

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 19 May 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Aidan Christie QC
Malcolm Cohen
Justine Davidge – items 7-16
Judith Farbey QC
Andrew Mitchell QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford
Adam Solomon
Anu Thompson – items 6-16
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
James Wakefield (COIC representative) – items 1-10
Emily Windsor (Special Adviser, Education)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Chantal-Aimée Doerries QC (Chairman, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council) – items 1-10
- BSB Executive in attendance:** Vanessa Davies (Director General)
Viki Calais (Head of Corporate Services)
Sarah Charlesworth (Senior Policy Officer) – items 8-9
Julie Demeritt (Policy Manager, Regulatory Policy) – items 1-10
Eva Hales (Corporate Services Manager)
Oliver Hanmer (Director of Supervision)
Sara Jagger (Director of Professional Conduct)
Faryal Khurram (Senior Supervision and Authorisation Officer) – item 10
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amit Popat (Policy Manager – Equality and Access to Justice) – item 9
Jessica Prandle (Senior Policy Officer – Equality and Access to Justice) – item 9
Amanda Thompson (Director for Governance Reform)
Simon Thornton-Wood (Director of Education & Training)
Wilf White (Director of Communications and Public Engagement)
- Press:** Nick Hilborne (Legal Futures)
Chloe Smith (Law Society Gazette)

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Item 1 – Welcome

1. The Chair welcomed Members to the meeting, in particular the new barrister Board Member, Anupama (Anu) Thompson, who was attending her first meeting. He also introduced two new members of staff:
 - Julie Demeritt – Policy Manager, Regulatory Policy;
 - Eva Hales – Corporate Services Manager.

Item 2 – Apologies

2.
 - Rolande Anderson
 - Rob Behrens CBE
 - Naomi Ellenbogen QC (Vice Chair)
 - Andrew Langdon QC (Vice Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Andrew Lamberti (Communications Manager)

Item 3 – Members’ interests and hospitality

3. The following items were declared:
 - Aidan Christie QC – dinner at the White Swan restaurant (9 March 2016) hosted by the Chancery Bar Association for those who spoke at its Conference in January 2016;
 - Sir Andrew Burns – drinks reception in the House of Lords (18 May 2016) following the State Opening of Parliament.

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 17 March 2016.

Item 5 – Matters Arising

5. None.

Item 6a – Action points and progress

6. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

Item 7 – PRP Committee Report for Q4 (Jan 2016 – Mar 2016) and year-end 2015-2016

BSB 032 (16)

8. Anne Wright highlighted the following:
 - 19 out of 31 business plan activities were completed on time during the 2016/16 business year and within budget. The remaining 12 have been carried over to 2016/17 as a result of re-scheduling, rather than financial reasons. This suggests a continuing need to improve forward planning and ensure timelines are realistic, particularly for complex projects such as the Future Bar Training programme;
 - staff turnover remains high at over 30% and the Part 2 papers give greater analysis and insight on this issue. In overall terms, however, the PRP Committee has been pleased with recent improvements to the HR service;
 - a KPI for entity authorisation decision time has been included following the authorisation of the BSB as a licensing authority;
 - the KPIs for the Professional Conduct Department remain slightly below target for the year, though Quarter 4 results were particularly impressive;

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- income for the year was down 24% against budget. The Board was warned about this earlier on in the year. This was due to low numbers of entity authorisation applications and a significant reduction in the volume of applications to the Qualifications Committee.
9. The Chair commented on the positive feedback from the LSB's evaluation of the BSB's progress towards achieving a "satisfactory" rating against the Regulatory Standards Framework. The LSB's report (issued 10 May 2016) agreed with the BSB's self-assessment ratings and complimented it on the improvements achieved.
10. Members commented as follows:
- the Q4 results for PCD are encouraging and commendable but it is not clear if this level of improvement will be sustained;
 - it would be helpful to know if there are any long-running cases that are still to be settled.
11. In response, the following comments were made:
- the results for individual quarters are affected by the number of cases that can be closed during that time. The Q4 figures are exceptional in this regard, though that should not understate the efforts made within the Department;
 - some long-running cases are still ongoing, though these are at the investigations and hearing stage, rather than at initial assessment. It had been delays within the Assessment Team caused by staff shortage that was the real cause of dips in performance measures earlier in the year;
 - the existing KPI target of 80% should be retained, though it should be borne in mind that this is an annual, not a quarterly, target.
12. **AGREED**
- a) to note the BSB's performance against the 2015-16 business plan.
 - b) to endorse the conclusions about the 2015-16 business year as set out in the executive summary of the report.
 - c) to note the addition of Entity Authorisation decision time to the Key Performance Indicators.

Item 8 – Immigration Thematic Review Report

BSB 033 (16)

13. The Board considered a report on the risks in the immigration and services market insofar as these relate to the regulatory functions of the BSB. The following comments were made:
- the compilation of the report prompted considerable liaison with external stakeholders. This has expanded the BSB's knowledge base and we hope to maintain these links for the future;
 - three new controls were proposed in the light of the review ie
 - ❖ illustrative examples of "good" and "poor" practice to supplement existing guidance for both barristers and consumers;
 - ❖ development of a "vulnerability framework" to help barristers assess and manage client vulnerability; and
 - ❖ publishing further guidance jointly prepared with other immigration advice and service regulators.
14. Members commented as follows:
- the workshop at the April Board Away Day on this topic was a useful precursor to the report;

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- the focus on consumer and risk management is welcome and indicative of the BSB's regulatory perspective. The new controls are sensible but, possibly, lack ambition;
 - the report highlights the sometimes detrimental impact of unregulated providers but the recommendations do not really address this issue;
 - the new controls are likely to be supported by those working in the sector. A collaborative approach is welcome – some very useful information is already available from other sources eg Law Society's guidance on judicial review.
15. In response, the following comments were made:
- the recommended new controls are a realistic assessment of what is achievable within available budget;
 - imposition of additional regulatory burdens should be avoided – the sector is already under pressure and more regulation may just result in fewer advisers;
 - the picture on unregulated providers is mixed. Some are known to benefit consumers, so simply seeking to take this resource away would not be in the public interest. It would be better to address information gaps so that reliance on unregulated providers was less necessary.
16. In debating the paper, the Board gratefully acknowledged the input of Kuljeet Chung, who is now on maternity leave.
17. **AGREED**
- a) to publish the immigration thematic review report on the BSB website.
 - b) to agree the recommendations as set out in paragraph 27 of the report as they relate to current BSB activities.
 - c) to approve the new controls as set out in paragraph 28 of the report.

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Item 9 – BSB 2015-16 Equality Objectives Progress Review and Developing New Objectives for 2017

BSB 034 (16)

18. The Board considered a 12-month progress update on the BSB's 2015-16 equality objectives. The report suggests a new approach to developing equality objectives for 2017. This involves consultation with all BSB departments so that any new objectives equate to existing projects that have a significant equality and diversity dimension eg women at the Bar research, immigration thematic review.
19. The following comments were made:
- eight of the 2015-16 equality objectives have been completed and the remaining two are in progress;
 - the 2017 objectives will be finalised by the end of this year. Consultation will extend to external, as well as internal, stakeholders.
20. The Chair reminded members that, following the dissolution of the E&D Committee, the Board is now expected to become more directly involved in equality issues.
21. The following comments were made:
- the BSB is already working productively with the Bar Council on matters of mutual concern about equality and diversity eg wellbeing at the Bar;
 - we have made progress on e&d but need to share these success stories and learning points more widely.

22. **AGREED**

- a) to note the 12-month progress review of the 2015-16 equality objectives as set out in Appendix 1 of the report.
- b) to approve the approach to developing the 2017 equality objectives as set out in paragraph 2 of the report and the action plan in Appendix 2.

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to note**

Item 10 – Youth Proceedings Advocacy Review: BSB Response

BSB 035 (16)

23. The Board considered a report setting out the BSB's response to the final report of the Youth Proceedings Advocacy Review by the Institute for Criminal Policy Research.
24. Oliver Hanmer thanked both Faryal Khurram and those Board Members who had joined the Task Completion Group for developing the response. He invited comments from the latter. In response, Justine Davidge commended the informative discussion on client vulnerability within the Group. Malcolm Cohen referred to paragraph 25 of the report concerning identification of poor performance. He commented as follows:
- reports on performance (whether good or bad) are rarely passed to the regulator;
 - we should encourage feedback from the judiciary in this regard and make clear the fact that the BSB's first aim is to help barristers improve their performance rather than to take punitive action;
 - ultimately though, if barristers continue to underperform despite remedial action, the BSB must then be prepared to take a stronger line.
25. The following comments were made:
- there seems to be a trend of pushing more serious cases to the Youth Court so there needs to be a corresponding push to raise the status of this type of work with barristers;
 - the MoJ and Legal Aid Agency need to take the lead in addressing this point by critically evaluating the pay levels available for Youth Court work which may be considered too low in view of the often complex and demanding cases involved;
 - the report suggests undertaking sampled visits to youth courts, though this may be less easy to arrange as these are not open courts. Sampling may only give a superficial understanding – what happens outside the courtroom may be equally, if not more, important. Sporadic visits may leave too much to chance so a more systematic approach would be preferable;
 - we need to be aware of balancing our concerns about this topic with other demands. As it stands, there is the potential for this to consume more in the way of BSB resources than we can reasonably afford;
 - the report identifies a plausible way forward by focusing on the competency requirements for those practising in Youth Courts. However we should approach regulatory intervention with care as the underlying reasons for a course of action taken by a barrister may lie with the instructions that person has received from client. In cases where the advocacy line is obviously inappropriate, it is reasonable to expect direct intervention at the time from the relevant judge.
26. In response, Oliver Hanmer commented as follows:
- the BSB is just one of several parties involved. The MoJ recently commissioned a similar report that will focus on how the youth justice system can most effectively interact with wider services for children and

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young people (the Charlie Taylor report on youth justice). The SRA is also now engaged on this topic, which it had not been before;

- we should therefore seek to build our working relations with the other stakeholders so that we can build a culture of trust and willingness to share information and so manage demand on our resources.

27. **AGREED**

- a) to note the response paper and the progress made since publication of the Youth Proceedings Advocacy Review.
- b) to endorse the way forward for the BSB as outlined in the response paper.
- c) to seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system.

OH

28. **Item 11 – Fees and Charges - update**

Viki Calais gave an update on fees and changes following the BSB's consultation on the "Full Cost Recovery" principle and "sliding scale" approach to setting fees. Only one full response was received (from the Bar Council), though two others were part completed. She highlighted the following:

- the largest non-PCF revenue streams are already operating under the above principles;
- the fees for authorisations (waivers, entity applications) will come under review this so that the sliding scale approach is appropriately applied.

29. Malcom Cohen referred to the low response rates and queried whether any meaningful conclusions could be drawn from this. In response the following comments were made:

- the Bar Council regarded the consultation proposals as a "common sense" way forward. The lack of controversy combined with other, more contentious consultations, may have been contributing factors to the low response rates;
- any further consultation on authorisation fees will be more specifically targeted.

30. **AGREED**

to note the consultation results and that the Executive will:

- continue to work to the Full Cost Recovery principles where appropriate;
- carry out further in-depth analysis on authorisation fees.

Item 12 – Chair's Report on Visits and Meetings (Mar-May 16)

BSB 037 (16)

31. **AGREED**

to note the report.

Item 13 – Director General's Report

BSB 038 (16)

32. Vanessa Davies highlighted the following:

- comments from James Wakefield expressing his appreciation for the BPTC Key Statistics report published on 5 May 2016;
- her thanks to the staff involved in managing the BSB's self-assessment response to the LSB's Regulatory Standards Framework.

33. **AGREED**

to note the report.

Item 14 – Any Other Business

34. None.

Item 15 – Date of next meetings

35. • Thursday 23 June 2016.

Item 16 – Private Session

36. 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) Women at the Bar Report;
 - (2) Approval of Part 2 (private) minutes;
 - (3) Matters Arising;
 - (4) Action Points and Progress;
 - (5) Corporate Risk Register;
 - (6) Independent regulatory decision making at the Bar Standards Board;
 - (7) Annual Communications Team Metrics;
 - (8) Any other private business.
37. The Board also agreed to invite the Chairman and the Chief Executive of the Bar Council to remain for item 1 of the Part 2 agenda (Women at the Bar Report). This was because the report covered an issue of equal relevance to the Bar Council.
38. The meeting finished at 5.30 pm.