

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

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

**Meeting of the Bar Standards Board**  
**Thursday 23 November 2017, 4.30 pm**  
**Room 1, First Floor, Bar Standards Board Offices,**  
**289-293 High Holborn, London, WC1V 7HZ**

**Agenda - Part 1 – Public**

				<b>Page</b>
1.	<b>Welcome and introductions (4.30 pm)</b>		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of Part 1 (public) minutes</b> <ul style="list-style-type: none"><li>• 26 October 2017 (*)</li></ul>	Annex A	Chair	<b>3-7</b>
5.	<b>Matters Arising (*)</b>			
6.	a) <b>Action points and progress</b> b) <b>Forward agenda</b>	Annex B Annex C	Chair Chair	<b>9-11 13-14</b>
7.	<b>Performance Report for Q2 (July 2017 – September 2017)</b> (4.35 pm)	BSB 083 (17)	Anne Wright	<b>15-40</b>
8.	<b>Education and Training Committee: Annual Report For 2016-17</b> (4.45 pm)	BSB 084 (17)	Justine Davidge	<b>41-50</b>
9.	<b>Review of the standard of proof applied in professional misconduct proceedings</b> (4.55 pm)	BSB 085 (17)	Sara Jagger	<b>51-79</b>
10.	<b>Chair's Report on Visits and Meetings: November 2017 (*)</b>	BSB 086 (17)	Chair	<b>81</b>
11.	<b>Director General's Report</b> (5.25 pm)	BSB 087 (17)	Vanessa Davies	<b>83-93</b>
12.	<b>Any other business</b>			
13.	<b>Date of next meetings</b> <ul style="list-style-type: none"><li>• Thursday 7 December 2017 (Board Away Day)</li><li>• Thursday 25 January 2018 (Board Meeting)</li></ul>			
14.	<b>Private Session</b>			

**John Picken, Governance Officer**

[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)

16 November 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 231117**



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

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

Thursday 26 October 2017, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

**Present:** Sir Andrew Burns KCMG (Chair)  
Alison Allden OBE  
Aidan Christie QC  
Justine Davidge – items 8-13  
Naomi Ellenbogen QC  
Zoe McLeod – items 8-13  
Nicola Sawford  
Adam Solomon  
Anu Thompson  
Anne Wright CBE – by telephone

*Note: Judith Farbey QC was not present for Part 1 of the meeting but did attend for Part 2.*

**Bar Council in attendance:** Malcolm Cree (Chief Executive, Bar Council)  
Mark Hatcher (Special Adviser to the Chair of the Bar Council)  
Andrew Langdon QC (Chair, Bar Council)  
Andrew Walker QC (Vice Chair, Bar Council)

**BSB Executive in attendance:** Vanessa Davies (Director General)  
Rebecca Forbes (Governance Manager)  
Chelsee Howells (Policy Officer)  
Sara Jagger (Director of Professional Conduct)  
Luke Kelly (Policy Officer)  
Ruby Newton (Senior Supervision & Authorisation Officer)  
Ewen Macleod (Director of Strategy and Policy)  
John Picken (Governance Officer)  
Wilf White (Director of Communications and Public Engagement)

**Item 1 – Welcome**

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

**Item 2 – Apologies**

2.
  - Rolande Anderson
  - Steven Haines
  - Andrew Mitchell QC
  - Lorinda Long (Treasurer, Bar Council)
  - James Wakefield (Director, COIC)
  - Oliver Hanmer (Director of Regulatory Assurance)
  - Andrew Lamberti (Communications Manager)

**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 28 September 2017.

**Item 5 – Matters Arising**

5. None.

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

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

**Item 6b – Forward Agenda (Annex C)**

7. The Board noted the forward agenda list. The following comments were made:

- the item on standard of proof will now be discussed at the November meeting (it had been due for the current meeting agenda);
- the December Board Away Day includes an item on barristers' use of social media. The SRA has already produced guidance for solicitors in this regard and it would be useful to have this as reference material.

VLD to  
note

**Item 7 – Rule change application (practice area information, compliance with Money Laundering Regulations, registration of youth court work) BSB 075 (17)**

8. The Board considered a paper concerning rule change applications in respect of practice area information, Money Laundering Regulations and youth court work. Ewen Macleod confirmed that the summary of consultation responses (Annex A of the paper) would be further amended to give fuller regard to those responses representing collective views. He agreed to forward this to Members in due course.
9. Regarding feedback on practice area information, there was some debate as to whether our proposal to categorise practice areas in the same way as the BMIF was entirely suitable. Ewen Macleod stated that this was done primarily for pragmatic reasons. Over time, though, we may adapt the categories if required (this may be necessary for the employed bar). He confirmed that the *method* of categorisation has no impact on the substance of the rule change application.
10. Andrew Langdon QC made the following points about proposals for registration of youth court work:
- as currently stated, the recommendation for mandatory registration would apply to barristers involved in cases in a range of courts where defendants are aged under 18 (ie not exclusively the Youth Court). This is problematic because:
    - respondents to the consultation might reasonably have thought it concerned the Youth Court only and no other. Their replies should therefore be viewed in that context;
    - were the recommendation only to apply to the Youth Court then it might assist in keeping a focus on this institution with a view to changing prevailing, but detrimental, aspects of attitude and culture eg the notably poorer levels of pay for advocates engaged in this work;
    - the registration requirements, as currently drafted, would apply to a much wider range of barristers than might have been intended, given so many barristers work in the Crown Court and might be involved in cases involving young people. This, again, risks losing the desired focus on youth court work.

11. Naomi Ellenbogen QC suggested the rule change proposal could be restricted, at this stage, to just the Youth Court. Members agreed this amendment.
12. The Board also debated whether registration should, or should not, include a self-declaration of competency. The following comments were made:
- a number of respondents agreed that declarations should be linked to the Youth Proceedings Competencies;
  - those who have undertaken the vulnerable witness advocacy training programme would be able to self-declare competency;
  - conversely those who self-declare competency but have not completed this training might be subject to CPD checks;
  - we should re-visit at a future meeting how best to address those cases involving young people aged under 18 held in other courts.
13. In terms of the Money Laundering Regulations, members supported the changes as set out in the paper including disclosure checks and the requirement to register for “My Bar” with a unique email address.
14. On a point a clarification, following a question from a lay member, Ewen Macleod confirmed that DBS checks were not currently an integral requirement for qualifying as a barrister. This is, however, the subject of ongoing debate as part of possible changes that may arise from the Future Bar Training Programme. The existing rules already require barristers to declare any criminal convictions they incur.
15. **AGREED**
- |    |   |                   |
|----|---|-------------------|
| a) | that a revised version of the consultation response document (Annex A of the paper) be circulated to the Board for further comment prior to sending the rule change application to the LSB.   | <b>EM</b>         |
| b) | subject to further amendment as per a) above, to approve publication of the consultation response document on the BSB website.  | <b>EM</b>         |
| c) | to approve rule change applications in respect of practice areas and Money Laundering Regulations.  | <b>EM to note</b> |
| d) | that the wording of the rule change application for mandatory registration should refer to cases in the Youth Court only ie not (at this stage) to those cases involving defendants under the age of 18 that are heard in the adult magistrates’ court, Crown Court or higher courts. | <b>EM</b>         |
| e) | that registration for Youth Court work should require a declaration of competency as set out in Option A of the paper.  | <b>EM</b>         |
| f) | to re-visit at a future meeting how best to address those cases involving young people aged under 18 held in other courts.  | <b>EM</b>         |

**Item 8 – Public and Licensed Access Review – consultation paper and rule change**

BSB 076 (17)

16. Ewen Macleod highlighted the following:
- the majority of consultation respondents agreed that the Cab Rank rule should not extend to public and licensed access work;
  - two of the original proposals will not be pursued ie those concerning disclosure of professional indemnity insurance (PII) cover and allowing clients ineligible to complain to the Legal Ombudsman (LeO) to directly instruct any barristers.

17. At the Chair's invitation, Andrew Walker QC commented on the licensed access proposals. He warned of a danger of unintended consequences ie that, in certain circumstances, the removal of current prohibitions against licensed access clients instructing barristers directly could inadvertently result in them carrying out litigation illegally.
18. Ewan Macleod confirmed that guidance would be amended to make clear that barristers must not act where an unauthorised person is conducting litigation.
19. **AGREED**
- a) to note the responses to the consultation paper on public and licensed access review.
  - b) to approve the rule changes and related proposals as set out in Annex A of the paper subject to clarification of guidance as described above. **EM**
  - c) to approve publication of the report on responses to the consultation as set out at Annex B of the paper. **EM**

**Item 9 – Chair's Report on Visits and Meetings: October 2017**  
BSB 077 (17)

20. **AGREED**  
to note the report.

**Item 10 – Director General's Report**  
BSB 078 (17)

21. The following points were highlighted:
- The Chair and Vanessa Davies attended the International Conference of Legal Regulators (4-8 October 2017). This was a very well received event and also featured a speech from Lord Keen about the Government's "Legal Services are GREAT" campaign;
  - it included the theme of the well-being of lawyers which will also be the subject of debate at the next Regulators' Forum meeting;
  - the "Women at the Bar" workshops held during October were very helpful in providing feedback to the Equality and Access to Justice Team;
  - Board Members are welcome to attend any of the forthcoming roadshows on the current CMA and FBT consultations which have been organised by the Communications and Public Engagement Department.
22. Justine Davidge referred to paragraph 14 of the report concerning the Curriculum and Assessments Review. She advised that the New Practitioner Programme (NPP) will not be considered as part of this review given it is only a post-qualification topic (and therefore outside the remit of the Future Bar Training Programme). The forensic accounting course will be included, however, as that can be completed either pre-or post-qualification.

- AGREED**
- 23. a) to note the report.
  - b) to forward the schedule of CMA and FBT roadshows to Board Members. **WW**

- Item 11 – Any Other Business**
24. None.

- Item 12 – Date of next meeting**
25. Thursday 23 November 2017.

**Item 13 – Private Session**

**Part 1 - Public**

26. 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 – 28 September 2017
  - (2) Matters arising
  - (3) Action points and progress – Part 2
  - (4) Assuring competence of barristers
  - (5) Review of disciplinary tribunal services
  - (6) Regulatory operations – centralised assessment of incoming information
  - (7) Consultation on the LSB's Draft Strategic Plan
  - (8) Any other private business
  - (9) Review of the Board meeting in terms of conduct and outcomes.
27. The meeting finished at 5.05 pm.





**BSB – List of Part 1 Actions  
23 November 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
15a (26 Oct 10) - Rule change application (practice area info, compliance with MLRs, reg'n of youth court work)	circulate a revised version of Annex A of the Board paper to Members for further comment prior to sending the rule change application to the LSB	Ewen Macleod	immediate	30/10/17	<b>Completed</b> – email sent to Board Members with updated version of the response document
15b (26 Oct 10) - Rule change application (practice area info, compliance with MLRs, reg'n of youth court work)	publish the final version of the consultation response document on the BSB website	Ewen Macleod	by 3 Nov 17	15/11/17	<b>Completed</b>
15d & e (26 Oct 10) - Rule change application (practice area info, compliance with MLRs, reg'n of youth court work)	forward a rule change application to the LSB as per the response document but amend the wording for mandatory registration so that it applies to cases in the Youth Court only and requires a declaration of competency as set out in Option A of the paper	Ewen Macleod	by 3 Nov 17	15/11/17	<b>Completed</b>
15f (26 Oct 10) - Rule change application (practice area info, compliance with MLRs, reg'n of youth court work)	re-visit how best to address registration of barristers instructed in cases involving young people aged under 18 that are heard in courts other than the Youth Court	Oliver Hanmer	by end Feb 18	15/11/17	<b>In-hand</b> On-going review of the youth proceedings research, the consultation paper and the consultation responses to establish the evidence in support of extending registration to barristers representing young people outside of the Youth Court.

**BSB – List of Part 1 Actions**  
**23 November 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
19b (26 Oct 17) - Public and Licensed Access Review – consultation paper and rule change	amend the rule change application on public and licensed access (so that barristers do not act where an unauthorised person is conducting litigation) and forward to the LSB for approval	Ewen Macleod	by 3 Nov 17	15/11/17	<b>Completed</b>
19c (26 Oct 17) - Public and Licensed Access Review – consultation paper and rule change	publish the report on responses to the consultation (as set out at Annex B of the paper) on the BSB website	Ewen Macleod	immediate	15/11/17	<b>Completed</b>
23b (26 Oct 17) - CMA and FBT roadshows	to forward the schedule of CMA and FBT roadshows reference in the DG's report to Board Members	Wilf White	immediate	03/11/17	<b>Completed</b> – schedule circulated with Friday mailing
21b (28 Sep 17) – E&D data: sexual orientation and religion / belief	draft a consultation paper on the disclosure of sexual orientation and religion and belief data by chambers and entities and present to the Board	Amit Popat	before end Jan 18	18/10/17	<b>In hand</b> – consultation will be prepared for Board approval in January
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Ewen Macleod / Joseph Bailey	before 26 Oct 2017	15/11/17  18/10/17  20/09/17	<b>In hand</b> – initial positive meeting held with the FCA. Currently exploring whether an additional MoU is necessary  <b>In hand</b> – awaiting response from the FCA  <b>In hand</b> – a joint approach has been made with CILEX regulation to the FCA

## BSB – List of Part 1 Actions

23 November 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
23c (27 Jul 17) – ATE insurance	issue regulatory guidance on ATE insurance subject to further discussions with the APEX member concerned and taking account of the need to ensure that barristers are aware of the potential risks involved	Ewen Macleod / Joseph Bailey	before end Sept 2017	18/10/17	<b>In hand</b> – awaiting discussions with Bar Council before publication
				20/09/17	<b>In hand</b> – we are awaiting comments from the relevant APEX member and we want to discuss the guidance with the Bar Council before publication
15b (27 Oct 16) – definition of “employed barrister (non-authorized 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	15/11/17	<b>Ongoing</b> – updated application about to be shared with the LSB
				20/09/17	<b>Ongoing</b> – application being finalised
				09/06/17	<b>Ongoing</b> – additional guidance being produced to support final application to the LSB
				16/05/17	<b>Ongoing</b> – currently updating application in the light of LSB comments
				15/03/17	<b>Ongoing</b> – draft application due to be submitted to LSB by end March
				15/02/17	<b>Ongoing</b> – awaiting meeting with BACFI
17/01/17	<b>In hand</b> – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.				



**Forward Agendas****Thursday 7 Dec 2017 (Board Away Day)**

- Barristers' use of social media
- Public Legal Education

**Thursday 25 Jan 2018**

- Update on PII Project
- CMA: response to policy consultation on new transparency requirements
- Positive Action Plan to address underrepresentation on the Board
- Entity Regulation Review
- Statutory Interventions
- LSB IGR consultation
- E&D Data collection consultation

**Thursday 22 Feb 2018**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Regulatory Operations and Regulations Changes Consultation Approval
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register
- PII

**Thursday 22 Mar 2018**

- BSB Business Plan for 2018-19
- Scope of Practice proposals
- Authorisations Governance update
- CMA: rule change consultation on new transparency requirements
- FBT consultation response: Tranche 1 policy decisions

**Thursday 26 Apr 2018 (Board Away Day)**

- FBT consultation response: Tranche 2 policy decisions

**Thursday 17 May 2018 (Board to Board meeting with LeO)****Thursday 24 May 2018**

- PRP Report: includes the BSB Q4 & YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register
- FBT consultation response: Tranche 3 policy decisions

**Thursday 28 Jun 2018**

- FBT: approval of rule change consultation

**Thursday 26 Jul 2018**

- BSB Annual Report 2017-18
- Enforcement Report 2017-18
- CMA Response to Regulatory Operations consultation

**Thursday 27 Sep 2018**

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Budget Bid for 2019-20
- Corporate Risk Register

- Schedule of Board meetings Jan 2019-20
- FBT: approval of new rules

**Thursday 11 Oct 2018 (Board to Board meeting with LSB)**

**Thursday 25 Oct 18**

**Thursday 22 Nov 18**

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register
- Regulatory Operations Programme – update

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

**Thursday 31 Jan 19**

**Thursday 28 Feb 19**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Draft Business Plan for 2019-20

**Thursday 28 Mar 19**

- Business Plan for 2019-20

## Performance Report for Q2 (July 2017 – September 2017)

### Status

1. For discussion and **decision** on point 5b.

### Executive Summary

2. This paper provides an update to members of the Board on the BSB's progress and performance in Q2 against the activities set out in its [2017-18 Business Plan](#)<sup>1</sup>. It covers a wide range of information (see the dashboard in Annex 1) relating to projects, financial position and performance measures, and it provides the Board with an assessment of progress against our plans.
3. Within the quarter, there was a high volume of work linked to the September's Board agenda for Future Bar Training (FBT), the Competition and Marketing Authority (CMA) and Risk projects. A real push was made by staff and the SMT has praised the high standard/quality of work. The Committee would like to echo this, and thank the team for dealing with the high volume of work in a professional manner.
4. The main "exception" areas highlighted in this report are:
  - a) The executive regularly reviews the budget and the Q2 Management Accounts show that we are on track.
    - (i) **Non-PCF Income:** £160k in non-PCF income against our budgeted projection of £146k (variance £14k or +10%) (2016-17 Q2 +37%).
    - (ii) **Expenditure:** £2,472k against a budget of £2,526k (variance £54k or -2%) (2016-17 Q2 -2%).
  - b) The mid-year forecasting exercise with budget holders has taken place and will be shown in the Q3 report. We are currently forecasting that expenditure will come in on budget. Presently we have 3 staff members on maternity leave, which we do not budget for. The outcomes of the recruitment process for cover for these positions may affect the year-end expenditure variance.
  - c) The non-PCF income year end forecast is showing that we will have generated a positive income variance of £503k or +56% (See annex 3, 2017-18 yearend income forecast). This is mainly due to the conservative income figures that were set, given the uncertainty of FBT causes: uptake on the Bar Transfer Test (BTT), Bar Professional Training Course (BPTC) or Bar Course Aptitude Test (BCAT) has exceeded those conservative expectations.
  - d) The Committee therefore agreed in principle to the Finance Committee request for the BPTC projected income figure for 2018/19 be set higher by £220k, based on higher number of students than the conservative previous projection for 18/19. The Board is asked to agree to this change in the 2018/19 budget proposals.
  - e) Five business plan activities are showing as off target: Public and Licensed Access (amber), Seek s69 Order (red), Review of Disciplinary Tribunal Service (amber), Equality Objectives (amber) and Governance Reforms (amber).
  - f) PCD's OPI 1 'percentage of complaints concluded or referred to investigations within 8 weeks', achieved a percentage of 78.6% missing its target by 1.4%.

<sup>1</sup> 2017 – 18 Business Plan [https://www.barstandardsboard.org.uk/media/1826204/bsb\\_business\\_plan\\_2017-18.pdf](https://www.barstandardsboard.org.uk/media/1826204/bsb_business_plan_2017-18.pdf)

- g) Authorisations missed 1 of their application targets; application determined within 0 to 6 weeks. Target achieved was 51%, KPI target is 75%.
- h) The overall staff turnover has decreased to 18%, with voluntary turnover being 11%. This is a significant improvement since Q2 2016-17 when turnover was 43.8% (19% voluntary).

### Recommendations

- 5. Members of the Board are invited to:
  - a) **discuss** the main areas highlighted;
  - b) **agree** to the increased non-PCF income projection for 2018/19; and
  - c) **make recommendations** to the Executive or the Committee as necessary.

### Background

- 6. We are now in the second year of our 2016 – 19 Strategic Plan<sup>2</sup>. The plan sets out the way in which we will regulate barristers and specialised legal services businesses. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. The work, which is to take place over this three-year period, has been organised into the following three strategic aims:
  - a) Regulating in the public interest;
  - b) Supporting those we regulate to face the future; and
  - c) Ensuring a strong and sustainable regulator.
- 7. The published Business Plan outlines the key activities for this year, as well as the budget to deliver these. This report describes our performance against these aims, objectives and budget, as well as the overall performance within the BSB.

### Reporting process

- 8. On a quarterly basis, the Corporate Support Team gathers information, in liaison with the Senior Management Team (SMT), and reviews the activities in the Business Plan and provides progress updates. It is SMT members' responsibility to provide explanations for delays or over or underspends and the associated risks or impacts and how they are being addressed. Resource Group colleagues provide the figures underlying the HR and IT performance data on a quarterly basis.
- 9. The live document against which business activities are reported was last updated on 10 October 2017, whereas our performance indicators and management accounts are for Q2 only (as at 30 September 2017).

### Areas for further consideration

- 10. Activity is reported to the Board and to the PRP Committee by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below. They have been listed in the order that they appear in the 2017-18 Business Plan.

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<sup>2</sup> 2016 – 19 Strategic Plan [https://www.barstandardsboard.org.uk/media/1746768/bsb\\_strategic\\_plan\\_2016-19.pdf](https://www.barstandardsboard.org.uk/media/1746768/bsb_strategic_plan_2016-19.pdf)



These include:

a) Public and Licensed Access

- (i) This activity was put on hold in 2016 – 17 business year, while we reviewed the [Competition Market Authority \(CMA\) market study](#)<sup>3</sup>.
- (ii) In June we opened a consultation on the changes to the Public and Licensed Access rules. This includes an analysis of whether the cab-rank rule, which currently only applies where a self-employed barrister is instructed by a professional client (such as a solicitor), should also apply to Public and Licensed Access cases. The consultation was originally due to close on the 15 September and was extended for two weeks due to a lower than expected level of responses during the summer period.
- (iii) As a result of the responses to the consultation, which closed on 26 September, the October Board approved the rule changes. An application will be submitted to the Legal Services Board (LSB) in November (as stated in the 2017 – 18 Business Plan) and, subject to approval, it is hoped that the new rules will be in place by February 2018.

b) Seek s69 Order

- (i) This activity, which was originally recorded as within our control is now rated as being out of our control, is marked as red in relation to our timeline (see annex 1).
- (ii) We have received confirmation from the Ministry of Justice (MoJ) of their intention to lay the Order before Parliament. Due to the general election, the parliamentary timetable changed and the Order will not be presented until October or November. With this delay, we will miss the October commencement date and the rule change will not come in to force until 6 April 2018.

c) Review of disciplinary tribunal service

- (i) This activity has slipped by a quarter, it was due to go to the Board in September for Board members consideration and review of the executive's recommendation about the future of the disciplinary tribunal services. The paper was discussed instead at the private session of the Board meeting on 26 October as a result of the summer break and the full agenda in September. We are confident that we will complete this activity by the end of the business year.

d) Equality Objectives

- (i) Part of the equality objectives activity for Q2 'the workshop with female barristers' was not completed due to room availability. The workshops explored solutions to encourage better retention of women at the self-employed Bar.

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<sup>3</sup> <https://www.gov.uk/cma-cases/legal-services-market-study>

- (ii) Each workshop brought together representatives from the Bar, training sector and equality and diversity organisations to explore the themes highlighted in our [Women at the Bar report](#)<sup>4</sup>. The workshop will update an action plan to address barriers women face.
  - (iii) The workshops were scheduled to provide an opportunity for participants with children and other responsibilities to attend, and took place on the 5, 16 and 17 October.
- e) Governance Reform
- (i) This activity has been shown as amber on the dashboard. The actual recruitment work has either been carried out or is underway. It was agreed at an SMT meeting that the Board Diversity Data will be deferred on the Board agenda until January 2018 after the recruitment activity for the Chair and Lay Members has completed. It is too late in the recruitment process for any analysis or action plan to be useful, and it will be most useful in informing future recruitment activities.

### Human Resources (HR) Dashboard

11. The turnover figure has fallen below 20%, which is a significant improvement over the previous years. During this quarter three staff members left, one in August and two in September. The turnover rate is currently at 18%, with a voluntary turnover rate at 11%.
12. The HR Director presented the biannual leavers analysis report to the Committee. For further reading see annex 8.

### Resources Group (RG) Update

13. Meetings have now been held with Resources Group directors both individually and collectively to discuss the working relationship between BSB and RG. The discussions have been constructive and positive with the aim of finding a proportionate means of managing the relationship effectively. Those meetings have suggested that the current approach to performance management is not creating the right level of accountability between the BSB and RG. SLAs by their nature are very detailed and do not reflect the business partnering arrangement that should exist. Work is underway to develop principles of effective working between the BSB and RG as well as practical steps to ensure that the BSB receives the level of service that it requires from RG and vice versa. Key to that is ensuring that there is clarity and understanding at the earliest stage of what is expected from each party. Similarly, there must be robust means of holding each other to account whilst maintaining the collaborative engagement that is necessary for true partnership working. Granular SLAs are not the best means of serving that objective and engendering the right relationship between RG and BSB. The proposals will be discussed with SMT before the end of the year before being finalised with PRP at its next meeting.

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<sup>4</sup> Women at the Bar report

[https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf)

14. The following is a summary of the RG key updates and further information can be found in the RG one report, annex 7.
- Formal consultation has been delayed due to the new office location not yet identified
  - There has been a slight delay in the property search due to uncertainty of search criteria and space requirement following a test fit exercise.
  - Wellbeing activities for staff have started.
  - Staff survey results have been analysed and an action plan has been devised.
  - All risk assessments are up to date and relevant. The annual fire marshal training took place.
  - My Bar was not demonstrated at the Annual Bar Conference, due to further testing of the system. Go live date moved from October 2017 to November 2017
  - Final mop up of Office365 is being carried out.
  - The review of the privacy policy is on hold – awaiting progress on General Data Protection Regulator (GDPR) review and clarification of where responsibility sits, which is currently with the Finance Director and Chief Information Officer.
  - Go Live date for Customer Relationship Management (CRM) is 26 October 2017.
  - The implementation of further development of Finance Systems has been delayed to the end of Q4.

### PCD Performance Indicators

#### Quarter 2 performance against KPI

15. Performance in Q2 has been good: overall performance against the corporate KPI, of 80% of cases completed within the service standards, was 85% in Q2, bringing the year-to-date performance to 80.1%. Also, the volume of cases closed in Q2 was higher than in Q1.

### Operational Performance Indicators

16. Performance this quarter against both OPI 2 (investigation of internal complaints) and OPI 3 (investigation of external complaints) was at or above the 80% target (80% and 88.1% respectively). While performance against OPI 1 for Q 2 was just below the target at 78.6%, this represents an increase of 7.2% on Q1.
17. The percentage of cases in the system which are already over the OPI service standards are now running at about 20% or below which is a significant improvement on Q1 when the percentage overrunning in relation to OPI 1 (assessment of complaints) stood at 39%. The Assessment Team has worked hard to reduce the number of older cases in the system and as a result the prospects for meeting the corporate KPI target at year-end are good.

### Long running cases

18. The number of “long-running” cases (defined as cases that are 50% or more over the service standards) has remained almost static at 43 cases (down by 1) with five such cases being closed in the period and four new ones falling into the category. All such cases are closely monitored and the PCD Managers are satisfied that there are justified reasons in each case for their longevity.

## Authorisations

19. The Committee received a presentation from the Authorisations Manager on the new arrangements now in place to manage the authorisations function of the BSB following the disestablishment of the Qualifications Committee. A good discussion took place on the proposal to review the current KPIs, so that they are smarter and more accurately reflect the way in which the team now operates under a revised governance structure. The Committee agreed to revisit the current KPIs in 6 months after which the new ways of working will have been embedded, and the current back log of applications will have cleared or largely reduced.
20. Current performance falls short of the KPIs, this reflects:
- 49% (half) of the applications determined were over 6 weeks old;
  - 16% (45) applications were 8 weeks old;
  - 3 officers were assigned over 90 applications for completion, whilst embedding a programme of cross skilling training within the team; and
  - There was a high percentage of applications for which there was one available officer able to complete assessments.
21. The Interim Authorisations Manager has developed a work programme to address the backlog of applications and tackle the skills deficit during Q3. For further reading see annex 5.

## 2017- 18 Q2 Budget and Forecast

22. Below are the YTD headline figures for Q2 and further detail can be found in the detailed Management Accounts table at Annex 2:
- a) **Non-PCF Income:** £160k in non-PCF income against our budgeted projection of £146k (variance £14 or + 10%).
  - b) **Expenditure:** £2,472k against a budget of £2,526k (variance £54k or -2%).
23. The key variances in the budget for the committee to be aware of are as follows:
- a) Income
    - (i) At the end of Q2 we have managed to resolve our negative variation of 21% from Q1 accounts and the forecast shows that non-PCF income is going to significantly exceed the original budget
  - b) Expenditure: staff costs
    - (i) Most of the savings in cost are down to salary costs showing a YTD variance of £47k. The underspend in salaries is due to delay in recruiting for one position (Senior Programme Manager) and one post being removed from the original plans.
    - (ii) The phasing of the temp staff/recruitment budget in Corporate Services has added to the staff variance. In addition to this an unbudgeted recruitment process was carried out for temporary staff in RAD and PCD teams to meet regulatory objectives.
    - (iii) An unbudgeted cost of a staff member leaving, which cost approximately £21k.

- c) Expenditure: non-staff costs
  - (i) Finance are currently correcting an over accrual for staff training cost, which is showing a negative value.

### **Equality Impact Analyses**

- 24. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our performance against various E&D measures.

### **Risk implications**

- 25. Risks that may have an impact on the BSB achieving its objectives have been considered whilst compiling the business plan activities. The risk register was last reported to the Governance Risk and Audit Committee on 17 October 2017 and to the Board in the private session, see BSB paper 092 (17).

### **Regulatory objectives**

- 26. Delivery of the BSB strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

### **Publicity**

- 27. This report is presented in the public part of the agenda.

### **Further reading**

- 28. Corporate Risk register, see paragraph 25.

### **Annexes**

- 29. Annex 1 – Q2 Dashboard
- Annex 2 – Management Accounts summary
- Annex 3 – 2017 – 18 Year-end Income Forecast
- Annex 4 – PCD Performance Indicators
- Annex 5 – Authorisation Team KPIs
- Annex 6 – HR Dashboard, BSB paper 092 (17) annex 7
- Annex 7 – Resource Group 1 Report, BSB paper 092 (17) annex 8
- Annex 8 – Leavers Analysis, BSB paper 092 (17) annex 9

### **Lead responsibility**

Anne Wright – Chair – Planning, Resources and Performance Committee  
Dan Burraway, Corporate Support Manager  
Natasha Williams, Business Support Officer



Q2 Dashboard

Business Plan Activities (2017-18)				Service Standards (Core activity)					
<b>Strategic Programme 1</b> <b>Regulating in the public interest</b>				<b>Professional Conduct Indicators</b>					
	TIME	BUDGET	STAFF	CTRL	IMPRT	SIZE	BSB paper reference		
CMA action plan	✓	✓	✓	C1	4	4			
Alternative Business Structures	✓	✓	✓	C1	2	2			
Embedding risk-based principles	✓	✓	✓	C1	3	3			
Bar PII and BMIF	✓	✓	✓	C1	4	3			
Public and licensed access	!	✓	✓	C1	2	2	para 10a		
Seek s69 order	✗	✓	✓	C3	3	1	para 10b		
Research Strategy	✓	✓	✓	C1	2	1			
Standard of Proof	✓	✓	✓	C1	3	1			
Review of disciplinary tribunal services	!	✓	✓	C1	2	1	para 10c		
<b>Strategic Programme 2</b> <b>Supporting barristers and those the BSB regulates to face the future</b>				<b>Authorisations</b>					
Continuing Professional Development	✓	✓	✓	C1	2	2			
Youth Courts	✓	✓	✓	C1	3	2			
Immigration	✓	✓	✓	C1	3	2			
Equality Objectives	!	✓	✓	C1	4	3	para 10d		
Scope of practice	✓	✓	✓	C1	1	1			
Anti Money Laundering	✓	✓	✓	C1	3	2			
Future Bar Training	✓	✓	✓	C1	4	4			
<b>Strategic Programme 3</b> <b>A strong and sustainable regulator</b>				<b>Entity Authorisation Decisions</b>					
Disciplinary Tribunal Regulations	✓	✓	✓	C1	2	1			
BSB - PII	✓	✓	✓	C1	2	1			
Regulatory Independence	✓	✓	✓	C1	3	3			
Governance reforms	!	✓	✓	C1	3	1	para 10e		
<b>Resource Group Key Activities</b>				<b>Number of Service Complaints closed</b>					
IM Business tools upgrade	✓	2	1				Q2 3		
MI Improvement	✓	3	1						
IM CRM training	✓	3	3						
ATP Charges	✓	4	2						
Recruitment Process	✓	2	2						
New CEO	✓	3	1						
Office Move	✓	4	1						
<b>Key</b>				<b>2017 - 18 Q2 YTD actuals against budget</b>					
<b>Control</b>		<b>Importance</b>		<b>Size</b>		<b>Weighting</b>		<b>Business Activities</b>	
C1 - BSB Control	↕ 4 More important	↕ 1 Small piece of work	↕ 1 Higher weighting	█ Completed					
C2 - RG control	↕ 1 Less important	↕ 4 Large piece of work	█ Lower weighting	X X X Stopped					
C3 - External control									
				<b>Staffing (Rolling figures)</b>					
				2017 2016 HR Q2 Target					
				Sickness (days/FTE) 6 7 ✓ Recruitment times (approval to start date (weeks)) 13 10 !					
				Sickness (days/long term) 4 4 ✓					
				Turnover (%) 18 43 ✓					
				Turnover (Voluntary) 11 19 ✓					
				<b>IT Response times</b>					
				2017 - 18 Q1					
				Response to high priority calls 100% ✓					
				Response to medium priority calls 100% ✓					
				<b>Corporate Risk Register</b>					
				07 Jul 17 16 Oct 17					
				Likelihood Impact					
				17 19					





General Council of The Bar  
BSB  
BSB Summary  
Sep-17

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget	BSB Paper ref
<b>Income</b>								
Practising Certificate Fees	578,000	578,000	0	3,468,000	3,468,000	0	6,936,000	
Other Regulatory Income	61,612	50,700	10,912	160,184	145,900	14,284	887,000	para 23a
<b>Total Income</b>	639,612	628,700	10,912	3,628,184	3,613,900	14,284	7,823,000	
<b>Expenditure</b>								
Staff Costs - Salary Related	367,469	346,903	(20,567)	2,001,741	2,048,878	47,137	4,118,556	para 23b
Staff Costs - Temp Staff/Recruitment	7,326	38,932	31,606	93,985	86,365	(7,621)	143,740	para 23b
Staff Costs - Non- Salary Related	(274)	18,605	18,879	27,993	38,540	10,547	80,590	
Non - Staff Costs	83,032	113,717	30,685	348,606	352,097	3,491	868,114	para 23c
<b>Total Costs</b>	457,554	518,157	60,603	2,472,326	2,525,880	53,554	5,211,000	
<b>Net Surplus / (Loss)</b>	182,058	110,543	71,514	1,155,858	1,088,020	67,837	2,612,000	

General Council of The Bar  
Bar Council  
BSB

Sep-17

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget
<b>Income</b>							
Practising Certificate Fees	578,000	578,000	0	3,468,000	3,468,000	0	6,936,000
Disciplinary Fines	1,871	0	1,871	(3,265)	0	(3,265)	0
BPTC Provider Fees	42,458	0	42,458	42,458	0	42,458	0
BPTC Provider Conference	3,290	0	3,290	3,820	7,500	(3,680)	7,500
Training Provider Acc.- BPTC provider	0	0	0	308	0	308	500,000
Training Provider Acc.- BTT provider	0	0	0	0	0	0	35,000
Training Provider Acc.- Forensic Accs	0	0	0	0	10,000	(10,000)	10,000
Training Provider Acc.- Public Access	0	0	0	400	0	400	1,200
Training Provider Acc.- BCAT : EU	0	0	0	0	0	0	75,000
Qualifications Committee - Panel 1	8,085	10,500	(2,415)	50,007	21,000	29,007	42,000
Qualifications Committee - Panel 2	748	450	298	6,147	900	5,247	1,800
Qualifications Committee - Panel 3	270	3,000	(2,730)	2,215	6,000	(3,785)	12,000
Qualifications Committee - Panel 4	2,940	0	2,940	10,254	0	10,254	0
Qualifications Committee - Panel 5	0	0	0	300	0	300	0
Qualifications Committee - Panel 6	2,155	0	2,155	22,502	0	22,502	0
Qualifications Committee - Reviews	0	30,000	(30,000)	(152)	60,000	(60,152)	120,000
Entity Regulation - Application	(205)	600	(805)	24,825	3,600	21,225	7,200
Entity Regulation - Approval	0	600	(600)	0	3,600	(3,600)	7,200
Entity Regulation - Annual Renewal	0	0	0	365	0	365	1,500
ABS - Application	0	1,800	(1,800)	0	10,800	(10,800)	21,600
ABS - Approval	0	1,500	(1,500)	0	9,000	(9,000)	18,000
ABS - Annual Renewal	0	2,250	(2,250)	0	13,500	(13,500)	27,000
<b>Total Income</b>	<b>639,612</b>	<b>628,700</b>	<b>10,912</b>	<b>3,628,184</b>	<b>3,613,900</b>	<b>14,284</b>	<b>7,823,000</b>
<b>Expenditure</b>							
Gross Salaries	288,109	281,900	(6,209)	1,616,390	1,663,243	46,853	3,331,852
Overtime	0	0	0	3,148	0	(3,148)	0
Benefit Allowance	8,820	8,420	(400)	49,014	50,207	1,193	99,284
Recognition award	0	0	0	3,700	0	(3,700)	0
Other Pay	13,587	0	(13,587)	14,676	0	(14,676)	20,000
ERS NIC	32,915	33,068	153	184,382	196,169	11,787	389,688
ERS Pension	24,038	23,515	(523)	130,431	139,258	8,828	277,732
Temporary Staff	4,950	21,432	16,482	35,148	42,865	7,717	88,740
Staff Recruitment	2,376	17,500	15,124	58,838	43,500	(15,338)	55,000
Staff Training	(321)	11,000	11,321	20,950	22,000	1,050	50,000
Staff Travel : Air	0	5,000	5,000	2,876	5,750	2,874	6,500
Staff Travel : Train	0	180	180	866	5,930	5,064	11,810
Staff Travel : Taxi	0	0	0	63	150	87	300
Staff Travel : Other public transport	0	1,225	1,225	0	2,850	2,850	5,850
Staff Travel : Other	0	0	0	192	300	108	600
Staff Accom : UK	0	0	0	1,600	0	(1,600)	2,435
Staff Accom : Overseas	0	1,000	1,000	0	1,000	1,000	1,000
Staff Subsistence : UK	47	0	(47)	1,098	360	(738)	1,895
Staff Subsistence : Overseas	0	200	200	0	200	200	200
Staff Reimbursement : Phone etc	0	0	0	30	0	(30)	0
Staff Reimbursement : Health	0	0	0	319	0	(319)	0
<b>Total Staff Related Costs</b>	<b>374,522</b>	<b>404,440</b>	<b>29,918</b>	<b>2,123,720</b>	<b>2,173,783</b>	<b>50,063</b>	<b>4,342,886</b>
<b>Expenditure - Non-Staff</b>							
Fees - Policy Development	(802)	32,080	32,882	(4,952)	149,480	154,432	304,960
Fees - Committee	21,251	9,187	(12,064)	114,146	35,502	(78,644)	129,674
Fees - Assurance	46,001	7,500	(38,501)	102,059	16,540	(85,519)	33,080
Fees - Legal Advice	5,137	25,000	19,863	52,761	35,500	(17,261)	71,000
External Expertise Recruitment	140	3,000	2,860	3,412	3,000	(412)	10,000
External Expertise Training	0	0	0	200	0	(200)	10,000
External Expertise Travel : Air	0	0	0	425	0	(425)	0
External Expertise Travel : Train	1,878	1,000	(878)	14,050	2,000	(12,050)	10,050
External Expertise Travel : Taxi	164	0	(164)	704	0	(704)	0
External Expertise Travel : Other	277	1,350	1,073	903	6,600	5,697	10,250
External Expertise Travel : Mileage	374	0	(374)	1,004	0	(1,004)	0
External Expertise Travel : Other	35	950	915	464	5,700	5,236	11,350
External Expertise Accom : UK	0	0	0	383	0	(383)	0
External Expertise Subsist : UK	161	0	(161)	755	0	(755)	5,500
External Expertise Reimburse : Phone etc	0	0	0	19	0	(19)	0
Appeal - Regulatory Decision	0	0	0	0	2,000	2,000	4,700
Courier	0	0	0	0	1,725	1,725	2,400
Court charges	1,112	0	(1,112)	1,607	0	(1,607)	0
Events	(327)	2,350	2,677	9,119	17,200	8,081	23,800
External meeting refreshments	0	0	0	1,004	0	(1,004)	0
External meeting room equipment	0	0	0	645	0	(645)	0
External meeting room hire	1,274	5,000	3,726	5,797	25,000	19,204	50,000
Gifts and Hospitality	0	0	0	50	1,000	950	3,500
Internal meeting: Room booking	0	1,000	1,000	0	3,000	3,000	5,000
Internal meeting: Refreshments	0	50	50	93	150	57	250
Internal meeting: Equipment	0	0	0	26	0	(26)	0
IT systems development	0	0	0	0	0	0	1,500
IT systems maintenance	0	0	0	1,875	0	(1,875)	0
Membership subscription	31	6,300	6,269	2,798	7,800	5,002	20,300
Other Casework support	144	1,800	1,656	1,579	3,600	2,021	7,200
Outsourced casework	0	4,500	4,500	0	9,000	9,000	18,000
Periodicals	0	250	250	316	500	184	1,000
Printing	0	1,250	1,250	(4,915)	2,500	7,415	5,000
Publications	0	7,500	7,500	6,504	15,000	8,496	30,000
Consultancy / Research	4,704	0	(4,704)	30,959	0	(30,959)	78,000
Scanning	0	0	0	0	0	0	3,000
Storage	1,459	1,000	(459)	1,855	4,000	2,145	8,000
Transcriptions	(192)	2,150	2,342	2,614	4,300	1,686	8,600
Translations	84	0	(84)	84	0	(84)	0
Witness expenses	128	500	372	265	1,000	735	2,000
<b>Total Non-Staff Costs</b>	<b>83,032</b>	<b>113,717</b>	<b>30,685</b>	<b>348,606</b>	<b>352,097</b>	<b>3,491</b>	<b>868,114</b>
<b>Total Expenditure</b>	<b>457,554</b>	<b>518,157</b>	<b>60,603</b>	<b>2,472,326</b>	<b>2,525,880</b>	<b>53,554</b>	<b>5,211,000</b>
<b>Net Surplus / (Loss)</b>	<b>182,058</b>	<b>110,543</b>	<b>60,603</b>	<b>1,155,858</b>	<b>1,088,020</b>	<b>67,837</b>	<b>2,612,000</b>

## 2017 – 2018 Year End Income Forecast

Type	Budget	Actual (Year to Date) *	Forecast	Variance
BPTC	£500,000	£0	£893,000 <sup>1</sup>	+£393,000
BPTC Conference	£7,500	£3,820	£7,000	-£500
BTT	£35,000	£42,458 <sup>2</sup>	£74,000	+£39,000
Forensic Accounting	£10,000	£0	£9,000	-£1,000
Public Access	£1,200	£400	£1,200	-
BCAT	£75,000	£0	£150,000 <sup>3</sup>	+£75,000
Authorisations (including reviews)	£175,800	£91,273	£175,800	-
Entity Regulation	£66,600	£25,190	£65,000	-£1,100
ABS Regulation	£15,900	£0	£15,000	-£900
<b>Total</b>	<b>£887,000</b>	<b>£163,141</b>	<b>£1,387,000</b>	<b>+£503,500</b>

1. 1624 students at £550 per student (£893,200). Invoices to be raised shortly.
  2. £42,458 is for the Summer Sit, Spring Sit is approximately £32k.
  3. Approximately 1,900 students expected. Depending on their origin (EU (£115) or Rest of the World (ROW) (£95)) and other deductions from Pearson expect anything up to £180k.
- \*. Actual comes from September / Q2 Management



## PCD Key Performance Indicators

PCD Measure		2017-18			2016-17 YE	2016-17 Target
		Q1	Q2	Target		
Complaints	Number of complaints received	123	119	n/a	369	n/a
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	73.8%	85%	80%	80.1%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	70.5%	78.6%	80%	84.6%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	66.7%	80%	80%	70.4%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	88.6%	88.1%	80%	76.4%	80%

## Over-Running Cases

Snapshot at the close of Q2 of 2017-18

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	50	13	26%
External Investigation (8 months)	52	8	15%
Internal Investigation (5 months)	43	4	9%
<b>Total</b>	<b>145</b>	<b>25</b>	<b>17%</b>

**Note**

OPIs and the overall KPI measure closed cases – In consequences, cases that are delayed (however legitimate the reason) will impact these figures.

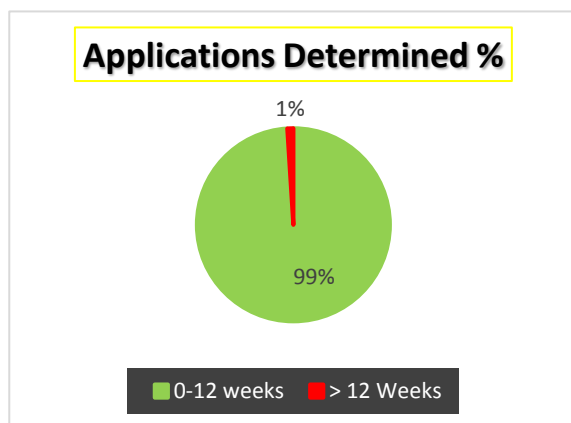
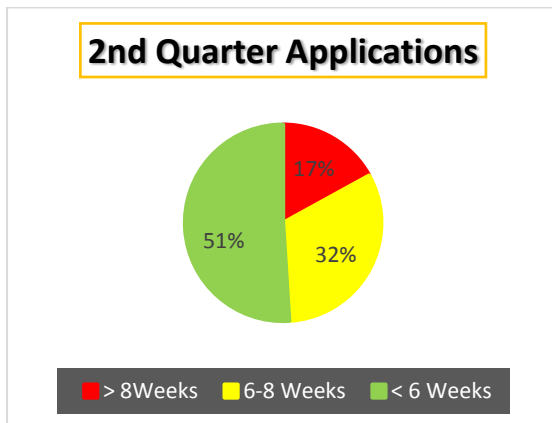
The overall KPI reflects the combined effect of the three individual OPIs



## Authorisations Team – Performance against Key Performance Indicators (“KPIs”) for the First Quarter of Financial Year 2017/18

### Applications

1. The KPIs for authorisation applications previously determined by the Qualifications Committee and now delegated to staff are:
  - i) The percentage of applications determined **within six weeks** of receipt of the complete application (which includes all required documentation and the application fee).  
Target: **75%**
  - ii) The percentage of applications determined **within eight weeks** of receipt of the complete application (which includes all required documentation and the application fee).  
Target: **80%**
  - iii) The percentage of applications determined within twelve weeks of receipt of the complete application (which includes all required documentation and the application fee).  
Target: **98%**
  
2. The following diagrams illustrate performance against these KPIs and includes the percentage of applications determined between nought to six weeks, six and eight weeks and nought to twelve weeks during the period 1<sup>st</sup> April and 30<sup>th</sup> June 2017.

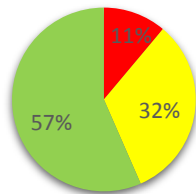


01/07/2017 to 30/09/2017

Total Applications	Number	%
Total Applications Determined	274	100%
Determined between 0 and 12 weeks	270	99%
Determined between 0 and 8 weeks	229	84%
Determined outside of 8 weeks	45	16%
Determined between 6 and 8 weeks	89	32%
Determined within 6 weeks	140	51%

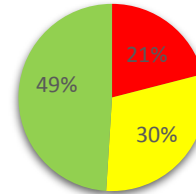
3. The following charts illustrate the team's performance each month against KPIs

### July Applications



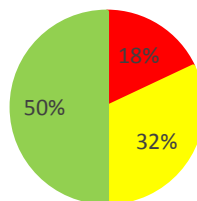
■ > 8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

### Aug Applications



■ > 8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

### Sept Applications



■ > 8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

- i) **July 2017**
  - A total of 96 applications had decisions determined during July.
  - 56% of the applications were determined within 6 weeks.
  - 89% of the applications were determined within 8 weeks
  - 99% of applications were determined within 12 weeks
  - The average number days taken to complete assessments was 37 (5 weeks)
- ii) **Aug 2017**
  - A total of 99 decisions were made during August.
  - 49% of the applications were determined within 6 weeks.
  - 79% of the applications were determined within 8 weeks
  - 99% of applications were determined within 12 weeks
  - The average number days taken to complete assessments was 41 (6 weeks)
- iii) **Sept 2017**
  - A total of 78 decisions were made during September.
  - 50% of the applications were determined within 6 weeks.
  - 82% of the applications were determined within 8 weeks
  - 99% of applications were determined within 12 weeks
  - The average number days taken to complete assessments was 37 (5 weeks)



## iv) Other Considerations

The KPIs were not met largely due to:

- a targeted approach to focus on assessing applications over 8 weeks old which impacted on the calculation of the average number of days taken to complete determinations.
- “bedding in” of new processes and deadlines to enable a more effective service.
- cross skilling also being embedded via job shadowing and knowledge sharing.
- a decrease in resources due to annual leave and sickness absence during September.

## 4. 30 working day turnaround

i) Set KPIs are based on 6 weeks (30 working days) turnaround periods which straddle months either side of the month in which a decision is due. Therefore, applications considered complete and received between 21<sup>st</sup> May and 19<sup>th</sup> August 2017 were due to be assessed in this quarter.

- an average of 5 applications per day are received during off peak periods.
- this quarter 324 applications received, of which 276 (85%) were deemed “complete”
- only “complete” applications which were received up to and including 19th August were due to be decided by 30th September.
- a total of 130 “complete” applications received during this quarter were not due for assessment before October.

\*It is worth noting that during this quarter 139 applications (51% of all applications determined) were **in advance of the month in which they were due**.

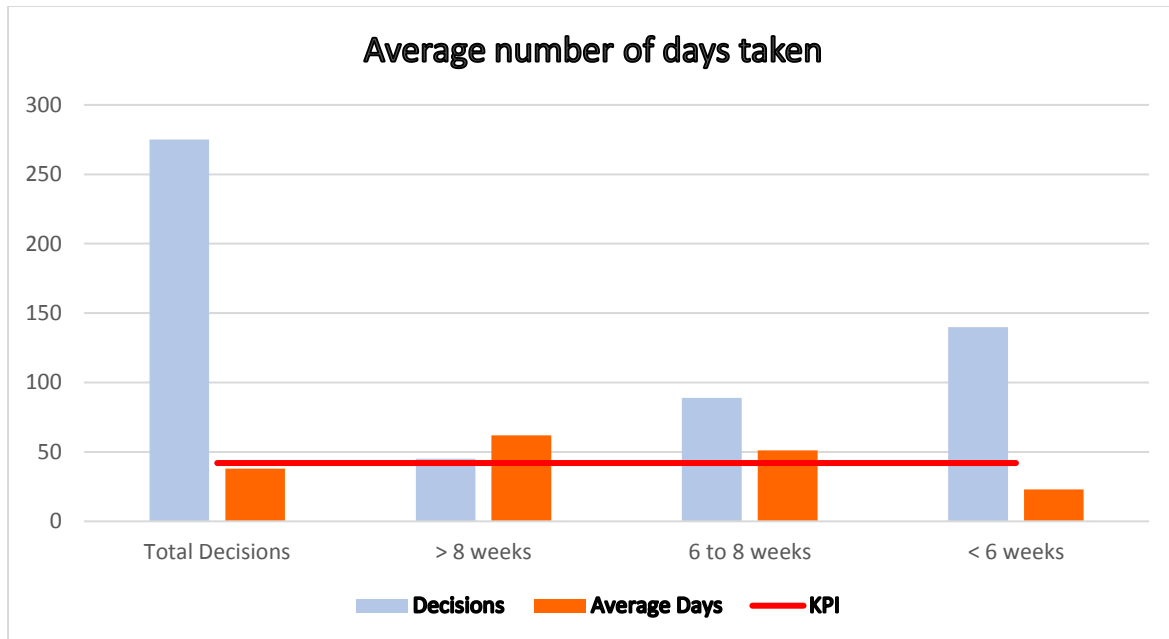
## 5. Applications Backlog

i) The team started the quarter having significantly reduced the historic backlog, from **28% to 5.5%** of the decisions made. Applications were **outstanding no more than 2 weeks**.

- 9 applications fell into this backlog of work compared to 103 during the previous quarter
- the average number of days taken to determine decisions for these applications was 62 days (8 weeks).
- applications between 6 and 8 weeks old at the date of decision took an average amount of 51 days (7 ½ weeks) to finalise decision
- applications determined within 6 weeks took 23 days (3 weeks) on average.
- this demonstrates that the team have consistently met two out of three KPIs during the last 6 months
- whilst there is a backlog of work to reduce during the 3rd quarter it is significantly less than last quarter (only 14 applications over 8 weeks old, with a further 29 between 6 and 8 weeks old)

**84%** of “live” applications awaiting decisions were assessed and determined within an **average of 33 days (5 weeks)**. These applications had due decision dates spanning an 11month period between 10<sup>th</sup> May and 11<sup>th</sup> August 2017.

- ii) The chart below compares the average number of days taken to determine decisions against our KPIs and demonstrates the impact the historic backlog has made on these figures.



The table below compares performance of the 1<sup>st</sup> Quarter against the 2<sup>nd</sup> Quarter

<b>Decisions made April to June 2017</b>	<b>Number of Decisions</b>	<b>Average days taken</b>
All decisions	308	49
Over 8 weeks (57 + days)	103	83
6 to 8 weeks (43 to 56 days)	68	51
Within 6 weeks (up to 42 days)	137	23
<b>Decisions made July to September 2017</b>	<b>Number of Decisions</b>	<b>Average days taken</b>
All decisions	275	38
Over 8 weeks (57 + days)	45	62
6 to 8 weeks (43 to 56 days)	89	51
Within 6 weeks (up to 42 days)	140	23

#### 6. Work Programme (1<sup>st</sup> July to 30<sup>th</sup> September 2017)

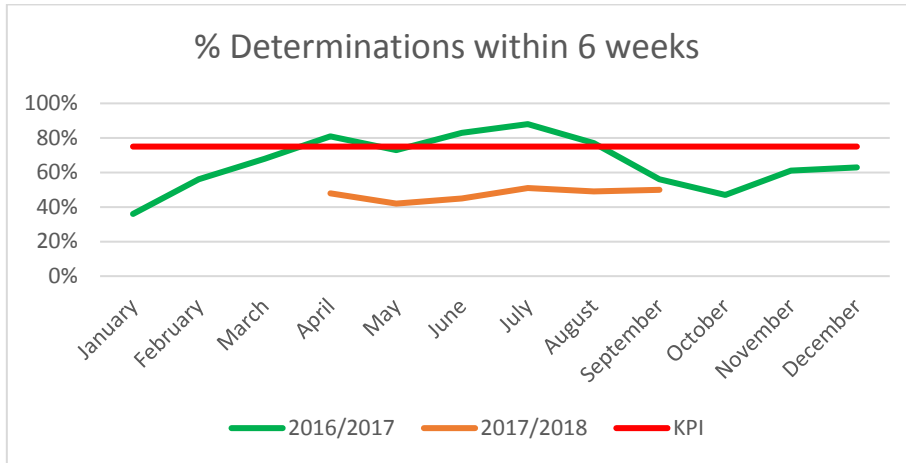
- i) An average of 5 or 6 applications are received daily which equates to 25 to 30 applications per week.
- ii) There is an increase in the number of applications relating to the Academic and Vocational Stages (although there is no increase to the overall volume of applications)
- iii) A skills deficit has been identified relating to these applications.
- iv) September saw a significant decrease in resources due to annual leave and sickness absence, leading to an increase in the backlog of applications
- v) The current work programme aims to:
  - complete 30 to 40 decisions per week
  - continue to reduce the backlog at a rate of 5 to 10 applications per week.

7. Enquiries

The implementation of a generic mailbox has enabled the team to quantify the number of enquiries handled in addition to the applications process. On average the team respond to 600 enquiries per month. To manage this workload a team rota has been introduced, with a “duty” officer operating a triage system. No data is currently available for telephone enquiries.

8. Comparative Stats 2016/2018

(i) The chart below illustrates the comparison between last years and this year’s performance against the KPIs.

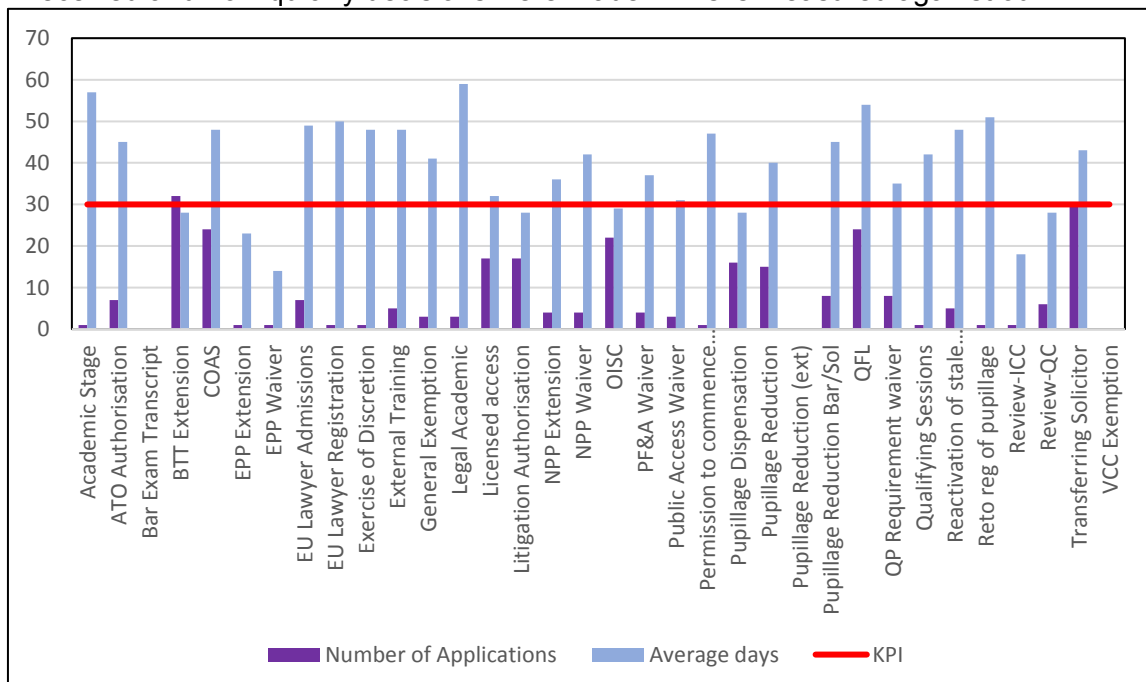


\*Figures based on “completed” applications received and determined in the same month.

(ii) The 2<sup>nd</sup> quarter reflects the stabilisation of performance as staff become skilled in other applications and support each other. We are disappointed not to have exceeded the KPIs although this is largely attributed to a resource issue during September.

9. Types of application determined

The table below illustrates the number of decisions made by the type of application received and how quickly decisions were made. This is measured against our KPI.



### 10. Decisions by officer (July to September 2017)

There are currently three officers each able to assess applications, we have increased our capacity by committing to training to ensure that least two officers can assess each application. This is an ongoing programme of work. Eventually it is envisaged that we will have a full complement of staff able to effectively deal with applications, waivers, exemptions and entity regulation.

- average of 91 applications per officer
- 30% applications were allocated to additional resources as part of the ongoing training programme

### 11. Reviews

Review decisions accounted for **2.5%** of all decisions made this quarter

- 1 ICC - decision upheld
- 6 QC – decisions, 3 upheld, 3 amended

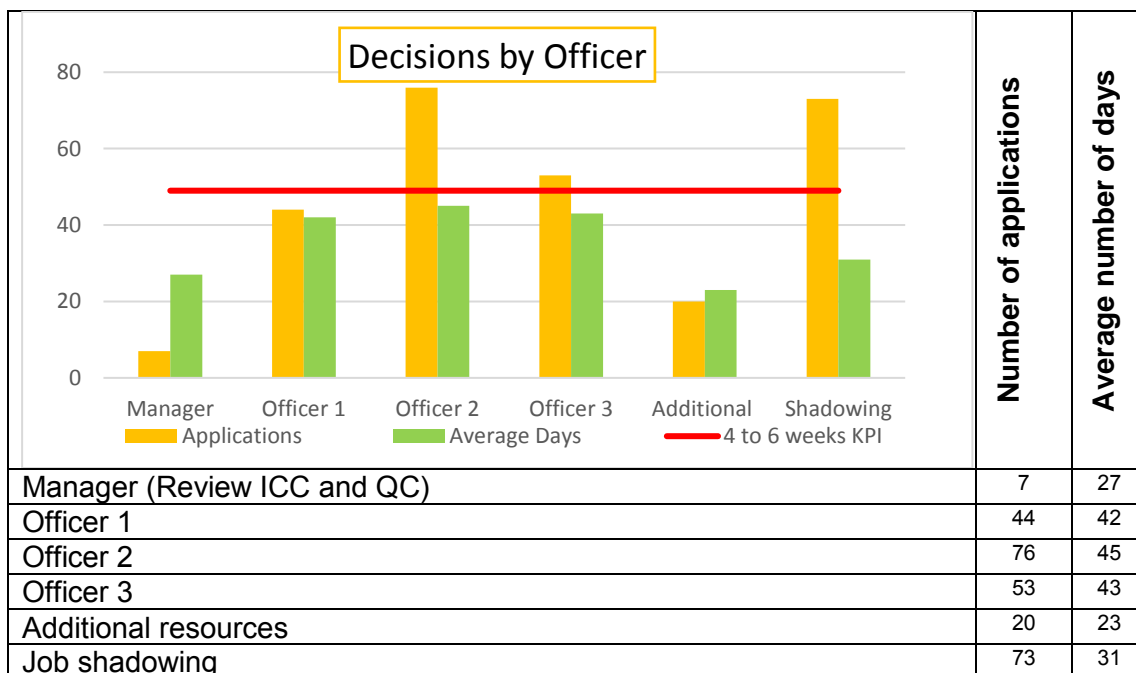
### 12. Quality assurance

We are currently reviewing the Quality assurance process. Senior Officers will have the responsibility of quality assuring every tenth decision before a letter is sent. As this is a new initiative no data is currently available.

### 13. Overview

We are disappointed not to have achieved our overall target and attribute this to the following:

- 49% (half) of applications determined were over 6 weeks old,
- 16% (45) applications were over 8 weeks old
- 3 officers were assigned over 90 applications each for completion, whilst embedding a programme of cross skills training within the team.
- There was a high percentage of applications for which there was only one available officer able to complete assessments



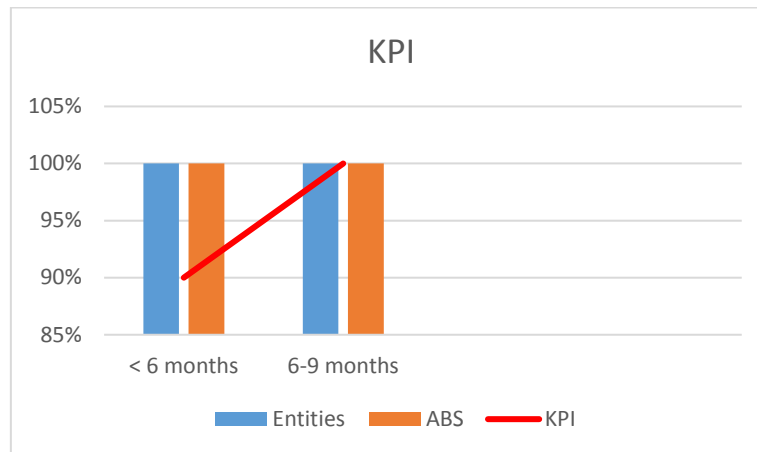
- i) The Interim Authorisations Manager has developed a work programme to address the backlog of applications and tackle the skills deficit during the 3<sup>rd</sup> Quarter.
  - The average number of days taken to determine applications for this period was 38 days (5 weeks), which exceeds the current KPI (6-8 weeks).
- ii) Another determining factor which created delays is a lack of shared skills and knowledge within the team, the programme of cross skilling is addressing this issue although training needs remain with certain applications.
  - The three officers have completed 73 applications as part of the ongoing programme of learning & development to address the resource and capacity issue
  - **aim** for the next quarter is that **all three officers able to assess all applications** and **entity authorisations** and quality assure each other's work
  - the **risk** during the next quarter is unplanned absences, for which a contingency plan must be developed
  - It is expected that the CRM implementation during the 3<sup>rd</sup> quarter will increase capacity
- iii) Another key factor for consideration is that current KPIs were set at a time when there were more available staff to assess the applications. The team have consistently met 2 out of 3 KPIs and are completing determinations within an average of 38 days. The Interim Authorisations Manager recommends a review of the current KPIs in line with current staffing and resources.
  - 50% within 6 weeks
  - 80% within 8 weeks
  - 100% within 12 weeks

#### Entity (including ABS) Authorisation

14. The KPIs for Entity Authorisation are:

- (i) The percentage of authorisation decisions made **within six months** of receipt of the application and associated fee.  
Target: **90%**
- (ii) The percentage of authorisation decisions made **within nine months** of receipt of the application and associated fee.  
Target: **100%**

The following diagram illustrates performance against these KPIs for the 2<sup>nd</sup> Quarter

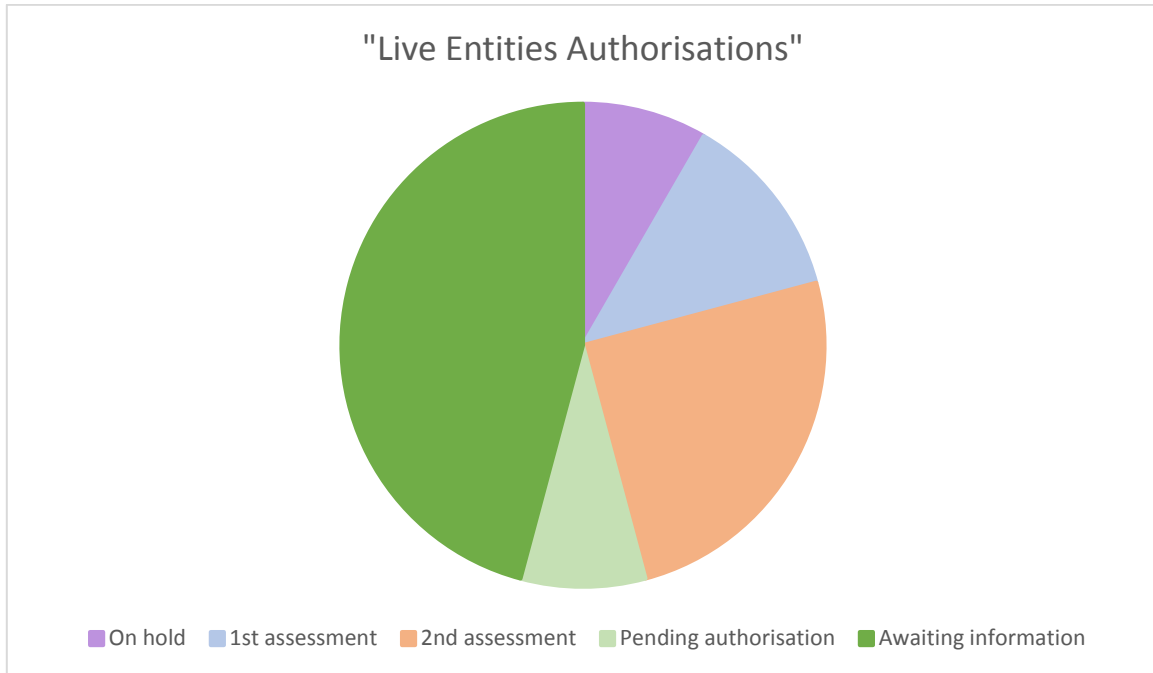


**We have met and exceeded our targets for the second quarter, with no outstanding authorisations due before November 2017**

#### 15. Entity Type

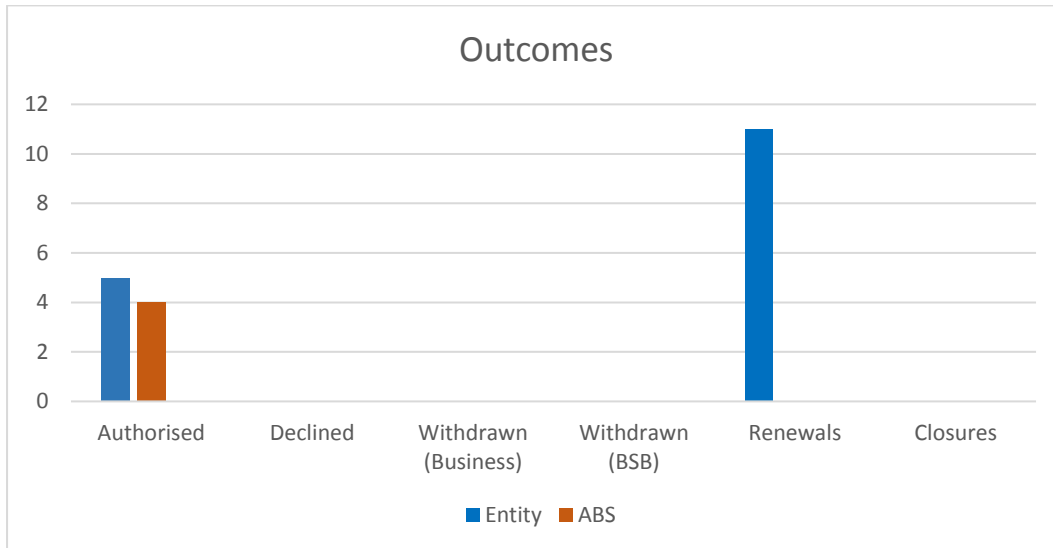
- i) A total of ten Authorisations were received and five **completed** during the 2<sup>nd</sup> quarter
  - BSB Authorised Body (Entity) **55%**
  - BSB Licensed Body (ABS) **45%**
- ii) There are nine Authorisations **pending**
  - BSB Authorised Body (Entity) **75%**
  - **BSB Licensed Body (ABS) 25%**
- iii) There are no **overdue** Authorisations
  - BSB Authorised Body (Entity) **0%**
  - **BSB Licensed Body (ABS) 0%**
- iv) There were eleven annual **renewals**
  - BSB Authorised Body (Entity) **100%**
  - **BSB Licensed Body (ABS) 0%**

The following diagram gives a breakdown of the 22 current “live” applications and stage they are at within the process and is representative of expected turnaround



16. **Outcomes**

The chart below illustrates the various outcomes for both Entities and ABS



17. **Resources**

- i) An ongoing programme of interdepartmental skills training means that there are currently **seven officers** competent in assessing and authorising these applications
- ii) Future training will provide an **additional three** members of **staff** with the same competency

18. **Quality Assurance**

- (i) Increased resource enables an **additional** and **independent** level of Quality Assurance to be applied to decisions.
- (ii) Only one issue was identified relating to assessments, linked to the training within the team.

19. **Service Improvement**

- i) Staff identified future changes within the SRA may impact on our risk assessments for entities moving from the SRA to BSB.
- ii) Staff are engaged in a review of processes to identify areas for improvement and deliver more effective services.

20. **Next Steps**

- i) Staff are engaged in a structured work programme aimed at eliminating any backlog, achieving KPIs and maintaining a consistent level of service.
- ii) Staff are committed to continued success and aim to achieve and exceed KPIs during the next three quarters.

**Sam Jensen**  
**Interim Authorisations Manager**  
**11 October 2017**



**Education and Training Committee: Annual Report For 2016-17****Status**

1. To note, apart from paragraph 15 which is for **decision**.

**Executive Summary**

2. The Education & Training Committee has delegated oversight of all regulatory activity relating to education & training for the Bar.
3. This is a report on the work of the Committee since it last reported to the Board, in November 2015. The Committee met 5 times in 2016 and has had 5 meetings in 2017.
4. Key activities during this period were:
  - Approval of the Professional Statement for Barristers incorporating the Threshold Standard and Competences
  - The implementation of a revised cut score for the Bar Course Aptitude Test
  - The introduction of the new Continuing Professional Development scheme
  - Changes to the assessment format of SAQ examinations for Professional Ethics
  - Changes to the assessment format of MCQ examinations for the Litigation subjects
  - The re-writing of the BPTC Handbook
  - Pupillage – commencement of the pupillage pilot scheme
  - The Curriculum and Assessments Review
  - Future Bar Training - consultation on preferred option for future routes to authorisation
  - Future Bar Training – consultation on new rules for qualification
5. The Committee will have a priority in 2018 to oversee the delivery of the FBT new rules for qualification.

**Recommendation**

6. The Board is requested to **note** the report, apart from paragraph 15 which is for **decision**. **The Committee recommends that the Board decides that the Committee should remain established until the LSB has approved the new qualifications rules, with the forward position being reviewed in September 2018 and further recommendations being made to the Board then.**

**Comment**

7. Following the corporate governance reforms across the BSB in 2015, a reconstituted Education and Training Committee was established in January 2016 with primary focus on the Future Bar Training programme. This also resulted in a number of changes to sub-committees.
8. The BPTC Sub-committee which had oversight of all matters relating to the Bar Professional Training Course was disestablished at the end of 2015 with responsibility now falling upon the Education and Training Committee and as part of the FBT programme.
9. Likewise, the Pupillage Sub-committee which acted in an advisory capacity following its reconstitution in 2014 was also disestablished at the end of 2015.

10. It is envisaged that following the implementation of the new rules for qualification the Education and Training Committee will be disestablished with future direction and advice being sought via APEX and the Board taking any relevant policy decisions.

#### Membership for 2017

##### *Members*

Justine Davidge (Chair, Barrister, Board Member)  
 Judith Farbey QC (Barrister, Board Member)  
 Alison Alden OBE (Lay, Board Member)  
 Rolande Anderson (Lay, Board Member)  
 Elizabeth Cunningham (Legal Academic, Lay Member)  
 Nigel Duncan (Legal Academic, Lay Member)  
 Anne Wright (Lay, Board Member)

11. The following members will be leaving the Education and Training Committee as their Board membership terms have come to an end (effective from December 2017):

- Rolande Anderson
- Anne Wright

The BSB is currently recruiting for three new lay Board members. The BSB Chair will consider the most appropriate allocation of Board expertise in determining who should be invited to join the Education and Training Committee.

#### Future Bar Training

12. The Programme Board, which is responsible for driving the FBT programme forward and ensuring the programme delivers agreed outputs and outcomes met seven times in 2016 and has had four meetings in 2017.
13. An FBT Strategic Programme Advisory Group was convened in May 2017 and brings together the strategic and operational leads from across the BSB to ensure there is a co-ordinated leadership of the Programme within the executive. It takes collective responsibility for delivery of the programme.
14. We have published a number of significant consultations within this time-frame along with a policy statement describing our vision for the future of Bar training:
- Professional Statement for Barristers incorporating the Threshold Standard and Competences – March 2016
  - CPD Rule Change Consultation – May 2016
  - Future Routes to Authorisation – October 2016
  - Shaping the education and training requirements for prospective barristers – October 2017.

#### Nature and extent of future work of the Committee

15. (a) At its meeting on 7 November 2017, the Committee was invited to consider the programme of work ahead that will need to be completed in order for the rule changes associated with FBT to be implemented from January 2019.
- (b) The Committee was of the view that in governance terms it would be inappropriate for it to be disestablished before the Legal Services Board has considered the rule changes application, or before the new rules are in place. That therefore means that the Committee should remain in place until at least 31 December 2018.

- (c) It was agreed that the Committee should recommend to the Board that the position should be reviewed in September 2018 in light of the progress that had been made by then on the remaining programme of work.
- (d) It was suggested that following the rule change, there might be a substantive but different piece of work for a programme board or working group around implementation and the “snagging” that might occur once the new rules were in operation. The Director General noted that ongoing monitoring of effectiveness of Future Bar Training would be undertaken as a longitudinal piece of work and the Research Team was developing an evaluation framework for that purpose.
- (e) It was stated that the Committee plays a vital role in supporting the quality assurance of the professional development of barristers, and there was a danger that a strategic overview of this aspect would be lost once the Committee was disestablished. It was suggested and agreed that it would be advisable to conduct an in-depth review of all the workstreams in which the Committee is engaged to determine what would happen to them once the Committee was disestablished; in particular, what would fall to the executive and what would fall to the Board. A similar exercise had been undertaken on the disestablishment of the Equality and Diversity Committee.

### Authorisations

#### *Governance and staffing*

- 16. The Authorisations team deals with an average of 300 applications and 600 enquiries each month. These cover all stages of the Bar Training Requirements and applicable exemptions and waivers. The team handles 44 different types of applications which include the academic stage, pupillage, CPD and the Bar Transfer Test.
- 17. Following the disbandment of the Qualifications Committee in August 2017, first instance decisions are made in accordance with the current scheme of delegations. Where it has been established that there is a low risk, recommendations are made by more junior members of staff and ratified by those with the authority to make decisions.
- 18. Applicants are entitled to apply for a review of the original decision which is dealt with by a Review Panel.
- 19. An appointment has now been made to the post of Authorisations Manager following the departure of Joanne Dixon in August 2017. Samantha Jensen, who has been in post in an interim capacity has now been appointed to the role permanently.  
*Priorities for 2018*
- 20. Priorities for the year ahead:
  - The team has taken on significant new responsibilities because of the governance reform programme and the priority is to ensure the new processes are embedded and working efficiently.

### Training Supervision and Examinations

#### *Governance*

- 21. Oversight of curriculum and quality assurance for the Vocational Stage of training, including the Bar Transfer Test (BTT), is delegated to the Education and Training Committee.

22. The Centralised Examinations Board oversees the delivery of assessments in the three knowledge area subjects of the BPTC.

*Staffing*

23. Staffing in the Training Supervision and Examinations team has been very stable throughout 2016 and 2017.
24. We are currently recruiting for an additional Examinations Officer due to the high workload in the examinations team. The fact that the Professional Ethics examination is now marked in-house has significantly increased workload. The outcome of the Curriculum and Assessments Review may also have a significant impact on the workload of the team if changes to the current forms of assessment are recommended.

*Bar Course Aptitude Test (BCAT)*

25. The cut score for the BCAT was raised from 37 to 45 in December 2016. One of the reasons for this was to reduce the number of candidates with a very low likelihood of passing the BPTC from investing a significant amount of money on the BPTC. Candidates are now given a report indicating their likelihood of success on the BPTC based on their BCAT score. Data regarding the BCAT is now included in the BPTC Key Statistics document which is published each year; however, full evaluation of the impact of the raised cut score will not be possible until the BPTC performance data of the 2017/2018 cohort is available.

*Provider institutions*

26. There are now eight providers of the BPTC across 15 sites in England and Wales. In January 2017, approval was granted for BPP to provide the course at their centre in Bristol starting in September 2017.
27. For the academic year 2016/17, BPP over-recruited at three out of four of their sites delivering the BPTC at that time. BPP requested an increase in the number of approved student places across all of their sites in order to avoid a re-occurrence. The issue of over-recruitment, and the viability of increasing the number of approved places, was examined during annual monitoring visits to BPP centres in Spring 2017. It was considered that the extra students had had minimal or no effect on the students' learning experience, and that subject to recruitment of extra staff to meet the staff to student ratio outlined in the BPTC Handbook, there would be no further effect should the number of approved places increase to the numbers requested by BPP. Their application was subsequently approved. Full visits will take place to all of BPP's sites in 2018 to monitor the impact of the increased number of students.
28. In Summer 2017 Cardiff University also applied to increase their number of approved student places on the BPTC from 84 to 120. This application was approved after assurances were made that there would be minimal impact on the students' learning experience. A visit is planned to Cardiff Law School in November 2017 to monitor the impact of the increased number of students.

*Candidate enrolment*

29. The number of registered candidates has increased in the 2017 intake (Table 1). Some of the increase can be attributed to the new BPP Bristol site and the increase in student validated places for both BPP and Cardiff. However, out of the 108 new validated places that were available, only 52 have been taken up. There may also be some potential impact from students wishing to complete the course before changes related to FBT are implemented, but this is speculation.

**Table 1. Enrolled BPTC candidates, 2010-2017**

2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
1669	1803	1619	1505	1409	1423	1624

*Examination performance*

30. Reports have been published by the Chair of the Centralised Examination Board (CEB) relating to performance in the spring and summer sittings of centralised examinations from spring 2012 to spring 2017 (available on the BSB website). The Chair's report for the summer 2017 assessments is to be published in December.
31. The 2016/17 spring assessments were the first to use the new formats (entirely MCQ for the Litigation subjects, and entirely SAQ for Professional Ethics which was centrally marked).

**Spring exams**

	Spring 2017	Spring 2016	Spring 2017	Spring 2014	Spring 2013	Spring 2012	Change 16 to 17
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<b>Professional Ethics</b>							
Number of Candidates	1,589	1,570	1,572	1,649	1,722	1,591	+19
Passing MCQ	N/A	97.4%	91.5%	81.0%	94.3%	92.6%	N/A
Passing SAQ	57.6%	70.8%	58.0%	65.6%	89.5%	88.5%	-13.2%
Passing Overall	57.6%	70.2%	56.7%	59.6%	86.4%	84.9%	-12.6%

<b>Civil Litigation, Evidence and Sentencing</b>							
Number of Candidates	1,597	1,499	1595	1663	1768	1568	+98
Passing MCQ	60.2%	74.1%	71.3%	68.6%	73.2%	83.7%	-13.9%
Passing SAQ	N/A	68.4%	65.0%	67.8%	61.5%	73.5%	N/A
Passing Overall	60.2%	62.2%	58.0%	57.4%	56.2%	68.0%	-2.0%

<b>Criminal Litigation, Evidence and Sentencing</b>							
Number of Candidates	1,502	1,421	1,483	1,586	1,719	1,569	+81
Passing MCQ	78.2%	85.9%	83.3%	84.1%	88.9%	88.7%	-7.7%
Passing SAQ	N/A	72.1%	64.2%	78.2%	69.9%	77.8%	N/A
Passing Overall	78.2%	70.3%	62.5%	72.8%	68.2%	74.7%	+7.9%

32. The 2014/15 spring assessments passing rates presented a mixed picture when compared to the previous year. Professional Ethics MCQ all-Provider passing rates and Civil Litigation MCQ all-Provider passing rates increased compared to 2013/14 but all other MCQ and SAQ all-Provider passing rates were down. In terms of combined passing rates (MCQ and SAQ) for the three knowledge areas, all-Provider passing rates were largely unchanged on the previous year in Professional Ethics and Civil Litigation, but were noticeably lower in respect of Criminal Litigation. Providers were engaged individually where the results may have indicated significant areas of weakness in the training.
33. The 2015/16 spring assessments passing rates showed an improvement against the previous year in MCQs and SAQs in all three modules. The most significant improvement was in respect of Professional Ethics SAQs (12.8%), pushing the combined passing rate up by 13.5% compared to the year before. The Professional Ethics MCQ passing rate, at 97.4%, was the highest recorded over the five-year span of results.
34. For the first time, the Chair's report commented on issues at Providers, namely lost scripts and a lack of reliability in SAQ marking.
35. The 2016/17 spring assessments passing rate for Ethics was not inconsistent with the passing rates achieved by previous cohorts. With the new format for the Litigation subjects, there is no precise point of comparison with previous years. The introduction of 'single best answer' questions has made the assessment more challenging than the previous MCQ assessments.

#### Summer exams

	Summer 2016	Summer 2015	Summer 2014	Summer 2013	Summer 2012	Change 15 to 16
<b>Professional Ethics</b>						
Number of Candidates	340	461	504	169	188	-121
Passing MCQ	58.4%	98.3%	77.6%	89.9%	88.3%	-39.9%
Passing SAQ	45.3%	67.5%	66.9%	57.4%	64.95	-22.2%
Passing Overall	30.3%	66.8%	56.0%	56.2%	59.0%	-36.5%

<b>Civil Litigation, Evidence and Sentencing</b>						
Number of Candidates	456	510	554	645	435	-54
Passing MCQ	65.5%	67.6%	57.0%	79.1%	76.6%	-2.0%
Passing SAQ	59.6%	67.3%	48.4%	66.2%	58.9%	-7.7%
Passing Overall	48.7%	54.3%	34.1%	59.8%	52.0%	-5.8%

<b>Criminal Litigation, Evidence and Sentencing</b>						
Number of Candidates	371	419	322	465	349	62
Passing MCQ	82.2%	79.0%	54.0%	88.8%	83.4%	2.6%
Passing SAQ	71.4%	67.8%	38.2%	64.2%	45.9%	7.9%
Passing Overall	66.6%	61.1%	30.1%	61.9%	43.6%	7.8%

36. The all-Provider passing rates for summer 2014/15 demonstrated an improvement in the combined all-Provider passing rates across all three centrally assessed modules compared to the summer 2013/14 results. Professional Ethics improved by nearly 11%, Criminal Litigation by 31%, and Civil Litigation by 20.4%. Numbers of candidates attempting the summer exams were significantly up in Criminal Litigation (97) and down in Civil Litigation (44).
37. The all-Provider passing rates for summer 2015/16, when compared to the corresponding figures for 2014/15, showed a significant decline in the Ethics combined all-Provider passing rates (both MCQ and SAQ) and similarly a marginal decline in Civil Litigation. Passing rates in Criminal Litigation remained largely static. The number of candidates who attempted the examinations was down across all three subjects. The Ethics results were disappointing but were mainly explained by the fact that more students passed at the first sitting, and therefore 84% of students who took the exam in August were attempting the exam for second (or third) time.

#### *Funding BSB oversight of the BPTC*

38. The BSB provides extensive quality assurance and the centralised examinations for the BPTC, as well as fostering a community of practice focussed on high standards amongst the providers. This work is funded on a full economic cost recovery basis through a per capita fee for which providers are invoiced. The fee currently stands at £550 per student per annum and has been at this level since 2015/16. The BSB does not draw on Practising Certificate Fee income for this work. Student numbers fluctuate from year to year and the relatively higher numbers and the income generated (£893,200) this year (2017) must be seen in the context of earlier years with lower rates of recovery. Any recent margin over target income is used to cover the additional cost of the BSB's work on Future Bar Training. The funding model for approved provision from 2019 will be consulted on at the same time as we consult on new rules, in 2018.
39. Priorities for the year ahead will be:
- Further development and finalisation of the Authorisation Framework against which proposals for delivery of education and training will be considered once rule changes are implemented.
  - Working alongside potential Authorised Education and Training Organisations to guide them towards meeting the requirements of the Authorisation Framework as they develop new and innovative training programmes.
  - Development of business support for approval and quality assurance of new training routes
  - Approval and implementation of the new curriculum and assessments strategy.
  - Consulting on and settling the funding model needed for Future Bar Training.

#### Bar Transfer Test (BTT, for transferring solicitors and overseas lawyers)

##### *Staffing*

40. The training supervision team administers the contract and relationship with BPP University Law School for delivery of the Test.
41. BPP has had a few changes in staff. Peter Crisp the former CEO and Dean of Law School has been replaced by Andrew Chadwick. Paul Wetton the former BTT Course Director has been replaced by Steve Wells.

*BTT course changes*

42. From spring 2017 BTT candidates have been required to sit centralised assessments in Civil Litigation, Criminal Litigation and Professional Ethics. The rationale behind this is to align the BTT more closely with the BPTC and help assure parity in the outcomes achieved by candidates. The review procedure for the centralised BTT assessments is the same as the BPTC.

*Candidates*

43. The number of candidates on the BTT has now stabilised after the peak intake in 2014.

**Table 2. Bar Transfer Test candidates, 2010-16**

2010	2011	2012	2013	2014	2015	2016	2017
86	82	102	151	293	157	148	165

**Table 3. Summary BTT results 2015 and 2016**

	May 2015		September 2015		May 2016		September 2016		Spring 2017		Summer 2017	
	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail
First sit	17	21	16	24	22	33	19	23	17	41	11	17
Second sit	7	11	2	18	5	8	7	13	7	11	9	16
Third sit	3	4	0	4	0	2	0	4	2	9	0	5

**Table 4. BTT Mitigating Circumstances and Request for review application outcomes**

	May 2015		September 2015		May 2016		September 2016		Spring 2017		Summer 2017	
	Upheld	Rejected	Upheld	Rejected	Upheld	Rejected	Upheld	Rejected	Upheld	Rejected	Upheld	Rejected
Mitigating Circumstances	3	9	6	11	3	3	4	2	1	10	1 (partly accepted)	7
Request for Review	0	1	3	4	3	9	3	5	1	3	n/a	n/a

*Provider*

44. BPP University Law School delivers the Test for the BSB. At the Examination Board the BSB is provided with the BTT Course Director's report. The report covers a summary of how the assessment progressed and any changes that have been made to the support materials or training sessions.
45. From the spring 2017 sit, BPP has offered online training via the Virtual Learning Environment (VLE) on the Moodle platform for Civil Litigation, Criminal Litigation and Professional Ethics, and has also provided access to the BPP University library for candidates.

*Financial implications*

46. The Bar Transfer Test yields income based on a proportion of the fees charged by the Provider. Fees relate to the number of parts of the test taken, rather than simply the number of candidates. On the introduction of the centralised assessments in spring 2017 the BSB income increased to 2/3 of the fee with BPP retaining 1/3, which reflects the greater amount of work now done by the BSB in administering and marking these assessments. The remaining BTT Assessments remain the same with the income for the BSB at 1/3 and BPP at 2/3 of the fees.



*Priorities for 2017-18*

47. Priorities for the following year will be to:
- Consider how the BTT will need to change under the Future Bar Training programme. This is part of the remit of the Curriculum and Assessment Review working group.

Pupillage*Governance*

48. The Pupillage Subcommittee was wound up at the end of 2015 as part of the reform of our governance arrangements. The Education and Training Committee maintain oversight of pupillage policy as part of the FBT programme. Administration of pupillage matters is undertaken by the Authorisations team, with monitoring being conducted by the Supervision team.
49. Supervision and Authorisation Officers within the Authorisations team are now responsible for making first instance decisions on pupillage applications received by the BSB, following the disbandment of the Qualifications Committee.

*Staffing*

50. Joanne Dixon, who managed the Authorisation Team for several years has now left the BSB. In April 2017 Samantha Jenson joined the BSB as Interim Authorisation Manager to assist with the operational management of the team and has now been appointed to the role permanently.

*Pupillages and Approved Training Organisations*

51. Annual pupillage registrations are set out in Table 5, below. Table 6 shows the number of Pupillage Training Organisations Authorised.

**Table 6. Pupillages registered January to December**

	2014	2015	2016	2017*
Non-practising	427	432	473	454
Practising	457	428	462	468

**Table 7. Pupillage Training Organisations authorised January to December**

2014	2015	2016	2017*
18	17	12	16

\* Up to and including 10 November 2017

*Priorities for 2018*

52. The changes needed for the administration of Pupillage will become clear following the outcome of the Future Bar consultation on “Shaping the education and training requirements for prospective barristers.” Work already underway as part of the Future Bar Training programme and continuing into next year includes:
- Pupillage Pilot – to test the implementation of the Professional Statement Threshold Standard and Competences
  - Recruitment and Advertising Task Completion Group – set up to ascertain which stages of the advertising and recruitment process include unjustified or discriminatory barriers to entry.

Continuing Professional Development

53. A new scheme for Continuing Professional Development (CPD) was introduced in January 2017. This scheme removed the prescription around the number of hours a barrister is obliged to do each year, and also removed the need for a number of CPD hours to be accredited. Barristers must now plan their CPD requirements early in the year, and then reflect on their activities at the end of the year. A series of roadshows promoting the new scheme took place in late 2016 at various sites around England and Wales and detailed guidance was made available on the BSB's website.
54. The scheme has been running for nearly a year. Spot checks of CPD completed under the scheme will commence in early 2018. The Assessment Framework for this process was considered by the Education and Training Committee in November 2017 and will be brought back to the next meeting to finalise.
55. There have been no changes made to the New Practitioners' Programme (NPP), the CPD scheme for newly qualified barristers. However, this will be reviewed in 2018.

*Public Access Training*

56. There are currently 3 providers who hold contracts to run the Public Access Training course, the Bar Council, Barristers Direct and HJT. The contracts to deliver this course are due to expire at the end of December 2017 and it has been agreed to grant an extension for an additional 12 months until the outcome of the Public and Licensed Access Review being conducted by the Policy team.

*Forensic Accounting Course*

57. In 2015, the BSB authorised BPP Professional Education to deliver an online Forensic Accounting course to pupils and new practitioners following a review of the face-to-face two-day mandatory course. The course was launched in March 2016 and enables delegates to complete the course at a pace according to their learning needs and practice demands whilst being more cost effective. BPP is required to pay the BSB delegate fees which is currently £20 per delegate, in 2016 the BSB received £6300 and £6600 to date for 2017. The Forensic Accounting course will be reviewed as part of the FBT programme.

**Resource implications**

58. Almost all activities covered by this report are subject to the BSB Fees and Charges Principles, which has led to systematic review of fees and charges for the BPTC (including centralised assessments), BTT and CPD. Resource and financial implications are addressed more specifically in the body of the paper

**Equality & Diversity Implications**

59. Equality impact assessments are undertaken within individual workstreams. A substantial piece of work has also been done by NatCen research on *Barriers to Training for the Bar* and *Differential attainment at BPTC and Pupillage*. This work will result in a suite of recommendations at vocational and professional stages.

**Consultation**

60. A draft of this report was reviewed by the Education & Training Committee at their 7 November 2017 meeting.

**Lead responsibility**

Victoria Stec - Head of Training Supervision and Examinations

## Review of the standard of proof applied in professional misconduct proceedings

### Status

1. For **discussion** and **decision**

### Introduction

2. At the Board meeting in February 2017, the Board revisited the issue of the appropriate standard of proof to apply in disciplinary proceedings for professional misconduct and considered whether it should be changed from the current criminal standard (beyond reasonable doubt) to the civil standard (balance of probabilities). It decided that a decision on the issue could not be made without consulting first on the principle of the issue. Therefore, a public consultation was issued earlier in the year which ran for 12 weeks from 2 May to 31 July 2017.
3. The consultation sought views on three questions which are set out in full at paragraph 11. The central issues were whether the BSB should change its regulatory arrangements to allow for the civil standard to be applied to the determination of allegations of professional misconduct and, if so, whether such a change should be made only if (and, assuming such a change, when) the Solicitors Disciplinary Tribunal (which also applies the criminal standard) moves to the civil standard.
4. 101 responses were received to the consultation. They have been analysed and are summarised in the attached draft Consultation Response Paper (Annex A). Annex A does not currently include the BSB's formal responses to the points raised by respondents. These will be added following the Board discussion to ensure that the final paper reflects the agreed views of the Board, which may differ to those set out in this paper. The views expressed in this paper are that of the Executive and may or may not be adopted in whole or in part by the Board.
5. To avoid repetition, the details of the consultation responses are not included in this paper although they are summarised in the various sections. The Board should therefore refer to Annex A for a detailed summary of the responses received. This paper has been written on the assumption that Board members will have read Annex A as well as the original consultation paper and are therefore familiar with the relevant issues.

### Background

6. The current position in relation to the standard of proof is that the BSB, under its disciplinary arrangements, expressly stipulates that the criminal standard should be applied when determining professional misconduct allegations. This standard of proof applies to cases heard by both Disciplinary Tribunals convened by the Bar Tribunal and Adjudications Service (BTAS) and the Professional Conduct Committee (PCC)<sup>1</sup> when determining allegations of professional misconduct.
7. The application of the criminal standard is out of line with most other professional regulators, including all the other approved legal regulators, who apply the civil standard of proof. This includes the Solicitors Regulatory Authority (SRA), which applies the civil standard to misconduct cases that fall within its jurisdiction. The only remaining professional regulators in England and Wales who apply the criminal standard are the BSB and the Royal College of Veterinary Surgeons. The Solicitors Disciplinary Tribunal

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<sup>1</sup> The PCC has the power to determine professional misconduct allegations, on the papers, under the Determination by Consent procedure but only subject to certain conditions which include the consent of the barrister or authorised body and the absence of any disputed facts.

(SDT), which is independent of the SRA, also applies the criminal standard but is not formally classed as a regulator.

8. The view held by most other professional regulators, both legal and non-legal, is that the civil standard is the appropriate standard to apply in disciplinary proceedings. This view is endorsed by the Legal Services Board (LSB). Indeed, in its recent consultation on the proposed revised Regulatory Standards Framework, the LSB indicated that the use of the civil standard will be one of the factors it will take into account in future when assessing the effectiveness of the BSB's enforcement system and ultimately whether the BSB meets the standards expected of an effective regulator operating in line with the regulatory objectives.
9. The BSB previously considered whether a move to the civil standard would be appropriate in 2011. At that stage, the Board was of the view that the civil standard appeared to be more appropriate than the criminal standard, but decided it would not be appropriate to make a move to the civil standard unless the SDT also did the same. There was also, in 2011, the imminent prospect of a test case being brought in front of the courts in which the appropriate standard of proof for disciplinary action against legal professionals would be considered. In the event, a test case has not materialised.
10. However, the recent judgment in the case of *The Solicitors Regulation Authority v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin) (which is referred to in this paper as the "Arslan judgment") has provided an indication of the direction of travel should the issue come to be determined by the courts. In that case, the court made some non-binding comments about the standard of proof. It said that it saw "*considerable force in the point [made in the case] that the climate and approach to professional regulation had changed since [1993]*"<sup>2</sup> and there was a need, when considering the standard of proof to be applied to legal professional misconduct allegations, for "*a re-evaluation of the approach taken to disciplinary measures intended to protect the public*".
11. The Board's decision to carry out a public consultation on the issue of the appropriate standard of proof was taken in light of the comments in the Arslan judgment and the fact that no progress had been made on the issue in six years. The consultation posed three questions:
  - a. Do you consider, in principle, that the BSB should change its regulatory arrangements to allow for the civil standard to be applied to allegations of professional misconduct?
  - b. If your answer to (1) above is "yes", do you consider that the BSB should only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?
  - c. Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?
12. 101 responses were received from members of the profession, representative bodies of the Bar (including the Bar Council and three Inns of Court), consumer groups, regulatory bodies and academics. Paragraph 7 of Annex A provides details of those who responded.

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<sup>2</sup> *Re a Solicitor* [1993] QB 69 which stated that the criminal standard was the appropriate standard to apply in relation to legal professionals where the allegations were tantamount to a criminal offence. This was followed in other cases and in *Campbell v Hamlet* [2005] UKPC 19 extended when it was decided that the criminal standard was the appropriate standard to apply in all disciplinary proceedings against legal professionals.

## Recommendations

13. The Board is asked to:
  - a. Consider the contents of Annex A and the potential Board responses to the issues raised in the consultation as set out by the Executive in this paper;
  - b. Consider its position on the views expressed by those who responded to the consultation;
  - c. Decide whether the BSB should change its regulatory arrangements to stipulate that the civil standard of proof should be applied to professional misconduct allegations;
  - d. If the decision is that the BSB should change the standard of proof, whether that change should be made independently of the SDT; and
  - e. If a move to the civil standard is to be made, when it should be introduced.
14. Once decisions on the issues above have been taken, the Executive will, if necessary, develop a detailed implementation plan to put the change into effect.

## Approach taken to considering the responses

15. The views set out in this paper are those of the Executive and the Board may not agree with all (or any) of them. The Executive has approached consideration of the consultation responses from the perspective of the BSB's statutory obligations as set out in the Legal Services Act 2007. These obligations include acting in a way that is, as far as is reasonably practicable, compatible with the regulatory objectives, which include protecting and promoting the public and consumer interests. They also require that the BSB must have regard to the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
16. The regulatory objectives do not impose a specific obligation on the BSB to protect or promote the interests of the profession but do include an obligation to encourage an independent, strong, diverse and effective legal profession. In setting out views on the consultation the Executive has taken the approach that the BSB is required by law to put the interests of the public and consumers above the specific interests of the profession.

## Question 1 - Do you consider, in principle, that the BSB should change its regulatory arrangements to allow for the civil standard to be applied to allegations of professional misconduct?

### Overview

17. The responses to the consultation indicate that the Bar is split in its views on whether there should be a change to the standard of proof. This is demonstrated by the Bar Council's decision, supported by the Commercial Bar Association (COMBAR), to submit a response that puts forward views both in support and against a change. The Inns of Court did not submit a collective response but of the three Inns that did respond, one was against a change, another supported a change and the third indicated it had left it to individual members to respond because views diverged. It is also of note that the responses against a change came exclusively from the Bar and its representatives. In contrast, those who were supportive of a change included not only members of the profession and its representatives but also other legal and non-legal regulators and consumer organisations.

18. In line with the structure of the draft Consultation Response Paper (Annex A), discussion of the issues raised under this question are set out under five headings:
- i. Public interest, protection and confidence
  - ii. The impacts on the profession
  - iii. Current regulatory practice
  - iv. The Legal Position
  - v. Evidence base to support any change
19. Inevitably there is overlap in the issues discussed under each heading and therefore points made under one may also be applicable to others.

### **Public Interest, protection and confidence**

20. There was no disagreement in the responses that the standards of the profession must be upheld and that those who represent a risk to the public should be prevented from practising. The divergence in views was about whether the civil or criminal standard represents the best or sufficient protection for the public and consumers. In considering this issue, the Board must take account of its statutory obligation to act in the public interest.
21. A clear theme in the responses against a change was the lack of empirical evidence to support the view that the public would be better protected by the civil standard (see also paragraphs 55 to 64 below) and the absence of such evidence to demonstrate that the public are calling for a change or there is a lack confidence in the disciplinary system. By contrast, those who support a change argue that it is self-evident that the civil standard provides better public protection given that it allows for sanctions to be imposed where it is more likely than not there has been a serious breach of an individual's professional obligations. In principle, it seems difficult to argue with this point of view unless there is some clear justification for saying that the criminal standard provides better protection.
22. Those against a change have argued that the criminal standard provides "sufficient" protection for the public. This view was put forward for a number of reasons. Some respondents considered the public is already sufficiently protected by the criminal standard combined with the avenues available within the civil system to obtain redress (e.g. via actions for negligence). However, these views do not appear to take into account that the role of a professional regulator is not to resolve individual concerns but to uphold and maintain, in the public interest, the standards of the profession. The ability to bring successful disciplinary action is crucial to doing this and stands apart from any avenues that might be available to an aggrieved person to obtain personal redress. Indeed, by removing the approved regulators' power to provide redress, the Legal Services Act 2007 drew a clear line between the function of regulation and redress mechanisms.
23. Many of those against a change also expressed strong concerns about the potential negative impacts on the behaviour of some sections of the Bar, which would act against the public interest and represent a reason for maintaining the criminal standard. The Bar Council described these issues as having a "chilling effect" on those already practising at the publicly funded Bar as well as those contemplating a career in such areas. These behavioural changes were presented as being a direct consequence of the potential increased exposure to unfounded complaints which it is considered will result in barristers becoming more risk averse to the detriment of their clients and the justice system. Examples of such behavioural changes include: reduced compliance with the cab rank rule; reduced willingness to take on public access work; a reluctance to engage with clients or litigants in person; and, a reduction in those willing to enter publicly funded areas of practice.

24. It is difficult to assess whether these negative impacts will occur, but they are a cause for concern which the Board must take into account when considering the public interest. It would be almost impossible to carry out reliable research in this area prior to making a change as behavioural impacts are notoriously difficult to assess. However, given the checks and balances in the complaints and disciplinary system to “weed” out unfounded complaints (see paragraphs 32 to 38 below), it would be extremely disappointing if a profession that prides itself on its integrity and relies on its reputation, were to react to a change in the standard of proof by making such significant behavioural changes. Further, some of the anticipated behavioural changes amount to breaches of the BSB Handbook. Therefore, rather than acting to reduce potential exposure to disciplinary action flowing from a change to the standard of proof, they may well increase that exposure.
25. Another prevalent concern of those against a change to the standard of proof is the lack of empirical evidence to support the view that the public interest is better protected and promoted by the civil standard. It is accepted that the BSB is not able to refer to empirical evidence to support this view and the lack of empirical evidence is discussed further at paragraphs 55 to 64 below. However, the view that the civil standard provides greater public protection was shared by most of those who supported a change and was considered to be self-evident. The empirical evidence that is being called for, was also not available when other professions made the change: instead, they relied on the logical conclusion that the civil standard provides greater protection as indicated in the 2012 Law Commission report<sup>3</sup>. It is also of note that those who are against a change point to the potential for an increase in disciplinary action and findings: but this would actually seem to support the view that a change would provide better public protection. If it is accepted by all that a consequence of a change to the standard of proof is that more members of the profession may potentially be sanctioned for serious failures to abide by their professional obligations, it would be difficult for the BSB to maintain that this is not in the public interest.
26. This leads to the fundamental issue which goes to the heart of the public interest question, whether it is right for members of the Bar to avoid disciplinary sanctions where the evidence, on balance, proves that they are guilty of serious failures to meet the standards expected? It should be borne in mind that not all breaches of the BSB Handbook will result in disciplinary action. Some breaches may present such a low risk that no action is considered necessary. Others may warrant the imposition of a non-disciplinary administrative sanction: decisions on which are already determined on the civil standard. It is only the most serious breaches that attract disciplinary action and therefore will be affected by a change in the standard of proof.
27. Any action the BSB takes in relation to serious breaches of the BSB Handbook needs to be put in the context of the wider regulatory and justice system. In relation to the latter, it was pointed out by some of those who support a change in the standard of proof that the Bar is no different to those who are exposed to the potential devastating consequences of decisions taken in a range of civil proceedings in the courts. Such proceedings can cover behaviour that would amount to a criminal offence, regardless of whether the offence has previously been proved in the criminal courts. Clients of barristers, particularly those working at the family Bar, are exposed to devastating and life changing decisions taken on the civil standard. However, if their barrister is accused of serious breaches of their professional obligations, they are currently afforded the higher protection of the criminal standard. As some have pointed out, this does not seem right. The Board also needs to take into consideration the impact on the justice system of practitioners who pose a serious risk being able to continue to operate within the system when it is more likely than not they are guilty of serious breaches of the Code of Conduct.

<sup>3</sup> Law Commission, “*Regulation of Health Care Professionals; Regulation of Social Care Professionals in England Report*”, (LC 345), [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345\\_regulation\\_of\\_healthcare\\_professionals.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf)

28. A number of respondents, including the Bar Council, were of the view that the public interest varies from profession to profession based on the risk posed by practitioners. The argument appears to be that because barristers do not work in the same life and death environment as doctors, or others in some of the medical professions, the risk to the public posed by barristers is lower. Therefore, while the civil standard might be appropriate for doctors to protect the public, the Bar should be afforded the greater protection of the criminal standard.
29. There can be no doubt that different professions present different types of risk to the public, but ranking the impact of those risks in order to determine the appropriate standard of proof to apply does not seem to be a reasonable approach and is unlikely to inspire public confidence. In theory, it would mean that those professions which pose a “lower” risk to the public would apply the (higher) criminal standard and the “higher” risk professions would use the (lower) civil standard. The reality is that other professional regulators apply the civil standard because they consider it is in the public interest to do so, not because they have made a subjective assessment of the risk which their profession poses to the public as compared with other professions. There are many professions which apply the civil standard where the activities of their members could be perceived as posing a lower risk than that which the Bar presents.
30. Other arguments against changing the standard of proof included the proposition that a change would undermine the seriousness of disciplinary proceedings and therefore impact on public confidence. But there is no evidence that other professions that have moved from the criminal to civil standard have suffered from a reduction in public confidence in their regulatory regimes. It would also seem illogical that members of the public who may experience their complaints more readily being “upheld” would have reduced confidence in the system: the logical conclusion is that the public reaction would be increased confidence.
31. In conclusion, it is accepted that there is no empirical evidence to support the proposition that the civil standard provides a better protection for the public and will increase public confidence. However, given the consensus outside the profession that it is self-evident that the public interest is better protected by the civil standard combined with the support within the profession for this view, the Board may consider that it would be difficult to justify taking a different stance. While there are legitimate arguments against a change to the civil standard based on public interest, and these need to be taken into account, they do not provide a strong, or necessarily logically coherent, basis for the Board to conclude that the public interest would best be served by retaining the criminal standard.

### **The impact on the profession**

32. One of the main concerns of those who are against changing the standard is the potential for increased exposure to complaints given the “unique” position of the self-employed Bar, working in an adversarial system increasingly without support from instructing solicitors. Almost without exception the concerns raised were about the Bar’s vulnerability to “unfounded”, “groundless” or “malicious” complaints. It is a moot point whether the Bar is more vulnerable to unfounded complaints than other professions as there are no comparative studies in this area. Nevertheless, given that approximately 40% of complaints made to the BSB each year from external sources are dismissed without investigation, it is clear that a significant proportion of complaints about the conduct of barristers are unfounded. There can also be no doubt that many of the complaints which are dismissed arise from dissatisfaction with the outcome of a case and/or a lack of understanding of the barrister’s role in an adversarial system.



33. In theory, an increase in unfounded complaints is a possibility and the Board needs to take this into account. But in practice it would seem unlikely that the public will have the level of understanding of the complexity of the legal complaints systems for the standard of proof used within the BSB's disciplinary system to be a fundamental motivating factor in the initial decision to make a complaint. Nevertheless, it must be accepted that increased public confidence in the BSB's disciplinary system may encourage more complaints: if they are founded, the Board may consider that it can only be in the public interest that they are taken forward to ensure standards at the Bar are maintained.
34. Given the checks and balances already present in the complaints systems operated by the Legal Ombudsman and the BSB, if there is an increase in unfounded complaints, it is unlikely that they will progress through these systems to the point where the standard of proof becomes relevant and disciplinary proceedings are a potential reality.
35. The focus of the concerns about unfounded complaints was on an increase in such complaints from clients and to some extent from litigants in person, particularly in relation to the publicly funded Bar. Many of the responses against a change came from the family and criminal areas of the Bar who view themselves as more vulnerable to unfounded client complaints.
36. In relation to client (as opposed to non-client) complaints from any area of the Bar, if a change to the standard of proof was made, it would still be the case that all such complaints must first be considered by the Legal Ombudsman: conduct complaints from clients cannot be made direct to the BSB and must be referred by the Legal Ombudsman. These requirements are set out in the Complaints Regulations<sup>4</sup> and there is no intention to alter them. The BSB's standard of proof has no bearing on the way the Legal Ombudsman handles complaints or on its decisions to refer conduct matters to the BSB. Indeed, while the Ombudsman does not expressly apply a standard of proof when considering complaints, the approach it takes is very similar to the application of the civil standard.
37. When referring issues of conduct to the BSB, the test for doing so is whether the Legal Ombudsman considers the complaint "discloses any alleged misconduct".<sup>5</sup> Again, the standard of proof the BSB applies is not relevant to this decision. The statistics show that a relatively low number of complaints made to the Ombudsman result in a conduct referral to the BSB. In 2016, according to the Ombudsman's figures, only 30 conduct referrals were made by the Ombudsman (less than 6% of the total complaints about barristers received about barristers by the Legal Ombudsman). As there is no intention to alter the way in which client complaints are handled, it is difficult to see how a change to the standard of proof will impact on the number of unfounded client complaints the BSB handles.
38. The position in relation to non-client complaints, including those from litigants in person, is different, because these are made direct to the BSB. However, all complaints, including those referred from the Legal Ombudsman, are subject to an initial assessment at which stage the standard of proof is not relevant: the test for referral to a formal investigation is whether the complaint discloses a potential breach of the BSB Handbook. Over the last three years, on average, 40% of complaints were dismissed at this stage which included 80% of complaints from litigants in person. It is difficult to see how a change in the standard of proof would affect these statistics in any significant way (see also paragraphs 70 to 77 below).

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<sup>4</sup> BSB Handbook, Part 5.A, The Complaints Regulations, rE13 – rE16

<sup>5</sup> Legal Ombudsman Scheme Rules, 5.59, <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>

39. The point in the system when the disciplinary standard of proof becomes relevant is following a formal investigation where there is evidence of a breach of the BSB Handbook and it is considered that the matter is so serious that it cannot be dealt with by way of an administrative sanction. Complaints are not referred to disciplinary action unless it is considered there is sufficient evidence to support the allegations (and the other regulatory tests are met). It is rarely the case that charges are based purely on one person's word against another in the absence of supporting evidence. As one respondent put it, "*a lower standard of proof does not equate to a lower standard of scrutiny of the evidence*". Further, the civil standard of proof is already applied when imposing administrative sanctions for less serious breaches.
40. It must be accepted that a change to the standard of proof, may result in more matters being referred to disciplinary action and more disciplinary findings. However, it is highly unlikely that any increase will be significant in the context of the Bar: less than 0.7% of the practising Bar is subject to disciplinary action each year. It should also be borne in mind that referrals to disciplinary action are not only subject to a reasonable prospects test but must also be in the public interest. This brings us full circle back to the issue of public interest and whether it is right that barristers should escape disciplinary action where it is more likely than not that a serious breach of their professional obligations has occurred. Barristers who are acting in accordance with the standards expected of them as set out in the BSB Handbook, will not be affected by a change in the standard of proof: those who are not may be more exposed to the prospect of disciplinary action.
41. Given the nature of self-employed practice at the Bar, it goes without saying that a barrister's reputation is fundamental to their ability to maintain and attract business. The view from those who are against a change is that disciplinary proceedings have a disproportionate reputational impact on barristers as compared to other professions. While it is accepted that the self-employed Bar is in a different position to other professions that may operate in the main in an employed context, the Bar is by no means unique. Many dentists, pharmacists and GPs are self-employed and face very similar reputational issues, but all are subject to the civil standard of proof in disciplinary proceedings. The lack of third party witnesses to incidents and the inability to keep copious notes of conversations is also not unique to the Bar: GPs and many other medical professionals rarely have third party witnesses to their interactions with patients or the time to take detailed notes of interactions.
42. Those in favour of a change, including those within the profession, do not see any legitimate justification for barristers being treated differently from other professions nor do they consider the profession is uniquely vulnerable to unfounded complaints.
43. In conclusion, the fears of the Bar, particularly those practising in criminal and family law, about the impact of a change to the standard of proof on the profession, are an important factor to weigh in the balance. It may be that there will be an increase in complaints. If those complaints are founded, then it must be in the public interest for the BSB to take action where it is more likely than not that a serious breach of a barrister's professional obligations has occurred. If a complaint is unfounded then, given the BSB's robust assessment and investigation procedures which are monitored by a range of assurance mechanisms, the profession can be confident that they will not face disciplinary action as a result of complaints that are not supported by evidence.

### The Legal Position

44. The legal position was only raised by a few respondents, and it was generally recognised that it was by no means a determinative factor. It is accepted that the Arslan judgment does not provide a basis for changing the standard of proof or that it should be definitive of the way forward particularly as the relevant comments were obiter (non-binding).

Nevertheless, the Board should not dismiss the indications given by two senior judges who clearly consider that the time is right to revisit the issue of whether the criminal standard is the right one to apply in disciplinary proceedings against solicitors and by extension to proceedings against the Bar.

45. The Bar Council cited an additional case<sup>6</sup> that was not referred to in the consultation paper as did the GMC<sup>7</sup>. Neither take the legal position further forward as the comments in the former supporting the criminal standard of proof for legal professionals were also not binding and the latter confirmed that the civil standard was the right standard to apply to disciplinary proceedings against doctors.
46. Several respondents considered that professional misconduct proceedings were quasi-criminal in nature, and that the criminal standard was therefore appropriate, whereas others took the view that misconduct proceedings were more appropriately classed as being civil in nature. Those in the former group expressed concerns that it would be anomalous for a barrister to be found guilty of misconduct akin to a crime on the civil standard, even more so if the barrister had already been acquitted in criminal proceedings related to the conduct. However, such anomalies are not uncommon and as some respondents pointed out, it is possible for civil claims to be brought for matters that amount to criminal offences or indeed be instigated where a criminal prosecution has previously failed. It is a moot point whether disciplinary proceedings are quasi criminal or civil in nature, but neither view is determinative of the appropriate standard to apply.
47. However, if a change to the civil standard were to be made, the BSB would continue to take a rigorous approach to the assessment of evidence. Some respondents referred to the cogency of evidence, and the member of the judiciary was of the view “.... *that there is a rule in the civil law of evidence which states that the more serious an allegation the more cogent the evidence which will be required in order to prove that it is probably true.*” This approach to evidence is one that the BSB is already used to applying in the current context where the criminal standard is applicable: a change to the civil standard will not impact on this.
48. Some respondents were of the view that nothing had changed since the last relevant case on the standard of proof was decided (2005). However, this is factually inaccurate. The Legal Services Act has intervened and, contrary to the line of the cases on the standard of proof, all other legal professions have moved to the civil standard including the solicitors’ profession in relation to misconduct matters dealt with by the SRA. The BSB is operating in a very different regulatory climate to that which pertained over a decade ago as the comments in the Arslan judgement indicated.
49. As noted above, the case law is of limited assistance in determining the way forward. The BSB is free to make a change to the standard of proof without reference to the case law. The Board may consider it inappropriate for the BSB, as a public interest regulator, to wait for an unspecified amount of time for the appellate courts to consider the issue of the appropriate standard of proof to apply. Six years have already passed since the Board made a substantive decision on the issue and no progress via the courts has been made in that time.

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>7</sup> *Bhatt v General Medical Council* [2011] EWHC 783 (Admin)

**Current regulatory practice**

50. The BSB is clearly out of step with other current regulatory practice and other regulators. This is an issue of significant concern, but as some respondents pointed out, the mere fact that most other regulators apply the civil standard of proof does not necessarily make it appropriate for the Bar to do so to. If a genuine and justifiable basis exists for the Bar to be treated differently, then the BSB should not shy away from this position.
51. However, as the paragraphs above indicate, there do not appear to be any legitimate, objectively justifiable, arguments for the Bar to be treated differently as a matter of principle. The primary argument raised by those who opposed a change was based on the contrast between barristers and medical professionals, particularly doctors, and the higher risk that the latter pose as well as the difference in employment status. It was emphasised that doctors posed a higher risk to the public than barristers and also had the support of employers, unlike the self-employed Bar. As such, the public interest required a less stringent civil test for doctors, rather than for barristers.
52. Ultimately, the question of current regulatory practice largely comes down to the same public interest and risk-based issues that have been rehearsed above, which are not repeated here. They are set out at paragraphs 20 to 31 above.
53. It remains the case that the BSB is out of step with current views on good regulatory practice in applying the criminal standard. The lower risks posed by the Bar as compared with some medical professionals, do not necessarily mean that the criminal standard is more appropriate for the Bar. This risk-based comparison loses force when many other professionals who are subject to the civil standard arguably pose less of a direct risk to the public than barristers. As stated above and endorsed by many who are supportive of a change to the civil standard, objectively there is no clear difference between the Bar and other professions that would justify a different standard of proof for professional conduct proceedings. Indeed, in terms of doctors, as the Bar Council pointed out, there are significant similarities given that both professions perform public interest roles where the protection of the public is paramount.
54. The Executive considers that there is insufficient justification (such as clear differences between the Bar and other professions) to warrant the BSB taking a different approach to the standard of proof from almost all other professional regulators.

**Evidence base to support the change**

55. As indicated above a significant number of responses to the consultation referenced the lack of empirical evidence to support a change and a number of respondents made suggestions for evidence that should be acquired before the Board takes a decision.
56. The BSB has always accepted that it cannot present empirical evidence to support a change in the standard of proof. As stated above, reliable research into whether the attitudes and behaviour of complainants and the members of the profession would alter with the change in the standard of proof would be hard to carry out. It would not necessarily provide any data that would impact on the Board's decision.
57. Evidence was gathered back in 2011 in relation to decisions of the Professional Conduct Committee which indicated that a change to the standard of proof would make no difference to the number of decisions taken to refer cases to disciplinary action. That evidence is clearly out of date and the BSB should not rely on it six years later. The question is whether further empirical research would be of any significant benefit. Clearly some respondents consider it would, but the Executive considers that it would not for the reasons set out in the paragraphs below. It is also needs to be taken into account that if

the issue came before the courts, a decision on the appropriate standard would be taken without reference to any future research.

58. The responses to this consultation provide a principled basis on which to base a decision albeit they are analytical rather than empirical. There is some proxy empirical evidence available in relation to decisions taken on complaints arising from criminal and family cases and from litigants in person. This is set out under Question 3 below as it was gathered in relation diversity issues in the BSB's complaints system. It provides useful data on the impact of complaints in these practice areas and, to some extent, addresses the issues of unfounded complaints. Also, the statistics referred to elsewhere in this paper provide a further proxy evidence base that assists with addressing some of the issues raised.
59. In terms of other empirical studies that could be carried out that would provide meaningful data that would fundamentally impact on the Board's decision, the Executive is not convinced that any such research could be carried out. The Bar Council has said that the BSB should conduct research into the number of additional cases that would be brought in front of a Tribunal if the standard of proof was changed. However, such research would not necessarily take the Board's consideration further forward. Indeed, it would cut both ways: if the results suggested that more cases would be referred because of the change this would only strengthen the justifications given by many respondents that there is a public interest in making the change. Were the results to suggest that the number of referrals would remain static they might indicate superficially that there is no need for change, but this would not address the public perception or confidence issues.
60. The same issues apply to assessing the potential increase in the number of complaints. Once again this is unlikely to produce evidence that would impact on the Board's decision. If the evidence indicates they could go up substantially then this is an indication that the public has increased confidence in the BSB's handling of complaints and provides evidence to support a change in the public interest. If they do not, this is not a reason for the Board to decide it is wrong in principle to change the standard of proof. The issue here is the robustness of the BSB's systems to weed out unfounded complaints and the standard of proof is only indirectly relevant to this.
61. The potential increased costs to the Bar is also an area in which it has been suggested further research should be carried out before making a decision. However, such research would also not take the Board further forward in its decision. Costs alone should not be a determinative factor, particularly if increased disciplinary action based on founded complaints is a consequence of the change (see also paragraph 40 above).
62. The Bar Council also suggested that research be carried out into whether a change would dilute the impact of disciplinary findings. However, it is not clear how such research could be conducted in any meaningful and/or reliable way that would impact the Board's decision.
63. Another area the Bar Council queried was the safeguards that would be put in place "*to meet the increased risk of marginal or unmerited cases being pursued*". This is not necessarily an issue that goes directly to the decision to change the standard of proof. It relates to the robustness of the BSB's decision making processes and the cogency of the evidence required to prove a breach. A change in the standard of proof would not affect the BSB's ongoing commitment to maintaining robust decision-making processes and making continuous improvements in light of experience.
64. In summary, the Executive does not consider that any meaningful or reliable empirical research could be conducted to support the Board's decision. This is perhaps why other regulators did not carry out such research before deciding to make a change. To a large

extent the decision to change the standard of proof is a decision of principle which is not susceptible to any meaningful number crunching. It is of course possible to try to carry out research and the Executive will attempt to do this if the Board requires it. But the time and resources required are likely to be disproportionate given the limited benefit, if any, that could be achieved

### Question 2

**Should the BSB only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?**

65. The number of responses we received from individual barristers relating to this question was relatively low, with 40 of the 101 respondents offering a view. From these the majority, regardless of how they answered the first question, believed it was not necessary to wait for a SDT decision on the issue
66. The main concern identified by those who were against a unilateral change (the majority of whom were also against changing the standard of proof in any event) was that it would be anomalous to have the two main legal professions applying different standards of proof. It was suggested that it was wrong in principle if identical misconduct allegations were made against a solicitor and barrister working as a legal team on the same case.
67. While this is a legitimate concern, it should be borne in mind that the present system already contains such anomalies, particularly in the context of Alternative Business Structures in which barristers could be working alongside accountants, legal executives, and solicitors all of whom are subject to the civil standard (save at the SDT). Accordingly, while some anomalies would be created by a change, at least until the SDT changes its standard of proof, others would be eliminated.
68. In conclusion, there is clear support for the BSB taking its own decision on the standard of proof independently of the SDT. It is the view of the Executive that if the Board considers it is right for the standard of proof to be changed, this should not await the outcome of the SDT's deliberations. The BSB should take the lead on this issue if it considers a change is appropriate. The SDT will be consulting on the issue later in the year and, in any event, responded to the consultation by saying that it would not want the SDT's decision to delay or accelerate the BSB's reflections on its own rules.

### Question 3

**Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?**

69. Relatively few responses were received to this question and few concerns raised about specific impacts on those from protected groups. The main issues related to the impact on women and BAME barristers who are considered to be over-represented in the field of family law and publicly funded work: areas that the Bar Council and others consider to be most exposed to complaints. The view is that a change to the standard of proof would lead to more barristers from these groups being subject to disciplinary action which could have a consequential impact on the diversity at the Bar.
70. As the Bar Council pointed out, the BSB does not currently hold accurate data on the areas of practice of those working at the Bar and therefore it is not possible to make an effective assessment of the areas of practice that generate most complaints which reach the Tribunal stage. Accurate data on practice areas will be available from April next year when a requirement to provide it will be introduced as part of the Authorisation to Practise process. The Bar Council is of the view that the BSB should not make a decision on the standard of proof until this information is available and can be analysed to determine whether any groups are adversely impacted by a change in the standard of proof.

71. However, the most recent data available in relation to ethnicity and gender in the complaints system “*2012-14 Complaints at the Bar: An analysis of ethnicity and gender*”<sup>8</sup> provides some useful data which shows a different picture to that which might be assumed. The report analysed all complaints about conduct received during the period and concluded that BME barristers are not over-represented in the complaints system and male barristers are more likely to be subject to complaint than female barristers as well as more likely to be the subject of a referral to disciplinary action.
72. The report also considered the likelihood of complaints being dismissed without investigation and the likelihood of complaints being referred to disciplinary action according to the type of complainant. The categories of complainant included those involved in criminal and family cases as well as complaints from litigants in person.
73. A factor of “1” was used as the benchmark and the results showed the following:
- a. Family cases complaints – were 3.69 times more likely to be dismissed without investigation and 0.2 less likely to be referred to disciplinary action
  - b. Criminal cases complaints – were 3.96 times more likely to be dismissed without investigation and 0.2 times less likely to be referred to disciplinary action
  - c. Complaints from litigants in person – were 2.47 times more likely to be dismissed without investigation and 0.25 less likely to be referred to disciplinary action.
74. The report also looked at the likelihood of being subject to a complaint according to specific types of practice area which included crime and family. However, given that the data on practice area was incomplete and potentially inaccurate, the report indicated that the analysis should be treated with caution. Nevertheless, it indicated that family practitioners were 1.41 times more likely to be subject to complaints and those working under public access 1.12 times more likely. However, there was no significant statistical effect in relation to criminal practitioners or those practising in immigration.
75. While these statistics are now three years old, since that time no significant change in the source of complaints has been seen and there is no reason to believe that the position described above has changed substantially.
76. Leaving aside the statistics, the central issue here is not the standard of proof applied but whether the BSB enforcement processes are operating effectively to ensure that there are no disparities in treatment of any person whether complainant or barrister. As a number of the respondents from both inside and outside the profession pointed out, if the standard is applied consistently there is no reason to believe that a change to the civil standard will impact disproportionately on any protected group.

## Conclusions

77. There are clearly strong views within the profession that a change to the standard of proof will have a considerable negative impact not only on the public interest but also on the profession. However, these views are not shared across the profession which is split as to the right direction to take. They are also not shared by those outside the profession who consider that a change is essential in the public interest and is needed to maintain public confidence.

<sup>8</sup> Bar Standards Board, 2012-14 Complaints at the Bar: An analysis of ethnicity and gender [https://www.barstandardsboard.org.uk/media/1736344/complaints\\_at\\_the\\_bar\\_-\\_an\\_analysis\\_of\\_ethnicity\\_and\\_gender\\_2012-2014.pdf](https://www.barstandardsboard.org.uk/media/1736344/complaints_at_the_bar_-_an_analysis_of_ethnicity_and_gender_2012-2014.pdf)

78. The Board will take account of its statutory obligations and its decision must be based on the public interest and not, to the extent that they diverge, the interests of the profession. That said, the Board will want to have regard to the views of the profession and particularly those working in publicly funded areas. It may be that there will be an increase in complaints and this increase might fall more on the publicly funded Bar. However, the available evidence indicates that while those working in publicly funded areas might be slightly more exposed to the likelihood of conduct complaints, those complaints are more likely to be dismissed at an early stage and less likely to be the subject of disciplinary proceedings. Further, it seems unlikely that fears about unfounded complaints will materialise but if they do, the robust checks and balances already in place will prevent them reaching the stage where the standard of proof is relevant.
79. The important issue is that the BSB continues to maintain and improve its enforcement decision making functions. This, above all, will protect the Bar from unwarranted disciplinary action. If the BSB maintains robust assessment and enforcement procedures, there is no reason to believe that those who act appropriately and according to their professional obligations will be subject to ill-founded disciplinary action as a result of a change to the standard of proof.
80. The lack of empirical evidence to support a change to the standard of proof is an issue and one about which many at the Bar have concerns. But this does not undermine the principled argument that, in the regulatory sphere, the civil standard provides better public protection than the criminal standard. It is difficult to know what type of empirical research would be of objective and practical benefit, given that the issues are about perception and confidence and not numbers. Other professions, including the SRA, did not carry out such research prior to making a change.
81. On balance, the Executive's view is that when the BSB's statutory obligations are taken into account, the issues raised in the consultation responses by those who are against a change do not provide a strong basis or justification for retaining the criminal standard. If the Board decides to make the change, it is clear that even those who are against such a move do not consider that what the SDT does is relevant and the Bar should make its own decision about what is right for the profession.

### Timing of any change

82. If the Board decides to make a change to the standard of proof and considers it should do so without reference to the position of the SDT, then there is no reason that the change should not be made as soon as reasonably practicable.
83. A change to the Disciplinary Tribunal Regulations would need to be made as well as any consequential changes to the BSB Handbook and these would be subject to approval by the LSB. Guidance and training for relevant BSB staff as well as BTAS panels would need to be provided prior to any change. Given that the BSB is currently proposing other fundamental changes to the enforcement decision making processes which, subject to consultation, are intended to come into effect in March 2019, it would seem reasonable that any change to the standard of proof is introduced at the same time. This will provide the necessary time to prepare for the change and also allow the profession to adjust.

### Resource implications

84. It may be that there is an increase in the number of complaints handled by the BSB as a result of any change to the standard of proof but the Professional Conduct Department currently has capacity to cope with a small increase in complaints and referrals to disciplinary action. The organisational structure going forward will need to take this into



account and ensure that there is sufficient capacity within the Executive and the independent decision-making functions.

### **Equality Impact Assessment**

85. The equality impacts of changing the standard of proof have been addressed above. There is no reason to consider that a change will have any undue adverse impact on any of the protected groups within the profession if it is applied consistently. This view is supported by the BSB's Equality and Access to Justice Team who also point, as does the Legal Service Consumer Panel, to the greater protection it will afford to vulnerable consumers and members of the public from protected groups who are involved in the legal system.

### **Risk implications**

86. There remains no clear evidence that the continued application of the criminal standard is having a direct impact on the BSB's ability to bring proceedings and secure findings for professional misconduct. However, the risk to the BSB reputation as a regulator is high given that nearly all other regulators apply the civil standard and there is little objective justification for the BSB continuing to apply the criminal standard. Further, in due course, there is a high risk that the LSB will assess the BSB as not meeting the requirements of an effective public interest legal regulator if change is not made given that the use of the civil standard will form one of the criteria in the revised Regulatory Standards Framework.

### **Impacts on other teams/departments or projects**

87. There would be no direct impacts on other teams/departments or current projects of the BSB if the Board decided to move the civil standard of proof.

### **Consultation**

88. Further consultation on this issue is not considered necessary. However, if the Board decides to move to the civil standard, then changes to the BSB Handbook will be required and consultation on the specific amendments will be needed. Such consultation can be included in the public consultation on other changes to the enforcement decision-making processes currently planned for March – May 2018.

### **Regulatory Objectives**

89. The issues in this paper impact on, and are central to, the regulatory objectives of protecting and promoting the public and consumer interest. They also contribute to supporting the constitutional principle of the rule of law as well as promoting adherence to the professional principles.

### **Publicity**

90. The Board's decision on this issue will need to be communicated immediately. The Communications Team is already prepared for this and has developed relevant press lines according to the potential outcomes. The formal Consultation Response Paper (Annex A) will also need to be completed and posted on the website.

### **Lead responsibility**

Sara Jagger, Director of Professional Conduct  
 Jake Armes, Project Manager



## Standard of Proof Consultation – BSB Response

### Introduction

1. In July 2017 the Bar Standards Board (BSB) closed its consultation on “The Review of the Standard of Proof applied in Professional Misconduct Proceedings” (the Consultation)<sup>1</sup>. This report summarises the responses received to that consultation.
2. Under the Legal Services Act 2007 (“the LSA”) the BSB, the regulatory arm of the General Council of the Bar (the Bar Council), is responsible for regulating barristers called to the Bar and other authorised individuals and bodies (entities) in the public interest.
3. One of the BSB’s functions is to investigate and consider potential breaches of the BSB Handbook (the Handbook). Where the breaches of the Handbook are serious and are considered to amount to professional misconduct, the BSB refers the matters to disciplinary action normally in front of an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudications Service (BTAS). In determining whether allegations of professional misconduct are proved, the Disciplinary Tribunal is required, under regulation E143 of The Disciplinary Tribunals Regulations 2014 (Part 5, Section B of the BSB Handbook), to apply the criminal standard of proof i.e. the Tribunal must be satisfied beyond reasonable doubt that the charges are proved.
4. The purpose of the consultation was to seek views on whether the BSB should change the standard of proof applied to professional misconduct allegations and move to using the civil standard of proof i.e. the Tribunal would need to find the charges proved on the balance of probabilities, that is, the facts supporting the charges are more likely than not to have occurred. Such a move would bring the BSB in line with nearly all other professional regulators who apply the civil standard.
5. The consultation ran for 12 weeks from 2 May 2017 to 21 July 2017 and posed three questions:
  - 1) Do you consider, in principle, that the BSB should change its regulatory arrangements to allow for the civil standard to be applied to allegations of professional misconduct?
  - 2) If your answer to (1) above is “yes”, do you consider that the BSB should only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?
  - 3) Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?

### Responses to the consultation

6. The BSB received 101 responses to the consultation and we are very grateful to all those who took the time to provide their views on such an important issue.

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<sup>1</sup> [insert link to consultation paper]

7. Responses were received from the following:
- Individual members of the profession (80)
  - A chambers clerk
  - 2 Harcourt Buildings Chambers (a specialist criminal chambers)
  - The Bar Council – the Bar’s representative body
  - Inns of Court (3) - The Honourable Societies of the Inner Temple, Gray’s Inn and Middle Temple
  - A member of the judiciary
  - Academics (5)
  - Bar associations (2) - the Criminal Bar Association (CBA) and the Commercial Bar Association (COMBAR)
  - Legal Regulators (2) - the Cost Lawyers Standards Board (CLSB) and the Solicitors Regulatory Authority(SRA)
  - Other professional regulators (2) - the General Medical Council (GMC) and the Institute of Chartered Accountants in England and Wales (ICAEW)
  - The Legal Services Consumer Panel (LSCP)
  - The Campaign Against Antisemitism (CAA)
  - The Solicitors Disciplinary Tribunal (SDT)
8. Many responses from individual barristers (approximately 45%) came from those practising in the fields of criminal and family law.
9. The SDT expressly stated that it would not be providing a response to questions 1 and 3 and Middle Temple felt unable to speak on behalf of the whole Inn due to divergent views but said it had encouraged its members to submit individual responses.
10. Both the Bar Council and COMBAR indicated that their members were evenly split in relation to Question 1. The Bar Council therefore included in its response the views for and against a change. COMBAR endorsed and adopted the views set out in the Bar Council response. The CBA, which does not favour a change, included in its response the minority view in favour of a change.
11. All other respondents expressed a clear view in relation to question 1: some merely answered “yes” or “no” to the question while others provided detailed reasons for their answers. Most responses did not address questions 2 and 3.

**Question 1: Should the BSB change its regulatory arrangements to allow for the civil standard of proof to be applied to allegations of professional misconduct?**

**Overview of responses**

12. Given the binary nature of question 1, it was inevitable that most responses fell on one side or the other: those who were against changing the standard of proof and those that were for making a change. There were a handful of responses from individual barristers that indicated a middle road or hybrid option might be found by applying a different standard according to the seriousness of the breach of the Handbook: in most cases these responses referred to retaining the criminal standard for cases of dishonesty or where the allegation is akin to a criminal offence but applying the lower standard for other types of breaches.
13. The respondents that were against making a change came almost exclusively from the profession or those representing it. They consisted of: approximately 70 individual barristers; the chambers clerk; 2 Harcourt Buildings Chambers; when setting out

arguments against the change the Bar Council and COMBAR<sup>2</sup>; and, Inner Temple. Two academics, who indicated they had qualified as barristers, also considered the BSB should not make the change. Most views were couched in robust terms with many saying that they were strongly opposed to any change.

14. The respondents who were for making a change came from not only from the profession and its representatives but also from others outside the profession. The number of individual barristers who were for a change was considerably fewer than those against, at around 12. The other responses favouring a change came from: when setting out arguments in favour of the change the Bar Council and COMBAR<sup>3</sup>; Gray's Inn; a member of the judiciary; two academics (one of whom is also a barrister); four regulators (the SRA, the CDSL; the GMC; the ICAEW); a consumer organisation (the LSCP); and, a campaigning group (the CAA).
15. There was a significant level of consistency and range in the arguments presented both for and against a change. They can be divided into five main areas:
  - i. Public interest, protection and confidence
  - ii. The impacts on the profession
  - iii. The Legal Position
  - iv. Regulatory best practice
  - v. Evidence base to support the change
16. Each of these areas are considered below with the arguments for and against a change presented separately. Inevitably some views fall within more than one area. The response of the Bar Council has been particularly helpful in setting out the arguments as it provided views from both stand points: these covered and mirrored nearly all the views expressed by others whether inside or outside the profession.

### **Public interest, protection and confidence**

#### *Against changing the standard of proof*

17. The Bar Council made it clear that it considered that it is of the utmost importance that the high standards of the Bar, for which it is renowned, are upheld robustly and effective safeguards are in place to prevent the small minority of barristers who pose a demonstrable risk to the public, and do not meet the high ethical standards of the Bar, from practising. This view was echoed by many who thought that the criminal standard should be retained.
18. However, those against a change to the civil standard were generally of the view that the criminal standard provides sufficient and adequate safeguards to protect the public and maintain public confidence. Many responses referred to the lack of empirical evidence presented by the BSB to demonstrate that the public is not sufficiently protected by the use of the criminal standard or that its use is reducing public confidence (see also paragraphs 59 to 63 below).
19. A number of responses, including that from the Bar Council, referred to the potential detrimental impacts on the public interest that could flow from a change. Views were expressed that lowering the standard could impact on the administration of justice and consequently the public interest. Such detriment could arise from barristers taking a

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<sup>2</sup> See paragraph 10 – the Bar Council and COMBAR submitted responses setting out views both in favour of a change and against it

<sup>3</sup> As above

## Part 1 – Public

more defensive, risk-averse and over-protective approach to dealing with both clients and opponents, particularly litigants in person. Such impacts were considered to arise from the increased exposure to unfounded complaints and the loss of the protection that the criminal standard provides (see also paragraphs 32 to 35 below). The Bar Council comment on these issues reflected views expressed by other respondents:

*“none of these potential impacts serves the interests of justice or protects the public. These wider “public protection” implications....need to weighed against the proposition that a lower standard of proof will benefit clients and the public.”*

20. Views were also expressed that lowering the standard could, again as a result of potential increased exposure to complaints, cause practitioners to take a different approach in court and thereby compromise their overriding duty to the court. Similar concerns were raised about the potential impact on adherence to the “cab rank” rule as barristers, particularly those working under public access, may avoid taking on “difficult” clients who may be more liable to complain. Such potential impacts were viewed as being detrimental to the public interest.
21. Concerns were also raised that a change to the civil standard would undermine the seriousness of professional misconduct proceedings and thereby reduce public confidence.

*For changing the standard of proof*

22. Those in favour of making a change to the civil standard referred to the overriding importance of public protection as the guiding principle of regulation and the view that the civil standard provided the best protection for public. Most of those who favoured change expressed this view, in various forms, as an argument for moving to the civil standard. For example the ICAEW said:

*“The civil standard of proof has always been the basis for disciplinary arrangements within ICAEW..... A key part of the professional accountability of an ICAEW Chartered Accountant is that a high standard of integrity, ethics and technical competence [our] charters require an enforcement process cognisant of public perception. These are principles we feel are woven into the Legal Services Act underpinning public and consumer interest. The civil standard of proof is a natural feature of this regulatory environment.”*

23. The LSCP uniquely raised the issue of ‘silent sufferers’ (consumers who had a complaint, but did nothing about it). They noted that *“the proportion of ‘silent sufferers’ increased from 35% in 2016 to 49% in 2017”*, highlighting the importance increasing public confidence in professional regulation.
24. Amongst others, the LSPC, individual barristers and the Bar Council raised concerns about public perception. The Bar Council response reflected these views in saying:

*“... concerns were expressed about the public perception of the standard. There were concerns that the public could perceive the criminal standard as mere protectionism working in the profession’s interest rather than in the wider public interest.”*

25. The Campaign Against Antisemitism commented:

*“We believe that the public should also be confident that barristers are more likely to be sound practitioners than otherwise, and to that end we agree with the Law Commission. We believe that using the balance of probabilities gives barristers adequate protection whilst ensuring that misconduct proceedings are able to protect the public from unscrupulous practitioners.”*

26. Many of those who supported a change also referred, with varying degrees of concern, to their view that it was unjustifiable that a barrister could escape sanction where a tribunal was satisfied that it was more likely than not that misconduct had occurred. Indeed, the Bar Council response indicated that those barristers in support of a change were “*dismayed*” at such a prospect. Some responses (including Gray’s Inn, the GMC and the LSCP) specifically referred to, and endorsed, the Law Commission’s conclusion, in 2012, that such a situation was not acceptable (in relation to medical practitioners).
27. Gray’s Inn also pointed to the regulatory objectives under which the BSB operates which include “protecting and promoting the public interest” and “protecting and promoting the interests of consumers”. It commented that “*it is difficult to see how these laudable regulatory objectives are achieved by allowing barristers to continue to practise where evidence proves on a balance of probabilities that they are dishonest and/or have sexually assaulted their clients.*”
28. In supporting a change to the civil standard, one member of the judiciary pointed out “*that the purpose of professional discipline is the protection of the public which, in this context, includes the proper functioning of the justice system in the public interest*”.
29. Some respondents in favour of the change noted the relative unfairness compared with other proceedings. This view is effectively summarised by one respondent who said:
- “If the public interest in protecting vulnerable children from abuse or neglect by parents means that it is legitimate to “find” parents guilty of abuse even where no criminal charge has been brought, and even where the evidence is likely insufficient to secure a conviction, then it is difficult I think to argue that the public interest in protecting the public from rogue or incompetent barristers should not lead to a similar conclusion in relation to disciplinary proceedings for the bar. It’s my career, but it’s somebody’s child. And there is a limited impact on the public we are protecting if some barristers are wrongly found guilty of misconduct (save insofar as it narrows the pool of good lawyers by one and may put off others from joining or staying in the profession so narrowing the pool further in future).”*
30. Concerns were also raised that public perception of the use of the criminal standard could be viewed as “protectionism” and working in the profession’s interest rather than the interests of the wider public.
31. In general, the views expressed in favour of changing the standard indicated that the public interest should outweigh the interests of the profession and the potential impact on individual practitioners.

## The impacts on the profession

### *Against changing the standard of proof*

32. Strong concerns were expressed by many of those who were against a change about the impact on individual practitioners and the way in which a change might affect their approach to their work. Some of these concerns are rehearsed above in relation to the public interest. The concerns centred on the unique position and vulnerability of those practising at the Bar in an adversarial system where the outcome can only be a winner and a loser and barristers owe an overriding duty to the court. The views expressed indicated a wide spread view that this leaves barristers more exposed than other professions to unfounded complaints arising from clients' dissatisfaction with the outcome of cases who may "*misconceive losing with incompetent advocacy*".
33. Many responses pointed out that barristers, particularly family and criminal practitioners and those working in publicly aided areas, do not have the support of a solicitor in court or at conferences and they often deal with clients on their own. This places a barrister in a difficult position when trying to defend themselves against unfounded complaints where it may be one person's word against another. Indeed, the CBA stated in its response that "*the main argument in favour of retaining the criminal standard, when other professions have moved away from it, [is] that barristers - and criminal barristers most acutely – are unusually vulnerable to groundless and malicious complaints*".
34. The Bar Council's response on these issues succinctly sums up the many views expressed in the responses about the vulnerability of barristers to unfounded complaints:

*"Barristers are particularly vulnerable to complaints for a number of reasons. First, they operate in adversarial circumstances, in which one party to the proceedings will lose. A loss can create a client's sense of grievance against his lawyers. Barristers may thus be subject to complaints because clients are unhappy with the outcome of the case, not because the barrister is guilty of misconduct.*

*It is often easier for a disaffected client to blame his lawyer than acknowledge fault on his own part. In that sense the legal profession is different from other professions: lawyers are often instructed to defend the conduct or character of their clients. If that defence proves unsuccessful, a client has an incentive to blame others in order to deflect responsibility. This dynamic is less evident in other professions.*

*Barristers who work in difficult publicly-funded practice areas, in which clients stand to lose a great deal (e.g. liberty, custody of a child) and which deal with emotive issues, such as family law, crime, immigration and employment, are vulnerable because it has become the exception rather than the norm for barristers instructed in such cases to be habitually attended by any representative from their instructing solicitors. This may be contrasted with the position of barristers in the majority of privately-funded civil law and commercial cases. The lack of third party presence, coupled with the impracticality of barristers being able to take notes of every conversation, or requesting their client to sign a brief note after every interaction, means that barristers are less able to protect themselves against unfounded allegations of misconduct. This problem may be particularly acute during a contested hearing.*

*In a similar vein, barristers increasingly come up against litigants in person who are likely to blame and on occasion make unfounded allegations against the barrister*



*who acts against them. Again, this will often arise when the barrister has no professional client in attendance at court or during tribunal hearings.”*

35. The view of many criminal and family practitioners who are against a change is that the criminal standard provides an important protection against unfounded complaints and a move to the civil standard would only encourage such complaints leaving barristers even more exposed and vulnerable to false claims. This in turn could, as the Bar Council put it, and was echoed by others, have a *“chilling effect on interaction with clients and deter imaginative or innovative approaches to advocacy”* and *“may deter barristers from entering into these areas of practice”*.
36. The Bar Council was, as were others, particularly concerned about the impact on barristers acting under public access instructions who are also vulnerable to complaints and feature disproportionately in the complaints received by the Legal Ombudsman (41% of complaints received by the Ombudsman in 2016/17). A change to the civil standard could act as an additional disincentive to barristers to undertake public access work. This would run contrary to the public interest given the stated aim of the Competition and Markets Authority and the Legal Services Board of increasing accessibility to legal services.
37. Many members of the profession, and the Bar Council, raised concerns that the process of professional misconduct proceedings, as well as a finding of professional misconduct, has a disproportionate reputational impact on barristers due to the self-employed nature of the profession: a change in the standard of proof may exacerbate these impacts. Again, the Bar Council response summed up the views expressed on this issue:

*“...even if a barrister is cleared of all charges, an appearance before a disciplinary tribunal may in itself damage a barrister’s reputation. If some or all of the charges are proved by the BSB and a barrister is suspended or disbarred, their livelihood may be destroyed and it can be difficult if not impossible to return to practice. The risks to wellbeing are obvious. The majority of barristers appearing before a tribunal are self-employed and as such pursue their livelihood on their reputation alone. This characteristic makes it more difficult for barristers to rehabilitate their professional lives than some other professionals, who may be employed and supported by their employer.*

*“If a lower standard results in more cases coming before the tribunal the corresponding risks to reputation and wellbeing increase*

38. Many barristers considered that it was wrong for a barrister’s livelihood to be taken away based on a finding that they *“probably did something wrong”* and such action should only be taken where there is certainty that serious professional misconduct has occurred.

*For changing the standard of proof*

39. Most of the responses in a favour of change did not expressly refer to the issues set out above although one barrister commented that the barristers are not uniquely vulnerable to complaints. The Bar Council’s response indicated that those in favour of a change do not see any strong justification for treating barristers differently from other professions (see also paragraphs 55 to 58).

40. Some respondents were of the view that the impact of a change may not be as great as might be feared. The Bar Council commented that those it spoke to who were in favour of a change were mostly of the view that changing or retaining the standard of proof would make little difference to the outcome in the vast majority of cases.
41. Many responses in favour of a change, put forward the view that it is not justifiable to dismiss a complaint where a tribunal considers it more likely than not that that barrister is guilty of professional misconduct.
42. Pre-empting some of the objections, one barrister noted:

*“It should not be necessary to wait for a Harold Shipman of the Bar to emerge for our profession to decide whether the criminal standard of proof gives the public enough protection. I do not accept that barristers and veterinarians are uniquely vulnerable to false complaints. We are vulnerable, especially criminal lawyers who now often lack a solicitor’s representative to be a witness in client meetings or in Court: an aggrieved criminal may be more tempted than others to make a false allegation. But we are not so vulnerable as to deserve greater protection than solicitors or doctors.”*

### The Legal Position

#### *Against changing the standard of proof*

43. Most of those against changing the standard of proof did not refer to the relevant case law in their responses but the handful of individual barristers that did were clear that the law requires the criminal standard to be applied in relation to allegations of professional misconduct against lawyers.
44. The Bar Council acknowledged that the case law is not a decisive factor and that the BSB may choose of its own volition to amend the standard of proof. It referred to the caselaw as set out in the consultation paper but also referred to the case of *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 which was relatively recently before the Supreme Court of New Zealand. In that case the majority of the court ruled in favour of a change to the civil standard. However, as the Bar Council pointed out, the Chief Justice dissented on the basis that the higher standard of proof protects against errors in decision making and that fairness requires that where substantial penalties may be imposed the higher standard is applied.
45. A number of barristers made reference to the non-binding judicial comments made on the standard of proof in *The Solicitors Regulatory Authority v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin) which were referred to by the BSB in the consultation paper as a factor in the decision to revisit the issue. The judicial comments indicated that the time is ripe for reconsideration of the line of authorities that stipulate the criminal standard of proof should be applied in misconduct proceedings against lawyers. Those that referred to this issue considered it wrong to determine the issue based on the perception of judges’ views and that non-binding judicial comments should not be used as an impetus for change.
46. Some responses referred to the nature of professional misconduct proceedings, stating that they are quasi-criminal in nature and therefore the criminal standard was appropriate. Respondents also referred to concern that barristers could be found guilty of conduct that was dishonest, or akin to a crime, on the civil standard and viewed this as inappropriate. Some also considered it wrong for a barrister acquitted of a crime to be exposed to the risk of misconduct proceedings for the same behaviour but on a lower standard of proof.

*For changing the standard of proof*

47. Very few of those in favour of change to the civil standard mentioned the case law but a number were of the view that misconduct proceedings are civil in nature and therefore the civil standard should be applied. This view was also expressed by the Bar Council who pointed out that while disciplinary proceedings can lead to distress and severe outcomes, they are not brought to deliver punishment but in order to regulate the profession and so protect clients and the public.
48. Gray's Inn commented that using the civil standard in disciplinary proceedings is *"analogous to the position in civil proceedings where allegations of criminal conduct do not require the criminal standard of proof even though the allegations are of rape, assault, dishonesty or dealing in drugs.....with no heightened threshold to account for the gravity of the allegations or consequences on the individual."*
49. A member of the judiciary made the point that there is a rule in the civil law of evidence that the more serious the allegation the more cogent the evidence which will be required in order to prove that it is probably true and that the presumption of innocence still continues.
50. The CLSB also commented that *"to apply a criminal law standard of proof where that alleged is not a criminal activity does not seem appropriate"*.

**Current Regulatory Practice***Against changing the standard of proof*

51. In relation to the position of other professions, the Bar Council stated that in its response that *"The Bar cannot and should not be compared with other professions who offer different services, practise in very different ways and deal with different levels of risk"*. This was a sentiment that was echoed in a significant number of individual barristers' responses.
52. The responses in this area repeatedly stated that barristers are not comparable to medical professionals due to the increased risk posed by medical professional failures. The response from 2 Harcourt Building's response summarises the views of many on this issue:
- "There is a distinction between the legal profession and the medical profession. Public protection is a key component of the medical profession. Direct physical harm can result from interventions or omissions by medical practitioners in a multitude of ways, not least as a result of medication errors, handling, wound management or surgery. Other forms of harm can also result, such as emotional, psychiatric or financial. The same concerns do not arise on a regular basis in the legal profession. The risk of harm to the public is a good reason for the civil standard to apply in the medical profession, but it does not require the BSB to follow suit."*
53. A number of barristers were of the view that while consistency with other professions may be desirable it should not be a determinative factor as not all regulatory contexts are alike. As the Bar Council put it *"what may be right for one jurisdiction or one profession will not necessarily be right for another"*

54. Many others considered that the fact that other professions apply the civil standard, and the Bar is in the minority in applying the criminal standard, was not a reason of itself for change. As one barrister put it *“everyone else is doing it is not a good argument”* and another commented *“just because something is popular does not make it right”*. The Bar Council, in its general comments, recognised that adopting the civil standard would join with regulators and other jurisdictions but it *“was not persuaded that we should adopt a change merely because others have done so”*. Many barristers considered it was wrong to compare barristers to doctors who are generally salaried and have the protection of an employer.

*For changing the standard of proof*

55. The Bar Council in its response recognised that the wider regulatory landscape is now different and the current standard in Bar disciplinary tribunals has become out of step with the regulatory norm. It did not see any strong justification for treating the Bar differently from the medical profession and highlighted that both professions perform roles that are important to the public interest and where the protection of that interest is paramount.
56. A number of those in favour of a change commented that solicitors and barristers are out of line with other professions. Several pointed to the fact that the Judicial Conduct Investigation Office applies the civil standard when considering allegations of misconduct against judges. The SRA also referred to this in saying:

*“The civil standard is also used widely by other regulators including all the health professions regulators, Accountancy and Actuarial Discipline Board, General Institute of Public Finance and Accountancy, General Teaching Council for Scotland and the Royal Institution of Chartered Surveyors. Disciplinary matters around the conduct of judges are also dealt with using the civil standard of proof. Internationally, most states in America have adopted the Model Rules for Lawyer Disciplinary Enforcement, which use a civil standard of proof. Disciplinary cases by the Upper Canada Law Society and the Australian Health Practitioner Regulation Agency are determined to the civil standard. Only the bar, solicitors and veterinary surgeons continue to use the criminal standard.”*

57. The CLSB pointed out that it is an approved regulator under the Legal Services Act 2007 and applies the civil standard at all stages of its enforcement process. It also commented that making the change to the civil standard would bring the Bar in line with other regulated legal professionals. The Bar Council commented that there is no strong justification for treating the Bar differently and Gray’s Inn questioned *“why [should] the standard of proof in professional misconduct proceedings against a barrister [...] be different than for a doctor or other professional facing identical proceedings? Allegations of dishonesty or sexual assault are equally fatal to the careers of all”*.
58. An academic and a barrister, commented that *“the Bar should not allow an individual to continue in practice only because of the operation of a higher standard of proof than that applied in other professions”*.

**Evidence to support a change***Against changing the standard*

59. A significant number of responses from those who are against a change, referred to the lack of empirical evidence presented by the BSB to demonstrate a need for a change to the civil standard. Many commented that there is no evidence that the current system is not protecting the public or that there has been damage to the public confidence in the profession as a result of use of the criminal standard.
60. A number of barristers considered that no change should be made unless, and until, clear evidence is available to support such a move. The Bar Council again summed up the views in this area by saying;

*“There must be careful scrutiny of the evidence of a need for change within our own jurisdiction and within our profession, of the rationale for making any change, and of the benefits, disadvantages and ramifications of doing so. Before any change is brought about, there must be a careful study of medium-to-long-term impact on the profession and those it serves.*

61. The Bar Council was also of the view that the BSB must explain the evidence which demonstrates the need for a change and also explain the rationale. It noted that the BSB’s consultation paper was presented from a position of principle which they assumed is why no analysis was included. However, it considered that the principle cannot be divorced from the practicalities or risk and implications of such a change. Therefore, an assessment of the impact on the number of cases being prosecuted by the BSB before Tribunals needs to be made. “Common sense” would indicate an increase in such cases if the standard is lowered and the cost implications for the profession should be assessed.

*For changing the standard*

62. Those that favoured a change in the standard, did not raise any specific issues regarding the evidence available to support the change. One barrister, who previously sat on Bar Disciplinary Tribunal panels, commented that she had direct experience of situations where serious charges were dismissed due to the application of the criminal standard. The Bar Council also referred to one member of the Bar they had consulted with who had sat on BTAS panels giving an example of one case where the application of different standard would have made a difference to the outcome.
63. As stated at paragraphs 25 and 26 above, a number of responses referred to and endorsed the conclusions of the Law Commission in 2012 when recommending that the medical professions change to the civil standard of proof. The SRA also cited the Insurance Task Force Report of 2016 that the criminal standard of proof is disproportionate and may limit the deterrent messages sent out.

**Question 2: Should the BSB only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?**

64. Relatively few of those who responded to the consultation addressed this question (approximately 40 out of the 101). We are grateful to the Solicitors Disciplinary Tribunal (SDT) for their response on this question and present it here as context for the rest of this section:

*“The Tribunal would not wish its decisions to delay or accelerate the Bar Standard Board’s proper reflections on their own rules. The Tribunal will itself, as part of the exercise of bringing forward its proposed new rules, be consulting on the appropriate standard of proof to apply.”*

65. A number of those who thought the BSB should not change to the civil standard answered the question stating that although the question did not require them to do so, they wanted to give a view. A few barristers who were in principle against the change were of the view that the BSB should act independently without reference to what the SDT may or may do. The vast majority (approximately 10 out of 14) of those who thought any change should not be made unless the SDT also changes, were also respondents who were against changing the standard of proof.

66. The Bar Council, COMBAR, Inner Temple and 11 individual barristers thought that the BSB should not change unless the SDT also does so. The Bar Council’s response on this issue reads:

*“If moving to the civil standard is the right thing to do, implementation should not be delayed because of what the SDT does or does not do. However we ought to point out there are some who would see it as anomalous for what they consider to be two branches of the same profession to apply different standards at their respective disciplinary tribunals and so consider that BTAS should adopt the civil standard only if or when the Solicitors Disciplinary Tribunal (SDT) does the same.”*

67. This view was echoed by all those who gave reasons. One respondent commented that:

*“...it would be intolerable and grossly unfair if a situation could arise where a complaint is made about the overall conduct of proceedings by a legal ‘team’ involving one or more of both barristers and solicitors with each being judged by different standards of proof.”*

68. Those that were that the BSB should act independently were 11 barristers and Gray’s Inn as well as: a member of the judiciary, three academics, the SRA, the GMC, ICAEW, the LSCP and the CAA. The reasons given were wide ranging including: that the Bar should make its own decision; what the SDT does is irrelevant; the BSB should not delay making the change if it is the right thing to do; waiting undermines the public confidence; and the SDT lacks the power to reform itself but the BSB is free to do so. The LSCP said:

*“We believe the change from the criminal to the civil standard of proof should be introduced independently of the SDT. It may be argued that since the SDT is not an Approved Regulator, the BSB should align itself with the rest of the regulators who have already changed their standard of proof to the civil standard. But this is not the strongest argument for change. This change must come about because it is right, reasonable and fair, irrespective of what may be going on in another place.”*

**Question 3: Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?**

69. The majority of respondents either did not address question 3 or indicated that they did not think there would be any adverse impacts from the change without giving reasons. A number also indicated that they did not know.
70. 18 responses were received that included comments on potential issues although several covered issues that impact on the Bar generally as opposed to those with protected characteristics. The majority of issues raised related to potential impacts on barristers. There were concerns that lowering the standard might impact on those with mental health problems who may be less able to defend themselves.
71. The Bar Council provided a detailed response to this question, for which we are grateful, which focused on BAME and women barristers who may be disproportionately impacted by a change. Three other respondents also referred to the potential impact on women and BAME barristers and their views were captured in the Bar Council response which said, in part:

*“We understand anecdotally that women are over-represented in the field of family law and BAME barristers are over-represented in publicly funded work. These areas are thought to be those most exposed to complaints.....*

*If female or BAME barristers, because of their work in this area, are more likely to appear before the Bar’s Disciplinary tribunal, and because of a change in the standard of proof, more likely to be suspended or disbarred, then the impact on diversity at the Bar should be a concern. The impact would be twofold; first there would be the actual impact on numbers of women and BAME barristers practising at the Bar and secondly, it may act as a disincentive to people with such protected characteristics being attracted to and retained at the Bar. Both would have the effect of making the Bar less reflective of the population it serves.*

*.....there is a strong possibility that crime, family and immigration law practitioners, who tend to be over-represented by female and BAME barristers, will be disproportionately affected by any change to the standard of proof, since they are likely to be over-represented at Bar Tribunals. The possibility of a disproportionate impact on female and BAME barristers will require further investigation by the BSB once more data is available.”*

72. The LSCP gave the following response which focuses on the increased protection a change would give to vulnerable consumers:

*“The Consumer Panel believes the proposed change of standard of proof would have a positive impact on vulnerable consumers. Vulnerable consumers will be better protected if regulated persons who have probably breached conduct rules are disciplined appropriately. The civil standard of proof should also give encouragement to vulnerable consumers and their representatives to raise concerns and seek redress when appropriate.”*

73. The SRA and the CAA both said that there was no reason to think there would be adverse impacts if the standard is applied uniformly and consistently.





**Chair's Report on Visits and External Meetings, November 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**

30 October	Met with the Interim Chair, Helen Phillips, LSB Member Michael Smyth and Chief Executive of LSB, together with BSB member Dr Anne Wright and BSB Director-General
30 October	Attended the Planning, Resources and Performance Committee
1 November	Met with the Chair and CEO of SRA  Chaired meeting with Chair and Deputy Chair of Bar Council and CMA representatives to discuss response to CMA recommendations on transparency
2 November	Attended the shortlist panel meeting for new Lay Board Members
7 November	Attended meeting of SMT
14 November	Conducted appraisal meeting for a Board member
14 November	Introduced the FBT London Seminar held at Holborn Bars
15 November	Conducted mid-year performance review of Director-General
15 November	Chaired the Chairs' Committee with Bar Council
16 November	Attended the first set of interviews for Lay Board Members
20 November	Met with Bar Mutual Indemnity Fund
21 November	Attended the second set of interviews for Lay Board Members
22 November	Attended final set of interviews for Lay Board Members



**Director General's report - BSB meeting 23 November 2017**

For consideration and noting.

**Director General**

1. My external work this month has been driven by our consultations on the CMA recommendations and FBT and has included leading sessions at the Annual Bar and Young Bar Conference and at the roadshows mentioned later in this report. I also spoke at a university conference on the future of EU law in the curriculum.
2. Internally, I led, with the support of our Senior Programme Manager Jaspal Kaur Griffin, the meeting described below, bringing together all the FBT teams (I am SRO for the Programme) and continued to contribute to the specific projects on the Authorization Framework and Curriculum and Assessment Review. By the time of the Board meeting I will have participated in final interviews for a new Ethics Assistant Chief Examiner.
3. Mid-year performance reviews have been conducted across the BSB and I am grateful to Board members who contributed to 360 feedback for members of the senior management team. Our performance management system and staff competence framework has been the subject of a review project by the cohort of colleagues involved this year in a leadership development programme. The group presented a very thoroughly researched report and a thoughtful set of recommendations to the senior management team, and these will now be taken forward with the HR Director. Feeding into our action in this area will also be the outputs from the project undertaken by the management development training cohort, which focused on recruitment and retention and was similarly well-grounded in its approach. Both areas are likely to result in actions which will eventually come to PRP for advice. Good induction training, unsurprisingly, came out as a key contributor to successful retention of staff: I hope that my routine guided visit to the RCJ for new staff this month made a small contribution.
4. Finally, I have had a preliminary discussion with our Chair-designate to consider preferred ways of working and induction requirements.

**Future Bar Training programme**

5. An internal FBT half day meeting was held on the 14<sup>th</sup> of November. The aim of this session was to allow the various project teams to share their accomplishments and challenges to date with each other and key members of Resources Group and also to provide updates on the upcoming workstreams and associated timelines for delivering the rest of the programme. This was valuable in identifying upcoming pinch points in the programme and will help ensure that resource allocation is adequately catered for and in ensuring programme timelines do not slip as a result. We also want to be able to give stakeholders more detail about what to expect when.
6. A programme of consultative engagement with a range of stakeholders on the Curriculum and Assessments Review is now underway. To date activities have been held with BPTC providers, the Inns education officers, the Centralised Examinations Board and the Syllabus team. Further activities are planned to include a number of roundtable events.
7. A series of events around the country have commenced to help inform the current FBT Consultation. Between 14 November and 13 December various members of the FBT project teams are travelling to London, Cardiff, Leeds, Birmingham and Manchester, as well as hosting an online webinar. At these events attendees will be presented with a selection of the issues under consultation, and be offered an opportunity to ask

questions and feed back their opinions. The event in London attracted over 40 attendees and was very successful.

8. A Task Completion Group (TCG) has been set up to review recruitment and advertising practices for work based learning (pupillage). The TCG will consider whether any of the current rules or common practices present unjustified or discriminatory barriers to entry to the profession. The review will also include the efficacy of the Pupillage Gateway, and consider whether any changes should be made to how the Pupillage Gateway is used to help promote best recruitment practice.
9. We held a productive meeting with our SRA colleagues to consider progress on the work the BSB has led comparing our Professional Statement with the SRA functional equivalent; and considering further arrangements for the Joint Statement Qualifying Law Degrees. We are aiming to agree a new “Common Protocol” (working title) in the new year to give guidance to stakeholders on the “different but compatible” future systems for barrister and solicitor training and qualification.

### **Regulatory Operations Programme**

10. At the October Board meeting the Board received a paper providing an update on progress on the CAT Project. A paper outlining progress in relation to the IDMB appears separately on the agenda for this Board meeting.
11. On 27 October, we held a meeting with the Legal Services Consumer Panel to explain the Regulatory Operations Programme further, and gather their views.
12. Having discussed the Risk Assessment testing completed to mid-October, the Project Board agreed that further testing was required for us to make decisions about the suitability of the approach to risk assessment and the scoring methodology used. The further testing has focussed on some specific data, which will allow us to compare different assessments of the same information. This comparison of assessments and assessors will allow us to understand what issues assessors experience when undertaking an assessment, what revisions we might need to make to the assessment tool or the guidance, and to allow us to select a preferred scoring methodology.
13. We have now assessed over 100 pieces of information, and are analysing the results. The Project Team is currently trying to finalise the end-to-end process, including how information is initially screened (eg. for relevance to us as a regulator), the staff levels at which different questions should be considered, and after assessment, the process for referral to the relevant teams for regulatory response. We have been begun working with Resources Group to incorporate this into our testing system, so that the process can be tested in its entirety.

### **Strategy & Policy**

14. In October, the team received almost 130 calls and e-mails to the Professional Standards Helpline. This brings the total number of enquiries received this calendar year to over 1,000.
15. On 2 October we launched a policy consultation on the CMA’s recommendations relating to new cost, service and redress transparency requirements. The consultation closes on 5 January 2018. As part of this we have started to deliver roadshows and events around England and Wales to engage and seek feedback from the profession and consumer groups. The Professional Standards Team is also overseeing a number of “pilots” of potential new transparency requirements. A range of chambers, entities and sole practitioners with different practice areas, and undertaking both Public Access and

- referral work, have been recruited to the pilot. We have also launched a survey allowing us to seek feedback from solicitors and (where possible) lay clients on how information is presented on the pilot participants' websites. The results of all this work, together with related consumer research, will lead into a rule change consultation in the New Year.
16. We have made an application to the LSB for a number of rule changes to require the disclosure of practice area information, to ensure compliance with new anti-money laundering regulations and to require registration when working in the Youth Courts. The board approved these rule changes in October. Subject to LSB approval, we hope these changes will come into force on 1 February (in time for the 2018 Authorisation to Practice exercise).
  17. We are drafting a rule change application for changes to the Public and Licensed Access Rules. This follows board approval in October. Subject to LSB approval, we hope to bring the new rules into force on 1 February 2018. A project team including members of the Authorisation Team has been established to ensure that the necessary operational changes are made on time.
  18. On 1 November we published the latest version of the BSB Handbook. This contains new parental leave rules and streamlines our Disciplinary Tribunal Regulations. The new version is also the first entirely gender-neutral version of the Handbook. A knowledge sharing session is scheduled for 15 November to explain the rule changes to staff and offer them the opportunity to ask any questions they may have.
  19. The Policy Forum met on 7 November to discuss a review of advertising and recruitment of pupillage.
  20. On 20 November we will meet BMIF to explain our position on PII arrangements for SPEs, and to discuss our wider programme of work on PII. We will present a verbal update to the board on PII in January.
  21. Work on developing a vulnerability toolkit continues. We are currently working to make this more immigration-specific following feedback from TCG members and other stakeholders. We plan to test the toolkit in early December.
  22. The Director of Strategy and Policy and a Senior Policy Officer (along with a representative from CILEx Regulation) met the Financial Conduct Authority to discuss entities arranging after the event insurance (an activity regulated by the FCA). Our approach to this is in line with the FCA's regulation and our final guidance to the profession on after the event insurance will be published shortly.
  23. The team continues to support a number of key projects across the business. This includes support to the Records Team and Project Management Office on the development of the new Authorisation to Practise portal, MyBar. All of the guidance has been written ready for the launch of the portal (scheduled for January 2018).

### **Research**

24. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy undertaken by both barristers and solicitor advocates. ICPR have been carrying out the research, consisting of 50 qualitative interviews with Crown Court judges. The first draft of the research report has been received and reviewed, with a final draft due in November.

25. The NatCen ‘Barriers to Legal Education’ research report and a report on differential attainment between different groups on the BPTC and in obtaining pupillage will be published in the next few weeks, following external peer review. An action plan has been developed in response to the recommendations arising from both research findings and will be published at the same time, following circulation to the Board.
26. Work continues on research to determine policies aimed at improving retention of women at the Bar, which will inform delivery of one of the BSB’s Equality Objectives and address the issues raised by last year’s ‘Women at the Bar’ research. The Equality & Access to Justice team has conducted five workshop sessions to explore the issues and develop potential solutions. A summary of the key findings has already been produced to inform the development of an action plan building on the workshops, with a full report due to be produced later in the year.
27. Drafting is underway on the findings of our research concerning price and service transparency provided by barristers. We are also developing a paper which will set out some options for consumer testing in the area of price transparency, aiming to increase our understanding of how best to make new transparency measures work for the consumers of barristers’ services.
28. Our regular ‘Research Roundup’ has been updated and published on ‘verity’. The roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.

### **Regulatory Risk**

29. Following previous discussions with the SMT on Micro (case-by-case) level prioritisation, the Regulatory Risk team have now had the opportunity to discuss Macro (market) level risk prioritisation with the SMT. A full update to the Board is available in the Paper in Part 2, this covers: Risk Prioritisation; Roles & responsibilities; Macro and Micro Prioritisation; and alignment of corporate and regulatory risks.
30. We are planning BSB wide knowledge sharing sessions for January 2018. These will cover all these areas of work, and will explain the transitional arrangements for applying case-by-case prioritisation ahead of the introduction of the Central Assessment Team.

### ***Risk Reporting***

31. The Regulatory Risk team presented the SMT with a first draft risk report at the end of October. The SMT continue to consider this report, but the team will present a revised draft to the GRA Committee in November, for them to provide feedback on improvements the team might make to the next version. The plan is to produce six-monthly consolidated risk report to GRA and the Board, with the first consolidated risk report to GRA in March 2018 and the Board in April 2018.
32. As explained previously, the report will provide a high-level view of all risks, consolidating Regulatory, Strategic and Operational into one report. Key to achieving this is the consolidation of the separate impact and likelihood tables, and the paper to GRA also asks for them to confirm the approach we have taken for aligning regulatory and corporate risk management, and to discuss and approve the revised risk and impact table.

**Equality and Access to Justice**

33. Three women at the bar workshops have been delivered at the BSB, in addition to an external workshop with the management committee of the Institute of Barrister Clerks, and a workshop with APEX advisors. These have contributed to the development of an action plan to reduce barriers/discrimination experienced by women at the bar. In total over 70 people have attended; one further workshop will be delivered with the Legal Practice Management Association in November. A draft action plan has been prepared drawing on emerging findings and will be presented at the November Board meeting. This has also had the input of our APEX advisers, as has the action plan we are developing in response to Barriers to Training for the Bar and Differential Attainment research, to be published soon.
34. Further to revising the previous Equality Champions' job descriptions, Equality and Access to Justice Officers have been appointed by all departments; the first meeting has been planned for November.
35. Delivered by the E&AJ and supervision team, pilot anti-discriminatory training has been planned for Lincoln's Inn practice management course for mid-November.
36. An internal project group has been established to deliver a Race Equality Round table in January 2018.
37. The Head of E&AJ has been liaising with the Pensions Regulator to deliver a leadership diversity workshop in January 2018 in support of their aim to increase staff and consumer involvement with their equality strategy. If this is successful we will consider using it at the BSB and with other legal regulators. Westminster Legal Policy Forum has invited the Head of E&AJ to represent the BSB at a keynote seminar 'Diversity and Inclusion in the Legal Profession' taking place in March 2018.

**Professional Conduct Department*****General Data Protection Regulations (GDPR)***

38. At the end of October PCD facilitated an Operational Management Team Meeting (to which Resources Group and Representation, Policy & Services managers were invited) to raise awareness at management level of the issues surrounding GDPR. We delivered a presentation covering the key changes, practical implications, and steps to compliance. This was followed by group exercise aimed at identifying action points and organisational training needs. The session was extremely productive in ensuring that we are working towards compliance across the organisation, and adopting a joined-up approach to aspects such as policy review and planning staff training.

***Information sharing with the Legal Ombudsman (LeO)***

39. PCD staff also travelled to Birmingham in late October to meet with LeO to discuss data sharing arrangements and update the operational protocol under which our two organisations work together. Following this meeting, PCD facilitated a knowledge-sharing session for the wider BSB delivered by the LeO Resolution Centre Team Leader. The session was helpful in ensuring staff are fully conversant with LeO's purpose, service principles, business process and jurisdiction. LeO also provided staff with information about trends concerning complaints data and common queries.

***Disciplinary Tribunal Regulations***

40. The updated Disciplinary Tribunal Regulations came into force on 1 November 2017. As previously reported, we have amended a number of our policies to reflect these changes and the policies are now available on the BSB website here:

<https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/how-we-do-our-work/rules-and-policies/>

***Litigation***

41. The PCD is handling five legal cases only one of which is a judicial review.
42. We are still awaiting judgement in the matter before the Supreme Court that was heard on 4 October 2017 (an appeal against previous lower court decisions to dismiss a claim for discrimination on the basis the claim was time-barred).
43. The discrimination claim brought by a disbarred barrister before the Employment Tribunal has been listed for 7 December 2017. This is not a final hearing but has been listed to consider whether the claim is still being actively pursued. There is also a claim before the county court for discrimination by a different complainant: this case has been stayed until the end of November, pending an internal review of the decision to dismiss.
44. Finally, in the Judicial Review case, about a decision not to investigate a complaint, the Administrative court has refused permission.

**Regulatory Assurance Department*****Anti-Money Laundering and Counter Terrorist Financing***

45. HM Treasury have published their second National Risk Assessment (NRA); [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655198/National\\_risk\\_assessment\\_of\\_money\\_laundering\\_and\\_terrorist\\_financing\\_2017\\_pdf\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf). The legal sector continues to be assessed as high risk for money laundering, with terrorist financing being assessed as low risk (para 7.3). We have been engaging with HM Treasury to help ensure that we have a shared view of risk and this reflected in a more sector-specific analysis compared to the last NRA in 2015. The NRA states that legal services at highest risk of exploitation are trust and company formation, conveyancing and client account services. Barristers have been assessed as being exposed to lower risks because of the limitations on what they are permitted to do (para 7.4). We intend to reflect the results of the NRA in our own risk assessment, which we are required to do under the Money Laundering Regulations, and provide a fuller report to the Board at a later date.
46. The Financial Conduct Authority has been consulting on a draft Sourcebook (supervision manual), for the Office for Professional Body Anti Money Laundering Supervision (OPBAS). We have responded to the FCA consultation (available here): [https://www.barstandardsboard.org.uk/media/1896178/2017\\_10\\_19\\_opbas\\_consultation\\_bsb\\_response.pdf](https://www.barstandardsboard.org.uk/media/1896178/2017_10_19_opbas_consultation_bsb_response.pdf)
47. The FCA have launched a further consultation on the fees structure for OPBAS; <https://www.fca.org.uk/publications/consultation-papers/cp17-35-recovering-OPBAS-costs-fees-proposals>. The consultation explains proposals for recovering the costs of establishing and running OPBAS. We are currently preparing our response to this consultation, which is open until 8 January 2018. A meeting is planned in December.



48. We have continued to engage with HM Treasury for the compilation of evidence for the FATF Mutual Evaluation Review of the UK in 2018. This has now been submitted and the next stage will be to support HM Treasury in responding to FATF questions and identifying the list of supervisors and “relevant persons” who will be scheduled to meet the assessors when they are onsite.

***Authorisations***

49. The Review Panel sat on 7 November and considered 4 applications for review. All first instance decisions were upheld, with amendments to conditions. Assurance measures and robust information gathering mechanisms are in place to ensure the consistency and standard of decision-making is maintained.
50. Since the induction day in mid-September, the APEX adviser has been used on 2 occasions. On an ongoing basis the type of query for which input is being sought and the expertise provided is being captured to ensure knowledge is passed onwards to the executive.
51. Internal Audit Review will take place during week commencing 4 December 2017.

***Entity Regulation***

52. The entity regulation scheme continues to operate as business-as-usual. There are 80 authorised and 6 licensed bodies currently regulated by the BSB to provide reserved legal activities.

***CMA Report - Promotion of the use of independent feedback platforms***

53. The BSB’s Action Plan to achieve this outcome commits us to conducting research and publishing guidance on engaging with client feedback – online and offline. The Supervision Team is taking the lead on this work stream within the framework of the overall programme governance. A plan of work has been set out to source input from chambers, entities, consumer and other professional bodies about how (and if) feedback about legal services is gathered and used to improve services for consumers. We will use the research to inform guidance for publication in March 2018.

***Youth Court Advocacy***

54. The board will recall that in October they took a decision which requires barristers currently working in the Youth Court (or who have done so in the last 12 months) to register with the BSB and, in doing so, to declare their competence against the BSB’s Youth Proceedings Competences. Our work in the last month has focussed on embedding this decision into our existing processes. In practice, this has involved taking a paper to the Education and Training Committee about the interaction of this change with FBT, speaking to the Authorisation team and the Bar Council Records Team and updating FAQs and guidance for the MyBar portal.
55. We have also started working on reviewing the evidence on whether to extend registration to barristers who engage with young people in proceedings in courts other than the Youth Court.
56. In addition, we have continued to prepare for our session at the Youth Justice Convention on the 21 November. It is entitled “*What does good advocacy in the youth court look like?*” The session will bring together our contacts in the sector, including a District Judge with a portfolio for training in the Youth Court and a specialist Youth Court

solicitor. Speakers will make short presentations based on their experience which will be followed by a question and answer session.

57. Our Youth Proceedings competences and guidance now appear on the Youth Justice Resources hub along with the Youth Proceedings Advocacy Review. The hub is a specialist resource for those working across the Youth Justice sector, so this is excellent visibility for our work.

### **Quality Assurance**

58. In the light of the board's discussion at the last meeting we have met with the BSB research team to discuss the evaluation of the new CPD framework. An update on the development of assuring standards at the Bar will be provided to the Board in Feb/March.

### **Training Supervision and Examinations**

#### **BPTC**

59. There are now eight providers of the BPTC across 15 sites in England and Wales. In January 2017, approval was granted for BPP to provide the course at their centre in Bristol starting in September 2017.
60. As previously reported, BPP and Cardiff requested and were granted an increase in validated student numbers from Academic Year 2017-18.
61. The number of registered candidates has increased in the 2017 intake (Table 1). Some of the increase can be attributed to the new BPP Bristol site and the increase in student validated places for both BPP and Cardiff. However, out of the 108 new validated places that were available, only 52 have been taken up. There may also be some potential impact from students wishing to complete the course before changes related to FBT are implemented, but this is speculation.

**Table 1. Enrolled BPTC candidates, 2010-2017**

2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
1669	1803	1619	1505	1409	1423	1624

#### **BCAT**

62. The cut score for the BCAT was raised from 37 to 45 in December 2016. One of the reasons for this was to reduce the number of candidates with a very low likelihood of passing the BPTC from investing a significant amount of money on the BPTC. Candidates are now given a report indicating their likelihood of success on the BPTC based on their BCAT score. Data regarding the BCAT is now included in the BPTC Key Statistics document which is published each year; however, full evaluation of the impact of the raised cut score will not be possible until the BPTC performance data of the 2017/2018 cohort is available.

**Centralised Examinations**

63. The confirmed post-intervention outcomes of the Spring 2017 assessments are as follows:

	<b>2017 Spring Sit</b>	<b>2016 Spring Sit</b>	<b>2015 Spring Sit</b>	<b>2014 Spring Sit</b>	<b>Change Spring 2016 to 2017</b>
<b>Professional Ethics</b>					
Number of Candidates	1,589	1,570	1,572	1,649	+19
Passing MCQ	N/A	97.4%	91.5%	81.0%	N/A
Passing SAQ	57.6%	70.8%	58.0%	65.6%	-13.2%
Passing Overall	57.6%	70.2%	56.7%	59.6%	-12.6%
<b>Civil Litigation</b>					
Number of Candidates	1,597	1,499	1,595	1,663	+98
Passing MCQ	60.2%	74.1%	71.3%	68.6%	-13.9%
Passing SAQ	N/A	68.4%	65.0%	67.8%	N/A
Passing Overall	60.2%	62.2%	58.0%	57.4%	-2.0%
<b>Criminal Litigation</b>					
Number of Candidates	1,502	1,421	1,483	1,586	+81
Passing MCQ	78.2%	85.9%	83.3%	84.1%	-7.7%
Passing SAQ	N/A	72.1%	64.2%	78.2%	N/A
Passing Overall	78.2%	70.3%	62.5%	72.8%	7.9%

64. The Chair's report has been sent to BPTC directors and will be published in the first week of November.
65. The final examination board for the Summer 2017 assessments took place on 19 October. The results were released to Providers on 25 October. The national pass rates were:

	<b>2017 Overall</b>	<b>2016</b>	<b>Change from 2016 (figures rounded)</b>
Professional Ethics	56.6%	67.5% (SAQ only)	-10.9%
Civil Litigation	43.9%	54.5% (Overall)	-10.6%
Criminal Litigation	47.2%	61.1% (Overall)	-13.9%

66. As the assessment formats have changed, it is not possible to provide a like-for-like comparison with passing rates for previous years. The most useful points of comparison with previous diets are the Short Answer Question element only for Professional Ethics, and the overall passing rates for the Litigation subjects. However, the introduction of Single Best Answer type multiple choice questions has made the Litigation assessments more challenging than the previous MCQ assessments and this is reflected in the lower passing rates for 2017.
67. The Chair's report will be published in early December.

**Communications and Stakeholder Engagement**

68. Since this report was last prepared for the Board, the following press releases have been issued:
- 27 October: Press release about the Board’s decision to revise the rules relating to authorisation to practise and public access work following consultations; and
  - 1 November: Press release about the publication of updated disciplinary tribunal regulations and rules on parental leave in the new version of the BSB Handbook.
69. The Board will have seen the fortnightly media coverage that the above announcements generated.

***Work in Progress***

70. 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:
- Publication of the BPTC and pupillage attainment research findings;
  - Announcements about a new Chair for the BSB and new lay Board members; and
  - A press release to support the joint BSB and CBA session at the forthcoming Youth Justice Convention.
71. The team is also working on the following projects:
- Managing a series of public engagement events and roadshows to seek views for the current CMA and FBT consultations;
  - Preparing for the launch of the “My Bar” portal; and
  - Analysing the results of the recent BSB website user experience survey.

***Online and social media***

72. During October, 29,975 users visited the BSB website. At the time of writing, we have 18,323 followers on Twitter, 2,868 followers on LinkedIn and 410 followers on Facebook.

**Corporate Services*****Governance***

73. The second biannual update for APEX members was held on the afternoon of 8 November, with eight of the 11 appointed experts in attendance. The session was conducted as workshop sessions, with a focus on strategies to improve social mobility and diversity at the Bar. Outcomes will be used to inform forward work planning for the Strategy and Policy directorate.
74. The recruitment for the Chair of the BSB has concluded and we hope to be able to announce the appointment at this Board meeting, subject to agreement on terms. The Appointments Panel (including the Vice Chair of the BSB, a lay Board member, the Chair of the Bar Council, a nominee of the Lord Chief Justice, and two independent lay members) were unanimous in their decision on the appointment. Recruitment for three lay Board members continues, with interviews concluding the day prior to this Board meeting.

75. Recruitment for a barrister member of the Governance, Risk and Audit Committee concluded with the selection panel choosing not to make an appointment from the shortlisted candidates. In light of this, the committee will reconsider its membership requirements and whether these remain fit for purpose for its role in providing assurance to the Board.

***Corporate Support***

76. The team has begun work on the business planning for 2018-19 and the foundational work for the next Strategic Plan. Building on the successes of previous years to ensure that the organisation maintains our rigorous prioritisation processes.
77. Work on the formal agreement between the BSB and Resources Group have continued to develop. Conversations have been constructive and positive and a final agreement will be finished for approval at the next PRP meeting.
78. In collaboration with the Finance Team the team completed a comprehensive forecasting exercise for the entire organisation, more detail is available in the Performance Paper.

**Resources Group**

79. A comprehensive report on the activities of the Resources Group is included in the Board papers. Notable achievements in the Group this month have included:
- After the CRM system launch in late October a programme of staff training has begun. The transition to the new system has been seamless due to the hard work of the programme team.
  - The Finance Team supported a forecasting exercise in the BSB. Reviewing all areas of income and expenditure and making required accounting adjustments and corrections.
  - The Staff Survey results have been analysed and an action plan has been developed.
  - Annual fire marshal training was delivered, with first aid training planned for later in the year.
  - Preparation is ongoing to ensure compliance with the requirements of General Data Protection Regulation (GDPR). Bevan Brittan were recently appointed to assist with policy review.

**Vanessa Davies**  
**Director General BSB**  
**November 2017**