

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*



## Meeting of the Bar Standards Board

Thursday 22 November 2018, 5.00 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 / announcements (5.00 pm)</b>	Chair	
2.	<b>Apologies</b>	Chair	
3.	<b>Members' interests and hospitality</b>	Chair	
4.	<b>Approval of Part 1 (public) minutes</b>		
	• 25 October 2018	Annex A	<b>3-5</b>
5.	a) <b>Matters arising and action points</b>	Annex B	<b>7</b>
	b) <b>Forward agenda</b>	Annex C	<b>9</b>
6.	<b>Education &amp; Training Committee:</b>		
	a) <b>Annual Report for 2018</b>	BSB 057 (18)	<b>11-14</b>
	b) <b>The future of the Education &amp; Training Committee (5.05 pm)</b>	BSB 058 (18)	<b>15-18</b>
7.	<b>Continuing Professional Development (CPD) Compliance (5.15 pm)</b>	BSB 059 (18)	<b>19-22</b>
8.	<b>Authorisations Review Panel Annual Report 2017/2018 (5.30 pm)</b>	BSB 060 (18)	<b>23-25</b>
9.	<b>Mid-year report of the Planning, Resource and Performance Committee (PRP) (5.40 pm)</b>	BSB 061 (18)	<b>27-33</b>
10.	<b>Amendment of Scheme of Delegations following approval of exemption application for the s69 Order changes (5.50 pm)</b>	BSB 062 (18)	<b>35-39</b>
11.	<b>Chair's Report on Visits and External Meetings from November 2018 (*)</b>	BSB 063 (18)	<b>41</b>

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

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*

12. **Any other business**  
(6.00 pm)
13. **Dates of next meetings**
  - Thursday 13 December 2018 (Away Day)
  - Thursday 31 January 2019 (full Board meeting)
14. **Private Session**

**John Picken**  
**Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
15 November 2018

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

**BSB 221118**

<p>BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

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

Thursday 25 October 2018, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

**Present:** Baroness Tessa Blackstone (Chair)  
Alison Alden OBE  
Aidan Christie QC  
Lara Fielden  
Zoe McLeod (items 7 – 11)  
Nicola Sawford  
Kathryn Stone OBE  
Anu Thompson  
Stephen Thornton CBE

*Note: Naomi Ellenbogen QC was not present at Part 1 of the meeting but did attend Part 2.*

**By invitation:** Malcolm Cree (Chief Executive, Bar Council) – *via Star Leaf*

**BSB Executive in attendance:** Jake Armes (Project & Operations Officer) – items 1-6  
Vanessa Davies (Director General)  
Rebecca Forbes (Governance Manager)  
Sara Jagger (Director of Professional Conduct)  
Michael Jampel (Head of Regulatory Policy)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
John Picken (Governance Officer)  
Wilf White (Director of Communications and Public Engagement)  
Christopher Young (Policy Manager) – items 1-7

**Press:** Max Walters (Law Society Gazette)

**Item 1 – Welcome**

1. Tessa Blackstone welcomed members to the meeting.

**Item 2 – Apologies**

- Justine Davidge
- Steven Haines
- Andrew Mitchell QC
- Adam Solomon QC
- James Wakefield (Director, COIC)
- Andrew Walker QC (Chair, Bar Council)
- Richard Atkins QC (Vice Chair, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- Mark Hatcher (Special Adviser to the Chair of the Bar Council)

**Item 3 – Members' interests and hospitality**

2. None.

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

3. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 27 September 2018.

**Item 5a – Matters arising and action points (Annex B)**

4. The Board noted the updates to the action list.

**Item 5b – Forward Agenda (Annex C)**

5. Members noted the forward agenda list. Vanessa Davies confirmed the list will be further adjusted as new reporting cycles are finalised.

**Item 6 – Modernising regulatory decision making – approval of revised Standing Orders and relevant BSB Handbook Regulations**

BSB 052 (18)

6. Sara Jagger referred to the revisions proposed for the Standing Orders and the BSB Handbook. These are a necessary pre-cursor to creation of the BSB's new regulatory decision-making regime (the policy for which has previously been agreed by the Board).
7. She advised on a further minor adjustment ie: the text proposed for deletion at paragraph 35 of Annex A and paragraph 32 of Annex B will now be reinstated. This follows feedback from the Bar Council's General Management Council on a paper about wider changes to the BSB's constitution.
8. She also confirmed that the Professional Conduct Committee will be disestablished on 31 May 2019 (not 30 May as stated in paragraph 11 of the covering report).

**9. AGREED**

- a) to approve the revised BSB Standing Orders 2018 to come into force on 5 November 2018 (Annex A) and the BSB Standing Orders 2019 to come into force on 1 June 2019 (Annex B). **RF**
- b) to approve the Enforcement Decision Regulations (Annex C) and the associated consequential amendments to the BSB Handbook (Annex D) for approval by the Legal Services Board (LSB). **SJ**
- c) to authorise the Director General of the BSB to approve, if necessary, any further minor amendments to the Enforcement Decision Regulations and the associated consequential amendments, in advance of the LSB application and / or in response to enquiries from the LSB once the application has been made. **VLD to note**

**Item 7 – Future Bar Training: Approval of new Part 4 Qualification Rules**

BSB 053 (18)

10. Ewen Macleod reported comments from Justine Davidge, who was unable to attend. The salient points were:
- the proposed Rules were drafted after due consultation and the Education & Training Committee now recommends them for adoption;
  - the Rules will be supplemented by a Memorandum of Understanding to clarify the role of the Inns;
  - one recommendation concerns the accreditation of pupil supervisors by the Inns of Court. This has previously been considered by the Board, but not fully settled.

## Part 1 - Public

11. In response to questions from Board Members, the following comments were made:
- the intention of rQ40 concerning appeals is that it should only relate to individuals seeking to qualify as barristers. It does not relate to authorised educational training organisations (AETOs) and final checks will be undertaken to ensure clarity on this point;
  - AETOs will be responsible for the quality assurance of their nominated pupil supervisors. Authorisation applications to the BSB must confirm that those nominated are suitable and competent for the role. Though the Inns will no longer be mandated to authorise pupil supervisors, the Committee strongly encourages them to offer pupil supervisor training to AETOs and any additional assistance to quality assure pupil supervisors;
  - the names of pupil supervisors will still need to be confirmed with the BSB and will still appear in the online public register of barristers;
  - the BSB has already communicated with training organisations about AETO registration (so that they can continue providing pupillages) but more is required as response rates have so far been slow;
  - a series of roadshows on changes to pupillage will be held between November 2018 – January 2019.
- CY to  
note
12. **AGREED**
- a) to adopt the draft Part 4 Qualifications Rules set out in Annex A including the proposals on the assurance of pupil supervisors.
  - b) to request that the dates of pupillage roadshows be circulated to Board Members.
- WW
- Item 8 – Annual report of the Governance, Risk & Audit (GRA) Committee**  
BSB 054 (18)
13. The Board **noted** the report.
- Item 9 – Chair’s Report on Visits and Meetings: October 2018**  
BSB 055 (18)
14. The Board **noted** the report.
- Item 10 – Any Other Business**
15. BSB Strategic Plan Consultation Event  
A flyer for this event was tabled at the meeting. It takes place on Thursday 6 December 2018 at the BSB offices (arrival time 5.00 pm for a 5.30 pm start, ending 7.00 pm). Members are welcome to attend.
- Item 11 – Date of next meeting**
16. • Thursday 22 November 2018.
- Item 12 – Private Session**
17. 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 – 19 July 2018;
  - (2) Matters arising and action points – Part 2;
  - (3) Quarterly Strategic Update from the Director General;
  - (4) Budget update from the Finance Committee;
  - (5) Any other private business.
18. The meeting finished at 5.25 pm.



**BSB – List of Part 1 Actions  
22 November 2018**

*(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
9a (25/10/18)	update the latest version of the BSB Standing Orders 2018 on website	Rebecca Forbes	5 Nov 18	6/11/18	<b>Completed</b> – November 2018 version of Standing Orders published on website
9b (25/10/18)	seek a rule change application with the LSB for proposed revisions to the Enforcement Decision Regulations and the associated consequential amendments to the BSB Handbook	Sara Jagger	by early Feb 19	13/11/18	<b>Change to deadline</b> – as the new Regulatory Operations arrangements are not now due to be come into force until 1 June 2019, the application to the LSB is scheduled for early February 2019.
12b (25/10/18)	circulate the dates of Pupillage roadshows to Board Members	Wilf White	immediate	26/10/18	<b>Completed</b> – flyer emailed to Members
9b (27/09/18)	engage with stakeholders to improve access to information for litigants-in-person about the UK legal system including the adversarial nature of the barrister's role	Wilf White	before Aug 19	13/11/18	<b>Ongoing</b> – planning to speak with stakeholders involved with Legal Choices website
12 (27/09/18)	amend the Code of Conduct for BSB Members and publish on the BSB website	Rebecca Forbes	before 25 Oct 18	6/11/18  18/10/18	<b>Completed</b> – Code of Conduct published on the website on 2 November.  <b>In hand for completion by due date</b> – amendment to be confirmed with member who made suggestion, and revised Code will then be published and disseminated.





## Forward Agendas

### Thursday 13 Dec 2018 (Board Away Day)

- Impact of technology on legal services and regulation
- Legal aid debate

### Thursday 31 Jan 19

- CMA: response to rule change consultation on new transparency requirements
- Annual Diversity data report
- Strategic update from the Director General
- Corporate Risk Report (summary)
- Potential Rule Change Following Consultation (SO&R&B data)
- AETO Authorisation and Supervision Fees and Charges

### Thursday 28 Mar 19 (3.30 pm Joint meeting with LeO; 5 pm Full Board meeting)

- Business Plan for 2019-20
- BSB Research strategy 2019-21
- EIA of Equality Rules
- Strategic update from the Director General (including communications and media strategy)
- Scope of practice consultation
- Regulatory Operations Programme – update on progress, approval of prospective updated Scheme of Delegations and Commissioner's new sub-delegations
- Consolidated Risk Report

### Thursday 2 May 19 (BOARD AWAY DAY)

- Risk Index 2019 and appetite setting

### Thursday 13 June 19

- Strategic update from the Director General
- End of Year Performance Report – PRP Committee

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### Thursday 18 Jul 19

- 2018/19 Enforcement Report (summary)
- Corporate Risk Report (summary)

### Wednesday 18 Sept 19 (Joint Meeting with the LSB)

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### Thursday 26 Sept 19

- Strategic update from the Director General
- Consolidated Risk Report (summary)

### Thursday 31 Oct 19

- GRA Annual Report
- Mid Year report – PRP Committee

### Thursday 28 Nov 19 (BOARD AWAY DAY)

### Thursday 30 Jan 20

- Strategic update from the Director General
- Corporate Risk Report (summary)

### Thursday 26 Mar 20

- Strategic update from the Director General
- Consolidated Risk Report



**EDUCATION AND TRAINING COMMITTEE: ANNUAL REPORT FOR 2018****Status**

1. For noting.

**Executive Summary**

2. The Education and Training Committee (the Committee) reviewed its Terms of Reference in November 2017. The Terms of Reference state that the Committee provides specialist oversight of the regulation of education and training on behalf of the Board. In the year under review, its work has mainly been to endorse to the Board substantive policy proposals within the Future Bar Training programme of work.
3. This report on the work of the Committee covers the period since it last reported to the Board, in November 2017. The Committee met 8 times during this period.
4. Key activities were in relation to policy proposals in the following areas:
  - Common Protocol on the Academic Stage of training
  - Curriculum and Assessments Review
  - Authorisation Framework
  - Role of the Inns – Development of a MOU
  - Transitioning Pupillage Training Organisations
  - Pupil Supervisor Accreditation
  - Pupillage Recruitment and Advertising
  - DBS checks
  - Pilot implementation of the Professional Statement in pupillage training

The Committee also considered matters relating to two further areas of work not directly emanating from consultations during the period under review, but following on from the work of the Committee in previous years:

- Continuing Professional Development
- Youth Court Advocacy in education and training.

The Committee has kept its longevity under review and has made a separate recommendation to the Board

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

**Comment**Membership for 2018*Members*

Justine Davidge (Chair, Barrister, Board Member)  
 Judith Farbey QC (Barrister, Board Member)  
 Alison Alden OBE (Lay, Board Member)  
 Lara Fielden (Lay, Board Member)  
 Kathryn Stone OBE (Lay, Board Member)  
 Elizabeth Cunningham (Legal Academic, Lay Member)  
 Professor Nigel Duncan (Legal Academic, Lay Member)  
 Andrew Clemes (Barrister Member)

6. Elizabeth Cunningham left the Committee in June 2018 and Judith Farbey QC left in July 2018. Andrew Clemes joined in October 2018.

Future Bar Training Policy Development

7. Since the review of its terms of reference in November 2017, the Committee has ceased to have any oversight of business as usual activities of Training Supervision and Examinations, or of Authorisations, but has considered the substantive policy decisions concerning these areas in relation to Future Bar Training.
8. The Committee reviewed in detail the outcomes of FBT consultations on policy changes and the policy recommendations arising from these, prior to consideration by the Board.

Common Protocol on the Academic Stage

9. The Committee noted the policy statement in February 2018, which was jointly drafted with the SRA stating the BSB's intent to withdraw from the joint statement. The Committee was keen to ensure that the Common Protocol should be clearly targeted at universities and not students, and that a range of alternative means of communication should be used for other audiences.

Curriculum and Assessments Review

10. The Committee considered the Curriculum and Assessment Strategy in April 2018 and agreed that the strategy would enable prospective barristers to meet the requirements of the Professional Statement for Barristers Incorporating the Threshold Standard and Competences (2016) by following permitted pathways at Authorised Education and Training Organisations (AETOs).

Authorisation Framework

11. The Committee reviewed the Authorisation Framework in detail in April 2018 and the revised version in September 2018. The Committee agreed that the revised Authorisation Framework gives effect to the Board's policy positions on FBT and agreed that it made sense to have the substance of what was in the evidence documents embedded into the Authorisation Framework, rather than as separate documents, and to have guidance accompanying the Authorisation Framework that could be amended more easily.

Role of the Inns – Development of a Memorandum of Understanding

12. The Committee has reviewed and provided input into the development and progress of the MOU on various occasions throughout 2018. The Committee will be reviewing the final version at the November 2018 meeting before the planned date for the Inns to sign it off on 5 December 2018.

Transitioning Pupillage Training Organisations to Authorised Education and Training Organisation status under the new Authorisation Framework

13. The Committee considered the approach to be taken by the Authorisations team to authorise all providers and how this would be communicated, following the Board's policy decision to require all to undergo authorisation under the new Authorisation Framework.

Pupil Supervisor Accreditation

14. The Committee considered three possible proposals for deciding whether to continue requiring an external accreditation process for pupil supervisors.

15. Members discussed the options in detail, considering the robustness and advantages of the current process, cost implications, impact on chambers, competition law implications, consistency of approach with other policy decisions
16. The Committee supported the recommendation requiring AETOs to select Pupil Supervisors and provide assurance to the BSB as to suitability, experience and competence, recognising that the Inns might continue to have a role in supporting chambers to do so.

#### Pupillage Recruitment and Advertising

17. The project was initiated because research showed that access to pupillage is one of the biggest barriers to increasing diversity at the Bar. The Committee received a report on the work of the executive project team, which was supported by a Task Completion Group comprising barristers and practice management staff from chambers and barristers from the employed Bar.
18. The Committee reviewed the recommendations relating to:
  - the development of guidance;
  - data in the Pupillage Gateway;
  - consulting on guidance on pupillage contracts and the Gateway timetable;
  - working with the employed Bar to promote opportunities for employed pupillage; and
  - approaching the Bar Council in relation to a number of aspects relating to these recommendations.

#### DBS (criminal record) checks

19. The Committee considered three proposals for implementing DBS checks. Members discussed these in detail taking into consideration proportionality (including increased administrative burden on the Inns, financial impact on students, the number of international students who never practise in England and Wales) and risk. The Committee supported DBS checks prior to Call.

#### Pilot for the implementation of the Professional Statement in pupillage

20. The Committee received regular updates on the progress of the pilot, providing assurance that the pilot had sufficient coverage in terms the types of organisations involved (size, geographical spread and involvement of both the employed and self-employed Bar).

#### **Other matters considered by the Committee**

21. The Committee also considered matters relating to two further areas of work not directly emanating from consultations during the period under review but following on from the work of the Committee in previous years.

#### Continuing Professional Development (CPD)

22. The Committee reviewed the Assessment Framework developed for the Supervision team to assess compliance with the new CPD rules for a sample of barristers and recommended testing it on a pilot sample in the first instance. The Committee considered the approach to be taken to those assessed as non-compliant in the first year of the new scheme and the distinction between the rules and good practice. The results of the spot check of approximately 5% of barristers will be reported to the Board in November 2018 and an evaluation of the new rules will be reported to the Board in March 2019.

Youth Court Advocacy

23. The BSB published the Youth Proceedings Competences and Guidance in February 2017 and from this, in October 2017, the Board approved compulsory registration of all advocates working in the Youth Court, effective from Authorisation to Practise 2018.
24. The Committee reviewed how the new requirements would be communicated to all Pupillage Training Organisations, how pupils would register and the implications for pupil supervisors and the Curriculum and Assessment Review.

**Resource implications**

25. Resources for the individual workstreams referred to in this report are overseen by the appropriate project teams.
26. Administrative resources to support the work of the Committee are in place up to the date of its proposed disestablishment.

**Equality & Diversity Implications**

27. Equality impact assessments are undertaken within individual workstreams.

**Consultation**

28. A draft of this report was reviewed by the Education and Training Committee by electronic circulation in November 2018.

**Lead responsibility**

Dr Victoria Stec – Head of Training Supervision and Examinations

## FUTURE OF THE EDUCATION AND TRAINING COMMITTEE

### Status

1. This paper is for **decision**.

### Executive Summary

2. Following the corporate governance reforms across the BSB in 2015, a reconstituted Education and Training Committee (the Committee) was established in January 2016 with primary focus on the Future Bar Training programme.
3. It was envisaged that following the implementation of the new rules for qualification the Committee would be disestablished with future direction and advice being sought via APEX and the Board taking any relevant policy decisions.
4. The Committee has kept the proposed schedule for its disestablishment under regular review and at its meeting on 9 October 2018 it recommended that it be disestablished following the LSB's approval of the rule change, which is expected to be in February 2019.

### Recommendation

5. The Board is requested to endorse the Committee's recommendation that it is disestablished in February 2019 following the LSB's approval of the rule changes.

### Comment

6. Under its Terms of Reference, the Committee is required to actively keep under review the regulatory arrangements relating to its Terms of Reference and report periodically to the Board as to the need for its continued operation.
7. At its meeting on 7 November 2017, the Committee was invited to consider the programme of work ahead that would need to be completed for the rule changes associated with FBT to be implemented in 2019.
8. The Committee recommended to the Board that the position should be reviewed in September 2018, having considered the progress that had been made by then on the remaining programme of work. The Board agreed.
9. At its meeting on 12 September 2018, the Committee conducted an in-depth review of all the workstreams in which it is engaged to determine what will happen to them once the Committee is disestablished; in particular, what will fall to the Executive and what will fall to the Board.
10. It was agreed that, should further policy matters arise, these will be assessed by the Executive and presented to the SMT. Where appropriate, the Board will be the final decision-making body.
11. The FBT Programme Board will remain in place in some form until the programme has been successfully evaluated. This will be when sufficient data is available to assess "year one" of delivery, which will not be until at least 2021. The Programme Board will meet in its present form until July 2019. Thereafter the meetings of the Programme Board are expected to become far less frequent and membership will be revised. Executive oversight lines will remain as at present in relation to FBT.

12. Members agreed that the appropriate time to disestablish the Committee would be when the new rules come into effect. We expect this to be in February 2019. There may be some residual work to do between the LSB rule approval and the rules being effected, which would require a final Committee meeting in 2019; this has been scheduled for 13 February 2019, but may be subject to change should the rule change approval be delayed.
13. The Committee therefore recommends that it is disestablished in February 2019.
14. The Board is asked to **endorse** the recommendation that the Education and Training Committee should be disestablished in February 2019.

**Resource implications**

15. Administrative resources to support the work of the Committee are in place up to the date of its proposed disestablishment.

**Equality & Diversity Implications**

16. Equality impact assessments are undertaken within individual workstreams.

**Consultation**

17. A draft of the Committee's Annual Report to the Board which included this recommendation was reviewed by the Education and Training Committee by electronic circulation in November 2018.

**Lead responsibility**

Dr Victoria Stec – Head of Training Supervision and Examinations



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	Thursday 22 November 2018
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<b>Title:</b>	CPD Compliance Report
<b>Author:</b>	Hayley Langan
<b>Post:</b>	Senior Training Supervision Officer

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input checked="" type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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### Recommendation

Members of the Board are invited to **note** the report.

### Executive Summary

1. This paper summarises the high-level outcomes of the recent compliance monitoring for Continuing Professional Development (CPD).
2. The purpose of the exercise was to understand levels of compliance and ensure compliance with the new CPD scheme introduced in January 2017. A sample of barristers on the Established Practitioner's Programme (EPP) were asked to submit their CPD records for 2017 for assessment.
3. Just under 90% of those selected for the spot check were assessed as compliant, or compliant with feedback. The APEX Member for CPD was of the opinion that this was a good level of compliance for the first year of a new scheme.
4. Common areas of weakness were the development of effective learning objectives and reflecting on how learning objectives had been met. In addition, several barristers in the spot check also did not seem to be aware of their obligations under the new scheme. Work must be done to raise awareness of the scheme and its requirements, and to support barristers in areas of weakness.
5. Further work will be done to evaluate the impact of CPD with independent research to be commissioned by the end of the year.

### Risk

1. Regulatory risk: Barristers fail to engage in continuing professional development of their practice in order to sustain high standards (section 3 of the BSB's Risk Index).
2. Corporate risk: the BSB lacks assurance about the competence of barristers. CPD is seen as a key element of the regulatory framework for assuring the competence of barristers. Failure to engage positively and constructively with CPD could undermine the current approach to assuring competence and may necessitate further regulatory intervention to ensure that standards of practice are maintained.

**Resources (Finance, IT, HR)**

There is no direct resource requirement from this paper, other than resources already dedicated to the evaluation work outlined in paragraphs 22-24.

**Equality & Diversity**

The new approach to CPD was the subject of an equality impact assessment and was found not to adversely affect any sections of the profession. The evaluation work mentioned in the paper, which will take place in 2019, will look at whether the new scheme has had any notable impact on equality and diversity.

## Continuing Professional Development (CPD) Compliance

**Status:** For noting.

### Background

1. Mandatory Continuing Professional Development (CPD) for barristers came into force in 1997 and operated largely unchanged until 2017. The previous requirement was that following the first three years of practice after pupillage a barrister had to complete the Established Practitioners' Programme (EPP) every year. The EPP required barristers to complete 12 hours of CPD between 1 January and 31 December, of which four hours had to be accredited by the Bar Standards Board (BSB). The scheme was very prescriptive in nature, with a substantial list of professional development activities which could not count towards the total.
2. Following the results of the Legal Education and Training Review (LETR) in 2013 the BSB made a commitment to review and overhaul the EPP CPD requirements with a scheme that was more risk-based and outcomes-focused. In 2016, the Legal Services Board (LSB) approved new CPD rules and the new scheme came into force on 1 January 2017.
3. Since 1 January 2017, under the new scheme, EPP barristers must plan their learning objectives at the beginning of the year according to their individual development needs and area(s) of practice. They must record their activities throughout the year, and then reflect on what they have learned at the end of the year, including how they have met their learning objectives and what their objectives should be for the future<sup>1</sup>.
4. The new rules for those on the EPP aim to enable greater individual responsibility in deciding the amount and type of CPD they should undertake and provide choice from a wider range of CPD activities. There is no longer a set number of hours of CPD which a barrister must do each year, CPD is no longer accredited, and there is no longer a list of prohibited activities. It is the responsibility of individual barristers to determine the amount of CPD that they should complete.
5. CPD forms part of the BSB's wider approach to assuring the competence of barristers. It sits within an assurance framework alongside other regulatory arrangements such as the Professional Statement and Threshold Standards, which is the basis on which education and training provisions are designed and delivered, and targeted regulation such as compulsory registration for those working in the Youth Court.

### CPD spot check approach

6. In June 2018, a spot check commenced of a sample of CPD records from barristers on the EPP scheme. The sample of 707 barristers, which amounted to just under 5% of those on the EPP scheme, included a number of barristers considered to present a high risk of non-compliance due to their regulatory history (7% of the sample), with the rest of the sample selected at random. In determining the sample size, we took advice from the Research team.
7. Barristers were contacted via email and asked to submit their CPD record for 2017.

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<sup>1</sup> More information on the CPD requirements is available here: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/established-practitioners-programme/>

**Spot check results**

8. Submitted CPD records were assessed as either compliant, compliant with feedback, or non-compliant. The results of the spot check are summarised in the table below.

<b>Spot check assessment</b>	<b>Proportion of sample</b> <i>(rounded to nearest whole number)</i>	<b>Outcome</b>
CPD record assessed as compliant	58%	Barrister not required to perform any further action.
CPD record assessed as compliant with feedback	29%	Barrister given advice on ways to achieve best practice for future records but otherwise not required to perform any further action
CPD record assessed as non-compliant	6%	Barristers given corrective action to complete (where appropriate).
Barrister did not respond to the request to participate in the spot check	2%	Referral to the Professional Conduct Department.
Barrister did respond but did not submit their CPD record	2%	Marked as non-compliant without corrective action.
Barrister has mitigating circumstances	1%	Barrister waived from participating in CPD spot check for 2018.

9. Common areas of feedback given to those whose CPD record had been assessed as compliant with feedback included:
- i. Having a limited range of learning objectives, or learning objectives were too generic;
  - ii. Having a limited range of CPD activities recorded, and
  - iii. Limited reflection on their CPD activities, how they met their planned learning objectives, or consideration of future learning objectives.
10. The purpose of the spot check was to promote compliance and good practice, so only those who did not co-operate with this spot check will be referred to the Professional Conduct Department (PCD). This is to give barristers a chance to become familiar with the new requirements. However, referral to PCD for enforcement action will be considered for repeated non-compliance in future spot checks.
11. Barristers with records assessed as non-compliant were, where appropriate, given corrective action to complete within 28 days. Those who performed that corrective action within the time limit were then marked as compliant. Of the 6% of records which were assessed as non-compliant, 45% were later marked as compliant or compliant with feedback after completing corrective action. Common issues which required corrective action included:
- i. Not completing a plan;
  - ii. No evidence of any form of reflection, and
  - iii. Abiding by the old CPD scheme (eg doing 12 hours of activities, using an old record template, not completing a plan or reflection).
12. Some records were assessed as non-compliant because the barrister simply had not done any CPD activity in 2017 or had not recorded any. This was often because the barrister was only practising a very limited number of hours, usually in preparation for retirement. These barristers were assessed as low risk due to their limited practice and so were not given corrective action. However, they were reminded of their obligation to abide by CPD requirements while they were still in practice and told that, should they still be practising at the

time of the next spot check, they would be spot checked again. These barristers were also reminded of the requirements under the new CPD scheme that any CPD activity should be proportionate to their practice.

13. A small proportion of those contacted did respond but ultimately did not submit a CPD record that could be assessed. These barristers were marked as non-compliant and, as corrective action was not possible for the past year, were reminded of the requirements and informed that they will be re-assessed for 2018.
14. A very small proportion of barristers were waived from participating in the spot check due to mitigating circumstances; reasons for waivers included pregnancy/maternity leave and being on long-term sick leave.
15. There were also 35 barristers who were not selected as part of the spot check sample but who declared during the Authorisation to Practise process in 2018 that they had not complied with CPD requirements in 2017. These barristers were contacted and asked to explain why they had declared themselves non-compliant. Where relevant, barristers were asked to submit a CPD plan for 2018 as corrective action. Correspondence with these barristers is ongoing at the time of writing this paper.

### Lessons learned from the spot check

16. As part of the concluding work on the spot check, the members of staff responsible for assessing CPD records met with the member<sup>2</sup> of the BSB's Advisory Pool of Experts (APEX) for CPD to discuss some of the main themes.
17. One main theme which came out of the spot check were that a significant number of barristers were still either unaware that a new scheme for CPD is in place, or they knew a new scheme is in place but were unclear on what the scheme's requirements are. Several barristers returned a CPD record on templates used in previous years, with 12 hours of activity recorded as was previously prescribed. Many barristers did not produce a plan or reflection to accompany their record of activities.
18. When the scheme was introduced, a series of roadshows took place throughout England and Wales to promote it, and information has been available on the BSB's website and linked to in the Regulatory Update which is sent to all members of the profession. It is therefore disappointing that there remains a relatively high percentage of the barristers who did not know that the approach to CPD had changed. The APEX member was of the opinion that the level of compliance is good for the first year of a completely new scheme. However, it is clear that work must be done to continue to raise awareness of the scheme and what must be done to achieve compliance. Further promotion of the scheme by both the BSB and specialist Bar associations, circuits, and the Bar Council could help to reach those who are less engaged with the communications from the BSB.
19. Another main theme was that many of the records had little or no evidence that a barrister had done any form of reflection. Reflection is a vital aspect of the new CPD scheme; it allows the barrister to consider what they have learned during a period, what benefits (or lack thereof) have come from that learning, how that learning has been implemented in their practice and what further learning they may need to do. The BSB may need to provide more support to barristers to understand how reflection can benefit them and to promote a culture throughout the profession of continual self-directed learning.

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<sup>2</sup> APEX member biography available on the BSB's website: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/advisory-pool-of-experts/apex-biographies/#Virginia>

20. We are planning to revise the guidance document and supporting materials available online and provide a shorter crib sheet version that is easier to follow; we could also provide more examples of model compliant records for illustrative purposes, and we could consider more creative ways of offering guidance such as videos or podcasts which could help those who may benefit from alternative methods of learning. It could be particularly helpful to ask barristers to deliver this information as it may be more relatable than the equivalent information being delivered by BSB staff.
21. Another area of weakness, often linked to poor reflection, was the use of ineffective, generic learning objectives. In a similar way to those suggested above for reflection, we could offer more support in how to create effective learning objectives which are specific and measurable, which would also aid in reflection later on.

### **Evaluation of the CPD Scheme**

22. In order to understand the new scheme's overall effectiveness, the BSB's Research team is planning to commission additional evaluation work which will involve seeking barristers' perceptions and experience of the scheme.
23. This is currently intended to be externally commissioned research, consisting of an online survey aiming to gather views from a representative sample of barristers on the EPP scheme regarding their perceptions and experiences of the new scheme. This will likely be followed up with a series of interviews to enable a more detailed exploration of some of themes picked up in the spot checks and emerging from the online survey. The Research team will shortly be putting out an invitation to tender for an external organisation to assist in this work.
24. The evaluation will also include a more in-depth, quantitative look at the data obtained during the spot check to ascertain whether there were any trends in CPD compliance relating to characteristics such as type and area of practice, and also to see if the new scheme has any notable impact on equality and diversity. The results of the evaluation will be presented to the Board.

### **Relationship of CPD with assuring competence**

25. It is premature to form a view on whether compliance with the new CPD arrangement has played a part in assuring competence of barristers. This is the first year of monitoring the new CPD arrangements and it will need time to become established before a full evaluation of its benefits on standards of barristers can be undertaken. The new approach adopted by the Board to quality assurance relies upon a range of information being gathered, of which CPD compliance is one part. The emphasis of this approach is on barristers taking greater responsibility to maintain their own professional standards within a defined regulatory framework. To understand whether this is happening, the BSB also needs to capture information from a wide range of sources about professional competence. There are ongoing discussions with training providers, representative bodies and the judiciary on how that information can be both captured and accessed.
26. Whilst there is work to be done to raise awareness of the new CPD scheme and for barristers to understand what is expected, the levels of compliance and engagement with the BSB nevertheless represent a positive start.

### **Lead responsibility**

Hayley Langan, Senior Training Supervision Officer  
Julia Witting, Head of Supervision

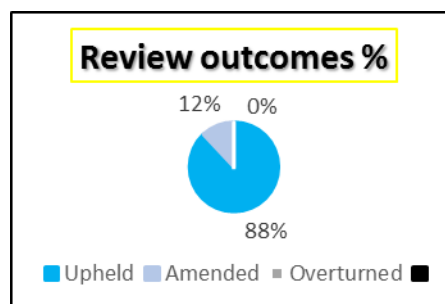
## Authorisations Review Panel Annual Report 2017/2018

### Status

1. For noting.
2. Public

### Background

3. The Authorisations Review Panel (ARP) has been in effect since September 2017 and replaces the previous Qualifications Committee. Its role is to review decisions taken by the Authorisations Team (Executive) in respect of applications for exemptions and waivers from Bar Training. It also reviews decisions undertaken by the Inns Conduct Committee (ICC) where an applicant is dissatisfied with the outcome.
4. The ARP comprises eight members: five lay members and three barristers. Every six weeks three of these members (one barrister and two lay members) convene to review decisions. A member of the Authorisations Team is also in attendance acting as secretary to the ARP. Attendance is agreed between the BSB and the ARP members, on a rotational basis, in advance.
5. There are three possible outcomes of the review of an application, i.e. “decision upheld”, “decision amended” and “decision overturned”. The following are some key statistics:
  - a) The Authorisations Team determined 1,141 application decisions received between 1 September 2017 and 30 September 2018.
  - b) The ARP met on 10 occasions during the last 12 months and considered a total of 34 applications for review. These applications related to 27 decisions taken by the Executive and seven decisions taken by the ICC. This means only 3% of all applications determined by the Executive (2.5%) and ICC (0.5%) were subject to review.
  - c) The ARP upheld 30 decisions, which represents 88% of those reviewed. A further four (12%) decisions made by the Executive were amended. No decisions were overturned. All ICC Decisions were upheld.



The types of decisions reviewed are listed below:

Application Type	Number
Admission to the Bar (Rights of Audience from another Regulator)	1
Exercise of Discretion	1
External Training	1
Pupillage Funding & Advertising Waiver	1
Certificate of Academic Standing	2
Dispensation from Pupillage Regulations	2
Fee Waiver	2
General Exemption	2
Inns Conduct Committee Appeal	5
Pupillage Reduction	5
Admission to the Bar (Qualified Foreign Lawyer)	5
Bar Transfer Test	6

Most of the applications submitted to the ARP for review are related to Lawyers wishing to transfer to the Bar; and lawyers who are unhappy with a decision taken by the Inns Conduct Committee

6. Where an applicant is unhappy with the outcome of the review received from the ARP, they have a right of appeal to the High Court.
7. In the relevant period, two ARP decisions were subject to appeal by the High Court: both related to first instance decisions taken by the ICC. All grounds of appeal were dismissed in full in both cases.
8. Processes are in place to assure the quality of decisions and decision-making. The review process is based on the collective agreement of three independent appointees. These appointed representatives review the original decision and supporting documentation. Whilst a designated officer from the Executive is present to act as secretary to the panel they are not involved in the decision. When the Independent Decision-making Body comes into effect in 2019, it is envisaged that the role of secretary will be filled by an independent person. We are satisfied that the above statistics support the success of our quality assurance. The annual meeting (see below) enhances these internal measures by allowing the ARP to review its process and consider areas for improvement.
9. The ARP met for its first annual meeting on 5 September 2018 and reviewed overall performance, completed a calibration exercise (see below for details), discussed how the new review process would operate with the introduction of the Independent Decision-making Body (IDB), provided updates on current BSB projects and reflected on practice during the last 12 months. ARP members were also asked to provide feedback for the session which will also be shared with the IDB Project Group. Key feedback received from the evaluation forms is detailed below:
  - a) Overall the ARP members were happy with the process followed during the last year. They said that only meeting annually did leave them feeling somewhat “disjointed” and that meeting together on a more regular basis would add benefit.
  - b) The ARP welcomed updates relating to Future Bar Training and the Authorisations Framework. These updates included the impact these changes would have on their decision making.



- c) Evaluation forms were returned to the Authorisations Manager and feedback was positive. It was also suggested that meetings of the entire ARP, such as the annual meeting should happen regularly throughout the year. It was agreed by all attendees that the annual meeting was an ideal opportunity to share lessons learned, experiences of unusual cases and develop best practice.
10. Consideration will be given to the feedback received from the ARP members, including the prospect of arranging quarterly meetings to support learning and development. We intend arranging a similar meeting in early 2019 in advance of the implementation of the Authorisations Framework. We are also considering further sessions to support the transition to IDB for those Panel members who have expressed an interest in transitioning to the new body.
  11. We would like to record our thanks to members of the ARP for their help in ensuring a smooth transition in how authorisation decisions are taken and reviewed. We are grateful for their hard work and diligence

**Lead responsibility:**

**Samantha Jensen  
Authorisations Manager  
November 2018**



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	22 November 2018
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<b>Title:</b>	BSB Planning, Mid year Resources & Performance Report
<b>Author:</b>	Emiko Etete
<b>Post:</b>	Corporate Support Officer

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input checked="" type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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### Recommendations

- i) **Note** the performance dashboard reporting on the mid year progress against business plan activities provided in Annex 1. The majority of business activities continue to meet the published timetable;
- ii) **Note the assurance** that the Committee have scrutinised the detailed BSB Q2 Performance Reports.

### Executive Summary

1. Under the new governance arrangements, The Planning, Resources and Performance (PRP) Committee reports twice a year to the Board on the performance of the BSB against its business plan commitments and its budget. This is the mid year report to the Board.
2. The BSB continues to perform well against business plan commitments. It has strong governance arrangements in place to support all its programme and business as usual activities. Through this it has performance information and data that enables it to flex resources accordingly and to identify challenges to delivery and to respond accordingly. But, we remain very tightly resourced and this impacts upon our resilience. We are entering a critical phase in the delivery of core and high profile programmes of work in FBT and Regulatory Operations. Both of these will go live within three months of each other and involve many of the same staff. The allocation of resources is kept under close review by both the Committee and the SMT.
3. The prioritisation of activities under the IM Programme continues to present a risk to the performance of the BSB as so many of our programmes place reliance upon IT services being delivered on time. Controls are in place to manage the risk both within the IM Programme and at individual programme/project level.
4. The budget is on track. With the holding of some vacancies, and higher than budgeted BPTC income due in Q3 we are expecting to end the year slightly under-spent.

### Risks

Managing the competing demands of the BSB and the Bar Council by the centralised services of IT, HR and Finances is a feature of the governance model within which we operate. Whilst controls are in place to mitigate the risks to the delivery of BSB projects and to ensure that they are given proper priority it nevertheless remains an area that is the subject of close scrutiny by both the executive and PRP.



**Mid-year report of the Planning, Resource and Performance Committee (PRP)**

1. The PRP has reviewed the mid-year performance of business plan activities as set out in the [2018 -19 Business Plan](#)<sup>1</sup>. (summarised in the dashboard at Annex 1).
2. All but one of the business plan activities is on track. There has been some re-prioritisation of activities in the light of vacancies within the Strategy and Policy Department but this has not impacted upon the end delivery dates. The activity off track is the rescheduling of the publication of the Risk Index from Q4 to Q1 in 2019/20. The original date could not be achieved given the depleted nature of the resources within the Risk Team. The timetable was discussed and revision was agreed by the Senior Management Team (SMT). There are no serious negative consequences from this decision as any emerging risks will be captured through structured risk reporting and assessment carried out in all BSB departments (and centrally via the Risk Forum). It is proposed that the Board will discuss the Risk index and associated risk appetite at its away day in April 2019.
3. The prioritisation of activities within the Information Management (IM) Programme has been the subject of consideration by PRP. The programme, managed through a Programme Board comprising senior BSB, Bar Council and Resources Group representation, includes the development of IT services in support of work across the whole organisation. From a BSB perspective this includes core programmes of work such as the development of a new case management system to support the Centralised Assessment Team and the Independent Decision Making Body and the development of an on-line application and assessment tool for the authorisation of Training Providers under the new FBT arrangements. Arrangements are being put in place, including principles for determining the level of priority an activity should have, to minimise the risk of delays to agreed delivery dates. SMT and PRP will continue to keep the impact of the IM Programme on performance under close review.

**Resources**

4. Staff turnover increased from 13% in Q1 to 20% in Q2. Voluntary turnover rose from 8.5% with five people leaving Strategy and Policy department over the last 3-6 months. The loss of resource is being managed through re-prioritising tasks and a review of the future structure of that Department (in the light of the proposed future BSB strategy which is focused on the evaluation of implemented policy and front line regulatory activity). PRP will receive a report on resourcing for the new strategy at its next meeting in February.

**Finance**

5. The Finance Committee and the Bar Council have agreed the budget envelope for 2019/20. The Practising Certificate Fee and arrangements for its collection are currently the subject of public consultation after which the LSB will be asked to approve the Fee.
6. We have recently received enrolment figures from BPTC providers and have exceeded our income estimate. We had been cautious in our estimation given the potential uncertainty for students caused by reform under FBT. 1758 students were enrolled on the 2018/19 course meaning BSB income of £967k (+£190k). Much of this overcollection will be balanced against increased costs in the Examinations team for ethics exams marking in the summer (circa £200k).

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<sup>1</sup> [https://www.barstandardsboard.org.uk/media/1927680/bsb\\_business\\_plan\\_2018\\_19\\_final.pdf](https://www.barstandardsboard.org.uk/media/1927680/bsb_business_plan_2018_19_final.pdf)

**BSB and Resource Group (RG)**

7. A programme of work has been implemented in the Finance team, moving to a more directly business partnering approach and resolving outstanding capacity and capability issues. Good progress has been made. The Finance Team is now at full capacity and the team is engaging more effectively with the BSB and addressing any outstanding backlogs.

**Annexes**

8. Annex 1 – Mid year performance Dashboard  
Annex 2 – Management Accounts summary

**Lead responsibility**

Steven Haines, Chair of PRP Committee  
Emiko Etete, Corporate Support Officer

### Mid year Dashboard (2018-19)

**Strategic Programme 1**  
Regulating in the public interest

Task	Assigned to	Import	Size	Priority	Status/ On		Ctrl	Ref
					Target	Budget		
CMA - Transparency	S&P	4	3	High	●	●	BSB	
PII	S&P	4	3	High	●	●	BSB	
Updating the BSB Handbook	S&P	4	2	Medium	●	●	BSB	
CMA - Independent Feedback Platforms	RAD	4	2	Medium	●	●	BSB	
Anti Money Laundering	RAD	4	2	Medium	●	●	BSB	
Equality and Access to Justice	S&P	4	2	Medium	●	●	BSB	
Regulatory Risk	S&P	3	2	Medium	●	●	BSB	
Scope of Practice	S&P	2	3	Medium	●	●	BSB	
Enforcement	PCD	2	2	Low	●	●	BSB	
Entity and ASB Regulation	RAD	2	1	Low	●	●	BSB	
Immigration	S&P	2	1	Low	●	●	BSB	

**Strategic Programme 2**  
Supporting barristers and those the BSB regulates to face the future

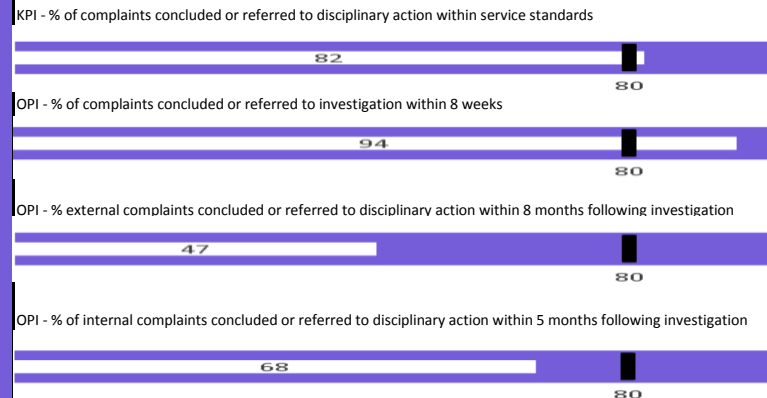
Task	Assigned to	Import	Size	Priority	Status/ On		Ctrl	Ref
					Target	Budget		
FBT - Authorisations Framework	RAD	4	4	High	●	●	BSB	
FBT - Examinations	RAD	4	4	High	●	●	BSB	
FBT - Rule Change	S&P	4	3	High	●	●	BSB	
FBT - Pupillage Project	RAD	4	3	High	●	●	BSB	
FBT - Evaluation	S&P	4	2	Medium	●	●	BSB	
CPD/ Assuring Standards of Practice	RAD	2	3	Low	●	●	BSB	
Public and Licence Access	S&P	2	2	Low	●	●	BSB	

**Strategic Programme 3**  
A strong and sustainable regulator

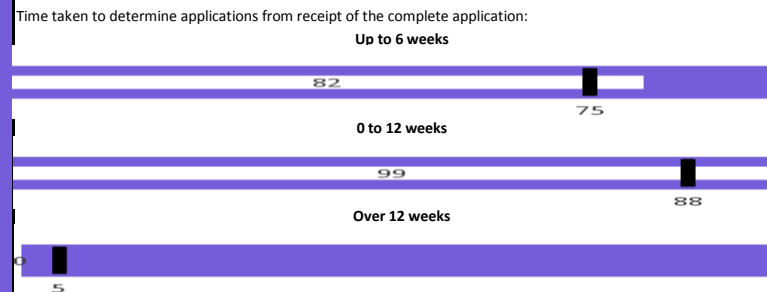
Task	Assigned to	Import	Size	Priority	Status/ On		Ctrl	Ref
					Target	Budget		
Modernising Decision Making	PCD	4	4	High	●	●	BSB	
Board	CS	4	3	High	●	●	BSB	
Assurance, Governance, Risk and Audit	CS	4	1	Medium	●	●	BSB	
Governance Recruitment	CS	3	2	Medium	●	●	BSB	
APEX	CS	3	2	Medium	●	●	BSB	
Legal Support Arrangements	PCD	3	2	Medium	●	●	BSB	

2018-19 Q2 YTD Actuals v Budget			
	(k)	(k)	(k)
	Actual	Budget	Var
Income	271	169	102
Expenditure	2,738	3,221	-483

**Professional Conduct Indicators**



**Authorisations**



**Entity Authorisation Decisions**



**Key**

<b>Importance</b>	▲ 4 More important	<b>Size</b>	▲ 1 Small piece of work	<b>Weighting</b>	■ Higher Weighting
	▼ 1 Less important		▼ 4 Large piece of work		■ Lower weighting





General Council of The Bar  
Bar Standards Board  
BSB Summary  
Sep-18

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget
<b>Income</b>							
Practising Certificate Fees	601,667	674,582	(72,915)	3,610,002	4,047,500	(437,498)	8,095,000
Other Regulatory Income	61,554	21,050	40,504	271,179	169,300	101,879	1,166,800
<b>Total Income</b>	663,221	695,632	(32,411)	3,881,181	4,216,800	(335,619)	9,261,800
<b>Expenditure</b>							
Staff Costs - Salary Related	356,583	355,508	(1,075)	2,209,113	2,116,988	(92,126)	4,266,034
Staff Costs - Temp Staff/Recruitment	9,414	21,401	11,987	37,702	87,073	49,372	159,478
Staff Costs - Non- Salary Related	3,298	26,225	22,927	20,977	54,450	33,473	89,900
Non - Staff Costs	58,187	175,438	117,251	470,711	498,236	27,525	965,491
Share of Property Project Costs	0	77,500	77,500	0	465,000	465,000	930,000
<b>Total Costs</b>	427,481	656,072	228,591	2,738,504	3,221,747	483,243	6,410,903
<b>Net Surplus / (Loss)</b>	235,740	39,560	196,180	1,142,677	995,053	147,624	2,850,897



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	22 November 2018
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<b>Title:</b>	Amendment to Scheme of Delegations following approval of exemption application for the section 69 Order changes
<b>Author:</b>	Sam Benton
<b>Post:</b>	Senior Professional Support Lawyer, Professional Conduct Department

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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### Recommendation

1. That the Board **approve** the proposed additions to its Scheme of Delegations (delegated to the Director-General), to take effect following publication of the amended Handbook, to:
  - a) Authorise the issue of a notice requiring the production of documents and/or provision of information in relation to a licensed body (section 93 Legal Service Act 2007 and rC64.4);
  - b) Authorise the issue of a notice requiring the production of documents and/or provision of information in relation to a BSB authorised individual or BSB authorised body (Article 5 Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018 and rC64.4); and
  - c) Provide express written consent to the appointment of a person who has been disqualified as an employee of a barrister in chambers (rC89.3).
2. If the above delegations are approved, that the Board **consider** the Director-General's proposed sub-delegations as set out in the paper.

### Executive Summary

1. The Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018 ("the Order") came into force on 1 October 2018. The Legal Services Board has given approval for the BSB Handbook to be amended to give effect to the powers conferred on the General Council of the Bar by the Order. These powers enable the General Council of the Bar to:
  - Issue a notice under any part of the Legal Services Act 2007, or the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions Order) 2018;
  - Provide express written consent to the employment at a chambers of a previously disqualified person.
2. The LSB has authorised amendments to rC64.4 and gC92A of the BSB Handbook to reference the issuing of notices, and to rC89.3 to reflect the consent power.
3. It is proposed that the Board delegate these powers to the Director-General, and approve her proposed sub-delegation to members of the BSB executive as set out in the attached paper.

**Risk**

The risk in not approving the proposed delegations is that every exercise of the new powers will require approval by resolution of the Board itself, which is neither a worthwhile use of Board time nor an effective and proportionate means of considering applications, as well as being contrary to the better regulation principles.

**Resources (Finance, IT, HR)**

The proposed amendments and additions will optimise the use of resources, by applying the Board's governance principle that decisions should be delegated to the lowest appropriate level whilst maintaining quality and managing risk. There is no anticipated additional resource required to support the proposed delegations, although any expenditure on enforcing notices will be monitored through the legal budget.

**Equality & Diversity**

No equality or diversity impacts have been identified as resulting from the proposals. However, the exercise of the power to authorise the issue of notices will be centrally recorded and monitored.

## Amendment to Scheme of Delegations following approval of exemption application for the section 69 Order changes

### Background

1. The Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order (“The Order”) 2018 came into effect on 1 October 2018. The Order confers new statutory powers requiring amendments to the BSB Handbook and the scheme of delegations in order to be operationally effective.
2. The relevant powers conferred in the Order are:
  - 2.1. Article 5: this empowers the BSB to make rules requiring a “relevant authorised person” (see paragraph 3 below) to produce information or documents by way of a notice and, in the event of non-compliance, to apply to the High Court for an order requiring that person to comply.
  - 2.2. Article 8: this empowers the BSB to make rules requiring a “relevant authorised person” to consider the BSB’s list of disqualified persons before employing a person to carry out certain activities<sup>1</sup>, and to seek the BSB’s permission to employ someone who is on that list.
3. The definition of “a relevant authorised person” in the Order covers the defined terms in the BSB Handbook for *BSB authorised body* and *BSB authorised individual*. The definition excludes ABS’s (which are defined in the Handbook as *BSB licensed bodies*) because we already have equivalent powers in section 93 of the Legal Services Act 2007 to require the provision of information or documents in relation to these bodies. However, these powers also require delegation in order to be operationally effective.
4. Following the enactment of the Order, a number of consequential amendments to the Handbook have been approved by the Legal Services Board. It is expected that the updated version of the Handbook will be published before the end of November 2018.
5. The following amendments to the Handbook give effect to Articles 5 and 8 of the Order:
  - 5.1. rC64.4 has been inserted and reads “[you must] comply with any notice sent by the BSB.”
  - 5.2. gC92A has been inserted and reads: “A notice under rC64.4 refers to a notice under any part of the Legal Services Act 2007, or the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions Order) 2018.”
  - 5.3. rC89.3 has been amended to reference the BSB’s power to give express written consent to the appointment of a person who has been disqualified before they are appointed.
6. The gC92A definition of “notice” as including “a notice under any part of the Legal Services Act 2007” is broad. However, the delegations proposed in relation to the notices under the Act are only intended to cover the delegation of the power to issue notices in relation to a licensed body under section 93 of that Act.

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<sup>1</sup> Set out in Article 7(3) of the Order, these include acting as a HOLP or HOFA, manager or employee.

**Proposed additions to the Board’s Scheme of Delegation**

7. The Board has delegated authority to the Director-General for oversight of all operational and administrative activities. To give operational effect to the Board delegations above, it is necessary for the Director-General to sub-delegate to relevant members of the BSB executive. The Director-General’s proposed sub-delegation of the new operational powers are set out in paragraph 15 below. The level of sub-delegation proposed has been arrived at by considering the principles of effective delegation in the Governance Manual, including the principle that “decisions should be delegated to the lowest appropriate level, whilst also ensuring an appropriate quality of decision-making and management of risk.”

*Notices to produce information and documents – BSB licensed bodies (section 93 of the Act)*

8. The need to exercise this power is most likely to arise during the Professional Conduct Department’s investigation or prosecution of a case, but may also arise in the work of the Supervision and Authorisation teams in the Regulatory Assurance Department.
9. Detailed operational guidance is currently being drafted as to the circumstances in which this power can be exercised and the criteria for the exercise of this power, which any staff seeking to exercise the power will be required to follow.
10. The exercise of the power is intrusive, may involve requests for privileged material, and may result in litigation, meaning that it is essential that sufficient grounds exist to justify the issue of a notice before doing so. It therefore needs to be authorised by sufficiently senior staff with legal qualifications.
11. As such, it is proposed that the authorisation of the exercise of this power be restricted to three roles within the Professional Conduct Department: the Director of Professional Conduct, the Senior Professional Support Lawyer and the Head of Investigations and Hearings Team. All three roles require legal qualification and sit at the level of Director (level 2) or Head (level 3).
12. While situated within the PCD, the Senior Professional Support Lawyer provides legal support across the BSB Departments. As such, where the need to exercise the power arises outside of the PCD, the guidance will direct other staff to seek authorisation from the Senior Professional Support Lawyer at first instance.

*Notices to produce information and documents – BSB authorised individuals and BSB authorised bodies (Article 5 of the Order)*

13. The position in paragraphs 8-12 above applies equally to the power under the Order in relation to *BSB authorised individuals* and *BSB authorised bodies*.

*Consent to the employment of a person who has been disqualified*

14. Providing consent to the employment of disqualified person in chambers is similar to the power to approve the employment of disqualified people in entities (rC92) that has already been delegated to members of the assurance and supervision teams in the existing Scheme (see delegation 15). The Board has previously determined that these staff have the expertise and experience necessary to make similar determinations in respect of entities, and the delegation proposed here would extend that authority to include decisions in respect of Chambers.

*Proposed additions and sub-delegation*

15. Accordingly, the following additions to the Board's scheme of delegations are proposed:

<b>A.</b>	<b>B.</b>
Authorise the issue of a notice requiring the production of documents and/or provision of information in relation to a licensed body (section 93 Legal Service Act 2007 and rC64.4)	<b>Director of Professional Conduct Senior Professional Support Lawyer Head of Investigation and Hearings Team</b>
Authorise the issue of a notice requiring the production of documents and/or provision of information in relation to a BSB authorised individual or BSB authorised body (Article 5 Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018 and rC64.4)	<b>Director of Professional Conduct Senior Professional Support Lawyer Head of Investigation and Hearings Team</b>
Provide express written consent to the employment of a person who has been disqualified (rC89.3).	<b>Director of Regulatory Assurance Head of Assurance Head of Supervision Authorisations Manager</b>

Ewen MacLeod  
Director of Strategy and Policy

Sam Benton  
Senior Professional Support Lawyer

Rebecca Forbes  
Governance Manager





**Chair’s Report on Visits and External Meetings from November 2018**

**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:**

17 October 2018	Attended as an observer the PCC meeting
2 November 2018	Chaired the Board recruitment shortlisting meeting. Also in attendance – Bronwen Curtis, Andrew Walker QC, comments provided by Adam Solomon QC
12 November 2018	Attended as an observer a Disciplinary Tribunal hearing
21 November 2018	Attended Board briefing meeting
21 November 2018	Attended meeting with The Rt Hon Lord Keen of Elie QC, Advocate General for Scotland and MoJ spokesperson for the Lords