

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public

Minutes of the Bar Standards Board meeting
Thursday 26 January 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 Alden OBE
Rolande Anderson
Rob Behrens CBE
Aidan Christie QC
Justine Davidge
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Adam Solomon
Anu Thompson (items 9-14 by phone)
Anne Wright CBE
- By invitation:** Isobel Leaviss (former Independent Observer)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Andrew Langdon QC (Chairman, Bar Council)
Andrew Walker QC (Vice Chairman, Bar Council)
- BSB Executive in attendance:** Corrine Charles (Head of Research and Information)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
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)
- Press:** Max Walters, Law Society Gazette

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular those attending the meeting for the first time as Board Members ie:
 - Alison Alden OBE;
 - Steven Haines;
 - Zoe McLeod.
2. He also welcomed Andrew Langdon QC (newly appointed Chairman of the Bar Council), Andrew Walker QC (newly appointed Vice Chairman of the Bar Council) and two staff members attending their first meetings (Corrine Charles and Oliver May).

Item 2 – Apologies

3.
 - Judith Farbey QC
 - Lorinda Long (Treasurer, Bar Council)
 - James Wakefield (Director, COIC)
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
 - Viki Calais (Head of Corporate Services)
 - Oliver Hanmer (Director of Regulatory Assurance)
 - Amit Popat (Head of Equality & Access to Justice)

Item 3 – Members’ interests and hospitality

4. The Chair and Members congratulated Rob Behrens on his recent appointment as the new Parliamentary and Health Services Ombudsman. He commences this role from April 2017.
5. Rob Behrens thanked the Board for its support but also explained that the Ministry of Justice falls under the jurisdiction of this post in the same way as other government departments. To avoid a conflict of interest, therefore, he confirmed his intention to resign from the Board with effect from 31 March 2017. The Chair accepted this point but also expressed his regret at losing such a long standing and valued Board Member.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 24 November 2016.

Item 5 – Matters Arising

7. None.

Item 6a – Action points and progress

8. The Board noted progress on the action list. The Chair referred to the action point concerning the Youth Proceedings Advocacy Review (min 27c – 19 May 16). Vanessa Davies confirmed that a report will be presented to the Board at the next meeting.

Item 6b – Forward Agenda (Annex C)

9. The Board noted the forward agenda list. Vanessa Davies referred to the items for the Board Away Day in April 2017. She confirmed that the MoJ’s response to the CMA’s market study on legal services will be made available in time for that meeting.

Item 7 – Independent Observer’s Report – November 2016

BSB 001 (17)

10. Isobel Leaviss presented her final report as Independent Observer (IO). She was appointed in May 2011 and concluded the role in December 2016. The Chair therefore gratefully acknowledged that her attendance was outside her contract period.
11. Isobel referred to her report and highlighted the following:
 - the considerable degree of change within the Professional Conduct Department over the five-year period eg
 - ❖ its change of remit to cover issues of potential misconduct only (not also complaints of inadequate service) and its new “risk based” approach to regulation;
 - ❖ introduction of new IT systems and changes in staffing;
 - ❖ new Handbook and Code of Conduct;
 - ❖ change in tribunal service administration following the Browne Report.

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- the high level of assurance the IO can provide on the robustness and integrity of the complaint handling system. Due processes are followed to ensure fairness and consistency for both complainants and barristers facing complaints;
 - the resilience of the Department's service levels despite the upheaval of change, including turnaround times and the proportion of cases before Tribunals resulting in disciplinary findings;
 - improvements in the case management process implemented during the period which have included:
 - ❖ better risk analysis and knowledge management;
 - ❖ introduction of KPIs to monitor turnaround times;
 - ❖ increased transparency about decision-making;
 - ❖ clearer and more accessible information for complainants and barristers facing complaints;
 - the challenges and issues for the future which include:
 - ❖ focusing regulatory resources on areas of greatest risk;
 - ❖ regulating the use of social media by barristers;
 - ❖ standard of proof (ie most other professional regulators apply the civil, rather than the criminal standard);
 - ❖ busy and complex caseloads;
 - ❖ the ongoing need to support staff in their dealings with complainants and barristers at times of great stress in their lives, particularly given the increase in home working.
12. Members warmly thanked Isobel for her work as IO and for her report recommendations which have been the drivers of operational improvements. Her detailed scrutiny of how the Professional Conduct Committee has functioned was also recognised.
13. Vanessa Davies confirmed that the budget previously reserved for the Independent Observer will now be used more widely as part of a broader risk based assurance framework that covers the whole BSB rather than just one Department. This will be overseen by the GRA Committee.
14. Members commented as follows:
- several recommendations that are still to be completed relate to equality and diversity. It would be helpful to know the current position;
 - the work of the Planning, Resources and Performance Committee has been enhanced by introduction of KPIs. They have proved very useful in monitoring performance;
 - the report highlights the very high standards achieved by the existing process for managing complaints about barristers and does not find any systemic issues of concern. We therefore need to apply considerable caution to proposals for further change and ensure the same rigour is achieved in any revised structure;
 - the role of the IO has been pivotal in enabling reform as her advice has been a source of expertise that is subsequently acted upon. It is important that the new but broader assurance framework is able to have the same impact.
15. In response the following comments were made:
- only two E&D returns are outstanding from Board Members. Around half of all committee members have completed the monitoring forms;
 - the assurance framework will apply internal audit resources in a flexible but closely focused way so that sufficient scrutiny is given to areas of greatest risk.

16. Rolande Anderson also referred to the content of E&D training programmes as well as the currency of the training undertaken by relevant individuals. She asked that both elements be kept under regular review. Ewen Macleod confirmed that Amit Popat (Head of Equality and Access to Justice) is undertaking an audit of the training content and that records on dates of training are now maintained.
17. **AGREED**
to note the report and to thank Isobel Leaviss for her excellent work as Independent Observer.

Item 8 – BSB section 69 order – responses to the LSB consultation
BSB 002 (17)

18. Ewen Macleod highlighted the following
- the paper concerns a consultation paper issued by the LSB on the draft section 69 order that will extend the powers of the BSB as previously agreed by the Board;
 - this would normally be a consultation simply on the draft order (the BSB having consulted already on the policy issues) but the original drafting of the order identified further policy issues which needed to be consulted on. The responses to the consultation have since been received and the Board's views are now sought on the proposed way forward;
 - assuming we continue and that there is sufficient Parliamentary time, we hope to have the order in force by the end of October 2017.
19. The Chair suggested taking each of the consultation responses in turn. The Board referred to the draft order (Annex 2) and commented as follows:
- a) **Appellate body for regulatory decisions**
- Clause 3 is a general enabling power for the BSB. Providing there is no intent to change current arrangements for disciplinary tribunals, we should proceed with the order as drafted.
- b) **Powers of intervention**
- (i) the points raised by the Bar Council as set out in paragraph 17 of the report are pertinent and should be discussed further. That said, they are not unique to barristers. There should be other regulatory models available that have also addressed these concerns.
- (ii) it would help to understand the safeguards in place to prevent the overuse of these powers. It is important that any action taken is truly proportionate and only in circumstances where there is a genuine risk to the public.
- (iii) In response, Ewen Macleod commented as follows:
- a recent similar order for the Intellectual Property Regulation Board might serve as a useful reference point in respect of the matters of detail raised by the Bar Council;
 - the Board has already stated that statutory intervention should be an option of last resort. It will only apply to those cases where all other possible regulatory action has already failed. This will be published as a policy statement and formalised within the BSB's rules;
 - the Board will be notified of cases where statutory intervention powers have been used, though the decision to invoke these will lie with the Director General.

- c) **Information gathering**
- There were no new policy issues to discover here. It was noted that the power would be useful in cases where we are not receiving appropriate co-operation from a barrister in addition to strengthening our regulatory regime in relation to cases where the disclosure of privileged information may be requested.
- d) **Disciplinary arrangements**
- the advice of Parliamentary Counsel may be useful on this part of the order but we should proceed albeit considering the extent to which the Bar Council's suggestions about narrowing the scope of the disciplinary power are feasible.
- e) **Practice rules on engaging further disqualified persons**
- we should seek advice from the MoJ as to whether this article (Article 8) is required in the order in the light of the Bar Council's claim that existing rules in the BSB Handbook are sufficient.
- f) **Compensation arrangements**
- No new issues were raised and the Board did not need to revisit its previous decision to seek these powers. It is important that we are able to adapt to changing markets which may, indeed, require compensation arrangements at some point in the future.
20. Ewen Macleod confirmed that any further drafting amendments required after discussions with the MoJ will also need the agreement of the LSB, who must make the recommendation to the Lord Chancellor. A further report will be presented to the Board in due course. This will include the internal guidance to staff on the use of these powers which the Board will need to agree.
21. **AGREED**
- a) to continue with the s69 order taking into account the comments raised at the meeting.
- b) to discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers. **EM**

Item 9 – Publication of diversity data

BSB 003 (17)

22. Ewen Macleod referred to the diversity data report at Annex A of the paper which the BSB is required to publish annually under the LSB's statutory guidance issued in July 2011. This shows a small rise in disclosure rates though some areas do not have sufficient response rates to enable statistically valid conclusions to be drawn.
23. Members commented as follows:
- the increase in disclosure rates is small but nevertheless pleasing to note;
 - it is not clear what can be regarded as a statistically valid disclosure rate. The report states that the completion rate for questions on disability was "low" at 35% but then claims it to be sufficient to draw "possible conclusions";
 - there is a distinction to be drawn between fact and opinion. We need to be sure that our interpretation of the statistics is properly factual and that our press release reflects that;
 - the chart on gender at the Bar suggests a high attrition rate for retention of women. This leaves us open to challenge on barriers affecting the progression of women in the profession. We need to be alive to the possibility of poor public perception of these figures;

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- we need to be clear in our explanation of the variables. It takes time to qualify as a silk. Those reaching that stage of their career now started in the profession some years ago when the prevailing work culture was different;
 - it would help to know how our disclosure rates compare with other legal regulators and how we intend to improve these for the future;
 - there are other avenues from which diversity data can be collated eg pupillage gateway. It ought to be possible to import this across.
24. In response, the following comments were made:
- it is not possible to identify a single figure beyond which survey results become statistically valid in all instances. It depends on the variables involved;
 - in some instances where disclosure rates are low eg on schooling, it is nevertheless possible to state that an overrepresentation of those from fee paying schools exists because that would be the case even if all non-respondents came from a state school;
 - the press release has been worded to avoid overstatement;
 - the experiences of female barristers have already been researched and follow-up work identified to better understand the barriers to progression;
 - we will explore comparative figures for other legal regulators to benchmark how we compare. We are not able to compel barristers to provide this information. However, we do intend to make clear the importance of the data collection as part of our preliminary work on the Authorisation to Practise fee collection for 2017;
 - improvements in our IT system will allow us to track barristers through the various stages of their careers, so it will be possible to import data across in the longer term.
25. **AGREED**
to approve the Diversity Data Report for publication on the BSB website.
- AP /
WW**
- Item 10 – BSB Equality Objectives for 2017-19**
BSB 004 (17)
26. Ewen Macleod commented as follows:
- the Equality Act 2010 requires public bodies to publish their equality objectives at least every four years. This time, we had planned (but are not obliged) to do this at the same time as the Diversity Data Report;
 - the proposed new equality objectives are set out in Annex B of the paper and have been developed in line with the BSB's new governance arrangements with APEX input.
27. Members commented as follows:
- the scope of the objectives as set out in Annex B is welcome;
 - the proposed actions for Equality Objectives 1 and 2 could more closely reflect the language of the Objectives themselves ie focus on the causes of discrimination and progression / retention issues.
28. Aidan Christie QC referred to Annex A of the paper which gave an update on the previous E&D Strategy Objectives. He referred to the update to Objective 7 which reported that research indicated that gender was a significant predictor of the outcome of complaints. Subsequent to this, the Professional Conduct Committee had introduced gender anonymisation procedures to its complaint handling process. This should be noted in the report.

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29. **AGREED**
- a) to note the progress on the previous equality objectives at Annex A and to request the report is updated in accordance with minute 28 above. **AP**
- b) to approve the 2017-19 equality objectives at Annex B subject to re-drafting the text of the proposed actions for Objectives 1 & 2. **AP**

Item 11 – Standing Orders and Scheme of Delegations – proposed amendments

BSB 005 (17)

30. Rebecca Forbes commented as follows:
- the BSB’s Standing Orders have been re-drafted to take account of the Board’s prior agreement to develop an assurance framework which in turn affects the Terms of Reference for the Governance, Risk and Audit Committee and the Planning, Resources and Performance Committee. It also reflects the transitional arrangements that are a precursor to disbanding the Qualifications Committee and enable the operation of review panels comprising three committee members;
 - additional proposed amendments have been included following review of the Standing Orders in entirety and in part to simplify the BSB’s committee member recruitment process;
 - the report also seeks approval of proposed changes in the Scheme of Delegations in relation to:
 - ❖ all “first instance” decisions from the Qualifications Committee to the Executive (via the Director General);
 - ❖ a correction to the references underpinning the delegation made by the Board of its power to take action as a result of assessment against compliance with the BSB Handbook;
 - a review of the Governance Manual has been conducted in the light of the above proposals and some minor amendments are proposed as a result.
31. Stephen Crowne queried the proposed change to the recruitment criteria for barrister committee members which no longer explicitly states they have to be practising. In response Vanessa Davies explained that appointments will be made according to the competency requirements of the committee in question. Where these particularly require the knowledge of a practising barrister, the appointments will reflect this but there may be instances when the experience of a non-practising barrister is still equal to the skills criteria required.

32. **AGREED**
- a) to approve the proposed revisions to the Standing Orders as set out in Annex 1 of the paper and that these take immediate effect and be published on the BSB website. **RF**
- b) to note the delegations made by the Qualifications Committee of its powers to the Director General.
- c) to approve the amended wording of the Board’s delegation of its power to take action as a result of assessment against compliance with the BSB Handbook.
- d) to note the minor amendments to the Governance Manual.

Item 12 – Chair’s Report on Visits and Meetings: Dec 2016 – Jan 2017

BSB 006 (17)

33. **AGREED**
to note the report.

Item 13 – Director General’s Report

BSB 007 (17)

34. The Board considered the Director General’s report. Justine Davidge referred to the consultation event on the Future Bar Training programme held on 19 January 2017 at Kings College, London. She commented positively on its organisation and the high level of interest and participation shown by the delegates who attended, particularly from students.
35. Andrew Mitchell QC also referred to Future Bar Training in the context of the recent consultation document. He reminded Members that the deadline for this had to be extended to allow time to consider an addendum concerning the joint Bar Council / COIC proposal for a two-stage BPTC. Its earlier omission from the consultation document continues to be a source of dissatisfaction for some in the profession and has the potential to put stakeholder relations under strain.
36. In response, Vanessa Davies acknowledged the sensitivity of the issue and confirmed that the Board will have access to the consultation responses as from early February 2017. It will receive a broad overview of the responses at its February meeting before receiving a formal report in March 2017. She also advised that the PRP Committee will receive further details on the project’s timeline and costs at its meeting on 2 March 2017.
37. Nicola Sawford referred to paragraph 5 concerning the ASPIRE programme and two points arising from this ie.
- the request from the ASPIRE Programme Board that GRA Committee members scrutinise the final self-assessment reports;
 - the two current vacancies on the Programme Board for which the GRA Committee had been approach to fill.
38. She confirmed that the GRA Committee will undertake the scrutiny role referred to above but that the Programme Board vacancies will be filled by Board Members who are *not* on the GRA Committee to avoid any conflict of interest.
39. **AGREED**
to note the report.

Item 14 – Any Other Business

40. None.

Item 15 – Date of next meetings

41. • Thursday 23 February 2017.

Item 16 – Private Session

42. The following motion, proposed by the Chair and duly seconded, was agreed:
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) Future Property Options;
 - (5) Professional Conduct in relation to taxation (PCRT);
 - (6) CMA report – next steps
 - (7) Statements on the role of the Board & the governance principles it will follow;
 - (8) Any other private business (to include an update on the FBT Programme);
 - (9) Review of the Board meeting in terms of conduct and outcomes.
43. The meeting finished at 6.00 pm.