

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 28 July 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Aidan Christie QC
Malcolm Cohen
Justine Davidge
Judith Farbey QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford (by FaceTime link – items 10-16)
Adam Solomon
Anu Thompson
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
Jane Chapman (Consultant) – items 1-8
Emily Windsor (Special Adviser) – items 1-10
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – items 1-9
Mark Hatcher (Special Adviser to the Chairman of the Bar Council) – items 1-8
- BSB Executive in attendance:** Sam Benton (Professional Support Lawyer)
Viki Calais (Head of Corporate Services)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Supervision)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Bernard MacGregor (Senior Supervision and Authorisation Officer) – items 1-9
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amanda Thompson (Director for Governance Reform)
Simon Thornton-Wood (Director of Education & Training)
Rob Wall (Head of Policy Programmes)
Wilf White (Director of Communications and Public Engagement)
Christopher Young (Policy Manager - Quality Assurance)

Item 1 – Welcome

1. The Chair welcomed Members to the meeting. He introduced Jane Chapman who helped draft the paper on threshold standards - BSB 052 (16). Jane trained as a solicitor and was formerly employed at the University of Law. She now works as a consultant. He also welcomed Chris Young, Policy Manager – Quality Assurance, who was attending his first meeting.

Item 2 – Apologies

2.
 - Rolande Anderson
 - Rob Behrens CBE
 - Andrew Mitchell QC
 - Chantal-Aimée Doerries QC (Chairman, Bar Council)

Part 1 - Public

- Andrew Langdon QC (Vice Chairman, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (COIC representative)

Item 3 – Members’ interests and hospitality

3. Malcolm Cohen made a declaration in respect of his attendance at the Middle Temple Garden Party (5 July 2016).
4. Sir Andrew Burns confirmed he had received invitations to all of the Inns’ Garden Parties but he had been unable to attend any of these due to conflicting commitments.

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

5. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 23 June 2016.

Item 5 – Matters Arising

6. None.

Item 6a – Action points and progress

7. The Board noted progress on the action list. Oliver Hanmer referred to minute 27c (19 May 2016) concerning the Youth Proceedings Advocacy Review. The Taylor Review into Youth Justice will not now be published until September so further discussions with the MoJ will be moved back accordingly, probably to October 2016.

JP to
note**Item 6b – Forward Agenda (Annex C)**

8. The Board noted the forward agenda list.

Item 7 –Statutory Intervention

BSB 051 (16)

9. Rob Wall highlighted the following:
 - the BSB will gain statutory intervention powers for alternative business structures (ABSs) if Parliament approves its application to be designated a licensing authority (the LSB and MoJ have both recommended that this occur);
 - the BSB is also seeking similar powers in respect of entities and individual barristers. A draft interventions strategy has been written (Annex A of the report) and a final version will follow;
 - intervention is a tool of last resort and will only be used when it is necessary and proportionate to do so. The guiding principle is to prevent harm to consumers rather than to act punitively against barristers;
 - it would be helpful to have the Board’s initial views so that the strategy is in place by the time BSB licensing of ABSs begins in Autumn 2016.
10. Members commented as follows:
 - in normal circumstances it should only be the Director General who takes the decision to intervene. It should only be delegated to a Director on an exceptional basis. The section under the “decision-maker” (paragraphs 17 and 18 of the report) should make that clear;
 - the process for keeping intervention decisions under review needs further thought. It might usefully involve input from a third party rather than solely relying on the views of the original decision-maker;
 - it would be helpful to hear more on the BSB’s obligations where a licensed body is holding client money.

11. In response, the following comments were made:
- responsibility for decisions on interventions will lie with the Director General and would only be delegated in extreme circumstances ie the DG's unavailability, incapacity or conflict of interest when a speedy decision is required. The final draft will make this point in stronger terms;
 - should the Board decide to establish an Independent Regulatory Decision Making Body (IDBM), this body could also review intervention decisions;
 - the BSB's role to protect client's money forms part of the statutory process of intervention and funds would be held in trust by it for that purpose.
- RW to note**

12. **AGREED**

- a) to note the work underway on interventions.
 - b) to note the draft interventions strategy and to review final strategy in Autumn 2016.
- RW**

Item 8 – Professional Statement Threshold Standard and Competences
BSB 052 (16)

13. Simon Thornton-Wood highlighted the following:
- the paper sets out a revised version of the Threshold Standard and Competences document following the BSB's consultation and a meeting of the E&T Committee;
 - the consultation prompted considerable interest including helpful and detailed responses from the Inns and the Bar Council in particular;
 - the task of working though the comments received and incorporating these into a new draft has been carried out on a consultancy basis by Jane Chapman and Carol Wadsworth-Jones.
14. Andrew Sanders stated that the document is primarily for the benefit of training providers who will be able to tailor their programmes so that they enable participants to acquire the skill sets identified in the document.
15. The Board discussed the proposal to replace "must have" with "should have" in the context of the skills identified. A minority view suggested that this undermined the document insofar as it makes permissive what ought to be compulsory. The consensus view was that the change reflects the purpose of the Statement as described in Annex 1 (paragraph 32) of the paper ie that "the Statement does not set out what a barrister must do but may be used as an evidential point of reference" in the case of a complaint. The document should therefore be regarded as a tool for guidance to distinguish it from the mandatory nature of the Code of Conduct.
16. The Board also agreed that the language used throughout the document should reflect this point of principle and do so consistently. As currently written, there are other instances where Board members were concerned that it might be interpreted as unduly directive in tone.
17. Members also commented as follows:
- the inclusion in the Threshold standard (Annex 3) of a new line (b) has been prompted by the response of just one consultee and it is worded in too broad a fashion to be meaningful. Its deletion should therefore be considered;;
 - the proposed line about competent assessment of financial remedies in section 1.3 sits uncomfortably in its sub-heading of "understanding law and procedure". The exercise of appropriate numeracy skills is included in section 1.5 which should be sufficient;

Part 1 - Public

- the words “where appropriate” might be added after the descriptor of section 1.5 ie “apply effective analytical and evaluative skills to their work” on the grounds that the skills required will differ according to the varying instructions received;
 - section 1.12 suggests there may be a need to “research areas beyond the law”. In practice, it was suggested that this would not be an appropriate way to spend a barrister’s time, especially as, ordinarily, barristers are not permitted to conduct litigation. The wording should therefore be considered for deletion;
 - section 3.1 should be moved earlier in the document because of its importance, ie the need for barristers to serve the best interests of their clients;
 - in section 4.4, the reference to “understanding business development activity” relates to marketing and it was observed that this is not an essential requirement at day one of a barrister’s professional career;
 - section 1.6 refers to giving clear, accurate advice both in writing and orally. It is not clear why the words “and take responsibility for it” appear afterwards. One option is to use the term “be accountable”. If the original wording is to be retained, then it was suggested that an illustrative example might help to give context.
18. In response, the following comments were made:
- the new line at (b) in Annex 3 was considered at length by the Education & Training Committee and was supported as being a useful addition on service standards. There was thus an argument for it to be retained;
 - taking responsibility for advice (section 1.6) refers to preparedness to stand by that advice when challenged, but the point would be reviewed.
19. The Board agreed that further work on the document is required to address the points raised and that it should see the final version prior to publication. This could be circulated electronically prior to the next meeting.
20. **AGREED**
- a) to approve in principle the revised Threshold Standard and Competences for publication subject to further amendment to the text as identified above. **STW**
- b) that the final version of the document be circulated to the Board prior to external publication. **STW**

Item 9 – Entity Authorisation – Report on Activity

BSB 053 (16)

21. The Board received a report on activity concerning entity authorisation for the period 5 April 2015 – 4 April 2016. The salient points were:
- 47 entities were authorised during the period, the significant majority of which were barrister single person entities. All but two were rated as low risk and all but one renewed for 2016-17;
 - the KPI standards for assessment turnaround were achieved;
 - the Supervision Department managed its resources flexibly in response to the low application rate. This meant that just 1 FTE staffing was used (rather than the 2.75 FTE originally anticipated).
22. **AGREED**
to note the report.

Item 10 – Enforcement Annual Report

BSB 054 (16)

23. Sara Jagger highlighted the following:
- in overall terms, the report is broadly positive. The KPIs show an improvement in performance compared to last year and though some targets were still missed, the period in question also saw a 40% rise in the throughput of cases;
 - there has been a significant increase in the use of administrative sanctions;
 - the user feedback survey results were similar to previous years and, in common with other regulators, satisfaction rates reflect the outcome. People whose complaints are dismissed are much more likely to be unhappy with the system.
24. Members commented as follows:
- the first quarter results were well below the KPI target as a result of earlier staffing shortages. The subsequent improvement is therefore greatly to the Department's credit;
 - the policy to delegate decision making to the lowest appropriate level appears to be working effectively;
 - it is not clear what prompted the significant rise in case numbers;
 - the report states that staff took 67% of decisions on cases. This is encouraging but it would be useful to know what type of cases these cover and how decisions are verified;
 - the BSB investigates complaints in the context of the Code of Conduct. It does not operate as an Ombudsman. The satisfaction survey results may indicate a continuing misunderstanding of the BSB's role on the part of complainants;
 - we may need to re-visit our approach to complaint management and how we respond to individual complainants ie treat incoming correspondence as "sources of information" against which the regulator can decide whether or not to raise a formal complaint;
 - 125 of the 299 external complaints received were from other barristers / solicitors or judges. It may be more accurate to at least regard those from the judiciary as internal, rather than external, complaints.
25. In response, the following comments were made:
- the 40% increase reflects a sudden increase in multiple complaints about the same set of chambers;
 - the cases determined by staff varied but tended to be straightforward and low or medium risk in nature. A high proportion were dismissal decisions. Serious or complex cases are still referred to the Professional Conduct Committee;
 - the process of staff decision taking come under the scrutiny of the Independent Observer. In addition, the Quality Review Sub-Committee of the Professional Conduct Committee carries out random checks on the quality of decision making (cf. paragraphs 3.58-3.63 of the report);
 - the Professional Conduct Department is already reviewing its categorisation and approach to complaints along the lines described above. This may result in a change of emphasis in standard correspondence with complainants, similar in style to other regulators eg Nursing and Midwifery Council.

Part 1 - Public

26. The following points were also raised:
- the actions points suggest a review of KPIs and OPIs. These should not be changed unless there are convincing reasons to do so ie only if they are intrinsically wrong;
 - the “key stats” table under the section “administrative sanctions” could be misread. It quotes 76 administrative sanctions carried out by staff but needs to be clearer that only 6 of these were fines (the remainder being warnings);
 - the reference to satisfaction rates, paragraph 3.22 should state a third of complainants remain *very* dissatisfied. This would make the data consistent with the data in Figure 7;
 - it may be helpful in future to include a section on lessons learned if the report identifies issues that warrant a change in procedure.
27. In response, the following comments were made:
- the purpose of the KPI review is to identify whether we are collating data on the right issues or whether alternative measures would give a more accurate picture. There is no intention to change targets just so that they become more achievable;
 - any lessons learned tend to relate to individual cases with unique circumstances rather than general policy issues. However, if certain cases do provide useful precedents and these could be summarised in a “lessons learned” section.
28. **AGREED**
to note the report and the associated conclusions and action points.
- Item 11 – Bar Standards Board Annual Report 2015-16**
BSB 055 (16)
29. Wilf White referred the Board to the draft Annual Report. This still requires some fine tuning but a final version will be published in week commencing 1 August 2016.
30. The Board approved the content of the report but asked for some minor alterations to be made to the appearance of the infographics
31. **AGREED**
to approve the report for publication on the BSB website subject to further necessary amendments and changes to the appearance of infographics.
- Item 12 – Chair’s Report on Visits and Meetings: June – July 2016**
BSB 056 (16)
32. **AGREED**
to note the report.
- Item 13 – Director General’s Report**
BSB 057 (16)
33. Vanessa Davies referred to paragraph 9 of her report which confirmed Simon Thornton-Wood will leave the BSB on 16 September 2016. She was joined by the Board in thanking him for his past service and his significant contribution in developing the BSB’s strategy on education and training.

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Part 1 - Public

34. Vanessa also highlighted the following:
- internal restructuring of the BSB will continue with the integration of the Education & Training Department and the supervision and authorisation functions to create a new Regulatory Assurance Department; with the education and training policy aspects being integrated with Regulatory Policy.
 - we are currently recruiting for the BSB's Advisory Pool of Experts (APEX); with applications received immediately after applications opened and a steady rate of expressions of interest being received.
 - the new Lord Chancellor was formally appointed at a ceremony on 21 July 2016. The new Minister of State for Courts and Justice is Sir Oliver Heald QC MP and the spokesperson for the Lords is Lord Keen of Elie QC.

35. **AGREED**
to note the report.

Item 14 – Any Other Business

36. None.

Item 15 – Date of next meeting

37. • Thursday 29 September 2016.

Item 16 – Private Session

38. 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:
 - CMA update;
 - ABS consultation;
 - (3) Action Points and Progress;
 - (4) Communications & Public Engagement Strategy;
 - (5) Assurance framework update;
 - (6) Future Bar Training: autumn 2016 consultation on options for routes to qualification;
 - (7) Any other private business;
 - (8) Review of the Board meeting in terms of conduct and outcomes.
39. The meeting finished at 6.00 pm.