

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 25 May 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Alison Allden OBE
Rolande Anderson
Aidan Christie QC – items 12 to 14
Justine Davidge – by phone
Steven Haines
Zoe McLeod
Nicola Sawford
Anu Thompson
Anne Wright CBE
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council) – items 1-9
Andrew Walker QC (Vice Chairman, Bar Council) – by phone
- By invitation** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
Oliver May (Senior Policy Officer, Equality & Diversity)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
Julia Witting (Supervision Manager)
- Press:** Max Walters, Law Society Gazette
Neil Rose, Legal Futures

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting. He congratulated Naomi Ellenbogen QC on her appointment as a Deputy High Court Judge (wef 22 May 2017).

Item 2 – Apologies

2.
 - Judith Farbey QC
 - Andrew Mitchell QC
 - Adam Solomon
 - Andrew Langdon QC (Chairman, Bar Council)

Item 3 – Members’ interests and hospitality

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 23 March 2017.

Item 5 – Matters Arising

5. None.

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

6. The Board noted progress on the action list. The Board agreed that min 12a (23 Mar 17) relating to the implementation of the “Managed Pathways” approach for Future Bar Training could be removed from action list. This is because it is a long-term project which will be overseen by the FBT Programme Board and progress reports will be made on a regular basis through the Director General’s Report. This is also true of min 12g (23 Mar 17) on a review on the teaching and assessment of ethics.

JP to note

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

Item 7 – Performance Report Q4 (as at end March 2017) and Year-end 2016-2017

BSB 029 (17)

8. Anne Wright highlighted the following:
- in overall terms, the year-end report is encouraging. Project management has improved so there were fewer overruns against time or budget. Business plan activities were therefore largely delivered as planned despite the tight resourcing involved. Just four business activities will now be carried forward to the next financial year. This is a much shallower “bow-wave” of uncompleted work than has previously been the case;
 - there is still room for improvement in forward planning, in particular a greater awareness of how different projects running simultaneously can interconnect, in that each can depend on input from the same staff members. We need to continue involving staff at all levels in the planning process as well as accurately prioritising resources in the face of competing demands;
 - income for the year was 15% higher than expected (primarily due to the continuation of the Bar Course Aptitude Test and the higher than expected numbers on the BPTC);
 - expenditure was 6% less than budgeted for the year;
 - the performance indicators for Authorisations and Professional Conduct have varied through the year. Some targets have been missed but others have been exceeded. An interim manager has been appointed to assist with the backlog of work in the Authorisations team;
 - performance within Resources Group has been generally good but staffing and training issues in the Finance Department have impacted on service levels there;
 - overall staff turnover remains high (34%) but the voluntary turnover rates are lower (17%). HR has already taken steps to improve recruitment practice within the BSB management;

- the PRP Committee meeting that considered the year-end report was attended by the whole Senior Management Team. This was very useful as the Committee could discuss factors affecting performance with each Director in turn.
9. She also commented as follows:
- the dashboard and covering report identifies four areas in particular ie:
 - public and licensed access – this is now back on track following publication of the CMA’s study of the legal services market;
 - MoJ consultation on regulatory independence – this is connected to the CMA report to which the MoJ has yet to formally respond. No further progress is therefore expected in the short term;
 - assurance framework – the original timeline could not be met but the project is still proceeding and a paper on this topic appears in Part 2 of the Board’s papers;
 - risk based regulation – the timeline was interrupted due to the maternity leave of the Head of Regulatory Risk. An interim appointment has now been made and the project should now continue as planned.
10. Members commented as follows:
- the improvements in project management are very welcome though the points identified by the PRP Committee are also valid;
 - the bottom line results for income and expenditure are also pleasing;
 - high staff turnover is also experienced by the Bar Council (not just the BSB). Several former BSB staff members moved to better paid and more responsible jobs elsewhere. This is unsurprising given our small size means there are limited opportunities for internal promotion. If we remain able to attract well qualified, competent and enthusiastic staff who have a positive experience of working for us, then relatively high turnover figures may not be such a concern;
 - our point of comparison should be other regulators rather than the Bar Council. We should be cautious about assuming the BSB is a “stepping stone” for broader vocations. The quasi-legal nature of regulation is likely to attract those who may have planned careers in other areas of law but who could not, initially, obtain places there. However, some recruited in this way do build careers in regulation – it is not all a case of one way traffic back to the legal profession;
 - the key point on turnover relates to those leaving at the end of the six-month probationary period. We need to improve our recruitment practice so minimise the numbers leaving at this stage.

11. **AGREED**
to note the report.

Item 8 – Shared Parental Leave

BSB 030 (17)

12. Ewen Macleod highlighted the following:
- the title of the paper may be misleading. It reflects an earlier consultation when it was assumed it would be possible to replicate the statutory shared parental leave scheme in the BSB rules. In fact, this is too complex given the way chambers are organised (the statutory scheme was not drafted with self-employed individuals in mind). In consequence, the recommendation is that all barristers are given the same parental leave rights;

- this recommendation is more practical insofar as it is easier to achieve and excludes the considerable administrative effort that would be required to manage a shared leave scheme. Moreover it is fairer to do so and will avoid any claims for indirect discrimination which the shared scheme might otherwise have faced.
13. Oliver May confirmed that the proposed course of action will suit chambers because they do not need to change existing policies but merely extend them to all ie not just primary carers but all carers.
14. Members commented as follows:
- the recommendation is a pragmatic and sensible response to the issues identified in the paper;
 - we need to have a mechanism in place to monitor the effect of the rule change. In addition to supervision, we may consider focus groups to assess the outcomes of the policy change;
 - the paper suggests that a review of rental breaks and how these ought to apply to those returning from parental leave should be subject to a separate review. This is a good idea and is supported;
 - we need to be clear in our communications as to the nature of the policy change, given the title of the consultation implies something different.
15. Ewen Macleod accepted the latter point and confirmed that discussions had already taken place with the Communications Team. A suitably worded press release has been prepared.
16. **AGREED**
- a) to approve the proposed amendment to rule rC110.3.k as outlined in paragraph 15 of the report and to be clear in our communications as to the exact nature of this change.
 - b) to ensure that the impact of the rule change is monitored over time and reported to the Board.
 - c) to undertake a separate review of rental breaks in due course.

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note**Item 9 – Anti-Money Laundering**

BSB 031 (17)

17. Julia Witting highlighted the following
- there have been several recent consultations about anti-money laundering legislation. New Government regulations come into force from June 2017;
 - next year, the UK will be the subject of a country peer review by the Financial Action Task Force (an intergovernmental organisation established to develop policies that combat money laundering). The new regulations are a precursor to this review and form part of the Government's preparations. They affect several UK regulators including the BSB;
 - a new oversight regulator will be created for the legal and accountancy sectors ie the Office for Professional Body Supervisors ("OPBAS) which will be staffed by the Financial Supervisory Authority (FSA). The government will consult in due course about how their costs will be re-charged;
 - there will be more specific duties for the BSB concerning risk based regulation and we shall need to extend our data collection to meet our new obligations to OPBAS;

Part 1 - Public

- we have already commenced a series of engagement meetings with the various stakeholders involved including the Treasury, the interim OPBAS team and the Bar Council (which is responsible for producing relevant guidance on this topic for barristers);
 - the inherent risk posed by the Bar is assessed as low because of much of its activity does not engage the new regulations directly. However, the overall legal and financial sectors are viewed as high risk areas by Government so the level of scrutiny will be correspondingly high.
18. The following comments were made:
- the level of risk within the legal sector varies. It would help to know if the Treasury intends to modify its approach accordingly;
 - there needs to be clarity as to the roles and responsibilities for the Bar Council and BSB given the legislative base is *not*, in this case, the Legal Services Act. Our guidance to practitioners must also be very clear and be supported by an effective communications strategy;
 - this is a new and complex area. It is important that good working relations between the Bar Council and the BSB are sustained. The Bar Council has a Working Group of experts in money laundering and is keen that this expertise is made available as needed. OPBAS and the BSB needs to ensure that regulation is proportionate to risk and avoid creating unnecessary regulatory burdens;
 - recommendation 7d refers to data collation through the Authorisation to Practise process. In previous meetings, we have discussed what data could be collected in this way - questions similar to those used by the BMIF were considered as feasible. However, we may now need to re-think this because the required data needs more granularity;
 - it would help to know the level of awareness about money laundering regulations and the areas of work to which they apply. We should also bear in mind that not all those who work in the legal profession do so in a regulated capacity.
19. In response, the following comments were made:
- there is a challenge in explaining how the Bar operates and where risk lies within the legal sector. Staff turnover at the Treasury is high and staff at OPBAS have a financial rather than a legal background. Progress has been made, however, and the lines of demarcation between the BSB and Bar Council are better understood;
 - the point on data collection is acknowledged and will be covered in our forthcoming consultation paper;
 - there is considerable confusion in the profession about money laundering regulations. This is apparent from supervision returns from chambers but it tends to prompt over-compliance rather than under-compliance. The Bar Council has already produced guidance documents which will be supplemented in due course. We need to maintain this joint approach in the longer term so that practitioners consistently receive accurate advice;
 - the wider point about those working in an unregulated capacity is relevant. It could be argued that the unregulated sector poses the greatest risk yet the government has only used the existing regulation framework to address this issue. In consequence, the overall response to risk might be considered insufficient;

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- the risk lies most with those who either knowingly or unknowingly enable money laundering to occur ie the “professional enablers”. Given barristers do not handle client money, the risk of them falling into this category is correspondingly low. Notwithstanding this, the impact of any breach, however unlikely, would be very high.
20. The Board noted that the regulations require the nomination of a Responsible Officer. This will be the Director General (though day to day work will be carried out by the Supervision Team). The Board also agreed to appoint Nicola Sawford as its own advocate for the anti-money laundering regulations.
21. **AGREED**
- a) to note the following:
- (i) the Government’s intention to create a new oversight regulator called the Office for Professional Body Supervisors (“OPBAS”) and our approach to engagement with the interim OPBAS team.
 - (ii) the preparations that are underway for the 2018 Financial Action Task Force Mutual Evaluation Review (FATF MER).
 - (iii) the new money laundering regulations (MLRs), which will be enacted in June 2017, and the obligations that it places on the BSB as Supervisor.
 - (iv) our intention to collect practice area information through the Authorisation to Practise process in 2018, to facilitate compliance with our obligations to:
 - develop a robust risk assessment and supervise regulatory risks; and
 - provide a register of Trust and Company Service Providers to HMRC.
 - (v) that this will help to provide evidence so that OPBAS is able calculate an appropriate basis to allocate its costs. *Note - the Board previously agreed (in March) to consult on changing the BSB’s rules to require barristers to disclose their areas of practice with a view to implementing new procedures as part of the 2018-19 Authorisation to Practise process.*
 - (vi) the requirement, and our approach, to develop joint legal sector guidance.
 - (vii) that the Director General will be the nominated Responsible Officer for the purposes of AML/CTF Supervision (as required under the new MLRs), with day to day operational management in the Regulatory Assurance Department’s Supervision team.
 - (viii) our approach to engaging with HM Treasury (“HMT”) to develop a National Risk Assessment (“NRA”).
 - (ix) our approach to working with the Bar Council to help raise awareness and ensure that barristers can engage in an informed way.
- b) to appoint Nicola Sawford as the Board’s representative and advocate for matters relating to anti-money laundering regulations.

**JWi to
note**

Item 10 – Chair’s Report on Visits and Meetings: May 2017
BSB 032 (17)

22. **AGREED**
to note the report.

Item 11 – Director General’s Report

BSB 033 (17)

23. Vanessa Davies highlighted the following:
- the BSB has now authorised the first of its alternative business structure (ABS) applicants;
 - The Professional Conduct Department is now fully staffed following successful recruitment to several vacant positions.
24. The Chair noted the meeting with the Legal Services Ombudsman on 26 April 2017. This involved Board Members from both LeO and the BSB and was a very constructive and mutually beneficial event.
25. Zoe McLeod commented on her attendance at a roundtable meeting on 25 April 2017 with 13 consumer organisations and regulators. This focused on immigration and was well received by those who attended. For many, it was the first time that a regulator had instigated engagement in this way. The key theme was the need for “joined up” thinking between regulators to achieve better coherence and consistency.
26. **AGREED**
to note the report.

Item 12 – Any Other Business**Next Steps on Future Bar Training (Authorisation Framework and Inns Review)**

BSB 034 (17)

27. The Chair referred to the discussion on Future Bar Training (FBT) at the last meeting and referred Members to the update paper which set out the current position.
28. Vanessa Davies commented as follows:
- some internal changes to accountabilities have been made ie the Director General is now the Programme Sponsor for Future Bar Training;
 - five key projects that form the next phase of the programme (as described in paragraph 3 of the report);
 - a meeting with BPTC providers takes place on 26 May 2017 and the FBT Programme Board next meets on 7 June 2017
 - the BSB and SRA will both participate in a public meeting about the FBT on 13 June 2017. This has been organised by the Westminster Legal Policy Forum. The debate will continue at a further BSB-run seminar on 19 June 2017 at the Grange Holborn Hotel.
 - the next major FBT paper for the Board will be presented at its July meeting with the aim of finalising a working draft of the authorisation framework by September 2017.
29. **AGREED**
to note the report.

Item 13 – Date of next meetings

30. Thursday 22 June 2017.

Item 14 – Private Session

31. 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 – 23 March 2017 (Annex A).
 - (2) Matters arising.
 - (3) Part 2 Action points and progress (Annex B).
 - (4) Corporate Risk Register.
 - (5) Assurance Framework Update.
 - (6) Summary Report from Board Away Day – April 2017.
 - (7) Annual Communications Team Metrics.
 - (8) Revision to Joint Standing Orders.
 - (9) Any other private business:
 - Revision of titles of Chair (and Vice Chair) of the Bar Council and Bar Standards Board.
 - (10) Review of the Board meeting in terms of conduct and outcomes.
32. The meeting finished at 5.30 pm.