

Note: the timings quoted on the agenda sheet are indicative only and the meeting may extend beyond the anticipated finish time.



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 22 June 2017, 4.30 pm

Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

Note: there will be a private pre-meeting session commencing 3.30 pm concerning Board recruitment. Papers for this will be sent separately

			Page
1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes		
	• 25 May 2017 (*)	Annex A Chair	3-10
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	11-12
	b) Forward agenda	Annex C Chair	13-14
7.	Public Access Consultation – Application of cab-rank rule to public access cases (4.35 pm)	BSB 041 (17) Ewen Macleod	15-90
8.	Draft Research Strategy 2017-19 (4.50 pm)	BSB 042 (17) Corrine Charles	91-106
9.	Chair's Report on Visits and Meetings: June 2017 (*)	BSB 043 (17) Chair	107
10.	Director General's Report (5.05 pm)	BSB 044 (17) Vanessa Davies	109-120
11.	Any other business		
12.	Date of next meeting		
	• Thursday 27 July 2017		
13.	Private Session		

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
15 June 2017

**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 220617

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

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

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

Item 1 – Welcome

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

Item 2 – Apologies

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

Item 3 – Members’ interests and hospitality

3. None.

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

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

Item 5 – Matters Arising

5. None.

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

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

JP to note

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

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

BSB 029 (17)

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

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

Item 8 – Shared Parental Leave

BSB 030 (17)

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

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

EM / WW

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

BSB 031 (17)

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

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

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

**JWi to
note**

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

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

Item 11 – Director General’s Report

BSB 033 (17)

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

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

BSB 034 (17)

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

Item 13 – Date of next meetings

30. Thursday 22 June 2017.

Item 14 – Private Session

31. The following motion, proposed by the Chair and duly seconded, was agreed:
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 23 March 2017 (Annex A).
 - (2) Matters arising.
 - (3) Part 2 Action points and progress (Annex B).
 - (4) Corporate Risk Register.
 - (5) Assurance Framework Update.
 - (6) Summary Report from Board Away Day – April 2017.
 - (7) Annual Communications Team Metrics.
 - (8) Revision to Joint Standing Orders.
 - (9) Any other private business:
 - Revision of titles of Chair (and Vice Chair) of the Bar Council and Bar Standards Board.
 - (10) Review of the Board meeting in terms of conduct and outcomes.
32. The meeting finished at 5.30 pm.

**BSB – List of Part 1 Actions
22 June 2017**

(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
16a (25 May 17) – Policy on parental leave	amend rule rC110.3.k concerning parental leave and issue a press release	Ewen Macleod / Wilf White		09/06/17	In hand – a draft application has been prepared to be shared with the LSB
21a (23 Mar 17) – Collection of practice area information	consult on changing the BSB’s authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertake in each practice area	Ewen Macleod	by end Oct 2017	12/06/17	In hand – published w/c 12 June
				16/05/17	In hand – consultation being drafted, to be published by June
21b (26 Jan 17) – section 69 order to extend BSB’s powers	discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers	Ewen Macleod	before end February 2017	16/05/17	Ongoing – wording of order agreed with MoJ. Progress delayed by election and will be dependent on Parliamentary time being available later in the year. At this stage, we have done all we can to progress.
				15/03/17	Ongoing - Feedback given to MoJ lawyers. We have identified a need to get some external advice which we are seeking urgently.
				15/02/17	In hand – discussion held. MoJ lawyers have come back with advice and request for further instructions. We are currently considering the points raised, will update Board in due course.
15b (27 Oct 16) – definition of “employed barrister (non-authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	09/06/17	Ongoing – additional guidance being produced to support final application to the LSB
				16/05/17	Ongoing – currently updating application in the light of LSB comments
				15/03/17	Ongoing – draft application due to be submitted to LSB by end March

**BSB – List of Part 1 Actions
22 June 2017**

(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
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	16/05/17	Ongoing – TCG set up with Board and APEX members in June. Revised deadline for Board decision is September 17.
				15/02/17	Ongoing – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	On track – oral update on Part 2 agenda
				20/10/16	For discussion - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.

Forward Agendas**Thursday 27 Jul 2017**

- Annual Report 2016-17 – sign off
- Enforcement Report 2016/17
- Regulatory Standards Framework – BSB self-evaluation
- Authorisations Governance Project Update
- IDMB update on progress
- Update on PII Project
- Draft guide for FBT Rules Change consultation
- Quality Assurance of Advocacy - update
- Entity Authorisation – Policy Review (including entity regulation and After The Event insurance)

Thursday 28 Sept 2017

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- GRA Committee Annual Report
- CMA recommendations on transparency: approval of consultation
- Qualifications Fees – Consultation Update
- Schedule of Board meetings Jan 2018 – Mar 2019
- Standard of Proof – response to draft consultation
- Business Planning and Budget Bid for 2018-19
- Corporate Risk Register
- Update on PII Project (including recommendation on extending requirement to insure with BMIF to SPEs)

Thursday 26 Oct 2017

- Rule change application (practice area, ML, youth courts)
- Education and Training Committee Annual Report
- Public and Licensed Access Review – consultation paper and rule change
- Statutory Interventions
- Quality Assurance of Advocacy
- Review of disciplinary tribunal services
- Positive Action plan to address underrepresentation on Board

Thursday 23 Nov 2017

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- IDBM update on progress
- Action Plan to reduce discrimination and barriers to retention/progression for Women at the bar

Thursday 7 Dec 2017 (Board Away Day)

- Draft Authorisation Framework (FBT)

Thursday 25 Jan 2018

- Final Report on PII Project
- Reg Ops Consultation Approval and Regulations Changes

Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19
- FBT Rule Change Application

Public Access Consultation – Application of cab-rank rule to Public and Licensed Access cases

Status

1. For noting and approval.

Executive Summary

2. Last year the BSB conducted a review of the Public and Licensed Access schemes. The purpose of the review was to assess how well the Public and Licensed Access schemes are working in the consumer interest, and consider whether any changes should be made to improve the consumer experience of using these schemes. The results of the review were presented to the board in November and the final report was signed off by the board (by email) and published in March.
3. At the November meeting, the Board delegated authority to the Director General and the Director of Strategy and Policy to issue a Public and Licensed Access consultation. The draft consultation is attached at **Annex 1**. The primary purpose of this paper is to seek agreement to the recommendation in the draft consultation paper not to apply the cab-rank rule to Public and Licensed Access cases. The initial review recommended that the BSB assess from first principles whether the cab-rank rule should be extended to Public and Licensed Access cases. A full analysis against the regulatory objectives in the Legal Services Act 2007 (LSA) has now been undertaken and this is set out in Annex A to the attached consultation paper. The analysis concludes that, on balance, extending the cab-rank rule to Public and Licensed Access cases could create a barrier to access to justice. We think it important, however, that we test our analysis and recommendation in a public forum, which is why we propose to include the recommendation in our consultation paper.

Recommendations

4. The Board is asked to:
 - a) **note** the consultation at **Annex 1**; and
 - b) **consider** the analysis at Annex A of the attached draft consultation which compares the status quo with applying the cab-rank rule to Public and Licensed Access cases.
 - c) **approve** the recommendation in the draft consultation paper not to apply the cab-rank rule to Public and Licensed Access cases and;
 - d) **agree** to publish the draft consultation paper following the Board meeting.

Background

The Public and Licensed Access review

5. The Board considered the results of the Public and Licensed Access review in November 2016. The review involved gathering and analysing evidence and developing an understanding of the market in this area and was informed by a task and completion group which included consumer representation. The three key issues identified from the review were (1) some Public Access barristers may be providing a poor client service, (2) there are barriers that are making consumers unable or unwilling to access a Public Access provider and (3) barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work.

6. Prior to the review taking place the BSB had already made a number of changes to the public access scheme in 2013. Most significantly, barristers who were of less than three years' practising experience were permitted to undertake Public Access work for the first time. This was subject to completing training specified by the BSB, having access to a Public Access 'qualified person' who is readily available to provide guidance, logging Public Access work and seeking feedback from Public Access clients. In October 2013, changes were also made to the Public Access training course which raised the minimum standards that training providers must meet, and included a requirement for participant competency to be assessed against outcomes. Barristers who had taken the existing course needed to complete additional training by November 2015 if they wished to continue to undertake Public Access work.
7. The key driver for the recent review was the fact that Public and Licensed Access rules had not been revised prior to the launch of the BSB Handbook in January 2014 and therefore did not reflect the BSB's current approach of embedding the consumer perspective in all work.

Cab Rank Rule

8. The review recommended that the "*BSB should assess from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the regulatory objectives in the Legal Services Act 2007. This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.*" As part of the review, we explored the reasons why barristers decline public and licensed access work and found no evidence that the number of public access cases declined was disproportionate or that cases were declined for no good reason. However, given the potential impact on access to justice, the review concluded that we should look at this in more detail.
9. The board discussed this recommendation at their November meeting. It was noted that the Legal Services Board (LSB) had previously expressed an opinion on this issue. The LSB queried the application of the cab-rank rule to Public and Licensed Access cases in its decision notice in 2013 approving changes to the public access scheme, and again in 2014 in its decision notice approving the new Handbook. Specifically in 2014 they stated that the application of the cab-rank rule needs to be considered further and that the BSB needs to demonstrate clearly that the overall effect is compatible with the regulatory objectives. Of course, regardless of the LSB decision notice, it is important for the BSB to assess from a first principles basis whether the cab-rank rule should apply to Public and Licensed Access cases, particularly given that the existing rules had not benefited from the consumer perspective nor had they previously been assessed from a risk perspective.

Comment

10. The table at annex A of the draft consultation paper attached at **Annex 1** is a full analysis against the regulatory objectives in the LSA. It compares the status quo with applying the cab-rank rule to Public and Licensed Access cases.
11. The outcome of the analysis is not to apply the cab-rank rule to Public and Licensed Access cases. The reasoning behind this conclusion can be found at paragraphs 23-25 of the draft consultation paper. In particular the Board should note that in coming to this conclusion the application of the cab-rank rule in general was considered. The cab-rank rule is an unusual feature of the Bar's regulatory arrangements given that it can be professional misconduct for a barrister to refuse to represent a lay client for

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personal reasons (which separates the Bar from other professionals). The effect of the rule is that barristers cannot choose their clients. On the contrary, all clients have equal access to the Bar, each having a full range of choice of any advocate who is suitably experienced, not conflicted and available for work, whatever the nature of their case. In effect, the cab-rank rule is a public interest restriction on barristers' normal freedom to contract (and hence to compete with other legal professionals in the marketplace).

12. Despite this restriction on a barrister's ability to contract, it was important for the BSB to consider from a regulatory perspective whether the cab-rank rule should apply to Public and Licensed Access cases. One of the overriding risks evident from the analysis is that applying the cab-rank rule to Public Access cases may still not lead to a meaningful improvement in access. In fact it could reduce supply by discouraging barristers to register to undertake Public Access work.
13. The initial review was informed by discussions with a Task and Completion Group (TCG) which included consumer representation. There was a strong consensus from the group that the cab-rank rule should not apply to Public and Licensed Access cases. The view of the group was that introducing such a change would lead to the risk of a barrister taking on work where clients would actually be unable to manage without a professional client and ultimately would serve to discourage barristers from registering to undertake public access work. More recently, we have also shared our analysis of the cab-rank rule with APEX member Fran Gillon and Board members Zoe Macleod and Adam Solomon. Feedback was incorporated into the final draft.
14. It is important to note that, at this stage, the proposal to retain the status quo in relation to the application of the cab-rank rule to Public and Licensed Access cases is a recommendation in the draft consultation. An engagement plan will be developed in conjunction with the Communications team to ensure there is sufficient consumer input on the proposals outlined in the consultation document, in particular the proposal not to apply the cab-rank rule to Public and Licensed Access cases. Following on from the consultation the initial analysis will be reviewed again in light of consultation responses.

Resource implications

15. Approval of the recommendation in the draft consultation not to apply the cab-rank rule to Public and Licensed Access cases will allow the consultation paper to be published following the Board.
16. If the Board does not agree with the recommendation then the draft consultation paper will require amendment which will require additional resource from the Professional Standards team and the Project Team for the Public and Licensed Access Review. This will also add significantly to the project timeline and delay submission of an application to the LSB.

Equality Impact Assessment

17. An equality impact assessment of the proposals in the consultation has been carried out. This did not identify any adverse impacts in relation to any of the protected groups under the Equality Act 2010. However, the issue of potential equality impacts will be revisited in light of the views expressed in the responses to the consultation.

Risk implications

18. If the Board do not agree with the recommendation in the draft consultation paper that the cab-rank rule should not apply to Public and Licensed Access cases, there is a risk that the project could face significant delays. The analysis and recommendation was formed after detailed consideration of the impact of such a change on the regulatory objectives and the available evidence. Conducting any further analysis would delay the publication of the consultation paper significantly. Currently it is proposed that any changes would come into force in February 2018 (subject to LSB approval), however it is unlikely that this current timeline could be met if any of the proposals in the draft consultation paper require significant amendment.
19. Delays may also result in us missing key milestones in the BSB Business Plan. There are a number of commitments in relation to our work on Public and Licensed Access, including publication of the consultation before the end of June. The milestones are set out below.

Strategic Programme 1- Regulating in the public interest				
Activity	Q1	Q2	Q3	Q4
<i>Public and licensed access</i>	<i>Consultation on rule change</i>	<i>Board decision on consultation</i>	<i>Potential rule change application to the LSB (pending board decision)</i>	

Business Plan 2017-18, BSB (2017)

Impacts on other teams / departments or projects

20. Any delay to the publication of the consultation will impact on the Communications and Engagement department as it will require alteration to their communications plan. This work is also referenced in our CMA Action Plan.

Regulatory objectives

21. Whilst the recommendation in the draft consultation paper is not to apply the cab-rank rule to Public and Licensed Access cases, the proposals in the consultation paper should nonetheless improve access to justice and protect and promote the public interest and the interests of the consumer. These regulatory objectives will also be furthered by revising the Public Access training, and in response to the Competition and Market Authority's (CMA's) review of the legal services sector, providing improved information for consumers and promoting greater transparency in costs before barristers are engaged. It is likely that these steps will be of more benefit to consumers than applying the cab-rank rule to Public and Licensed Access cases.

Lead responsibility:

Kuljeet Chung, Policy Manager, Professional Standards Team
Ewen MacLeod, Director of Strategy and Policy.

Annexes

Annex 1 – Draft consultation on changes to the Public and Licensed Access Rules



Public and Licensed Access Review

Consultation on Changes to the Public and Licensed Access Rules

June 2017

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Executive Summary

The Bar Standards Board (BSB) began a review of the Public and Licensed Access schemes in late 2015.

The Public and Licensed Access schemes allow lay clients to instruct barristers directly without first instructing a solicitor or other lawyer.

The **Public Access scheme** allows registered Public Access barristers to accept instructions directly from any **member of the public**. The **Licensed Access scheme** allows certain “**licensed**” clients to instruct any barrister directly.

In order for a barrister to accept instructions via Public Access, they must complete training specified by the BSB and be registered as a Public Access practitioner. Over 5,500 barristers in England and Wales are registered as Public Access practitioners. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the [Schedules to the BSB’s Licensed Access Recognition Regulations](#).

The main benefits of the Public and Licensed Access schemes are that they improve access to justice, and can increase choice and reduce costs for consumers. Consumers are not required to instruct a barrister through a solicitor, and it may be less costly for them not to do so.

The [Public and Licensed Access Review Report](#), published in March 2017, found that the Public and Licensed Access schemes are operating well, and overall are an essential component of how barristers provide their services to the public. However, our review also identified a number of ways in which the Public Access scheme could be further improved in the public interest, and the Licensed Access scheme could be streamlined.

This consultation begins to address the recommendations of the Public and Licensed Access Review Report. For example:

- The report recommended that the BSB should assess from first principles whether the cab-rank rule, which currently only applies to work referred by solicitors or other lawyers, should be extended to Public and Licensed Access cases. A full analysis against the [regulatory objectives](#) in the Legal Services Act 2007 (LSA) has been undertaken. **The consultation proposes that the cab-rank rule should not be extended to Public and Licensed Access cases.** While the BSB recognises that there are arguments in theory for extending the cab-rank rule on the grounds of improving access to justice, and protecting and promoting the public interest and the interests of consumers, extending the rule would be more likely to create a barrier to access. The other proposals in this consultation, and the BSB's work in response to the Competition and Market Authority's (CMA's) [review of the legal services sector](#), are also more likely to be of benefit to consumers than applying the cab-rank rule to Public and Licensed Access cases;
- **The consultation proposes amending the Public Access Rules so that they are in line with the more outcomes-focused approach of the rest of the BSB Handbook.** It also proposes a) replacing the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback, and b) requiring that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister;
- **The consultation also proposes amending the Licensed Access Rules and Recognition Regulations so that they are in line with the more outcomes-focused approach of the rest of the BSB Handbook.** In particular, it proposes:
 - a) removing reference to the Licensed Access Terms of Work, which are published by the Bar Council in its representative capacity;
 - b) only imposing limitations and conditions on licences in exceptional circumstances;

- c) if appropriate, permitting members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal; and
 - d) moving the First and Second Schedules to guidance, which would allow the BSB to devise application processes for bodies to be added to the Schedules more easily.
- **Finally, the consultation explores whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to the Legal Ombudsman (LeO) to instruct any barrister directly i.e. without using the Public or Licensed Access schemes.** This amendment would be made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).

We invite responses to this consultation from anybody wishing to share their views. However, we anticipate that it is going to be of most interest to barristers undertaking Public and Licensed Access work, Public and Licensed Access clients, the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations, Bar special interest networks and associations and consumer organisations.

The closing date for the consultation is **Friday 15 September 2017**.

We want to hear your views on all of the questions posed, and will take all of the responses into account.

Please send your response, or otherwise get in touch, as follows:

Email: professionalstandards@barstandardsboard.org.uk

Tel: 020 7611 1444

Professional Standards Team

The Bar Standards Board

289-293 High Holborn

London

WC1V 7HZ

If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please also let us know if there is anything else we can do to facilitate feedback other than via written responses.

We look forward to hearing from you.

Part I: Introduction

1. The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. The BSB regulates around 16,000 practising barristers and around 50,000 unregistered barristers in England and Wales.
2. The Public and Licensed Access schemes allow lay clients to instruct barristers directly without first instructing a solicitor or other lawyer. In order for a barrister to accept instructions via Public Access, they must complete training specified by the BSB and be registered as a Public Access practitioner. Over 5,500 barristers in England and Wales are registered as Public Access practitioners. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the [Schedules to the BSB's Licensed Access Recognition Regulations](#). The main benefits of the Public and Licensed Access schemes are that they improve access to justice, and can increase choice and reduce costs for consumers. Consumers are not required to instruct a barrister through a solicitor, and it may be less costly for them not to do so.

Background to the suggested rule changes: Public and Licensed Access Review Report

3. The BSB began a review of the Public and Licensed Access schemes in late 2015. The key driver for the review was the fact that the Public and Licensed Access Rules had not been revised prior to the launch of the [BSB Handbook](#) in January 2014, and might not reflect the BSB's current approach of embedding the consumer perspective in all aspects of our work. Our [Strategic Plan for 2016 – 19](#), for example, commits the BSB to building a deeper dialogue with consumers. It was therefore timely to assess how well the Public and Licensed Access schemes were working in the consumer interest, and consider whether any changes should be made to improve the consumer experience of using these schemes.

4. The [Public and Licensed Access Review Report](#), published in March 2017, found that overall the Public and Licensed Access schemes are an essential component of how barristers provide their services to the public. They perform a valuable role in promoting consumer choice by increasing the ways in which legal services can be accessed by the public. The report concluded that both schemes are operating well, and Public Access barristers are providing a valuable service to their clients. The research showed that Public Access has increased markedly over the past three years and is expected to continue to grow, which underlines the need to ensure that the scheme delivers for consumers (for a full description of the research methodology, see the full report).
5. However, the report also identified a number of ways in which the Public Access scheme can be further improved in the public interest. Three key issues were identified in light of the evidence gathered:
 - There are barriers that are making some consumers unable or unwilling to access a Public Access provider;
 - Barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work; and
 - Some Public Access barristers may be providing a poor client service.
6. The recommendations in the report were designed to address these issues. It should be noted that the three key issues identified above are only relevant to the review of Public Access, not Licensed Access. The evidence showed that there appeared to be fewer issues with the Licensed Access scheme, and so a decision was made to consider the two schemes separately. Accordingly, separate recommendations have been made for Public and Licensed Access.

Recommendations of the Public and Licensed Access Review Report

7. The recommendations in the report which are relevant to this consultation – which is limited to changes to the Public and Licensed Access Rules – are as follows:

Cab-Rank Rule

8. The BSB should assess from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the [regulatory objectives](#) in the Legal Services Act 2007 (LSA). This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.
9. Consideration will also be given as whether the cab-rank rule should apply to Licensed Access cases.

Public Access Rules

10. The BSB should amend the Public Access Rules to be in line with the more outcomes-focused approach of the rest of the BSB Handbook, and explore whether to replace the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback.
11. The report recommended that the Licensed Access scheme should be retained largely in its current form, with only the following changes being made:

Licensed Access Rules and Recognition Regulations

12. The BSB should amend the Licensed Access Rules and Recognition Regulations to be in line with the more outcomes-focused approach of the rest of the BSB Handbook. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. We will explore, amongst other things, whether the Schedules should be moved to guidance.

Limitations and Conditions

13. Members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This would be in keeping with amending the Licensed Access Recognition Regulations to reflect the more outcomes-focused approach of the rest of the BSB Handbook.
14. The BSB should also explore whether the whole system for individual approval of licences continues to be necessary and/or whether it could be made more proportionate.

Scope of Practice Rules

15. The BSB should explore whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to the Legal Ombudsman (LeO) to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). However, if this is an amendment which should be made in principle, it may be best made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).

Terms of Work

16. The BSB should remove reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations and, via the protocol for ensuring regulatory independence, request that the Bar Council update the terms.
17. For the other recommendations in the report (which are not directly relevant to this consultation), see Annex F.

Part II: Current Public and Licensed Access Rules and proposed changes

Cab-rank rule and the non-discrimination rule

Background

18. The cab-rank rule is Rule C29 in the BSB Handbook. The rule states that if a self-employed barrister receives instructions from a professional client such as a solicitor, and the instructions are appropriate taking into account the experience, seniority and/or field of practice of the barrister, they must accept the instructions. This applies irrespective of:
- The identity of the client;
 - The nature of the case to which the instructions relate;
 - Whether the client is paying privately or is publicly funded; and
 - Any belief or opinion which the barrister may have formed as to the character, reputation, cause, conduct, guilt or innocence of the client.
19. The requirement not to discriminate is Rule C28 in the Handbook. The rule requires barristers not to withhold their services, or permit their services to be withheld:
- On the ground that the nature of the case is objectionable to the barrister or to any section of the public;
 - On the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to the barrister or to any section of the public; or
 - On any ground relating to the source of financial support which may properly be given to the prospective client.
20. The requirement not to discriminate applies to all work, including public and licensed access work. The BSB believes this requirement should continue to apply as it provides vital protection to all clients, regardless of how the barrister has been instructed. It is also a matter of general law that barristers have an obligation not to discriminate unlawfully as to those to whom they make their services available on any of the

statutorily prohibited grounds such as gender or race. The rule is also concerned with a barrister's broader obligations not to withhold services on grounds that are inherently inconsistent with their role in upholding access to justice and the rule of law.

21. The cab-rank rule differs in that it only applies to referral work from a professional client. Like the requirement not to discriminate, the cab-rank rule also ensures that all clients with means can obtain representation. However it also obliges barristers to accept all work for which they are qualified even if refusal would not be caught by the non-discrimination rule. For example, it ensures that barristers cannot be restrained by commercially motivated non-compete clauses. So one client cannot insist that a barrister never works for their competitors in the future.

Analysis

22. Although public access clients are afforded the protection of Rule C28 the BSB has nevertheless, assessed from first principles whether the cab-rank rule should also apply to Public and Licensed Access cases, undertaking a full analysis against the regulatory objectives in the LSA. The table at Annex A compares the status quo with applying the cab-rank rule to Public and Licensed Access cases.

Conclusion

23. The BSB recognises that there are arguments in theory for applying the cab-rank rule to Public and Licensed Access cases on the grounds of improving access to justice, and protecting and promoting the public interest and the interests of consumers. However, having undertaken a full analysis against the regulatory objectives in the LSA (at Annex A), our overall assessment is that the status quo should be maintained (i.e. that the cab-rank rule should not be applied to Public and Licensed Access). In summary, our rationale is that:
 - In practice it is unlikely that a Licensed Access client or other member of the public with a properly funded, arguable case would be unable to access representation, either via the Licensed or Public Access scheme or, if necessary,

by instructing a solicitor. However, the BSB should be sensitive to any evidence of such consumer detriment if it emerges;

- Applying the cab-rank rule to Public Access cases could create a barrier to access, in that barristers may become less inclined to undertake Public Access work and not register to do so. This could reduce choice and increase costs for consumers;
- Even if this did not occur, applying the cab-rank rule to Public and Licensed Access cases may still not lead to a meaningful improvement in access, as there would still be an exception for lack of suitability;
- Indeed, applying the cab-rank rule to Public and Licensed Access cases could lead to clients attempting to invoke the rule when they are unsuitable for Public or Licensed Access and/or their cases have little merit, and it may be in no one's interest to proceed;
- There is at least a residual risk that more instructions would be accepted where it would not be in the interests of clients, or in the interests of justice i.e. that more instructions would be accepted inappropriately (although the risk could be mitigated by regulatory supervision and revising the Public Access training – see Annex F); and
- Our view is that the cab-rank rule already operates sufficiently in both the public interest and the interests of consumers.

24. While our conclusion is that the status quo should be maintained (i.e. that the cab-rank rule should not be applied to Public and Licensed Access cases) we also consider more could be done to ensure that barristers undertaking Public and Licensed Access work, and Public and Licensed Access clients, are aware of the protections afforded by Rule C28. Guidance to the rule states this is a requirement that barristers do not 'withhold [their] services on grounds that are inherently inconsistent with [their] role in upholding access to justice and the rule of law'. It is therefore proposed to make the protections which clients are afforded by Rule C28 more prominent in the BSB's [Public Access Guidance for Barristers, Clerks and Lay Clients](#) (see paragraph 87).

25. We also consider that, while our conclusion is the cab-rank rule should not be applied to Public and Licensed Access cases, the proposals in this consultation (for example, streamlining the Licensed Access scheme) will nonetheless improve access to justice,

and protect and promote the public interest and the interests of consumers. These regulatory objectives will also be furthered by revising the Public Access training and, in response to the Competition and Market Authority's (CMA's) [review of the legal services sector](#), providing improved information for consumers and promoting greater transparency in costs before barristers are engaged (see Annex F). It is likely that taking these steps will be of more benefit to consumers than applying the cab-rank rule to Public and Licensed Access cases.

Question

26. **Question 1:** do you agree with the conclusion that the status quo should be maintained i.e. that the cab-rank rule should not be applied to Public and Licensed Access cases? If not, please state why not.

Proposed changes to the Public Access Rules

27. The current Public Access Rules are Rules C119 – C131 of the BSB Handbook (Section D2.1). The proposed changes to the Public Access Rules can be found in full at Annex B, and a discussion of the proposed changes to the rules is below.

Discussion of proposed changes to the Public Access Rules

Rule C120.2: Additional Public Access training

28. This rule has been removed to reflect that the deadline to undertake additional Public Access training has passed.

Rule C121.2 – .4: Public Access barristers of less than three years' standing

29. Monitoring undertaken by the BSB suggests that rather than requiring barristers who are of less than three years' standing to maintain a Public Access log, it may be that there are more effective and proportionate means of seeking and reflecting on client feedback. More generally, the CMA also identified issues with the existing means of seeking and reflecting on client feedback in its review of the legal services sector.¹
30. It is therefore appropriate for the BSB to review its regulatory approach in this area. While it is important that newly qualified Public Access barristers use feedback to develop their practices, the BSB's [Professional Statement](#) (which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice) already states at paragraph 2.5d) that 'barristers should ask for and make effective use of feedback'.² In addition, the BSB's [Future Bar Training](#) programme will seek to ensure that education and training for the Bar reflects the requirements of the Professional Statement. There is therefore now less justification for a prescriptive requirement that barristers who are of less than three years' standing maintain a Public Access log, given they will be expected to make effective use of feedback on 'day one' of practice.
31. Furthermore, the BSB's report on High Impact Supervision Returns (October 2015) stated 'of particular note was the fact that few chambers actively seek feedback from lay clients and a number felt that it would not be possible or appropriate to do so. Rule C121 of the BSB Handbook requires barristers with less than three years' standing to seek appropriate feedback from their public access clients on the service provided, but few chambers referred to this in their return'. The report did describe how a few chambers seek feedback from lay clients, and it was considered beneficial to explore how chambers could apply these strategies more widely. This led, as the CMA notes in its review of the legal services sector, to a project intended to improve the way in which barristers and chambers gather feedback, and how they make use of that to improve services to clients. Guidance on how to gather and make use of feedback (with

¹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

²

https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf, page 15

illustrative examples) was drafted; however, it was not intended to be aimed just at Public Access barristers who are of less than three years' standing, but at all barristers regardless of their experience. This was because evidence from supervisory activity indicated that there is benefit for all barristers in seeking feedback from clients.

32. It is therefore proposed to remove the prescriptive requirement of Rule C121.2 – .4, and instead further explore how all barristers (not just Public Access barristers who are of less than three years' standing) can seek and make use of feedback. To this end, the guidance on how to gather and make use of feedback should be revisited in light of the evidence which has emerged from the CMA's report. This guidance on how to engage with feedback directly from clients could also be published alongside the BSB's guidance to providers on how they should engage with public reviews on independent feedback platforms (the CMA has recommended that all legal regulators publish the latter).

Rule C125: Notifying Public Access clients

33. Rule C125 states that having accepted Public Access instructions, barristers must notify their Public Access clients in writing, and in clear and readily understandable terms, of a number of particulars. Rule C125.3 states that the notification must include 'unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that you cannot be expected to perform the functions of a *solicitor* or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the *conduct of litigation*'. The term 'other authorised litigator' has been replaced with 'other *person* who is authorised to *conduct litigation*' to reflect the language used in the rest of the BSB Handbook. It is also proposed to simplify the text relating to obligations arising out of or related to the conduct of litigation.
34. In addition, Rule C125.4 states that the notification must include 'the fact that you are self-employed, are not a *member* of a firm and do not take on any arranging role'. The text 'not a *member* of a firm' has been replaced with 'not employed by a *regulated entity*', and the text 'do not take on any arranging role' has been replaced with '(subject to Rule S26) do not undertake the management, administration or general conduct of a

client's affairs'. In both cases, the meaning has not changed but the language used now reflects that in the rest of the BSB Handbook.

35. Furthermore, it is proposed to add Rule C125.10, which states that the notification must include 'the level of professional indemnity insurance held by you'. Self-employed barristers must be members of the Bar Mutual Indemnity Fund (Rule C71 in the BSB Handbook), and barristers must ensure they have adequate insurance (taking into account the nature of their practice) which covers all the legal services they supply to the public (Rule C76.1). The BSB Handbook also states that barristers must not mislead, or cause or permit to be misled, their clients about the extent to which they are covered by insurance against claims for professional negligence (Rule C19.5).
36. While there is no evidence of widespread under-insurance by Public Access barristers, the CMA stated in its review of the legal services sector that consumers should be able to expect legal services providers to disclose the level of professional indemnity insurance they hold.³ It is therefore proposed to require that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister. This would assure lay clients (in the absence of professional clients such as solicitors) that Public Access barristers have adequate insurance which covers all the legal services they are supplying.

Rule C129: Documents

37. Rule C129 has been changed to state that documents relating to Public Access work should be retained for at least six, rather than seven, years. This reflects the equivalent rule for documents relating to Licensed Access work (Rule C141), and the fact the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years.⁴

³ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 227-228

⁴ <http://www.legislation.gov.uk/ukpga/1980/58/section/5>, s(5)

Rule C130: Correspondence

38. Rule C139 states that Public Access barristers ‘may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*’. There would be no risk posed if a Public Access barrister undertook correspondence where it was not ancillary to permitted work i.e. if a lay client instructed a Public Access barrister simply to undertake correspondence on their behalf. The reference to the BSB’s Public Access Guidance for Barristers is also unnecessary as this is referred to in Rule C119. It is therefore proposed to remove the rule.

Throughout

39. Various changes have been made to simplify and update the language used. While this has been done where possible, the nature of Public Access work (i.e. a lay client instructing a barrister without a solicitor or other professional client) means that the Public Access Rules must retain a level of prescription to ensure public protection. However, there may be further opportunities to simplify the language used, and so a question has been asked below in respect of this.

Question

40. **Question 2:** do you agree with the proposed changes to the Public Access Rules (at Annex B)? In particular, do you agree with the proposals to:
- a) remove the requirement for barristers who are of less than three years’ standing to maintain a Public Access log; and
 - b) require that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister?

If not, please state why not.

41. **Question 3:** have you identified any further opportunities to simplify or improve the Public Access Rules (at Annex B)? If yes, please explain your answer.

Proposed changes to the Licensed Access Rules

42. The current Licensed Access Rules are Rules C132 – C141 of the BSB Handbook (Section D2.2). The proposed changes to the Licensed Access Rules can be found in full at Annex C, and a discussion of the proposed changes to the rules is below.

Discussion of proposed changes to the Licensed Access Rules

Rule C133: Application of the Licensed Access Rules

43. Rule C133 states that Rules C136 – C137, which among other things require barristers to be clear with clients about the basis upon which they have accepted Licensed Access instructions, do not apply if the client is a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. It is unclear why barristers should not also be required to provide this information to clients who are members of professional bodies. It is therefore proposed to remove the references to Rules C136 – C137 from Rule C133.

Rule C135: Acceptance of Licensed Access instructions

44. The reference to a barrister's chambers also being able to provide the services required by a particular Licensed Access client has been removed, as while chambers must be properly administered (Rule C89 in the BSB Handbook) barristers are personally responsible for their own professional work (Rule C20).

Rules C136 – C137 and C139: Licensed Access Terms of Work

45. The Licensed Access Terms of Work are published by the Bar Council in its representative capacity. As Licensed Access clients are deemed to be acting within a specific area of expertise or specialism, there is little regulatory justification in including reference to the terms in the Licensed Access Rules. From a regulatory standpoint, it

would be better to simply require that Licensed Access is undertaken on agreed terms and then if barristers wish to continue using the Licensed Access Terms of Work, they can do so. It is therefore proposed to remove reference to the Licensed Access Terms of Work from the Licensed Access Rules. Various other changes have also been made to facilitate this.

Throughout

46. Various changes have been made to simplify and update the language used. The term 'other authorised litigator' has also been replaced with 'other *person* who is authorised to *conduct litigation*' to reflect the language used in the rest of the BSB Handbook.

Question

47. **Question 4:** do you agree with the proposed changes to the Licensed Access Rules (at Annex C)? In particular, do you agree with the proposal to remove references to the Licensed Access Terms of Work? If not, please state why not.

Proposed changes to the Licensed Access Recognition Regulations

48. The current Licensed Access Recognition Regulations can be found on the BSB's website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>. The proposed changes to the Licensed Access Recognition Regulations can be found in full at Annex D, and a discussion of the proposed changes to the regulations is below.

Discussion of proposed changes to the Licensed Access Recognition Regulations

Paragraph 3(e): Limitations and conditions

49. Paragraph 3(e) states that when issuing licences to clients so they may instruct barristers directly, the BSB may impose limitations and conditions relating to a) the matters the client can instruct a barrister for, and b) the courts and tribunals the client

can instruct a barrister to appear in. This is a restriction which is difficult to continue to justify. These lay clients will be deemed to be acting within a specific area of expertise or specialism, and their competence to instruct barristers will be assessed as part of their licence applications. There is also an existing safeguard in the BSB Handbook which states that barristers ‘must not accept instructions to act in a particular matter if: [they] are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter’ (Rule C21.8).

50. In addition, as limitations and conditions relating to matters and courts and tribunals are often imposed, licence holders are often required to submit (and pay for) applications to amend their licences. Making licences valid for all matters, courts and tribunals would therefore streamline the Licensed Access scheme and free up regulatory resources.
51. The BSB would also retain the ability to impose limitations and conditions on licences in exceptional circumstances, as paragraph 3(e) would still state that licences may be issued ‘subject to such limitations or conditions as the Bar Standards Board may think appropriate’. While the BSB would not normally impose limitations and conditions on licences, an example of where it may still be appropriate is on the licences of immigration advisers regulated by the Office of the Immigration Services Commissioner (OISC). This is because immigration advisers apply to be regulated by OISC at the level which reflects their competence and service.⁵
52. It would be necessary to operate a transitional arrangement whereby as existing licences which have limitations and conditions are renewed, a decision is made as to whether it is absolutely necessary to still impose limitations and conditions.

Paragraphs 4(b) – (c): Content of licences

53. Paragraph 4b) refers to the Licensed Access Terms of Work, which are published by the Bar Council in its representative capacity. As Licensed Access clients are deemed to be acting within a specific area of expertise or specialism, there is little regulatory

⁵ <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser#applying-for-the-correct-level>

justification in including reference to the terms in the Licensed Access Recognition Regulations. It is therefore proposed to remove paragraph 4b).

54. Paragraph 4c) states licences ‘*may* if the Bar Standards Board think appropriate provide that a copy of the Licence shall be sent with every set of instructions to any barrister instructed by the authorised licensed access client’. This is in fact a requirement under Rule C134.2 (see above) and so paragraph 4c) has therefore been removed.

Paragraph 6: Matters to be considered by the BSB

55. Paragraph 6a) refers to barristers in independent practice operating ‘as a referral profession of specialist consultants’. This is no longer strictly accurate as following the establishment of the Public Access scheme in 2004, barristers can now undertake work other than on a referral basis i.e. if registered to do so, they can now accept instructions directly from the public rather than solely via a solicitor or other professional client. Paragraph 6a) has therefore been removed.

Paragraph 7: Higher courts and the Employment Appeal Tribunal

56. Paragraph 7b) states that if a person is a member of one of the professional bodies listed in the First Schedule, while they may use the Licensed Access scheme to instruct a barrister directly, they may not do so for the purpose of representation in various higher courts and the Employment Appeal Tribunal.
57. However, this is a restriction which is difficult to continue to justify for the same reasons as the restrictions currently imposed by paragraph 3(e). Firstly, members of the professional bodies listed in the First Schedule will be lay clients who are deemed to be acting within a specific area of expertise or specialism. Secondly, paragraph 7a) already states that such persons may only instruct barristers directly in matters which fall generally within their professional expertise. If these matters happen to require representation in the higher courts, this should not be an issue as there is an existing safeguard in the BSB Handbook which states that barristers ‘must not accept instructions to act in a particular matter if: [they] are not competent to handle the

particular matter or otherwise do not have enough experience to handle the matter’ (Rule C21.8).

58. It is therefore proposed to remove paragraph 7b). If appropriate, this will permit members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal.

First and Second Schedules to the Licensed Access Recognition Regulations

59. The First and Second Schedules to the Licensed Access Recognition Regulations have been updated to reflect that some of the professional bodies listed have changed their names, merged or disbanded.
60. It is also proposed to move the Schedules to guidance, so that in the future the BSB would not be required to apply to the oversight regulator, the Legal Services Board (LSB), to amend them. This would make the process of amending the Schedules more straightforward, freeing up regulatory resources.
61. In addition, it is proposed that the BSB devises rigorous but straightforward application processes for bodies to be added to the Schedules. In the case of the First Schedule, the application process would be for professional bodies such as those for accountants and taxation advisers, insolvency practitioners, etc. In the case of the Second Schedule, the application process would be for ombudsman services. However, in both cases the criteria to be added to the Schedules can be drawn from paragraph 6 of the Licensed Access Recognition Regulations.
62. In the case of applications to be added to the Second Schedule, it is proposed that there would be no application fee. This is because it is in the public interest for ombudsman services to be able to instruct barristers directly via the Licensed Access scheme. However, in the case of applications by professional bodies to be added to the First Schedule, it is proposed that there would be an application fee. This is because the application is more likely to be driven by the interests of their members to be able to make use of the Licensed Access scheme. Individual members of

professional bodies which are not listed in the First Schedule (and other licence holders) are also required to pay an application fee in order to instruct barristers directly via the Licensed Access scheme. The application fee for professional bodies to be added to the First Schedule will be determined in line with our fees and charges policy and the principles of cost recovery.

Throughout

63. Various changes have been made to simplify and update the language used.

Question

64. **Question 5:** do you agree with the proposed changes to the Licensed Access Recognition Regulations (at Annex D)? In particular, do you agree with the proposals to:

- a) only impose limitations and conditions on licences in exceptional circumstances?;
- b) if appropriate, permit members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal?;
- c) move the First and Second Schedules to guidance?;
- d) devise application processes for bodies to be added to the First and Second Schedules?; and
- e) only charge a fee for applications by professional bodies to be added to the First Schedule?

If not, please state why not.

Scope of Practice Rules

65. As Licensed Access clients are deemed to be acting within a specific area of expertise or specialism, the scenarios in which they instruct barristers are deemed to be low-risk. This has led to the suggestion that the BSB could amend its Scope of Practice Rules to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes).

66. The justification for this would be that the risk is higher where clients who *would* be able to complain to LeO instruct barristers directly. These are the types of client for whom the

public access scheme has largely been designed, with the added protection provided by those rules. Those clients who would be able to complain to LeO are as follows:

- Individuals;
- Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- Charities with an annual income net of tax of less than £1 million;
- Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- Trustees of trusts with an asset value of less than £1 million; and
- Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the Legal Ombudsman.

67. There are risks in the BSB's Risk Index which relate to client service and delivery i.e. the potential for things to go wrong for clients. For example, there is a risk that a barrister may fail to provide a proper standard of client care or quality of work to clients, and another risk that clients are not given clear information about fees.⁶ Where clients who would be able to complain to LeO instruct barristers directly, the impact of things going wrong is higher on those clients. However, clients who would not be able to complain to LeO are less likely to require the protections afforded by the Public and Licensed Access Rules, thus the suggestion that the BSB could amend its Scope of Practice Rules to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes).

68. If the Scope of Practice Rules were amended in this way, there would be less reliance on the Public and Licensed Access schemes. This is because clients who would not be able to complain to LeO would be permitted to instruct barristers directly without the requirement for either:

⁶ https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf, page 5

- The barrister to be registered to undertake Public Access work; or
 - The client to hold a licence issued by the BSB; or
 - The client to be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations.
69. In these cases, other relevant rules in the BSB Handbook would still apply; for example, barristers would still be required to confirm acceptance of instructions in writing, including the terms and/or basis on which they will be acting (Rule C22). They would also still be required to provide information to clients about their right to make a complaint, and the complaints procedure (Rules C99 – C102). In the absence of solicitors or other professional clients also being instructed, record keeping requirements similar to those in the Public and Licensed Access Rules would also likely be imposed. However, in these low-risk scenarios of clients instructing barristers directly, compliance with the Public and Licensed Access Rules as a whole would be deemed unnecessary. The Public Access rules would still remain for those clients who may need additional support in instructing a barrister directly.
70. It is likely that there would be less reliance on the Licensed Access scheme in particular, as clients who would not be able to complain to LeO would not be required to hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. In the light of such a change we would consider whether the Licensed Access scheme continued to be necessary or whether all other clients would be better served by going to a Public Access practitioner.
71. If the Scope of Practice Rules were amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes), this amendment would be made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review). This is an opportunity to simplify the BSB's regulatory arrangements and remove a requirement to use the Public and Licensed Access schemes which may not be adding clear value, unless risks in not requiring compliance with the Public and Licensed Access Rules in these scenarios are identified. We intend to use the consultation to gather evidence as to the feasibility of the proposal,

particularly from barristers undertaking Public and Licensed Access work and Public and Licensed Access clients. This evidence base can then be used to inform a wider review of the Scope of Practice Rules.

Questions

72. **Question 6:** do you agree or disagree that, in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes)? Please state why.
73. **Question 7:** in these scenarios of clients instructing barristers directly, have you identified any risks in not requiring compliance with the Public and Licensed Access Rules? If yes, please explain your answer.

Equality impact assessment

74. An equality impact assessment of the proposals in the consultation has been carried out. This did not identify any adverse impacts in relation to any of the protected groups under the Equality Act 2010. However, the issue of potential equality impacts will be revisited in light of the views expressed in the responses to the consultation.

Question

75. **Question 8:** do you consider that any of the proposals in the consultation could create any adverse impacts for any of those with protected characteristics under the Equality Act 2010? If yes, please explain your answer.

Part III: About the consultation

How has the consultation been developed?

76. We are extremely grateful to the Public and Licensed Access Review Task Completion Group for their contribution. The expertise of this small group of practising barristers, chambers staff and consumer experts was invaluable to the development of the consultation.

Who should respond to the consultation?

77. We are particularly interested in hearing from:
- Barristers undertaking Public and Licensed Access work;
 - Other barristers;
 - Public and Licensed Access clients, including licence holders and members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations;
 - The bodies listed in the First and Second Schedule;
 - Other bodies which may apply to be listed in the First and Second Schedule;
 - Members of chambers' business management, including clerks;
 - Members of the judiciary;
 - Bar special interest networks and associations;
 - Consumer organisations; and
 - Students: current law students, BPTC students and anyone interested in a career at the Bar.

Part IV: How to respond to the consultation

78. The closing date for the consultation is **Friday 15 September 2017**. You do not need to wait until the closing date to respond to the consultation.
79. If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know.
80. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the specific questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content.
81. We want to hear your views on all of the questions posed, and will take all of the responses into account.
82. You do not have to respond to the consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.
83. **Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to the consultation please set this out in your response.**
84. Please send your response, or otherwise get in touch, as follows:
Email: professionalstandards@barstandardsboard.org.uk
Tel: 020 7611 1444
Professional Standards Team
The Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

List of questions

85. **Question 1:** do you agree with the conclusion that the status quo should be maintained i.e. that the cab-rank rule should not be applied to Public and Licensed Access cases? If not, please state why not.

Question 2: do you agree with the proposed changes to the Public Access Rules (at Annex B)? In particular, do you agree with the proposals to:

- a) remove the requirement for barristers who are of less than three years' standing to maintain a Public Access log; and
- b) require that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister?

If not, please state why not.

Question 3: have you identified any further opportunities to simplify or improve the Public Access Rules (at Annex B)? If yes, please explain your answer.

Question 4: do you agree with the proposed changes to the Licensed Access Rules (at Annex C)? In particular, do you agree with the proposal to remove references to the Licensed Access Terms of Work? If not, please state why not.

Question 5: do you agree with the proposed changes to the Licensed Access Recognition Regulations (at Annex D)? In particular, do you agree with the proposals to:

- a) only impose limitations and conditions on licences in exceptional circumstances?;
- b) if appropriate, permit members of the professional bodies listed in the First Schedule to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal?;
- c) move the First and Second Schedules to guidance?;

- d) devise application processes for bodies to be added to the First and Second Schedules?; and
- e) only charge a fee for applications by professional bodies to be added to the First Schedule?

If not, please state why not.

Question 6: do you agree or disagree that, in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes)? Please state why.

Question 7: in these scenarios of clients instructing barristers directly, have you identified any risks in not requiring compliance with the Public and Licensed Access Rules? If yes, please explain your answer.

Question 8: do you consider that any of the proposals in the consultation could create any adverse impacts for any of those with protected characteristics under the Equality Act 2010? If yes, please explain your answer.

Next steps following the end of the consultation

- 86. The consultation will close on **Friday 15 September 2017**. Once the consultation has closed we will collate and analyse the responses. We will use them to determine the potential for the suggested rule changes and issue a consultation report. If we decide to go ahead with the rule changes, we will finalise the drafting of the new rules and apply to the LSB for approval.
- 87. If the LSB approves the rule changes, we will amend the BSB Handbook and Licensed Access Recognition Regulations, and update the associated documents on the BSB website: the Public Access Guidance for Barristers, Clerks and Lay Clients, and the Public Access Model Client Care Letters.

Annex A: Cab-rank rule analysis

The following table compares the status quo with applying the cab-rank rule to Public and Licensed Access cases.

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
<i>Improving access to justice</i>	<ul style="list-style-type: none"> • The BSB has taken the view that the cab-rank rule is an essential safeguard of access to justice. • However, it is important not to assume that Public Access clients whose instructions are declined because the barrister does not want to take on the case are unable to secure representation from another Public Access barrister or indeed, a solicitor. The Law Society’s response to the 2014 call for evidence on the standard contractual terms and the cab-rank rule noted that ‘there are no examples of people with properly arguable, funded 	<ul style="list-style-type: none"> • This could increase choice and reduce costs for consumers i.e. they would not be required to instruct a barrister through a solicitor, and it may be less costly for them not to do so (although if barristers become less inclined to undertake Public Access work and do not register to do so, this could reduce choice and increase costs for consumers). • In 2014, the BSB issued a call for evidence as part of a review of the standard contractual terms and the cab-rank rule. This produced evidence that applying the cab-rank rule to cases where there is a professional

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>cases being unable to access a solicitor'.⁷ Expanding on this statement, it is therefore likely that there are few (or no) examples of clients with properly arguable, funded cases being unable to access either a solicitor or, if the client and case is suitable for Public Access, a Public Access barrister. Receiving advice through the Public Access scheme is also likely to assist clients in establishing whether they have a case in the first instance.</p> <ul style="list-style-type: none"> Given the expert and specialist nature of Licensed Access clients, it is even less likely that there are examples of Licensed 	<p>client influences barristers to accept instructions.⁹ It would follow that applying the cab-rank rule to Public and Licensed Access cases could improve access to justice.</p> <ul style="list-style-type: none"> As part of the Public and Licensed Access review, the BSB also commissioned, jointly with our oversight regulator the Legal Services Board (LSB), an independent research specialist (Pye Tait) to undertake supply-side research into the Public Access scheme (surveying and interviewing Public Access barristers). The report stated 'the most prevalent reasons for declining cases [in the past

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http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20150730_Annex_E.pdf, paragraph 10

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http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20150730_Annex_F.pdf, paragraph 22

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>Access clients with properly arguable, funded cases being unable to access representation.</p> <ul style="list-style-type: none"> This reflects the findings of the 2014 call for evidence on the standard contractual terms and the cab-rank rule. While the BSB has taken the view that the cab-rank rule is an essential safeguard of access to justice, it was noted that market forces are one reason why specific reliance on the cab-rank rule is rare, as ‘there is a good supply of barristers and...they will have a commercial self-interest in accepting work’.⁸ However, this is not necessarily the case in all areas of law. 	<p>12 months] are that either the client or the case is not suitable for public access work. Nearly 60% of respondents stated that clients were unsuited to the scheme, and just over 50% that the case was unsuitable. Nearly 40% of respondents did not want to take on the case’.¹⁰ The fact that nearly 40% of respondents declined Public Access instructions because they did not want to take on the case suggests barristers may be more likely to decline Public (and Licensed) Access cases. Applying the cab-rank rule to these cases could therefore improve access to justice.</p> <ul style="list-style-type: none"> However, applying the cab-rank rule to Public Access cases could create a barrier

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http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20150730_Annex_E.pdf, paragraph 9

¹⁰ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<ul style="list-style-type: none"> It should also be noted that, while it is unlikely a Licensed Access client or other member of the public with a properly funded, arguable case would be unable to access representation, the legal regulators do not operate a mechanism which would systematically capture evidence of such consumer detriment. The BSB should therefore be sensitive to any evidence of such consumer detriment if it emerges; for example, through regulatory supervision. There is anecdotal evidence that if Public and Licensed Access cases are unsuitable, barristers will often refer clients to suitable solicitors (although not for a fee, as this would be in 	<p>to access, in that barristers may become less inclined to undertake Public Access work and not register to do so (unlike Public Access, barristers are not required to register to undertake Licensed Access work, and therefore applying the cab-rank rule to Licensed Access cases would not have the same potential effect). For example, Pye Tait’s report revealed that ‘risk assessment is an important influencing factor when barristers decide whether or not to accept public access instructions. As the vast majority of respondents are self-employed, the risk of the work going wrong in some way can be significant’.¹¹ Barristers feel more exposed to complaints, and</p>

¹¹ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page 32

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>breach of the prohibition on referral fees: see Rule C10 in the BSB Handbook). It is also possible that, to avoid the administrative burden, some barristers may refer Public and Licensed Access cases to solicitors even if they are suitable and the clients are able to conduct any necessary litigation. However, again the legal regulators do not operate a mechanism which would systematically capture evidence of this; for example, feedback from solicitors.</p>	<p>therefore disciplinary action, when undertaking Public Access work.</p> <ul style="list-style-type: none"> • In addition, Pye Tait's report found that some barristers 'do not think public access work is suitable for vulnerable clients, and these cases are often declined as part of the clerks' initial screening. In this context barristers consider clients to be 'vulnerable' if they would be unable to conduct litigation, and manage the administrative burden...In a lot of cases, clients approach barristers via the scheme when they have already been turned away by solicitors, as their case is unlikely to succeed or lacks validity in other ways. Therefore barristers will reject the case on grounds of lack of

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		<p>suitability'.¹² However, if the cab-rank rule was applied to Public Access cases, there is a risk that significant numbers of clients would attempt to invoke the rule when their cases have little merit, and it may be in no one's interest to proceed (although the BSB could mitigate the risk by providing improved information for consumers to help them make more informed choices).</p> <ul style="list-style-type: none"> • There is also a risk that there would not be a meaningful improvement in access. While some additional cases may be accepted, there would still need to be an exception for lack of suitability. 50.8% and 59.3% of respondents to Pye Tait's survey declined

¹² https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page 33

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		<p>Public Access instructions because the case and the client were not suitable for Public Access work respectively (it is likely that there was some overlap between the two).</p> <ul style="list-style-type: none"> • Given the expert and specialist nature of Licensed Access clients, applying the cab-rank rule to Licensed Access cases would be even less likely to lead to a meaningful improvement in access. • 30%, 25.9% and 25.6% of respondents to Pye Tait’s survey also declined Public Access instructions due to full caseloads, a lack of specialist expertise and disagreements over fees respectively. There would still need to be exceptions for these reasons.

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		<ul style="list-style-type: none"> • Barristers could also seek to evade the application of the cab-rank rule to Public and Licensed Access cases, although the risk of this could be mitigated by regulatory supervision and if necessary, disciplinary action. • Initial screening for suitability is often undertaken by clerks. If the cab-rank rule was applied to Public and Licensed Access cases, the BSB would need to revise its Public Access Guidance for Clerks and take other steps to ensure that Public Access clerks and administrators were aware of the wider obligation.
<i>Supporting the constitutional principles of the rule of law</i>	<ul style="list-style-type: none"> • The BSB has taken the view that the cab-rank rule is an essential safeguard of the rule of law. 	<ul style="list-style-type: none"> • There would still need to be an exception for cases where it would not be in the interests of justice for barristers to accept

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<ul style="list-style-type: none"> • Rule C28 in the BSB Handbook and the guidance to the rule (see paragraph 21) are consistent with supporting the constitutional principles of the rule of law. • There are protections in the Public and Licensed Access Rules which are intended to ensure that barristers do not accept instructions where this would not be in the interests of justice (Rules C120.4 and C135.2 in the BSB Handbook). 	<p>instructions. However, there is at least a residual risk that more instructions would be accepted where it would not be in the interests of justice i.e. that more instructions would be accepted inappropriately (although the risk could be mitigated by regulatory supervision and revising the Public Access training – see Annex F).</p>
<p><i>Protecting and promoting the public interest, and protecting and promoting the interests of consumers</i></p>	<ul style="list-style-type: none"> • The BSB has taken the view that the cab-rank rule is clearly in the interests of consumers of barristers' services, and an essential safeguard of the public interest. The two are related as the LSA defines consumers widely – its definition encompasses those who are using, or are contemplating using, legal 	<ul style="list-style-type: none"> • The BSB recognises that there are arguments for applying the cab-rank rule to Public and Licensed Access cases on the grounds of protecting and promoting the public interest, and the interests of consumers. These are similar to the arguments in relation to improving access to justice. However, in practice it is

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>services, whether this is in a personal capacity or in connection with their business.¹³ In theory, this definition of consumer could encompass any member of the public at some point in their lives.</p> <ul style="list-style-type: none"> • The cab-rank rule already places the public interest higher than professional interests for the reasons described in paragraph 19. • The cab-rank rule already places the public interest higher than particular consumer interests, as with the introduction of the BSB Handbook in January 2014 it was extended to apply to instructions for work in England and Wales coming from lawyers in Scotland, Northern Ireland and European Economic Area 	<p>unlikely that a Licensed Access client or other member of the public with a suitable case would be unable to access representation, either via the Licensed or Public Access scheme or, if necessary, by instructing a solicitor. It is also important to again consider that applying the cab-rank rule to Public Access cases could lead to barristers becoming less inclined to undertake Public Access work, and not registering to do so (potentially reducing choice and increasing costs for consumers).</p> <ul style="list-style-type: none"> • Following the 2014 call for evidence on the standard contractual terms and the cab-rank rule, it was noted one reason why specific reliance on the cab-rank rule

¹³ <http://www.legislation.gov.uk/ukpga/2007/29/section/8>, s(8)4

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>member states. It was also extended to non-advocacy work, whereas previously it only applied to advocacy work. Different types of consumers with different needs are therefore now all afforded the protections of the cab-rank rule.</p> <ul style="list-style-type: none"> The cab-rank rule means that it can be professional misconduct for a barrister to refuse to represent a lay client because the barrister, for example, would prefer for commercial reasons to act for a different party. While this protection is not extended to Public and Licensed Access clients, the associated risks are unlikely to materialise in practice. If a Public or Licensed Access client required this protection then, assuming 	<p>is rare is that 'solicitors would not consider it to be helpful for their client to force a barrister to accept a case they did not want to undertake'.¹⁴ It is equally unlikely that it would be helpful for a Public or Licensed Access client to force a barrister to accept a case they did not want to undertake. While a barrister would of course still be bound by the Core Duty in the BSB Handbook to act in the client's best interests, assuming that their case is valid it is more likely to be in the consumer's interest to secure other representation.</p> <ul style="list-style-type: none"> There is a risk that clients would attempt to invoke the rule when they are unsuitable for Public or Licensed Access and/or

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http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20150730_Annex_E.pdf, paragraph 9

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>their case is valid, it would be straightforward for them to instruct a solicitor who could invoke the cab-rank rule if necessary (albeit one of the main benefits of Public and Licensed Access is that it increases choice and reduces costs for consumers i.e. they are not required to instruct a barrister through a solicitor, and it may be less costly for them not to do so).</p> <ul style="list-style-type: none"> • There are protections in the Public and Licensed Access Rules which are intended to ensure that barristers do not accept instructions where this would not be in the interests of their clients (Rules C120.4 and C135.2 in the BSB Handbook). An example would be if the client is unable to conduct 	<p>their cases have little merit, and it may be in no one’s interest to proceed. It would be less likely in the case of expert and specialist Licensed Access clients, but the risk would still not be removed entirely.</p> <ul style="list-style-type: none"> • As Pye Tait’s report stated, ‘it tends to be that individual clients are most likely to be deemed unsuitable. This is partly because businesses may have a better understanding of the legal framework and/or require litigation which is more straightforward and therefore less time-consuming. Businesses also have their own administrative capacity to take on those elements of the case’.¹⁵ Applying the cab-rank rule to Public and

¹⁵ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	litigation, and the barrister is not authorised to do so.	<p>Licensed Access cases would not serve to address the gap in suitability, and potentially only lead to clients attempting to invoke the rule inappropriately (although the BSB could mitigate the risk by providing improved information for consumers to help them make more informed choices).</p> <ul style="list-style-type: none"> • There would still need to be an exception for cases where it would not be in the interests of clients for barristers to accept instructions. However, there is at least a residual risk that more instructions would be accepted where it would not be in the interests of clients i.e. that more instructions would be accepted inappropriately (although the risk could be mitigated by regulatory supervision and

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		revising the Public Access training – see Annex F).
<i>Promoting competition in the provision of services</i>	<ul style="list-style-type: none"> • The BSB has taken the view that the existing rule has significant benefits with regard to improving access to justice, supporting the constitutional principles of the rule of law, and protecting and promoting the public interest and the interests of consumers. It is therefore a justifiable restriction on a barrister’s freedom of contract as it only applies if a barrister is instructed by a professional client, who can both ensure that the case is suitable and conduct any necessary litigation. • It is possible that not applying the cab-rank rule to Public and Licensed Access cases has a negative impact on competition in the legal services market. This is 	<ul style="list-style-type: none"> • This would be a regulatory requirement for barristers to accept instructions directly from the public which is not imposed on solicitors or other practising lawyers. In turn, this may distort competition in the market. In response, barristers may become less inclined to undertake Public Access work and not register to do so (but still be required to accept Licensed Access instructions). • A solution would be for there to be an equivalent regulatory requirement on solicitors to accept instructions directly from the public, but this is unlikely for the same reasons why, overall, applying the cab-rank rule to Public and Licensed Access cases

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>because barristers are free to only accept instructions directly from the public when those clients can conduct any necessary litigation, whereas solicitors accept instructions directly from the public and are less able to avoid incurring litigation costs. However, solicitors' practices are more likely to achieve economies of scale when conducting litigation, and litigation costs are likely passed on to their clients in any event. The fundamental point is also that there is no regulatory requirement for solicitors to accept instructions directly from the public.</p>	<p>would not be consistent with many of the regulatory objectives.</p> <ul style="list-style-type: none"> • The cost of additional regulation may also lead to barristers becoming less inclined to undertake Public Access work and not registering to do so. This should be considered in light of Pye Tait's finding that 'Public Access work currently accounts for a relatively small proportion of barristers' overall caseload'.¹⁶ It may therefore be better for the BSB to promote competition by focusing on expanding other opportunities for clients to access barristers (for example, streamlining the Licensed Access scheme), and providing improved information for consumers to

¹⁶ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page 8

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		help them make more informed choices.
<i>Encouraging an independent, strong, diverse and effective legal profession</i>	<ul style="list-style-type: none"> As there is no (potentially onerous) duty to accept Public and Licensed Access instructions, there is no disproportionate impact on any sections of the Bar. 	<ul style="list-style-type: none"> A potentially onerous duty to accept Public and Licensed Access instructions could have a disproportionate impact on some sections of the Bar; for example, it could cause difficulty and hardship for barristers with disabilities, or parental and caring responsibilities. The cost of additional regulation could reduce supply, as barristers may become less inclined to undertake Public Access work and not register to do so. Most respondents to Pye Tait’s report were ‘opposed to any additional regulations within the existing framework’.¹⁷

¹⁷ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page 49

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		<ul style="list-style-type: none"> • Pye Tait’s report stated that a ‘risk relates to getting paid for public access work; a number of barristers who participated in in-depth interviews said they have spent time and effort chasing up fees which would not have been the case if instructed by a professional client’.¹⁸ If the cab-rank rule was extended to Public (and Licensed) Access cases, barristers may need to be able to require payment of fees in advance.
<i>Increasing public understanding of the citizen’s legal rights and duties</i>	<ul style="list-style-type: none"> • Clients are not able to attempt to invoke the rule when they are unsuitable for Public or Licensed Access and/or their cases have little merit, and it may be in no one’s interest to proceed. 	<ul style="list-style-type: none"> • In the absence of a solicitor, clients may be more likely to take steps to improve their understanding of their legal rights and duties. • However, there is a risk that clients would attempt to invoke the rule when they

¹⁸ https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf, page 32

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
		<p>are unsuitable for Public or Licensed Access and/or their cases have little merit, and it may be in no one's interest to proceed. It would be less likely in the case of expert and specialist Licensed Access clients, but the risk would still not be removed entirely (although the BSB could mitigate the risk by providing improved information for consumers to help them make more informed choices).</p>
<p><i>Promoting and maintaining adherence to the professional principles¹⁹</i></p>	<ul style="list-style-type: none"> The cab-rank rule means that it can be professional misconduct for a barrister to refuse to represent a lay client because the barrister, for example, would prefer for commercial reasons to act for a different party. While this protection is not extended to Public and Licensed Access clients, the 	<ul style="list-style-type: none"> There would still need to be an exception for cases where it would not be in the interests of clients for barristers to accept instructions. However, there is at least a residual risk that more instructions would be accepted where it would not be in the interests of clients i.e. that more instructions

¹⁹ <http://www.legislation.gov.uk/ukpga/2007/29/section/1>, s(1)3

Regulatory objective	Status quo	Applying the cab-rank rule to Public and Licensed Access cases
	<p>associated risks are unlikely to materialise in practice. If a Public or Licensed Access client required this protection then, assuming their case is valid, it would be straightforward for them to instruct a solicitor who could invoke the cab-rank rule if necessary (albeit one of the main benefits of Public and Licensed Access is that it increases choice and reduces costs for consumers i.e. they are not required to instruct a barrister through a solicitor, and it may be less costly for them not to do so).</p>	<p>would be accepted inappropriately (although the risk could be mitigated by regulatory supervision and revising the Public Access training – see Annex F).</p>

Annex B: Proposed changes to the Public Access Rules

The current Public Access Rules are Rules C119 – C131 of the BSB Handbook (Section D2.1). The proposed changes to the Public Access Rules are in bold below.

D2.1 PUBLIC ACCESS RULES

rC119 These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a *solicitor* or other *professional client* (public access clients). Guidance on public access rules is available on the *Bar Standards Board* website:

<https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.

rC120 Before accepting any *public access instructions* from or on behalf of a *public access client*, you must:

- .1 be properly qualified by having been issued with a full *practising certificate*, by having satisfactorily completed the appropriate public access training, and by registering with the ***Bar Council Bar Standards Board*** as a public access practitioner;
- .2 ~~if you were already registered with the *Bar Council* to undertake public access work on October 4 2013 then they must undertake any additional training required by the *Bar Standards Board* within 24 months of that date or cease to undertake public access work;~~ removed from [date];
- .3 take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the *client* or in the interests of justice for the public access client to instruct a *solicitor* or other *professional client*; and

- .4 take such steps as are reasonably necessary to ensure that the *client* is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.

rC121 As a *barrister* with less than three *years' standing* who has completed the necessary training, you must:

- .1 Have a *barrister* who is a qualified person within Rule S22 and has registered with the *Bar Council* as a public access practitioner readily available to provide guidance to you;
- .2 ~~Maintain a log of public access cases you have dealt with, including any issues or problems which have arisen;~~ removed from [date];
- .3 ~~Seek appropriate feedback from you public access clients on the service provided;~~ removed from [date];
- .4 ~~Make this log available, on request, to the Bar Standards Board for review.~~ removed from [date].

rC122 You may not accept ~~direct~~ *instructions* from or on behalf of a public access *client* ~~in or in connection with any matter of proceedings in which~~ if, in all the circumstances, it would be in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*.

rC123 In any case where you are not prohibited from accepting *instructions*, you must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*. If, after accepting ~~direct~~ *instructions* from a public access *client* you form the view that circumstances are such that it would be in the best interests of the public access *client*, or in the interests of justice

for the public access *client* to instruct a *solicitor* or other *professional client* you must:

- .1 inform the public access *client* of your view; and
- .2 withdraw from the case in accordance with the provisions of Rules rC25 and rC26 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.

rC124 You must have regard to guidance published from time to time by the *Bar Standards Board* in considering whether to accept and in carrying out any *public access instructions*.

rC125 Having accepted *public access instructions*, you must forthwith notify your public access *client* in writing, and in clear and readily understandable terms, of:

- .1 the work which you have agreed to perform;
- .2 the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this *Handbook* and, in particular, Rules rC25 and rC26;
- .3 unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that you cannot be expected to perform the functions of a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to *conduct litigation*** and in particular to fulfil ~~limitation obligations, disclosure obligations and other~~ obligations arising out of or related to the *conduct of litigation*;
- .4 the fact that you are self-employed, ~~are not a member of a firm and do not take on any arranging role~~; are not employed by a *regulated entity* and (subject to Rule S26) do not undertake the

management, administration or general conduct of a *client's* affairs;

- .5 in any case where you have been instructed by an *intermediary*:
 - .a the fact that you are independent of and have no liability for the *intermediary*; and
 - .b the fact that the *intermediary* is the agent of the lay *client* and not your agent;
- .6 the fact that you may be prevented from completing the work by reason of your professional duties or conflicting professional obligations, and what the *client* can expect of you in such a situation;
- .7 the fees which you propose to charge for that work, or the basis on which your fee will be calculated;
- .8 your contact arrangements; **and**
- .9 the information about your complaints procedure required by D1.1 of this Part 2; **and**
- .10 the level of professional indemnity insurance held by you.**

rC126 Save in exceptional circumstances, you will have complied with Rule rC125 above if you have written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.

rC127 In any case where you have been instructed by an *intermediary*, you must give the notice required by Rule ~~C123~~ C125 above both:

- .1 directly to the public access *client*; and
- .2 to the *intermediary*.

rC128 Having accepted *public access instructions*, you must keep a case record which sets out:

- .1 the date of receipt of the *instructions*, the name of the lay *client*, the name of the case, and any requirements of the *client* as to time limits;
- .2 the date on which the *instructions* were accepted;
- .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
and
- .4 when agreed, the fee.

rC129 Having accepted *public access instructions*, you must either yourself retain or take reasonable steps to ensure that the lay *client* will retain for at least **seven six** years after the date of the last item of work done:

- .1 copies of all *instructions* (including supplemental *instructions*);
- .2 copies of all advices given and documents drafted or approved;
- .3 the originals, copies or a list of all documents enclosed with any *instructions*; **and**
- .4 notes of all conferences and of all advice given on the telephone.

rC130 ~~Having accepted *public access instructions*, you may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*.~~
removed from [date].

rC131 Save where otherwise agreed:

- .1 you shall be entitled to copy all documents received from your lay *client*, and to retain such copies permanently;
- .2 you shall return all documents received from your lay *client* on demand, whether or not you have been paid for any work done for the lay *client*;
- .3 you shall not be required to deliver to your lay *client* any documents drafted by yourself in advance of receiving payment from the lay *client* for all work done for that *client*; **and**
- .4 having accepted *public access instructions* in any civil matter, you may take a proof of evidence from your *client* in that matter.

Annex C: Proposed changes to the Licensed Access Rules

The current Licensed Access Rules are Rules C132 – C141 of the BSB Handbook (Section D2.2). The proposed changes to the Licensed Access Rules are in bold below.

D2.2 LICENSED ACCESS RULES

rC132 Subject to these rules and to compliance with the Code of Conduct (and to the *Scope of Practice, Authorisation and Licensing Rules*) a *barrister* in self-employed *practice* may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>) whether that *client* is acting for themselves or another.

rC133 These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules rC134.2, **rC136**, **rC137** and rC139 do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>).

rC134 You are only entitled to accept *instructions* from a *licensed access client* if at the time of giving *instructions* the *licensed access client*:

- .1 is identified; and
- .2 sends you a copy of the Licence issued by the *Bar Standards Board*.

rC135 A *barrister* must not accept any *instructions* from a *licensed access client*:

- .1 unless you **and your chambers** are able to provide the services required of you by that *licensed access client*;

- .2 if you consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to *conduct litigation*** or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place.

rC136 ~~Having accepted *instructions* from a *licensed access client* otherwise than on the terms of the Licensed Access Terms of Work, you:~~

- .1 ~~must first agree in writing the terms upon which you have agreed to do the work and the basis upon which you are to be paid;~~
- .2 ~~must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid. If you agree standard terms with a *licensed access client*, you must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed and the basis upon which you are to be paid.~~

rC137 Having accepted *instructions* from a *licensed access client*, you must promptly send the *licensed access client*:

- .1 a statement in writing that the *instructions* have been accepted (as the case may be) ~~(1)~~ on the standard terms previously agreed in writing with that *licensed access client* ~~or (2) on the terms of the Licensed Access Terms of Work (and thereafter if requested a copy of the Licensed Access Terms of Work)~~; or
- .2 if you have accepted *instructions* otherwise than on such standard terms ~~or on the terms of the Licensed Access Terms of Work~~, a copy of the agreement in writing with the *licensed access client*

setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid; **and**

- .3 unless you have accepted *instructions* on ~~the terms of the Licensed Access Terms of Work or on standard~~ terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:
- .a the effect of rC21 as it relevantly applies in the circumstances;
 - .b unless authorised by the *Bar Standards Board* to *conduct litigation*, the fact that you cannot be expected to perform the functions of a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** and in particular to fulfil ~~limitation obligations disclosure obligations and other~~ obligations arising out of or related to the *conduct of litigation*; **and**
 - .c the fact that circumstances may require the *client* to retain a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** at short notice and possibly during the case.

rC138 If at any stage you, being instructed by a *licensed access client*, consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place:

- .1 you must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** or other appropriate *intermediary* (as the case may be); **and**

- .2 unless a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter you must cease to act and must return any *instructions*.

rC139 If at any stage you, being instructed by a *licensed access client*, consider that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply ~~either~~ with the terms of the Licence granted by the *Bar Standards Board* ~~or (where applicable)~~ **with the terms of the Licensed Access Terms of Work** you must forthwith report the facts to the *Bar Standards Board*.

rC140 Having accepted *instructions* from a *licensed access client*, you must keep a case record ~~(whether on card or computer)~~ which sets out:

- .1 the date of receipt of the *instructions*, the name of the *licensed access client*, the name of the case, and any requirements of the *licensed access client* as to time limits;
- .2 the date on which the *instructions* were accepted;
- .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;
and
- .4 when agreed, the fee.

rC141 Having accepted *instructions* from a *licensed access client*, you must either yourself retain or take reasonable steps to ensure that the *licensed access client* will retain for six years after the date of the last item of work done:

- .1 copies of *instructions* (including supplemental *instructions*);
- .2 copies of all advices given and documents drafted or approved;
- .3 a list of all documents enclosed with any *instructions*; **and**
- .4 notes of all conferences and of all advice given on the telephone.

Annex D: Proposed changes to the Licensed Access Recognition Regulations

The current Licensed Access Recognition Regulations can be found on the BSB's website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>. The proposed changes to the Licensed Access Recognition Regulations are in bold below.

THE LICENSED ACCESS RECOGNITION REGULATIONS

1. Authorised licensed access clients are those persons and organisations and/or their members and/or their or their members' employees (as the case may be) who have from time to time been approved as such by the Bar Standards Board.

2. Any person or organisation wishing to be approved as an authorised licensed access client shall apply in writing to the Bar Standards Board by completing an application form in such form and supplying such other information as the Bar Standards Board may from time to time or in any particular case require.

3. In approving any person or organisation as an authorised licensed access client the Bar Standards Board may grant such approval in each case as the Bar Standards Board may think appropriate:

(a)

(i) on a provisional basis or

(ii) on a full basis;

(b)

(i) for a fixed period or

(ii) for a fixed period subject to extension or

(iii) indefinitely;

(c)

(i) to the person or organisation and/or

- (ii) to some or all of the members of the organisation and/or
 - (iii) to some or all of the employees of the person or organisation or its members;
- (d) in relation to matters concerning
- (i) the person or organisation and/or its members (as the case may be) and/or
 - (ii) his or its or its members' employees and/or
 - (iii) his or its or its members' clients or customers; **and**
- (e) subject to such limitations or conditions as the Bar Standards Board may think appropriate. ~~relating to~~

~~(i) the matters in relation to which the authorised licensed access client may instruct a barrister and/or~~

~~(ii) the courts or tribunals before which a barrister so instructed may exercise a right of audience and/or~~

~~(iii) such other matters (including the means by which the authorised licensed access client shall instruct a barrister) as seem relevant in the circumstances.~~

4. The Bar Standards Board shall issue to every person or organisation approved as an authorised licensed access client a Licence in such form as the Bar Standards Board may from time to time or in the particular case think appropriate. Such Licence (which may be a provisional Licence or a full Licence):

(a) shall specify (i) the name of the person or organisation who has been approved as an authorised licensed access client (ii) the period (if any) for which the Licence has been granted or (as the case may be) that the Licence has been granted indefinitely and (iii) the limitations or conditions (if any) subject to which the Licence has been granted; **and**

~~(b) may if the Bar Standards Board think appropriate provide that unless otherwise first agreed in writing with an individual barrister or chambers all~~

~~instructions accepted by any barrister from the authorised licensed access client will be deemed to be given and accepted on the terms of the Licensed Access Terms of Work as approved from time to time by the Bar Standards Board;~~

~~(c) may if the Bar Standards Board think appropriate provide that a copy of the Licence shall be sent with every set of instructions to any barrister instructed by the authorised licensed access client;~~

~~(d) (b)~~ shall remain at all times the property of the ~~General Council of The Bar Bar Standards Board~~ to whom (or to whose duly appointed officer) it shall be surrendered on demand.

5. The Bar Standards Board may from time to time:

(a) approve additional persons or organisations as authorised licensed access clients;

(b) withdraw approval (either wholly or in part) from any person or organisation as an authorised licensed access client;

(c) increase reduce or otherwise alter the period for which a person or organisation is approved as an authorised licensed access client;

(d) alter or revoke the limitations or conditions (if any) attached to any approval of a person or organisation as an authorised licensed access client or impose new or additional limitations or conditions;

(e) cancel and demand the surrender of any Licence issued under paragraph 4 of these regulations.

6. In exercising their functions under paragraphs 1, 2, 3, 4 and 5 of these regulations the Bar Standards Board shall comply with the statutory objectives referred to in ~~section 17(1) of the Courts and Legal Services Act 1990 and~~

~~section 1(2) of the Access to Justice Act 1999~~ **section 1 of the Legal Services Act 2007**, may consult with such persons organisations or bodies as they think appropriate and shall to such extent as they may think appropriate in the particular case have regard to the following matters:

~~(a) the fact that barristers in independent practice operate as a referral profession of specialist consultants;~~

~~(b)~~ **(a)** the extent to which the person or organisation or its members (as the case may be) are likely to have a significant requirement to retain the services of a barrister for their own benefit or for the benefit of their employers, employees, members, clients or customers (as the case may be);

~~(c)~~ **(b)** the extent to which whether as a result of professional or other relevant training or by reason of practice and experience the person or organisation or its employees or members (as the case may be) are or may reasonably be expected to be:

(i) providers of skilled and specialist services

(ii) competent in some identifiable area of expertise or experience

(iii) familiar with any relevant area of law

(iv) possessed of the necessary skills to obtain and prepare information and to organise papers and information sufficiently to enable the barrister to fulfill ~~his~~ **their** duties in a non-contentious matter to the client and in a contentious matter both to the client and to the court

(v) possessed of the necessary skills to take charge and have the general conduct of the matters in respect of which they wish to retain the services of a barrister;

(d) the extent to which the affairs and conduct of the person or organisation or its members (as the case may be) are subject to some appropriate professional disciplinary regulatory or other organisational rules;

(e) the extent to which the person or organisation or its members (as the case may be):

(i) are insured against claims for negligence in relation to their handling of matters in respect of which they wish to retain the services of a barrister

(ii) have made and continue to comply with satisfactory arrangements for holding in separate accounts and maintaining as trust monies any monies received from third parties

(iii) have made and continue to comply with satisfactory arrangements for ensuring that barristers' fees are promptly paid; **and**

(f) such other facts and matters (if any) as seem to them to be relevant in the circumstances.

7. Notwithstanding paragraphs 2, 3 and 4 of these regulations any member of any of the bodies referred to in the First Schedule to these regulations shall be deemed to be an authorised licensed access client (including in relation to matters concerning that member's clients or customers) but

~~(a) only in a matter of a kind which falls generally within the professional expertise of the members of the relevant body; **and**.~~

~~**(b) not for the purpose of briefing counsel to appear in or exercise any right of audience before the Judicial Committee of the House of Lords the Privy Council the Supreme Court the Crown Court a County Court or the Employment Appeals Tribunal.**~~

8. Notwithstanding paragraphs 2, 3 and 4 of these regulations any of the following shall be deemed to be an authorised licensed access client:

(a) an arbitrator, ~~(including for these purposes an adjudicator under the Housing Grants Construction and Regeneration Act 1996)~~ **(as amended)**, but only when instructing ~~counsel~~ **a barrister** for the purpose of advising on any point of law, practice or procedure arising in or connected with an arbitration in which ~~he has~~ **they have** been or may be appointed; **and**

(b) any person who has been appointed to one of the offices of Ombudsman referred to in the Second Schedule to these regulations, but only when instructing ~~counsel~~ **a barrister** for the purpose of advising on any point of law, practice or procedure arising in the course of the performance of ~~his~~ **their** duties.

9. Nothing in paragraphs 7 and 8 of these regulations shall prevent:

(a) any person to whom paragraph 7 or paragraph 8 applies making an application in accordance with paragraph 2 of these regulations (in which event paragraphs 3, 4, 5 and 6 of these regulations shall apply to such application and to any Licence issued pursuant to such application);

(b) the Bar Standards Board exercising in relation to any person to whom paragraph 7 or paragraph 8 applies the powers conferred by paragraphs 5(b), 5(c) and 5(d) of these regulations (in which event paragraph 6 of these regulations shall apply).

THE FIRST SCHEDULE

Part I - Accountants and taxation advisers

1. The Association of Authorised Public Accountants
2. Association of Taxation Technicians
3. The Association of Chartered Certified Accountants
4. The Chartered Institute of Management Accountants

5. Institute of Chartered Accountants in England and Wales

~~6. The Institute of Chartered Accountants in Ireland~~ Chartered Accountants
Ireland

7. Institute of Chartered Accountants ~~in~~ of Scotland

8. The Chartered Institute of Taxation

9. The Institute of Financial Accountants

~~10. The Institute of Indirect Taxation~~

Part II - Insolvency practitioners

1. Insolvency Practitioners Association

Part III - Architects surveyors and town planners

~~2. The Architects Registration Council of the UK~~ 1. Architects Registration
Board

~~3. The Architects and Surveyors Institute~~

~~4.~~ 2. Association of Consultant Architects

~~5.~~ 3. The Royal Institute of British Architects

~~6.~~ 4. The Royal Institution of Chartered Surveyors

~~7.~~ 5. The Royal Town Planning Institute

Part IV - Engineers

1. The Institution of Chemical Engineers

2. The **Chartered** Institution of Civil Engineering Surveyors

3. The Institution of Civil Engineers

4. The Institution of Engineering and Technology

5. Institution of Mechanical Engineers

6. The Institution of Structural Engineers

Part V - Valuers

~~1. The Incorporated Society of Valuers & Auctioneers~~

Part VI - Actuaries

~~2.~~ 1. The Institute and Faculty of Actuaries

~~3. Institute of Actuaries~~

Part VII - Chartered secretaries and administrators

1. The Institute of Chartered Secretaries and Administrators: **The Governance Institute**

Part VIII - Insurers

~~2.~~ 1. The Association of Average Adjusters

~~3.~~ 2. The Chartered Institute of Loss Adjusters

~~4.~~ 3. The Chartered Insurance Institute

THE SECOND SCHEDULE

~~1. Parliamentary Commissioner for Administration~~ The Parliamentary and Health Service Ombudsman

~~2. Commissioner for Local Administration (England)~~ The Commission for Local Administration

~~3. Commissioner for Local Administration (Wales)~~ Public Services Ombudsman for Wales

~~4. Health Service Commissioner~~

~~5. Banking Ombudsman~~ 4. The Financial Ombudsman Service

~~6. Building Society Ombudsman~~

~~7. Insurance Ombudsman Bureau~~

~~8. The Personal Investment Authority Ombudsman Bureau Ltd~~

~~9.~~ 5. The Legal **Services** Ombudsman

Annex E: About the BSB

About the BSB and what we do

1. The Bar Standards Board is the regulator of barristers in England and Wales. We are also responsible for setting the education and training requirements for those who wish to practise as barristers in England and Wales.
2. We are responsible for the [BSB Handbook](#), which sets out how barristers must work once they are qualified. We monitor how well barristers are meeting our practising requirements.
3. If they breach the BSB Handbook, we can take disciplinary action against them. Through our activity, we protect the public interest and consumers, and help uphold the rule of law and the proper administration of justice. You can find out more about us on our [website](#).

Strategic context and our approach as a regulator

1. Along with other legal services regulators, such as the Solicitors Regulation Authority²⁰ (SRA) and CILEx Regulation²¹, our regulatory objectives are:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of legal services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties; and

²⁰ The body responsible for regulating solicitors.

²¹ The body responsible for regulating legal executives.

- promoting and maintaining adherence to the professional principles.
2. Last year, we published our [Strategic Plan for 2016-2019](#). This Plan, and the accompanying annual business plans which support it, set out our strategic aims for ensuring we are best placed to respond to our regulatory objectives. These are:
- regulating in the public interest;
 - supporting barristers and those we regulate to face the future; and
 - ensuring a strong and sustainable regulator.
3. We are a risk and evidence-based regulator. This means that our approach must focus on identifying potential risks which could prevent us from meeting our regulatory objectives. We use evidence to prioritise the risks that we focus upon, and then review our effectiveness in achieving the desired outcomes to inform future adjustments to our regulatory approach.

Annex F: Other recommendations of the Public and Licensed Access Review Report

1. The other recommendations in the [Public and Licensed Access Review Report](#) are not directly relevant to this consultation, which is limited to changes to the Public and Licensed Access Rules. However, respondents to the consultation may be interested in the other recommendations in the report to understand the wider context of the Public and Licensed Access review.
2. We will seek to address many of the other recommendations as part of our response to the CMA's [review of the legal services sector](#). Its report identified issues relating to (for example) transparency of fees and the existing means of seeking and reflecting on client feedback. The BSB will be working with the other frontline legal regulators to publish a detailed collective response to the CMA's recommendations. We will also be publishing an action plan of how we will be taking its recommendations forward individually.
3. The Public and Licensed Access Review Report also assessed how well the Public Access training regime prepares barristers for Public Access work and what, if anything, should be added or removed from the training course so that all Public Access barristers are well prepared to undertake Public Access work. The report made a recommendation in respect of this.
4. The other recommendations in the report are as follows:

Guidance for Barristers, Clerks and Lay Clients

5. The BSB should review its [Public Access Guidance for Barristers and Clerks](#), amend as necessary and then test the guidance to ensure it is fit for purpose. It should then be published and promoted through a variety of channels.

6. The BSB should also revisit the updated [Public Access Guidance for Lay Clients](#) in light of its now larger evidence-base and the evidence which has emerged from the CMA's report, amend as necessary and then test the guidance to ensure it remains fit for purpose. In addition, the BSB should explore whether to make provision of the guidance to lay clients mandatory for barristers. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and clients.
7. N.B. If the LSB approves the rule changes which are the subject of this consultation, we will update the Public Access Guidance for Barristers, Clerks and Lay Clients to the extent necessary. The Public Access Guidance will then be revisited in light of the evidence which has emerged from the CMA's report, and amended again as necessary.

Guidance on Conducting Litigation

8. The BSB should review its position on which tasks constitute conducting litigation, draft standalone Guidance on Conducting Litigation and then test the guidance to ensure it is fit for purpose. It should then be tested and promoted through a variety of channels.

Model Client Care Letters

9. The BSB should review its [Public Access Model Client Care Letters](#) in light of its evidence-base, amend as necessary and then test the letters to ensure they are fit for purpose. Making provision of the guidance to lay clients mandatory for barristers could also reduce the amount of information which needs to be included in client care letters and therefore, reduce the length of the Public Access Model Client Care Letters.
10. In reviewing its Public Access Model Client Care Letters, the BSB should also draw on the best practice it has identified in terms of providing clarity and transparency on fees, and managing clients' expectations. This should help clients to understand how the fees they are charged are calculated, what is required of them and what sort of contact with

barristers they can expect. In light of the evidence which has emerged from the CMA's report, as part of our response to its recommendations we will also be considering rules that would promote greater transparency in costs before clients have engaged a barrister.

11. N.B. If the LSB approves the rule changes which are the subject of this consultation, we will update the Public Access Model Client Care Letters to the extent necessary. The Public Access Model Client Care Letters will then be revisited in light of the evidence which has emerged from the CMA's report, and amended again as necessary.

Training for Clerks and Administrators

12. The BSB should encourage Public Access clerks and administrators to attend relevant training courses as a matter of good practice. We should also explore how best to promote the training which is available (in a way which is consistent with our regulatory role).

Public Access Training

13. The BSB should undertake further assessment of how well the current Public Access training providers are meeting the required outcomes, and how well the providers are delivering training in the areas which barristers have identified for improvement. These assessments should be used to produce a revised set of required outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). It is also recommended that the revised outcomes align a) with the BSB's [Professional Statement](#), which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice, and b) with the BSB's [Future Bar Training](#) programme more widely. This seeks to make education and training for the Bar more consistent, innovative and flexible, while also removing unnecessary barriers.

Draft Research Strategy for 2017-19

Status:

1. For **noting** and **approval**.

Executive Summary:

2. A new Research Strategy has been drafted which presents a vision for BSB research going into 2019. The strategy identifies six research objectives and associated actions that will be taken during the two-year strategy period to enable the vision to be achieved. The six objectives are to:
 - I. Increase knowledge and understanding of those we regulate, legal services users (“consumers”), the market, and the impact of our work.
 - II. Raise the internal profile of the BSB Research Team, to increase awareness of its role and to promote closer engagement.
 - III. Increase the reach and impact of BSB research activity and outputs, both within and outside of the organisation
 - IV. Increase staff awareness of research methods, standards of research evidence and their application within the BSB.
 - V. Standardise the processes applied to in-house and commissioned research and analysis to ensure consistency of approach and ensure value for money.
 - VI. Equip the BSB Research Team with the skills and tools to respond to an increased demand for in-house work.
3. A detailed action plan sets out the work that will be undertaken to deliver the research objectives during 2017-19. The action plan is organised into four work-streams:
 - building the evidence base;
 - increasing the visibility and impact of BSB research;
 - improving research awareness and use of evidence in the BSB; and
 - driving up research standards and team capabilities.

Recommendations

4. The Board is asked to:
 - a) **note and approve** the Research Strategy, proposed objectives and action plan, at **Annex A**
 - b) **agree** to publish the draft Research Strategy on the BSB website following the Board meeting.

Background

5. The BSB is committed to becoming more evidence and risk-based in all that we do. The Research Strategy presents the vision for BSB research going into 2019. It describes the actions that will be taken to ensure that research, analysis and evaluation undertaken or commissioned by the BSB continues to be credible, robust and reliable and informs the future direction and planning of BSB work, making a wide impact on policy and practice.

Part 1 - Public

6. The objectives in the Research Strategy were developed following a review and stock-take of existing research processes, procedures and outputs; two internal staff surveys which explored awareness of the Research Team's work; review of the BSB Strategy, Business Plan, Risk Outlook, Equality and Diversity Strategy and the LSB Regulatory Standards performance reports; and consultation with BSB departmental heads and the Senior Management Team.
7. The objectives will be delivered by the in-house team of research and analytical specialists. A profile of Research Team members is provided at **Annex B**. Evidence that has recently been commissioned or conducted by the team includes:
 - a. The findings of the *Women at the Bar* survey, which found several examples of good practice and evidence of progress in some areas, but also highlighted that more work is required to address some of the unfair treatment of women barristers identified by the survey participants.
 - b. The annual report on *Diversity at the Bar*, which identified trends and barriers and helps us to develop policies to promote a profession that reflects the diverse society it serves.
 - c. Research into the *provision of legal services by barristers*, which found examples of new and innovative delivery models in the market, with the prevailing business model for barristers being a traditional chambers.
 - d. The annual *Key Statistics* report on student performance on the Bar Professional Training Course (BPTC), which contributes to the growing body of evidence being used to inform the Future Bar Training (FBT) programme.
8. Approval of the Research Strategy is included as an activity for Q1 in the BSB 2017-18 Business Plan, under the 'regulating in the public interest' strategic programme.

Equality Impact Assessment

9. An Equality Impact Assessment (EIA) has been undertaken of this Research Strategy. This did not identify any adverse impacts in relation to any of the protected groups under the Equality Act 2010.
10. The research projects that are included in the Strategy action plan will each be the subject of an EIA, to ensure that the design, procurement, sampling, conduct, and reporting stages are assessed for potential adverse and positive equality impacts.

Resource implications

11. The cost of implementing the 2017-19 research objectives will largely be met from existing budgets. A budget for research was factored into the budget bid for 2017-18 and these actions will also be a priority in the following year.

Regulatory objectives

12. The first of six objectives in the Research Strategy is to “increase knowledge and understanding of those we regulate, legal services users (“consumers”), the market, and the impact of our work”. To deliver this objective, a range of research and evaluation projects will be completed between 2017-19 to add to the evidence base and increase knowledge in these areas.
13. Delivery of this objective, and implementation of the Strategy more generally, relates to several of the BSB’s regulatory objectives, including “improving access to justice”, “protecting and promoting the interests of consumers”; “promoting competition in the provision of services within subsection (2)”; “encouraging an independent, strong, diverse and effective legal profession”; and “promoting and maintaining adherence to the professional principles”.

Publicity

14. The strategy is intended for external publication on the BSB website alongside existing BSB Strategies and plans.

Annexes:

Annex A: Research Strategy 2017-19
Annex B: Profile of Research Team members

Lead responsibility:

Corrine Charles, Head of Research and Information

BSB Research Strategy 2017-19

1. Introduction

- 1.1 This Strategy sets out the approach to research, analysis and evaluation at the Bar Standards Board (BSB). It describes the overall context in which research is delivered and presents the vision for BSB research going into 2019. It describes the actions that will be taken during the two-year strategy period to enable this vision to be achieved and to ensure that research undertaken or commissioned by the BSB continues to be credible, robust and reliable and informs the future direction and planning of BSB work, making a wide impact on policy and practice.
- 1.2 This Strategy will be of interest to our internal and external stakeholders in the legal services sector including the Legal Services Board (LSB), other legal regulators, professional bodies, Specialist Bar Associations, government departments, providers of legal education and training, consumer organisations and representatives, and users of legal services.

Context

- 1.3 The Bar Standards Board (BSB) regulates barristers and specialised legal services businesses in England and Wales, in the public interest. We are responsible for:
- Setting the education and training requirements for becoming a barrister;
 - Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
 - Setting standards of conduct for barristers;
 - Monitoring the service provided by barristers to assure quality; and
 - Handling complaints against barristers and taking disciplinary or other action where appropriate
- 1.4 The work that we do is governed in particular by the Legal Services Act 2007 (the Act) as well as a number of other statutes. Along with the other legal service regulators identified in the Act, our objectives are the same as the Regulatory Objectives laid down in the Act. These are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of a citizen’s legal rights and duties; and
- Promoting and maintaining adherence to the professional principles.

1.5 Our [Strategic Plan 2016-19](#) sets out the way in which we will regulate barristers and entities. All of our work in this period will align with our three strategic aims:

- Regulating in the public interest;
- Supporting those we regulate to face the future; and
- Ensuring that the Bar has a strong and sustainable regulator.

1.6 The BSB is a risk and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers’ services. We identify the potential risks that could prevent our regulatory objectives from being met. When we have done this, we focus our attention on the risks that we think post the greatest threats to our regulatory objectives. We then take proportionate action to prevent those risks from occurring, or to reduce their impact. Our Strategic Plan sets out that there are three areas in particular in which risks threaten our statutory regulatory objectives. These are:

- Improving how those the BSB regulates meet consumer needs;
- Improving diversity, and enhancing equality in practice and culture at the Bar;
and
- Responding to commercial pressures on legal service providers.

1.7 You can read more about our approach to [risk-based regulation](#) and learn more about the risk areas upon which we are focusing most of our attention in our [Risk Outlook](#).

2. Research at the BSB

2.1 The Research Team helps the BSB to meet its regulatory objectives and strategic priorities by providing high quality, reliable research, evaluation and analysis, enabling policy development and regulatory risk management to be evidence-based.

2.2 A small team of research and analytical specialists is responsible for the following range of activities:

- **Conducting and commissioning research, monitoring and analysis** to build the evidence base and inform debate and policy.
- **Evaluating** the impact or effectiveness of specific BSB projects, policies, programmes or regulatory actions.
- **Co-ordinating the analysis and publication of data** on the life-cycle of the Bar – from entry to Queen’s Counsel - and the diversity of students undertaking the vocational phase of training for the Bar (the Bar Professional Training Course) and of the wider profession.
- **Identifying and sharing evidence and information** from the wider research community, to inform decision-making and practice.
- **Providing specialist research advice and guidance within the BSB**, responding to queries and requests for information or data.
- **Communicating research evidence** in a user-friendly way to support its application and use.
- **Collaborating with other legal regulator researchers** in planning and delivering research, ensuring value for money by pooling resources and sharing knowledge.

2.3 The Research Team seeks to improve the BSB’s understanding of those we regulate, the market, what legal services consumers need and how they use legal services, and the impact of our work.

2.4 Research supports the BSB in developing, reviewing and evaluating policy and provides evidence to support decisions on the setting or revision of professional standards and the introduction of rules and guidance for barristers and entities. Research also supports delivery of the objectives in the Equality and Diversity Strategy 2017-19, informing the BSB’s work on equality and improving access to justice.

- 2.5 By monitoring and gathering evidence about what is happening in the market, the Research Team supports ongoing regulatory risk management. This work, combined with the BSB Assurance Framework, supports the development of a good understanding of the impact being made by the BSB as regulator.

Where we want to be by 2019: our research vision

- 2.6 We want to expand the evidence base and further increase our knowledge and understanding of those we regulate, the market, legal services consumers and the impact of our work. This will help to ensure that our decisions take account of a sufficiently wide evidence base. To increase the uptake and impact made by our research, we need to improve its availability and accessibility.
- 2.7 We want the BSB Research Team to be recognised as a credible and reliable voice in relation to research, evaluation and analysis, both internally and within the legal services sector. To do this, we need to ensure that we apply and maintain consistently high standards of quality and rigour in all aspects of research and increase clarity about the processes we follow in the delivery of research.
- 2.8 We want the BSB Research Team to be positioned as the centre of expertise within the BSB, with all team members equipped to use that expertise effectively. We also want to support colleagues within the BSB to embed good research practice in their day-to-day work and to increase their awareness of the use and application of research, data and evaluation methods.
- 2.9 Finally, we want be able to more clearly demonstrate how our research evidence and outputs have influenced and informed the future direction, strategic aims and regulatory policies of the BSB.

3. Research Objectives

3.1 To enable us to achieve our vision, we have identified six Research Objectives for the period 2017-19. These are to:

- (i) Increase knowledge and understanding of those we regulate, legal services users (“consumers”), the market, and the impact of our work.
- (ii) Raise the internal profile of the BSB Research Team, to increase awareness of its role and to promote closer engagement.
- (iii) Increase the reach and impact of BSB research activity and outputs, both within and outside of the organisation
- (iv) Increase staff awareness of research methods, standards of research evidence and their application within the BSB.
- (v) Standardise the processes applied to in-house and commissioned research and analysis to ensure consistency of approach and value for money.
- (vi) Equip the BSB Research Team with the skills and tools to respond to an increased demand for in-house work.

3.2 These objectives have been developed following a review and stocktake of existing research processes, procedures and outputs; two internal staff surveys regarding awareness of the research team’s work; review of the BSB Strategy, Business Plan, Risk Outlook, Equality and Diversity Strategy and the Regulatory Standards performance reports (LSB); and consultation within the Research Team and with BSB departmental heads and the Senior Management Team.

3.3 The actions we will undertake to deliver our Research Objectives are organised into four workstreams - building the evidence base; increasing the visibility and impact of BSB research; improving research awareness and use of evidence in the BSB; and driving up research standards and team capabilities – and are presented in the action plan which follows.

4. Action plan: how we will deliver our objectives

Building the evidence base		
1. Increase knowledge and understanding of those we regulate ⁽¹⁾ , legal services consumers ⁽²⁾ , the market ⁽³⁾ , and the impact of our work ⁽⁴⁾ .		
FOCUS	ACTIONS	COMPLETION
Delivering new evidence	Publish findings from research into the provision of legal services by barristers. (1,3)	Q1 '17-18
	Scope research to inform BSB response to the CMA Report following its market study into the supply of legal services in England and Wales. (1,2,3)	Q1 '17-18
	Publish FBT evidence review . (1,3)	Q2 '17-18
	Confirm scope of evaluation of the FBT reforms. (1,3,4)	Q2 '17-18
	Publish findings from commissioned research into the experiences of Family Law clients . (1,2)	Q2 '17-18
	Publish findings from jointly commissioned (with the SRA) research on judicial perceptions of the quality of criminal advocacy . (1)	Q2 '17-18
	Publish updated annual BPTC Key Statistics report. (1,3,4)	Q2 '17-18 and Q2 '18-19
	Publish findings from research with Bar students exploring barriers to legal education, to inform BSB Equality Objectives. (1,3,4)	Q2 '17-8
	Scope research on SME consumers . (1,2,3)	Q3 '17-18
	Scope the evaluation of the Immigration Thematic . (1,2,4)	Q3 '17-18 (tbc)
	Complete research with women barristers to inform BSB Equality Objectives. (1,4)	Q3 '17-8
	Publish updated annual Diversity at the Bar report. (1,3,4)	Q4 '17-18 and Q4 '18-19
	Complete research with the profession on protected characteristics to inform BSB Equality Objectives. (1,3,4)	Q3 '18-19
	Complete research to assess the impact made by training providers' equality policies on the experiences of Bar students, to inform BSB Equality Objectives. (1,3)	Q4 '18-19
Focus of research	Implement research prioritisation framework with criteria to assess proposed new research and ensure that only work of the most strategic importance and relevance proceeds.	Q2 '17-18

Increasing visibility and impact		
<p>2. Raise the internal profile of the BSB Research Team, to increase awareness of its role and to promote closer engagement.</p> <p>3. Increase the reach and impact of BSB research activity and outputs, both within and outside of the organisation.</p>		
FOCUS	ACTIONS	COMPLETION
Internal communication and staff engagement	Produce monthly Research Team bulletin to publicise current and future projects and share evidence from wider research community (to be included in internal departmental newsletter).	Q1 '17-18
	Re-organise Research Team content on BSB internal website (“verity”), including refreshed and revised content.	Q2 '17-18
	Establish research single points of contact (“SPOCs”) in each BSB department to facilitate engagement, exchange ideas and identify potential work-streams on which Research Team would lead or lend expertise. Establish a quarterly Research Panel chaired by the Research Team and attended by SPOCs.	Q2 '17-18
	Host all-staff knowledge-sharing sessions for every completed research project, to share learning from the findings.	Q4 '18-19
External reach and impact	Publish publication schedule , source data, time range covered, data limitations and links to other BSB publications alongside the ‘Lifecycle of the Bar’ data on BSB website.	Q2 '17-18
	Design accessible and high impact research report template to apply to all future BSB research publications. Design 2-3 page ‘Research Briefing’ template to accompany future new research publications, to succinctly summarise key points and policy and practice implications.	Q2 '17-18
	Re-organise Research Team content on BSB website , including refreshed and restructured content.	Q3 '17-18
	Produce overarching Research Dissemination Strategy , which sets out principles to be applied and steps to take to ensure timely publication and communication of research findings.	Q4 '17-18
	Design and implement research project impact templates to help identify and demonstrate use, uptake and impact made.	Q4 '17-18
	Publish anonymised primary research data underlying published research reports, to increase transparency and facilitate secondary analysis.	Q4 '18-19

Improving research awareness and use of evidence in the BSB		
4. Increase staff awareness of research methods, standards of research evidence and their application within the BSB.		
FOCUS	ACTIONS	COMPLETION
Methods and use of evidence	Host three staff training sessions each year on research and evaluation methods and application of research evidence.	Q4 '18-19
	Produce a practical user guide on the application of evaluation methods to further embed understanding and use of evaluation and support the policy development framework.	Q4 '18-19
Application of evidence	Create and publicise case studies which illustrate how research evidence has been used to influence and drive forward BSB work.	Q4 '18-19
Driving up research standards and team capabilities		
5. Standardise the processes applied to in-house and commissioned research and analysis to ensure consistency of approach and value for money.		
6. Equip the Research Team with the skills and tools to respond to an increased demand for in-house work.		
FOCUS	ACTIONS	COMPLETION
Research standards	Produce new templates and guidance which standardise team processes and ways of working in relation to the planning, commissioning, conduct, reporting and approval of research or evaluation.	Q4 '18-19
	Introduce external peer review as final stage of quality assurance prior to publication of externally commissioned research findings, to increase the credibility and quality of our outputs and ensure compliance with ethical codes and good practice in social research and reporting of analysis.	Q4 '17-18
Skills and tools	Undertake a team skills audit and gap analysis, identifying any key gaps and specific training/coaching needs set against research strategy objectives.	Q3 '17-18

5. Where we will be in 2019

- 5.1 Through the implementation of this Strategy, by 2019, we will have delivered a range of cross-cutting projects from our research programme and have generated new evidence regarding those the BSB regulates, the market, and legal services consumers and have advanced our understanding of the impact of our work as the regulator. We will have implemented a new research prioritisation framework and assessed all proposed work against set criteria, ensuring that we only take forward the most relevant and timely research which will address a clear evidence gap whilst maintaining the appropriate balance of reactive and horizon-scanning work.
- 5.2 By 2019, we will have standardised and made transparent the processes by which we plan, conduct, commission and deliver research. The new templates and guidance that we establish will support consistently high standards of quality and rigour in our activities and the outputs we deliver and ensure that we achieve value for money. We will have continued to apply sound ethical principles and follow good social research practice in all stages of our work, following the ESRC's Framework for Research Ethics and the Social Research Association ethical guidelines. We will also have continued to build equality and diversity considerations into every stage of our work, to ensure that the planning, conduct, reporting and use of research minimise any adverse effects and promote positive impacts in regards to equality and diversity.
- 5.3 We will have improved the availability and accessibility of research evidence and data on our internal and external websites and will have in place a clear dissemination strategy for our commissioned and in-house research. We will also have created a publication timetable for our regular data updates to our website, setting out all the information that we make public, their source(s) and when updates will be provided.
- 5.4 We will have monitored the impact and use of our research evidence and captured this in a series of case studies which demonstrate how our work has influenced and informed the future direction, strategic aims and regulatory policies of the BSB.

Part 1 – Public

- 5.5 We will have identified and addressed any skill gaps within the Research Team, supporting team members to apply their expertise in their work. We will have continued to seek out opportunities to collaborate with other legal research regulators to deliver research, ensuring value for money and the opportunity to pool resources.
- 5.6 We will have established research ‘single points of contact’ within each BSB department and have engaged regularly with them through the new Research Panel. As a result, we will have improved internal awareness of and engagement with research activity and planning.
- 5.7 We will have supported colleagues to embed good research practice in their day-to-day work by delivering tailored research sessions to increase awareness of the use and application of research, data and evaluation methods within the BSB. We will also have created and implemented a practical evaluation manual to assist colleagues in their decision-making in the early stages of policy development and implementation, which will align with the policy development framework and help to further embed the understanding and use of evaluation in the organisation.

BSB Research Team: skills and experience

Corrine Charles, Head of Research and Information

Qualifications: MSc Applied Forensic Psychology.

Skills

Research and evaluation design and delivery
Project Management (PRINCE2 practitioner)
Qualitative and quantitative methods of enquiry and analysis, including mixed-methods
Data analysis and methods of inference
Research procurement
Communicating research evidence and analysis
Research ethics

Experience

Prior to the Bar Standards Board, Corrine worked in a range of analytical and social research roles across the criminal justice system, including for the Metropolitan Police, in the Home Office Research Department and as Head of Research at the Crown Prosecution Service. Corrine has designed and managed social research programmes to inform policy development and has evaluated various local and central government and prosecution policy initiatives. She has delivered research on topics including violent crime, sexual offences, crime reduction and vulnerable victims and witnesses.

Oliver Jackling, Research and Evaluation Officer

Qualifications: MSc Social Research Methods

Skills

Research design and delivery
Qualitative research and analysis
Quantitative research and analysis
Project management
Knowledge and information management
Communicating research findings
Research procurement
Research ethics

Experience

Prior to working for the BSB, Oliver worked on a range of research projects, both as a consultant specialising in public and third sector clients as well as for Queen Mary University. He has worked on projects covering a range of areas including local government, housing, health, employment and skills, and social care.

Anatole Baboukhian, Research and Evaluation Officer

Qualifications: Master in Comparative Public Law (FR), MA Cultural Policy

Skills

Research design and delivery
Qualitative and quantitative research
Project management
Research procurement
Comparative analysis
Public Policy and Public Law

Experience

Anatole has been involved in projects covering a range of policy areas including the arts sector, fundraising, telecommunications regulations and digital rights. Prior to the BSB, Anatole was working for Guinness World Records and was in charge of implementing a new research methodology framework and led commercial research projects.

Ben Margerison, Data Analyst

Qualifications: MSc Economics and Policy of Energy and the Environment

Skills

Data analysis including regression and time series analysis
Data management
Experience in SQL, R, and Excel
Experience of forecasting, mainly using quantitative methods
Literature reviews
Report writing

Experience

Prior to the BSB, Ben had been working on a contract basis with a range of organisations as a data analyst, including at the Royal College of General Practitioners and an energy market pricing agency. During this time, he gained experience in producing reports and undertaking analyses for the purposes of monitoring and evaluation, and to inform business decision making, as well as experience in data management and data modelling. Whilst at the BSB Ben has largely been involved with improving reporting on the BPTC and various pieces of work related to the FBT programme.

Chair's Report on Visits and External Meetings, May - June 2017**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:**Sir Andrew Burns**

9 May	Social encounter with Treasurer of Middle Temple
11 May	Attended Inns Strategic Advisory Group meeting
18 May	Attended Chairmen's Committee meeting with Bar Council
20 May	Attended Bar Council to report on regulatory matters
23 May	Undertook 2 Board members' appraisal meetings
25 May	Met with one of the shortlisted candidates for CEO role of Bar Council
29 May	Teleconference call with second shortlisted candidate for CEO role of Bar Council
30 May	Starleaf conference call with third shortlisted candidate for CEO role of Bar Council
6 June	Attended Independent Appointments Panel meeting
6 June	Attended 4-way meeting of Chairs and CEOs of SRA
6 June	Attended GRA meeting
13 June	Attended Westminster Legal Policy Forum
13 June	Attended Emoluments Committee meeting
14 June	Attended BACFI Garden Party
15 June	Attended CILEx Presidential Luncheon
19 June	Attended Future Bar Training Seminar
20 June	Attended 4-way meeting with Chairs and CEOs of LSB
21 June	Attended Chairmen's Committee meeting with Bar Council
21 June	Undertook 1 Board member appraisal meeting

Director General's report - BSB meeting 22 June 2017

For consideration and noting.

Director General

1. As the paragraphs immediately below indicate, the focus of my work in the last month has been on FBT. I led the provider workshop on 26 May, and visited the University of Northumbria to continue dialogue. I spoke at the Westminster Legal and Policy Forum on 13 June, outlining our future plans to an audience composed of university, practitioner and other stakeholder representatives. Several universities have been in touch with direct invitations to discuss the future of the legal education and training system, now that the BSB and SRA plans are so much clearer.
2. Together with members of the senior management team, I have been involved in discussions with the CMA and other regulators as we come to the final stages of producing our action plans, which appear elsewhere on the Board agenda.
3. Internally I have worked with the Bar Council CEO to complete the annual performance appraisal cycle, which concludes with a full equality analysis on the results conducted by the HR Director, and subsequently agreement by the Emoluments Committee on the level of award to be used as the base line for our performance-related pay system.
4. Work has been completed on a protocol with the Bar Council on international working with signature and promulgation expected week of 19 June.
5. I have had the opportunity to meet with the shortlisted candidates for the Bar Council CEO role and have been in touch directly with the appointee, Malcolm Cree. I look forward to working with him.

Future Bar Training programme***Programme Management***

6. Since the BSB Board's decision on 23 March 2017, we have firmed-up our plans for what is required to deliver this next stage of FBT. The five key projects now ongoing as part of the Future Bar Training Programme are:
 - Rule changes (and related consultation / LSB application);
 - Authorisation Framework (design and operation);
 - Pupillage Reform (including the pilot);
 - A review of the role of the Inns in our regulatory arrangements;
 - Review of curriculum and assessments (including a review of the way professional ethics is taught and assessed); and
 - Evaluation.
7. As the work required in 2017-18 has increasingly taken shape, we have reviewed the internal staffing, governance and accountabilities required to deliver FBT.
8. The Director General will increase her direct involvement in the FBT Programme. She is now the internal Programme Sponsor, replacing Oliver Hanmer, who will assume some alternative responsibilities to free her up to do so.
9. To ensure that there is coordinated leadership of the Programme within the executive, we have set-up a strategic programme advisory group, which will take collective

responsibility for the delivery of the programme. Additionally, a senior programme manager role is still to be filled but an offer has now been accepted with a start date in early August.

Rules Change – Consultation and Application

10. A high level timeline for the rule changes has been developed. Following Education & Training Committee on 4 July, the 27 July Board meeting will receive the Education and Training Committee's recommendations on relevant policy points and the outline of the Rule change consultation.
11. Following the July Board meeting, we intend to take a draft consultation to the September E&T Committee with delegated authority from the Board to sign off the consultation. The consultation will open on 20 September and close on 20 December. We expect that the application to the LSB for Rule Changes will be go to the Board (and LSB) at the end of March 2018.
12. We have set in motion a plan to meet regularly with the LSB to gauge their thinking regarding the consultation / application and detail. The first meeting has now taken place and they seem genuinely enthused by the proposals and understand our intention to develop a new set of rules which would enable sufficient flexibility so as to avoid unnecessary rule change applications in the near future. The next scheduled meeting with representatives from the LSB will take place on 21 June.

Authorisation framework

13. The Authorisation Framework will set out what the BSB expects to see from providers of training, based on the four principles (accessibility, flexibility, affordability and high standards) set out in our policy statement; how we will make decisions on authorising providers and pathways; and how we will make all these things work in practice.
14. We are keen to make sure that the framework we design is user-friendly; we will therefore be having an iterative process of discussions with key stakeholders throughout its development. The first of these was held on 26 May (BPTC Providers' Forum – see below); the second engagement event will be through the BPTC Conference, which has a wider list of attendees (including Inns education personnel, external examiners etc). These events will inform the development of the framework in advance of the consultation on new rules. We have engaged a consultant, Jane Chapman (who worked on the Professional Statement) to help unify the voice and give internal consistency to the Framework, given that many actors will have contributed to its design.
15. We expect to have a clearer exposition of the contents of the Framework at a high level at the time of the July Board meeting.

Role of the Inns in Bar training

16. While the Inns will continue to have the role of calling individuals to the Bar, we need to ensure that any associated processes continue to be relevant in the light of the new approach to FBT and the Professional Statement, and that the BSB has proper regulatory oversight.
17. Following the Board's decision on FBT, we have begun consulting with the Inns regarding their functions, which form part of our regulatory arrangements. The outcome of this review will have implications for the new regulatory framework of the Rules we will consult on this autumn.

18. As part of this process, we were asked why the New Practitioners Programme (NPP) for post-qualification CPD was not included in the review. We said that it wasn't included in the scope for this review as we had prioritised pre-qualification rules but that we would look to review the NPP and other post-qualification reforms (e.g. the continuing need for Qualified Persons) alongside the existing FBT programme but for this to be concluded in 2018.
19. At the Inns Strategic Advisory Group (ISAG) meeting in May, Sir Andrew and Vanessa Davies spoke about the regulatory position we will need to clarify through this review. On 18 May, we began formal discussions with the COIC / ICCA and the Heads of Education (from each Inn) to set out which rules were being reviewed this year and timescales for returning information on current practice (18th June) as well as any other work they have begun to review already (they have suggested that they have started to review Qualifying Sessions).
20. There are no further meetings scheduled but we have left an open invitation to do so. We expect that we will meet with them prior to the September consultation opening.

Review of Curriculum and Assessments

21. It is timely that we undertake a review of the curriculum and assessments associated with the vocational stage of training, including the teaching and assessment of Professional Ethics, which was a focus of concern in responses to the consultation:
 - we will reconsider how much of the curriculum needs to be prescribed, and what can be left to providers' discretion;
 - we will consider what methods of assessment are most appropriate to demonstrate that the competences of the Professional Statement are met, and
 - we will determine which areas of training most warrant the regulatory control point of centralised assessment.
22. This work is being undertaken by a small group of external experts (Deverall Capps, Maria Tighe, Helen Tinkler) supported by executive staff (Vanessa Davies, Victoria Stec, Natasha Ribeiro, Hayley Langan). Initial findings will feed into the July Board paper and will be the subject of discussion at the BPTC Providers' Conference on 14 July 2017.

Pupillage reform

23. The pilot project to ensure that pupillage training is designed to meet the competences set out in the Professional Statement, Threshold Standard and Competences (PSTS&C) is underway. Following engagement with the Inns and publicity through the Regulatory Update, we have commenced engaging with stakeholders and identifying a pilot group of Pupillage Training Organisations. We intend to invite six to ten PTOs in total to take part in the pilot, covering a range of sizes, geographic locations and practice areas from both chambers and the Employed Bar.
24. As well as testing that training is designed to meet the competences set out in the PSTS&C, we intend to use the pilot to assist in considering some wider themes that have emerged from consultation, including the requirements that we set for the length and structure of pupillage and the one-to-one relationship between pupils and pupil supervisors. We will also review written contracts for pupils and the process that we have for administering pupillage from registration to completion.
25. We are conducting work to develop an evidence base with regards to the funding of pupillage to support policy development in the area.

26. We have completed initial scoping of work to accredit and reaccredit existing PTOs. This is being considered as part of the development of the Authorisation Framework so as to ensure our approach to authorisation is fully aligned.

Strategy & Policy

Professional Standards

27. In May, the professional standards team took over 100 calls about the BSB Handbook through our enquiry line. In total this year (January – May), the team have now provided advice and guidance in response to over 500 enquiries.
28. Work on implementing the recommendations of the Competition and Markets Authority (CMA) review into the legal services market continues, and a paper is before the board this month. The board is also being asked to approve the next steps in our review of the Public and Licensed Access schemes.
29. Guidance for organisations and consumers of immigration legal services will be published later this month (following a review by Law for Life to ensure that it is both in 'Plain English' and is accessible to readers). This will deliver against one of the milestones in our Business Plan. A dissemination plan has been drawn up to ensure that it is distributed as widely as possible to relevant stakeholders. We are also starting work on developing a vulnerability framework for barristers, to better identify, assess and manage client vulnerability. As with the consumer guidance, we will be engaging with key stakeholders to develop this and plan to pilot the framework later this year.
30. An International Protocol has been drafted and is currently with the Bar Council.
31. A PID and project plan for our PII project has been agreed. A TCG is scheduled for the end of June. We plan to seek further legal advice on competition concerns, which will inform the programme of work. We are also running a short survey with entities to better understand the PII issues faced by all types of entity, and the impact of BMIF withdrawing from the SPE market. An update on progress will be presented to the board in July.
32. We have just issued a rule change consultation on new information and disclosure requirements. These would require barristers to provide us with information on practice area, to register if they work in proceedings with young people, and to make specific declarations if they provide services that engage new Money Laundering regulations. The consultation closes in mid-September and we plan to bring the results of the consultation to the board in October.
33. We are reviewing a number of our internal processes around the BSB Handbook. As part of this, the professional standards team held a workshop on the rule change process and has recently published new internal guidance. We will be hosting representatives from the LSB to talk at a knowledge-sharing seminar on the rule change process on 13 July.

Regulatory Risk

Risk Prioritisation

34. Work on BSB risk prioritisation has progressed well. We held a series of discussions with the risk forum and with colleagues across the BSB to help develop ideas for a paper for the SMT, which they discussed on 8 June. They asked for a further

opportunity to consider risk prioritisation, but wanted to discuss this with the Board first. Risk prioritisation is therefore on the Board agenda for discussion on 22 June.

Risk Reporting

35. The SMT have agreed an approach to Risk Reporting that will provide them with visibility of risk activity across the organisation and by Department. We will task the risk forum with considering the underpinning information and agreeing key messages, trends and new or emerging risks to help inform the SMT's discussion, along with options for how they might wish to respond to these risks.
36. This work has helped define the roles and responsibilities for the SMT, the Risk Forum and the Risk Champions. As we develop this reporting, we will look at designing an appropriate risk reporting solution for both the GRA and the Board also, which we will set out in papers to the GRA and to the Board later this year.

Risk Assessment

37. Colleagues in the Information Services Team continue to work on an Access solution that will allow us to test our proposed approach to ensuring consistent risk assessment. They hope this will be available by late-June.
38. We have begun developing a project plan for how we will undertake the assessment testing, alongside which we have started to develop the guidance for assessors. The Project Board will have the opportunity to sign-off the approach to testing and the guidance by the start of July.
39. Work is also ongoing to agree the end-to-end CAT assessment process, of which the Risk Assessment is a significant part. Taken along with the outcome of the testing, the CAT Project Team believe this will allow us to agree our future IM requirement by end-November.

Equality and Access to Justice

40. The E&AJ Team presented a proposed change to the parental leave rule at the May Board meeting. The rule change has been approved and work has commenced on the application for approval by the LSB.
41. The Head of Equality and Access to Justice has had a meeting with the LSB about their research on increasing access to justice for people with mental health problems and dementia. He has been invited to present the BSB's approach to increasing access to legal services at an LSB research roundtable in July.
42. One of Equality Objectives published in the Equality Strategy 2017-19 has been delivered: the E&AJ Team has worked alongside the departmental Equality Champions to develop an equality action plan for all BSB departments.
43. An EIA has been conducted for the emerging research strategy. Areas of equality impact include: ensuring research guidance includes how to consider diversity as part of research proposals; including a research ethics section that considers issues of bias; ensuring that sample groups are targeted to appropriately diverse groups; ensuring that external agencies procured to deliver research operate in line with BSB equality policies.

44. EIA trainer training has been designed for all Equality Champions. Training will be delivered in July 2017 so all Equality Champion are equipped to provide training to their departments.

Research

45. A new Research Strategy has been prepared which presents a vision for BSB Research going into 2019. The strategy identifies six research objectives and associated actions that will be taken during the two-year strategy period to enable the vision to be achieved. The Strategy is one of the papers for consideration by the Board this month.
46. We have worked with the Strategy and Policy Team to develop a proposal for further research to support the Action Plan to implement the recommendations from the CMA report. The Action Plan will be submitted to the Board this month along with the research specification proposition.
47. We have published the study on the provision of legal services by barristers. The report contains the results of an online survey conducted in September and October 2016 with barristers about the future delivery of legal services. A Knowledge Sharing Session on this report and its next steps is scheduled for 12 July, during which Pye Tait, the research organisation who conducted the research, will present the findings.
48. The latest Research Roundup, to provide a summary and links to recently published research into the legal sector that could have a bearing on the work of the BSB, has been published on Verity and circulated by the Communications Team.
49. The Family Law research project undertaken by IRN is nearly complete, and we are working with IRN and the Communications department on producing the final report. The research involved a survey of 1200 consumers who had experienced a recent family law issue, alongside 50 interviews with clients of family law barristers. A knowledge sharing event has already been held to publicise the findings internally, with the final report expected to be published by the end of June.
50. We are working with NatCen Research to finalise the report for the Bar Training research project. This project has conducted qualitative research into barriers to access to the profession to inform further aspects of the Future Bar Training programme, consisting of 25 interviews with recent BPTC students and 25 interviews with recent pupillage applicants. NatCen will be presenting the findings to a Future Bar Training seminar on the 19th June.
51. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. ICPR have been appointed to carry out the research, with the research design and research tools finalised and agreed in April, with the research consisting of 60 qualitative interviews with Crown Court judges. ICPR have received final approval from the Judicial Office and have started setting up the first round of pilot interviews.
52. Pixl8 have started their research into users of the BSB website to inform future improvements. A survey for website users is ongoing, to be followed by a round of interviews, and we will continue to work with the communications department to shape and quality assure the research going forward.

53. We are working with the Policy team to develop proposals for research into the operation of the Qualified Persons rule for new practitioners, and into the choice of insurance by single-person entities and Alternative Business Structures.
54. We are working with the Equality and Access to Justice team to develop a proposal for further research to determine policies aimed at improving retention of women at the Bar and address the issues raised by last year's 'Women at the Bar' research into the operation of the Equality Rules and the experiences of women in the profession. This research will also inform delivery of one of the BSB's Equality Objectives.
55. We have largely finalised the 2017 BPTC Key Statistics Report, which is due to be published on our website this month. An embargoed copy was sent to providers of the BPTC on 12 June.
56. We are also finalising the FBT Evidence Base report, which is being updated to include findings arising from the Bar Training Research commissioned from NatCen, in support of the application of the rule change to the LSB for the FBT project.

Professional Conduct

Publication of findings

57. We have made an interim change to the BSB's publication of disciplinary findings policy. The change involves sentences of suspension from practise that are up to and including 12 months in length. Whereas previously these were to remain on our website indefinitely, they will now be removed after 10 years. The change applies retrospectively, so existing sentences which fall within this definition and have been published for 10 years or longer have been removed from the website as of 3 June 2017. It does not impact on our policy to disclose such information on request. The updated document can be found here –

https://www.barstandardsboard.org.uk/media/1832970/141112_-_pe02_-_publication_of_disciplinary_findings_bsb_-_updated_june_2017_.pdf

58. The change is in line with proposals on the publication of disciplinary findings that were subject to public consultation prior to the introduction of the BSB Handbook but to date have not been implemented. The proposals were intended to restrict the time such findings are made publicly available and the wider changes will be taken forward within this business year.

PCC Appraisals and re-appointment

59. As part of the aim to achieve continuing improvement in the performance of the Bar Standards Board's handling of complaints, we have commenced our annual Professional Conduct Committee Appraisals process. Annual appraisals of PCC members are in line with best practice and the process is designed to be helpful in promoting a two-way dialogue. As the majority of the terms of office of PCC members expire at the end of July 2017, the process will also support the re-appointment of eligible Committee members.

Disciplinary Tribunal Regulations review

60. The PCD is currently finalising the information literature for witnesses and guidance for staff on dealing with witnesses, as part of the implementation of this project. We have established an executive Task and Completion Group to assist with this. In due course the new literature will be published on the website and made available at the Bar Tribunals and Adjudications Service tribunal suite.

Staff training

61. On 16 May, PCD staff received refresher training from a member of the BSB Prosecution Panel on drafting professional misconduct charges. This covered technical aspects of ensuring that relevant code provisions, rules and underlying behaviour are clearly identified and reduce any potential risk of charges needing to be amended following service.
62. A member of the PCC, also provided a very helpful knowledge sharing session in early June on the remit and operation of the family courts: it also addressed evidential and disclosure rules applicable in the family courts. The session was attended by members of the PCD, RAD and Strategy & Policy.

Litigation

63. There have been no changes to the position in relation to the matter before the Supreme Court (an appeal against previous decisions to dismiss a claim for discrimination on the basis the claim was time-barred) and the matter before the Employment Tribunal (a discrimination claim by a disbarred barrister)
64. The only outstanding Judicial Review application, made by a complainant against a decision to dismiss part of his complaint, is still at the permission stage. The Applicant's request for an extension to file more detailed grounds was refused by the court and we now await the decision on permission.

Regulatory Assurance Department***Licensed Body ("ABS") Implementation***

65. The scheme launched on 6 April 2017. At time of writing there are 4 licensed bodies, details of which are published on our website in the Entities Register.

Youth Proceedings Advocacy

66. We have continued to develop the excellent relationships we have built in the Youth Justice sector this month. Our focus has been on the Judiciary; we have met with the Judicial Lead on Youth Justice, the Chief Magistrate and the Magistrates Association. In the course of these meetings, we have publicised the work we are doing in this area so it can be disseminated more widely to judges and magistrates and discussed opportunities for collaboration. As a result of our conversations, the Chief Magistrate will be sending an email out to all District and Deputy District Judges about our competences, highlighting the process around certificate for assigned advocate and encouraging judges to contact us where they see instances of poor advocacy. We intend to publish an article in The Magistrate later this year to send similar messages out to magistrates.

67. We continue to engage about our guide for young people about what they should expect from their advocate and from the Youth Court. We have received feedback from key stakeholders.
68. The practice area consultation has been released. As part of this, we will be consulting on the compulsory registration of barristers working in proceedings involving youths. Compulsory registration is likely to start as part of the Authorisation to Practise process in 2018.

Anti-Money Laundering and Counter Terrorist Financing

69. We are anticipating that four consultations will be launched over the summer about how the new oversight regulator, the Office for Professional Body Supervisors (OPBAS) will operate.
70. Work is underway to produce joint guidance for the legal sector in time for the new Money Laundering Regulations (expected to come into effect 26 June). It is based on the Law Society's current guidance, which has HM Treasury (HMT) approval. HMT have indicated that they will sign off the new guidance before 26 June. This will provide barristers with safe harbour protection if they follow the guidance. That has not been available to date because HMT stopped approving individual sector guidance.
71. The guidance says clearly that 'Provision of legal advice' as an activity is excluded from the Money Laundering Regulations. HMT had already signed this off in the last version of the Law Society's guidance. Such a clear statement is very helpful in enabling barristers to understand when the Regulations apply to their work.
72. The first draft is, however, rather solicitor centric as it was based on the Law Society guidance and updated for the new Regulations by their working group without wider input. This approach was agreed by the Legal Sector Affinity Group (LSAG) due to time constraints and it will be adapted in subsequent versions. The Bar Council intend to go ahead with their own separate guidance to manage the risk that it will not be clear enough for barristers, although it is not known if the Treasury will be willing to sign it off.

Centralised Assessment of Incoming Information ("CAT")

73. The Project Team is currently drawing together and documenting all the methodology and processes that have been developed to date, prior to rolling out testing.

Authorisations

74. Interviews are due to take place from 19 to 26 June 2017 for members of the new Review Panels and for the new members of APEX who will replace the Qualifications Committee from 1 September 2017.
75. The transitional provisions, whereby members of the Qualifications Committee sit as review panels and provide advice to members of staff in the way that the Review Panels and APEX will operate in the future, continue to work well. The next review panel is due to sit on 21 June 2017.

BPTC Handbook updates

76. The BPTC Handbook for the academic year 2017-18 has been drafted. The new version of the handbook includes a small number of minor changes and updates; the primary change has been the mapping of BPTC requirements to the Professional Statement, Threshold Standard and Competences. BPTC providers have seen and

made comments on the new version of the handbook and it will be ready to publish by the end of June 2017.

BPTC Providers' forum

77. A providers' forum meeting took place on 26 May 2017. During the meeting, provider representatives were given a brief update on the FBT programme before a taking part in a short workshop on the Authorisation Framework. Providers were given a blank version of the proposed Authorisation Framework grid and asked to consider what each of the four pillars of FBT (ie accessibility, affordability, flexibility and high standards) might look like and how they might be evidenced by a training provider.

Conference planning

78. The team is currently planning the agenda for the BPTC Provider Conference on 14 July 2017 at Hallam Conference Centre, W1. Items for discussion on the day will include the Authorisation Framework and the Curriculum and Assessments Review. Invitations have been sent out to delegates.

Monitoring Visits

79. The cycle of monitoring activity for all BPTC providers has concluded and reports are currently being prepared for publication in the next month.

Examinations

80. The subject boards and final examination boards for the centrally set and assessed subjects have taken place for both the BPTC and Bar Transfer Test. These are the first boards to be held following the implementation of new forms of assessment in all three subjects. Civil and Criminal Litigation are now assessed by 75 multiple choice questions, including a number of single best answer questions that require judgement to be applied to a situation; Professional Ethics is now assessed by six Short Answer Questions. We have also implemented in-house marking for Professional Ethics (Civil and Criminal Litigation are already machine-marked by us). The new forms of assessment are working well and discriminating between strong and weak candidates effectively; they are also meeting the level of reliability expected of high-stakes examinations.

Communications and Stakeholder Engagement

81. Since this report was last prepared for the Board the following press releases have been issued:
- 19 May: A press release about a barrister disbarred for dishonestly withholding fees from his chambers;
 - 26 May: A press release about our proposal to change to our rules to require chambers to allow all self-employed barristers access to parental leave;
 - 26 May: A press release to announce that we will be appointing a new Chair from 2018; and
 - 30 May: A press release to accompany the publication of our report into the provision of legal services by barristers.
82. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

83. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- the launch of a rule-change consultation regarding the Public and Licensed Access schemes;
 - the launch of the consultation about new information and declaration requirements for barristers;
 - the publication of the annual BPTC statistics report; and
 - the publication of guidance on immigration services.
84. The team is also working on the following projects:
- a stakeholder engagement event to be held on 19 June about Future Bar Training;
 - drafting the 2016-17 BSB Annual Report;
 - preparing and writing content for the new “My Bar” portal area of the website;
 - analysing the results of the staff survey about the intranet; and
 - preparing to analyse the results of the BSB website user experience survey.

Online and social media

85. During May, 24,904 users visited the BSB website. At the time of writing, we have 17,282 followers on Twitter, 2,770 followers on LinkedIn and 347 organisation likes on Facebook.

Corporate Services***Governance***

86. 14 requests for engagement of APEX members have been submitted, with all requests initially accepted. Requests have been made of ten of the eleven appointed experts to date. One request has been made in the BSB’s capacity as a Licensed Access client, to instruct a barrister member of APEX for advice to inform development of policy. Four members have accepted the invitation to join a Task Completion Group on Professional Indemnity Insurance (which also includes members of the Board and of the profession).
87. The Appointments Panel (established under Schedule A to the Constitution of the BSB) met in early June, to agree the schedules and materials for the recruitment of the Chair of the Board, and three lay Board members. The Panel noted the analysis (by the BSB’s Equality and Access to Justice team) of the diversity profile of the current Board and of the candidate pool from the recruitment in 2016. The Panel had regard to recommendations to take action where protected characteristics are under-represented in both the current Board and the candidate pool. It also considered action to be necessary for protected characteristics which are adequately represented in the candidate pool but not in the current Board (such as ethnic diversity, where the applications received are representative of the general population but the composition of the Board is not). The Board is considering the skills and competencies required of the incoming Chair, and those will be agreed in time for advertising in the first week of July. Advertising for all roles will open in early July, with applications for the Chair closing in mid August and applications for the lay members closing in mid-September.

88. Interviews are scheduled in the latter part of June for members of the Advisory Pool of Experts (APEX) to support staff taking decisions on authorisations and waivers, and for members of Review Panels to consider reviews of those decisions. We are seeking to appoint up to six members of APEX, and eight members of review panels (three barristers and five lay members), to provide sufficient flexibility to convene panels of one barrister and two lay members as necessary.

Corporate Support

89. A draft Invitation to Tender for the contract for internal audit services has been prepared and considered by the Governance, Risk and Audit Committee. Subject to approval of the final version by the Committee, it is intended to publish before the end of June and for the appointed auditors to commence in September.
90. Departmental assurance maps are being developed in consultation with managers across the BSB, and will be considered by the Governance, Risk and Audit Committee in September (in part to enable it to agree the scope of the work of the internal audit).
91. Initial work on drawing up the 18/19 budget and business plan has started.

Vanessa Davies
Director General BSB
14 June 2017