

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 27 October 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair) (items 7 - 14)
Rolande Anderson
Rob Behrens CBE
Aidan Christie QC (items 7 - 14)
Malcolm Cohen
Judith Farbey QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford
Anu Thompson
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Chantal-Aimée Doerries QC (Chairman, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
- BSB Executive in attendance:** Viki Calais (Head of Corporate Services)
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 Regulatory Policy)
John Picken (Governance Officer)
Rob Wall (Head of Policy Programmes)
Wilf White (Director of Communications and Public Engagement)
- Observers:** Stephen Redmond (Chair, Independent Appointments Panel)
Bronwen Curtis CBE (Independent Member, Independent Appointments Panel)
Jacqui Francis (Independent Member, Independent Appointments Panel)

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular Stephen Redmond, Bronwen Curtis CBE and Jacqui Francis from the BSB's Independent Appointments Panel.

Item 2 – Apologies

2.
 - Justine Davidge
 - Andrew Mitchell QC
 - Adam Solomon

Item 3 – Members' interests and hospitality

3. None.

Part 1 - Public

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 29 September 2016.

Item 5 – Matters Arising

5. The Chair asked for an update on two items ie:
- recommendations from the Independent Observer’s report on E&D monitoring and training (minutes 11 and 13);
 - the decision to target Barristers Clerks, Head of Chambers and Chief Clerks in promoting the new CPD scheme (minute 22).
6. Rolande Anderson also asked about record keeping on E&D training. It was apparent from the previous meeting that this had not been properly managed in the past.
7. In response, the following comments were made:
- E&D training records for Board and Committee members have now been updated following a survey and new procedures will be instituted as regards future record keeping. Dates have been agreed for those who have yet to complete the course;
 - CPD roadshows are underway and specific meetings have been arranged with the Institute of Barristers Clerks (IBC) and the Legal Practice Managers Association (LMPA);
 - roadshow attendees have included Head of Practice and the Learning and Development Managers of larger sets of chambers. We have also made a commitment to issue relevant guidance materials to Heads of Chambers;
 - in addition, the following related action has been taken:
 - Specialist Bar Associations have been informed;
 - a webinar on CPD changes will take place on 10 November 2016;
 - some chambers have requested specialist briefings and these will be undertaken in due course.
8. Judith Farbey QC asked for a copy of the material used at CPD roadshows. She is chairing a CPD day at Middle Temple in November 2016.
9. **AGREED**
- a) to note the above updates.
 - b) to forward CPD roadshow material to Judith Farbey QC.

OH

Item 6a – Action points and progress

10. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

11. The Board noted the forward agenda list. In response to questions about the proposed agenda for November 2016 and December Away Day, the following comments were made:
- the Away Day agenda is likely to include items on:
 - prioritisation of regulatory risks;
 - progress on the strategic plan;
 - next steps of governance reform, likely to include discussion on Board appraisal and development;
 - the November agenda includes an item on international working with the theme of ensuring that our regulatory work keeps pace with the globalisation of the profession. It is also reflected in the BSB’s strategic plan. The aim will be to develop a suitable protocol in association with the Bar Council to avoid any duplication of effort.

JP to
note

Item 7 – Amending the scope of in-house employed practice

BSB 073 (16)

12. Ewen Macleod highlighted the following:
- the paper proposes a revised approach to the BSB's earlier consultation on amending the definition of "employed barrister (non-authorised body)". This follows helpful feedback from both the Bar Council and the Bar Association for Commerce, Finance and Industry (BACFI);
 - the proposal is now to extend the existing rule (rS39) but in more specific terms than originally envisaged. The effect will be to regularise what is already the BSB's standard response of issuing waivers to those barristers who wish to work outside traditional "employed practice" as it is currently defined;
 - a Task Completion Group will be established to oversee the associated guidance and to ensure there are no unintended consequences of the rule change prior to making the relevant application to the LSB.
13. In response to a question about feedback from BACFI, Ewen Macleod commented as follows:
- the revised proposal may not go as far as BACFI may have wished but it follows the same direction;
 - if approved, the new rule would reduce the need for barristers to apply for waivers than currently is the case;
 - BACFI will be informed of the Board's view following the meeting.
14. Judith Farbey QC drew attention to feedback on risks associated with broadening the definition as set out in paragraphs 26-28 of Annex B to the paper. She advised that the Executive take this into account and accordingly proceed with due caution. This was acknowledged and agreed. **EM to note**
15. **AGREED**
- a) to note the responses to the consultation summarised at Annex B of the report.
 - b) to make the rule change suggested at paragraph 26 of the report, subject to further informal discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance and confirm that no further consequential changes are needed. **EM**

Item 8 – Statutory Intervention

BSB 074 (16)

16. Rob Wall highlighted the following:
- subject to Parliamentary approval of its designation as a licensing authority, the BSB will acquire statutory powers of intervention for the alternative business structures (ABSs) it regulates;
 - this is the first time that the BSB will have such powers, though other regulators have them already;
 - the proposed intervention strategy (Annex A) builds on the core principles agreed by the Board in July 2016. This incorporates:
 - development of intervention procedures and guidance;
 - proposals to amend the scheme of delegation to empower the Director General to authorise intervention action;
 - selection of two intervention agents following a tendering exercise;
 - development of document management procedures, staff training and a communications plan;
 - the scope for BSB intervention will extend to other authorised persons once the proposed s69 Order is ratified.

Part 1 - Public

17. Members commented as follows:
- the Board as a whole should be informed of a decision to intervene, not just the Chair, so that Members are aware of the circumstances prior to press reportage;
 - some circumstances may arise which require a rapid response. It would be helpful to know if the process has sufficient flexibility to cope with this;
 - the process as described does not explain how intervention is monitored as it proceeds.
18. In response the following comments were made:
- informing just the Chair about decisions to intervene is thought appropriate in view of the need for speed and confidentiality;
 - there is scope for the Director General to delegate authority to a Director in exceptional circumstances. This should afford the flexibility to achieve a rapid response. In addition, having two intervention agents makes it possible to respond to a situation where two interventions are required at the same time;
 - a senior member of staff will be operationally involved throughout the intervention process, so monitoring will take place through that means.
19. In respect of the first point, the Board agreed that Members should be informed in addition to the Chair but they should refer enquiries to the relevant senior manager, rather than responding with press lines. In addition Members appreciated that this type of information can only be shared in a limited way.
20. **AGREED**
- a) to approve the intervention strategy at Annex A of the report subject to an amendment in the notification of intervention decisions such that all Board Members are included.
 - b) that the Director General be delegated decision making authority on intervention as set out in Annex A to the report.
 - c) to note the additional work undertaken to date (cf. min 16 above).

RW

Item 9 – Bar Council Standing Orders – proposed amendments

BSB 075 (16)

21. Vanessa Davies advised the Board on proposed changes to the Bar Council's Standing Orders as they relate to appointment procedures for bodies where there is joint representation ie Finance Committee, Budget Review Groups Emoluments Committee, Chairmen's Committee and Audit Committee.

22. **AGREED**

- a) to endorse the proposed appointments process and for its inclusion in the Standing Orders for joint committees.
- b) to endorse the changes to the Standing Orders as set out in the Annex to the report regarding the appointment of non-ex officio positions.

RF to
inform NZ**Item 10 – Chair's Report on Visits and Meetings: October 2016**

BSB 076 (16)

23. **AGREED**

to note the report.

24. **Note:** the paper presented to the Board omitted one calendar entry in error ie:
"2 October - attendance at a Reception hosted by the Bar Council at the Temple Church followed by the Dinner jointly hosted by the Chairman of the Bar and the President of the Law Society at Middle Temple"

25. For the public record this is now included in the report published on the BSB's website.

Item 11 – Director General's Report

BSB 077 (16)

26. Vanessa Davies highlighted the following:
- the CPD roadshows which have proved to be successful in engaging the profession;
 - the Future Bar Training (FBT) roadshows which are now underway.
27. Rolande Anderson attended one of the early FBT events and commented it had proved a useful exercise, particularly in terms of resolving misunderstandings on the part of attendees that final decisions had been made. In fact, this is part of an ongoing conversation to identify practical means to achieve greater flexibility in the path to qualification.

28. **AGREED**
to note the report.

Item 14 – Any Other Business

29. None.

Item 15 – Date of next meeting

30. Thursday 24 November 2016.

Item 16 – 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;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) Centralised assessment of incoming information
 - (5) Independent regulatory decision making at the Bar Standards Board
 - (6) Professional Indemnity Insurance (PII)
 - (7) Communications and Public Engagement Strategy
 - (8) Professional Conduct in relation to taxation
 - (9) Any other private business;
 - (10) Review of the Board meeting in terms of conduct and outcomes.
32. The meeting finished at 5.05 pm.