

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public

Minutes of the Bar Standards Board meeting
 Thursday 23 February 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
 Rob Behrens CBE
 Aidan Christie QC
 Justine Davidge
 Judith Farbey QC
 Steven Haines
 Zoe McLeod
 Andrew Mitchell QC
 Nicola Sawford
 Adam Solomon
 Anne Wright CBE
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – by phone
 James Wakefield (Director, COIC)
 Andrew Walker QC (Vice Chairman, Bar Council)
- BSB Executive in attendance:** Sam Benton (Professional Support Lawyer)
 Vanessa Davies (Director General)
 Rebecca Forbes (Governance Manager)
 Oliver Hanmer (Director of Regulatory Assurance)
 Sara Jagger (Director of Professional Conduct)
 Ewen Macleod (Director of Strategy and Policy)
 Ruby Newton (Senior Authorisation & Supervision Officer)
 John Picken (Governance Officer)
 Wilf White (Director of Communications and Public Engagement)
 Angela Yin (Communications & Press Officer).
- Press:** Max Walters, Law Society Gazette

Item 1 – Welcome

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

Item 2 – Apologies

2.
 - Anu Thompson
 - Andrew Langdon QC (Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
 - Viki Calais (Head of Corporate Services)

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 26 January 2017.

Item 5 – Matters Arising

5. None.

Item 6a – Action points and progress

6. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

Item 7 – Performance Report Q3 (as at end December 2016)

BSB 012 (17)

8. Anne Wright highlighted the following:
- eight Business Plan activities are currently behind target delivery times as identified on the dashboard (Annex 1). Several of these are due to “reprioritisation” ie diversion of resources to urgent projects which then has a knock-on effect for other scheduled programmes;
 - the key messages for the Board to note are:
 - a caveat to the financial statement provided. There was not time for a re-forecast to be completed prior to the PRP Committee’s meeting. The management accounts (Annex 2) should therefore be read in this context;
 - continued close monitoring of the Future Bar Training (FBT) programme is required. This is a complex project which has significant impact on staff resources and needs to be managed within particular timelines. This will need to be reflected in the 2017/18 business plan;
 - staff turnover remains high. The committee received an analysis of leavers from the Director of HR. This identified several areas to explain the figures, in particular, high levels of short term contracts including those for maternity cover and higher than expected numbers leaving during or at the conclusion of their probationary period.
9. She also thanked Dan Burraway (Corporate Support Manager) who had covered for two absent colleagues in that Department during the period when the performance report was prepared.
10. The following comments were made:
- the report identifies several missed KPI targets; in particular:
 - Authorisations – applications completed within 6 weeks;
 - Professional Conduct – percentage of external complaints concluded or referred to disciplinary action within 8 months.
 - it is not clear if performance has been affected by variances in the volume of incoming work;
 - there are limits to the amount of “reprioritisation” that can be undertaken without detrimentally affecting the overall business plan. Future Bar Training is a key programme but it is not clear if resources are ring-fenced for it.

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11. In response the following comments were made:
- the figures for Authorisations were recently discussed by the Qualifications Committee. The salient points were:
 - the reasons for the shortfall are now largely historic and unlikely to recur collectively again (a mixture of staffing difficulties, backlogs and implementation of new governance arrangements);
 - some applications are more complex than others and therefore require more time to complete;
 - the completion figures for authorisations within 8 weeks were significantly better, notwithstanding the above issues;
 - the KPIs for Professional Conduct were affected by the closure of several long standing cases. Whilst this is welcome it nevertheless impacts on these figures in a detrimental way;
 - the volume of work does vary but both the Regulatory Assurance and Professional Conduct Departments can address these ebbs and flows in a flexible manner by adapting staffing resources accordingly. The same is true of the FBT programme for which resources are not specifically ring-fenced but can be allocated on an “as required” basis;
 - notwithstanding the above, the Professional Conduct Department has been running “lean” for some time due to vacancies created through staff turnover. This means it has been less resilient in terms of its capacity to consistently meet existing KPIs. A full complement of staff sustained over a prolonged period would be able to meet these targets.
12. **AGREED**
to note the report.
- Item 8 – Youth Proceedings Advocacy Review Update: Youth Proceedings Competencies and Guidance**
BSB 013 (17)
13. Oliver Hanmer highlighted the following:
- the report reflects a significant level of engagement by the BSB with a wide range of stakeholders over the last 18 months. It sets out a three phase action plan to improve advocacy within the youth justice sector;
 - the first of these is to publish the relevant competencies and guidance information (Annex 1 of the paper) followed by stakeholder engagement;
 - subsequent phases include further consumer oriented publications, compulsory registration of Youth Court Advocates and embedding this approach within the BSB’s wider quality assurance strategy;
 - the value of compulsory registration is that the BSB can then identify who is undertaking this work and ensure standards are met by monitoring CPD choices.
14. He also referred to the Ministry of Justice (MoJ). The salient points were:
- the MoJ is not prioritising the findings of the Taylor Review of the Youth Justice System in England and Wales (Dec 2016). This is unfortunate as this publication had given extra momentum to the BSB’s work in this area;
 - it is also not seeking to raise the fee for Youth Court work despite the findings of the Review that lower payment was a key factor for the perception that these cases are of lesser value compared to Crown Court work.
15. Members commented as follows:
- it is pleasing to see the progress made on an issue which directly affects a vulnerable group;
 - it would help to know more about the communications strategy we have in place;

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- it would be useful to hear about the proposed procedures for the registration of Youth Court Advocates;
 - the guidance at 4.3 (Annex 1) states that barristers should be able to “empathise, understand and communicate effectively...”. It also quotes a range of protected characteristics in this regard. The language here needs to be reconsidered, in particular the reference to empathy. This is not possible to measure in any meaningful way. The overriding principle is that barristers must represent their clients’ interests in the best possible way at all times;
 - there is a reference to ‘employ other available services” at 4.3.2 (Annex 1) in the context of barristers supporting young people for whom direct communication is difficult. It is not clear what is meant here and some clarification would be welcome;
 - it would be helpful to know the extent of involvement from young people in the design of consumer oriented publications and the best approach for those clients for whom reading English is a barrier;
 - it is not clear how the impact of this work will be measured;
 - it would help to know if this topic is covered on the current BPTC curriculum or otherwise what training opportunities there are available.
16. In response, the following comments were made:
- the communications strategy includes:
 - a press release for 24 February 2017;
 - articles in Counsel magazine;
 - a series of talks at related events / seminars;
 - liaison with the national press;
 - the procedures for registration are being drafted and this is on the premise that barristers will be able to register retrospectively. We want to avoid creating any barriers that would frustrate their participation in these cases;
 - the wording could be amended. It is primarily a language issue - empathy is not synonymous with sympathy but it is open to misinterpretation. To show understanding is broader and remains relevant in the context of protected characteristics;
 - the research work undertaken included direct contact with young people and the client material produced reflects that experience;
 - the impact of the work will be measured indirectly through feedback from bodies such as the Magistrates Association. We could also complete some comparative research in 18-24 months’ time;
 - youth court work is a niche area and does not feature in the more general BPTC curriculum. There are specialist training providers available, however, and part of the project is to raise awareness of this within the Bar. In addition, there are alternative opportunities within the voluntary sector.
17. **AGREED**
- a) to approve the Youth Proceedings competencies and guidance subject to amendments to paragraphs 4.3 and 4.3.2 as identified above.
 - b) to note the continuing work on the Youth Proceedings Advocacy Review.

OH

Item 9 – Future Bar Training: Consultation update

BSB 014 (17)

18. **AGREED**
to note the report.

Item 10 – Chair’s Report on Visits and Meetings: February 2017

BSB 015 (17)

19. **AGREED**
to note the report.

Item 11 – Director General’s Report

BSB 016 (17)

20. Vanessa Davies commented as follows:
- the report was written in advance of the proposed follow-up workshop on CPD referred to in paragraph 3. This was, in fact, postponed;
 - the latest revision to the Handbook means it will be in “gender neutral” form;
 - the responses to the Future Bar Training consultation have been made available via an online site for the benefit of Board Members. This includes all those from Specialist Bar Associations.

21. **AGREED**
to note the report.

Item 12 – Any Other Business

22. None.

Item 13 – Date of next meeting

23. Thursday 23 March 2017.

Item 14 – Private Session

24. 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) Corporate Risk Register;
 - (5) FBT – arrangements for March meeting;
 - (6) Review of the standard of proof applied in professional misconduct proceedings;
 - (7) Update on Brexit implications – Bar Council proposal;
 - (8) Any other private business;
 - (9) Review of the Board meeting in terms of conduct and outcomes.

25. The meeting finished at 5.30 pm.