

**Meeting of the Bar Standards Board**

**Thursday 25 June 2015, 4.30 pm**

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

**Agenda - Part 1 – Public**

		<b>Page</b>
1. <b>Welcome and introductions</b> (4.30 pm)	Chair	
2. <b>Apologies</b>	Chair	
3. <b>Members' interests and hospitality</b>	Chair	
4. <b>Approval of Part 1 (public) minutes:</b>		
• 21 May 2015 (*)	Annex A	<b>3-9</b>
5. <b>Matters Arising (*)</b>		
6. a) <b>Action points and progress</b>	Annex B	<b>11-14</b>
b) <b>Forward agendas</b>	Annex C	<b>15-16</b>
<b><u>Items for discussion</u></b>		
7. <b>Review of the Disciplinary Tribunal Regulations – Consultation Paper</b> (4.35 pm)	BSB 045 (15) Sara Jagger	<b>17-52</b>
8. <b>Equality and Diversity Committee Annual Report 2014-2015</b> (4.45 pm)	BSB 046 (15) Rolande Anderson	<b>53-57</b>
9. <b>BSB quarter report on BTAS and the Browne recommendations</b> (4.55 pm)	BSB 047 (15) Amanda Thompson	<b>59-73</b>
10. <b>Chair's Report on Visits and Meetings: May - July 15: (*)</b>	BSB 048 (15) Chair	<b>75-76</b>
11. <b>Director General's Report</b> (5.00 pm)	BSB 049 (15) Vanessa Davies	<b>77-89</b>
12. <b>Any other business</b> (5.05 pm)		
13. <b>Date of next meeting</b>		
• Thursday 23 July 2015		
14. <b>Private Session</b>		

**John Picken, Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
 18 June 2015

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



BAR STANDARDS BOARD
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REGULATING BARRISTERS

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

Thursday 21 May 2015, Room 1.1, First Floor  
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Patricia Robertson QC (Vice Chair)  
Rolande Anderson  
Malcolm Cohen  
Simon Lofthouse QC  
Andrew Sanders  
Adam Solomon  
Richard Thompson (items 7-15)  
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)  
Matthew Nicklin QC (Special Adviser)  
Nicola Sawford (Board Member designate)  
James Wakefield (COIC) (items 1-9)  
Emily Windsor (Special Adviser) (items 7-15)
- Bar Council attendance:** Stephen Crowne (Chief Executive, Bar Council) (items 1-9)
- BSB Executive in attendance:** Viki Calais (Business Manager)  
Sarah Charlesworth (Senior Policy Officer, E&D)  
Vanessa Davies (Director General)  
Joanne Dixon (Manager, Qualification Regulations)  
Oliver Hanmer (Director of Supervision) (items 7-15)  
Sara Jagger (Director of Professional Conduct)  
Andrew Lamberti (Communications Manager)  
Bernard MacGregor (CPD Supervision Officer) (items 1-9)  
Ewen Macleod (Director of Regulatory Policy) (items 7-15)  
John Picken (Governance Officer)  
Amit Popat (Policy Manager - Equality and Access to Justice)  
Pippa Prangley (Regulatory Risk Manager)  
Amanda Thompson (Director of Strategy & Communications)  
Simon Thornton-Wood (Director of Education & Training)  
Natasha Williams (Business Support Officer)

**Item 1 – Welcome and introductions****ACTION**

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

2. **Item 2 – Apologies**

- Rob Behrens;
- Justine Davidge;
- Andrew Mitchell QC;
- Tim Robinson;
- Sam Stein QC;
- Sarah Brown (Special Adviser);
- Alistair MacDonald (Chairman, Bar Council);

- Chantal- Aimée Doerries QC (Bar Council Vice Chairman);
- Lorinda Long (Treasurer, Bar Council);
- Mark Hatcher (Special Advisor to the Chairman on Representation and Policy).

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

3. The following declarations were made:
- Patricia Robertson QC – hospitality provided by the Chancery Bar Association following a talk given by her (20 May);
  - Vanessa Davies & Patricia Robertson QC – guest of Bevan Brittan at the Dinner for the Association of Regulatory and Disciplinary Lawyers (15 May 2015);
  - Vanessa Davies – Magna Carta Lecture and Dinner, Lincoln’s Inn (12 May 2015).

### **Item 4 – Approval of Part 1 (public) minutes (26 March 2015)**

(Annex A)

4. The Board approved Part 1 of the minutes of the meetings held on Thursday 26 March 2015.

### **Item 5 – Matters Arising**

None.

### **Items 6a & b – Action points and Forward Agenda**

Action points and progress (Annex B)

6. The Board noted progress on the action list.

Forward Agenda (Annex C)

7. The Board noted the forward agenda list. Vanessa Davies referred to the item on Education consultations to be discussed at the next meeting. She advised that it may be possible to organise a briefing for members about this topic immediately before the start of the Board meeting on 25 June 2015.

### **Item 7 – PRP Committee Report (including Year-End Performance Report)**

BSB 035 (15)

8. Anne Wright commented as follows:
- the year-end performance report prompted a useful discussion at the last PRP Committee. This highlighted:
    - ❖ improved financial control demonstrated in the year-end expenditure accounts;
    - ❖ the summary of achievements (Annex 4 of the paper) and positive outcomes from service level agreements;
    - ❖ continuing concern over high staff turnover and overrun on projects;
    - ❖ the missed KPI targets for the Professional Conduct Department, particularly in relation to the Assessment Team;
  - the Committee is keen to see:
    - ❖ greater agility in managing resources and prioritising effectively;
    - ❖ improvements in forward planning that anticipate foreseeable delays and external impacts;
    - ❖ that the Annual Report highlights the BSB’s achievements as well as the lessons learned from Year End report and the action the BSB will take in this light of this.

9. Vanessa Davies commented as follows:
- the Committee provided a helpful and constructive challenge to the Executive and identified the balance that needs to be struck between the momentum for change and realistic expectations for delivery;
  - the Committee was concerned that there would be a “bow wave” of unfinished work that would impact on the 2015/16 business plan. In fact that possibility had already been taken into account and the plan adjusted accordingly;
  - in accordance with the Committee’s wishes, the performance dashboard will be amended to take account of the relative importance and scale of business plan objectives. Currently there is no “weighting” indicated;
  - there was a fall in income in 2014-15 and we shall need to improve forecasting for the future so that managers are made aware as early as possible so that they can adjust their spending.
10. The following comments were made:
- the Executive Summary of the paper is helpful and clearly sets out the key issues, particularly the need to address timeline slippage;
  - it would help to see analyses of cost / resource before projects proceed. That said, the Board itself needs to be aware of the cost implications of policy initiatives and to bear in mind the potential impact on resources and deadlines of any unplanned activities, especially when proposed at a late stage;
  - the 2015-16 budget assumes a considerable rise in income from educational and qualifications which seems hard to justify;
  - there is a concern about income shortfall across the organisation, including the Bar Council. The Finance Committee discussed this issue at its last meeting. We need to assess whether we are more vulnerable to income variation compared to other regulators given we have to maintain capability to respond to all types of qualification / education enquiries;
  - the missed KPI figures for PCD are explained with reference to staff shortages. This needs fuller explanation. Staff vacancies occur only after due notice with the consequent need for appropriate management of remaining resources.
11. In response the following comments were made:
- the income projection for qualifications is dependent on full cost recovery (FCR) proposals being reviewed and for demand not to be affected. In fact the PRP Committee has already expressed concern about the significant increases that FCR would cause. The income projections are therefore at risk and the Finance Committee has been informed;
  - a paper will be prepared on FCR for the July 2015 Board meeting. This will include comparative data on other regulators as well as the cost base of qualification / education functions;
  - the Board was put on notice of a likely fall in performance targets at the last meeting. The PCD Assessment Team lost two of its three senior staff in quick succession. This meant relying on committee members to fill the breach as only they had the knowledge and experience to undertake the task;
  - whilst KPI targets were missed, the delay in most cases was not significant. The Team is now fully staffed and it is expected that KPI figures will be on target in due course.

12. **AGREED**

- a) to note the BSB's performance against the 2014-15 business plan and the key messages from the PRP Committee;
- b) to endorse the conclusions set out in the Executive Summary and the need to improve forward planning;
- c) to note the achievements set out in Annex 4 of the paper and to endorse the comments made by the PRP Committee on the Annual Report.

**AT / VC to  
note  
AT to  
note**

**Item 8 – Proposed BSB Equality Objectives 2015-16**

BSB 036 (15)

## 13. Rolande Anderson commented as follows:

- the publication of equality objectives is a statutory requirement under the Equality Act 2010;
- the proposed objectives link to the BSB's strategic plan and focus on:
  - ❖ learning about the effect of changes to Equality Rules;
  - ❖ data collection;
  - ❖ contributing to effective supervision work;
  - ❖ wider engagement with stakeholders.

## 14. A question was raised about progress on existing equality objectives (Annex 2 of the paper); in particular objective 4 concerning E&amp;D data for Board &amp; Committee members. In response, it is apparent that data requests have been made in the past but replies have not been comprehensively stored. Action planned following the governance review should fully resolve this issue.

15. **AGREED**

- a) to approve the transfer of completed equality objectives from the current published list to an archive list.
- b) to approve the incorporation of ongoing objectives to the 2015-16 equality objectives.
- c) to approve the four aims and eleven new objectives set out in Annex 1 for publication.

**SC**

**SC to  
note  
SC**

**Item 9 – Future Bar Training – Continuing Professional Development Consultation**

BSB 037 (15)

## 16. Bernard MacGregor highlighted the following:

- proposals for a new CPD scheme have been finalised. This moves the emphasis away from a prescriptive hours-based scheme to one that is designed by individuals around their own development needs;
- the new scheme will prioritise supervisory action but retain enforcement as a last resort;
- the proposed consultation period will run from the end of May to the end of August with a second consultation planned in early 2016;
- a pilot scheme will run in parallel;
- the new CPD scheme will be launched from January 2017.

## 17. The following comments were made:

- there should be several more examples included under the section "compiling learning objectives";
- the first section on reflection (immediately prior to Q4 and Q5) needs greater clarity. The individual needs to reflect on what s/he is doing differently as a result of CPD. If there is no change in behaviour or application of skills, then it begs the question of whether the training undertaken was effective;

- it is not clear whether “reflection” is meant to be an internal process for the individual alone or one involving discussion with colleagues;
- we might encourage the use of mediators to help develop plans and reflect upon performance;
- a model form was attached with an earlier version of the consultation paper but this has now been removed. It is not clear why this action was taken;
- as currently written, the document is likely to prompt questions on whether “reflection” should take place at the end of the CPD year or after each training event. This issue needs to be stated in more specific terms;
- the paragraphs in the document need to be numbered so that respondents can cross reference in their replies;
- the covering report does not reflect the concerns expressed by the Supervision Committee ie:
  - ❖ the model presupposes that an individual will discuss training requirements with a line manager. In the context of self-employed barristers in chambers, however, this is neither likely or realistic;
  - ❖ it is not clear how the minority who refuse to participate in the scheme will ever be identified or, if they are, how they will be made to comply;
- there is an obvious link between CPD and QASA. Whilst this does not need to be included in the document, it would be helpful to know how this linkage will work in practice;
- whilst we might hope for a reasonable response rate to the consultation document, we may find this is not the case – particularly as the questions seem to require in-depth replies.

18. In response, the following comments were made:

- “reflection” is primarily intended to be a personal process where an individual considers outcomes against learning objectives. It does not, however, preclude discussion with others;
- the emphasis is on self-tailoring CPD needs. A single, catch-all form is not therefore appropriate as that recalls prescription;
- there needs to be an end of year assessment of CPD objectives but the process of reflection is not just restricted to this point. It can, and may, usefully be used as an ongoing assessment tool if that is the individual’s preference;
- the CPD scheme is aimed for established practitioners only. The New Practitioners Programme will continue as now;
- it is a reasonable expectation that barristers will be able to manage their own CPD requirements and critically self-assess their needs. Moreover it is not something which we should impose as a responsibility for chambers – it is for the individual barrister to resolve;
- there will be sampling procedures in place to monitor compliance and supervisory intervention to give advice and guidance where required. Ultimately enforcement action can be taken on the grounds on non-cooperation with the regulator were it necessary.
- an unsatisfactory performance in QASA will in most cases result in specific CPD requirements which can be monitored as part of a supervisory intervention. It would not be helpful to re-ignite the QASA debate within the context of the consultation paper, however.
- a good response rate is anticipated – the questions are not as time consuming to answer as they might first appear.

## Part 1 - Public

19. **AGREED**
- a) to endorse the consultation document on CPD subject to the above comments concerning:
- clarification of the term “reflection”;
  - more examples of “compiling objectives”;
  - inclusion of paragraph numbers in the formatting.
- b) to consult with the profession directly regarding the new approach to CPD and that the relevant document be published by the end of May 2015.

BM / OH

BM / OH

**Item 10 –Complaints Regulations: Amendment to the Professional Conduct Committee’s power to taken “no further action”**

BSB 038 (15)

20. Sara Jagger confirmed that one response had been received to the above consultation from the Bar Council. The proposed amendments address existing anomalies in the Handbook regarding the powers of the Professional Conduct Committee and also change the wording of how professional misconduct is defined.

21. **AGREED**

to approve the revisions to the Complaints Regulations (Part 5, Section A of the BSB Handbook – “the Handbook”) and consequential changes to the definition of professional misconduct (Part 6, definition 166), as set out in Annexes 1 and 2 of the paper, to allow for submission to the LSB for final approval.

SJ

**Item 11 – Chair’s Report on Visits and Meetings – April-May 2015**

BSB 039 (15)

22. The Board **noted** the Chair’s report on visits and meetings.

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

BSB 040 (15)

23. Vanessa Davies highlighted the following:
- 22 staff members took up the offer of a formal CILEx qualification and will take their final examinations in early June.
  - the Press Officer, Eugene Grant, leaves the BSB on 22 May 2015.
24. Nicola Sawford referred to the lessons learned from the Authorisation to Practise exercise for 2015. She suggested that the main points be summarised and circulated to members for information.

**AGREED**

25. to note the report.  
that the key points from the Authorisation to Practise exercise be circulated to the Board.

VLD / PA

**Item 12 – Any Other Business**

26. None.

**Item 13 – Date of next meeting**

27. • Thursday 25 June 2015.



**Item 14 – Private Session**

28. 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 – 26 March 2015 (Annex A);
- (2) Matters arising;
- (3) Action points and progress – Part 2;
- (4) Corporate Risk Register;
- (5) Updates to the BSB Regulatory Risk Framework and Index
- (6) Principles on Board consideration of consultation documents
- (7) Media handling process
- (8) Governance Restructure - update
- (9) Regulators' Summit Programme – sign off for deregulatory status report
- (10) Any other private business.

29. The meeting finished at 5.50 pm.



**BSB – List of Part 1 Actions  
25 June 2015**

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

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
15a (21 May 15)	transfer completed equality objectives from the current published list to an archive list	Sarah Charlesworth	immediate	04/06/15	<b>Completed</b> <a href="https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-%E2%80%93-publication-of-equality-objectives/">https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-%E2%80%93-publication-of-equality-objectives/</a>
15c (21 May 15)	publish the four aims and eleven new equality objectives	Sarah Charlesworth	immediate	04/06/15	<b>Completed</b> <a href="https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-%E2%80%93-publication-of-equality-objectives/">https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-%E2%80%93-publication-of-equality-objectives/</a>
19a / b (21 May 15)	publish the consultation document on CPD subject to the comments expressed at the meeting ie <ul style="list-style-type: none"> <li>• clarification of the term “reflection”;</li> <li>• more examples of “compiling objectives”;</li> <li>• inclusion of paragraph numbers in the formatting.</li> </ul>	Bernard MacGregor	immediate	03/06/15	<b>Completed</b> – consultation document published <a href="https://www.barstandardsboard.org.uk/media/1668707/cpd_consultation_2015.pdf">https://www.barstandardsboard.org.uk/media/1668707/cpd_consultation_2015.pdf</a>
25 (21 May 15)	circulate the key points arising from the Authorisation to Practise exercise to Board Members	Vanessa Davies	immediate	08/06/15	<b>In hand</b> - a draft report was received by the Information Management Programme Board on 4 June 2015. The Bar Council CEO and BSB DG has requested some further proposals on recommendations and future actions before signing it off for circulation

**BSB – List of Part 1 Actions  
25 June 2015**

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

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
12b (26 Feb 15)	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	08/06/15	Being addressed as part of development of new assurance system (including performance reporting) that will be required to support the new governance system
				18/03/15	Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.
5 a-b (23 Oct 14)	consult on change: insurance for entities once the entity regulation process is in operation	Ewen Macleod	before Mar 15	12/05/15	Consultation has been issued, closes on 30 June 2015
				18/03/15	Draft consultation to be reviewed by HBWG week of 23/3 and finalised before Easter.
				17/02/15	Work was reviewed by Handbook Working Group on 13 February and remains on track
				20/01/15	Work is on track
12c (21 Nov 13)	undertake a further review to the Standing Orders	Amanda Thompson / Chloe Dickinson	On hold	18/06/15	<b>To be removed</b> - review now part of the overall governance review project. This item will be removed from future action lists accordingly.
				18/03/15	Governance to be discussed at April away day.
				13/05/14	New timeline needed to reflect decision to undertake fundamental review taken by the Board at the Awayday.

**BSB – List of Part 1 Actions  
25 June 2015**

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

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				11/02/14	Consideration to some principles to be given at April Awayday
				14/01/14	Work has commenced
16b (18 Jul 13)	gather feedback on accessibility of information on the BSB website about complaints	Amanda Thompson	before end Mar 14	18/06/15	<b>Gathering of feedback complete.</b> Project to be launched to revise information on website.
				18/03/15	Resources planning underway in order to finalise workplan for completion; proposal from contractor under review
				17/02/15	Comms and PCD teams met on 23 January to progress work further; a technical issue on website structure is being resolved; new copy received and being reviewed
				09/10/14	Proposals from specialist group now received and being evaluated. Once services we will purchase have been agreed between PCD and Strategy and Communications, work will proceed.
				15/07/14	PCD members have met with one of the stakeholder group members (which specialises in ensuring people have the knowledge, confidence and skills needed to deal with law-related issues) to discuss how we make complaints information available. A work plan is now being developed.

**BSB – List of Part 1 Actions  
25 June 2015**

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

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				17/06/14	Progress on stakeholder work has been very limited given volume of other communications activity. Arrival of new Communications Manager will free up resources to focus on this again.
				13/05/14	Stakeholder session focused on understanding complaints system, reflecting stakeholder group's needs. Further activities being planned to complete this action.
				11/03/14	Feedback will be sought at stakeholder session on 28 March.
				14/01/14	On track
				13/11/13	Stakeholder workshop held on 13 November dealing with QASA. Next session will be as below. Early indications are that engagement will be productive.
				17/07/13	Stakeholder workshop/seminar being planned to deal with communicating the work of PCD. Anticipate will be held before end of March 2014 but depends on stakeholder availability. Date will be confirmed when available.

**Forward Agendas**

**Thursday 23 July 2015**

- BSB Draft Annual Report for 2014-15
- PCD/PCC- Year End Report – 2014-15
- Strategy 2016-19 – first draft (private)
- Standard Contractual terms and CRR (public)
- New Governance structure proposals and implementation plan (private)
- Supervision report – high impact chambers (public)
- Fees and Charges
- Insurance for single person entities: possible rule change
- Inns Conduct Committee Rules

**Thursday 10 September 2015**

- PRP Committee Annual Report
- Budget 2016-17
- 2016-19 Strategic Plan

**Thursday 24 September 2015**

- BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- GRA Committee Annual Report. Note: this paper will also include the annual report from the Independent Observer
- Provision of non-reserved legal services by employed barristers (non-authorised bodies)
- Review of provision of immigration advice and services
- Disciplinary Tribunal Regulations – approval of revisions
- Future Bar Training – sign off Professional Statement
- Future of the Bar Course Aptitude Test

**Thursday 22 October 2015**

- Supervision Committee Annual Report
- Standards Committee Annual Report
- BSB Member email accounts
- Bar Council Standing Orders: Part III amendments

**Thursday 26 November 2015**

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

**Thursday 17 December 2015 (Board Away Day)**

**Thursday 28 January 2016**

- Diversity data report
- Public and licensed access rules
- Future Bar Training: outline proposals for academic, vocational and professional stage reform

**Thursday 25 February 2016**

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

**Thursday 17 March 2016**

- Strategic plan 2016-19 - final

***Longer term items (dates to note)***

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



## Review of the Disciplinary Tribunal Regulations – Consultation Paper

### Status

1. For discussion and approval.

### Executive summary

2. In October 2014, the Professional Conduct Department (PCD) commenced a review of the Disciplinary Tribunal Regulations (Part 5, Section B of the Bar Standards Board Handbook – “the Handbook”). Following the completion of a comprehensive research phase, the project team identified in excess of 60 issues with the Regulations for consideration: some very minor or straightforward, others more complex or fundamental.
3. A detailed analysis of the identified issues was carried out supported by a Working Group which considered and debated each issue in turn. With the assistance of external legal advice and drafting, the PCD have produced a revised draft Regulations for consultation, which has been circulated to the Board separately<sup>1</sup> (the current version of the Regulations has also been provided to the Board for information).
4. The PCD now intend to carry out a public consultation on the proposed changes to the Regulations commencing in July 2015 and a draft consultation paper has been produced (see Annex 1 of this paper). There will also be consequential changes to the Complaints Regulations (Part 5A) and certain definitions at Part 6, the extent and nature of which will be determined by the outcome of the consultation.
5. Any responses received to the consultation will be considered by the Working Group, prior to a final draft of the Regulations being submitted to the Board, and thereafter the LSB, for approval.

### Recommendations

6. The Board is asked to:
  - **approve** the publication of the consultation paper at Annex 1 to this paper, which sets out the proposed changes to the Disciplinary Tribunal Regulations;
  - **note** the proposed revised Disciplinary Tribunal Regulations (circulated separately).

### Background

7. Matters referred by the Professional Conduct Committee/Department (PCC/PCD) for disciplinary action are, in the main<sup>2</sup>, dealt with under the Disciplinary Tribunal Regulations (“the Regulations”) at Part 5B of the BSB Handbook. The Regulations set out the powers and functions of Disciplinary Tribunals (“the Tribunal”) and processes to be followed when dealing with allegations of professional misconduct that have been referred to them.

<sup>1</sup> The revisions to the Regulations are quite extensive and are therefore not shown tracked in the version provided to the Board. However, a copy of the revised draft regulations with amendments from the original tracked can be provided on request.

<sup>2</sup> The Professional Conduct Committee of the BSB also has power under the Complaints Regulations, (Part 5, Section A of the Handbook) to determine disciplinary matters via the Determination by Consent procedure.

8. The Regulations in their current guise have been in place since 2009 and have not been subject to substantive review since then (although they have been partly amended in February 2012, January 2014 and January 2015). Since their introduction, they have not received any general or public criticism. However, comment has been made about certain aspects of the Regulations in a couple of relatively recent court cases. It has also been recognised internally that the current Regulations contain some areas of unnecessary complexity and references to out-dated and potentially inefficient procedures.
9. The review was carried out with the support of a Working Group comprised of the Registrar of the Bar Tribunal and Adjudication Service (BTAS), PCC members, a member of the BSB's prosecution panel, members of BTAS's pool of Tribunal panel members, the Chair of the Disciplinary Tribunal and BSB staff. Further, two barristers who regularly represent barristers at Tribunals were also invited, and agreed, to participate but, unfortunately, due to other commitments were unable to do so.
10. A detailed analysis of the current Regulations was conducted through consultation with those involved in, and affected by, the disciplinary system. A benchmarking exercise was also carried with other regulators as a means of identifying potential issues with the current Regulations. Separately, a number of issues with the Regulations were identified by a short-life COIC working group. Through this process, in excess of 60 issues of varying complexity were identified. The Working Group, over a period of five months, considered and debated each of the issues in turn and, with the assistance of external legal advice and drafting, produced a substantially revised set of draft Regulations for consultation, which has been circulated separately to the Board. That said, the fundamental Tribunal process has not changed and while the order of the Regulations has been revised in some instances, much of the content remains unaltered.

### Overview of suggested amendments to the Regulations

11. As stated above, the proposed changes on which we wish to consult differ in their effect and complexity and so require varying degrees of explanation. Not every minor change to the drafting is referred to in the consultation paper (or this paper). However, a comprehensive description of the key changes is provided to ensure that the public, the profession and other interested parties have a full understanding of the proposed revisions. The changes are grouped under four sections (Sections A – D) and a summary of the proposed changes is provided in the paragraphs below.
12. Please note:
  - any reference to specific *paragraphs* denotes the consultation paper at Annex 1;
  - any references to specific *regulations* denotes the numbering used in the revised version of the Regulations unless otherwise specified. Some references are also made to the current Regulations.

### Section A - changes to terminology and clarification of roles (see paragraphs 16 - 17):

13. These include amendments which have been proposed with the intention of modernising the Regulations, ensuring they are internally consistent and/or to bring them properly in line with existing processes and the format of the Handbook. The main changes which fall under this section relate to moving away from 'criminal' terminology and the clarification and correction of

outdated references to the roles of certain people/bodies with a connection to the disciplinary process. For example:

- a) it is proposed that the 'defendant' is now referred to as the 'respondent';
- b) where a referenced function is purely administrative, the revised Regulations replace references to the 'President' (of COIC) with 'BTAS', as the body responsible for carrying out these function in reality.

**Section B - straightforward changes to the disciplinary process (see paragraphs 18 - 36):**

14. The amendments outlined in this section of the consultation paper are neither complex nor expected to be controversial. They are designed to streamline and clarify the disciplinary processes, make them more user friendly (particularly in terms of catering for lay participants in the system, such as witnesses), and fill gaps in current provisions. The key changes are summarised in the paragraphs below.
15. **Directions:** the 'Directions' section of the Regulations (rE106 – rE126) has been redrafted, although no changes have been made to the fundamental approach. The concept of 'standard directions', which can be agreed between the parties, has been retained and they remain set out at Annex 6 of the Regulations, albeit with some re-ordering and amendment (see paragraph 20 of Annex1). 'Special' directions (ie, directions which differ in some way from the standard directions) have been renamed 'non-standard' directions. These directions can still be agreed between the parties and can come into effect without the endorsement of a Directions Judge, subject to a few conditions (see paragraph 21 of the Annex 1). Finally, the Regulations have been amended to give the Tribunal an express power, if the Directions have not been complied with, to exclude the evidence or draw an adverse inference against that party as a way to encourage compliance (rE168).
16. **Panel appointment:** in response to observations made by the Administrative Court, the Regulations now codify the already established process of appointing Tribunal panel members from the Tribunal Appointments Body of COIC (rE142).
17. **Recommendations of the PCC:** the Regulations no longer *require* the President to have regard to the PCC's recommendation that a three person panel be chaired by a Judge rather than a QC, as it is now the view that this is inappropriate, particularly as the respondent is not afforded the same opportunity (see rE134 of the current Regulations). This will not prevent the PCC from making its views on the composition of the panel known to the President.
18. **Witnesses and vulnerable witnesses:** the revised Regulations include two additional sections covering the provisions in relation to the process for taking witness evidence at hearings and the treatment of vulnerable witnesses (rE171 – rE175 and rE176 – rE181). The provisions codify the practices already employed when dealing with witnesses but it was considered important and in the interest of the public to enshrine these processes in the Regulations.
19. **Procedure at a hearing:** the Regulations now include an outline of the procedure to be followed depending on whether the charges are admitted or not (rE187 – rE197). The need for such clarity is now more important given the extension of the BSB's jurisdiction to lay persons working in chambers and entities who may be less familiar with court or tribunal proceedings.

20. **Action taken by the BSB/Bar Council:** the Regulations have been amended to remove the level of detail on the action that should be taken by the BSB/Bar Council following the pronouncement of a sentence (see rE239 – rE240 as well as rE196 – rE197 of the current Regulations). The underlying administrative processes will, instead, be included in separate policy and guidance documentation.
21. **Keeping complainants informed:** the regulation relating to updating the complainant on the progress of the complaint has been removed (see rE215 of the current Regulations) because it is only applicable to the BSB and is more appropriately addressed in our internal processes and in public guidance (the central importance of the complainant will be retained).

**Section C: more fundamental and/or complex changes to the disciplinary process and the powers of the Tribunal (see paragraphs 37- 69):**

22. This section details the issues and revisions that are more substantive and require greater explanation as part of the consultation. Nevertheless they are still designed to update and streamline the process and fill gaps as well as ensure the powers of the Tribunal are sufficient to meet the needs of a modern disciplinary system. The consultation paper provides more detailed arguments as to the reasoning behind and aims of the changes, however, the following paragraphs briefly rehearse the key issues:
23. **Potential gaps in the Tribunal's powers of disposal:** the power to impose administrative sanctions currently lies solely with the PCC and extends to all breaches of the Handbook which do not amount to professional misconduct. Any referrals by the BSB to a Tribunal will, by definition, be matters that are not considered suitable for the imposition of administrative sanctions. Under the current Regulations, Tribunals do not have the power to impose administrative sanctions. Therefore, if a Tribunal considers that the alleged behaviour of a respondent does not amount to professional misconduct but is satisfied, on the balance of probabilities, that there has been a breach of the Handbook, it has no option but to dismiss the charges. This creates a potential gap in the powers of the Tribunal which could result in no action at all being taken against a respondent who has clearly breached the Handbook.
24. The issues are therefore whether, and how, this gap should be filled. The options, considered and rehearsed in full at paragraphs 42 – 48 of the consultation paper, are to:
- a) extend the powers of the Tribunal to allow it to impose administrative sanctions; or
  - b) include a provision allowing the Tribunal to refer a matter back to the BSB for consideration of the imposition of an administrative sanction; or
  - c) include a provision allowing the Tribunal to make a formal finding that a breach has occurred and order that the BSB impose an appropriate administrative sanction; or
  - d) maintain the status quo.
25. The Working Group debated long and hard the options above and their deliberations are summarised in detail in the consultation paper. They concluded that option b) above – ‘refer cases back to the BSB for consideration of the imposition of an administrative sanction’ – was the most appropriate taking into account all the issues. This approach offers the greatest level of public protection and flexibility by ensuring that action is taken where a breach of the Handbook has been determined. It also prevents inconsistency between sanctions imposed by a Tribunal and those imposed by the BSB. The Regulations have therefore been amended to this effect (see rE208).

26. It is recognised that the issue is complex and none of the options is ideal and therefore the responses on this issue will be important in determining the way forward.
27. **Deferred sentences:** the power to impose deferred sentences was introduced in 2009 with the aim of preventing further incidents of professional misconduct (see rE176 – rE179 of the current Regulations). However, it has only been used five times in the last six years (twice in relation to the same barrister) and not at all since 2012, perhaps because the process is considered quite complex. It is also considered to be resource intensive and expensive to impose. The review therefore raised questions as to whether it is appropriate to retain this power in principle and the consultation paper proposes that the power is removed.
28. **Appeals to the High Court:** under the current Regulations, the respondent’s right to appeal is unfettered whereas the BSB’s is restricted (see rE185 of the current Regulations). These restrictions have been imposed for policy reasons, as opposed to any requirement under the relevant legislation or the Civil Procedure Rules (CPRs). On reflection, the view is that the overriding criterion for the BSB to mount an appeal should be whether it is in the public interest to do so. The Working Group considered that the criteria applicable to a decision to lodge an appeal are more appropriately captured in a separate policy document rather than being enshrined in the Regulations.
29. **Functions currently allocated to the Inns of Court/COIC:** historically the Inns of Court have played a central role in the Bar’s disciplinary system. The landscape has changed particularly with the introduction of the LSA and the formal role of the Inns is now limited to “calling” prospective barristers to the Bar. In all other respects the BSB, with LSB approval, has the statutory power to determine the contents of the disciplinary rules for the Bar of England and Wales.
30. The consultation paper recognises that the current Regulations still contain anachronistic provisions, such as:
- the provision tasking the Inns with ‘pronouncing’ all sentences and setting the date on which they will take effect (see rE189 to rE195 of the current Regulations); and
  - the order to suspend a barrister from practice being accompanied by an order to remove the barrister’s “*rights and privileges as a member of his Inn*”, which is not a regulatory matter (see rE170 of the current Regulations).
31. Therefore the sentencing powers in the Regulations have been amended and the provisions requiring the Inns to pronounce sentences (other than disbarment) have been removed, as have any provisions requiring the Inns to take action in relation to outcomes of Tribunal hearings.
32. **Format of reports of finding and sentence and their distribution:** the current Regulations contain extensive regulations in relation to the production and dissemination of reports of the outcome of Tribunals. The revised Regulations have attempted to streamline the system for reporting on Tribunal outcomes, by providing for one formal single, publicly available “decision report” (rE233). This report will be produced within a few weeks of the Tribunal and directly distributed to relevant individuals/bodies. The findings will only be published online where charges have been upheld (rE241). The comparatively detailed list of bodies to which the President should send the report has also been distilled, with discretion being granted to the

President to send the report to any other person or bodies as he or she deems appropriate, which would include the Lord Chancellor and Director of Public Prosecutions, should they still wish to receive them (rE233.9).

33. **Applications for a fresh-hearing:** the Working Group considered the circumstances under which a fresh hearing can be ordered (as opposed to an appeal mounted) where a respondent was not present at a Tribunal to be too restrictive. The Regulations have been extended at rE184 to allow for applications for a rehearing to be made in all circumstances where there is a legitimate reason for the respondent's absence.
34. **Rate for claiming costs for respondents acting in person:** CPR 48.6 limits the rate at which a barrister acting in person can claim for costs to the litigants in person rate rather than a professional rate. The BSB's Regulations currently include no comparable provision, and consequently the BSB could be exposed to large cost claims (which will be funded by the profession's practising certificate fee). In a recent judicial review brought by the BSB regarding the issue of the rates to be paid to self-representing barristers, the Administrative Court indicated that if we wished to limit the rates to that provided in the CPRs, we should make this clear in our rules. The Working Group considered that barristers, acting in person, should not be in a more advantageous position in relation to claiming costs from the BSB than they would be in court proceedings. Therefore, the Regulations have been amended at rE244 to limit the hourly rate self-representing barristers can claim to the litigants in persons rate provided for in the CPRs.

**Section D: issues of principle not covered in the revised Regulations but on which we wish to seek views (see paragraphs 70 - 86):**

35. The issues outlined in this section are not intended to be addressed in the current round of revisions to the Regulations. However, we are taking this opportunity to canvass views which will assist in informing the future direction of travel on the relevant matters.
36. **Claiming costs incurred by the BSB (paragraph 71 - 75):** the BSB is prohibited under the current Regulations from claiming the costs of the preparation for hearings (see rE214). The system therefore currently allows respondents to lengthen, delay or complicate proceedings without being exposed to financial consequences. This has significant resources implications for the BSB, the cost of which is borne by the wider Bar. In contrast, we run the risk of exposure to costs orders covering the respondent's full costs (in many cases funded via Bar Mutual insurance).
37. The current situation therefore creates an inequality of arms and there are clear arguments in favour of either removing the current prohibition on the BSB claiming the preparatory costs for hearings<sup>3</sup>, or prescribing that costs, reflective of the financial value of the service currently provided to the BSB by members of the Prosecution Panel pro bono, be paid to a legal charity (in accordance with section 194(3) of the Legal Services Act 2007). Another alternative would be remove the ability for either party to claim costs and expect the respondent and BSB to bear their own. A number of regulators operate this regime.

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<sup>3</sup> To support this, we would need to introduce a formal billing system.

38. **Size of Tribunal Panels (paragraph 76 - 78):** the current regime allows for the most serious cases, ie those which may warrant a lengthy suspension (over 12 months) or disbarment, to be dealt with by a panel of five people with a Judge acting as Chair. All other Tribunal cases are dealt with by a three person panel chaired by a QC.
39. The consultation paper considers whether there is continued need to have five person Panels and whether all cases could be referred to three person Tribunal panels, regardless of the seriousness of the case (the option to constitute the panel with a Judge Chair in serious cases could remain). This approach mirrors the practice of most other regulators and other court systems, and could clearly lead to a reduction in operating costs.
40. **Re-admittance (paragraph 79 - 80):** the Inns of Court are currently responsible, via the Inns Conduct Committee, for deciding whether those who have been disbarred can be recalled to the Bar. This process does not form part of the BSB's direct regulatory arrangements. The reality is that re-admittance is a regulatory issue and there are strong public interest arguments in favour of the process being transferred, under the Regulations, to independent Tribunals who also have the original power to order disbarment. This would be a fundamental change to the regulatory arrangements which will require more detailed consideration once views are obtained.
41. **Settlement agreements (paragraph 81 - 86):** in recent times, a practice has emerged among some other regulators where respondents, prior to a hearing, have the option of coming to an agreement with the regulator regarding the outcome of the disciplinary proceedings and the sanction to be applied (generically these are known as "regulatory settlement agreements"). It will be put to the Tribunal panel for approval. The issue is whether we should adopt this mechanism within the Regulations as an alternative means of disposal of professional misconduct allegations.
42. The advantage of "settlement agreements" is that they can shorten what might be lengthy proceedings. Having said that, considerable resources could also be expended on reaching a settlement and indeed could be wasted if no settlement is achieved. More importantly, the public may perceive such settlements as lacking transparency, unjust and weighted in the respondent's favour, although some may view any process which encourages the early acceptance of a wrong-doing as advantageous and in the public interest.
43. The Working Group have formed no settled view on the issue, and as with all the other issues detailed in this section, at this stage, the intention is merely to canvass views on whether we should explore further the concept of introducing such agreements.

### Resource implications

44. The changes to the Regulations will have few resource implications and are unlikely to generate any additional work for staff within the PCD and PCC, although clearly training will need to be provided on the application of the revised regulations. There are also no additional financial implications associated with the proposed changes, particularly since, in some cases, operational responsibility is being transferred from the BSB to BTAS (eg, for the distribution of bundles to Tribunal Panel members - see paragraph 17.v. of the Annex 1).

## Equality and diversity

45. We have undertaken an initial equality screening of the impact of the proposed changes to the Regulations. The screening did not identify any adverse impacts in relation to any of the protected characteristics under the Equality Act 2010. However, the consultation will ask respondees to identify any equality issues with the changes, and the issue of equality impacts will be revisited after the period of consultation.

## Risk implications

46. The Regulations in their current guise have not been subject to any general criticism either from the public, the profession or the courts, and in practice work well. Nevertheless, it is important that our enforcement system remains up to date, reflects modern practice and continues to be fit for purpose in order to ensure that we can protect and promote the public interest as well as maintain adherence to the professional principles. There is a risk that if we do not address the issues identified in the review our ability to meet the regulatory objectives may be undermined and the disciplinary system will gradually become out of step with modern practice. Further, our ability to mitigate effectively the risks identified in the regulatory risk index, particularly in relation to ethical conduct could be adversely affected if we do not address gaps in the powers available to the Tribunal.

47. It is essential that public confidence in the disciplinary system is maintained and in retaining unnecessary complexity and anachronistic provisions, such as reporting on the outcomes of hearings and the Inns involvement in the pronouncement of sentences, there is a risk that public confidence will be eroded. Such confidence may also be affected if we do not ensure that the Tribunal process is clear, independent and includes express provisions in relation to the treatment of witnesses, particularly vulnerable witnesses. Finally, there are reputational and financial risks associated with not taking action in relation to the issues identified in recent court cases namely the appointment and nomination of panel members and the costs payable to self-representing barristers.

48. At this stage, no significant operational risks have been identified in relation to the proposed changes to the Regulations as set out in the consultation paper. The majority of the changes aim to clarify and streamline processes, as well as eliminate any potential uncertainty in how the relevant powers are applied.

## Impact on other teams, departments or projects

49. The PCD will be responsible for assessing and coordinating the results of the consultation, with the support of the Working Group, and operationally, no BSB Departments, other than the PCD, will be impacted by the proposed changes. The amendments to the Regulations set out in Sections A-C of the consultation paper will require consequential changes to be made to other parts of the Handbook, namely the Complaints Regulations and several definitions included at Part 6. These changes are not set out in the consultation paper as the extent and nature of them will be determined by the outcome of this consultation but it is not anticipated they will have an impact on any other part of the BSB.

50. Members of the Regulatory Policy department have been kept advised of the proposals through their involvement in the Working Group, as has the Registrar of BTAS and the Chair of the Disciplinary Tribunal.



## **Regulatory Objectives**

51. The changes presented in the consultation paper will promote, and are central to, the objectives of protecting and promoting the public and consumer interest and promoting and maintaining adherence to the professional principles.

## **Publicity**

52. Once approved, the consultation paper will be published on the BSB's website. A communications plan is in place that will target key stakeholders such as consumer groups, the special bar associations, the Circuits and other regulators to try to encourage a wide response. Consideration is also being given to holding workshops (both in and outside of London) for individuals involved in the disciplinary system, including Tribunal Panel members, members of the BSB's Prosecution Panel and PCC members.

## **Annexes**

- Annex 1 – proposed consultation paper

### **Lead responsibility:**

#### **Sara Jagger**

Director of Professional Conduct

#### **Siân Mayhew**

Policy and Projects Officer



**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

# **Review of the Disciplinary Tribunal Regulations**

**Consultation Paper**

DRAFT

**July 2015**

# Review of the BSB’s Disciplinary Tribunal Regulations Consultation Paper

## About this consultation paper

### Who is it for?

This consultation will be of interest to consumers of legal services, members of the Bar, and bodies and individuals involved in regulatory disciplinary systems.

### What is its purpose?

We want to invite comments on our proposed changes to the Disciplinary Tribunal Regulations (Part 5, Section B of the Bar Standards Board Handbook – “the Handbook”), which have been modernised and streamlined to address various issues with the application of the current regulations that were identified as part of a comprehensive review.

### How long will the consultation run for?

The consultation will run from X July to X October 2015.

### How to respond to this consultation

Responses should be sent to Siân Mayhew, Policy and Projects Officer:

- by email to: [SMayhew@BarStandardsBoard.org.uk](mailto:SMayhew@BarStandardsBoard.org.uk); or,
- by post to: **Siân Mayhew**  
**Professional Conduct Department**  
**Bar Standards Board**  
**289 – 293 High Holborn**  
**London WC1V 7HZ**

You are welcome to address all or some of the issues set out in this paper and provide observations on issues not specifically covered by the questions.

We will summarise the responses received and will publish the summary document on our website. If you do not want your response or a summary of it published, please make this clear to us when you reply.

## Background

- Under the Legal Services Act 2007 (LSA), the Bar Standards Board (BSB), the regulatory arm of the Bar Council, is responsible for regulating barristers called to the Bar and other authorised individuals and bodies (entities) in the public interest. We will consider taking disciplinary action where there is evidence that a person or entity that we regulate has breached the Handbook.
- Disciplinary matters are, on the whole<sup>1</sup>, dealt with under the Disciplinary Tribunal Regulations (“the Regulations”) at Part 5B of the Handbook. The Regulations set out the powers and functions of Disciplinary Tribunals (“the Tribunal”) and processes to be followed when dealing with allegations of professional misconduct. Referrals to disciplinary action for professional misconduct are made by the BSB’s Professional Conduct Committee (PCC) to independent Tribunal panels which are organised by the Bar Tribunals and Adjudication Service (BTAS). Tribunal panels are formed of three or five people and their sentencing powers include:
  - disbarring a barrister from being a member of the profession;
  - ordering suspension from practice; and
  - disqualifying people from future employment by a BSB authorised individual or body (entity).

<b>70-80</b>	<b>The number of cases we refer to a Tribunal panel each year</b>
<b>88%</b>	<b>The average percentage of cases where professional misconduct is found proved by the Tribunal<sup>2</sup></b>

- The Regulations in their current form have been in place since 2009 and have not been subject to a complete review since then. However, they have been amended in part on several occasions: in February 2012 to bring them in line with the provisions of the LSA; in January 2014 to incorporate minor changes arising from the introduction of the Handbook (which replaced the Code of Conduct 8<sup>th</sup> Edition); and more recently, in January 2015, to reflect our extended jurisdiction to regulate entities.
- The Regulations and their application have not been subject to any general criticism either from the public, the profession or the courts and in practice work well. However, in a couple of relatively recent court cases, comment has been made about specific aspects of the Regulations (see paragraphs 25 and 66). Further, we recognise the current Regulations contain some areas of unnecessary complexity and references to

<sup>1</sup> The Professional Conduct Committee of the BSB also has power under the Complaints Regulations, (Part 5, Section A of the Handbook) to determine disciplinary matters via the Determination by Consent procedure.

<sup>2</sup> The ‘uphold rate’ at Tribunals in 2012 was 82%, 92% in 203/14 and 89% in 2014/15.

out-dated and potentially inefficient procedures. The review also revealed some issues of principle that need to be explored (see paragraphs 70 - 86 below). With this as a background, a wide review of the Regulations has been carried out, the results of which form the basis for the revisions proposed in this paper.

## Aims of the review

5. The Regulations are designed to support the BSB in meeting its statutory obligations under the LSA and to promote the Regulatory Objectives<sup>3</sup> by:
  - protecting the public and consumers from regulated individuals who have committed professional misconduct; and
  - promoting adherence to the professional principles, through maintaining proper standards of work and integrity within the profession.
6. The Regulations also promote the principles of better regulation<sup>4</sup> by ensuring consistency, clarity, fairness and transparency in our application of disciplinary procedures for all those involved in and affected by the disciplinary system, including members of the public and decision makers.
7. The aim of this review was therefore to ensure that we continue to meet our obligations under the LSA by:
 

*‘reviewing the current Disciplinary Tribunal Regulations and producing a robust set of revised Regulations which address all identified concerns, are not superfluously prescriptive and reflect modern and best regulatory practice’.*

## Our approach to the Review

8. The review was carried out with the support of a Working Group comprised of BTAS and BSB staff, PCC members, a member of the BSB’s prosecution panel, members of BTAS’s pool of Tribunal panel members and the Chair of the Disciplinary Tribunal. Further, two barristers who regularly represent barristers at Tribunals were also invited, and agreed, to participate but, unfortunately, due to other commitments were unable to do so.
9. A detailed analysis of the Regulations was carried out through consultation with those involved in the disciplinary system, including all members of the BSB’s prosecution panel, the BTAS panel member pool, members of the PCC and relevant BSB staff. Separately, a number of issues with the Regulations were identified by a short-life Council of the Inns of Court (‘COIC’) working group, set up to consider the implications

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<sup>3</sup> See section 1 of the LSA

<sup>4</sup> See section 28 of the LSA

for the Regulations arising from the ‘Browne Review’<sup>5</sup>. A benchmarking exercise was also conducted with other professional regulators to determine whether there were any significant differences with our approach, or anything that could be learnt from their processes.

10. Through this process, we identified in excess of 60 issues: some minor or straightforward, others more complex or fundamental. The Working Group over a period of five months considered and debated each of the identified issues in turn and, with the assistance of external legal advice and drafting, produced the revised draft Regulations for consultation set out at Appendix 1<sup>6</sup>.

## Overview of amendments

11. With the introduction of the Handbook in 2014, we attempted to move away from overly prescriptive rules to a more outcomes based approach. We continue to take this approach when reviewing and amending different parts of the Handbook.
12. However, we think that it is necessary for these Regulations to remain fairly prescriptive in order to protect the public and provide certainty and clarity for those involved in the disciplinary process. In fact, additional procedural details have been inserted for this reason (see rE187 – rE197). Further, since the Regulations cover a legal process that could result in a regulated person’s livelihood being removed temporarily or permanently, a prescriptive set of rules encourages fairness and consistency in decision making by Tribunals. This prescriptive approach is mirrored in the regulations of other professional regulators.
13. The proposed changes to the Regulations differ in their effect and complexity and so require varying degrees of explanation. The order of the Regulations has also been revised, although much of the content and the fundamental Tribunal process remains unaltered.
14. A detailed description of the most significant changes is provided in this consultation paper to ensure that the public, the profession and other interested parties have a full understanding of the revisions before any changes are implemented. The changes have been grouped under the following four headings according to their nature
- **Section A - changes to terminology and clarification of roles:** these amendments are proposed with the intention of modernising the Regulations, ensuring they are internally consistent and/or to bring them properly in line with existing processes and the format of the Handbook;
  - **Section B - straightforward changes to the disciplinary process:** this section covers amendments designed to update and streamline the process, fill gaps and

<sup>5</sup> More information on the original Browne Review can be found here: <http://www.graysinn.info/index.php/disciplinary-tribunals-review-coic>

<sup>6</sup> A copy of the revised draft regulations with amendments from the original tracked can be provided on request.

provide greater clarity for professionals as well as lay users of the system such as complainants, witnesses and non-legally qualified employees in entities who now come within our regulatory remit;

- **Section C - more fundamental and/or complex changes to the disciplinary process and the powers of the Tribunal:** this section includes issues and revisions that are more substantive and require detailed explanation. Nevertheless they are still designed to update and streamline the process and fill gaps as well as ensure the powers of Tribunal are sufficient to meet the needs of a modern disciplinary system; and
- **Section D - issues of principle not covered in the revised Regulations but on which we wish to seek views:** the issues outlined in this section are wider and are not addressed in the current round of revisions to the Regulations. We wish to take this opportunity to canvass views on these issues and further amendments to inform our thinking on the potential direction of travel in the medium term.

15. Please note, every effort has been made within each section or sub-section, where appropriate, to refer to the issues and amendments in the numerical order they appear in the revised or current Regulations. Further, any references to specific regulations are to the numbering used in the revised version of the Regulations set out at Appendix 1 unless otherwise specified. Some references are also made to the current Regulations, a copy of which can be found at Appendix 2.

## Section A - changes to terminology and clarification of roles

### Terminology

16. Consideration has been given to the suitability and accuracy of the language/terminology used within the Regulations. The Bar's disciplinary process has historically reflected the language of the criminal prosecution process and given the nature of the Tribunal process, it is difficult to move away from this entirely. However, some attempt has been made to do so<sup>7</sup>. Other changes in terminology are also proposed to reflect current practice. The amendments in this area are as follows:
- i. the term 'defendant' is used in the current Regulations to refer to the person who is subject to disciplinary proceedings. This has been changed to "respondent" throughout in line with the terminology used by most other Tribunals as well as other professional regulators;
  - ii. where the current Regulations refer to 'serving' or "service" of documentation on the "Tribunal", this has been changed to "file" or "filing" of the documentation with

<sup>7</sup> Although not referenced in the Regulations, internally, we refer to the barristers who represent us at Tribunal as 'Prosecutors'. In light of the aim to move away from criminal terminology within the disciplinary system, consideration is being given to finding an alternative description for our representatives such as 'Case Presenters'.



- “BTAS” as the Tribunal’s administrative body, which is more accurate given that neither BTAS nor the Tribunal are parties to proceedings;
- iii. the use of male pronouns in the current Regulations has been changed to reflect modern practice and gender neutral references are now included throughout the revised Regulations;
  - iv. the list of the types of Judges that can perform relevant functions under the Regulations (see E137 of the current Regulations – Annex 2) has been removed from the Regulations and instead will be included, unchanged, as a definition in Part 6 of the Handbook; and
  - v. in relation to service of documents, “Registered post” has been replaced with “guaranteed delivery post or other guaranteed or acknowledged delivery” to reflect current terminology (see rE248.1).

### Clarification of roles

17. For clarity, corrections have been made throughout the Regulations to references to people/bodies, which are out of date or inaccurate. Similarly, amendments have also been made where a particular action is more appropriately performed by some other person/body. The following amendments have been made:
- i. The current Regulations refer in various places to the ‘BSB Representative’ as the person appointed after a referral to a Tribunal to present the BSB’s case. However, most of the functions allocated to the ‘BSB Representative’ in the current Regulations are not appropriate for our representative to perform and should instead be designated generally to the BSB (to reflect what happens in practice). Therefore all references to the ‘BSB Representative’ have been replaced with references to the ‘BSB’;
  - ii. In the same vein, the ‘President’ of COIC is given under the current Regulations responsibility for all functions performed by the independent Tribunal body when many are purely administrative in nature and should more rightly be designated to BTAS generally. Therefore, where appropriate, the revised Regulations remove the references to the ‘President’ and replace them with ‘BTAS’ (see in particular rE102.2, rE112, rE121, rE124 and rE130);
  - iii. Similarly, a number of administrative functions currently designated to the Treasurers of the Inns of Court are, in reality, entirely performed by either the Registrar of BTAS or the Chair of the Tribunal. Again, the Regulations have been amended to designate these functions at the correct level (see rE251);
  - iv. Some of the functions currently ascribed in the Regulations to the Clerk to the Tribunal, such as organising the recordings of proceedings (rE122) or appointing a qualified person to determine the level of costs (rE245), are now more appropriately assigned to BTAS and accordingly amendments have been made;
  - v. Under the current Regulations, we are responsible for sending copies of both the BSB and respondent’s bundle of papers for hearings to the Tribunal panel members. It has been agreed that it is inappropriate for there to be direct contact between the “prosecuting body” (the BSB) and the independent Tribunal. Therefore the Regulations have been amended to stipulate that this function is performed by BTAS

(rE153). BTAS will have to bear the additional costs and responsibilities, but this approach is in keeping with the approach taken by other Tribunals and the courts.

*Q1: Do you agree with the changes to terminology and the clarification of roles outlined above? Are there other changes in these areas that you consider would be beneficial?*

## Section B - Straightforward changes to the Disciplinary Tribunal process

### Amendments to the provisions on ‘Directions’

18. The ‘Directions’ section in the Regulations refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the hearing. Those regularly applying these processes generally agree that this section can be difficult to follow and that it should be streamlined and simplified. However, while extensive revisions have been made to the drafting of the relevant regulations (see rE106 – rE126), the fundamental approach has not changed.
19. “Standard’ directions” can still be agreed by the parties and come into effect without the endorsement of a Directions Judge. This is still seen as an effective and efficient means of addressing case management issues.
20. The standard directions themselves are still set out at Annex 6 to the Regulations. They have been reordered, clarified and amended to include further directions which are applied regularly, but under the current system have to be treated as special directions. The additional and revised standard directions at Annex 6 cover:
  - The date when the standard directions come into force (Direction 2);
  - Specific timeframes for providing dates of availability, pleas, the respondent’s evidence and witness requirements (Directions 3, 4 and 5);
  - The provision of dates of availability between set dates as opposed to generally (Direction 3);
  - An additional direction that the parties provide a witness schedule and a time estimate for the evidence of each (Direction 5(b));
  - The number of copies of the evidence bundles the parties must file with BTAS. The respondent’s bundle should now be provided to BTAS as opposed to the BSB as is currently the case (Direction 6.a and also rE151);
  - Provision, prior to the hearing, of financial documentation or any other documentation the respondent might wish to rely on in mitigation where an indication has been given by the respondent that he or she intends to admit the charges (Direction 6.b); and
  - Notification of requirements for reasonable adjustments and/or special measures in relation to witnesses (Direction 7).
21. As well as standard directions, the current Regulations provide for “special directions”, which are directions that depart from the list of standard directions set out at Annex 6.

This term has caused confusion as it denotes something out of the ordinary. These types of directions have therefore been renamed “non-standard” directions to reflect the fact that such directions can cover any directions that depart in some way, however small, from the standard directions. As with the current special directions, non-standard directions can be agreed between the parties and come into effect without the endorsement of a Directions Judge (unless there is no reply from the respondent, in which case the non-standard directions will require the endorsement of the Directions Judge (rE109)). However, provisions have been added that prevent the parties agreeing:

- any non-standard direction which will impact on BTAS and/or prevent it from carrying out its operational function (rE111); and
  - any direction (standard or non-standard) which has previously been agreed but either party wishes subsequently to vary (rE126).
22. As is the case under the current Regulations, where no agreement on the Directions is achieved between the parties within the proposed timeframe, a Directions Judge will be appointed to agree the directions, either on paper or by means of an oral hearing.
23. **Hearing in private:** all Directions hearings currently and historically have been held in private given that they occur at an early stage in the process and could result in charges being dismissed on an application to strike out. We are not proposing to alter this but no reference is made in the current Regulations to this issue and therefore the revised Regulations expressly stipulate that oral directions hearings will be in private (rE123).
24. **Non/late-compliance with Directions:** BSB Case Officers report that non- or late-compliance with directions is a persistent problem which effects the progress of cases. The current Regulations contain no provisions to enforce compliance and no penalties for failures to comply. Introducing potential consequences for non/late-compliance could reduce the likelihood of this occurring. Our research shows such provisions are commonly seen in other regulators’ disciplinary schemes. The Regulations have therefore been amended at rE168 to give the Tribunal an express power, to exclude the evidence or draw an adverse inference against that party if the Directions have not been complied with as a way to encourage compliance.

***Q2: Do you agree with the changes that have been made to the ‘Directions’ section (at rE106 – rE126) and the Standard Directions at Annex 6 of the revised Regulations?***

## **Nomination of Tribunal panel members**

25. In 2012, serious anomalies were identified with the appointments process operated by COIC (the body responsible for appointing Tribunal panel members at the time) which called into question the validity of all Tribunal decisions going back some 10 years and generated numerous challenges to previous findings. We acknowledge that some findings were flawed due to perceived bias and agreed, voluntarily on application, to allow the findings to be overturned. However, we resisted other applications to overturn

findings where the flaws were procedural and could not affect the outcome. Our stance was supported by the Administrative Court.

26. However, the Administrative Court was of view that the Regulations were “opaque” and failed to reflect the underlying and accepted system for nomination to panels (ie, that the President of COIC nominates the members of a Tribunal panel from a pool of qualified people appointed by the Tribunal Appointments Body of COIC). Therefore, the revised Regulations, at rE142, now include an express reference to the nomination system and to the Tribunal Appointments Body of COIC. This provision does not apply to judicial chairs as they do form part of the “pool” and are appointed by the President.

### **Removal of prohibition on Directions Judges sitting as Tribunal Chairs**

27. Under the current Regulations, Directions Judges are prohibited from sitting as Tribunal Chairs in a case where they have given directions. The review revealed no clear rationale for maintaining this position and in fact there are benefits in having the same person perform both roles, for example, their familiarity with the case prior to the commencement of the Tribunal. Our research revealed that this is also common practice in other regulators. The Regulations have therefore been amended (rE145) to remove this prohibition except in circumstances where a Directions Judge has made a substantive decision in a case, for example, if he or she has already refused a strike out application or is conflicted for any other reason.

### **Recommendations by the PCC that a judge should Chair a three person panel**

28. The current Regulations (see rE134 of Appendix 2) specify that the President of COIC, when constituting a three person Tribunal panel, must have regard to (but not be bound by) any PCC recommendation that a Judge rather than a Queen’s Counsel be appointed as Chair. The view is that it is inappropriate for such an obligation to be placed on the President when the respondent is not accorded the same opportunity to have their views considered. However, to extend the obligation on the President to take into account the respondent’s views could potentially lead to time consuming arguments regarding the identity of the Chair. The Regulation has therefore been amended to remove this obligation placed on the President, although this will not prevent the PCC from making its views on the composition of the panel known to the President.

### **Applications to adjourn proceedings**

29. The current Regulations are silent on the process of making applications to adjourn (postpone) a hearing prior to its commencement. Therefore the revised Regulations now include, at rE155, a provision which explains that such applications should be made to the Chair of the Tribunal in writing accompanied by supporting evidence. Further, rE155,

sets out the procedure the Chair must follow when considering applications. These provisions should lead to greater clarity and consistency in addressing such applications.

### Joinder provisions

30. In contrast to the practice of other regulators, the current Regulations do not include any formal power for a Tribunal to join and hear cases or matters together ('joinder' provisions). While in practice this happens regularly without the benefit of underpinning regulations, we consider that, for the sake of clarity and transparency, it should be made clear that a Tribunal has the power to hear matters together, either against the same respondent or against different respondents. Therefore explicit joinder provisions have been included in the revised Regulations to cover this (rE158 – rE160). It should be noted that Directions Judges, in accordance with their general powers to make any directions for the expeditious management of cases (rE129), can continue to direct that cases be joined.

### Witnesses and vulnerable witnesses

31. A further gap in the current Regulations is the lack of any specific provisions concerning the process for taking witness evidence at hearings and the treatment of vulnerable witnesses. Therefore, the revised Regulations include two additional sections covering these issues (rE171 – rE175 and rE176 – rE181). The provisions codify the practices already applied when dealing with witnesses but we consider it important and in the public interest for these practices to be enshrined in the Regulations.
32. The Regulations provide at rE176 a definition of 'vulnerable witnesses'. The list, in the main, reflects the definition included at Section 16 of the Youth Justice and Criminal Evidence Act 1999. It also follows the equivalent provisions of other regulators, particularly the healthcare regulators, although the list has been slightly adapted to include (for the purposes of these Regulations only) witnesses who are the alleged victims of violence by a respondent. The Regulations include a specific power for a Directions Judge or the Tribunal to make a direction preventing a respondent from cross-examining a vulnerable witness (rE179). Special measures can also be put in place, on application, for the treatment of *any* witnesses, even those not considered 'vulnerable', where there is good reason (rE181).

**Q3: Do you agree with the list of those people who may be treated by the Tribunal as 'vulnerable witnesses' (rE176) and should the list be extended to include reference to victims of other types of allegation, and not just allegations of a violent or sexual nature?**

### Procedure at the Hearing

33. The current Regulations are silent on the procedure to be followed at Tribunal hearings. As well as it being common place for other regulators to include such information in their regulations, we consider it to be in the public interest to enshrine these basic procedural

details in the Regulations. Therefore the Regulations now include an outline of the procedure to be followed depending on whether the charges are admitted or not (rE187 - rE197). This will ensure that all participants whether parties, witnesses or observers, are clear as to the hearing process. The need for such clarity is now even more important in light of the extension of our jurisdiction to lay persons working in chambers and entities who may be less familiar with court or tribunal proceedings.

### Action taken by the BSB/Bar Council

34. The current Regulations contain detailed provisions prescribing the action we must take following the “pronouncement” of sentences (see rE196 – rE197 of the current Regulations at Appendix 2 and also paragraph 59 below). We no longer think it is necessary to include such administrative detail in the Regulations. Therefore, rE239 – rE240 has been simplified and now simply states that we must ensure that the sentence of the Tribunal is “put into effect”. The underlying administrative processes will, instead, be included in separate policy and guidance documentation.

### Keeping complainants informed

35. There is only one reference to complainants in the current Regulations which comes under the “Miscellaneous” section (see rE215 of the current Regulations at Appendix 2). It refers to keeping the complainant, if any, updated on progress. The view is that it is unnecessary, and inconsistent with the rest of the Regulations, to include this provision in a set of Regulations intended to cover the formal Tribunal processes. Keeping complainants updated on progress is extremely important but it is only applicable to the BSB and is more appropriately addressed in our internal processes and in public guidance. The regulation has therefore been removed.

### Other straightforward amendments

36. The following amendments have also been made to the Regulations:
- The revised Regulations include a new provision, requiring the BSB to file its bundle of evidence with BTAS at the same time as it serves the bundle on the respondent (rE103) to allow BTAS to have an early and full picture of the allegations for case management purposes;
  - The wording of the Regulations, at rE140, has been amended to specify that the formal composition of a five person Tribunal panel includes two lay and two barrister members since this is the only formation in which a five person Panel will be convened (the current Regulations state that there must be “*at least one*” lay/barrister member);

- References to the provision of a shorthand writer have been replaced with the need to provide a verbatim record (rE157), since most hearings are now digitally recorded;
- The revised Regulations, at rE202, now include the requirement to put before a Tribunal previous findings against an entity as well as anyone directly implicated by the charges against an entity, as any such findings will be equally relevant to the sentencing process;
- The revised Regulations now include a new provision allowing the Tribunal to order, on application, that a finding is *not* published (rE241.1.a) where, in exceptional circumstances, the Tribunal consider this to be appropriate;
- The revised Regulations now include additional details regarding the submission/serving of cost schedules 24 hours before the hearing at (rE243) so the Tribunal is aware in advance of the costs either party intends to seek;
- The current Tribunal sentencing power to order that a respondent be reprimanded by the Treasurer of his or her Inn (paragraph 9 of Annex 1) has been removed, as it is sufficiently covered by the Tribunal's general power to order a respondent to attend on a "nominated person" to be reprimanded.

***Q4: Do you have any comments on the changes to the Regulations outlined above in Section B which are not subject to specific questions?***

## Section C - Fundamental or more complex changes to the processes or Tribunal powers

### Potential gap in the Tribunal's powers of disposal

37. When the Handbook was introduced in January 2014, it included a revised definition of professional misconduct which "*means a breach of this Handbook by a BSB regulated person which is not appropriate for disposal by way of no further action<sup>8</sup> or the imposition of administrative sanctions*".
38. The power to impose administrative sanctions currently lies solely with the PCC and extends to all breaches of the Handbook proved on the balance of probabilities. These sanctions are not currently made public although they are taken into account when determining what action to take in relation to any further breaches by the same individual or entity.
39. As Tribunals are tasked with considering allegations of professional misconduct, any referrals by the BSB to a Tribunal will, by definition, be matters that are not considered suitable for the imposition of administrative sanctions. Under the current Regulations, Tribunals do not have the power to impose administrative sanctions. Therefore, if a Tribunal considers that the alleged behaviour of a respondent does not amount to professional misconduct but is satisfied, on the balance of probabilities, that there has

<sup>8</sup> Following a recent public consultation, the BSB will be making an application to the LSB to remove from the Handbook the PCC's power to take "no further action" – see Consultation on '[Complaints Regulations: Amendment to the Professional Conduct Committee's power to take "no further action"](#)' (Feb 2015)

been a breach of the Handbook, it has no option but to dismiss the charges. This is the case, even if it is satisfied that a breach of the Handbook has occurred which might warrant the imposition of an administrative sanction. This creates a potential gap in the powers of the Tribunal which could result in no action at all being taken against a respondent who has clearly breached the Handbook.

40. The issues are therefore whether, and how, this gap should be filled. The options are to:
- a) extend the powers of the Tribunal to allow it to impose administrative sanctions; or
  - b) include a provision allowing the Tribunal to refer a matter back to us for consideration of the imposition of an administrative sanction; or
  - c) include a provision allowing the Tribunal to make a formal finding that a breach has occurred and order that the BSB impose an appropriate administrative sanction; or
  - d) maintain the status quo.
41. There are arguments for and against each of the proposed options above, which the Working Group considered in significant detail. A summary of the issues related to each is provided below.
42. **Extend the Tribunal powers:** on the face of it, this appears to be the simplest solution. It allows matters to be dealt with promptly by a panel that has heard and considered all the evidence and can make an informed decision taking into account all the circumstances. Tribunals would need to be provided with clear guidance on the decision making process, the application of the different standards of proof<sup>9</sup> and, to ensure consistency, guidance on the approach the BSB take when imposing these sanctions. However, there is a risk that these decision-making processes for Tribunals could become quite complex and vulnerable to challenge, as well as difficult for members of the public to understand.
43. This approach raises two further concerns. The first is the appropriate appeal route for such decisions. Currently, all appeals from Tribunal decisions go the High Court but appeals against administrative sanctions imposed by us go to a three person panel appointed by BTAS. It would be inappropriate and inconsistent to create two appeal routes for the imposition of administrative sanctions. Therefore, if this option was to be adopted, a new avenue of appeal from Tribunal decisions would need to be included in the Regulations to mirror the appeal route for BSB decisions. This is not necessarily an insurmountable issue but could result in decisions taken a by five person Tribunal being appealed to a three person panel, albeit that a Judge could be appointed to Chair the three person panel.
44. The second and more difficult issue with this option is that administrative sanctions imposed by a Tribunal would be in the public domain (because all hearings are held in public) when administrative sanctions imposed by us are not. Therefore the effect and

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<sup>9</sup> Tribunals apply a higher standard of proof (“certain so as to be sure”) when taking decisions about allegations of professional misconduct.



consequences for the respondent of an administrative sanction imposed by a Tribunal would be quite different to an administrative sanction imposed by the BSB.

45. **Referring cases back to the BSB for consideration of the imposition of an administrative sanction:** this option has the disadvantages of prolonging the process for respondents and any complainants as well the decision on the final outcome of Tribunal proceedings being taken in private. We would also essentially be required to reconsider our earlier decision (ie, that the allegations were not suitable for the imposition of administrative sanctions) and it could be perceived as the BSB having “two bites at the cherry”.
46. However, weighed against these disadvantages are certain advantages, including greater consistency in the decision making processes applied and the impact on the respondent, as well as clearer appeal routes. Further, when reconsidering the imposition of an administrative sanction in a particular case, we would be reviewing a different set of circumstances since the evidence of professional misconduct would have been tested by the Tribunal and found to be inadequate (contrary to our original assessment). Administrative sanctions would be imposed at the BSB’s discretion, but we would have the benefit of the Tribunal’s reasoning and assessment of the evidence when taking any decision.
47. **Directing that the BSB impose an administrative sanction:** this option has the same advantages and disadvantages as the previous option except that it also has the further disadvantage that the Tribunal would be making a public finding. However, it should be noted that prior to the introduction of the Handbook, when the imposition of administrative sanctions was limited to only a few breaches of the Code, Tribunals had the power to direct that the BSB impose a written warning or financial penalty.<sup>10</sup>
48. **Maintaining the status quo:** the advantage of maintaining the status quo is that it requires the PCC to continue to focus on effective risk assessment and on referring to Tribunals only those cases that are serious enough to warrant professional misconduct proceedings. The disadvantage of this option is that it is not in the public interest for a Tribunal to dismiss a case entirely in circumstances where a breach of the Handbook can be proved and it would be appropriate for some action to be taken. However, although we expect these situations to occur rarely, it is not possible, at this stage, to assess the risk associated with maintaining the current position. Having carried out a review of Tribunal decisions taken since the introduction of the Handbook in January 2014, in which one of more of the charges were dismissed, there have been no relevant cases where the power to impose an administrative sanction clearly could have been exercised were it to have existed<sup>11</sup>.
49. The Working Group debated long and hard the options above and concluded that option b) above – *‘refer cases back to the BSB for consideration of the imposition of an*

<sup>10</sup> See Code of Conduct 8<sup>th</sup> Edition, Annex K, Disciplinary Tribunal Regulations, regulation 19(10)

<sup>11</sup> Since January 2014, there have been 25 cases referred to Tribunal under the old Code of Conduct in which one or more of the charges were dismissed, none of which would allow for the imposition of an administrative sanction under 901.1 of the Code of Conduct. Of the 33 cases referred to Tribunal under the new Handbook, none have been dismissed.

*administrative sanction*’ – is the most appropriate, when taking into account all the issues.

50. This approach offers the greatest level of flexibility and public protection by ensuring that action can be taken where a breach of the Handbook has occurred. However, it also prevents inconsistency between sanctions imposed by a Tribunal and those imposed by us. The Regulations have therefore been amended at rE208 to this effect. If, following the consultation, this proposal is accepted the power will need to be supported by clear guidance as to when it would be appropriate to use it. For example, a referral back to the BSB would need to be based on the public interest and the risk posed by the conduct, not simply because a finding could be made on the lesser standard of proof.
51. We recognise that the issues are complex and none of the options is ideal. We therefore particularly welcome views on this issue to allow us to determine the best way forward.

***Q5: Do you agree that Tribunals should be given the power to refer matters back to the BSB for consideration of the imposition of administrative sanctions? If not, which of the other options above do you consider would be more appropriate?***

### Deferred sentences

52. The Regulations currently give Tribunals the power to order that a sentence be deferred, ie it will only be activated if the respondent commits professional misconduct during the period of deferral, which can be from six months to a maximum of two years. The power only applies where a Tribunal considers a fine, condition/and or suspension from practice, to be an appropriate sanction to address the proven misconduct (see rE176 – rE179 of the current the Regulations at Appendix 2).
53. The power to impose deferred sentences was introduced in 2009 with the aim of deterring further incidents of professional misconduct. However, it has only been used five times in the last six years (twice in relation to the same barrister) and not at all since 2012. The review has raised questions as to whether it is appropriate to retain this power. In principle, it is debateable whether it is right that a regulated person, who is found to have committed professional misconduct warranting a comparatively serious sanction, be protected from the impact of such sanction solely as a means to encourage future good behaviour. Further, the process for applying and monitoring a deferred sentence can be complex, resource intensive and expensive to impose. In all the circumstances, we consider that the power should be removed from the Regulations particularly as it has not been exercised for nearly three years and therefore is apparently of little practical use.

***Q6: Do you agree the power to impose deferred sentences should be removed from the Regulations?***

## Appeals to the High Court

54. Under the current Regulations, the respondent and the BSB are entitled to appeal decisions of Tribunals. The respondent's right to appeal is unrestricted whereas the BSB's is restricted to cases where the Tribunal: has taken into account irrelevant considerations; failed to take into account relevant considerations; reached a decision that is wrong in law; and/or reached a decision which no reasonable Tribunal could properly have reached (see rE185 of Appendix 2).
55. These restrictions have been imposed for policy reasons, as opposed to any requirement under the relevant legislation or the Civil Procedure Rules (CPRs). The former, section 24 of the Crimes and Courts Act 2013, merely gives the General Council of the Bar (and thereby the BSB) the power to confer rights of appeal to the High Court in relation to regulated persons. The latter, Practice Direction 52D, paragraph 27.1A of the CPRs, refers only to appeals from decisions of Disciplinary Tribunals.
56. The restrictions were introduced with the new Handbook and on reflection, the view is that it is not in the public interest to retain such prescriptive requirements in relation to appeals. The overriding criterion for the BSB to mount an appeal should be whether it is in the public interest to do so. The retention of the requirement that consent for the BSB to appeal must be obtained from either the Chair of the BSB or the Chair of the PCC is considered to provide sufficient protection for respondents. Therefore, we are now of the view that the criteria applicable to a decision to lodge an appeal are more appropriately captured in a separate, publicly available, policy document. Once drafted, the policy will largely reflect what is currently included in the Regulations but allow for flexibility to mount appeals in any circumstances where it is in the public interest. The Regulations have therefore been amended accordingly (rE23 - rE236).

***Q7: Do you agree that the formal restrictions on the BSB mounting appeals against decisions of Tribunals should be removed?***

## Functions currently allocated to the Inns of Court/COIC

57. Historically the Inns of Court have played a central role in the Bar's disciplinary system and indeed, they were, in the distant past, entirely responsible for it in conjunction with the judiciary. However, the landscape has changed, particularly with the introduction of the LSA. The formal role of the Inns is now limited to "calling" prospective barristers to the Bar, ie conferring on them the formal status of barrister and disbarring them when ordered to do so by a Tribunal. In all other respects the BSB, with LSB approval, has the statutory power to determine the contents of the disciplinary rules for the Bar of England and Wales.
58. We recognise that the current Regulations still contain anachronistic provisions which give functions to the Inns that are no longer appropriate or needed. Therefore a range of amendments address these issues with the intention of ensuring all appropriate functions and powers are exercised primarily by Disciplinary Tribunals and, where necessary, by

the BSB. These are rehearsed in the following paragraphs (see also paragraphs 79 – 80 below).

59. **Sentencing functions:** under the current Regulations, the Inns are tasked with “pronouncing” all sentences imposed by Tribunals and they cannot come into effect until pronounced (rE189 to rE195 at Appendix 2). The Inns are also responsible for setting the dates on which sentences are to take effect. However, other than in the case of disbarments, there is no longer any clear rationale for this and we are of the view that it is inappropriate for the Inns to be involved in the sentencing process in this way. Therefore the previous provisions that require the Inns to pronounce sentences (other than disbarment) have been removed, as have any provisions requiring the Inns to take action in relation to outcomes of Tribunal hearings.
60. In addition, under the current regulations, any suspension orders made by the Tribunal are accompanied by an order to remove the barrister’s *“rights and privileges as a member of his Inn”* (rE170 of Appendix 2). We do not consider this to be a regulatory matter and whether or not a barrister can continue to exercise rights and privileges in relation to their Inn while suspended is an issue for the individual Inn and not for the regulatory disciplinary system to determine. Therefore the sentencing powers in the Regulations have been amended to remove this aspect of a Tribunal’s sentencing powers.

**Q8: Do you agree with the removal of the regulations in relation to the involvement of the Inns of Courts in the disciplinary system except in relation to the pronouncement of disbarments?**

### **Format of reports of finding and sentence and their distribution**

61. The current Regulations contain extensive provisions in relation to the production and dissemination of reports of the outcome of Tribunals. These provide for three different stages at which reports are prepared and issued to different recipients, only one of which is in the public domain. The revised Regulations have attempted to streamline the system for reporting on Tribunal outcomes, by providing for one formal single, publicly available, “decision report”, ie judgement, for each case, regardless of the outcome (see rE233). This report will be produced within a few weeks of the conclusion of the Tribunal and directly distributed to relevant individuals/bodies. The findings will only be published online where charges have been upheld (rE241).
62. The current Regulations also include at various places comparatively detailed lists of individuals/bodies that should be supplied with reports. Our view is that these lists should be distilled to one which will be applicable in relation to the ‘decision report’ described above. As such rE233 now provides a list of those people/bodies to which the report must always be sent (ie the respondent, the BSB etc). However, the President is given the discretion to send the report to any other person or bodies as he or she deems appropriate (rE233.9). This means that the current recipients of reports will no longer receive them automatically although, by policy, BTAS can choose to send the final report

as standard to any relevant persons, which would include the Lord Chancellor and Director of Public Prosecutions, should they still wish to receive them.

**Q9: Do you agree with the proposed amendments to streamline the reporting process?**

**Q10: Do you agree with the proposal to remove reference to the full list of bodies to which the final report should be sent and allow the distribution of such reports to be determined at the discretion of BTAS/ the President?**

## Applications for a fresh-hearing

63. Under the current Regulations (see rE150 at Appendix 2), if a respondent does not attend a Tribunal hearing and charges are found proved in his or her absence, a rehearing (as opposed to the respondent appealing the finding) can only be ordered where the procedures for service have not been complied with. We consider these circumstances are too restrictive and therefore the Regulations have been extended at rE184 to allow for applications for a rehearing to be made in all circumstances where there is a valid reason for the respondent's absence. This revised approach is fairer to the respondent and avoids the need for costly appeals which could well result in a matter being remitted to a fresh Tribunal.
64. A Directions Judge will now be permitted to grant a fresh hearing if he or she considers it just to do so and is satisfied that the respondent:
- submitted the application for a new hearing promptly; and
  - had good reason for not attending the hearing.
65. The criteria for granting a fresh hearing, set out at rE186, mostly mirror comparable provisions in the CPRs (Part 39, Rule 39.3). However, the Regulations do not include the additional criterion contained in the CPRs that there should be “a reasonable prospect of success” at the “trial”. The inclusion of this additional factor may make the decision to grant a rehearing unreasonably complex given the very small number of cases to which the Regulation might apply. Further, if a respondent has a good reason for not attending a hearing, even if his or her prospects of successfully defending the charges are low, it is fair to provide an opportunity to have the case heard again.

**Q11: Do you agree with the changes introduced, which allow for the granting of a fresh hearing on application in any circumstance where the respondent has a good reason for not attending the original hearing?**

## Rate for claiming costs for respondents acting in person

66. In 2012, in a case where a respondent was acting in person and the charges were dismissed by a Tribunal, a costs award was made against the BSB. The respondent, who was an unregistered barrister, claimed costs at professional hourly rates. In

determining the hourly rate to be applied, the costs assessor treated CPR 48.6, which limits barristers acting in person to claiming the litigants in person rate set out in the CPRs, as persuasive. In the event, the costs assessor did not apply the litigant in person rate and made the award based on the professional hourly rate claimed by the respondent. The BSB sought judicial review of the decision.

67. The Administrative Court commented, in cutting the hourly rate in half but not applying the CPR, that *“if the [BSB] is concerned to avoid having to pay the costs of a barrister’s time when that barrister has successfully defended proceedings, it is open to the [BSB] to provide in its rules that the CPR should apply.”*
68. We accept that in appropriate cases we should be subject to cost orders in line with the Regulations and relevant case law (but see paragraphs 71 - 75). However, we do not consider that barristers, acting in person, should be in a more advantageous position in relation to claiming costs from the BSB than they would be in court proceedings.
69. The Regulations have therefore been amended at rE244 to make it clear that barrister respondents who have represented themselves at a Tribunal should, in the event of a costs claim against the BSB, be limited to claiming the rate applicable to litigants in person as provided for in the CPRs. This limits the BSB’s risk of being exposed to large cost claims that, in turn, may potentially lead to increased insurance premiums and legal costs, which are funded by the profession’s Practising Certificate Fee.

***Q12: Do you agree with the amendment to the Regulations limiting the hourly rate that self-presenting barristers can claim to the rate applicable to litigants in person under the CPRs?***

***Q13: Do you have any other comments on any of the proposed amendments to the Regulations set out in Section C above which are not specifically covered by specific questions?***

## **Section D - Issues of principle not included in the revised Regulations**

70. This final section highlights a series of issues that are not necessarily intended to be covered in the revised Regulations, but on which we consider it important to canvass wider opinion before deciding whether and how to move forward with them. Each has wider implications although we may decide to incorporate immediate/interim changes to the proposed revised Regulations.

### **Claiming costs incurred by the BSB**

71. The BSB is prohibited under the current Regulations from claiming the costs of preparation for hearings (rE214 at Appendix 2). Given that BSB representatives provide their services pro-bono, our ability to recoup the costs of successful prosecutions is

limited and therefore fall on the wider practising Bar via the Practising Certificate Fee. The system therefore currently allows respondents to lengthen, delay and/or complicate proceedings without the risk of financial consequences.

72. In contrast, we run the risk of exposure to costs orders covering respondent's full costs. In many cases, the respondent's costs will be covered by their professional insurance (provided by the Bar Mutual) regardless of the outcome and, while the Bar Mutual takes a responsible approach to funding cases, it is bound by the terms of its insurance policy. The current situation therefore creates an inequality of arms whereby respondents can make numerous, potentially unmeritorious, challenges to proceedings without fear of increasing their costs exposure. In turn the resources used by the BSB in defending such challenges are borne by the whole profession via the Practising Certificate Fee.
73. Against this background, there are clear arguments in favour of removing the current prohibition on the BSB claiming the preparatory costs for hearings. To support this type of change, we would need to introduce a formal billing system which would require additional upfront expenditure. However, in the medium- to long-term it would reduce our financial exposure and thereby the funds required from the practising certificate to support this area of regulation.
74. Additionally, and perhaps as an interim measure, the Regulations could contain a provision allowing for costs to be claimed against the respondent but, in accordance with section 194(3) of the Legal Services Act 2007, prescribing that these costs be paid to a legal charity. The value of these costs would reflect the financial value of the service which is currently provided to us free of charge by our representatives.
75. An alternative approach would be to remove the ability for either party to claim costs and expect the respondent and BSB to bear their own. A number of regulators operate in this way. At this stage, we are only canvassing views and we will need to consider further the wider implications, in particular the views of the Bar Mutual, before considering any changes to the Regulations. We would therefore encourage readers of this paper to provide their views on these issues.

***Q14: What are your views on potential changes to the current regime for claiming BSB costs, taking into account the alternative approaches set out at paragraphs 73 - 75?***

## **Size of Tribunal Panels**

76. The concept of having three person and five person panels to consider differing levels of professional misconduct has been in place for many years but only developed into formal three and five person Tribunals in 2009. The current regime allows for the most serious cases, which may warrant a lengthy suspension (over 12 months) or disbarment, to be dealt with by a panel of five people with a Judge acting as Chair. All other Tribunal cases are dealt with by a three person panel chaired by a QC.

77. The question has arisen as to whether there continues to be a need to have five person panels and whether all cases could be referred to three person Tribunal panels regardless of the seriousness of the case. The option to constitute the panel with a Judge Chair in serious cases, using criteria similar to that which currently distinguishes three person Tribunal panels from five person panels, could remain. This approach mirrors the practice of most other regulators and other court systems and could clearly lead to a reduction in operating costs.
78. A substantive evidence-gathering exercise would be required to consider the impact on such a change on the quality of Tribunal decision-making and to ensure the gravity of proceedings are still reflected in the composition of panels. This consultation, however, provides an opportunity to seek the initial views of interested parties on the potential for introducing such a change in the future.

***Q15: What are your views on removing the jurisdiction of five-person Tribunal panel and replacing them with three person panels potentially Chaired by a Judge?***

### **Re-admittance**

79. As rehearsed above (see paragraphs 57– 60), the Inns of Court are responsible for calling persons to the Bar and for disbarring barristers where a Tribunal makes this order. They are also currently responsible, via the Inns Conduct Committee, for deciding whether those who have been disbarred can be recalled to the Bar. However, this process does not form part of the BSB's direct regulatory arrangements and is not under the governance of independent panels. The reality is re-admittance is a regulatory matter and there are strong public interest arguments in favour of the process being transferred to Tribunals who are completely independent and separate to the profession and also have the original power to order disbarment.
80. This would be a fundamental change to the regulatory arrangements which will require more detailed consideration. However, this consultation provides a suitable opportunity to canvass initial views about making such a change.

***Q16: Do you agree that the decision to re-admit a barrister to the Bar following disbarment should be a matter for the BSB as the regulator and taken by Tribunals not the Inns of Court?***

### **Settlement agreements**

81. In recent times, a practice has emerged among some other regulators where respondents have the option of agreeing with the regulator, prior to a hearing, the outcome of the disciplinary proceedings and the sanction to be applied. These arrangements are known by various titles but generically are known as “regulatory settlement agreements”. Where such an agreement is reached between the parties, it will be put to the Tribunal panel for approval. The issue is whether we should adopt this



mechanism within the Regulations as an alternative way of dealing with professional misconduct allegations.

82. We have formed no settled view on whether such agreements would be an appropriate addition to the regulatory disciplinary regime. However, to an extent the basic concept already exists in the form of the Determination by Consent procedure (a procedure which allows regulated persons to consent to the PCC determining the outcome of charges of professional misconduct, without the involvement of a Tribunal Panel)<sup>12</sup>.
83. The advantage of “settlement agreements” are that they can shorten what might be lengthy proceedings and encourage respondents, in appropriate cases, to accept that misconduct has occurred. This could create efficiency gains and financial savings.
84. Having said that, such agreements could also have the reverse effect of lengthening or increasing the complexity of proceedings if a Tribunal disagrees with the terms of a proposed settlement agreement. Considerable resources could also be expended on reaching a settlement and indeed could be wasted if no settlement is achieved.
85. More importantly, the public may see such settlements as lacking transparency, unjust and weighted in the respondent’s favour. However, some may view any process which encourages the early acceptance of a wrong-doing as advantageous and in the public interest, particularly where it avoids unnecessary challenges later down the line.
86. At this stage, we merely intend to canvass views on whether we should explore further the concept of introducing such settlements.

***Q17: Do you support the introduction of “settlement agreements” as an alternative means of determining the outcome of disciplinary cases?***

## Consequential amendments to other parts of the Handbook

87. Consequential changes to other parts of the Handbook, principally the Complaints Regulations at Part 5A and the Definitions at Part 6, may be required. The extent and nature of these changes will be determined by the outcome of this consultation and once the final content of the Regulations has been approved. However, they may involve amending terminology, updating the definitions section to include new or amended definitions and creating new provisions or deleting others to reflect any relevant changes to the powers of the Tribunal.

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<sup>12</sup> Further information on the Determination by Consent procedure can be found here: [https://www.barstandardsboard.org.uk/media/1408127/140321\\_-\\_ge02\\_-\\_dbc\\_explanatory\\_note\\_for\\_barristers\\_and\\_flowchart\\_-\\_live\\_updated\\_nov\\_14\\_va444025\\_.pdf](https://www.barstandardsboard.org.uk/media/1408127/140321_-_ge02_-_dbc_explanatory_note_for_barristers_and_flowchart_-_live_updated_nov_14_va444025_.pdf)

## Transitional arrangements

88. It is intended that the revised Regulations replace the current Regulations from an agreed date. The transitional arrangements set out at rE261 provide that the revised Regulations, once finally approved, will apply not only to cases commenced after they come into effect but also to those that are already being dealt with at the time the Regulations come into force.

## Equality Impact Assessment

89. We have undertaken an initial equality screening of the impact of the proposed changes to the Regulations. The screening did not identify any adverse impacts in relation to any of the protected characteristics under the Equality Act 2010. However, the issue of equality impacts will be revisited in light of any relevant issues arising from this consultation and once the changes have been approved.

***Q18: Do you consider that any of proposed changes to the Regulations could create adverse impacts for any of the equality groups?***

## Summary of questions

- Q1** Do you agree with the changes to terminology and the clarification of roles outlined above? Are there other changes in these areas that you consider would be beneficial?
- Q2** Do you agree with the changes that have been made to the 'Directions' section (at rE106 – rE126) and the Standard Directions at Annex 6 of the revised Regulations?
- Q3** Do you agree with the list of those people who may be treated by the Tribunal as 'vulnerable witnesses' (rE176) and should the list be extended to include reference to victims of other types of allegation, and not just allegations of a violent or sexual nature?
- Q4** Do you have any comments on the changes to the Regulations outlined above in Section B which are not subject to specific questions?
- Q5** Do you agree that Tribunals should be given the power to refer matters back to the BSB for consideration of the imposition of administrative sanctions? If not, which of the other options above do you consider would be more appropriate?
- Q6** Do you agree the power to impose deferred sentences should be removed from the Regulations?
- Q7** Do you agree that the formal restrictions on the BSB mounting appeals against decisions of Tribunals should be removed?
- Q8** Do you agree with the removal of the regulations in relation to the involvement of the Inns of Courts in the disciplinary system except in relation to the pronouncement of disbarments?

- Q9 Do you agree with the proposed amendments to streamline the reporting process?
- Q10 Do you agree with the proposal to remove reference to the full list of bodies to which the final report should be sent and allow the distribution of such reports to be determined at the discretion of BTAS/ the President?
- Q11 Do you agree with the changes introduced, which allow for the granting of a fresh hearing on application in any circumstance where the respondent has a good reason for not attending the original hearings?
- Q12 Do you agree with the amendment to the Regulations limiting the hourly rate that self-presenting barristers can claim to the rate applicable to litigants in person under the CPRs?
- Q13 Do you have any other comments on any of the proposed amendments to the Regulations set out in Section C above which are not specifically covered by specific questions?
- Q14 What are your views on potential changes to the current regime for claiming BSB costs, taking into account the alternative approaches set out at paragraphs 73 - 75?
- Q15 What are your views on removing the jurisdiction of five-person Tribunal panel and replacing them with three person panels potentially Chaired by a Judge?
- Q16 Do you agree that the decision to re-admit a barrister to the Bar following disbarment should be a matter for the BSB as the regulator and taken by Tribunals not the Inns of Court?
- Q17 Do you support the introduction of “settlement agreements” as an alternative means of determining the outcome of disciplinary cases?
- Q18 Do you consider that any of proposed changes to the Regulations could create adverse impacts for any of the equality groups?



## Equality and Diversity Committee Annual Report 2014-2015

### Status

1. To note.

### Executive Summary

2. The Equality and Diversity Committee (EDC) has delegated oversight of all regulatory activity relating to equality and diversity at the Bar, and makes recommendations to the main Board.
3. This is a report on the work of the Committee. The Committee met five times in 2014, including a strategic planning day to evaluate the work completed to date. The Committee have met three times so far in 2015.
4. The work the EDC has completed over the course of 2014 has done much to raise the profile of the EDC with other Bar Standards Board (BSB) committees and across the BSB.
5. In addition to raising the profile at the BSB internally, the work of the EDC has raised their profile with the profession. Through the chambers monitoring project, equality and diversity was positively discussed with chambers to review their compliance with the equality rules.
6. The BSB created a memorandum of understanding with the Bar Council to clarify (for the profession) the respective roles and responsibilities of the Bar Council and the BSB with respect to equality and diversity.
7. The EDC has overseen the monitoring of the diversity data on the profession and have been key to identifying diversity trends at the Bar.
8. The EDC has redeveloped the BSB equality objectives for 2015-2016 to ensure they were more clearly aligned to the overall organisational strategic aims, and introduced a new focus on engagement with the public and consumers.
9. This progress has been achieved during a period of significant changes in the management and staff team, and reorganisation of a number of roles.

### Recommendation

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

## Comment

### Membership for 2014 - 2015

Rolande Anderson (Chair, Board member)

#### *Barrister Members*

Justine Davidge (Vice Chair, Board member)

Isabel Hitching

#### *Lay Members*

Robin Field-Smith

Clare Pavitt (*resigned May 2015*)

Marie Pye

Ranjit Sondhi

Richard Thompson (Board member)

#### *Barrister Advisers to the Committee (appointed March 2015)*

Lucy Bone

Graham Reid

## BSB Projects

11. The EDC has worked to create better links with other BSB committees and staff across the organisation. The committee have engaged Heads of Departments to present to the EDC followed by close partnership working with their committee.
12. Members of EDC are actively involved in other BSB Committees in an effort to embed equality and diversity across the organisation. Rolande Anderson and Justine Davidge are members of the Education and Training Committee, as well as Robin Field-Smith as an adviser. Richard Thompson chairs the Supervision Committee. Isabel Hitching is the Vice Chair of the Qualifications Committee. Marie Pye is the Equality and Diversity Adviser on the Professional Conduct Committee. Finally, Rolande Anderson, Justine Davidge and Richard Thompson sit on the Board.
13. In addition, the Committee worked with the Education and Training team on equality issues arising from the Legal Education and Training Review (now Future Bar Training), in particular on how access routes to the profession can be improved by adopting a regulatory approach that is flexible, and that minimises costs and other barriers.
14. The Committee worked with the Strategy and Communications team on the new Policy Development Framework to ensure equality was embedded throughout, rather than forming the final part of the process.
15. Following the Professional Conduct diversity review by Inclusive Employers, the Committee worked with the Professional Conduct Team on the implementation of the recommendations, and continues to monitor developments.

### **Work with the Bar Council**

16. The BSB created a memorandum of understanding (MoU) with the Bar Council to clarify (for the profession) the respective roles and responsibilities of the Bar Council and the BSB with respect to equality and diversity. The MoU addresses the organisations Public Sector Equality Duties, advice to the barrister profession, regulatory and good practice published guidance and finally the support that is given to chamber's Equality and Diversity Officers.

### **Work involving the barrister profession**

17. The Committee, considered the diversity data on the total profession, they highlighted important trends and areas of concern and reported these to the Board. They formulated recommendations to improve disclosure rates and carry out research into the retention and progression of women. The Aggregated Diversity Report on the Profession 2014 was published 31 January 2015.
18. In addition the Committee have commissioned a review of the diversity data that has been collected across the barrister profession, in order to assess trends and evidence to support future work.
19. The Committee oversaw a compliance exercise with a sample of 32 chambers focusing on implementation the Equality and Diversity rules of the Code of Conduct for the Bar which came into force in September 2012. The Committee was keen to understand issues around compliance with the new rules and it was decided that a monitoring exercise should be undertaken. The Equality and Diversity team provided suggestions to help chambers to understand how to comply with individual rules; this included producing sample action plans and policies. The exercise was welcomed by those chambers who took part.
20. The Committee were involved and fed into the development of the new risk framework.
21. In addition the BSB EDC have made an input into the Bar Council's Equality and Diversity Officer networking events to provide regulatory guidance on the interpretation and implementation of the BSB's equality rules and legal requirements, focusing on areas such as flexible working.
22. In 2014, the Committee Chair sent a letter to the profession highlighting the benefits of providing diversity data in order to increase the disclosure from the Bar.

### **Relationship development**

23. As part of its Committee development plan the EDC held its January 2015 meeting in the Parliament Chamber at Inner Temple. During the meeting a presentation was delivered by Inner Temple's External Relations Manager which gave details about the work of the Inns and the various diversity initiatives that are currently in place.
24. The Committee discussed the challenges the clerks and barristers have faced when understanding and implementing the equality rules with the Institute of Barristers Clerks (IBC). They considered what the BSB could do further to support compliance of the fair allocation of work and fair recruitment and selection rules. The Committee will be working with representatives from the IBC to examine the results of the BSB's research and consider how equality impacts at the Bar can be addressed.

## **Equality Objectives**

25. The EDC redeveloped the BSB's equality objectives for 2015-2016, introducing four overarching aims underpinned by eleven objectives. The objectives have also been aligned with the BSB's strategic aims, notably, our commitment to identifying and addressing equality issues at the Bar and in our complaints processes as part of our work to become more evidence-and risk-based in all we do. The equality objectives aim to:
- Analyse the effectiveness of the BSB equality rules;
  - Improve diversity data collection to ensure we have a reliable evidence base;
  - Ensure equality and diversity analysis is an integral part of the BSB's approach to regulation;
  - Engage with a wide range of communities to inform our regulatory functions and inform our equality and access to justice programme.

## **Key upcoming areas of work and projects for 2015/16**

26. The EDC will be focusing on the following key areas of work and projects for 2015/16:
- Research the impact the Equality Rules have had on Women at the Bar;
  - Reviewing the equality impacts of the potential changes to education and training regulation;
  - Developing actions to improve diversity data disclosure;
  - Review the results of the new approach taken to Supervision and highlight any actions needed;
  - Meeting and working with a range of diversity groups;
  - Work with the regulatory risk programme to ensure equality is embedded as part of the approaches we take to become a risk based regulator.

## **Staffing**

27. The Senior Policy Officer – Equality and Diversity, Jessica Bradford went on maternity leave in September 2014 and was temporarily replaced by Sarah Charlesworth.
28. The Equality and Diversity Adviser, Sarah Loutfi, left the BSB in November 2014.
29. A new managerial role was created in the staff team which addressed equality and also the BSB's access to justice work. Amit Popat joined the BSB in April 2015 as the Policy Manager – Equality and Access to Justice.

## **Annex**

30. Annex A – Equality and Diversity Committee – Terms of Reference



**The terms of reference for the BSB Equality and Diversity Committee are:**

1. to promote equality and diversity in the profession so that the profession is open to all on merit and reflects the diversity of society;
2. to ensure that the BSB acts in accordance with its statutory duties to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it, and in particular to:
  - a. make strategic recommendations for equality policy development and implementation and, where necessary, submit proposals for policy changes or initiatives to the Board or relevant committee,
  - b. monitor, revise and update the BSB's Equality and Diversity Strategy and Action Plan,
  - c. scrutinise equality assessments to ensure that the BSB's functions have given due consideration to eliminating discrimination and promoting equality, and
  - d. identify and report regularly to the Board on areas of risk in relation to equality and diversity issues and compliance with relevant equalities legislation;
3. to champion equality and diversity issues with the Board, its committees and within the BSB generally;
4. to provide appropriate expert advice and guidance to the Board and its committees on equality issues where requested;
5. to liaise and consult with the other regulatory committees, the Inns' Council and the judges as appropriate in exercising its functions;
6. to undertake such other tasks as the BSB may from time to time require; and
7. to report to the Board on its work as and when required.

**The membership of the Equality and Diversity Committee shall be:**

8. A chair;
9. A vice-chair;
10. Up to five lay members; and
11. Up to five practising barristers.

**Quorum**

12. No business may be transacted at any meeting of the Equality and Diversity Committee unless one third of the members are present of whom at least 2 must be barristers and at least 2 must be lay members.



**BSB quarter report on BTAS and the Browne recommendations****Status:**

1. For noting.

**Executive Summary:**

2. A complete update was reported to the Board in February 2015 detailing the considerable work that has been carried out over the past two years to ensure all 82 recommendations of the Browne Review were met and also the adherence to the contractual arrangements.

**Recommendations**

3. It is recommended that Board members **note** this paper.

**Background**

4. The Board were given a summary of actions:

2010	Memorandum of understanding was agreed in the September
2012	People affected were notified of the issues that were uncovered in 2011. A review group that had been set up under Desmond Browne published its report in the July. The BSB endorsed the report's recommendations in the October.
2013	The MoU was temporarily revised but then replaced shortly afterwards with the contract and progress reporting and quarterly monitoring visits commenced.
2014	HH Stuart Sleeman was appointed as BTAS Chair this March. The Inaugural Strategic Advisory Board (SAB) Meeting took place in April, chaired by Ms Clare Dodgson (lay). A permanent Registrar commenced in post in June. COIC has now received charitable status and the contract novated accordingly.

**The Browne recommendations**

5. The CMO liaised with the Registrar on all contractual matters and received regular updates. Quarterly monitoring meetings took place for two years but with the efficient systems now in place and the main risks significantly mitigated, the monitoring will be reduced to a 6-monthly basis.

The BSB's CMO Completed	71 (92%)	<ul style="list-style-type: none"> <li>• <b>71</b> of the recommendations have been met in good time through continuous communication and collaboration with the BSB.</li> </ul>
Progressing but awaiting either BSB or SAB approval	4 (5%)	<ul style="list-style-type: none"> <li>• <b>2</b> have been approved by the Inns Conduct Committee (ICC) and are now awaiting BSB approval (recs 33, 46).</li> <li>• <b>1</b> is awaiting a BSB response based on the Disciplinary Tribunal Regulations to be published in early 2016 (rec 9)</li> <li>• <b>1</b> is awaiting response from SAB on business case (290/06/15) (rec 10).</li> </ul>

Not Progressing	2 (3%)	<ul style="list-style-type: none"> <li>• 2 recommendations (recs 48, 50) refer to the Barrister members of the pool being paid a sitting fee. COIC has been asked to hold off the decision regarding this until the BSB's own position on pro bono barrister input has been clarified. This has been on the SAB agenda for December 2014.</li> </ul>
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### The Contract Management Process

6. The BSB's CMO developed a strong working relationship with the BTAS representative (the Registrar) and has ensured a smooth handover to the Business Support Team.
7. KPIs were agreed November 2013, in accordance with the contractual framework on performance requirements. The Registrar and the CMO have reviewed the KPIs and the Registrar is currently working on a new set of KPIs for the next stage of monitoring.
8. The CMO and the Registrar met formally for quarterly monitoring visits at the BTAS tribunal Suite, Grays Inn, to ensure that the other more practical areas of the contract are functioning adequately. Meetings were followed up by monitoring notes which are available at the Board's request.
9. Monitoring visits will now be conducted by the Business Support Team on 6 monthly basis.
10. A successful inaugural Strategic Advisory Board (SAB) meeting was held during April 2014; terms of reference were agreed and now SAB meets quarterly. The BSB is represented by the Director General and Dr Malcolm Cohen (Board member). The CMO was managing the operational oversight of the BSB contract with COIC which will be continued by the Business Support Team after her departure this month. The SAB provides the strategic oversight and advice to COIC.

### Resource implications

11. Finance – the contract management was part of the BSB budget for two years in the first instance and its cost effectiveness was reviewed in late 2014. A Business Support team restructure has taken place and contract monitoring will continue to be managed by the team. A small cost saving has been realized.
12. The costs of BTAS are met by COIC.
13. Information Technology Requirements – COIC/BTAS are required to improve their IT systems to ensure compliance with the contractual clauses (please see 10, 32, 51, 52 of the recommendations update at Annex 1). The BSB provided advice on how to assist with meeting these requirements.
14. HR implications for the BSB – The CMO's contract ends on 26 June 2015 and the Business Support Team will continue to dedicate a percentage of their time on managing the COIC contract to ensure a professional business relationship and adherence to the contract.
15. COIC Human Resources – The BTAS office is adequately resourced to deliver the expectations in the contract except for a couple of minor adjustments and provision has been set aside to employ temporary resources as required.
16. Knowledge Management – Monitoring reports are available for Board members on request.

**Equality Impact Assessment**

17. E&D requirements have been addressed through the contractual arrangements. Ongoing communication and monitoring arrangements with the BSB's E&D Team are in place.

**Risk implications**

18. The Board is aware of the risk implications relating to the potential failure of COIC and BTAS to provide an ongoing effective and efficient tribunals service. Therefore, the contract management activity is essential. There have previously been significant reputational and financial impacts upon the BSB as a result of COIC's failures to provide an effective service. The contract has mitigated the previous risks but they may arise again if effective control is not exerted by the BSB. Wider strategic risk management is effected through BSB participation in the Strategic Advisory Board of BTAS (the BSB Director General and a Board member are members of the SAB).
19. As mentioned above, the main risks have been significantly mitigated, 91% of the Browne recommendations have been met and it is now planned for monitoring visits to be reduced to six-monthly occurrences.

**Impacts on other teams / departments or projects**

20. The CMO has worked closely with the Professional Conduct Department and the E&D Team, and the Independent Observer. The BST will continue this way of working.

**Regulatory objectives**

21. Under the Legal Services Act 2007, the Bar Council is an Approved Regulator and has delegated the responsibility of regulatory and disciplinary arrangements for barristers in England and Wales to the Bar Standards Board.
22. The Council of the Inns of Court is a charity that provides services to the Board, through BTAS, in relation to the recruitment and training of staff and panel members for disciplinary tribunals, which consider allegations of professional misconduct against barristers in England and Wales.
23. The activity engaged in under the contract with COIC is essential to upholding the regulatory objectives.

**Publicity**

24. A press statement will be released at the end of June 2015.

**Annexes**

25. Annex 1 – Update on the 82 (77) recommendations.

**Lead responsibility:**

Malcolm Cohen  
Vanessa Davies  
Chandra Connaghan



No.	Area	Recommendation description	Board paper category	Comment
1	Establishment of unified service	A COIC Tribunal Service should be established, covering both COIC Disciplinary Tribunals and panels and the Inns Conduct Committee ("the ICC"), with the focus on separate processes but common aims and principles, unified administration and co-location.	COMPLETED	The Bar Tribunals and Adjudication Service (BTAS) has been established, which covers the terms set out in the recommendation.  CC - DONE
2	Establishment of unified service	In every aspect of activity, the COIC Tribunals Service should work to the following Statement of Purpose:  <i>a) to provide a hearings service that is efficient, effective, timely, professional and transparent and one that uses up to date practices and approaches;</i> <i>b) to facilitate high quality decision-making in the public interest; and,</i> <i>c) to be independent, providing clear separation of the adjudicatory function from the BSB, as the prosecuting body for the Bar.</i>	COMPLETED	Followed, and underpins all change programme & ethos of the new BTAS.  The service agreement with the BSB demonstrates this, as does the performance monitoring framework the BSB has established which commenced at the end October 2013.
3	Establishment of unified service	The COIC Tribunals Service, having regard to its purpose, should develop a set of publicly available principles under which it should operate.	COMPLETED	Followed, and CHRE modern & efficient adjudication has been taken as the model BTAS is being built upon.  Both BTAS's and the ICC's principles have been developed and are available on the BTAS website.
4	Written protocols, guidance and information	In relation to every aspect of the work of the Tribunal Secretary/Inns Conduct Committee Hearings Administrator, current process and procedure should be set out, with any gaps or need for change or improvement being clearly identified and addressed.	COMPLETED	See recommendations 4 & 8 below.
5	Written protocols, guidance and information	An internal Standard Operation Procedure Manual ("SOPM") should be produced. In addition to setting out systems and procedures, the SOPM should also cover objectives and expected service standards.	COMPLETED	The Manual includes procedures relating to:  - General Office Administration; - Administration of DTs/FTPs (end-to-end procedures); - Publication/circulation of findings; - Administration of the full ICC; - Information filling, archiving and destruction; and, - Publication/retention policy.
6	Written protocols, guidance and information	All standard letters and pro-formas should be reviewed.	COMPLETED	There are a number of pro-formas available on the website, which have been reviewed. These include:  - Barrister nomination form; - Chairman's Report pro forma; - Declaration of Interests form; - Equality and diversity form; - Expenses Claim form; - Final Report pro forma; - Findings and Sentence pro forma for 3 person Disciplinary tribunal; - Findings and Sentence Sheet pro forma for 5 person Disciplinary tribunal; - Panellist Appraisal form; - Panellist 360° Feedback Form; - Referral Form – Disciplinary tribunal hearings; and, - Referral Form – Fitness to Practise hearings.  All project office documents are complete, as are all standard letters and termination letters.

No.	Area	Recommendation description	Board paper category	Comment
7	Written protocols, guidance and information	Based on the SOPM, written information for Service users on systems and procedures should be produced (in Plain English and other formats) and made publicly available.	COMPLETED	<p>BTAS has interpreted this as the BSB being the primary service user - all protocol, guidance and information has been produced and agreed via the Project Board, of which BSB is a voting-right member. The BSB has therefore also been involved in the development process as well.</p> <p>BTAS's secondary service users are those who attend BTAS; information required pre-hearing is supplied by email/hard copy, with any other requests for information being dealt with on request.</p> <p>For all users and the general public, all information about BTAS, how it works and how it is held to account is on the website, and is drafted in Plain English [BTAS's external E&amp;D adviser reviews BTAS's policies pre-publication to assess and amend (if necessary)]. BTAS also have an accessibility statement on their website.</p>
8	Written protocols, guidance and information	Documentation and policies typical of a modern adjudicatory body should be developed e.g. risk policy, equality impact policy, freedom of information, disclosure policy and information retention and disposal policy, with priority being given to developing a risk policy and supporting systems.	COMPLETED	<p>A schedule of policy and procedure development work has been agreed with the BTAS Project Board and is well advanced. Policies and procedures which have been published to date are as follows:</p> <ul style="list-style-type: none"> <li>- Appointments Protocol 2013;</li> <li>- Disclosure policy (references FOI);</li> <li>- Equality and Diversity;</li> <li>- Expenses policy;</li> <li>- Information Security policy;</li> <li>- Performance and appraisal policy;</li> <li>- Publications policy;</li> <li>- Recruitment and selection policy;</li> <li>- Service Complaints policy;</li> <li>- Disaster recovery; and,</li> <li>- Reasonable adjustments.</li> </ul> <p>The general risks to the service are set out in the Business Continuity Policy, although this is not being published.</p>
9	Written protocols, guidance and information	In producing the documentation recommended at recommendation 8 above, advice should be sought from the BSB on ways in which the Tribunals Service could underpin compliance with the LSB's Regulatory Standards Framework.	PROGRESSING	<p>The regulations governing the Tribunals are incorporated in the BSB's new Handbook, which reflects the RSF and has been approved by the LSB.</p> <p><b>02/14</b> - remains ongoing as the Handbook changes worked through</p> <p><b>06/14</b> - update - This can only be indirect as it is BSB that must be compliant. CC to ensure communication with Amanda and Sara before the next submission on the RSF is made to the LSB.</p> <p><b>18/09/14</b> - CC made it clear that BTAS' responsibility under this recommendation was to seek advice from the BSB on ways in which BTAS could underpin compliance with the LSB's RSF. BTAS have sought this information and so in real terms have completed the recommendation. However as this is indirect CC spoke to Amanda and was informed that Sian Mayhew is launching a review on DTR'. This will therefore stay at 'Progressing' until information is fed back to BTAS and a plan is put in place.</p> <p><b>23/04/15</b> - CC spoke to Sian Mayhew today who explained that the review on DTR will go out for a three month consultation, then to Board in September and then to the LSB which could take a further 90 days. This means there will probably not be any update until next year.</p>



No.	Area	Recommendation description	Board paper category	Comment
10	Records/Case Management System	An electronic case management system should be put in place.	PROGRESSING	<p>The latest Programme Plan (June 13) reports that a database has been built and tested to manage hearings, panellists', and costings data.</p> <p>The database will be populated with information by BTAS Administrators on an ongoing basis.</p> <p>BTAS are looking into tendering and developing a more sophisticated Case Management System (CMS) in future (dates TBD).</p> <p><b>02/14</b> - correction to November update - this is currently going through a specification process.</p> <p><b>update 17/6/14</b> - BTAS are awaiting the recommendations of the ICC Review as it may include merging the DT and ICC Panels and if this is to happen it will significantly affect the scope and specification of any CMS and for this reason it would be premature to look into tendering for a CMS until this has been confirmed.</p> <p><b>18/09/14</b> - If all is approved then a Tendering process for a CMS will take place in February. However, it is AR's feeling the current number of cases doesn't warrant an expensive new system and that the systems that are currently in place are sufficient. AR has suggested that there may be a need for a new system after the entity review. We will have to wait until after February to see if a new CMS is purchased or if it is decided that the current system is sufficient before this recommendation can be moved to 'completed'</p> <p><b>23/04/15</b> - The main point is if a new system will be beneficial. AR made the point that 150 hearings were expected last year but there were only 53. Currently a very detailed and robust spreadsheet system is in place and managing the information well. Although the idea of a new system is not opposed, this current way is electronic and it is backed up and it is felt that this is sufficient for now. CC advised that AR take a business case to SAB.</p>
11	Case Management System	As an interim measure and pending implementation of recommendation 10 above, a system for recording details of hearings/panels on Excel spreadsheets should urgently be put in place.	COMPLETED	Superseded by ongoing implementation of recommendation 10.
12	Tribunals Appointments Body	Members of the Tribunals Appointments Body ("the TAB") should not be members of the Bar Council or BSB or their Committees.	COMPLETED	<p>Paragraph 5 VII of the Appointments Protocol 2013 states that persons will not be eligible for appointment to the TAB if they "hold office as a Council Member or Committee Member or are an employee of the Bar Council or the Bar Standards Board or have held office as a Council Member or Committee Member or have been an employee of the Bar Council or the Bar Standards Board within the 12 months prior to selection to be a member of the Tribunals Appointments Body."</p> <p>Additionally, the Protocol states that persons will not be eligible for appointment if they are "a Bar Standards Board prosecutor or have been a Bar Standards Board prosecutor within the 12 months prior to selection to be a member of the Tribunals Appointments Body."</p> <p>Compliance with these protocol will be monitored by the BSB Contract Management Officer, as well as through the BSB Referral Forms and Register of Interests.</p>
13	Tribunals Appointments Body	Members of TAB should not currently sit on Tribunals.	COMPLETED	<p>Paragraph 5 VI of the Appointments Protocol 2013 states that persons will not be eligible for appointment to the TAB "if they have acted as a panel member on a Disciplinary Tribunal or Inns' Conduct Committee within the 12 months prior to selection to be a member of the Tribunals Appointments Body."</p> <p>Compliance with this protocol will be monitored by the BSB Contract Management Officer.</p>
14	Tribunals Appointments Body	The TAB should be run at arms-length to the running of the Tribunals Service.	COMPLETED	<p>COIC and the President of COIC have delegated their powers to appoint and nominate Disciplinary Tribunal panel members to the Tribunals Appointments Body.</p> <p>Paragraph 3 of the Appointments Protocol 2013 states that "the Chairman [of TAB] will be responsible for the appraisal and performance of the other members of the Body."</p>
15	Tribunals Appointments Body	A larger TAB should be put in place to accommodate the need to interview applicants.	COMPLETED	There are now 11 members of the TAB (previously there were 4).

No.	Area	Recommendation description	Board paper category	Comment
16	Tribunals Appointments Body	Each TAB interview panel should include a lay representative.	COMPLETED	Paragraph 2 of the Appointments Protocol 2013 states that the TAB should consist of "a minimum of 2 lay representatives."
17	Tribunals Appointments Body	Members of the TAB should have received equality and diversity training.	COMPLETED	Paragraph 3.1 of BTAS' Equality and Diversity policy states that "BTAS will ensure through appropriate procedures, <i>training</i> and advice that those making selection decisions in relation to both panel members and clerks do so in accordance with fair and objective recruitment and selection methods and in adherence with The Bar Tribunals & Adjudication Service Recruitment and Selection Policy."
18	Tribunals Appointments Body	There should be improved record keeping and reporting requirements to ensure the accountability of the TAB.	COMPLETED	Paragraph 5.3. of BTAS's Recruitment and Selection policy states that "BTAS will ensure that a full record of the recruitment and selection process is made and retained for a specified period."  A comprehensive database has been designed and built, but it needs to be tested.
19	Tribunals Appointments Body	Responsibility for appointments to the COIC Disciplinary Pool ("the Pool") should lie with the TAB, with the President of COIC delegating this responsibility.	COMPLETED	COIC and the President of COIC have delegated their powers to appoint and nominate Disciplinary Tribunal panel members to the Tribunals Appointments Body.
20	Fitness to Practise	The President of COIC should be responsible for appointing medical experts to individual Fitness to Practise (FTP) Panels at his discretion (under a written procedure to be agreed, in due course, by COIC, after consultation with the BSB).	COMPLETED	Paragraph 1 of Schedule 1 of the revised FTP Rules (due to come into effect from 6 January 2014) states that:  "The President shall appoint and maintain:  (a) a list of barristers, medical and lay persons eligible to be members of Fitness to Practise Panel; (b) a list of barristers, medical and lay persons eligible to be members of a Review Panel; and (c) from the lists at (a) and (b), lists of Queen's Counsel eligible to act as Chairs of a Fitness to Practise Panel and a Review Panel respectively."
21	COIC Panellist Pool	There should be a uniform procedure for recruitment to the Pool, with each member being recruited on the same basis (regardless of category).	COMPLETED	BTAS's Recruitment and Selection policy sets out a uniform procedure for the recruitment of Pool members (barrister members, as well as lay members are now interviewed for Pool membership).
22	COIC Panellist Pool	Applications for membership of the Pool should be in electronic form only.	COMPLETED	
23	COIC Panellist Pool	Recruitment for Pool membership should be competency based.	COMPLETED	Competence descriptors are in place and are set out in the Performance and Appraisal Policy.  Paragraph 7.3. of BTAS's Recruitment and Selection policy states that "As a matter of policy all interviews will be competency based". (See also recommendation 30).
24	COIC Panellist Pool	Appointments to the Pool should be for 5 years, renewable once (subject to satisfactory performance).	COMPLETED	The decision has been taken to reduce terms of office to 4 plus 4 to reflect best practice in other bodies.  Therefore, BTAS's Appointments Protocol states at paragraph 30 that all appointments to the pool will be for a period of 4 years, and renewable once.
25	COIC Panellist Pool	Appointment to the Pool should be conditional on successful completion of training.	COMPLETED	Included in the appointments procedure at Paragraph 20 of the Appointment Protocol is the requirement that TAB will "send to the President a list of appointable candidates, <b>subject to full completion of any defined training requirements.</b> "  Appointment letters are therefore provisional and only confirmed once training has been completed.
26	COIC Panellist Pool	Refresher training should be provided for Pool members	COMPLETED	See recommendation 31 below. <b>02/14</b> - currently running sessions on new Handbook, Sentencing Guidance & FTP rules.  <b>18/09/14</b> - As initial training has not long taken place and refresher training usually happens annually, this recommendation cannot move to 'progressed until 'refresher' training happens.  <b>23/04/15</b> - COIC and SAB have agreed the proposal to have main training every three years with scattered updates in between. Dates and timings just need to be arranged.  There will be two-three year periods, then a new cohort. This way, there would be an induction for one cohort and it would be a refresher for the second cohort.

No.	Area	Recommendation description	Board paper category	Comment
27	Written protocols, guidance and information	A COIC Recruitment Protocol should be developed and published.	COMPLETED	A detailed Recruitment and Selection policy has been developed and is published on the BTAS website.
28	Written protocols, guidance and information	The definition of different categories of Pool member should be confirmed and included in the Recruitment Protocol.	COMPLETED	The Recruitment Protocol does not include specific reference to categories of members that should make up the Tribunal Panel. However, this is set out within the Glossary of the Appointments Protocol in part (e.g. "Practising barrister" for the purposes of appointment to the Tribunals Appointments Body or appointed as a panel member, means someone who is a practising barrister of not less than seven years' standing).
29	Tribunals Appointments Body	The TAB Terms of Reference should be reviewed in light of the paper at Annex 10 of the report.	COMPLETED	The TAB terms of reference have been updated since March 2012, and are now incorporated into the Appointments Protocol.
30	Written protocols, guidance and information	The competency framework developed in the context of recruitment should be applied to a system for annual appraisal and performance assessment of Pool members.	COMPLETED	<p>A 'competency framework' in relation to recruitment is set out in the 'Recruitment and Selection Guidance' (this is not published).</p> <p>The TAB are required to follow "fair and transparent competency based recruitment procedures" (Paragraph 9 of the Appointments Protocol).</p> <p>BTAS have developed a 'Performance and Appraisal policy', which includes at paragraph 4 and Table 2, a set of core competences against which the performance of the individual is appraised. These are:</p> <p>"1. Judgement and decision-making; 2. Analytical thinking; 3. Effective communication; 4. Interpersonal skills; 5. Integrity and impartiality."</p> <p>Under the 'Terms of Appointment' in the Appointments Protocol, Paragraph 29 VI states that individuals will be required to undertake to: "participate in an appraisal process and actively commit to achieving any personal development objectives identified during the appraisal process."</p> <p>They are also required to undertake to remain: "committed to the continuing demonstration of the competences required for the effective performance on Disciplinary Tribunals and Conduct Committees."</p> <p>The latest Programme Plan suggests that the formal appraisal process will commence in January 2014. Thereafter, individual training will be arranged as identified through the appraisal process.</p> <p><i>02/14 - appraisers trained and appraisal of TAB members complete, appraisal of DT pool to commence April 14.</i></p> <p>Update as @ 17/06/14 - Appraisals are now routinely taking place with 9 completed to date this quarter.</p>
31	COIC Panellist Pool	There should be regular training (both induction and refresher training) for members of the Pool, including equality and diversity training.	COMPLETED	<p>Induction training was provided to new Panel members in January 2013. As such, BTAS will have developed an induction training programme for all panel members on joining the panel. The induction training includes Equality &amp; Diversity training. Additionally, the comprehensive Information and Guidance Pack has also been reviewed and updated for Panel members and clerks.</p> <p>Paragraph 8.3. of the Recruitment and Selection policy states that "all pre-appointees will be subject to successful completion of any required training set by BTAS." Any offer of appointment to a panel will therefore be conditional on the completion of training.</p> <p>In terms of refresher training, the latest Programme Plan (June 2013) indicates that this has been provided to panellists, clerks and ICC members. Subject specific training is scheduled for Nov - Dec 2013.</p> <p>Any re-appointment of panel members will be dependent on the completion of refresher training (See paragraph 30 of the Recruitment Protocol).</p> <p><i>02/14- ongoing</i></p> <p><i>Update as @ 17/06/14 - Sessions on the New Handbook, Sentencing guidance, FIP rule and Vulnerable Witnesses were delivered in June 2014.</i></p>

No.	Area	Recommendation description	Board paper category	Comment
32	Records/Case Management System	Comprehensive records of Pool members' training should be maintained and if the required training is not undertaken by a Pool member, he/she should not be permitted to continue to sit.	COMPLETED	This information is held in personnel files, as well as in Performance and Appraisal Reports. <i>02/14 - this is ongoing and will be checked at monitoring visits but initially is complete. Update as @ 17/06/14 - see Number 31 above.</i>
33	ICC	The ICC rules should be amended to provide for induction and refresher training for its members and the nature of the training to be provided should be determined.	PROGRESSING	With ICC <i>02/14 - Urgent rule change due to Handbook, currently sought and more extensive review of rules commenced.</i>  <i>18/09/14 - The ICC review has now taken place in September and the actions/reviews will be sent to the BSB on 31/01/15 approximately.</i> <i>The big change is the merger between the ICC and DT - which means there will be more panellists and they will be highly trained. The number of lay reps will remain the same. Barristers will be DT appointed to and ICC role by their Inn.</i> <i>It is planned for this to be approved and implemented for the start of the new academic year.</i>  <i>23/04/15 - The new ICC rules went to COIC in January and were not agreed. These will now go to the COIC Board on Monday 27th April where they need to be approved or amended and approved.</i>
34	Reporting and monitoring	There should be a requirement that the BSB satisfy itself that COIC's general policy and approach in respect of training arrangements is correct (rather than COIC being required to consult the BSB about the content of training).	COMPLETED	This will be monitored through the application of the contract and ongoing monitoring practices.  BSB included in training & via Strategic Advisory Board (SAB). <i>02/14 - this can be moved to 'completed' after information received at first SAB</i>  <i>06/14 update - all training for the panel members has now been completed. Including an introduction to the new Handbook by Robert Pragnall. I am satisfied that training has been done appropriately and efficiently. In line with this, Training records are being kept on each members file, TNA's are produced and refreshers will also happen as needed.</i>
35	COIC Panellist Pool	New Pool members should be assigned to an existing member who will mentor the new recruit for 12 months from the date of appointment.	NOT REQUIRED	Not undertaken to prevent further tainting
36	COIC Panellist Pool	A fully developed mentoring system for Pool members should be introduced over the next two years.	PROGRESSING	The appointment of DT Chair will commence process <i>02/14 - Interviews for the Chair are being held on 10 March 2014 and then this process can commence.</i>  <i>Update as @ 17/06/14 - A DT Chair was appointed on 12 March 2014 and a further update on this point is expected at the QMV in September 2014.</i>  <i>18/09/14 - Stuart Sleeman (chair) is a deputy circuit Judge and his term would expire in August and there was a question around whether he could continue to act as chair of BTAS. It has now been confirmed that he is eligible to act as Chair and give directions. There is still a question around whether he can/will be reappointed for the next 4 years.</i> <i>As it was initially agreed that this would start to take shape once the new Chair had been appointed, further news or an action plan is needed in order to show the progress. To be added to the SAB Agenda on how to move forward.</i>  <i>23/04/15 - BTAS are recommending a continuous appraisal system - confidential. This will include a mentoring and compulsory observation. This has now been seen by SAB and is going to COIC on 27/04/15 for a decision.</i>
37	Written protocols, guidance and information	The COIC Disciplinary Pool Members Guidance Pack should be reviewed annually.	COMPLETED	The Pack has already been subject to a review, and will be reviewed further in light of the changes resulting from the introduction of the new BSB Handbook (in conjunction with the PCD).  Ongoing monitoring will ensure that the Pack remains up-to-date and relevant.  Published on website and available in hard copy.
38	Written protocols, guidance and information	Written procedures and guidance should be made publicly available to support all aspects of the service and, where appropriate, should be included in COIC Disciplinary Pool Members Guidance Pack.	COMPLETED	A number of written procedures are now made publicly available in hard copy and on the website. The Information and Guidance pack can also be viewed on BTAS's website.

No.	Area	Recommendation description	Board paper category	Comment
39	Knowledge management	Any communications involving the public should clearly signpost what should happen and when.	COMPLETED	Detail guidance on how the hearing process works is available on the BTAS website.  Guidance, pathway maps & 360° virtual web-based tour.
40	Written protocols, guidance and information	When COIC's Sentencing Guidance is reviewed, particular consideration should be given to guidance in relation to orders for the recovery of costs.	NOT REQUIRED	Changes to subvention shift the cost burden - the BSB can no longer recover tribunal costs (other than those they directly incur, such as witness costs).
41	Staffing	A COIC Tribunals Service President or Chairman should be appointed and a role description developed and approved by COIC, after consultation with the BSB.	COMPLETED	Applications are now under consideration and interviews will be completed by mid-October 2013. UPDATE AS @ 06/11/13 - No one was appointed from amongst the candidates during the October Interviews. The Chair of TAB McFarlane LJ is attending the next Project Board (14 November) to discuss how we might take this forward. It is possible we will either go for a retired judge (in place of a QC member of the panellist cohort, or, advertise for an external (non-panellist) QC).  The Appointments Protocol provides for appointment from amongst QCs. <i>02/14 - Interviews for the Chair are being held on 10 March 2014</i>  <i>Update as @ 17/06/14 - HH Stuart Sleeman was appointed on 12 March 2014.</i>
42	Written protocols, guidance and information	Role descriptions should be produced for Chairs, barrister, lay, lay (medical) members sitting on FTP Panels and clerks and all should be made publicly available, with the BSB being consulted on its contents.	COMPLETED	Role descriptions for barrister and lay disciplinary pool members have been developed in consultation with the BSB.  This is set out in the Glossary of the Appointments Protocol.  All panel member names are available on BTAS's website.
43	Knowledge management	As an interim measure, names of Disciplinary Pool members should be available on request but the aim should be to have the names published on a dedicated COIC Tribunal Service website, as soon as possible.	COMPLETED	Superseded by implementation of recommendation 42.
44	ICC	Names of ICC members should be made publicly available on the COIC Tribunal Service website.	COMPLETED	The names of all ICC Panel members are available on the BTAS website.
45	Knowledge management	The question of whether COIC should publish details of all publishable findings and sentences imposed by Disciplinary Tribunals and details of forthcoming hearings on the Tribunals Service website should be further considered, in consultation with the BSB.	COMPLETED	In agreement with the BSB, BTAS now publishes on its website details of all forthcoming hearings, as well as all disciplinary findings imposed since 1 February 2013.  Will need to ensure these sections of the website are kept up to date through ongoing monitoring.
46	ICC	The ICC should publish details of forthcoming hearings and hearing reports (where appropriate) on the COIC Tribunals Service website.	PROGRESSING	Working towards a Rule change for some/all hearings to be in private, meaning they will therefore not be published. <i>02/14 - currently being discussed by COIC.</i>  <i>18/0914 - The Recommendation is now that all hearings are in Private. This is yet to be approved by the BSB. This will be detailed in the new ICC rules, which require full BSB approval before they can be signed off. This will be passed to the BSB for consideration at the end of January 2015.</i>  <i>23/04/15 -The ICC review is still in progress. The argument here is that 'Barrister applicants' are not Barristers and not public facing. This will be going to COIC on Monday 27th April for approval. It will then go to Jo Dixon in May with the aimed implementation date of 1 January 2016 (delayed from August while awaiting COIC's approval)</i>
47	Reporting and monitoring	The Tribunals Service should provide an annual report to COIC, which should cover performance data.	COMPLETED	Annual report will be produced in early 2014.  KPIs to be agreed. <i>02/14 - complete and presented to COIC 26 February 2014.</i>

No.	Area	Recommendation description	Board paper category	Comment
48	COIC Panellist Pool	The barrister members of the Pool should be paid a sitting fee.	NOT PROGRESSING	COIC have been asked to hold off on doing this until the BSB's own position on pro bono barrister input was clarified.  Not approved by COIC.  <b>06/14</b> - update - Needs to go back on to the SAB Agenda  <b>18/09/14</b> - BSB's own position has still not been clarified. This has not been added to the SAB agenda as of yet. AR to request it is added to the next SAB agenda on 4th December.  <b>23/04/15</b> - There is an increasing argument to pay however, BSB's own position is still to be clarified.
49	COIC Panellist Pool	The barrister members of the Pool should be paid travel and subsistence.	COMPLETED	
50	COIC Panellist Pool	A smaller pool with a minimum sitting requirement should be introduced, once barrister members are paid a sitting fee.	NOT PROGRESSING	See recommendation 48.  <b>06/14</b> - update - Needs to go back on to the SAB Agenda  <b>18/09/14</b> - BSB's own position has still not been clarified. This has not been added to the SAB agenda as of yet. AR to request it is added to the next SAB agenda on 4th December.  <b>23/04/15</b> - BTAS are moving towards a smaller pool (as demonstrated by the training/refresher explanation. Pools were originally set up to manage 150 panels a year, however there were only 53 last year.
51	Knowledge management	A dedicated Tribunals Service website should be established, covering areas identified at Paragraph 23.1. of the report.	COMPLETED	A new, dedicated BTAS website has been developed - this went live on 29 July 2013.
52	Knowledge management	Consideration should be given to having a password protected members' section of the website.	COMPLETED	Consideration to be given to the development of a protected section of the website for use by panellists in the second phase of the website build (which commences in October 2013). <i>02/14 - completed</i>
53	Knowledge management	A quarterly bulletin should be produced for Pool members.	COMPLETED	The latest Programme Plan includes reference to the commissioning and publication of a Newsletter - these will be published quarterly.  Three Newsletters are available on the BTAS website.
54	COIC Panellist Pool	The Chair of the Tribunals Service should consider the merits of appointing Pool members to a dedicated advisory panel.	COMPLETED	Transition from Project Board to Strategic Advisory Board, as per Service Agreement.
55	Clerks	Clerks should not advise Tribunals on the Code of Conduct.	COMPLETED	Explicitly recorded in guidance, aide memoire & in induction training.  Schedule A of BTAS's Appointments Protocol states that clerks should not provide legal advice.  The role of the clerk is clearly set out in the Disciplinary Pool Members Information and Guidance Pack. At Section 9.4 it states:  "Clerks do not act in a legal advisory role but they are expected to address any queries raised by the panel about procedural issues."
56	Clerks	Clerking should only be undertaken by practising barristers (and not 2nd 6 month pupils or barristers pre-pupillage).	NOT REQUIRED	Results in insufficient numbers. Extended provision made to include some categories of non-practising in Appointments Protocol.
57	Clerks	Consideration should be given to the rate of pay for clerks.	COMPLETED	
58	Clerks	Recruitment for clerks should be competency based and an annual appraisal system for clerks should be put in place based on the competency framework.	COMPLETED	BTAS's 'Performance and Appraisal' policy is similarly applicable to clerks.  Recruitment complete & appraisal system on-going.

No.	Area	Recommendation description	Board paper category	Comment
59	Clerks	Written guidance on the role of a clerk should be produced and published.	COMPLETED	Detailed guidance on the role of clerks is included at Section 9 of the Disciplinary Pool Member Information and Guidance Pack.
60	Clerks	Consideration should be given to the need for a separate stream of training for clerks.	NOT REQUIRED	Decision taken to train clerks with panellists to better understand respective roles & responsibilities
61	Clerks	The practice of newly appointed clerks shadowing an experienced clerk should be continued.	COMPLETED	Each Clerk is mandated to observe tribunals prior to confirmation of appointment
62	Services Agreement	The Memorandum of Understanding with the BSB on disciplinary matters should be replaced by a legally binding instrument covering disciplinary arrangements. The aim in so doing should be to ensure that in the public interest, a transparent, accountable and cost effective service is provided in support of the regulatory objectives.	COMPLETED	A formal contract has been developed by the BTAS and the BSB, in conjunction with solicitors. It sets out the agreement for the provision of services in relation to BTAS.  The contract has been finalised by both parties and is in force, and has been formally signed by the authorised signatories on 23 October).  However, given the legal status of the two parties, the form is a Service Agreement made as a Deed, and when appropriate, will novate to a contract.
63	Reporting and monitoring/Service Agreement	The Tribunals Service should publish its annual report to COIC and the BSB.	COMPLETED	Annual reporting requirements are detailed in the BSB/BTAS Agreement (see in particular Schedule 1, Paragraph 14).  Compliance with these reporting requirements will be monitored by the BSB Contract Management Officer.
64	Reporting and monitoring	The annual report should be supplemented by active performance management throughout the year and quarterly performance reports for COIC management and the BSB.	COMPLETED	Quarterly management reporting requirements are detailed in the BSB/BTAS Agreement (see in particular paragraph 8).  Registrar undertaking monthly & quarterly reviews.  Compliance with these reporting requirements will be monitored by the BSB Contract Management Officer.
65	Reporting and monitoring	Reports from the TAB and the ICC should form part of the Tribunals Service Annual Report.	COMPLETED	Not expected till 2014  Frequency & outline contents to be agreed by SAB. <i>02/14 - all reports may be merged from 2014 - all 2013 annual reports issued separately and with exception of BTAS (DT, ICC and TAB both published on website post approval by COIC. can be moved to 'completed' after first SAB meeting.</i>  <i>06/14 - update - completed but must continue</i>
66	Reporting and monitoring	After discussion with the BSB, the Tribunal Service should put in place a range of agreed Key Performance Indicators, on which it should report in its annual report.	COMPLETED	Development of the KPIs is well under-way, and is being lead by the BSB's Contract Management Officer. The heads of performance have been agreed.  As per the contract, these will need to be developed within 3 months of the signing of the contract, although they are likely to be in place long before. <i>02/14 - KPIs agreed and subject to ongoing monitoring</i>
67	Reporting and monitoring	Consideration should be given to linking Tribunals Service KPIs with personal staff objectives.	COMPLETED	This is an internal matter for BTAS.  Awaiting TUPE arrangements & new entity. <i>02/14 - ongoing</i>  <b>Update as @ 17/06/14</b> - COIC becomes a legal entity on 1 July 2014 and all staff will have be Topped across from employment by the Inns. From this date COIC will develop and introduce it own staff appraisal and objectives policy. This will remain at Progressing until the next QMV update in September.  <b>18/09/14</b> - COIC is now a legal entity and all staff have been Topped across. - moved to 'completed'
68	Policy and procedures	The COIC Tribunals Service, rather than the BSB, is the appropriate body to hold adjudication panels; determine cases by consent and decide whether to refer a case to 3 or 5 person panel.	NOT REQUIRED	It is solely for the BSB to decide what disciplinary functions it retains and which it decides to contract out; the BSB must decide what form of enforcement action is appropriate.

No.	Area	Recommendation description	Board paper category	Comment
69	Reporting and monitoring	The Secretary to COIC should provide an update to COIC at its October 2012 meeting on entity regulation (from the perspective of its implications for the Tribunals Service work levels and any additional requirements for the Service.	COMPLETED	
70	Reporting and monitoring	The Secretary to COIC should provide regular updates to COIC on entity regulation and ensure close liaison with those charged with developing the Tribunals Service.	COMPLETED	<p>Passed to Director COIC for actioning. <i>02/14 - ongoing</i></p> <p><i>Update as @ 17/06/14 - regular updates are being received and COIC's will have charitable status as of 1 July 2014.</i></p>
71	COIC Panellist Pool	When making lay representative appointments, the TAB should consider the need to appoint persons with the appropriate expertise to allow properly informed decisions in hearing involving non-lawyers.	COMPLETED	Set out within Appointments Protocol.
72	Tribunals Appointments Body	The Tribunals Service should be treated as an integral arm of COIC (like the Advocacy Training Council) but with some form of corporate status. Further recommendations in this area should await the outcome of the work on the future legal status of COIC itself and the recommendations on the Symons sub-group.	COMPLETED	<p>COIC has not yet established itself as a legal entity. However, it has restructured and agreed governance and Mem and Arts in support of this.</p> <p>Incorporation is anticipated in early 2014. <i>02/14 - COIC has been set up as a Company Limited by Guarantee. The next stage is to be given Charitable Status.</i></p> <p><i>Update as @ 17/06/14 - see 70 above - COIC's will have charitable status as of 1 July 2014.</i></p>
73	Staffing	Tribunals Service staff should be professionalised through competence based recruitment and proper induction, plus continuing training, on-going performance review and effective and dedicated leadership. Professional behaviour and values should be reinforced in day-to-day practice and within the culture of the Tribunals Service.	COMPLETED	<p>Awaiting TUPE transfer to BTAS.</p> <p>Paragraph 2.9. of the Panel member's Information and Guidance Pack states that:</p> <p>"Going forward, COIC hopes to provide training which develops the core competencies demonstrated by appointees at interview. This would enable COIC to easily identify the training and development needs of panel members, whilst simultaneously allowing it to inform members of the Pool and other stakeholders about the expectations placed upon them."</p> <p>See also recommendation 30. <i>02/14 - This has been completed for staff in post but further induction post TUPE to be undertaken.</i></p> <p><i>Update as @ 17/06/14 - COIC staff recruitment, inductions, appraisal and training policies being developed and introduced from 1 July 2014.</i></p> <p><i>18/09/14 - Common COIC Policy - BTAs have engaged an Advisor from Middle Temple advising on a new Appraisal system. There is no policy in place as yet but BTAS are looking to introduce it at the end of December in order to implement in January 2015. - move to 'completed'</i></p>
74	Staffing	Tribunals Service staffing levels should be adequate, with the appropriate staff and resources in place to match the number and complexity of hearings each year and some flexibility to take account of the changing skill needs and environment of staff.	COMPLETED	<p>A request for additional staff made to Director COIC.</p> <p>As it stands, the BTAS Secretariat is headed by the Interim Registrar, Wendy Harris.</p> <p>She is supported by:</p> <ul style="list-style-type: none"> <li>- The Tribunals Administrator, Margaret Hilson; and,</li> <li>- The Inns' Conduct Committee Administrator, Linda De Klerk</li> </ul> <p>The continued suitability of staffing levels will be closely monitored on an ongoing basis by the BSB's Contract Management Officer, through the application of the formal contract. <i>02/14 - 3rd Administrator now recruited.</i></p> <p><i>Update as @ 17/06/14 - Current staffing level is Registrar and 2 administrators which currently matches the number and complexity of hearings . Funding exists for a 3rd administrator to be recruited if this changes.</i></p>



No.	Area	Recommendation description	Board paper category	Comment
75	Staffing	A staff training programme should cover systems and procedures, staff attitudes, behavioural values, the engendering of professionalism, good communication skills and equality and diversity training.	COMPLETED	Incremental changes in culture underway but substantial aspects of training to await TUPE transfer. <i>02/14 - ongoing</i>  <i>Update as @ 17/06/14 - completed as part of induction training and to be embedded in COIC procedures from 1 July 2014.</i>
76	Staffing	A systematic work analysis should be undertaken to allow staff levels, needs and structure to be defined, job descriptions produced and performance management arrangements implemented.	COMPLETED	Routine monitoring on-going. <i>02/14 - This has stalled due to BSB not providing future caseload prediction information as per Schedule 2 of the Contract</i>  <i>Update as @ 17/06/14 - Routine monitoring requires case prediction data from BSB. CC spoke to Sara Jagger and PCD team regarding this and a meeting was going to held with Andy Russell where this will be one of the items to be discussed. Update will be given once received.</i>  <i>18/09/14 - completed</i>
77	Staffing	Reporting lines for staff should be identified.	COMPLETED	The BTAS staff are employed under different contracts and by different Inns. Once the COIC entity is established all staff will via TUPE become employees of COIC and reporting lines etc. will become set out. In the meantime the default position is that the staff all report to the Interim Registrar on a day-to-day basis but their contract is held by the Inns. <i>02/14 - awaiting TUPE completion</i>  <i>Update as @ 17/06/14 - Currently reporting to newly appointed Registrar and arrangements will be finalised with TUPE transfer completing on 1 July 2014.</i>
78	Staffing	An interim manager with specialist change management skills should be recruited by COIC.	COMPLETED	
79	Reporting and monitoring	The Interim Change Manager should report to Under Treasurer of Gray's Inn on daily basis and will report on progress to COIC through the Senior Executives Committee.	COMPLETED	With the addition of Project Board reports to COIC
80	Staffing	COIC should liaise with the BSB with regard to the future staffing structure	COMPLETED	The continued suitability of staffing levels will be monitored on an ongoing basis by the BSB's Contract Management Officer, through the application of the formal contract.  Additional ongoing review via Project Board or SAB will take place. <i>02/14 - This has stalled due to BSB not providing future caseload prediction information as per Schedule 2 of the Contract</i>
81	Procurement	COIC should recognise the need, on occasion, to buy in expertise for specific projects.	COMPLETED	Decisions taken on a case-by-case basis.  BTAS have bought in expertise from Turner & Townsend to assist with the Project Management of the Sentencing Guidance Review project.  They have also bought in the services of website developers ('Reading Rooms') for their new website.  Going forward, BTAS will consider buying in professional support in the following areas:  - Legal advice; - Equality & Diversity expertise; - Website maintenance and general support; - On-call IT support; - Accountancy services; - Out-of-hours key holding service; and, - Portering Services.  <i>02/14 - This has clearly been demonstrated by the above.</i>
82	Premises	The Tribunals Service should be run from dedicated and custom-design premises.	COMPLETED	9 Gray's Inn Square has been established as the new Tribunals venue.  The continued suitability of these new premises will be closely monitored on an ongoing basis through the application of the formal contract.



**Chair's Report on Visits and Meetings May 2015 – July 2015****Status:**

1. For noting

**Executive Summary:**

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

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

16 May	Attended the Bar Council meeting Met with the Circuit Leaders
19 May	Met with Lord Justice Briggs Attended the BSB Finance Committee meeting
25 May – 5 June	Represented the UK on Holocaust related meetings in Jerusalem
8 June – 11 June	Represented the UK on Holocaust related meetings in Budapest
16 June	Met with Mrs Justice Carr Attended a review of management accounts with Alistair MacDonald and David Botha
17 June	Attended the Youth Court Advocacy review session at BSB Attended the Chairmen's Committee meeting Attended the Inns' Strategic Advisory Group
18 June	Met with Mr Justice Green Met with Mrs Justice McGowan Attended the Magna Carta lecture at Grays Inn
23 June	To attend the Youth Court Advocacy review session at BSB
24 June	To attend the Modernising Justice Summit To meet with the Chair and CEO of the Solicitors Regulatory Authority (SRA)
30 June	To attend the Regulator Chairs' meeting
02 July	To meet and marshal with His Honour Judge Ader
09 July	To attend the Westminster Legal Policy Forum To meet with the Chairman and CEO of the Bar Council

**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 25 June 2015**

For consideration and noting.

**Director General**

1. My work externally this month has focused on our contributions to the work led by the LSB following the 2014 Regulators' Summit, and in particular work on future legislative options. I attended with the Chair a briefing meeting the LSB hosted for representative bodies on 9 June. I have also ensured the BSB was represented at a number of Magna Carta events, including the official celebrations at Runnymede.
2. Internally I have given considerable time to the drafting of the next Future Bar Training consultation and closer oversight of the programme of work. I have also been involved in marshalling our resources and assisting Oliver Hanmer in his leadership of the new ASPIRE programme, which focuses on governance, consumers and risk based regulation.
3. The last month has also seen the completion of the annual performance reviews for all staff and work to receive the results of the staff engagement survey and to plan action on the basis of it. There will be initiatives that are shared across the employee base, as well as some focused on the BSB and its individual teams.
4. I will be on annual leave from 4 - 23 July.

**Regulatory Policy**

***Standards***

5. The team, with the Standards Committee, has been considering a number of options in relation to employed barristers' (non-authorized body) scope of practice arrangements. This is in light of a number of practical difficulties the rules have been causing for employed barristers seeking to work through agencies or corporate vehicles. The Committee expects to agree a consultation on a rule change before the summer break. The Committee is also considering a number of wider issues in the light of the LSB's recent discussion paper on whether regulatory restrictions for in-house lawyers are justified.
6. The team has also been progressing work in relation to the immigration thematic review in conjunction with the Supervision department. In particular, the team has been organising a roundtable event to be hosted by the BSB in early July. The event will seek to bring together a number of stakeholders including other regulators and consumer organisations to gain a better insight into the immigration advice and services market. Information from this event will feed into the wider programme of work which will be presented to the Board later in the year in the form of a report with recommendations.
7. Planning work is being undertaken on the public and licensed access review for which evidence gathering will begin this summer. A consultation will be issued later in the year with proposals being presented to the Board towards the end of the business year.
8. The consultation paper on insurance requirements for single person entities is due to close at the end of this month. The team will analyse the results and present a report to the Board with a recommendation in July.

***Regulatory risk***

9. Following the Board's recent discussions about the developing Regulatory Risk Framework and Index, there is already an encouraging level of demand for assistance from the business with embedding the approach into key initiatives. We are planning a launch event for the risk framework and index in September and will publish them before then.
10. Recruitment for a Regulatory Risk Analyst is now complete, and we are pleased to have appointed a candidate already experienced in analysis of regulatory risk within the legal sector.
11. In the interim, the Regulatory Risk Manager is leading the development of our Risk Outlook. A project team has been established, drawing on research, regulatory policy and supervision to design an approach to development of the Outlook and undertake initial analysis.
12. The BSB's first Regulatory Risk Outlook will be a milestone publication for the organisation, providing contextual information on the market we regulate, outlining key drivers of change and highlighting priority areas of focus for the BSB.
13. The Risk Outlook will contain a combination of themes which provide an insight into both areas of immediate attention for us (ie we have evidence of current issues and detriment occurring) and some longer term concerns (where we may have anecdotal evidence but believe that the situation may worsen.)
14. We will want to outline the response that the BSB is taking to dealing with each of these priorities. For some there may be ongoing regulatory action. For others, we may not be satisfied with the evidence base currently available to use and may undertake additional research to substantiate future action.
15. The Outlook itself and engagement with profession and other stakeholders during development and launch will play a key role in helping us to gain further insight into the market and how we might more effectively be addressing problem areas.
16. We would welcome the involvement of Board and Committee members to provide market insight, objective challenge of developing analysis or validation of priority areas. Anyone interested in assisting should contact the Regulatory Risk Manager.

***Equality and Access to Justice***

17. The eleven proposed new BSB equality objectives for 2015-16 were approved at the May meeting of the Board. The objectives have now been published on the BSB website, with a detailed rationale for each objective, action plans and timescales. The Equality and Access to Justice team (E&AJ) deliver to a detailed work plan to ensure the objectives are progressed. The equality objectives that were published in 2014-15 are all either complete or on track to be completed by their respective deadlines and so have been moved into archive.
18. The E&AJ team has designed new equality impact assessment training for BSB staff members as part of the objective to ensure equality analysis is integrated into policy, projects, strategy and business plans. There will be two sessions piloted in July and further training will be delivered after this. Additionally, meetings with key project leads have taken place to deliver equality analysis across key areas of organisational change,

for example, the risk framework, ABS implementation programme and consumer project.

19. The team has met with the Equality and Diversity team at the Solicitors Regulation Authority to discuss common objectives and partnership working. It was agreed that a further joint meeting with CILEx Regulation be set up to discuss firm diversity data and the creation of a legal profession equality standard framework.
20. A meeting has been planned in early July with London-based disability specialists to progress the objective to invite diverse groups to contribute and inform our future diversity programme.
21. For the regulatory update the E&AJ team contributed a section 'Creating inclusive cultures for you, your workforce and clients' reminding the profession about Flexible Working, Equality and Diversity Policies and the Fair Access to Work rules (rC110-rC113 BSB Handbook) – with a particular emphasis on how the policies and rules apply with the occurrence of Ramadan commencing on the 17/18 June to 17th July 2015.
22. The E&AJ team organised its first Knowledge Sharing Session which was open to all BSB and Bar Council staff as well as BSB Board and Equality and Diversity Committee members; a total 60 people attended. Yvonne Coghill OBE, a former nurse and now the newly appointed Director of the Workforce Race Equality Standard at NHS England spoke at this session of the importance of diversity and inclusion and the reality of barriers facing BME people in the National Health Service. She spoke about her personal experiences in the sector and highlighted that leadership and an engaged workforce are needed to embed equality in an organisation. The E&AJ team have received very positive feedback on the session and suggestions for future diversity sessions over the next couple of months.

## **Supervision**

### ***Risk profiling of "Medium Impact" Chambers***

23. The Supervision Team have issued the second round of Supervision Returns, to enable all Medium Impact chambers to be risk profiled. This is a key deliverable in our business plan to support achievement of "satisfactory" rating by the LSB for risk-based regulation. The Return was sent to 192 Medium Impact Chambers on 22 May. Chambers have until 17 July to complete their surveys. Around 25% of Medium Impact chambers are sole practitioners and the Return has been adapted to reflect this.
24. Additional questions have been included in the areas of litigation and public access work. Answers to these questions will inform thematic review work carried out in conjunction with the Regulatory Policy Team.

### ***Immigration Thematic Review***

25. The purpose of the review is to determine whether the BSB's regulatory arrangements are fit for purpose in relation to the provision of immigration advice and services by barristers. It meets a commitment made to the LSB to carry out a review in this area. A Project Board has been established, comprising teams from across the BSB.
26. The Supervision Team will be contributing to the review by carrying out visits to chambers to contribute evidence that will inform the overall thematic review in relation to the provider side of the market. The demand/client side of the market will be covered by other evidence gathering, led by the Regulatory Policy Team.

***Supervision & PCD risk assessment of incoming information***

27. The risk-based approach is founded upon being able to identify risks within incoming information, and assess the exposure and priority to enable a proportionate response. An effective Risk Assessment process is critical to the joined-up management of risks.
28. As part of the Risk programme of work, PCD and Supervision have reviewed the way in which they currently assess incoming information and established a programme of work to support the alignment of approaches between the teams and across the organisation.

**Education and Training**

29. Two new sites for existing providers of the BPTC have been accredited from September 2015. BPP Birmingham has been accredited for 48 full-time places, and the University of Law Leeds has been accredited for 36 full-time places (although the latter will, in fact, not be running the course until 2016).
30. The first sit 2014/2015 BPTC final examination board meeting is scheduled for 26 June and results will be released on 1 July.
31. The first sit 2015 Bar Transfer Test examination board met on 4 June and 9 June (to conclude business); results were released on 12 June. The BPP Programme Leader for the Test, Paul Wetton, is standing down after a number years in the role; his replacement has yet to be appointed.
32. The centralised assessments for the BPTC have been reviewed, under the chairmanship of Prof Paul Kohler. Recommendations following the review will now be put forward to the Education & Training Committee for consideration at their meeting in July.
33. The CPD Provider Accreditation Scheme 2015 was implemented in January 2015 and approx. 440 CPD providers are now accredited. Initial monitoring of provision – newly introduced with the scheme – started in June. The scheme has been received positively by providers.

***Future Bar Training***

34. The CPD consultation was published on 3 June and will close on 31 August.
35. The Professional Statement consultation will close on 24 June 2015.
36. Maya Chopra, Legal & Policy Assistant for the Future Bar Training programme, leaves the BSB on 10 July to take up pupillage; a successor will be appointed to start in the autumn.

***Qualifications***

37. The Qualifications Committee met on 19 May 2015. It considered five applications for review. In one case, it amended the original decision, in three cases it upheld the previous decision and it adjourned consideration of one case. The Committee also considered reports on numbers of applications made to the Committee, on equality and diversity statistics, on performance against key performance indicators and on the first year of delegated decision making.



## **Professional Conduct**

### ***Staffing changes***

38. Following the departure of three members of staff on maternity leave, all three new members of staff recruited to cover the vacancies have commenced work in the PCD. Jake Armes, Professional Conduct Assistant (Assessment Team) and Opemipo Akisanya, part-time Professional Conduct Assistant (Operational Support Team) started on 27 May and 1 June 2015 respectively. Jake is a part-time student on the Graduate Diploma of Law (GDL) course and Opemipo is hoping to take up his place on the GDL course in September.
39. In the Investigations and Hearings Team, Sandhya Kapila joined the team as a Casework Supervisor on 8 June 2015. Sandhya, who is a barrister, joins the PCD from the General Chiropractic Council, where she oversaw the process of sending cases to the Investigating Committee and any subsequent disciplinary action. Prior to this, Sandhya worked in a number of other representative bodies and spent some time as a Compliance Officer in a leading chancery chambers where she advised on the steps necessary for the Chambers to ensure compliance with BSB requirements.
40. Over the next few weeks, Robert Burn, the other PCD Casework Supervisor, will be transferring to a part-time Senior Case Officer role. His replacement has been recruited and will be joining the BSB in August 2015.
41. Following the departure of the Legal Knowledge Officer in March 2015, the PCD have decided to use this vacancy to recruit a Professional Support Lawyer (Enforcement) at a higher level. Whilst the PSL will be responsible for departmental legal knowledge management, he or she will take a lead role in drafting and developing operational policies and procedures and will carry out research and analysis on new or existing points of law to keep the BSB/PCD up-to-date with legal developments affecting the regulatory sector. This new Band 3 post will report directly to the Director of Professional Conduct; provide departmental and organisation wide support; and, help to free-up resources for other conflicting priorities.

### ***Time recording***

42. Staff are continuing to record time spent on each aspect of the work of the PCD in order to provide a sound basis for establishing the cost of complaints. For accurate calculations, sufficient numbers of cases need to be recorded completely e.g. from the start of a complaint through to the conclusion. At the end of June 2015, the PCD will have recorded six months' worth of information and will review whether the number of complete cases recorded are enough for calculating purposes or whether more data is required.

### ***Disciplinary Tribunal Regulations review***

43. The Review of the Disciplinary Tribunal Regulations is now complete and a new set of Regulations have been drawn up. The consultation paper is included in the Board papers for this meeting.
44. The consultation period has been extended to 16 weeks to allow for the summer recess, after which responses will be collated and analysed with a view to a final draft of the Regulations being submitted to the Board in November 2015.

***Judicial Reviews***

45. The PCD is currently involved in seven Judicial Review proceedings.
46. One was submitted in error and is listed for directions on 23 June 2015, where it is expected to conclude. Another has been remitted to the Visitors and is listed for 25 June 2015.
47. Of the other five, four are at the permission stage and the other is awaiting listing before the Court of Appeal.

**Strategy and Communications*****Communications***

48. Since this report was prepared for the May Board meeting, the following press releases and announcements have been issued:
  - 3 June: Launch of the Future Bar Training CPD consultation. “Barristers best placed to chart their own CPD course, says bar regulator”.
49. The Board will have seen the fortnightly media coverage that the above announcements generated.
50. Angela Yin joined the team on 1 June as the new Press and Communications Officer.

***Work in Progress***

51. At the time of writing, the following pro-active communications activities are scheduled over the next few weeks and months:
  - Developing communications material in support of the upcoming publication of the BSB’s regulatory risk framework as well as working on a range of subsequent communication activity to support the risk programme.
  - Launching the Future Bar Training consultation about developments to the academic, vocational and pupillage stages of qualification
  - Supporting the launches of the consultation about Disciplinary Tribunal regulations and changes to the rules affecting employed barristers.
52. The team is working on drafting and producing the 2014/15 Annual Report.
53. Much work is being undertaken around internal communications now that *verity* (our organisation-wide staff intranet) is live. Further staff engagement activities and articles are planned, including those to support the new “ASPIRE” project. A “BSB market place” event took place on 22 June, providing all staff with an opportunity to learn more about the work of other teams in a fun way.

***Online and social media***

54. During May, 20,909 users visited the BSB website. At the time of writing, we have 11,648 followers on Twitter.

## **Business Support**

### ***Strategic Planning***

55. The executive is working up the strategic themes that the Board discussed at its April 2015 Away Day and this will be presented back to Board members at the meeting in July 2015.

### ***Governance***

56. A high level plan, with timelines and resource commitments, has been drawn up for the BSB's Governance Review, which is being discussed by Board members in the private session.

### ***Business Plan and Budget***

57. The Business Support Team is setting up the systems needed to monitor the BSB's performance against its Business Plan objectives. The suggestions made by the PRP Committee on tracking progress across quarterly reports, and weighting the activities, will be integrated into the Dashboard.
58. The 2014-15 Annual Report is currently being drafted and the PRP Committee will be discussing this in depth at its 18 June 2015.

### ***Contract Management***

59. The Business Support Team is carrying out a project to improve the way that we monitor and manage our contracts, to ensure that we achieve value for money and mitigate contractual risks. The new contracts register has been operationalised and a new contracting manual has been drafted.

### ***Fees and charges***

60. The team is preparing a consultation document on the BSB's fees and charges to and the Board will receive a copy at its July 2015 meeting.

## **Research**

### ***YCAR***

61. The Youth Court Advocacy Review is on schedule and all field work has now been completed by ICPR. Stakeholder roundtables are due to take place on the 17 and 23 June with the final report due in autumn 2015.

### ***Regulatory Risk***

62. Scoping of the risk outlook and evaluation framework have taken place. Data streams are being systematically assessed. The design of data validation criteria and systems is ongoing.

### ***Consumer engagement – change programme***

63. Preliminary literature review has been carried out and scoping exercise for research design. The research objectives will be divided into standalone phases with the first due to be completed by December 2015.

**Resources Group****Current Key Business Projects and Programme**64. ***CPD Regulation Implementation***

- Consultation published live
- Scoping underway for design and development of the QM scheme

65. ***Property Strategy 2018/19***

- The first phase of the project is underway to research the drivers and options available to us
- A timetable has been drawn up to achieve an agreed option in a business case for the end of March 2016

**The following fit underneath the umbrella of the Information Management Programme of work:**66. ***Authorisation to Practise 2015***

- Completed and Lessons Learnt completed;
- Analysis of handing the process over to business as usual is underway

67. ***Intranet***

- Intranet launched successfully on the 29 April; a positive response from the business
- Planning for phase 2 underway
- Lessons learnt underway

68. ***Human Resources Information System (HRIS)***

- Business case agreed for implementation of the HRIS during April – September 2015
- Supplier selection process in final stages – a recommendation for selection has been agreed with HRIS Project Board.

69. ***Data Cleansing***

- Project team is currently working on the key stage of completing the Data catalogue and System catalogue.
- Initial audit of the quality and integrity of data across the organisation underway in conjunction with the information architecture project
- Project team is currently working on the key stage of completing the Data catalogue and System catalogue.

70. ***Supervision and Entities regulation***

- Supervision system operational and live and well received by the team - project review underway and looking at how we can showcase the success there
- Entities Application system is phased go live during June

**71. *Alternative Business Structures***

- Planning underway for implementation project

**72. *Information Architecture – Defining the future “Integrated Solution”***

- Business process review complete; subject to a final sessions with RPS Senior Management Team. 127 Process reviewed and analysed. Business process catalogue completed.
- Initial analysis undertaken around data/information/technology requirements
- Information Architecture and business requirements in draft.

**73. *Document Management System Review***

- A report is being compiled around usage and benefits realised from the Objective Document Management System in order to derive an action plan.

**74. *Management Information***

- Business case circulated for review by key business stakeholders and programme board
- Scoping around the role required within the IT Team to provide this service underway
- Scoping around using an existing asset in the IT team entitled SSRS to give the reporting capability.

**75. *PCI Compliance***

- Initial assessment of our compliance with the payment card industry standards has taken place
- An initial scope of work is to be negotiated

**76. *IT policy development***

- IT policies are now under development in the following areas:
  - IT Policy Development: Bring Your Own Device Policy
  - Remote Working Policy
  - Equipment Policy
  - Social Media Policy
  - Cloud Policy
  - Email and Internet Policy
  - Information Security Policy
  - Data Retention

**Key Resource Group Updates****77. *Project Management Office – Richard Thompson***

All key business projects and programmes involve the Project Management Office.

***Project Management Standards Training***

78. An Introduction to Project Management Training course has been completed. The PMO is analysing feedback and looking at how it can build on this work to offer more in depth training opportunities to the organisation.

**Human Resources – Catherine Shaw**

***Performance Management***

79. The performance review window for 2014/15 is now closed. We have a number of unreturned performance review forms, mostly from RPS and RG. The deadline was 22 May 2015.
80. The moderation meeting was carried out on 28 May 2015. It was agreed that we had met our targets in terms of spread of ratings across the organisation and that there were no adverse E&D impacts of concern.
81. We have kicked off an exercise with RPS and RG to review all job descriptions and to align these to our competency framework. Lesley Hopkins is working with us on this project.

***Training and Development***

82. An external trainer facilitated two training courses on Managing Conflicting Priorities for RPS and RG. This had previously been run for the BSB.

***HR Team***

83. Elika Edwards left the Bar Council HR team at the end of April. We are recruiting for a replacement HR Administrator.

***Reward***

84. The HR team are undertaking further work on the details of our remuneration strategy going forward, including how we will implement and manage performance related pay.
85. We met with our new benefits broker who have confirmed that our pension provided by Standard Life and the current default fund within that pension are appropriate for our organisation and the staff we employ. We will now start to arrange 1-1 sessions for new joiners with the benefits broker.

***HR System and Intranet***

86. We continue to work with the PMO in respect of both these projects. We have shortlisted three potential suppliers for the HRIS system and final selection is planned for early June. The HR team met with a representative from Networx to discuss

***HR Policies***

87. The HR team are working on amendments to our Parental Leave Policy in light of recent changes in legislation in this area.

**Employee Relations**

88. People Insight launched our employee survey on 13 April 2015. They presented the results to SLT on 1 June and facilitated an action planning group on 9 June.

**HR Metrics**

- i) Recruitment – active roles

Role	Division	Open since	Status
Supervision and Authorisation Officer X2	BSB	07/10/14	DB Lenck joined 2 <sup>nd</sup> role on hold
Senior Supervision and Authorisation Officer	BSB	15/1/15	Faryal Khurram joined 13 May.
Business Support Officer X2	BSB	27/2/15	Natasha Williams joined 1 May. John Hall joins 17 July.
Assessment Manager	BSB	2/3/15	Natasha Ribeiro joined 5 May
Member Services Assistant X3	RPS	9/3/15	Jyoti Kandola joined 25 March. Jasmyn Kalikas joined 14 May. Recruiting for 3 <sup>rd</sup> role.
Relationship Manager X2	RPS	9/3/15	Advertising externally and internally
Senior Policy Officer (FTC)	BSB	20/3/15	Jonathan Slater joined 11 May
Casework Supervisor	BSB	27/3/15	Vanya Headley joins 10 Aug
Casework Supervisor (FTC)	BSB	27/3/15	Sandhya Kapila joined 8 June.
Head of Supervision and Authorisation	BSB	31/3/15	Clíodhna Judge moved to role 18 May.
Professional Conduct Assistant, operational support	BSB	31/3/15	Opemipo Akisanya joined 1 June.
Regulatory Risk Analyst	BSB	9/4/15	Offer made.
Senior Management Accountant	RG	21/4/15	Peter Edwards moved from contractor to permanent on 1 May.
Financial Controller	RG	28/4/15	Interviewing
Communications and Press Officer	BSB	28/4/15	Angela Yin joined 1 June.
Policy & Project Officer	BSB	1/5/15	Courtney Brown joined 1 June.
HR Assistant (FTC)	RG	1/5/15	Advertising externally
Senior Risk Officer	BSB	18/5/15	Advertising externally

**Records – Lisa Smith**

89. Housekeeping on our data has commenced which includes reviewing rights of audience and ensuring those who should be marked as qualified persons are updated. Records will continue to work closely with IT to ensure that they are available to assist in the IA project, for example, data cleansing which means that those records which had technical issues when renewing during Authorisation to Practise are tidied up in conjunction with IT and a developer from Advanced NFP.
90. Records will be liaising with supervision to establish the parameters for the income declaration audit in relation to the percentage of records which will be passed to supervision for audit purposes. In conjunction with Advanced NFP a programme will be developed to enable this annual audit. Records will also be contacting BMIF regarding the insurance audit.

**Finance – David Botha**

91. The final audit was completed at the end of May and the accounts will be approved in the course of June and July.
92. Revised Management accounting reports are to be rolled out starting June 2015 to enable better focus on income and cost risks and to provide better insights into our financial forecasting process this year.

**Facilities – Sam Forman**

93. Scope of works agreed and work commenced on the repair obligations to the common areas from the Basement to the Fourth Floor. The completion date for the works is Friday 19 June. All work is being carried out in the evenings and at weekends.
94. Works to the First Floor HVAC system and the electrical fixed wiring testing have been completed.
95. New tenants on floors five and six have almost completed their fit out. Floors seven and eight are about to commence their fit out.
96. Property Strategy – the project concept has been discussed and work will commence on scoping out the project.
97. CCTV has been installed in the Comms Room and the Basement bicycle area.
98. The FM team are working with Camden Climate Change Alliance (CCCA) in an attempt to reduce our carbon footprint. A mentoring workshop has taken place with CCCA and work is underway to identify, understand and quantify our carbon footprint.
99. A survey was distributed to staff regarding the Condeco booking system. Feedback received will help improve the services offered and identify any system errors that require attention.
100. The Emergency Management Team met to discuss their roles and responsibilities, frequency of meetings and recent events that had occurred in the local area.



**IS Department – Tony Cook**

***Objective DMS Review***

101. We have received the results of the staff survey and the review carried out by the Objective consultant. We are now working with Objective to understand our options to improve the system, and once this piece of work is complete we will circulate the proposal for formal review.

***Departmental Restructure***

102. A business case has been passed to the HR department along with new job descriptions for review against the Hay Grading system to gain an understanding of the costs associated with this change.

***Finance Process Review and System Requirements***

103. The Finance system process review has been completed with Finance. We have also completed the system requirements document to show how finance and their processes will potentially work in the future with the new system (CRM).

***Data Cleansing***

104. The Data Catalogue work has been completed - this has identified what data needs to be cleaned, and the potential processes and scripts that may be required to do this.
105. The System Catalogue work has been completed – this has identified what MS Access and MS excel documents could be moved to the core database (and new CRM) and those that will need cleaning.

***Information Architecture***

106. We are continuing to investigate our options and associated costs with suppliers to design our potential future infrastructure that will fulfil our business needs for the new platform and the future shape of the organisation.

**Vanessa Davies**  
**Director General BSB**  
**18 June 2015**