

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 27 July 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Rolande Anderson
Aidan Christie QC
Justine Davidge – items 9-15
Judith Farbey QC
Steven Haines
Nicola Sawford
Adam Solomon
Anu Thompson
Anne Wright CBE – by phone
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
Andrew Walker QC (Vice Chair, Bar Council)
- BSB Executive in attendance:** Jake Armes (Policy & Projects Officer)
Joseph Bailey (Policy & Projects Officer)
Oliver Finlay-Smith (Communications & Public Engagement Officer)
Rebecca Forbes (Governance Manager)
Sara Jagger (Director of Professional Conduct)
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 to the meeting. He also paid tribute to Stephen Crowne and wished him well for the future. Stephen retires from his role as Chief Executive of the Bar Council at the end of August 2017.

Item 2 – Apologies

2.
 - Alison Alden OBE
 - Naomi Ellenbogen QC (Vice Chair)
 - Zoe McLeod
 - Andrew Mitchell QC
 - Andrew Langdon QC (Chair, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - James Wakefield (Director, COIC)
 - Vanessa Davies (Director General)
 - Joanne Dixon (Authorisation Manager)
 - Oliver Hanmer (Director of Regulatory Assurance)
 - Andrew Lamberti (Communications Manager)

Item 3 – Members’ interests and hospitality

3. Sara Jagger made a declaration in respect of her own and Vanessa Davies’s attendance at the Annual Dinner of Association of Regulatory & Disciplinary Lawyers on 30 June 2017. Sara attended as a guest of Ward Hadaway Solicitors and Vanessa as a guest of Kingsley Napley.

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 22 June 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. Due to the size of the agenda for the September meeting, the item on the Q1 performance report will be “starred” and therefore not discussed unless a Board Member gives prior notice that this should occur.

Item 7 – Annual Report 2016-17

BSB 048 (17)

8. Wilf White commented as follows:
- after the agenda papers were dispatched, some further changes were made to the Chair’s opening statement and BSB organogram. These amendments give greater emphasis to the role of the Board;
 - the expenses quoted for Board Members in the draft Report are incorrect. These will be amended, along with several other typographical errors;
 - the cost transparency metrics (Annex 2) will be published separately from the main Report. This is at the request of the LSB.
9. Members commented as follows:
- the Annual Report has a welcome focus on the “business as usual” aspect of the BSB’s work;
 - some hard copies should be produced for circulation to stakeholders;
 - the section on income and expenditure is clear and comprehensible;
 - some further clarification is required on the infographics ie:
 - the figures quoted for various disciplinary findings (52 / 19 / 5) do not match the numbers illustrated in the graphic. It is also unclear if the latter two figures are subsets of the first;
 - the reference to the “Women at the Bar” survey is in very small print and easy to miss. This should be given greater prominence.
 - the cost transparency matrix includes a figure for the “total permitted purposes reserve”. Some explanation of what this means should be included.

10. AGREED

to publish the Annual Report subject to the above further amendments.

WW

Item 8 – Enforcement Report 2016-17

BSB 049 (17)

11. Aidan Christie QC commented as follows:
- the report shows that the Professional Conduct Department was short staffed for most of the period (1 April 2016 – 31 March 2017). In the circumstances the performance achieved, as measured by the KPIs, is very commendable;
 - there is no reference to the “user feedback survey”. The reasons for this are as stated in paragraph 1.6 of the report.
 - the number of requests for review which resulted in cases being reopened increased significantly (paragraph 2.53 of the report);
 - increasingly more decisions are now taken by staff in line with the revised governance arrangements. Only the more serious cases are now subject to committee decision.
12. Sara Jagger commented as follows:
- the Department was very grateful for the support of the Professional Conduct Committee, particularly at a time when staffing shortages were particularly acute;
 - some further proof reading of the report will be undertaken prior to publication. Two necessary amendments to the text are:
 - paragraph 1.19 – the range should be 8-25%;
 - paragraph 2.26 – the number of assessments rated “high risk” has fallen by 50% (not 100% as quoted).
13. Rolande Anderson referred to paragraph 4.7 concerning casework lessons. The third sentence needs the words “a lack of” inserted before the word “integrity”.
14. **AGREED** to publish the Enforcement Annual Report 2016-17 subject to the above amendment and further proof reading. **SJ**

Item 9 – Authorisations Governance Review: Update on Implementation

BSB 050 (17)

15. Rebecca Forbes commented as follows:
- the report summarises progress on authorisation governance procedures prior to disestablishment of the Qualifications Committee;
 - two new APEX members and all eight members of the Authorisations Review Panel (ARP) have been appointed;
 - revisions to the Standing Orders (SOs) and Scheme of Delegation have been drafted for the Board’s consideration.
16. Adam Solomon concludes his chairmanship of the Qualifications Committee at the end of August when it will be disestablished. However, it would be helpful for the Executive to have a continuing point of contact on the Board for authorisation related issues. He therefore offered to take on this role, which the Board gladly accepted.
17. Judith Farbey QC noted that the proposed Standing Orders require the Authorisations Review Panel (ARP) to have a lay majority. She queried the need for this. There is a risk that we lose nimbleness and responsiveness as a result and there does not seem to be an obvious public interest argument to justify the requirement.

18. In response, the following comments were made:
- the Qualifications Committee agreed there should be a lay majority on the ARP because that is consistent with our general approach on governance. Moreover, it tends to be barrister, rather than lay members, who find attendance difficult.
 - we can monitor attendance and keep the matter under review. Should it prove problematic in practice, we can reconsider the issue.
19. **AGREED**
- a) to note the report.
 - b) that Adam Solomon be the Board's point of liaison with the Executive for Authorisation related issues. **JD to note**
 - c) to approve the proposed revisions to the Standing Orders and that these take effect from 1 September 2017.
 - d) to note the amendments to the Scheme of Delegations consequential to the Board's earlier decision to disestablish the Qualifications Committee.
 - e) to approve the new delegations as set out in Annex 2 with immediate effect. **RF / JD to note**
20. **Item 10 - After the Event insurance**
BSB 051 (17)
Joseph Bailey and Ewen Macleod highlighted the following:
- in response to several enquiries from barristers, we propose to permit BSB entities and self-employed barristers to recommend and arrange "After the Event" (ATE) insurance ie the cover for legal costs which a claimant must meet when a claim is unsuccessful. The number of enquiries is low although one BSB regulated entity is already acting as an approved representative of an FCA regulated firm;
 - notwithstanding this, we do not propose that the BSB applies to become a designated professional body (DPB) for financial services activities. This is because of low demand; it is not our area of specialism and alternative regulatory arrangements are available;
 - our rules do not prohibit this type of work but, to undertake it, a barrister would either have to be practising within an entity that is regulated by the Financial Conduct Authority (FCA) or become an "appointed representative" (AR) of an FCA regulated firm.
 - CILEx Regulation is in a similar position to the BSB in that it, too, is receiving ATE enquiries from its members but, equally, does not wish to become a designated professional body. The BSB's Senior Management Team therefore supports the proposal to establish a joint Memorandum of Understanding between the BSB, CLIEx Regulation and the FCA. It would assist if authority to negotiate and sign off this MoU could be delegated to the Director General and the Director of Strategy and Policy.
21. The following comments were made:
- this will be the first occasion when a barrister is subject to the rules of a non-legal regulator. This is not the case for solicitors because the Law Society is a designated professional body. This means firms can undertake these type of activities without being regulated by the FCA, if they can meet the conditions specified in section 327 of the Financial Services and Markets Act 2000;

- we need to take care that the wording of the Memorandum of Understanding is clear as to respective roles and does not open the door to “regulation creep” from the FCA;
 - we could authorise the start of negotiations with the other stakeholders on the MoU but the Board should see the final version before it is formally signed;
 - demand may be low now but it could develop, particularly if the number of ABS entities licensed by the BSB increases. It could therefore be appropriate to revisit the decision over whether to become a designated professional body in due course;
 - the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) makes it unlawful to receive referral payments as a result of making recommendations to clients on insurance matters in claims for damages following personal injury or death. Our guidance needs to reflect this point although the Handbook outlaws referral fees in any event;
 - following the agreement of an MoU, we should review regulatory arrangements in 12 months’ time.
22. The Chair also invited comment from Andrew Walker QC on behalf of the Bar Council. He commented that the market for ATE insurance is potentially large but remains hazardous for those without significant experience. The Bar Council’s Ethical Committee took a fairly neutral stance when the issue was first discussed but agreed to make clear the pitfalls to barristers and discourage them from taking undue risks;
23. **AGREED**
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|----|---|----------------------------|
| a) | that, subject to satisfactory drafting of a Memorandum of Understanding with CILEx and the FCA, BSB entities and self-employed barristers be permitted to recommend and arrange ATE insurance policies but that this should be reviewed after 12 months of operation. | JB / EM
to note |
| b) | that negotiation on drafting the MoU commence with CILEx and the FCA but that the final draft version be presented to the Board for approval. | JB / EM |
| c) | that the regulatory guidance on ATE insurance as set out in Annex 1 of the report be published 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. | JB / EM |
| d) | that the BSB (and therefore the Bar Council) should not, at this stage, apply to become a designated professional body for financial services activities. | JB / EM
to note |
| e) | to note that BSB entities which obtain FCA regulation can remain insured by BMIF in respect of legal services. | |

Item 11 – Chair’s Report on Visits and Meetings: May - June 2017
BSB 052 (17)

24. **AGREED**
to note the report.

Item 12 – Director General’s Report
BSB 053 (17)

25. **AGREED**
to note the report.

Item 13 – Any Other Business

26. None.

Item 14 – Date of next meeting

27. Thursday 28 September 2017.

Item 15 – Private Session

28. 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 – 22 June 2017
 - (2) Matters arising
 - (3) Action points and progress – Part 2
 - (4) Determining risk appetite
 - (5) Independent regulatory decision making at the Bar Standards Board
 - (6) Future Bar Training: Autumn 2017 FBT consultation – Pupillage
 - (7) Future Bar Training: Research for Publication
 - (8) Update on Professional Indemnity Insurance (PII) Project
 - (9) Quality Assurance / maintaining standards at the Bar
 - (10) Regulatory Standards Framework – BSB self-assessment
 - (11) Any other private business
 - (12) Review of the Board meeting in terms of conduct and outcomes.
29. The meeting finished at 5.15 pm.