access to such topics can permit critical reflections on other areas of law, heighten general legal skills, and engage intellectual curiosity, all of which are important for the practice of any barrister. We would therefore suggest that compliance action only occur if there are a significant number of CPD activities that are not relevant to current or future practice.”

100. The ChBA was concerned that worthwhile but generic learning objectives could lead to non-compliance.
101. The LCLCBA queried how a declaration of compliance is made at the end of the year.

BSB response

102. The examples of compliant learning objectives were not primarily formulated by the BSB, they come from examples of learning objectives created by pilot participants. They were further reviewed by barristers to ensure they would make sense to other practitioners. The BSB's involvement was principally to ensure anonymity and that an example of each of the knowledge and skills areas were included.
103. The BSB does not believe that the barristers involved in providing and reviewing these examples were being vague or naïve.
104. The BSB does not want to dampen intellectual curiosity. However the new scheme does need to ensure that activities completed meet the definition of CPD.
105. In practice it is not that the simple inclusion of obviously irrelevant activities would lead to non-compliance, it is that those activities would not be included when assessing whether the learning objectives had been met.
106. This is to say during a spot check of CPD compliance if the barrister was assessed as having completed relevant activities that meant they had achieved their learning objectives then the barrister would be considered compliant.
107. Any activities that were not considered relevant would not impact on this assessment.
108. Depending on the circumstances a barrister might receive feedback to simply point out that particular activities had not been considered relevant to the stated Plan so that the barrister did not rely on those activities in the future.
109. In addition if activities permitted critical reflections on other areas of law or improved legal skills it may be that they are not actually irrelevant, if they help a barrister meet their learning objectives.
110. With regard to generic and unfocused learning objectives, it would depend on the context. If a barrister was effectively providing a summary of the definition of CPD as their sole learning objective that would not be sufficient. Additionally generic learning objectives often do not specify a particular outcome.
111. However a generic learning objective amongst others can act as a header for stating learning objectives that have more specific outcomes.
112. The declaration of compliance is covered at 'Stage 4: Declaring compliance' of the guidance on page 13.

“You must declare that you have carried out suitable CPD each year.

The CPD year runs from January to December. As such, you will be able to declare compliance with the CPD regulations and complete Authorisation to Practise requirements (which require action in February and March) simultaneously.”

113. This is in effect the same situation that occurs under the current scheme.

Qualification of Assessors

114. COIC commented that:

“The various stages of scrutiny and enforcement, as now described on pages 22-24, are incremental and do not appear to be controversial. However a major concern raised in the Inns’ Response to the earlier Consultation Paper (see paragraph 16 of that Response, answering Question7) related to the composition and qualifications of the assessors who would be responsible for the spot-checking and (if necessary) enforcement processes as now described. This issue is not addressed. The BSB must be able to provide this information and is requested to specify either in the Rules or the Guidance what qualifications, knowledge and experience the assessors will possess.”

BSB response

115. The assessment and supervision of barristers spot checked for CPD compliance will fall under the Regulatory Assurance Department of the BSB.
116. Enforcement action (where necessary) will be the responsibility of the Professional Conduct Department
117. It would be both inappropriate and inconsistent with its approach elsewhere for the BSB to specify in rules and guidance the qualifications, knowledge and experience an employee of the BSB must have to implement a particular Handbook provision. The BSB has a general responsibility to ensure that it has the capacity and capability needed to fulfil its role as a regulator , a formal scheme of delegations to give appropriate authority to those making assessment decisions and an assurance framework to underpin both.
118. The BSB will ensure that assessors have appropriate knowledge and training to make assessments of a barrister’s CPD activities and learning objectives.
119. Where necessary the BSB will also be able to draw on the advice of third party expert advice, including from practising barristers.

CPD Activities

120. The LCLCBA queried whether public access courses should count as CPD as it also led to a separate “qualification” and would therefore **‘involve it being counted twice’**

BSB response

121. The BSB does not see a compelling reason to prohibit activities which lead to a barrister gaining a separate qualification also counting towards CPD. Indeed relevant Masters Courses and PhDs can also count towards a barrister completing their CPD requirements.

Altering the plan and changing learning objectives

122. A number of respondents queried whether it was possible to alter the plan or amend learning objectives mid-way through the year.

BSB response

123. As noted on pages 4, 13 and 14 of the Guidance a barrister's learning objectives can be altered through the year if appropriate. This was also stated at paragraphs 69 and 72 of the 2015 consultation response.

Spot checks

124. The LCLCBA questioned how spot checks would be carried out and how much time a barrister would have to respond.

BSB response

125. The BSB would anticipate that a reasonable period would be not less than two weeks for a barrister to submit appropriate materials to demonstrate compliance with the CPD requirements.

Bar Council response

126. The Bar Council has provided a lengthy response to the 2016 Consultation that also raises concerns about the principles underpinning the proposed new scheme. These principles have undergone a considerable period of consultation and engagement with the profession including the 2015 consultation process.

127. The Bar Council was specifically contacted in 2015 by the BSB to provide a response to the 2015 consultation. This included the BSB following up with the Bar Council after the original deadline had passed to confirm whether or not the Bar Council wanted to submit a response. This was done in order that we could receive useful input from the overall representative body of the profession about the principles and proposed operation of the new CPD scheme.

128. The Bar Council provided a specific written response stating they had decided not to respond to the consultation as they felt responding to the 2015 consultation was better left to individual practitioners:

“In fact the Bar Council (specifically the Education and Training Committee) decided not to put in a response to this consultation, as the consultation was aimed at individual members of the profession. Many thanks for following up”.

129. It is therefore unfortunate that the Bar Council has now decided to respond to the 2016 rules consultation by highlighting concerns about the principles and operation of the proposed new CPD scheme that should have been more properly (and usefully) raised in the 2015 consultation.

130. In the interests of ensuring that the concerns of the profession's representative body are addressed we set out below a specific response to those issues not otherwise addressed in the consultation response.

General overview of the proposed scheme

131. The Bar Council's general overview of the new scheme is critical on the ground that the current scheme has allowed the majority of barristers to demonstrate compliance with their CPD requirements.

BSB response

132. The BSB's overriding duty is to assure the public that a barrister is up to date with the law as relevant to their practice and maintains high standards of skill and competence. While the current CPD requirements do have high levels of compliance the BSB does not believe the current scheme does enough to accurately assess whether a barrister is completing useful or relevant CPD. The focus of the current scheme is far more on the number of hours completed than the substance of the activity.
133. Therefore an argument based on compliance levels with the current requirements is less relevant than whether the current requirements are fit for purpose.
134. Rather than continue with a prescriptive and cumbersome "one size fits all" CPD scheme the BSB has chosen to develop a more flexible scheme that will reflect the needs of every individual barrister and allow the BSB better to assure the public of barristers' continuing competence.

Administrative burden

135. The Bar Council asserts that the proposed new scheme will impose a greater administrative burden on barristers than the current scheme.

'At present the administrative burden on the practitioner when engaging in CPD amounts to a requirement to record activity personally. It is a simple arithmetical exercise that does not entail the demonstration of the qualitative value of CPD. There is good cause for this. CPD is only accredited for events that meet a certain standard; assessment of the virtue of a particular CPD activity is a completely subjective exercise that would be costly to perform and immensely unpopular.'

The Bar Council firmly opposes any proposal to impose a further administrative burden on practitioners. In particular, we object to the proposal that some form of self-assessment should form part of the CPD requirements: this is unnecessary to begin with, will be time consuming for practitioners, and will often be completely pointless as the year's practice changes'.

136. The Bar Council also stated that the new scheme was disproportionate to the aims of the scheme and does not provide a standard by which barristers can be assessed.

'If the target of this regulation is the very small number of barristers who do not keep themselves up to a required level of competence, then why not focus upon those barristers under the current regime, rather than devise a completely new regime that will distract and frustrate the compliant majority?'

137. The Bar Council believed that instead barristers would attempt to 'game the system':

'..a barrister will, in order to comply with the new system, craft a set of targets that borrow linguistically from the examples given in the Guidance. It is unlikely that the typical barrister will stand any realistic chance of adhering to those targets, because the exigencies of practice will intervene. The barrister will therefore have wasted time both in setting out the targets and then in explaining how he or she was unable to meet them.'

BSB response

138. From an administrative point of view it is not clear that the proposed scheme will lead to a greater burden.
139. Producing a plan at the beginning of the year front loads some of the administrative exercise a barrister has to complete. However this should be weighed against the time and money saved by no longer needing to find, book, pay for and attend activities simply in order to make up the prescribed number of hours without question as to their relevance.
140. It also acts as a tool to allow barristers more accurately to focus on the type and amount of activities that are appropriate to their individual practice.
141. In addition there are specific demographics within the profession that the Bar Council has ignored in its estimation that the proposed scheme will be more burdensome.
142. For example barristers returning to practice from maternity or paternity leave will no longer need to apply for waivers or indeed contact the BSB to determine how their CPD requirements should be pro-rated. They will be able to make their own assessment as to their training needs.
143. The position is similar for those barristers returning to practice from illness.
144. Equally barristers retaining a practising certificate in England and Wales but practising overseas no longer have to take time to seek out and attend the comparatively rare BSB accredited activities that are hosted in countries outside the UK regardless of their relevance.
145. Generally planning ahead is considered an efficient way of ensuring tasks are prioritised and completed effectively. This is particularly the case where time is a scarce resource, for example a barrister with a busy practice. It is surprising therefore that the Bar Council believes that in the narrow area of a barrister completing their CPD for the year planning ahead loses its efficacy.
146. It should also be noted that currently NPP barristers have to complete 45 hours of CPD. They also need to complete two and potentially three compulsory courses. These requirements can be completed at any point over a three year period but the compulsory courses run at only limited times and locations through the year. It is up to the NPP barrister to plan their time accordingly in order to complete their requirements. Barristers are therefore not unfamiliar with the benefits of planning their CPD activities in advance.
147. Catching out a small number of non-compliant barristers is not the target of the regulations. They are designed to meet the regulatory objectives and improve the practices of the profession. The BSB is confident that if engaged with correctly this scheme will add additional benefit for all barristers, including those who are compliant with the current scheme.
148. The Bar Council appears to hold the view that barristers will set themselves up to fail rather than try and use the proposed new system constructively by setting a series of targets that will provide structure to their training and development. The Bar Council provides no evidence as to why a barrister would have a motivation to do this. The BSB's starting point, based on experience, is that the majority of barristers take pride in excelling in their practice and if provided with tools to be able to do this will use them.

149. With regard to the standards that CPD compliance will be assessed against, the rules and guidance, including examples of compliance provide a great deal of detail as to how barristers can be compliant with the CPD requirements.
150. In addition the pilot scheme which was run without the benefit of updated guidance provided that the vast majority of participants (69 of 76 barristers) were able to complete compliant CPD Plans. In particular the reflection stage of CPD was compelled to a high standard.
151. Barristers also recorded higher levels of CPD activities completed, averaging 28 hours of CPD compared to the current average of 13 hours of CPD completed. This is in line with the LETR research which indicated that:

“Encouraging and rewarding voluntary CPD activity over and above necessary existing level of compulsion is the most effective means of propagating good practice”

Qualitative assessment of CPD

152. The Bar Council was also critical of the new scheme on the basis that barristers are currently unable to make qualitative assessments of the requirements of their practice or their training needs.
153. The Bar Council notes:
- “Extensive additional training will be required to help barristers to make qualitative assessments about their own CPD requirements”.**
154. As previously noted the Bar Council stated that the current CPD requirements were a simple arithmetical exercise.
155. However the Bar Council also notes:

‘In some cases, the number of hours may be a relatively insignificant factor in relation to the quality and effectiveness of the particular CPD activity; in others, it may be inevitable but unpredictable. Perhaps just as importantly, the availability, length and quality of courses are outside barristers’ control, and may be difficult to predict at the start of any particular year.’

156. The Bar Council also stated that any qualitative assessment should be made through a framework determined by the regulator.
- ‘... accreditation of CPD providers should act as a quality assurance mechanism. It ought to ensure that totally specious activities do not count towards CPD. The terms verifiable and non-verifiable are also subjective. This proposal clearly shifts the burden to the profession to undertake a type of accreditation for their CPD activities.’**

The BSB response

157. The BSB does not agree with the Bar Council’s assertions that the current scheme is simply an arithmetical exercise.
158. Barristers already make at least minimal qualitative value judgements with regard to choosing their CPD. This is why practitioners choose activities relevant to their area of

practice rather than other activities even where alternative activities may provide more CPD hours.

159. Equally engaging in CPD is not a simple arithmetical exercise otherwise we would uniformly see every barrister completing 12 hours of CPD. Barristers complete a wide number of hours both more than and less than 12 hours. Clearly there is already an assessment of what training is required occurring on some level in the profession.
160. The Bar Council itself seems to have somewhat inconsistent view of how significant hours are to completion of CPD and acknowledges that the quality and effectiveness of a course are sometimes more important.
161. The BSB is puzzled by the Bar Council's assertion that within the current CPD scheme accreditation acts as an overarching quality assurance mechanism for the EPP. The majority of EPP barristers' requirements do not need to be accredited. For potentially two thirds of the activities completed a barrister needs to make a value judgement as to how worthwhile they are and cannot rely on accreditation.
162. In addition as a point of regulation, within the *current* CPD regime a barrister should not be treating the CPD process as a simple arithmetical exercise nor solely relying on the accreditation of a course before they complete an activity. This is confirmed in the current definition of CPD which is found on pg 3 of the CPD guidance.
163. To clarify, if a barrister who only practices in area A and had no intention of going into another area of practice completed 12 hours of CPD by attending seminars in area B, simply as a means of completing the minimum hours of CPD, then they would be in breach of the *current* CPD requirements.
164. Having demonstrated that barristers should and do already make qualitative assessments of their CPD requirements the BSB cannot agree that it would require extensive training for the profession to make a written qualitative assessment of their training requirements at the beginning of the year.
165. Nor does the BSB believe that it should be for the regulator to make the initial qualitative assessment for individual barristers of which activities an individual should attend.
166. The BSB guidance does provide a framework to aid barristers in making an assessment of quality, for example considering different types of CPD activities and reflecting on how a particular activity has met a learning objective will aid a barrister in assessing quality of CPD activities over their careers.
167. However, the BSB will also produce additional supporting material demonstrating how barristers can begin to make an assessment of quality of CPD activities.

Explaining the new system of regulation to the profession

168. The Bar Council commented that:

'The consultation document does not explain how the BSB intends to explain the new system of regulation to the profession.'

BSB response

169. The Bar Council is correct that the 2016 consultation, which focuses on the narrow question of how the proposed rules and regulations support the proposed new scheme, does not explain how the BSB intends to explain the new system of regulation to the profession.
170. However we would draw the Bar Council's attention to the 'Future Bar Training Continuing Professional Development Consultation Report' of 17 March 2016 which noted at paragraph 29 that:
- “An education and engagement programme will be run in the Autumn of 2016 so that the profession is clear about what is expected in the new CPD scheme”**
171. Further to that members of the profession are being invited to attend a series of roadshows which are being held across the country. These roadshows will explain the new scheme in detail and give barristers an opportunity to ask questions. There will be follow up workshops in January-April once the new scheme has gone live and barristers are completing CPD plans.
172. In addition the BSB will be further engaging with the Bar Council and other Membership organisations to provide more detailed support to the profession.

BSB Proposals

- Guidance and rules will be amended in the light of comments made by respondents
- Templates for completing the relevant documentation will be provided
- Application to the LSB to approve the proposed rules and regulations will now proceed.

C. THE CPD RULES**The mandatory continuing professional development requirements**

rQ130 For the purpose of this Section 4.C:

- 1 “calendar year” means a period of one year starting on 1 January in the year in question;
2. "continuing professional development" ("CPD") means work undertaken over and above the normal commitments of a *barrister* and is work undertaken with a view to developing the *barrister's* skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the *barrister* up to date and maintain the highest standards of professional practice.
3. "CPD Guidance" means guidance issued by the Bar Standards Board from time to time which sets out the CPD structure with which an EPP *barrister* should have regard to.
4. "EPP" means the Established Practitioners Programme which requires *barristers*, once they have completed the NPP, to undertake CPD during each calendar year in accordance with these Rules.
5. the “mandatory requirements” are those in Rules Q131 to Q138 below.
6. "NPP" means the New Practitioner Programme which requires barristers to complete CPD in their first three calendar years of practice in accordance with these rules.
7. a “*pupillage year*” is any calendar year in which a *barrister* is at any time a *pupil*.
8. a “learning objective” is a statement of what a *barrister* intends to achieve through their CPD activities for that calendar year with reference to a specific aim and one or more outcomes.

rQ131 Any practising *barrister* who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of CPD during his first three years of *practice*.

Guidance**Guidance on Rule Q131**

gQ1 Rule Q131 is intended to apply only in those limited circumstances where a *barrister* started *practice* before 1 October 2001 but after the NPP first came into force, left *practice* before completing the NPP, but has since returned. Rule Q131 requires them to finish their NPP during whatever is left of their first three years of *practice*.

rQ132 Any practising NPP *barrister* who starts *practice* on or after 1 October 2001 must during the first three calendar years in which the *barrister* holds a *practising certificate* after any *pupillage year* complete a minimum of 45 hours of CPD.

Guidance**Guidance on Rule Q132**

gQ2 NPP *barristers* should have regard to rQ137 and the NPP guidance which will note the details of any compulsory courses the NPP *barristers* must complete. It also provides guidance as to the types of activities that count towards CPD.

rQ133 Subject to Rule Q136, any EPP *barrister* who holds a *practising certificate* or certificates during a calendar year must undertake CPD.

rQ134 An EPP *barrister* who is required to undertake CPD must:

1. prepare a written CPD Plan setting out the *barrister's* learning objectives and the types of CPD activities he or she proposes to undertake during the calendar year
2. keep a written record of the CPD activities the *barrister* has undertaken in the calendar year
3. keep a written record in the CPD Plan for each calendar year of:
 - a. the *barrister's* reflection on the CPD he or she has undertaken;
 - b. any variation in the *barrister's* planned CPD activities; and
 - c. the *barrister's* assessment of his or her future learning objectives.
4. Retain a record of the CPD Plan and completed CPD activities for three years.
5. submit to the Bar Standards Board an annual declaration of completion of CPD in the form specified by the BSB

Guidance**Guidance on Rules Q133 and Q134**

gQ3, EPP *barristers* who are required by these Rules to undertake CPD should refer to the CPD Guidance. The CPD Guidance provides further detailed information which EPP *barristers* should have regard to when planning, undertaking and recording their CPD. The CPD Guidance is not prescriptive. Its purpose is to provide a structure that would represent good practice for most *barristers* when considering their CPD requirements.

gQ4 The CPD Guidance explains that these Rules do not specify a minimum number of CPD hours which an EPP *barrister* must undertake in a calendar year: it is the responsibility of the individual *barrister* to determine the CPD activities he or she will undertake in order meet the requirements of CPD. The Bar Standards Board will assess and monitor *barristers'* compliance with CPD.

gQ5 The underlying principle behind the requirement to plan CPD and set learning objectives is that *barristers* consider their own circumstances and development needs when they complete CPD activities. This best ensures that activities completed contribute to the development of the *barrister's* practice.

rQ135 Upon the request of the Bar Standards Board, a *barrister* must produce his or her CPD Plan and record of CPD activities for assessment.

rQ136 Rule Q133 does not apply:

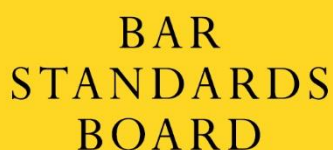
.1 in the case of a *barrister* to whom Rule Q131 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131;

or

.2 in the case of a *barrister* to whom Rule Q132 applies, during any *pupillage* year or during the first three calendar years in which the *barrister* holds a *practising certificate*.

rQ137 The *Bar Standards Board* may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by *barristers* (or by any category of *barristers*) in order to satisfy the mandatory requirements.

rQ138 The *Bar Standards Board* may, by resolution and after consultation with the Inns, Circuits and other providers as appropriate, vary the minimum number of hours of CPD which must be completed by an NPP *barrister* in order to satisfy any of the mandatory requirements.



BAR
STANDARDS
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REGULATING BARRISTERS

Continuing Professional Development (CPD) Guidance for barristers

Who is this guidance for?

1. This guidance explains the Bar Standards Board's (BSB) new Continuing Professional Development (CPD) regime for the **Established Practitioners Programme (EPP)**. If you are an established barrister on the EPP this guidance is for you. The guidance is designed to provide practical support to help you complete your requirements. It has been designed with the assistance of barristers from a range of seniority and practice areas.
2. This guidance should be considered with regard to Handbook provision I6.4.
3. The CPD regime for Established Practitioners will change with effect from 1 January 2017. From this date you should comply with the new CPD requirements.
4. The guidance will be reviewed during the operation of the new approach to CPD. You are encouraged to share your feedback with us. To do so, you should contact cpdrecords@BarStandardsBoard.org.uk. We are keen to ensure that the guidance is as helpful as possible and will update and refine it in the light of comments and suggestions received.

What about the New Practitioners Programme (NPP)?

5. The requirements for *new* barristers are not changing. **NPP** barristers will continue to follow the current CPD requirements. This means that those barristers in their first three years of practice will continue to follow the NPP.

The CPD definition

6. rQ130.2 defines CPD. CPD is work undertaken over and above your normal commitments as a barrister. CPD is undertaken with a view to developing your skills, knowledge and professional standards in areas relevant to your present or proposed area of practice. This is in order to keep yourself up to date and maintain the highest standards of professional practice.
7. The definition of CPD has not changed from the previous Guidance. However the EPP requirements and assessment process has changed.

How has the EPP changed?

Summary of changes

- There is **no** minimum number of hours that you need to complete.
- You now have individual responsibility for deciding what training you require.
- There is no longer a requirement to complete accredited hours.

- You have increased flexibility in the types of CPD activities that you can complete.
 - We will assess whether you have planned and completed your CPD in a structured way.
 - Assessments of CPD will be made with regard to what CPD has been completed in previous years.
8. The role of our supervision team in setting Corrective Action for non-compliance has been formalised. This means that the focus on the regulation of CPD will not be on disciplinary action but on ensuring that you comply with the CPD requirements.
 9. We will monitor CPD by spot checking. The focus will be on barristers that are at higher risk of non-compliance with their CPD requirements, supplemented with a random higher risk of the profession. High risk will be established, amongst other things, with reference to a barrister's history of compliance with the Handbook.
 10. Non-compliance will generally be dealt with in the first instance through supervisory action.
 11. Referral to enforcement action will be reserved for those incidents of persistent non-compliance or non-cooperation.

Why have these changes been made?

12. The BSB has a statutory obligation to give the public assurance that barristers are competent, up to date and maintain high standards of work. Our regulatory framework for CPD is an important way we do that. We want the new scheme to be
 - Less prescriptive
 - More flexible
 - More suited to your actual training needs
 - Less likely to result in irrelevant CPD activities being completed
 - Less likely to result in disproportionate supervision and enforcement action being taken for non-compliance
13. In addition the new regime will ensure that the CPD requirements help you to maintain high standards of practice. We have done this by creating a risk-based and outcomes focused approach to CPD. This is a departure from the previous more prescriptive approach.
14. The new CPD scheme puts in place a structure that allows you to determine your own training requirements for the year in an efficient way. It also allows us to assess whether you have planned and completed your CPD in a structured way.
15. The change to CPD is in line with what is regarded as best practice for regulation of professional services. It therefore provides greater assurances to the public that the profession and the regulator are meeting their regulatory requirements.

Benefits of the new CPD Scheme

- There is no need to complete a minimum amount of CPD, including a minimum amount of accredited CPD. This should save you time and money as you do not need to attend courses just to complete 12 hours of CPD.
- There is no incentive to complete irrelevant CPD activities.
- The types of CPD available are more flexible. For example, there is no restriction on the amount of legal writing which can be completed.
- The scheme takes into account CPD completed in previous years. This means CPD can be planned with anticipated work load and can be directly carried over between years.
- There is no longer an extension or waivers process. If your circumstances mean that less CPD needs to be completed due to maternity leave, ill health or another

reason then this only needs to be noted on your CPD plan. This means that the regulation is less bureaucratic.

- As a result, we will be able to spend more time focussing on “High Risk” barristers and those who are not engaging with the CPD process or completing appropriate CPD

The CPD cycle

16. rQ134 of the Handbook sets out the four stages an EPP barrister must complete to be compliant with their CPD requirements.
 - Stage 1: Planning;
 - Stage 2: Recording and evidence;
 - Stage 3: Reflecting on your CPD activities;
 - Stage 4: Declaring completion.
17. In the following section we provide a practical example of how you can meet the different stages in the planning, recording, reflection and declaring cycle for CPD:
18. During the planning stage you should complete a plan of the CPD that you are going to undertake. It is a requirement that you do this by setting learning objectives (see pages 4-12 for more information) which should provide specific aims and outcomes of the CPD you plan to undertake. It is a requirement that you also provide examples of the types of CPD activities that you are proposing to undertake
19. During the recording and evidence phase you should complete CPD activities and keep a record of them.
20. The reflection phase takes place once the CPD activities have been completed for the year.
21. We do not specify a process for the reflection stage, but it could include noting;
 - Which learning objectives you completed, and how the activities you completed met your learning objectives
 - Which learning objectives you did not complete and the reasons why not,
 - Which learning objectives you changed,
 - What you need to complete in future years.
22. Finally you should submit a formal declaration that you have completed your CPD requirements. This submission is made as part of the Authorisation to Practise process at the end of the year in a similar manner to the old system.
23. Your compliance with the CPD scheme will continue to be monitored and assessed by us via spot checking. However our role in setting Corrective Action for non-compliance has been formalised. Referral to enforcement action will primarily be reserved for those incidents of persistent non-compliance or non-cooperation.

Stage 1: Planning

Setting learning objectives

24. rQ134.1 requires you to determine the learning **objectives** you intend to complete during the calendar year.
25. The Handbook defines a learning objective as; **“a statement of what a *barrister* intends to achieve through their CPD activities for that calendar year with reference to a specific aim and one or more outcomes.”**
26. In other words a learning objective is a statement of what you hope to achieve through your CPD activities and an explanation of why you want to achieve it.
27. Learning objectives should have an aim and one or more outcomes. It is best practice for a learning objective to be specific and measurable.

An example of a good learning objective:

“To become qualified to provide direct access advice to the public to improve my ability to provide advice to a wide range of clients and deliver a cost-effective service to lay clients”.

“...become qualified to provide direct access advice to the public” is a specific aim.

“...improve my ability to provide advice to a wide range of clients” is an outcome

“...deliver a cost-effective service to lay clients” is a second outcome

What to consider when planning your learning objectives

28. It is good practice when planning your learning objectives and the range of CPD that you plan to carry out, would be to consider the following knowledge and skill areas.
29. This is because considering these areas demonstrates that the CPD plan has been completed in a structured way with a view to developing your skills, knowledge and professional standards in line with the Handbook definition of CPD

Legal knowledge and skills

It is a Handbook requirement (Part 2 of the BSB Handbook) that you must not provide services to clients beyond your competence.

In general, the more areas of law in which you hold yourself out as practising, the greater the need for CPD. It is good practice to assess:

- If you are competent to offer services in any particular field of law;
- The specific areas of development which are required;
- The type and breadth of CPD that you require in order to maintain a sufficient level of legal knowledge and skills in these areas.

<p>Advocacy</p>	<p>Being able to provide good quality advocacy services is a central skill for the vast majority barristers across every practice area.</p> <p>You should be able to provide a level of advocacy appropriate for your level of seniority and experience.</p> <p>This may include such topics as the ability to:</p> <ul style="list-style-type: none"> • Cross examine witnesses • Submit pleas in mitigation • Make use of skeleton arguments • Make appropriate oral submissions.
<p>Practice management</p>	<p>It is a Handbook requirement (Core Duty 10) that you take reasonable steps to manage your practice or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.</p> <ul style="list-style-type: none"> • This can be fulfilled in the context of CPD by considering such topics as: Financial management; • Risk management; • Money laundering regulations • Management of employees • Management of working environment including managing work related anxiety and mental health concerns. <p>Your approach to CPD in relation to the way you manage your practice will depend upon the nature of your practice.</p> <p>When considering practice management requirements it is good practice to take into account your type of practice and role in practice when choosing your CPD activities.</p> <p>By types of practice we mean:</p> <ul style="list-style-type: none"> • Self-employed sole practitioner • Self-employed in Chambers • Employed as in-house counsel • Employee or manager of an authorised entity • Dual capacity. <p>By roles in practice we mean:</p> <ul style="list-style-type: none"> • Head of Chambers • Tenant • Pupil Supervisor • Pupillage Recruitment Manager • Owner or manager of a BSB authorised entity

<p>Working with clients and others</p>	<p>When considering your training requirements with regard to how you work with clients and others you it is best practice to assess whether you have the knowledge and skills to:</p> <ul style="list-style-type: none"> • Communicate effectively with all clients and others orally and in writing. • Give clear and comprehensible advice to professional and lay clients. • Be transparent about the basis of your instructions and your fees • Understand the procedures and techniques necessary to work with vulnerable victims and clients as appropriate to your practice. <p>Equality and diversity</p> <p>You should consider the Core Duties when determining your CPD requirements with regard to equality and diversity.</p> <p>It is good practice to consider whether you understand:</p> <ul style="list-style-type: none"> • The implications for your practice of equality and diversity legislation and regulations <p>Public access</p> <p>If you wish to conduct public access work you are required to complete BSB accredited training in order to do this.</p> <p>This training can count towards CPD.</p>
<p>Ethics, professionalism and judgement</p>	<p>When considering your training requirements with regard to ethics professionalism and judgement it is essential that you are familiar with your regulatory requirements and our outcomes-based approach to regulation.</p> <p>It is good practice to consider your training requirements with regard to;</p> <ul style="list-style-type: none"> • Conflicts of interest • Client confidentiality • Your duties to the court • Money laundering legislation. <p>You may also wish to consider:</p> <ul style="list-style-type: none"> • Your ability to act confidently in your legal practice • Your approach to your work and your ability to correct errors or admit your limitations • Your interpersonal skills • Issues of equality and diversity within your practice

Type and nature of CPD

30. rQ134.1 requires you to set out the type of CPD activities you intend to complete in order to meet your learning objectives. It is good practice to complete a variety of different types of CPD activities. This might include different activities such as lectures, workshops, podcasts, reading etc.
31. You do not need to note the specific CPD activities you intend to complete. For example it is not necessary to record in your Plan that you are going to complete a course on a particular date presented by a particular provider.
32. When planning your CPD we recommend that you consider the amount of CPD that would be sufficient. There is no prescribed minimum amount of CPD. Your own circumstances, seniority or practice should all be considered and may mean it is appropriate to complete less or more CPD.
33. In some circumstances, for example where a senior barrister is completing an exceptionally large and involved case it may even be appropriate not to complete CPD during the year on the basis that the research done during the case represents a substantial development in the practitioner's skills and knowledge.

Examples of CPD Plans and learning objectives

Examples of compliant CPD Plans

34. The following four examples of CPD Plans would be assessed as compliant with the requirements. **Assessment comments** have been added to each example to highlight key points about why the example would be considered compliant. You should note that these are illustrative examples that reflect an individual barrister's CPD requirements.

Example 1**Learning Objectives****Legal Knowledge and Skills**

- 1) To improve my knowledge of non-contentious employment matters so that I can deliver more effective advice to clients about risk management.
- 2) To undertake mediation training so that I can provide a wider range of services.

Practice Management

- 3) To increase my knowledge and awareness of different funding products and fee structures for clients. This will allow me to provide better access to justice through a fairer and more cost effective fee structure

Describe the type and nature of CPD you intend to undertake; include how that will support achievement of your learning objectives

I intend to undertake a broad range of CPD which will incorporate;

- Online podcasts and webinars.
- Preparing and giving my own seminars to lay and professional clients
- Attendance at “live” seminars and lectures.

This will allow me to obtain CPD from recognised experts in the relevant fields (who may be based some distance away), provide me with an opportunity to carry out my own research and cement my understanding of particular topics. It will also enable me to engage with seminar providers to ask relevant questions of matters that may be particular to my own practice.

Assessment comments:

- **These learning objectives are concise but explain both the aim and the outcome of the learning objective.**
- **Note in particular that the first learning objective has a fairly wide aim (increasing knowledge of non-contentious employment matters). However a specific outcome is provided ‘So that I can deliver a more effective risk management service to clients’**
- **A different barrister could have the same aim but a different outcome e.g. ‘So that I am more confident in providing advice to commercial clients about drawing up redundancy policies’**

Example 2**Learning objectives:****Legal Knowledge and Skills:**

- 1) To deepen my understanding of international law elements of my practice so that;
 - I know the regimes by which evidence can be obtained and used in court proceedings from other countries
 - I know the practice procedures and legal principles in the international courts in which I intend to develop my practice.
- 2) To update my knowledge of recent judgments in the field of professional discipline in order to better comply with regulatory requirements.

Practice Management:

- 3) To understand the changes in regulation being undertaken by the BSB in relation to practising as a self-employed barrister in Chambers within the context of a limited company rather than a sole practitioner, in order to deliver a cost effective service to clients.

Ethics and professionalism

- 4) Deepen my knowledge and understanding of the BSB Handbook as it applies to self-employed barristers so that I am complying with the regulatory requirements and particularly that I am administering my practice effectively.

Describe the type and nature of CPD you intend to undertake; include how that will support achievement of your learning objectives

- 1) Conduct regular Westlaw searches of regulatory judgments and receive bulletins of the same. Seek to engage with a casebook author to assist in publication of an updated version.
- 2) Attend lectures and seminars on cybercrime and terrorism, ideally coordinated by recognised international public or academic institutions.
- 3) Review the training materials by UK governmental bodies on the use of International Letters of Request and Mutual legal assistance treaties.
- 4) Review the BSB guidance and seek professional advice on the impact of practising as a limited company.
- 5) Review the BSB rules and guidance surrounding marketing of barristers' services. Review and re-work current marketing materials.
- 6) Teach two sessions at my Inn's course on Ethics for New Practitioners.
- 7) Teach a session at my Chambers training for pupils. This will require me to refresh my knowledge of the Handbook by preparing for the session and will require me to reflect on ethical issues through leading an interactive session.

Assessment comments

- These learning objectives are all related to the specific CPD knowledge areas. They also provide detailed activities and specific outcomes.
- Note that objective 1 has two distinct outcomes associated with it. It is not necessary to create a large number of different learning objectives when there are a few aims with multiple outcomes that will be achieved.
- The barrister is rightly using teaching and presenting seminars and other CPD activities as a way of completing their CPD. Providing CPD activities generally requires a barrister to refresh their knowledge of the subject area by preparing for the new sessions. It can sometimes also allow the barrister to learn from other trainers at the session

Example 3**Learning objectives:****Legal Knowledge and Skills**

- To maintain knowledge and understanding of my main practice areas. This is to ensure that upon returning to work from maternity leave I am not behind with any new authorities.
- To continue to develop knowledge, awareness and experience in the cross over between criminal prosecution and the regulation of care homes under the Care Quality Commission, so that I can undertake general instructions in this area to which I am new.

Advocacy: Oral and Written

- Refresh my advocacy skills in order to ensure I am up to date with current advocacy techniques.

Practice Management

- As a member of the employed Bar I wish to focus my Practice Management training on the skills and knowledge needed to manage a team of legal service providers including other qualified persons and paralegals.

I hope the outcome of this training is that I can help my team to provide a better standard of service to clients and also that I am more aware of the responsibilities I have in the context of my role in practice as a manager in ensuring that my practice is managed in an effective manner.

- To improve my IT skills in order to ensure I am complying with information security best practices'.

Describe the type and nature of CPD you intend to undertake; include how that will support achievement of your learning objectives

- Attend seminar on regulation of care homes.
- Audio lectures on Advocacy techniques certified by the Circuits or Inns of Court.
- Volunteer to help organise my Inn's training day on Criminal Advocacy and help deliver training during the day.
- In house training workshops
- Formal recorded peer to peer reviews
- Podcasts
- Attend lectures relating to information security best practices.

Assessment comments

- **The aim of the first learning objective 'to maintain knowledge and understanding of my main practice areas' is quite generic in nature. However it also relates to a specific training need and outcome identified by the barrister because of their circumstances, in this case maternity leave.**
- **Again the aim of the second learning objective is quite generic. However the outcome relates to a specific circumstance of the barrister. In this case their seniority and level of experience.**
- **The third learning objective relates to specific practical skills that the barrister wants to improve. Once again the aim of this learning objective (improving IT skills) is broad and could have had a range of different outcomes. Eg. 'So that I able to deliver a quality and cost effective service to both professional and lay clients.**
- **Objective 4 is a type of activity (personal management training) that would previously not have been permitted. However it is clearly important and relevant training to some barristers including members of the employed Bar and describes both an aim and an outcome**

Example 4**Learning objectives:****Practice Management**

- 1) To ensure that my knowledge of the rules which are ancillary to my main areas of practice are fully up to date, specifically continuing changes to Civil Procedure Rules and Costs rules
- 2) To improve client care by enhancing in-Chambers record keeping and communication of advice with Direct Access clients.
This will ensure that;
 - Advice has been understood by clients.
 - Client questions/issues have been addressed and/or resolved.

Legal Knowledge and Skills

- 3) To enhance existing qualifications/ maintain accreditations as mediator/ mediation advocate /continuing direct access authorisation
- 4) To further develop knowledge of core subject areas of practice, focussing this year specifically on trusts and trustees and obligations of attorneys acting under an LPA

Describe the type and nature of CPD you intend to undertake; include how that will support achievement of your learning objectives

Support – each activity is individually addressed to each learning objective and is measurable by reference to

- independent accreditation or testing
- independent monitoring of attendance
- appropriate note taking for future reference and/or review

Objective 1 to be met by attendance at a professional one day accredited CPD courses on each of these two subjects

Objective 2 to be met by attendance at a professional one day accredited CPD courses. This will be followed by taking re-accreditation tests)

Objective 3 to be met by arranging one to one training by suitably qualified provider

Objective 4. to be met by attendance at Chancery Bar Association accredited seminar(s), then detailed research and study

Assessment comments.

- This plan lists four detailed specific learning objectives which have measurable clear outcomes. These learning objectives are related back to the CPD Knowledge areas and the types of activities the barrister intends to undertake.
- Objective two relates to the barrister changing Chambers record keeping systems. Depending on the barrister's position in Chambers (i.e. a Head of Chambers) this could fall within scope of CPD.

Examples of non-compliant CPD Plans

The following two examples of CPD Plans would be assessed as non-compliant with the requirements. **Assessment comments** have been added to each example to highlight key points about why the example would be considered non-compliant.

Example 5.

Learning objectives:

- 1) To improve knowledge of Commercial Law
- 2) Attending lectures in person and online

Assessment comments

- The second learning objective actually describes the type and nature of the CPD activities the barrister intends to carry out.
- This plan does not provide a specific measurable learning objective which has either an aim or an outcome.
- The second learning objective actually describes the type and nature of the CPD activities the barrister intends to carry out.
- There is no plan as to how the CPD will be structured or how attended the lectures in person or online will support the learning objective.
- The learning objectives are not linked back to the CPD knowledge areas.

Example 6.

Learning objectives:

- 1) To ensure I am up to date with the legal developments, practice and procedure in my area of work and to understand the most current thinking of specialists in my area of work.

Assessment comments

- This plan provides only a single learning objective. The learning objective does not provide any detail as to the particular practices or procedures the barrister needs to keep up to date with.
- Understanding the current thinking of specialists in the area of work could be a worthwhile learning objective. However in this case there is no further detail added. For example there are no outcomes associated with it.

Stage 2: Recording and evidence

35. During stage 2 in order to comply with rQ134.2 you will record the relevant CPD activities that you have completed that have met your learning objectives.

Scope of CPD

36. A non-exhaustive list of CPD activities includes:
- Taking part in formal face-to-face training courses, including university courses;
 - Online courses;
 - Podcasts;
 - Attending conferences;
 - Taking part in seminars or webinars;
 - Reading or research;
 - Authorship and editing of published works of a professional nature. This includes exam papers;
 - Presenting seminars, lectures and workshops;
 - Teaching a relevant legal course eg LLBs LLMs the GDL BPTC LPC or Diplomas in Law.
37. The following activities do not count towards CPD:
- Work completed as part of actual practice, including pro-bono or volunteer work
 - Research completed as part of actual practice, including pro-bono or volunteer work
 - Updating social media accounts including twitter
 - Following a social media account
 - Learning a foreign language
38. We encourage you to carry out a wide variety of CPD activities.
39. Each barrister's practice is different, and as such we do not prescribe one structure or amount of CPD to be carried out by all members of the profession.

Evidence

40. You are encouraged to keep a note or evidence of the CPD activities that you have completed over the past three years of practice. This may include:
- Title/description of your CPD activity;
 - Date (or date range) of your activity;
 - Type of CPD activity;
 - CPD provider (where applicable);
 - Knowledge area the CPD activity relates to
 - Learning objective(s) met by the CPD activity;
 - Reflection on your CPD;
 - Evidence confirming you have taken part in CPD activity.

41. We recognise that retaining evidence may not always be practicable; that is why we are not making it a requirement to do so. However, if you are spot-checked you will be asked to demonstrate that you have completed the CPD you have recorded and will be asked to produce any evidence that you have retained or take steps to acquire it. The onus will be on you to demonstrate that you have undertaken the CPD that you say you have.
42. Your evidence may include:
 - An attendance record
 - A certificate of completion/achievement
 - Confirmation of results
 - Notes compiled undertaking research or reading
 - A sample of credited published journals/articles
 - Counter signed CPD Plan and Record card by a peer or responsible officer within Chambers.
43. This should not be considered an exhaustive list of what may be considered evidence of completion.

Stage 3: Reflecting on your CPD activities

44. In order to comply with rQ134.3 you are required to reflect on the CPD activities you have planned and completed throughout the year, in particular focusing on any variations of your planned CPD activities and what your assessment of future learning objectives are
45. A recommended way to complete this stage is to evaluate the extent to which your planned activities have met your learning objectives - after each CPD activity and at the end of each CPD year. This is a useful exercise to:
 - Maximise the effectiveness of your learning and embed it into your practice;
 - Make sure you can adapt your CPD throughout the course of the CPD year to achieve your desired learning objectives;
 - Help inform learning objectives for future years.
46. This is also an opportunity for you to change the course of your planned CPD if your circumstances change during the year.

Stage 4: Declaring compliance

47. You must declare that you have carried out suitable CPD each year.
48. The CPD year runs from January to December. As such, you will be able to declare compliance with the CPD regulations for the prior CPD year as you complete Authorisation to Practise requirements (which require action in February and March).

How we assess your CPD

49. We will assess your CPD Plan and Record based on all four stages of the CPD cycle and in accordance with assessment criteria.

Planning stage assessment

50. We are assessing that you have planned your CPD in a structured way.
51. We will check:
- That you have considered your requirements with regard to the definition of CPD and particularly skills, knowledge and professional standards. The four recommended CPD knowledge areas in which CPD activities could be undertaken cover these requirements (but you may take your own approach):
 - Legal knowledge and skills
 - Practice management
 - Working with clients and others
 - Ethics and professionalism
 - That you have set yourself relevant learning objectives with specific aims and outcomes
 - That you have considered how your learning objectives and proposed CPD activities are relevant to your practice
 - That you have evaluated your own strengths and weaknesses in order to keep yourself up to date and maintain high standards of professional practice.

CPD activities assessment

52. We will:
- Check the relevance of the CPD activities you have carried out against the area of practice you undertake and the learning objectives you recorded at the planning stage
 - Consider your experience (compared to the activities carried out and the type of CPD activities you completed in previous years)
53. You will not necessarily be non-compliant if there is a variation between the learning objectives at your planning stage and the CPD activities you have completed. However, any differences that have arisen should be noted and addressed in the reflection stage.
54. Equally, carrying out a large number of CPD hours by itself does not guarantee compliance.

Reflection stage assessment

55. We will assess that you have followed a structured process in complying with rQ134.3.
56. We will check:
- That you have reflected on how your activities have met your original learning objectives
 - Whether any variations between learning objectives and activities occurred
 - Your assessment of future learning objectives

Declaration stage assessment

57. We will check that you have submitted a declaration of your completion of the CPD requirements.

The assessment criteria

58. The CPD assessment criteria will examine each of these areas using a risk-based outcomes-focused framework. This means that the Plan and Record Card are evaluated as a whole for compliance. Failure to complete individual elements of the process will not automatically lead to an assessment of non-compliance.

Examples that may lead to an assessment of non-compliance:

- CPD activities that are obviously not relevant to your practice or proposed area of practice
- Completing a minimal amount of CPD over a number of years, with no justification of this in your learning objectives
- Completing exactly the same CPD activities over a number of years with no adequate justification. E.g. attending the same 'Introduction to Advocacy' course over a ten year period
- Completing a CPD activity that is clearly below your level of expertise
- Disregarding the CPD process.

Our supervision and enforcement approach

59. You will have a wide discretion as to the amount and type of CPD you complete. It is hoped that following the structure in this guidance you will be compliant with your CPD. However, in some instances the CPD you have completed may not be assessed as compliant.
60. When you are assessed as non-compliant the CPD assessment team will try to use supervision to ensure compliance. It is anticipated that enforcement action will occur only in cases where a barrister does not engage with supervision or is repeatedly non-compliant.
61. Here is a summary of the approach that we will take to supervision and enforcement:
1. Barrister is selected for a spot check
 2. Barrister submits CPD Plan and Record Card
 3. CPD Assessment Team assesses Plan and Record Card
 4. CPD Assessment Team may assess CPD as
 - (i) Compliant.
 - (ii) Compliant but feedback required
 - (iii) Non-compliant.
 5. If CPD Assessment Team identifies non-compliance then in most cases a Corrective Action plan will be set for the barrister.
 6. If a barrister satisfactorily completes Corrective Action, CPD requirements are noted as completed and no further action will be taken. However, a barrister is likely to be checked again in future to ensure ongoing CPD compliance.
 7. If a barrister does not complete Corrective Action or has repeatedly been assessed as non-compliant then the barrister will be referred for consideration of enforcement action

Detail of Supervision and enforcement process

62. Where an assessment of non-Compliance is made - for example if we are not satisfied that the completed CPD activities are relevant to your stated learning objectives - the CPD Assessment Team will, in the first instance, deal with this through feedback and Corrective Action.

Corrective Action

63. Corrective Action is used by us to address identified non-compliance with the CPD requirements. It is a remedial approach that aims to avoid the need to take enforcement action.
64. The range of Corrective Actions could include, but is not limited to;
- Carrying out a particular type of CPD activity
 - Expanding on your planning or reflection stage (either in the current CPD year or for future CPD years)
 - Confirm your area of practice or proposed areas of practice
 - Confirm that you have understood and acknowledged any feedback provided as part of the Corrective Action.
65. When you have been set Corrective Action you will be informed of this along with any associated deadlines.

Feedback

66. In some cases the CPD assessment team will assess a Plan and Record Card as compliant but note some areas of recommended action to improve the record. These recommended actions will be provided as feedback.

Our enforcement process

67. Referral to enforcement action may occur if, for example:
- You refuse to complete Corrective Action that has been set
 - You fail to complete the full extent of the Corrective Action
 - You repeatedly refuse to complete the CPD process in full or repeatedly fail to comply with all the requirements
 - You fail to supply a CPD record and plan when called upon to do so
 - You are dishonest e.g. you falsely declare completion of the CPD cycle
68. We will not normally make a referral to enforcement action for a single isolated breach of the CPD rules, although the seriousness of the breach will be taken into consideration.
69. If you are referred for consideration of enforcement action, the BSB will deal with the referral in accordance with the provisions of Part 5 of the Handbook and any relevant operational processes and policies.

Contact us

70. If you have any questions or concerns about the CPD process we will be happy to help.

Contact: cpdrecords@BarStandardsBoard.org.uk

CPD Stakeholder Engagement Plan

Objectives

- To raise awareness of the new CPD arrangements among barristers and wider stakeholders leading up to the launch of the new scheme on 1 January 2017;
- To ensure barristers and other stakeholders understand the benefits of the new regime and why it is being introduced by the BSB; and
- To provide clear guidance about the new regime in order that barristers are in a position to prepare appropriately for the 2017 CPD year.

Messaging

1. CPD requirements for barristers on the Established Practitioners Programme (EPP) are changing from 1 January 2017;
2. The development of the new CPD regime has been widely consulted on with barristers and the legal profession, including a successful pilot in 2015 where 76 barristers responded positively to the new regime;
3. The new CPD regime will allow barristers greater flexibility and control of their CPD activities. Under the new regime a barrister:
 - will now have individual responsibility for what training they require;
 - will no longer have to complete a minimum number of hours;
 - will have greater flexibility in the types of CPD activities they undertake;
 - will not be subject to any compulsory activities including accredited activities; and
 - will be assessed by the BSB on whether they have planned and completed their CPD in a structured way.
4. CPD requirements for the New Practitioners Programme (NPP) will not be changing.

Engagement activities

5. The BSB will conduct a range of engagement activities from September 2016 to April 2017 to prepare the profession for the new CPD regime. We recognise that the Bar is anxious about the changes and we will take every opportunity to engage with the profession to address any concerns. The first phase of engagement activities, before 1 January 2017, will focus on making barristers aware of the CPD changes, why the BSB is making these changes and what the new regime requires of them. The second phase, after 1 January 2017, will have a greater focus on helping barristers comply with the new scheme. As part of the second phase we will host surgeries to advise barristers on how they then can fulfil the new CPD requirements.
6. In the planning of our engagement activities we have worked closely with the Circuits and Specialist Bar Associations (SBAs), and will continue to do so, to ensure our engagement programme is meaningful and reaches all sectors of the Bar. Activities will include:

1. CPD Roadshow

The BSB will host a series of workshops across England and Wales to help barristers prepare for the new CPD regime.¹ We have worked closely with the Circuits to promote the workshops to ensure they are hosted at a convenient time and location for Circuit members. Each workshop is designed to give barristers a head start with regard to their CPD planning for 2017. The session will include a short presentation on the rule changes and guidance on how to plan CPD under the new rules. The workshop will also feature an “ask the regulator” session where a BSB director will be present to answer any questions a barrister may have on CPD or our other regulatory activities. We hope that each workshop will also be attended by a barrister member of the Board

[Target stakeholders: Barristers (Established Practitioners' Programme)]

2. Press releases

The BSB will submit a press release to trade and national press to announce the changes to CPD that will come into force 1 January 2017. The press release will emphasise why we are changing CPD and the new requirements for those on the EPP. We will issue a second press release in mid-December 2016 to remind the profession of the imminent changes to CPD which will take effect from 1 January 2017.

[Target stakeholders: All]

3. Webinar

The BSB will host a webinar on 10 November help barristers prepare for the CPD changes remotely. This webinar will give the opportunity for barristers that could not attend a workshop to watch the presentation and ask questions to a BSB representative. The webinar contains a slide show and commentary to guide barristers through the changes and will be followed by a Q & A session. The webinar will be recorded and uploaded to the website to act as a useful resource for the new CPD requirements.

[Target stakeholders: Barristers (Established Practitioners' Programme)]

4. Specialist Bar resources

The BSB will produce a range of tailored resources applicable to different areas of the profession. In particular, we will produce sample CPD forms and learning objectives relevant to different areas of the Bar. We will look to work with the SBAs to produce the resources to ensure the examples are relevant to their members and contain 'real-world' examples. We will coordinate dissemination of the resources with SBAs to maximise reach.

[Target stakeholders: Barristers (All), Legal Representative Bodies]

¹ Workshop locations and dates: London (4 & 5 October); Bristol (10 October); Leeds (11 October); Birmingham (18 October); and Manchester (2 November).

5. Liaise with Circuits SBAs and other accredited providers

The BSB will continue to engage with the Circuit and SBAs officers to monitor how the profession is responding to the CPD changes. Regular engagement with officers within representative bodies will allow us to address common themes of concern. If concerns arise, we will be keen to work with Circuits and SBAs to provide more information and/or resources to ensure we address any confusion or questions about the new regime. We will also meet accredited CPD providers who may want to seek clarification on their future role in the new CPD market.

[Target stakeholders: Legal Representative Bodies, Accredited CPD Providers]

6. Regular reminders on social media

The BSB Twitter and LinkedIn account will post reminders of the changes. The BSB will encourage 'retweets' from other accounts in the legal sector, in particular SBAs and Circuits, to maximise the reach of the posts.

[Target stakeholders: All]

7. Publicise CPD changes at Bar specific events

The BSB will publicise the changes to CPD at external events. We are arranging to speak at the Chancery Bar Association National conference (20 - 21 January 2017). The BSB will also have a stall at the Annual Bar and Young Bar Conference (15 October 2016) where will be open to queries about the new CPD regime. We will continue to look for opportunities to speak at SBA events to make attendees aware of the changes.

[Target stakeholders: Barristers (all), Legal Representative Bodies, Other Legal Practitioners]

8. Regular reminders in the Regulatory Update

Reminders of the new CPD regime will be featured in each Regulatory Update between September and January 2017. The articles will emphasise how the changes will give greater freedom to barristers when planning their CPD activities. The articles will promote the CPD workshops and provide a link for barristers to register for a workshop.

[Target stakeholders: Barristers (all)]

9. Direct mailing to all barristers on the Established Practitioners' Programme

A direct email has been sent to all barristers on the Established Practitioners programme about the changes to CPD and an invitation to the roadshows. The invitation briefly summarises the changes to CPD and directs barristers to where they can find more information.

[Target stakeholders: Barristers (Established Practitioners' Programme)]

10. Targeted article in Counsel Magazine

The BSB will aim to have a featured article in Counsel Magazine explaining the new CPD regime. The article will give the opportunity for the BSB to go into more detail about how we formed the new CPD requirements and exactly what they will entail. In particular we will reference previous consultations and the pilot which has informed the new regime. We will also refer to the resources available and provide a contact address for those with further questions.

[Target stakeholders: Barristers (all), Other Legal Practitioners, Legal Representative Bodies]

11. CPD surgeries and seminars

From the 1 January 2017, the BSB will look to host a number of surgeries to help barristers with the transition to the new requirements. The surgeries will address the practicalities under the new regime such as setting learning objectives and filling out the new form. We will look for opportunities to work with SBAs and Circuits. We are currently in discussion with the Chancery Bar Association to host a lunch time seminar to assist Chancery members with the new requirements.

[Target stakeholders: Barristers (all), Legal Representative Bodies]

Target stakeholders

Stakeholder group	Stakeholder/s
Barristers	Self-employed barristers (Established Practitioners' Programme)
	Employed barristers (on the Established Practitioners' Programme)
	Self-employed barristers (New Practitioners' Programme)
	Employed barristers (on the New Practitioners' Programme)
Other Legal Practitioners	Clerks
	Practice Managers
Legal Representative Bodies	Specialist Bar Associations
	Inns of Court
	Circuits
Accredited CPD Providers (that are not listed above)	Chambers
	Law Firms
	Associations of business professionals
	Universities
Internal BSB Audiences	Board and Committee members
	Staff
External Audiences	General Public
	Legal Consumer Organisations

Equality rules: Shared Parental Leave

Status

1. For decision.
2. This paper seeks the Board's agreement in principle to consult on possible rule changes relating to shared parental leave.

Executive Summary

3. The Bar Council made a formal request to the BSB under the independence protocol that we consider reviewing our equality rules to mirror recent statutory changes in relation to shared parental leave (SPL).
4. A task completion group was formed to consider the merits of taking regulatory action. In the light of this work, it is recommended that the BSB consults on possible changes and seeks views on the likely impact on chambers of a new requirement.
5. This paper seeks the Board's agreement to proceed with consultation.

Recommendation

6. It is recommended that the Board:
 - a. **Notes** the summary of the issue below; and
 - b. **Agrees** to consult on possible changes to the equality rules to permit shared parental leave in Chambers.

Background

7. The current BSB Handbook equality rules on parental leave, introduced in 2012, apply only to the main carer of a child following birth or adoption. This could be the mother, father, or adoptive parent of either sex. The BSB introduced these rules to allow self-employed barristers in chambers to access similar parental leave provisions as are afforded to employed barristers through legislation.
8. In April 2015 new regulations introducing shared parental leave (SPL) came into force that applied to eligible employees. SPL provides a pot of leave that can be shared between both parents, the purpose being to allow flexibility in how parents best care for their child in its first year. The SPL provisions do not apply to self-employed barristers, save for a self-employed barrister who is the main carer and chooses to reduce their Maternity Allowance and pass their entitlement to an employed partner.
9. The current parental leave rules for self-employed barristers are found at rC110(.k) of the BSB Handbook:

You must take reasonable steps to ensure that in relation to your chambers or BSB authorised body the following requirements are complied with:

- .k chambers has a parental leave policy¹ which, in the case of a chambers, must cover as a minimum:

- .i the right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;
- .ii the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;
- .iii the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;
- .iv where any element of rent is paid on a flat rate basis, the chambers policy must as a minimum provide that chambers will offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers' rent;
- .v the procedure for dealing with grievances under the policy;
- .vi chambers' commitment to regularly review the effectiveness of the policy;

¹ Parental leave means leave taken by the **main carer** [emphasis added] of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex (Definition 150, BSB Handbook).

10. In February 2016 the Bar Council requested, through the Protocol for Ensuring Regulatory Independence, that the BSB amend the parental leave rules and provide guidance with respect to SPL. This is so that the BSB Handbook reflects the new legislation, and parents at the self-employed Bar are given the opportunity to take a flexible approach to caring for their children while maintaining their practice.
11. A task completion group has considered the issues independently of the Bar Council and agreed that the BSB should consult on potential changes to its parental leave rules.
12. The members of the task completion group are:
 - a. Jessica Prandle – BSB Senior Policy Officer, Equality and Diversity
 - b. Amit Popat – BSB Head of Equality and Access to Justice
 - c. Stephanie Borthwick – BSB Senior Policy Officer, Professional Standards
 - d. Rolande Anderson – Lay BSB Board member
 - e. Lucy Bone – Barrister, Littleton Chambers
 - f. Jacky Chase – Chambers Administrator, 25 Bedford Row

The proposed rule change

13. The definition associated with Handbook rule rC110(.k) could be amended to read: "Parental leave means leave taken by the main carer of a child preceding or following birth or adoption, **or leave taken by a joint carer in circumstances where Shared Parental Leave is taken** [emphasis added]. This could be the mother, father or adoptive parent of either sex".
14. The rule regarding Parental Leave policies could also be amended to require chambers to include a section on Shared Parental Leave in their policies. The policy would state that in the case of SPL, the combined leave and rent relief arrangements taken by either parent should be less than or equal to the parental leave or rent relief available to one (the 'main') carer. For example, total leave must be at least one year with a minimum 6 month rent-free period (where a flat rate is paid).

15. Statutory SPL can be taken as one continuous block of leave, or split into a maximum of three separate blocks of leave, all of which must be taken within the child's first year. The consultation should include this as a component of the possible rule change.
16. If the rule change were adopted, the BSB guidance could be updated to include reference to Shared Parental Leave in Touch (SPLIT) days. SPLIT days, like Keeping in Touch (KIT) days for maternity leave, are individual days of paid work that can be done during shared parental/maternity leave without losing SPL/adoption pay rights. Up to 20 SPLIT days are encouraged for a couple taking SPL. Again, the total number of SPLIT days taken by one parent should not exceed the total available to both parents.
17. It is suggested that if a barrister is taking SPL, they should not submit any bills during their time on leave, save for any SPLIT days worked. This provides evidence to chambers that the barrister is indeed a 'joint' carer of a child.
18. Implementing SPL arrangements in chambers could be complex, so it is suggested that the BSB does not attempt to cover every eventuality in its Handbook guidance. Rather it is recommended that the Bar Council be invited to produce detailed guidance on SPL in chambers should we decide to go ahead with the rule change.

Potential impacts of a rule change

19. The proposed change has the potential to directly benefit two of the BSB's Equality Objectives:
 - a. Improving Wellbeing, by promoting the principle of parental leave and enabling an improved work-life balance; and
 - b. Improving retention of Women at the Bar, by enabling the sharing of childcare duties between two carers.
20. The TCG also acknowledged that there may be difficulties in implementing SPL within chambers – there are broadly three different situations that the rules may need to cater for:
 - a. A self-employed barrister whose partner is in employment wishes to take advantage of SPL;
 - b. Two barristers in one chambers wish to make SPL arrangements together; or
 - c. Barristers in two different chambers wish to co-ordinate SPL.
21. These options will be further explored during the consultation process.
22. The TCG was particularly keen to understand the financial impacts on chambers of any change. Some initial impact assessment has been undertaken, but this would be a key component of any consultation exercise.

Potential benefits	Potential challenges
<ul style="list-style-type: none"> ● Bringing the self-employed Bar in line with current SPL provisions for the employed Bar. ● Allow parents greater flexibility in how to best care for, and bond with, their child in its first year ● Giving fathers the opportunity to take a greater role in childcare responsibilities ● Supporting the retention and progression of female self-employed barristers. ● Unlike maternity leave, barristers could stop and start their SPL leave (on up to three occasions) and return to work between periods of leave. ● Changing the culture at the Bar and the traditional view of caring roles. ● Wellbeing – improvement of work/life balance at the Bar. ● No infringement of privacy – not submitting bills during SPL will be sufficient to demonstrate to chambers that a barrister is indeed a ‘joint’ carer. 	<ul style="list-style-type: none"> ● All chambers will have to amend their Parental Leave policies. ● No legal requirement for chambers to introduce SPL provisions so this would be an additional regulatory burden. ● Potential abuse of SPL provisions in chambers/barristers going against the spirit of SPL for their own advantage e.g. two barristers in different chambers could each claim one year of leave and 6 months’ rent relief at the same time. As self-employed people, barristers are not part of the formal SPL system and so there is no formal ‘pot’ of leave to share. ● Cost implications for chambers due to increased likelihood of barristers taking leave/requesting rent rebates where they might not have otherwise done so. ● Difficulty of calculating leave and rent breaks available if one chambers has a more generous parental leave policy than another. ● Eligibility issues if one parent is employed.

Recent actions and next steps

23. The Shared Parental Leave Task Completion Group met in July and agreed on the above suggested rule change and potential implications.
24. The Equality and Access to Justice team has been communicating with a number of chambers in order to establish an estimate of the financial implications of extending parental leave to both carers. The estimate will be an extrapolation of the rental income loss (in percentage terms) to chambers as a result of women taking maternity leave in the past 5 years.
25. Collection of this information is ongoing, but the data so far suggests the introduction of SPL to the self-employed bar could result in additional rental income losses to chambers of just over 1%.
26. Subject to Board agreement, in early October the BSB will begin a focused, targeted consultation on the issues raised, including the potential impact of the proposed rule change. This will include targeted meetings with relevant representative groups.
27. Consultation responses will be considered and implementation and communications plans will be developed alongside any subsequent recommendation to the Board.

Risk and Equality Impact Assessments

28. An equality impact assessment of any proposed rule change will be completed with the input of the Task Completion group. It is not anticipated that this project will have any significant adverse impacts on equality because the parental leave rules were designed specifically with the aim of promoting equality and diversity at the Bar.
29. The BSB Regulatory Risk Index lists a ‘lack of a diverse and representative profession’ as a significant market risk. SPL legislation was introduced to support flexibility and retention of parents in the workplace. Failure on the BSB’s part to reflect these changes in its regulatory arrangements may have a negative impact on diversity at the Bar, particularly in relation to the representation of women.

Resource implications

30. This work forms part of a review of the BSB’s equality objectives that would have been undertaken in any event this year, so there is no significant impact on overall BSB resources at this stage. There will be resource implications for the profession should we decide to implement the proposed changes.

Impact on other teams and departments

31. Minimal at this stage, other than publicising the consultation. If we decide to go ahead with the proposed rule change there will be a need to publicise the change and in the longer term we may need to adapt our supervision approach to assess the impact of the changes.

Regulatory objectives

32. The primary focus of this proposal is the regulatory objective of encouraging an independent, strong, diverse and effective legal profession. The potential benefits are discussed in the body of the paper.

Publicity

33. A communications strategy will be developed for the consultation – this will include targeted meetings with key interest groups.

Lead responsibility:

Amit Popat, Head of Equality and Access to Justice
Oliver May, Senior Policy Officer

Chair's Report on Visits and External Meetings, July – September 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

9 September	Participated in the longlisting of candidates for the recruitment of lay Board members
15 – 16 September	Attended the Fifth Annual International Conference of Legal Regulators in Washington DC
22 September	Met with the Chair and CEO of the Legal Services Board
27 September	Attended the Finance Committee meeting
27 September	Attended a dinner for chairs and chief executives to discuss the issues and impact of Brexit; hosted by Saxton Bampfylde and Sir Philip Lowe
29 September	Attended the Chairmen's Committee
3 October	To participate in the shortlisting of candidates in the recruitment process of lay Board members

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 29 September 2016

For consideration and noting.

Director General

1. The reports from departments below show the extent to which notwithstanding the relative quiet in the courtrooms of England and Wales over August, the BSB has continued to be busy and productive. We marked the publication of our Annual Report and the achievements of the last three year's strategic plan with a staff celebration on 5 August. I am most grateful to Board members who joined SMT colleagues in helping to fund the successful event.
2. The two floors of the building on which we work have undergone adjustments to layout and furnishings, to facilitate our move to more colleagues working remotely and reduce our future space requirements, under the Work Smart programme rubric. The transition has gone very smoothly for which tribute must be paid to the Facilities and IS teams for their hard work, often during unsocial hours to reduce business down time. We are monitoring closely the impact of the new arrangements: internally at least everyone seems very pleased at the improved work-life balance afforded. I will be pleased to receive any observations Board members may have about impact on their own work with us.
3. I have been closely involved in the finalisation of the next FBT consultation and several other aspects of other education and training work, all of which have brought home the depth and extent of contribution made to the BSB by Simon Thornton Wood, who left us on 16 September. Simon has joined one of the Royal Colleges in a senior executive role. Our restructuring of the education and training team is now complete, with policy and research and data work now settling into the Regulatory Policy department under Ewen Macleod's overall lead; and quality assurance, supervision and examinations settling into the Regulatory Assurance Department under Oliver Hanmer's overall lead.
4. A significant amount of work has been progressed in relation to governance, notably the recruitment to APEX and the start of the Board member competition for vacancies arising from January 2017. I have been directly involved in interviewing for APEX members in Equality and Diversity, competition and economics. The standard of applicants has been extremely high and I now look forward to having close oversight of the induction arrangements and the bringing together of this new community of practice in support of our work. A more detailed update is elsewhere on the agenda.
5. I attended the international conference of legal regulators held on 15 and 16 September in Washington DC. Topics covered comparatively across many jurisdictions included admission systems, approaches to supervision and discipline, application of technology and "lean" concepts to regulatory work, problems in emergent regulatory regimes (where I chaired a working session dealing with issues in Zimbabwe). The conference has established, with SRA support, a website for participants to share information and materials in support of collaborative working amongst legal regulators internationally: www.iclr.net.
7. Finally, it would be impossible to complete this Board report without acknowledging that this will be Amanda Thompson's last meeting. Our Director for Governance Reform leaves us in early October, one week shy of eight years of service to the BSB. Her legacy is substantial. Most will be familiar with the vision, drive and determination which she has brought to the challenges of reforming our governance arrangements. Less familiar may be the fact that she has led the establishment of our corporate and governance systems and our communications work in her various roles here, such that

all these areas have been handed on to new, highly professional teams. She has been the source of many ideas for reform across the piece and has always been a major contributor to ensuring the personal well-being of everyone who works here. I thank her personally for all she has done and know the Board will want to join me in doing so, and in wishing her all the best for her future ventures.

Regulatory Policy

Professional Standards

8. The team has recently recruited a new policy officer and senior policy officer. Chelsea Howells and Rachael Evans took up post on 1 September 2016.
9. Work on PII continues. A MOU with Bar Mutual has been signed, providing BSB with greater regulatory oversight of the terms of cover for the self-employed Bar. Oxera have completed the economic analysis of the PII market and will be presenting their findings and initial conclusions on 22 September. A copy of their report, together with a paper on next steps, will go to the Board in October.
10. A revised paper on international working will go to SMT in early October. This will look at international risks to the legal services market and seek agreement on how BSB should prioritise work in this area. This will include work with the Bar Council on governance.
11. The Immigration Thematic Review was published on 20 May. The project is now moving into the implementation phase and a new PID and project plan are being developed. Implementation work will start Q3/Q4 – although the bulk of the deliverables will fall in 2017/18.
12. The evidence gathering and analysis phases of the Public and Licensed Access Review project are complete. A TCG met on 6 September to discuss whether the issues identified were correct and what further issues need consideration. The team will now take the results of the research, together with a series of recommendations, to the November Board meeting after having assessed the outcome of the Regulators' Forum's work on client care letters.
13. An amended definition of employed barrister (non-authorized body) was drafted and shared with key stakeholders from the Bar Council and BACFI in order to understand the practical impact of the proposed rule change. After receiving feedback, it was decided that some further work on the definition and corresponding guidance was necessary. It is now expected that the new definition will be put to the Board in October.

Future Bar Training

Publication of Professional Statement, incorporating the Threshold Standard & Competences

14. The final version of the Professional Statement was presented to the E&T Committee and the BSB Board in July. Following amendments being suggested at the July Board meeting, the final version is set to be published this month.
15. An Authorisation Framework will now be required to embed the PSTS throughout education and training.

Routes to qualification: Consultation

16. Following approval by the Board for the approach to the consultation in July, a draft consultation was circulated on 15 August to key internal colleagues and E&T Committee members for comment. Following the E&T Committee's meeting on 19 September, the consultation will be launched in the week of 3 October.
17. Working closely with the Director General and Director of Communications, for whom FBT is now a major priority in his work plan, the plan for stakeholder engagement has been further developed. The consultation period will include a number of engagement events, scheduled in London and in the regional circuits. Key target groups include students (current and recent graduates), consumer groups, academics, BPTC providers and barristers.

Regulatory Risk

18. Recruitment activity has been a theme through the summer, for both our Regulatory Risk Manager and APEX expert, and we are pleased to have our new regulatory Risk Manager now in post. Peter Astrella brings a wealth of risk experience from varied roles in the Ministry of Defence and most recently, UK Trade & Investment. This enables us now to push ahead with work on introducing regulatory risk reporting and further developing the role of the staff Risk Forum.
19. We continue to monitor post-referendum developments in the public sphere, and are also looking into technological developments and risks around cyber security in law firms. The risk forum will be discussing chambers mergers and closures, as well as some of the latest research linked to our consumer needs theme.
20. The Risk Champions are beginning to focus on practical ways to assist knowledge sharing of market and risk information across the BSB which will complement the introduction of reporting, and is assisted by the extra appetite for good information now that more staff are working remotely under WorkSmart.
21. Support has also continued through the summer for the Centralised Assessment Team project, Public and licensed access review, research into delivery models for barristers' services and changes within the wider department to welcome new staff, including our research and analysis team into Regulatory Policy whilst undertaking business planning for the coming year.
22. The Board will receive an update in the Autumn on our next phase of risk work which focuses on prioritisation of different regulatory risks to inform decision making, building on the work undertaken in the development of the Risk Outlook.

Equality and Access to Justice

23. The E&AJ team has a new senior policy officer, Oliver May, who started on 22 August 2016. Oliver will hold the position until Jessica Prandle returns from maternity leave in autumn 2017.
24. Knowledge Sharing Sessions continue to be held monthly. The next session will be on hearing loss on 29 September 2016. Unfortunately the August session on Race Equality was postponed, but has been rescheduled for 25 October 2016. Following on from a recent knowledge sharing session, a partnership has been established with the charity Changing Faces to run a workshop in November that will promote awareness and understanding of the issues faced by those with facial disfigurements.

25. Equality and Diversity training of board and committee members is progressing, with the goal of having all members trained by end of November 2016. The E&AJ team are also developing unconscious bias training to be delivered to the Professional Conduct Committee.
26. On 20 July and 31 August 2016 the E&AJ team held workshops with the Supervision team about how best to ensure that chambers were implementing equality and diversity policies in line with the Equality Objectives.
27. The E&AJ team have briefed Equality Champions (EC's) to develop equality objectives that relate to their specific area of focus, all departments have been now been engaged and the E&AJ will meet with the EC's to identify equality priorities for the BSB.
28. The E&AJ Policy team and Research team are undertaking regression analysis to identify the impact of a number of protected characteristics on BPTC grades. Initial E&D implications have been presented to E&T committee with an associated action plan in place.
29. A Women at the Bar Internal Project Group is being set up. Membership is being finalised and the first meeting will be in October. We will shortly be consulting on changes to the current equality rules, including our approach to shared parental leave (in order to take account of recent statutory changes to parental leave.)

Professional Conduct

Public Information Project (PIP)

30. Revised drafts of the leaflets we send to barristers and complainants have been drawn up in consultation with the Communications & Public Engagement Team, based on content contained in the Enforcement pages of the BSB website. These are in the process of being finalised and we aim to be in a position to begin using the new leaflets around the end of September 2016.

DTR Review

31. The Disciplinary Tribunal Regulations changes have been submitted to the Legal Services Board for approval. All policy and guidance documents are being reviewed to bring them in line with the changes to the regulations, this includes the creation of an executive Task and Completion Group focusing on the impact the changes will have on witnesses and vulnerable participants. Transitional processes are being established to ensure any impact on casework is kept to a minimum, these processes will be put in place from November 2016 with the new regulations coming into effect from January 2017.

IO recommendations

32. In July the Independent Observer presented her interim report to the Governance, Risk & Audit Committee, making a number of new recommendations. PCD are working with the Equality & Access to Justice Team on planning and delivering training on equality and diversity, and unconscious bias.
33. In consultation with the PCC Office Holders, the PCD have developed a system to anonymise complainants in the reports presented to the PCC. This is on track for implementation on 26 September 2016. The PCD is also currently considering how to best monitor the diversity of the BSB's prosecution panel which will assist in determining the future recruitment strategy.

PCC Lay recruitment

34. A need has been identified to recruit further lay members of the PCC to ensure our commitment to maintaining parity of numbers with barrister members. We are currently consulting with the Governance Team on the process and aim to begin formal recruitment within the next month.

Governance review – IDMB

35. Work is ongoing on further developing the evidence base to support the creation of an Independent Decision Making Body (IDMB). The PCD is conducting research as requested by the Board for consideration at the November meeting which includes a pilot exercise of staff members preparing reports and presenting cases at PCC as well as a time recording exercise with Case Examiners to obtain more detailed data on the work involved in preparing cases for consideration by the PCC. This information will be considered by the IDMB Project Board/Team and the Board Task and Completion Group which is due to meet for the first time on 22 September.

Litigation

36. The PCD have not received any new applications for Judicial Review since the last update. The applicant who had been previously unsuccessful in challenging decisions to dismiss his complaint had an oral application for permission refused on 13 September as being totally without merit. Judgement has not been handed down yet and when it is, the court will be considering whether to impose a Civil Restraint Order.
37. Judgement has been handed down in the discrimination claim and the appeal was dismissed. The barrister has indicated permission to appeal this will be sought from the Supreme Court. There is no date set in relation to the Employment Claim, which is still due to take place in October.

Regulatory Assurance Department***Licensed Body (“ABS”) Implementation***

38. Progress is on track to deliver to a late 2016 date (subject to the relevant approvals). Our internal pilot ran successfully in July with 11 testers from across the BSB. Feedback on the system, forms and guidance was reviewed and incorporated as appropriate. The LSB also reviewed the system, forms and guidance, reverting with some helpful comments and suggestions.
39. The external pilot began in mid-August and will run until 3 October. There are 6 participants of varying size and complexity and we are working closely with them to get their views on the functionality, design and user experience of the new application portal. As with the internal pilot, all feedback will be carefully considered.
40. Interest in the overall Licensed Body regime remains encouraging with queries received by the team on a daily basis. An interactive session on various aspects of the subject is planned for the 2016 Annual Bar Conference.

Interventions

41. The Interventions Strategy was reviewed by the Board in July with a revised version for review in October. The drafting of operational guidance is well underway and reflects close collaboration between the Professional Standards team and the Professional

Conduct and Regulatory Assurance departments. An update on progress will also be given to the Board in October.

42. An Invitation to Tender (“ITT”) for Intervention Agent Services was issued on 5 September, to close on 30 September. It was sent to a number of firms we know support interventions, published on our website and linked-in pages and via Twitter. Evaluation of the responses will commence at the start October with the intention to have a contract in place with the successful provider(s) by the end October.
43. A File Retention policy has been drafted, reflecting the current legislative position. We have also engaged with our file management company and are awaiting indicative costs.
44. We have completed a detailed equality impact assessment which we will continue to review.
45. Internal staff training sessions are planned for October. Specialist training for those who might expect to be more closely involved with interventions will be scheduled with an external provider (we expect this to be the successful provider(s)).

Youth Proceedings Advocacy Review

46. Workshops are underway to define the competencies expected of an advocate undertaking youth proceedings work. The workshops consist of advocates, consumer organisations and other professionals working within this sector.

Equality and Diversity

47. The Supervision team, together with the Equality and Access to Justice team have held a second workshop to equip staff with the tools needed to embed good practice during supervision of chambers and entities. The Supervision team has developed an Equality Action Plan, with a series of actions to embed this approach. The Equality Action Plan will shortly be expanded to include actions for other teams in the department.
48. Each of the teams in the department has contributed to the development of the organisational Equality Objectives.

Pupillage

49. The Supervision Manager and the department’s Equality Champion contributed a piece on regulation for the Lincoln’s Inn training for Pupil Supervisors.

Central Assessment Team

50. Finalisation of the methodology for assessing incoming information is awaiting further work planned in October by the Risk team to finalise the BSB-wide risk methodology. This will ensure alignment of approach.
51. The project team is currently working on defining capacity, capability and cost of the new team, taking into account savings that will be made in other teams. It is also working with the Information Management Programme team to define user requirements. We are aiming to bring a paper to the October Board meeting to provide more information to the Board about the project.

Qualification Authorisations

52. The Qualifications Committee met on 6 September 2016. It considered four applications for review, upholding the original decision in three cases and amending the original decision in one case.
53. Each Panel of the Committee is continuing to revise its Criteria and Guidelines and an increasing number of applications are being determined by staff, without consideration by a Panel.

CPD

54. The CPD Consultation on the proposed changes to the rules and regulations has now closed. The responses are being collated and a report will be presented to the Board for approval along with the proposed rules and next steps.
55. There will then need to be an application to the LSB for approval of the proposed changes to regulatory arrangements.
56. In October and November the BSB will run a series of roadshows and workshops to help communicate the principles and operation of the new CPD scheme.
57. Accreditation continues to operate as business as usual. A letter detailing the forthcoming changes to CPD from January 2017 and the abolition of accreditation will be sent in October directly to all those CPD providers accredited during 2016.
58. The interim monitoring cycle (covering Jan to May 2016) was carried out across the summer with some 400 accredited CPD providers submitting their monitoring reports.

Governance Review

59. Rebecca Forbes, Governance Manager took up post on 15 August.
60. Following discussion with the Planning, Resources and Performance and Governance, Risk and Audit Committees, work has progressed on the assurance framework with a fuller proposal being developed and put to the Board for decision at this meeting. The internal Governance Champions group has continued to assist with validating the proposals.
61. The first round of recruitment to APEX has been successful, with interviews for seven roles in competition, economics, equality and diversity, higher education, insurance, regulatory policy and theory and regulatory risk taking place, and appointable candidates for all of the roles identified. Offers of appointment were made in the week commencing 19 September.
62. The second round of recruitment to APEX will open on 3 October, with roles for competition, equality and diversity, constitutional, human rights and public law practitioners being advertised.
63. A governance reform knowledge sharing session for all staff will take place on 5 October, reflecting on the progress of the governance reform programme so far and looking forward to the next phase of the programme.
64. Amanda Thompson, Director for Governance Reform, leaves the organisation on 7 October. Joseph Bailey, Governance Policy & Projects Officer, also finishes his

secondment in the Governance Team on 7 October, after which date the team will move into the Corporate Services Department headed by Viki Calais.

Communications and Stakeholder Engagement

65. Since this report was prepared for the July Board meeting, the following press releases and announcements have been issued:
- 14 July: Press release to seek potential ABSs for pilot and to publicise case studies for authorised bodies
 - 27 July: Press release about an unregistered barrister suspended for providing immigration services when suspended from doing so
 - 27 July: A news announcement seeking seven members for a new Advisory Pool of Experts
 - 2 August: A press release to accompany the publication of our Annual Report and highlighting progress made
 - 8 August: A press release to accompany the publication of our Enforcement Annual Report highlighting our more targeted use of enforcement powers
 - 6 September: A press release confirming the LSB's approval of our application to become a licensing body for ABSs and to obtain new statutory powers of intervention
 - 6 September: A press release about a barrister disbarred for criminal charges that involved dishonesty
 - 8 September: A press release launching a survey on the future of legal services delivery.
66. The Board will have seen the fortnightly media coverage that the above announcements generated.
67. Copies of the Annual Report were circulated to a range of key stakeholders including relevant government ministers, consumer and Bar organisations.

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:
- The organisation and promotion of a series of workshops around the country to promote the forthcoming CPD changes for barristers and to help them prepare. This includes a webinar as well.
 - The organisation and promotion of a series of workshops later in the year at university provides to support engagement for the forthcoming FBT consultation.
 - The publication of the Threshold Standard and Competencies for the Professional Statement.
69. Following the discussion at the July Board meeting, Wilf and the team are preparing a formal Communications and Public Engagement Strategy for approval by the Board in October.

Online and social media

70. During July, 21,147 users visited the BSB website. 20,306 users visited during August. At the time of writing, we have 15,502 followers on Twitter.

Research

71. Since the meeting in June, work has progressed as follows:
- The first two editions of the quarterly “Research Roundup”, a new regular resource for the organisation providing a summary of recent relevant research from the BSB, other legal regulators, academics and other organisations, have been launched on Verity
 - Completed a report investigating the attainment gap across BPTC modules for gender and ethnicity for the Education and Training Committee
 - Produced detailed breakdowns of ethnicity by BPTC provider for the Education and Training Committee
 - Published the second tranche of the annual statistics on the profession on the BSB website, covering statistics for the practising Bar at less than five and over 15 years call, tenancies, and BPTC enrolments and completions.
 - Completing the ITT for the first part of the BSB’s consumer research programme, into Family Law clients
 - Supporting the development of the next stage of the Information Management programme
 - Met with the QC Appointments Panel and the Judicial Conduct Investigations Office to support their development of research projects
 - Launched an online survey to managers for the governance/delivery models project.
 - Completing final report with tender for the Client Care Letters project.
 - Supported Reg Pol with the ITT and tender selection process on the Professional Indemnity Insurance project.
72. The research team has also been joined by Ben Margerison (formerly of Education and Training) and transferred to the Regulatory Policy department.

Corporate Services

Staffing

73. The Corporate Support Manager post remains vacant however we expect to have this filled by the end of November 2016. We are also preparing to transfer the Governance team into the Department at the beginning of next month.

Business Planning

74. We published our 2015-16 Annual Report at the end of July 2016. This marked the end of our previous Strategic Plan. The Corporate Support Team have been working with BSB budget holders to pull together the 2017-18 budget bid which Board members will find in Part 2.
75. The team has built systems that we are using to monitor progress and performance against the 2016-17 Business Plan and budget (see paper 068). Team members have crafted a new dashboard and structure of accounts to align with our objectives.
76. We are also working on renewing the BTAS (COIC) contract which is due to be extended at the end of the calendar year.

Key Resources Group Updates

77. A summary of key updates is provided here and much more detailed information can be found in the part 2 report (BSB paper 070 (16) – Annex 4).
78. The Information Management programme is progressing well with only some minor delays. A new Head of Information Services (Robert McCracken) is now in post.
79. A staff “pulse” survey was carried out in April 2016. The results have been analysed and action plans have been put in place to address any concerns.
80. The organisation is well underway with its “worksmart” programme which is looking to allow staff to work more flexibly and to help reduce office space in preparation for our move in 2019. Floors have been reconfigured and new furniture is in place.
81. The Records team successfully managed the completion of the 2016 Authorisation to Practise project and barristers that did not renew were reported to the BSB’s PCD Assessment Team (2 barristers).
82. A new finance system is due to be rolled out. The first stage will be a new procurement system which is due to go live next month. Year-end accounting and audit have also been successfully completed.

**Vanessa Davies
Director General BSB
September 2016**

Schedule of Board Meetings Jan 2017 – Mar 2018

Status:

1. For noting and approval.
2. Public.

Executive Summary:

3. A proposed schedule of meetings for 2017/18 is set out below.

Recommendation:

4. The Board is asked to agree the schedule.

Comment / detail:

5. The proposed dates for Bar Standards Board meetings (Jan 2017 – Mar 2018) are:
 - Thursday 26 Jan 2017 (already diarised)
 - Thursday 23 Feb 2017 (already diarised)
 - Thursday 23 Mar 2017 (already diarised)
 - Thursday 27 Apr 2017 (Board Away Day)
 - Thursday 25 May 2017
 - Thursday 22 Jun 2017
 - Thursday 27 Jul 2017
 - Thursday 28 Sept 2017
 - Thursday 26 Oct 2017
 - Thursday 23 Nov 2017
 - Thursday 7 Dec 2017 (Board Away Day)
 - Thursday 25 Jan 2018
 - Thursday 22 Feb 2018
 - Thursday 22 Mar 2018

Amanda Thompson
Director for Governance Reform
September 2016