

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



Meeting of the Bar Standards Board
Thursday 27 July 2017, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

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1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes • 22 June 2017 (*)	Annex A Chair	3-7
5.	Matters Arising (*)		
6.	a) Action points and progress b) Forward agenda	Annex B Annex C Chair Chair	9-11 13
7.	Annual Report 2016-17 (4.35 pm)	BSB 048 (17) Anne Wright	15-64
8.	Enforcement Report 2016-17 (4.45 pm)	BSB 049 (17) Aidan Christie QC / Sara Jagger	65-100
9.	Authorisations Governance Review: Update on Implementation (4.55 pm)	BSB 050 (17) Joanne Dixon / Rebecca Forbes	101-133
10.	After the Event insurance (5.05 pm)	BSB 051 (17) Joseph Bailey	135-152
11.	Chair's Report on Visits and Meetings: July 2017 (*)	BSB 052 (17) Chair	153
12.	Director General's Report (5.15 pm)	BSB 053 (17) Vanessa Davies	155-163
13.	Any other business		
14.	Date of next meeting • Thursday 28 September 2017		
15.	Private Session		

John Picken, Governance Officer
JPicken@barstandardsboard.org.uk
20 July 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 270717

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 22 June 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Alison Alden OBE
Rolande Anderson
Aidan Christie QC
Judith Farbey QC
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Adam Solomon
Anu Thompson
Anne Wright CBE (items 7-13) – by phone
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – by phone
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
Andrew Walker QC (Vice Chair, Bar Council)
- By invitation** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Joseph Bailey (Policy & Projects Officer)
Corrine Charles (Head of Research)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
- Press:** Max Walters, Law Society Gazette

Item 1 – Welcome

- The Chair welcomed those present to the meeting. He drew Members' attention to the following events:
 - BPTC Conference (Board Members invited to attend) – Friday 14 July 2017, 9 am – 5pm, Hallam Conference Centre, 44 Hallam Street, London W1W 6JJ;
 - FBT Seminar for Board Members – Wednesday 19 July 2017, 5 – 7pm, BSB offices.
- He also remarked on the success of the FBT Seminar held on 19 June 2017 at the Grange Holborn Hotel, 50 - 60 Southampton Row, London. This attracted around 100 delegates and was very well received.

3. In addition, he reminded Members about the survey on Board meeting dates for 2018-19. Replies are required by 30 June 2017.

**BSB
Mbrs to
note**

Item 2 – Apologies

4. • Justine Davidge
• Andrew Langdon QC (Chair, Bar Council)
• Lorinda Long (Treasurer, Bar Council)
• Rebecca Forbes (Governance Manager)

Item 3 – Members’ interests and hospitality

5. Rolande Anderson made the following declarations:
- lunch with Nicholas Davidson QC (7 June 2017);
 - she was appointed as an independent member for a joint Business, Energy & Industry Strategy (BEIS) / Competition & Markets Authority (CMA) selection process, to interview new Panel Members for the CMA. Final interviews took place over June 2017.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 25 May 2017.

Item 5 – Matters Arising

7. None.

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

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

Item 6b – Forward Agenda (Annex C)

9. The Board noted the forward agenda list. The July agenda will now also include an item on the Board’s “risk appetite”.

Item 7 – Public Access Consultation – Application of cab-rank rule to public access cases

BSB 041 (17)

10. Joseph Bailey highlighted the following:
- a review of the Public and Licensed Access scheme took place last year and the results were presented to the Board in November 2016. A final report was published in March 2017;
 - since then, a consultation paper has been drafted (now due for publication). It recommends that we should *not* apply the cab rank rule to Public and Licenced Access cases. This is the view of the relevant Task Completion Group and the member of our Advisory Pool of Experts (APEX).
 - other recommendations in the paper are aimed at improving access to justice and include improvements for training barristers and information for consumers.
11. Members commented as follows:
- the analysis at Annex 1 states that applying the cab rank rules to Public and Licensed Access cases could have “a disproportionate impact on some sections of the Bar”. It would help to explain why this is the case;
 - question 6 asks about possible changes to the Scope of Practice Rules. However what is proposed could have unintended consequences. If, as suggested, these are amended to allow any client unable to complain to LeO to instruct *any* barrister directly, then the

barristers concerned *could* be subject to the cab rank rule. This is because they would be practising outside the scope of the established Public and Licensed Access schemes. This needs clarification;

- we need to continue to monitor the number of public access cases that are declined by barristers. Current rejection rates seem high;
- the requirement that barristers continue to supply information on how to complain is welcome as is the proposal to improve feedback routes from clients to barristers;
- it would be useful to seek responses to the consultation from a range of organisations including consumer representatives.

12. Regarding the latter point, Ewen Macleod suggested we distil down the questions to consumers bodies to just those where it would be particularly helpful to have their feedback and then target relevant organisations accordingly.

13. **AGREED**

- a) to note the consultation at Annex 1 of the report and the associated analysis comparing the status quo with applying the cab rank rule to Public and Licensed Access cases.
- b) to clarify the point made in respect of Scope of Practice rules (cf. min 11 above). EM
- c) subject to (b) above, to approve the recommendation not to apply the cab rank rule to Public and Licensed Access cases.
- d) to publish the draft consultation on the BSB website. EM

Item 8 – Draft Research Strategy 2017-19

BSB 042 (17)

14. Corrine Charles highlighted the following:

- the strategy sets out six research objectives to be undertaken over a two-year period. This is supported by a detailed work plan which identifies the tasks necessary for this to be achieved.
- it will build the evidence base on which the BSB depends for making its regulatory decisions. It should also increase awareness and visibility of the BSB’s research work, improve standards and staff capability within the Research Team.

15. Members commented as follows:

- the strategy is a welcome step forward. It aids transparency by publicly stating our vision for research together with the associated action plan. The proposal to publish anonymised primary research data is helpful;
- it places us in a much stronger position to work with other stakeholders through partnering arrangements on research. In addition to working with other legal regulators, we could consider other organisations, if the subject matter makes this appropriate eg Citizens’ Advice;
- the action plan states we shall introduce “external peer review as a final stage of quality assurance prior to publication of *externally commissioned* research findings”. We might also consider taking the same approach for internally produced work. Moreover, we should seek views from challenging perspectives and not just rely on those from familiar sources.
- it would help to know more about our general policy for research dissemination – there may be scope for a general policy of publishing findings including that at an interim stage of a project;

- the prioritisation of research work for larger projects is understandable but other, smaller scale issues still warrant attention particularly if these affect vulnerable groups;
 - the report quotes a range of activities undertaken by research specialists in the BSB (para 2.2. of the report). However, there is no reference to how we commission either external research or collaborative work with other organisations.
 - the report mentions plans to establish a “Research Panel”. It would help to know more about this.
 - the skills audit of the Research Team at Annex B of the report does not include “behavioural insight”, so this may be a gap;
 - it is not clear if the Bar Council has its own Research capability.
16. In response, the following comments were made:
- the points raised on peer review are accepted;
 - we already have extensive liaison with other legal regulators on research matters. This is done either through regular meetings with them or through the Research Forum. The latter body pools the plans for future research projects from which it is then possible to identify opportunities for collaboration;
 - our goal is to publish as much research data as we can, including that at an interim stage. Final research reports are already published as a matter of course with a supporting press release;
 - the Research Panel will be an in-house body of relevant BSB staff ie members of the Research Team and key contacts from other departments. It will discuss operational matters and generate ideas for future project areas;
 - currently we do not have in-house expertise in behavioural insight.
 - the Bar Council does not have sufficient budget to undertake large projects though there is a small reserve to fund key research. Where possible, it tries to work in partnership with others.
17. **AGREED**
- a) to approve the Research Strategy objectives and action plan as set out in Annex A of the paper.
 - b) to publish the Research Strategy on the BSB website.

CC

Item 9 – Chair’s Report on Visits and Meetings: May - June 2017
BSB 043 (17)

18. **AGREED**
to note the report.

Item 10 – Director General’s Report
BSB 044 (17)

19. Vanessa Davies thanked Justine Davidge for her presentation at the Future Bar Training event on 19 June 2017 as well as those staff who organised and contributed.
20. Judith Farbey QC referred to paragraph 24 concerning pupillage reform. She asked for further information about this, in particular the requirements that we set for the length and structure of pupillage.
21. Vanessa Davies referred to feedback from an earlier consultation. This had suggested there may be benefit for some pupils in having more than one supervisor. The review will consider this idea further.

22. **AGREED**
to note the report.
23. **Item 11 – Any Other Business**
None.
24. **Item 12 – Date of next meetings**
Thursday 27 July 2017.
25. **Item 13 – Private Session**
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 – 25 May 2017 (Annex A).
 - (2) Matters arising.
 - (3) Part 2 Action points and progress (Annex B).
 - (4) CMA report: approval of action plan.
 - (5) Remuneration of barristers.
 - (6) Regulatory risk update.
 - (7) Any other private business.
 - (8) Accommodation Options.
 - (9) Review of the Board meeting in terms of conduct and outcomes.
26. The meeting finished at 5.10 pm.

**BSB – List of Part 1 Actions
27 July 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
13b (22 Jun 17) – Public and Licenced Access	clarify proposed changes to the Scope of Practice rules in relation to the applicability of the cab rank rule to those barristers instructed by clients outside the formal Public & Licensed Access schemes	Ewen Macleod	immediate	26/06/17	Completed – the consultation paper clarifies that the cab-rank rule would not apply in these circumstances.
13d (22 Jun 17) – Public and Licenced Access	publish the draft consultation on Public & Licensed Access on the BSB website	Ewen Macleod	immediate	26/06/17	Completed
17b (22 Jun 17) – Research Strategy	publish the Research Strategy on the BSB website	Corrine Charles	immediate	17/7/17	In hand – the Strategy is being designed and will be published w/b 24/7.
16a (25 May 17) – Policy on parental leave	amend rule rC110.3.k concerning parental leave and issue a press release	Ewen Macleod / Wilf White	by end Oct 2017	18/07/17 09/06/17	In hand – we have received feedback from the LSB on a draft application and will submit the formal application shortly In hand – a draft application has been prepared to be shared with the LSB
21a (23 Mar 17) – Collection of practice area information	consult on changing the BSB's authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertake in each practice area	Ewen Macleod	by end Oct 2017	12/06/17 16/05/17	In hand – published w/c 12 June In hand – consultation being drafted, to be published by June
21b (26 Jan 17) – section 69 order to extend BSB's powers	discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers	Ewen Macleod	before end February 2017	18/07/17 16/05/17	Ongoing – current expectation is that order will be laid in Parliament during Autumn 17, coming into force April 18 Ongoing – wording of order agreed with MoJ. Progress delayed by election and will be dependent

BSB – List of Part 1 Actions

27 July 2017

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				15/03/17	on Parliamentary time being available later in the year. At this stage, we have done all we can to progress. Ongoing - Feedback given to MoJ lawyers. We have identified a need to get some external advice which we are seeking urgently.
				15/02/17	In hand – discussion held. MoJ lawyers have come back with advice and request for further instructions. We are currently considering the points raised, will update Board in due course.
15b (27 Oct 16) – definition of “employed barrister (non-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	09/06/17	Ongoing – additional guidance being produced to support final application to the LSB
				16/05/17	Ongoing – currently updating application in the light of LSB comments
				15/03/17	Ongoing – draft application due to be submitted to LSB by end March
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	18/07/17	Ongoing – update elsewhere on agenda 27 July
				16/05/17	Ongoing – TCG set up with Board and APEX members in June. Revised deadline for Board decision is September 17.

BSB – List of Part 1 Actions
27 July 2017
(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				15/02/17	Ongoing – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	On track – oral update on Part 2 agenda
				20/10/16	For discussion - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.

Forward Agendas**Thursday 28 Sept 2017**

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) – *starred item for this meeting*
- GRA Committee Annual Report
- CMA recommendations on transparency: approval of consultation
- FBT – approval of consultation
- Decision on PII Project (recommendation on whether to extend requirement to insure with BMIF to SPEs)
- Publication of diversity data: proposals for consultation
- Schedule of Board meetings Jan 2018 – Mar 2019
- Business Planning and Budget Bid for 2018-19, including qualification fee setting
- Corporate Risk Register

Thursday 26 Oct 2017

- Rule change application (practice area, ML, youth courts)
- Equality Objectives update
- Standard of Proof – response to consultation
- Education and Training Committee Annual Report
- Public and Licensed Access Review – consultation paper and rule change
- Statutory Interventions – operational update
- Quality Assurance of Advocacy
- Review of disciplinary tribunal services

Thursday 23 Nov 2017

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

Thursday 7 Dec 2017 (Board Away Day)**Thursday 25 Jan 2018**

- Final Report on PII Project
- Regulatory Operations Programme - Consultation Approval
- Update on FBT consultation

Thursday 22 Feb 2018

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

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19
- FBT Consultation report and policy decisions to inform Rule Change Application

Bar Standards Board Annual Report 2016-17

Status

1. For discussion and decision.

Executive Summary

2. This paper contains a near final draft of the 2016-17 Annual Report for consideration by the Board. The draft reflects comments and direction given by the Planning, Resources and Performance Committee. This paper contains a designed version to enable the Board to see the look and feel of the report as well as the text.

Recommendations

3. The Board is invited to:
 - a. **Discuss** the content of the report;
 - b. **Agree** that the report be published and promoted accordingly.

Comments

4. The Planning, Resources and Performance Committee considered the 2016-17 Annual Report at their meetings on 9 May and 26 June. Members provided direction as to the content and tone of the report at their meeting in May, and provided comments on an earlier draft at their meeting in June.
5. The 2016-17 Annual Report is the first annual report associated with the 2016-19 Strategic Plan. It has therefore been designed to look like it belongs to this strategic period. It generally follows the format of previous reports setting out our performance against objectives but this year has a particular focus on business as usual activities as well as major new projects. In response to the LSB's call for greater financial transparency by regulators we are also publishing a separate summary of key financial figures separately.
6. Like last year, the report includes a number of infographics designed to represent the BSB's activities during 2016-17. These infographics will also be used within social media to help us promote the report and the BSB in general.
7. As in previous years, the report itself will not generally be printed and is designed to be viewed primarily in electronic format. We will however produce a small number of printed copies to post to a few key stakeholders.
8. A final proof read and accuracy check will be made before final publication. Comments are welcome regarding any element of the report's content and design.
9. Please note that in order to minimize printing costs, only the first few pages of the report attached to this Board paper have been printed in colour. The pdf version to be made available on the website will all appear in colour.
10. This paper also includes a draft copy of a separate document entitled "Cost Transparency Metrics 2016/17". This contains the information that we are required to produce by the Legal Services Board. At the PRP meeting in June, it was agreed that we would publish this information in this way as a separate document published alongside the main Annual Report.

Resource implications

11. No additional resource is required. We have a budget for the production of the designed annual report.

Equality Impact Assessment

12. No equality impact assessment is necessary as there is no policy element to this report.

Risk implications

13. There are no significant risks associated with this report.

Impacts on other teams / departments or projects

14. All BSB departments have had input into the content of this report.

Regulatory objectives

15. The report relates to performance against the Strategic Aims in the Strategic Plan 2016-19. Those aims in turn were developed in the light of the regulatory objectives.

Publicity

16. The report will be published on the website following the July Board meeting. A press release will be issued to accompany its publication.

Annexes

17. Annex 1 – draft Annual Report
18. Annex 2: - draft Cost Transparency Metrics 2016/17

Lead responsibility:

Wilf White, Director of Communications and Public Engagement

Annual Report

2016/17

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest



Our year in numbers: 2016-17

We regulate almost

16,000

practising barristers.

(and a further 49,000 non-practising barristers are subject to our regulation)



We authorise over 60 specialised legal services businesses.



Chair

Our Board



8 Lay members
(including the Chair)



7 Barrister members



We seek to promote equality and diversity



We introduced a new Continuing Professional Development (CPD) scheme for established barristers on 1 January 2017.



208 applications

were received by us from solicitors, EU lawyers, overseas lawyers and legal academics wanting to transfer to the Bar.

Over 300 people

attended one of our 30 stakeholder engagement events, and a further 800 people registered to attend our CPD workshops.



336

complaints were opened against barristers



52

barristers had a disciplinary finding against them.

19

barristers were disbarred

5

barristers were suspended.



New regulatory approach to improve advocacy standards within Youth Courts announced.



1,333 respondents

to our Women at the Bar survey – results published in July 2016.



1,167 centralised assessment papers

were sat by students in August 2016 as part of their BPTC and a further 1,559 papers were sat in March 2017.

(NB: The spring BPTC exams took place between March and May, so further papers were sat by students in May 2017)



Who we are and what we do

We regulate barristers and specialised legal services businesses in England and Wales in the public interest.

We are responsible for:

- setting the education and training requirements for becoming a barrister;
- setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- setting standards of conduct for barristers;
- authorising organisations that focus on advocacy, litigation, and specialist legal advice;
- monitoring the service provided by barristers and the organisations we authorise to assure quality; and
- handling complaints against barristers and the organisations we authorise and taking disciplinary or other action where appropriate.

The Regulatory Objectives

Our objectives are laid down in the Legal Services Act 2007. We share them with the other legal services regulators. They are:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of citizens' legal rights and duties; and
- promoting and maintaining adherence to the professional principles.

Risk-based regulation

We do all of this by taking a proportionate, risk-based approach to regulation. This means that we are constantly monitoring the market for barristers' and advocacy services. We identify all of the potential risks that could prevent the Regulatory Objectives (see box panel) from being met. When we have done this, we focus our attention as the regulator on the risks that we think pose the biggest threats to the public interest.

We then take action to try and prevent those risks from occurring, or to reduce their impact. The work that we do is governed by the Legal Services Act 2007 as well as by a number of other statutes.

Please visit our website at www.barstandardsboard.org.uk to find out more about what we do.

Welcome to our Annual Report for 2016-17

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A personal word of introduction from BSB Chair, Sir Andrew Burns



Welcome to our Annual Report for 2016-17.

2016-17 has been a very busy year for all of us at the Bar Standards Board. Our work has included consulting on major Bar training reforms, reporting on our survey of women at the Bar, introducing a new Continuing Professional Development (CPD) scheme for experienced barristers, and responding to the Competition and Market Authority's (CMA's) review of the legal services market.

However, as well as explaining these flagship policy developments, I am keen for this Annual Report to shine a spotlight on the day to day tasks that we undertake when regulating barristers and specialised legal businesses in England and Wales in the public interest.

The reality is that most of our work – and most of the cost that we incur as a regulator – concerns business-as-usual activities. These are activities that we have a statutory duty to undertake and for which the size of our regulated community of barristers - and the complex nature of their work - dictates the extent, scope and cost of regulation.

As you will see from some of the graphics in this Report, we regulate almost 16,000 practising barristers as well as over 49,000 who are not practising as barristers but still have to abide by the rules in the BSB Handbook. We supervise their activities, process their applications and waivers with regard to our practising rules, answer their queries, and generally aim, in the public interest, to support their work as barristers.

Barristers are professional people who generally abide by the highest possible ethical standards and our legal system is rightly the envy of the world. But, from time to time - and in a very small number of cases considering the total number of practising barristers - we also have to take disciplinary or other enforcement action against barristers when things go wrong.

We aim to do our work as efficiently as possible and in a way that delivers value-for-money for those who fund us.

As 2016-17 was the first year of our current three-year Strategic Plan, there were a number of significant policy developments announced or put into effect during the year. We describe these developments in more detail within this Report, but the highlights included:

- preparing barristers for the new, more flexible CPD scheme for established practitioners that came into force on 1 January 2017;
- publishing the Professional Statement, which now includes the Threshold Standard and Competences and sets out in more detail the skills, knowledge and attributes which barristers are expected to have on “day one” of being issued with a practising certificate;
- engaging with the Bar and other stakeholders in what proved to be our largest consultation ever and one which provoked strong feelings amongst some members of the Bar. The consultation considered a number of approaches to Future Bar Training (FBT) and ultimately led to our decision to authorise in future a limited number of training routes for prospective students to qualify as barristers;
- publishing a new equality and diversity strategy to continue the progress being made at the Bar in this area, and to improve access to justice;
- taking action to address unfair treatment of women at the Bar, following the publication of our 2016 survey findings;
- agreeing new measures to improve standards of advocacy within Youth Courts, including publishing new guidelines for barristers working in youth proceedings based on a set of essential competences that are expected of all advocates working with young people;
- preparing to license Alternative Business Structures (ABSs); and
- responding to the CMA’s report following its market study into the supply of legal services in England and Wales.

The CMA report concluded that competition in the legal services market for consumers and small businesses is not working well, largely because consumers and small businesses lack the experience and information they need to drive competition by making well-informed purchasing decisions. We agree with the CMA. Consumers are our most important stakeholders and it is vitally important that we do more to help them get access to justice.

As the Bar’s regulator, we will respond to the CMA’s findings. Our regulatory response – along with the responses of the other legal regulators - will form a large part of our policy development work during 2017-18 and beyond. Some of the issues raised by the CMA are challenging both for us and for the Bar itself: for example, its comments about the need for greater fee transparency. We recognise this, and will be seeking to engage with those we regulate on this topic, and before we make any changes to the BSB Handbook.

Speaking of engagement, one of the features of our work during 2016-17 was the extent to which we “got out and about” to meet organisations that represent legal consumers, barristers and other people with an interest in our work. Personally, I found these encounters particularly rewarding. We held a series of roadshows around the country to meet and speak with barristers ahead of the introduction of the new CPD regime, and to talk to students, barristers and training providers during the FBT consultation. All in, we hosted and supported 30 events in 2016-17 at which over 1,100 people attended or registered to attend (including our CPD webinar in October 2016).

All of us at the BSB regularly meet with our counterparts at the other legal regulators and at other relevant bodies to collaborate with them in our work.

We intend to continue and expand our engagement programme in 2017-18. We are very keen to hear feedback about every aspect of our work and to listen to the views of the public, barristers and other interested parties.

In addition to our CMA response, our other priorities for 2017-18 include:

- beginning to implement the reform of Future Bar Training;
- conducting research so that we can better understand the barriers for students and pupils with protected characteristics; and
- continuing to implement our recommendations to improve the experiences of young people who are the subject of proceedings in the Youth Courts, and the standards of advocacy that they receive.

The Board of the BSB, which I chair, is made up of eight lay and seven barrister members, and our role is to set the BSB's strategic direction, to make major policy decisions and to hold the Executive to account to ensure that they are meeting our regulatory aims and objectives. We met regularly throughout 2016-17 and continue to do so, ably assisted by our committees: the Governance, Risk and Audit committee ensures good governance and internal controls are maintained; the Planning, Resources and Performance committee helps to develop our strategic direction, to allocate resources and to monitor performance; the Professional Conduct committee decides whether or not to take enforcement proceedings against barristers who are alleged to have breached the BSB handbook; and the Education and Training committee determines the education and training which new barristers require as well as the training requirements that practising barristers must meet throughout their careers. I should also like to pay tribute to members of the Qualifications committee, which decided on individual applications for waivers or exemptions from those training requirements, but which now has been wound up as part of our current governance reforms. The Board look forward to continuing our role in the coming year.

Finally, I would like to thank all of my colleagues on the Board, our committee members, and our excellent executive team of staff for all of their hard work and effort during 2016-17. We are continuing to carry out the governance changes that we announced in 2015. Doing so has enabled us to realise real efficiencies in our regulatory operations. It has also allowed us to distinguish more clearly between policy-making and decision-making on individual cases, in the ways in which we conduct and oversee our activities. It has been a sterling effort by everyone concerned.

I hope that you enjoy reading the story of our year.



Sir Andrew Burns KCMG
Chair, Bar Standards Board

Our current strategic priorities

2016-17 was the first year of our three-year Strategic Plan running from 2016 to 2019. We published the new Plan in March 2016 to build upon our progress over the previous five years to become a more modern and efficient regulator.

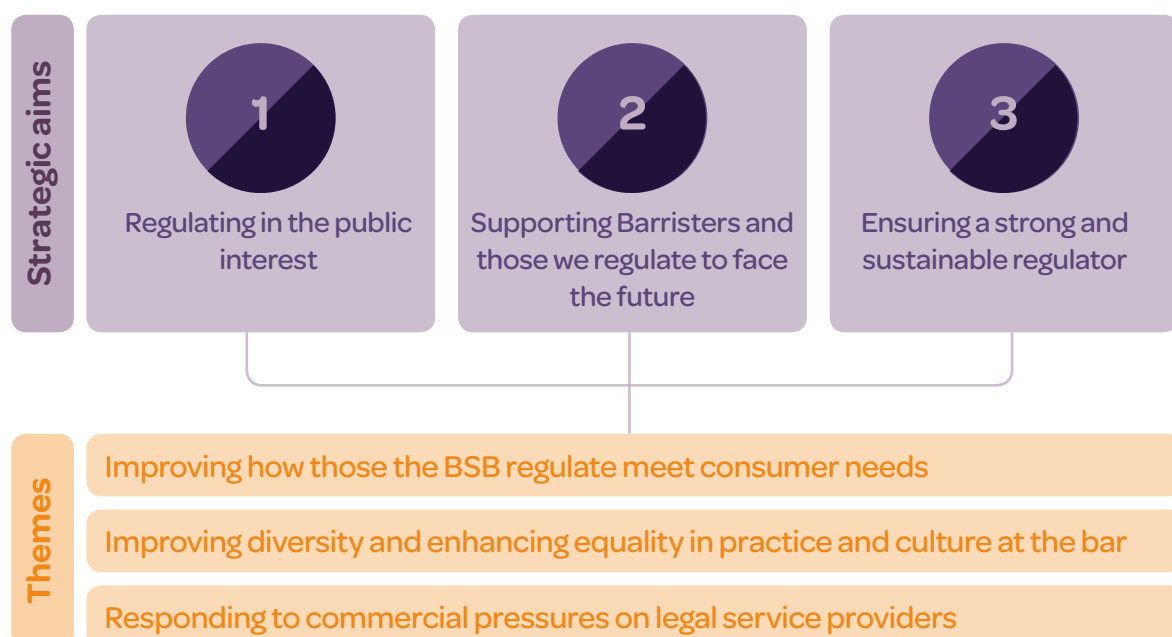
Our current Strategic Plan organises our work into three Programmes. Each Programme comprises both reform and continuing regulatory “business as usual” activities. These Programmes are:

1. regulating in the public interest;
2. supporting those we regulate to face the future; and
3. ensuring that there is a strong and sustainable regulatory function for the Bar.

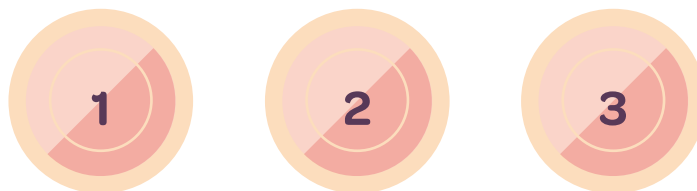
Embedded into these programmes is our approach to how we address the main risks we perceive to our Regulatory Objectives. These are the themes that we have identified as priorities through the work we have conducted to understand the market and the risks to the Objectives which may arise. The themes are:

- A. the risk of failure by those we regulate to meet consumer needs;
- B. the risk of lack of diversity, and discriminatory practice and culture at the Bar; and
- C. the risk of commercial pressures on legal service providers.

The diagram below represents our approach:



To help you understand how the work that we did during 2016-17 fits into our Strategic Plan, this Report uses these graphic devices to cross-reference pieces of work to one of our three strategic themes.



You can read more about our approach to regulating the Bar, risk-based regulation (including more about our risk themes) and our current Strategic Plan on our website at: www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/

Strategic Programme 1: Regulating in the public interest

This Programme is about ensuring that our regulatory approach promotes and protects the interests of consumers of legal services and the wider public. It includes making sure that we maintain our focus at all times on actions that help the public navigate the legal system and, where necessary, to interact with barristers.

We want to help the public to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have a better knowledge of their legal rights and duties as citizens. The recent CMA report has given further emphasis to the importance of this work.

We will develop our dialogue with the profession and consumers so that what we propose and what we do can be demonstrably evidence-based and risk-focused as well as understood by users and providers. We will do this by engaging with both the profession and consumers in face-to-face meetings and via digital channels where appropriate.

We will continue to strengthen and demonstrate our independence from the profession as is appropriate given our important regulatory objectives. This includes continuing to ensure our regulatory decision making processes are independent, consistent and transparent.

2

Strategic Programme 2: Supporting barristers and those the BSB regulates to face the future

This Programme is about supporting the profession so that it can continue to provide essential legal services at a high standard to the public in the years to come.

The legal services market is changing rapidly and will continue to do so. We will help the public to understand the separate nature and specific skills of the Bar in a legal world where regulatory constraints apply primarily to the reserved activities, such as advocacy in the higher courts and litigation. This is particularly necessary where the forces of unregulated competition will be increasingly felt in other areas of a barrister's work and competence. For example, the public needs to understand the difference between a fully qualified, regulated and insured barrister and a "McKenzie Friend" (someone who assists a person who is representing themselves in court (a "litigant in person") and who may be paid but who may not be either regulated or legally qualified).

We will seek to encourage the profession to cooperate more closely with solicitors and other legal professionals where that may offer advantages for the public. We will also continue our plans to authorise entities and Alternative Business Structures to provide barristers with further opportunities to innovate in the ways in which they can supply legal services.

We will ensure our regulatory frameworks do not pose unnecessary barriers to entering the market and we will reform legal education and training to sustain high standards while making training for the Bar more accessible, affordable and flexible.

3

Strategic Programme 3: Ensuring a strong and sustainable regulator

This Programme is about making sure that we take the necessary steps to remain an efficient and effective regulator for the Bar in the long-term.

We will continue to position the BSB as the regulator of legal services which have advocacy and specialist legal advice at their core.

We will actively promote regulatory governance arrangements which are constitutionally independent of government and of the profession we regulate, whilst at the same time ensuring that we maintain our credibility with the public. We will maintain and extend our accountability.

We will continue to promote our core values of fairness, integrity, respect, excellence and value for money. We will maintain our strong track record of transparency, accountability and good stewardship of resources by setting out clear and meaningful measures of success.

Adaptable plans for changing times

When we published our Strategic Plan in 2016, we acknowledged that there was a great deal of uncertainty concerning the regulatory environment in which we operate. For this reason, we needed to make sure that our Strategic Plan and our annual Business Plans were flexible and adaptable, so that we could respond to these changes and re-prioritise our work as and when necessary.

Although our three main risk themes have remained unchanged since March 2016, a number of events occurred during 2016-17 that required our attention. Most notable of these was the publication of the CMA report in December 2016. (This is discussed in more detail elsewhere in this Report.) Broader developments such as Brexit have also had an impact on our plans and priorities.

Despite this, as you will see on page 27 of this Report, nearly all of the tasks that we set ourselves in our 2016-17 Business Plan were delivered as planned and to budget.

Our teams and their work

This organisation chart shows how we are structured. A description of the work of each team is provided below. On 1 April 2017, we had 79 people employed at the BSB.

Our Board

Sir Andrew Burns KCMG – *(Chair)*
Naomi Ellenbogen QC – *(Vice-Chair)*

Barrister members - Aidan Christie QC, Justine Davidge, Judith Farbey QC, Andrew Mitchell QC, Adam Solomon, Anupama Thompson

Lay members - Alison Allden OBE *(from 1 January 2017)*, Rolande Anderson, Rob Behrens CBE *(resigned wef 31 March 2017)*, Dr Malcolm Cohen JP *(until 31 December 2016)*, Steven Haines *(from 1 January 2017)*, Zoe McLeod *(from 1 January 2017)*, Tim Robinson *(until 31 December 2016)*, Prof Andrew Sanders *(until 31 December 2016)*, Nicola Sawford, Dr Anne Wright CBE

Special Advisors (until 31 December 2016) – Keith Baldwin and Emily Windsor

BSB Director General

Dr Vanessa Davies



Regulatory Assurance

The Regulatory Assurance Department brings together all of our supervision and authorisation functions. Our aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the adherence to the standards set out in the BSB Handbook of both individual barristers and the chambers and entities in which they practise. This includes a risk-based approach to the supervision of chambers, the authorisation of new entities and the regulation of CPD.

We oversee the Academic, Vocational, and Pupillage stages of training that must be completed in order to qualify as a barrister. This includes all aspects of managing the centralised assessments on the current Bar Professional Training Course (BPTC). We also decide on individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

Professional Conduct

The Professional Conduct Department investigates concerns about the professional conduct of barristers and others whom we regulate and, where appropriate based on an assessment of risk, takes action against those who may have breached the Core Duties or other provisions of our Handbook.

We always use the same four stage process to ensure that we deal with all complaints fairly and efficiently. This process is described in detail on our website at: <https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/making-a-complaint/what-will-happen-as-a-result-of-your-complaint/>

When a complaint leads to a disciplinary tribunal these are arranged by an independent organisation called the Bar Tribunals and Adjudication Service (BTAS).

Barristers' Core Duties

The rules and code of conduct for barristers in England and Wales are contained within the BSB Handbook. There are ten core duties that all barristers must observe. These are:

Barristers must...

- observe their duty to the court in the administration of justice;
- act in the best interests of each client;
- act with honesty and integrity;
- maintain their independence;
- not behave in a way which is likely to diminish the trust and confidence which the public places in them or in the profession;
- keep the affairs of each client confidential;
- provide a competent standard of work and service to each client;
- not discriminate unlawfully against any person;
- be open and co-operative with their regulators; and
- take reasonable steps to manage their practice, or carry out their role within their practice, competently and in such a way as to achieve compliance with their legal and regulatory obligations.

The BSB Handbook is available on our website at: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>

Strategy and Policy

The Strategy and Policy Department brings together a number of functions, which underpin our role as a risk and evidence-based regulator. This includes regulatory risk and research functions, as well as responsibility for policy development and diversity.

We gather evidence about what is happening in the market and the impact that our actions are having – we do this by conducting research (either by ourselves or with others) and engaging with stakeholders who have an interest in our work. Where necessary, we use this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These are collated in the BSB Handbook. We develop policy on the educational pathways into the profession. In addition we develop policy on conduct of practice in areas such as chambers' complaints handling and direct public access to barristers.

Another area of particular concern is equality and diversity, where we set a number of objectives in our Equality Strategy.

Communications and Public Engagement

The Communications and Public Engagement Department is responsible for all of our internal and external communications including our publications, website, social media activity and media relations. It helps our other teams to engage with the profession and other stakeholders to make sure that we discuss our policy development plans in an open and consultative way.

Corporate Services

The Corporate Services Department provides support with strategic and business planning, management accounting and budgeting, reporting and ensuring that we maintain good practices, policies and procedures.

Resources Group

We share the following support services with the Bar Council: Facilities, Finance, Information Services, Human Resources, Records and the Project Management Office.

The story of our year

In this section, we outline what we achieved during 2016-17. If you want to see this reported against the list of activities that we set out in our 2016-17 Business Plan, please refer to the table on page 27.

Overall, we had **a productive and busy year**. Key highlights from the year included:

- introducing new measures to improve standards of advocacy within Youth Courts;
- introducing a new CPD scheme for established barristers;
- consulting the profession and others about the future of Bar training;
- publishing the results of our major survey about women's experiences at the Bar; and
- preparing to license Alternative Business Structures (ABSs).

However, most of our work regulating barristers is taken up with the day-to-day tasks necessary to oversee qualification for, and the activities of, the practising Bar. With almost 16,000 registered barristers in England and Wales and a further 49,000 unregistered barristers who are also subject to our regulation, these everyday **business-as-usual, regulatory tasks** account for around 80% of our costs. These tasks include:

- supervising barristers' chambers;
- assessing complaints about barristers' professional conduct;
- when necessary, taking appropriate disciplinary action against barristers who have broken the rules;
- issuing practising certificates to individual barristers on an annual basis, and thereby authorising them to practise;
- assessing and processing applications from barristers to extend their practising certificates to include authorisation for public access work and/or to conduct litigation;
- managing the centralised assessments for the Bar Professional Training Course (BPTC);
- supervising BPTC providers;
- assessing and processing applications associated with the education and training of barristers including those relating to pupillage, CPD, transferring qualified lawyers, and applications to become a pupillage training organisation;
- complying with our statutory equality and diversity responsibilities; and
- authorising entities and ABSs;

In order to assure value for money when conducting these "business-as-usual" activities, we have robust governance arrangements in place to make sure that we do this all as efficiently as possible. We have made good progress in this regard, as reflected by the fact that our directly controllable expenditure has remained steady over the past few years.

Assuring standards of practice by barristers

Making sure that members of the public can have confidence in the services that they receive from their barrister is one of the most important areas of our work. Assuring standards of advocacy is one of the bedrocks of the justice system and of the rule of law in general. The public must be able to rely on the standard of representation that they receive in court.

There are a number of ways in which we go about assuring the standards of practice delivered by barristers.

First, we closely **monitor and supervise barristers' practices**. In this way, we hope to be able to identify whether something needs to change in the barrister's practice. In most cases nothing needs to change but if something does – or we think there is a strong chance that something might go wrong in the future to prevent the barrister from providing a high standard of service and/or the impact of this could have serious consequences – circumstances which we term “high-risk” – we work collaboratively with the barrister's chambers to put things right. This could involve additional training, making a change to a barrister's working procedures or anything else that we think is necessary to assure standards.

Supervision is now embedded within our overall regulatory approach. The emphasis is on helping chambers manage compliance and risk to ensure that they are meeting their regulatory requirements and are doing what they can to prevent any risks that have been identified from occurring. We target those chambers that present the greatest risk (with reference to our Risk Index) – or where we receive information about a particular barrister or chambers that indicates high-risk. We visited a significant number of high-risk chambers in 2015-2016 which enabled us in 2016-2017 to focus our supervision activity where there remained evidence or there was new evidence of high-risk. This activity included six visits to chambers as well as on-going desk based supervision. This means that we make the best use of the resources that we have available in developing constructive and positive relationships with chambers where they are most needed.

The work undertaken by our Supervision team is one of the main ways in which we can assure the public that the majority of barristers and their chambers provide advocacy and other services to an acceptable standard.

Another way in which we can assure standards of practice is by taking **enforcement action** against the relatively low number of barristers who are found to have broken the rules of professional conduct.

Our method for investigating complaints about barristers' professional conduct is thorough, robust and fair. The public can be confident that appropriate action is taken against barristers who break the rules. Yet, at the same time, barristers can be assured that if they are the subject of a complaint, we will investigate it carefully and deal with it in a fair and proportionate way.

During 2016-17, we opened 366 complaints about the conduct of barristers. Eighty per cent of these complaints – many of which can be exceedingly complex - were concluded or referred to disciplinary action within agreed service standards. These service standards require that:

- initial assessment of a complaint be completed within eight weeks either by the complaint being closed without investigation or with it being referred to investigation;
- complaints from third parties be closed after investigation or referred to disciplinary action within eight months; and
- complaints raised by us be closed after investigation or referred to disciplinary action within five months.

During 2016-17, a total of 52 barristers had disciplinary findings made against them with 19 of these barristers being disbarred and a further five of them being suspended.

You can read more about the work of our Professional Conduct Department in our separate annual report about this aspect of our work. This report will be available on our website shortly after this Annual Report is first published.

Finally, if we think our rules about advocacy standards for barristers need to be amended we can apply to our oversight regulator, the Legal Services Board, to have them changed. We will only change the rules after we have developed a properly evidenced policy proposal, and engaged and consulted with the profession and other interested stakeholders about the change.

Our work on the proposed **Quality Assurance Scheme for Advocates** was put on hold while we waited for the Ministry of Justice to announce proposals for a defence panel scheme.

Two policy developments that we were able to take forward during 2016-17 were our ongoing work to address access to the market by those requiring immigration advice and representation, and our work to improve advocacy standards in the Youth Courts. In accordance with our risk prioritisation work, both of these developments relate to situations where barristers' clients have particular vulnerabilities.

In 2016, we published the results of our comprehensive **review of immigration services** and adopted a new set of recommendations. We conducted the review, because we identified this area as one where consumers are especially vulnerable and may find it hard to access the market to their advantage. The recommendations included a plan to develop a framework that barristers can use to assess and manage immigration client vulnerability, including questions a barrister can ask clients, and information about referral to other services if necessary. The plan also involves us publishing case studies alongside our existing guidance, outlining what "good" and "poor" service looks like to help immigration clients understand what to expect when they interact with a barrister, and their legal rights if they do receive a "poor" service. This guidance was published in June 2017.

In early 2017, we announced **a new regulatory approach designed to improve advocacy standards within Youth Courts**. We published new guidance for barristers working in youth proceedings based on a set of essential competences that are expected of all advocates working with young people. These competences are shown in the diagram below.



We also announced that later in 2017 we plan to introduce compulsory registration for barristers practising in youth courts. Whilst there are examples of good practice in this area, standards are variable. Registration will allow us to identify all barristers who are working in the Youth Courts and where necessary to take steps to ensure that they have the specialist skills, knowledge and attributes that are crucial when working with young people.

We continued to engage actively with key stakeholders and organisations about our work on Youth Court advocacy standards to ensure that barristers' work in this area is seen as a specialism. We have engaged with the Judiciary, the Inns of Court College of Advocacy, the Magistrates Association, the Youth Justice Legal Centre (part of Just for Kids Law) and the Youth Justice Board among other organisations.

We are increasingly being seen as a leader in this sector and are now a member of the Alliance for Youth Court Reform, headed by Lord Carlile CBE QC. Furthermore, we have received significant positive feedback and praise for our work from stakeholders in the sector.



In Focus: Why standards of advocacy in the Youth Courts matter.

No one could argue against the notion that every child deserves the very best chance in life. But what happens when that child ends up accused of a serious crime and finds itself caught up in the daunting world of the justice system? It can be difficult enough for some adults, let alone for children who may also have mental health issues, learning and communication difficulties and/or troubled backgrounds.

To illustrate the issues, we reproduce here a case study from the Youth Justice Legal Centre – one of the many stakeholders with whom we have worked to develop our new regulatory approach for improving standards of advocacy within the Youth Courts:

Juwon's story (not his real name):

Juwon was 16 years old when he was arrested after being found asleep in a flat that had been broken into. He was charged with burglary and bailed to appear at a youth court. At court he was polite, answered questions when asked, and agreed with the police statements. On this basis, he was advised to plead guilty.

The court heard he was in school and hoped to become a plumber. He was apologetic and remorseful. As he was automatically eligible for a referral order, the hearing lasted a few minutes.

In the weeks that followed, the Youth Offending Team (YOT) discovered Juwon was homeless. He had been living with his uncle and aunt; shortly before the burglary allegation, Juwon's uncle had died unexpectedly. Juwon was very close to his uncle and struggled to come to terms with his death. On the night of his arrest, Juwon had been drinking heavily and has no memory of how he came to be in the flat. His aunt was understandably upset at Juwon's behaviour and lack of respect, so cut all ties with him, leaving his belongings in black bags outside her home and refusing to come to the police station or court.

Juwon did not volunteer any of this information. A barrister with youth justice expertise would have known the importance of finding out background information and it is highly likely the Crown Prosecution Service would have reviewed their decision to prosecute. Regrettably, Juwon now has a criminal record for an offence of domestic burglary. This is likely to prove a barrier to his career aspirations.

Introducing a new Continuing Professional Development scheme for barristers

One of the ways in which barristers can ensure that they continue to demonstrate high standards of advocacy, and to provide a good level of service to their clients in other ways, is by undertaking Continuing Professional Development (CPD). This is why CPD is an important part of our regulatory toolkit. We have a statutory responsibility to assure the public, independently, that they can rely on barristers as being up to date and competent.

Indeed a commitment to the constant updating of knowledge and skills is the hallmark of all professions.

In January 2017, we introduced a new CPD scheme for established barristers with three or more years of practising experience, because we wanted to change the focus to be on the quality of barristers' CPD rather than the quantity. (The CPD scheme for barristers with less than three years' practising experience did not change.)

Compared with the previous CPD schemes, the new scheme means that established barristers:

- have more individual responsibility for deciding what CPD activities they require;
- are able to choose from a wider range of CPD activities; and
- no longer have a requirement to complete a minimum number of accredited hours.

The new scheme is illustrated in the diagram below and is explained further in the "In Focus" section on the next page:



The new scheme came into force after an extensive period of consultation with the profession, and after a trial had taken place during 2015. This meant that we could listen to the profession and refine the scheme to make sure its introduction ran smoothly, and that it met our objectives.

During 2016 we engaged with barristers up and down the country to make sure that they understood the new scheme and were ready to start complying with it. During the autumn, we held a number of “roadshow” events in all of the Circuits and ran a webinar which over 800 people registered to attend. The feedback from the events was very positive.

The new arrangements bring the CPD scheme for barristers in line with schemes in many other professions. The new scheme enables us to adopt a proportionate and cost-effective regulatory approach to barristers’ CPD by allowing us to spot-check individual barristers’ CPD plans. It shifts the emphasis from completing a specified number of hours to the relevance of CPD undertaken - a change that we think is in the best interests of the public.

We look forward to reflecting on the scheme’s first year of operation.



In Focus: What experienced barristers need to do to comply with the new CPD requirements.

In December 2016, after consulting the profession, we published a comprehensive set of guidance for barristers about the new CPD scheme on our website.

To demonstrate how the scheme works in practice, this guidance can be summarised as follows, and with reference to the four stages in the CPD planning cycle:

- 1. REVIEW:** Barristers should prepare a written CPD Plan setting out their learning objectives and the activities they propose to undertake during the year.
- 2. RECORD:** Barristers should keep a written record of the CPD activities they have undertaken over the past three years including their reflection on the CPD they have undertaken during that time, any variation in their plans and an assessment of their future learning objectives.
- 3. REFLECT:** Barristers should reflect on their planned and completed CPD activities to assess whether they have met their objectives.
- 4. REPORT:** Barristers must declare to the Bar Standards Board annually that they have completed their CPD. This should be completed as part of the authorisation to practise process, when they renew their practising certificate.

The full guidance for barristers can be found at: https://www.barstandardsboard.org.uk/media/1800835/cpd_guidance_for_barristers.pdf

Assuring standards of entry to the profession

A large part of the day-to-day business as usual work that we undertake as a regulator involves the process by which new barristers qualify to practise in England and Wales.

We have a duty to make sure that everyone who is authorised has met the necessary standards to be allowed to practise. This is one of the most important ways by which we assure the public that everyone being called to the Bar is fit to do so.

The following list shows the variety of **roles we play in the qualification of a new barrister**, as well as illustrating the scope and extent of the work that we undertook in 2016-17:

- **1,867** students took a Bar Course Aptitude Test – one of our regulatory requirements – in order to demonstrate their aptitude to complete the Bar Professional Training Course (BPTC) successfully;
- **1,423** students enrolled with a BPTC provider in order to study on the BPTC;
- **1,167** centralised assessment papers were sat by students in August 2016 as part of their BPTC and a further 1,559 papers were sat in March 2017 (NB: The spring BPTC exams took place between March and May, so further papers were sat by students in May 2017);
- **140** applications were received by us from students wishing to be exempted from various aspects of the academic or vocational stages of learning;
- **15** organisations applied to us to become a pupillage training organisation;
- **147** applications were received by us from prospective barristers for exemptions and waivers in relation to pupillage;
- **147** qualified overseas lawyers or qualified UK solicitors took the Bar Transfer Test in order to be eligible to practise as a barrister in England and Wales; and
- **208** applications were received by us from solicitors, EU lawyers, overseas lawyers and legal academics wanting to transfer to the Bar.

Many of the applications referred to above are dealt with by our Qualifications Committee under our current governance arrangements. However, from August 2017, this will change when the Qualifications Committee is disbanded to allow decisions of this nature to be made by our staff. This change is an example of where we are making every effort to streamline our processes and to ensure value-for-money for those who fund us. Where necessary, our staff will be able to access expert advice from our retained pool of experts (known as “APEX”).

Reforming the system for qualifying as a barrister

Our extensive review of education and training for barristers, known as “**Future Bar Training**”, has been running since late 2014. In 2016-17, substantive progress was made.

First, and most importantly, we published a revised version of the Professional Statement, which now includes the Threshold Standard and Competences. It sets out in more detail the skills, knowledge and attributes which barristers are expected to have on “day one” of being issued with a practising certificate.

The Professional Statement is an important component of our Future Bar Training programme of reforms, because it underpins the future system of training for the Bar. It describes the standards by which anyone hoping to practise as a barrister in the future will be assessed. Please see the diagram below for an overview of what the Professional Statement contains.

The Professional Statement: an overview



The full version of the Professional Statement is available on our website at: <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/professional-statement/>

Having finalised the Professional Statement to incorporate the Threshold Standard and Competences, the next stage was for us to consult on possible approaches for new training pathways.

In July 2016, and before we launched our consultation paper in October, we held a public “debate” event about potential options for the future. Speakers at the event included representatives from BPP University, the Chancery Bar Association, the Council of the Inns of Court (COIC), Northumbria University, and on behalf of the employed Bar, a speaker from HMRC. Each speaker argued in favour of a different approach for training barristers in the future.

Our consultation, launched in October, outlining different approaches for training generated an unprecedented level of interest and response, with over 1,100 respondents, including an open letter in support of the COIC/Bar Council model signed by over 500 barristers. The responses included those that we received when we held a series of “roadshows” around the country for students, barristers and legal academics to share their thoughts on the approaches with us.

The response that we received helped our Board make a final decision on some important issues at its meeting in March 2017. The Board’s decisions and the next steps are outlined in more detail in the “In Focus” panel the next page.

At the same time, the Board also agreed a Policy Statement setting out our vision for the future of Bar training. This is available to read on our website at: <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/future-ways-to-qualify-as-a-barrister/>

As we move now onto the implementation phase of our “Future Bar Training” programme, we remain committed to transparency and engagement with everyone affected by the changes, and especially with students considering a career at the Bar in the future. We plan to communicate openly at every stage of the development of the new training approaches, and are happy to speak with anyone who has questions or concerns at any step of the way.



In focus: The Board's decision to authorise a limited number of future training routes for prospective students to qualify as barristers

Following the consultation, the Board decided to authorise a limited number of future training routes for prospective students to qualify as barristers. One of these is likely to be the new training course, proposed by COIC and the Bar Council.

It was also decided:

- that the Bar should remain a graduate profession normally requiring at least a 2:2 classification;
- that we should continue to specify the seven foundation subjects which make up a qualifying law degree;
- that there is no need at present to change the rules that define a barrister as someone called to the Bar by one of the Inns of Court;
- that the Bar Course Aptitude Test should be retained; and
- that we should review the way in which Ethics is taught and assessed.

At the time of writing this Annual Report, we are preparing to publish an Authorisation Framework in consultation with stakeholders in order to assess all future training routes against the criteria of:

- flexibility (encouraging, for example, the options of part time study, distance learning and integration with paid work);
- accessibility (offering support to students from under-represented groups);
- affordability (improving the value for money of the present system); and
- sustaining high standards (so that consumers can be certain that every barrister who begins practice has met the requirements of the Professional Statement).

The rules and Authorisation Framework are expected to be formally in place from the 2018-19 academic year (i.e. early autumn 2018), but the timing of new courses being approved is reliant on providers coming forward with plans. Their proposals will all be assessed against the same criteria.

We believe that giving students an element of choice will be consistent with these principles, but agree with the many consultation respondents who argued that too many training options could cause confusion for prospective barristers and training providers, damage diversity and increase regulatory cost.

Promoting equality and diversity

In February 2017, we published our new **Equality and Diversity Strategy** for 2017-2019. The Strategy document reports on our progress towards fulfilling our statutory objectives under the Equality Act 2010 both as an employer and as the regulator of barristers in England and Wales.

This work has important implications for access to justice too, because the Bar and the legal system need to reflect the diverse society that they represent.

With this in mind, and at around the same time, we also published our annual report on **diversity at the Bar**. This showed that diversity is heading slowly in the right direction but that further progress is needed.

Some of the key findings from the report include:

- The practising Bar is still weighted towards males, with 63.4 per cent being men and 36.5 per cent being women. However, the percentage of women increased by 0.6 per cent during 2016;
- The percentage of Black and Minority Ethnic (BME) practising barristers has increased by 0.2 per cent since 2015. 12.7 per cent of the practising Bar is now BME;
- Male QCs still outnumber female QCs, however the percentage of female QCs increased by 0.7 per cent during 2016. 13.7 per cent are female, while 86.3 per cent are male;
- The percentage of BME QCs is broadly unchanged having increased by only 0.1 per cent in 2016 with 6.4 per cent being BME and 90.1 per cent being white (the remainder did not disclose their ethnicity); and
- The gender and ethnic diversity of pupil barristers is roughly in line with the population of England and Wales, with 51.3 per cent of pupils being female and 16.3 per cent being BME.

You can read our Equality and Diversity Strategy on our website at: <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-strategy-2017-19/>

One aspect of equality that did demand our attention and action in 2016, was the publication of our survey findings about **women's experiences at the Bar**.

The survey was sent to all currently practising female barristers. It was completed by 1,333 respondents - almost a quarter of women at the Bar. The profile of respondents was representative of the overall population on most key indicators such as ethnicity, age and year of call.

Although the report found a number of examples of good practice and clear evidence of progress in some areas, it showed the need to address areas where women can face unfair treatment such as harassment, discrimination, work allocation, flexible working and returning from maternity leave. In particular, the survey found that:

- two in every five respondents said they had suffered harassment at the Bar, with only a small proportion (one in five) reporting it;
- more than two in every five respondents stated they had experienced discrimination, again with only one in five reporting it;
- experiences of flexible working arrangements appear to be mixed. For many, flexible working works well, but others raised issues that had led to a negative impact on their practice (such as an impact on work allocation or progression) or had prevented them from flexible working in the first place; and
- many respondents felt that taking maternity/parental leave had had a negative impact upon their practice, with impacts on work allocation, progression and income highlighted.

As a result of the survey findings, we wrote to every multi-tenant barristers' chambers to seek their help in addressing these issues and to improve compliance with our Equality Rules.

The report concluded that the experiences of women at the Bar are significantly better in chambers where the policies which our Equality Rules require have been put in place following proper consultation and where everyone is aware of them.

The survey findings and the action necessary to eliminate unfair treatment of women and to improve the retention of women at the Bar are reflected in the objectives of our new Equality and Diversity strategy.

Finally with regard to equality and diversity, we sought views on whether or not self-employed barristers should enjoy similar rights to parental leave as employed barristers, when we published a consultation in November.

We have since proposed that chambers should make shared **parental leave** arrangements for self-employed barristers. We believe making our parental leave rules more flexible could enable the self-employed Bar to retain female barristers and improve diversity within the profession.

Supporting innovation at the Bar

Two of our Regulatory Objectives are: promoting competition in the provision of services; and encouraging an independent, strong, diverse and effective legal profession.

One of our roles as the regulator is to enable barristers who want to innovate to do so. We do this by having flexible regulatory arrangements. This was one of the main driving forces when we introduced the BSB Handbook back in 2014: to provide a less prescriptive, more outcomes-focused set of rules governing barristers' professional conduct.

But we cannot afford to rest on our laurels, and as a regulator, we must keep an eye on the future to enable the Bar to remain competitive and to continue to provide the high quality, cost-effective legal services demanded by the public. With this in mind, in September, we launched a survey for barristers about **the future delivery of legal services**.

The survey found that while there are examples of "new and innovative" business models in the market, the prevailing business model for barristers is a traditional chambers.

Furthermore, the barristers who responded to the survey do not necessarily feel the need for a new approach to the delivery of legal services with, for example, only 8% saying that they plan to change the way they receive instructions.

Given that the survey also found that, generally speaking, the traditional chambers business model for barristers is not, in itself, a barrier to innovation, we will consider what – if any – further action is necessary from us as a result of the survey.

The Legal Services Act 2007 suggested that allowing barristers and other lawyers to jointly own and manage **Alternative Business Structures (ABS)** with non-lawyers could open up the market for legal services and encourage competition. The Act enables us – and other legal regulators – to authorise ABSs and other entities. We have been authorising entities – bodies fully owned and managed by authorised individuals, i.e. lawyers with current practising certificates – since 2015. By the end of March 2017, we were authorising 67 entities. However, shortly after the reporting period covered by this report, on 3 April 2017, we started authorising ABSs too. This followed the necessary approval being granted by Parliament.

Although we are cautious about the number of ABSs that may choose to be regulated by us, we believe this development encourages further innovation in the provision of legal services. Being a specialist in regulating advocacy-based services, our ability to authorise ABSs allows barristers and other lawyers to partner with other business professionals to bring new skills and fresh perspectives to this sector of the market.

Over the course of the year, we have also been undertaking a wide-ranging review of our **Public and Licensed Access Schemes**. These schemes allow members of the public and other lay clients to instruct barristers directly without first instructing a solicitor or other intermediary. We shall be introducing new rules to improve these schemes – especially for the Licensed Access Scheme – during 2017-18.

Responding to the Competition and Market Authority's (CMA's) market study into the provision of legal services

In December, the CMA published its much-anticipated report into the operation of the **market for legal services in England and Wales**. Please see the "In Focus" panel on the next page for a brief overview of the main CMA findings.

We welcomed the findings, pointing out that improving access to justice, promoting the interests of consumers and promoting competition in the provision of legal services are key objectives for all legal regulators. We also committed ourselves to working collaboratively with our regulated community of barristers when considering our response.

Since the report's publication, we have been working closely with the other legal regulators in order to respond collectively to the CMA. This response was published in June 2017, so therefore falls outside the period covered by this Annual Report. Needless to say, our response and the implementation of any agreed actions to address the CMA's concerns are a high priority for us in our 2017-18 Business Plan.

The CMA has raised some important issues and, in the public interest, we are looking forward to addressing them.



In focus: Overview of the CMA market study into the provision of legal services

The CMA concluded that competition in legal services for individual consumers and small businesses is not working well. In particular, it found that there is not enough information available on price, quality and service to help those who need legal support choose the best option.

The study observed that obtaining the right service at good value can therefore be challenging as consumers can face wide variations in the cost of similar services. They can also struggle to find enough information to help them identify their legal need in the first place.

The CMA set out a package of measures which challenged us – with the other frontline legal regulators and the Legal Services Board – and providers to help customers better navigate the market and get value for money.

These measures include:

- a requirement on providers to display information on price, service, redress and regulatory status to help potential customers. This would include publishing pricing information for particular services online;
- revamping and promoting the existing Legal Choices website to be a starting point for customers needing help, information and guidance on how to navigate the market and purchase services;
- facilitating the development of comparison sites and other intermediaries to allow customers to compare providers in one place by making data already collected by regulators available;
- encouraging legal service providers to engage with feedback and review platforms to ensure that customers can benefit from the experience of others before making their choice; and
- recommending that the Ministry of Justice looks at whether to extend protection from existing redress schemes to customers using ‘unauthorised’ providers.

In addition, as part of the study, the CMA also recommended that the Ministry of Justice review the current legal regulatory framework to make it more flexible and targeted at protecting consumers in areas where it is most needed. They also recommended that the Ministry of Justice carries out its planned review on the independence of regulators both from the profession and from government as soon as possible.

The full CMA report can be found on their website at: <https://www.gov.uk/government/news/cma-demands-greater-transparency-from-legal-service-providers>

Delivering value for money

During 2016-17, a number of changes were made to the way in which we are governed and the way in which we work. These are designed to make our operations as efficient as possible and deliver value for money for those who fund us. You can review the financial effects of these changes by reading about our financial performance during 2016-17 on page 35 of this Report.

The first series of changes affected our **governance arrangements**, when in January 2017, our Board agreed a new set of governance principles, and to simplify a lot of our decision-making processes.

The principles clarify how we make decisions, our governance structures and how we gather expert input to inform our work. They confirm that the Board continues to have overall oversight within our new governance structure. The principles also confirm our commitment to independence and openness, effectiveness, and our duty to promote Equality and Diversity.

Our ongoing governance reforms have seen a reduction in both the number of committees and the number of their members. The new approach requires more executive-led policy development and decision making.

To support this, in 2016, we established our new Advisory Pool of Experts (APEX). APEX is a group of external and independent experts, including a number of barristers, who may be called upon to provide specialist advice in areas of our work where an in-depth or more independent view is needed. The formation of APEX is designed to complement our move towards more staff-led decision-making.

You can read more about our governance principles in our Governance Manual on our website at: https://www.barstandardsboard.org.uk/media/1818312/governance_manual__march_2017.pdf

Another area of change designed to save money in the longer term, and that was implemented during 2016-17, is our **Work Smart programme**.

Work Smart is our flexible working programme for staff. It enables our employees to work remotely and without the need to be based full-time in our offices. The programme has been implemented ahead of the General Council of the Bar's likely office move expected in 2018. The introduction of smarter, more flexible working arrangements for staff will enable us to relocate to an office with a smaller footprint, and therefore, to save money.

To date, Work Smart has been a success and staff feedback has been positive.

Finally, thanks to our shared Information Systems resources with the Bar Council, we were involved with them during 2016-17 in preparing a major overhaul of our **Information Management systems**. We expect the benefits of this joint project to be seen during 2017-18. There will be benefits for barristers as well as for us in terms of efficiencies in some of our critical business and regulatory processes. A new self-service portal for barristers will be launched later this year called "My Bar". It will be the new way for barristers to access information from us and from the Bar Council, It will enable them to manage all of their subscriptions, applications, authorisations and event bookings with us and with their representative body.

2016-17: What we said we would do and what we delivered

The table below shows the commitments that we made in our 2016-17 Business Plan against a short update of the progress we made during the year.

Strategic Programme 1 – Regulating in the public interest

Activity:	Progress:
Consumer engagement – review and refresh strategy	<ul style="list-style-type: none"> • New strategy approved • Increased focus on consumer engagement at an early stage of policy development • Continued input with other legal regulators to the Legal Choices website
Research – scope and conduct demand side research	<ul style="list-style-type: none"> • We commissioned IRN Research, an independent research agency working in the legal services sector, to undertake research into the experiences of barristers' clients in family law cases. • The research aimed to understand the experience of legal services among clients of family law barristers in relation to access and quality of service and identify the key barriers and risks that face clients of family law barristers • This research is complete and was published in July 2017
Stakeholder engagement – map stakeholders and develop strategy	<ul style="list-style-type: none"> • Mapping exercise completed and new strategy approved • Increased focus on stakeholder engagement at an early stage of policy development in order to seek views and raise awareness • 30 stakeholder events, including CPD and FBT events, with over 1,100 registrations
Independent regulatory decision making – agree new governance principles and implement new Qualifications Committee decision-making governance	<ul style="list-style-type: none"> • Revised governance principles agreed in January 2017 • New decision-making arrangements agreed for decisions previously made by the Qualifications Committee • Qualifications Committee to be disbanded from August 2017

Table continues overleaf

<p>International work – review and scope current arrangements</p>	<ul style="list-style-type: none"> • We have undertaken a review of our work in relation to the international aspects of our role as the Bar’s regulator. This has resulted in a protocol modelled on the protocol for regulatory independence, outlining the respective roles of the BSB and the Bar Council. It has now been agreed with the Bar Council • This will ensure that we are able to exercise our regulatory functions where necessary in the international arena, independently of the Bar Council (for example, where Codes of Practice or other standards are being discussed at international meetings)
<p>Disciplinary system – review contractual arrangements for tribunals</p>	<ul style="list-style-type: none"> • Contract with BTAS renewed • Revised disciplinary tribunal regulations to be introduced in 2017-18
<p>Regulatory interventions – Develop policy and processes for interventions</p>	<ul style="list-style-type: none"> • Statutory powers of intervention for ABSs obtained on designation as a licensing authority • Intervention powers for the rest of the regulated community are dependent on approval of an order under s69 of the Legal Services Act 2007. An Order has been agreed and consulted on – implementation dependent on approval of the Lord Chancellor and Parliament. We expect this to happen no earlier than October 2017
<p>We spent £2,361k on Strategic Programme 1, which is 48% of our direct costs</p>	

Strategic Programme 2 – Supporting barristers and those the BSB regulates to face the future

Activity:	Progress:
<p>Entity Regulation and Alternative Business Structures – complete review of entity authorisation and start authorising ABSs</p>	<ul style="list-style-type: none"> • Review of entity authorisation completed • 67 entities authorised as at 31 March 2017 • Started licensing ABSs on 3 April 2017 following Parliamentary approval of the required Order
<p>Scope of Practice and Employed Barrister rules (s15 LSA07) – decide on narrow change to Employed Barrister rules and review the “Scope of Practice” rules</p>	<ul style="list-style-type: none"> • We have agreed a rule change in relation to employed barristers in non-authorised bodies • This will enable these barristers to provide legal services to a wider range of clients in addition to their employer (where those clients are not entitled to complain to the Legal Ombudsman) • We are now pursuing a formal rule change with the Legal Services Board • We have undertaken scoping in relation to a wider review but the review itself has been postponed until 2018-19 owing to other priorities in the 2017-18 business year
<p>Public Access – review, consult and gain LSB approval for new Public and Licensed Access scheme rules</p>	<ul style="list-style-type: none"> • Review of Public and Licensed Access schemes completed • Review found schemes are working well and providing valuable service to clients, but some improvements necessary • Consultation on rule changes delayed until 2017-18
<p>Chambers’ governance – Complete governance model research and act upon findings</p>	<ul style="list-style-type: none"> • This research has been completed and was published on 30 May 2017. The key finding was that the majority of respondents saw no need for change to the traditional chambers model • The report is informing our approach to supervision of chambers
<p>Professional Indemnity Insurance arrangements – insurance market analysis and review of BMIF governance</p>	<ul style="list-style-type: none"> • We agreed a memorandum of understanding with BMIF, following a review of governance arrangements • We also commissioned Oxera to undertake a review of the market for barrister PII. This comprehensive piece of work has informed a new project to review our PII arrangements, which will be completed in 2017 • The decision on a rule change has therefore been postponed until September 2017, pending completion of the new project

Table continues overleaf

<p>Immigration thematic review – decide on options and recommendations</p>	<ul style="list-style-type: none"> • Review completed and decisions made • Includes plans to improve guidance for clients and to develop a framework that barristers can use to assess and manage immigration client vulnerability • Implementation is happening as planned in 2017-18
<p>Youth Courts – decision on Youth Courts policy proposals</p>	<ul style="list-style-type: none"> • Policy proposals agreed • Publication of new guidance for barristers working in youth proceedings based on a set of essential competences that are expected of all advocates working with young people • Compulsory registration for barristers practising in youth courts to be introduced, subject to consultation, during 2017-18
<p>Quality Assurance Scheme for Advocates (QASA) – Board decision on implementation</p>	<ul style="list-style-type: none"> • Put on hold pending Ministry of Justice decision on defence panel scheme
<p>Future Bar Training – consult on training options and make decision on best approach</p>	<ul style="list-style-type: none"> • Consultation took place and received a record level of engagement and responses • Board decision in March 2017 to authorise a limited number of future training routes for prospective students to qualify as barristers • Implementation to begin as planned during 2017-18
<p>Continuing Professional Development – consult on new CPD rules and roll-out new scheme</p>	<ul style="list-style-type: none"> • Consultation on rule changes took place • Extensive engagement with the Bar to help them prepare for the new CPD scheme for established practitioners • New regime came into force on 1 January 2017 • On-going support and advice provided to barristers on the new regime
<p>Diversity – publish Women at the Bar research, devise action plan and agree new Equality Objectives</p>	<ul style="list-style-type: none"> • Women at the Bar research findings published • Action plan agreed to address unfair treatment of women at the Bar • New Equality Objectives and Equality and Diversity strategy published in February 2017
<p>We spent £1,721k on Strategic Programme 2, which is 35% of our direct costs</p>	

Strategic Programme 3 – a strong and sustainable regulator

Activity:	Progress:
Ministry of Justice consultation on regulatory independence – respond to the consultation	<ul style="list-style-type: none"> The Ministry of Justice did not issue a consultation on regulatory independence during 2016-17
Assurance Framework – agree and roll-out the Framework	<ul style="list-style-type: none"> An independent review of the assurance processes in high risk areas was undertaken. Processes and procedures for assurance were deemed robust and fit for purpose The Independent Observer position was disestablished and the Board agreed to move forward with a tender for Internal Audit services in 2017-18
Board Governance – recruit and induct for Independent Appointments Panel, implement a Board development strategy and recruit new Board members as required	<ul style="list-style-type: none"> Recruitment and induction for Independent Appointments Panel completed successfully Board development strategy agreed New Board members recruited and in place
ASPIRE – strengthen consumer engagement capability and capacity, and implement post RSF assessment actions	<ul style="list-style-type: none"> Consumer engagement capability and capacity has been strengthened and embedded throughout policy development Our approach to outcomes focused regulation has been strengthened by increased investment in research to give greater insight into clients' needs and embedding an evidence-based approach to policy development Our risk programme continues to embed risk across all of the BSB's activities, with the creation of the risk forum to enable joined-up discussions about risk issues and improve consistency across the BSB New set of governance principles agreed and first phase of governance changes implemented
Advisory Pool of Experts (APEX) – recruit APEX members	<ul style="list-style-type: none"> APEX established with successful first recruitment round
HR strategy – introduce new Learning and Development Strategy for staff	<ul style="list-style-type: none"> New Learning and Development Strategy for staff introduced A new leadership and management training programme commenced during the year and continued into 2017-18 Staff received "plain English" training during 2016-17

Table continues overleaf

<p>Risk-based Regulation – launch Risk Outlook and complete prioritisation of risks in framework for decision-making</p>	<ul style="list-style-type: none"> • Risk Outlook published in April 2016 • The Board discussed risk prioritisation at an away day in December 2016. Implementation of risk prioritisation will be considered further by the Board in Q1 of 2017-18
<p>Information Management Programme (IT strategy) – Completion of the data foundation, management information, and business intelligence phases, implementation of ABS online tools, and completion of phase one for finance software</p>	<ul style="list-style-type: none"> • Data foundation, management information and business intelligence phases completed as planned • Online ABS authorisation tool completed and made live • Phase one of finance software completed
<p>BSB future premises – Board decision on preferred option for BSB premises</p>	<ul style="list-style-type: none"> • High-level decisions made concerning search for future BSB premises • Precise location to be sought during 2017-18

We spent £836k on Strategic Programme 3, which is 17% of our direct costs

Our governance

We are led and governed by a Board made up of 15 people. The Board has a non-barrister majority and a non-barrister Chair. The Board met 12 times during the year: there were 9 ordinary meetings, one special meeting on Future Bar Training, and two Away Days.

During 2016-17, the following people sat on our Board:

Chair:

Sir Andrew Burns KCMG

Vice-Chair:

Naomi Ellenbogen QC

Barrister Members:

Aidan Christie QC

Justine Davidge

Judith Farbey QC

Andrew Mitchell QC

Adam Solomon

Anupama Thompson

Lay Members:

Alison Allden OBE (from 1 January 2017)

Rolande Anderson

Rob Behrens CBE (resigned wef 31 March 2017)

Dr Malcolm Cohen JP (until 31 December 2016)

Steven Haines (from 1 January 2017)

Zoe McLeod (from 1 January 2017)

Tim Robinson (until 31 December 2016)

Prof Andrew Sanders (until 31 December 2016)

Nicola Sawford

Dr Anne Wright CBE

Special Advisors to the Board (with no voting powers):

Keith Baldwin (until 31 December 2016)

Emily Windsor (until 31 December 2016)

Accountability

Under the Legal Services Act 2007 (LSA07), the LSB is responsible for overseeing the approved regulators for legal services in England and Wales. The approved regulator for barristers is the General Council of the Bar (GCB), which is also the representative body for the Bar. The LSA07 requires the separation of regulatory and representative activities so the GCB has established the Bar Standards Board to exercise its regulatory functions independently. We have a protocol in place with the GCB to ensure that the professional body's representative functions do not exert undue influence over the regulatory functions.

We independently control our allocated resources, and our operations are monitored quarterly by the Planning, Resources and Performance (PRP) Committee and then reported to the Board. The Committee also helps develop our strategic and business plans and oversees performance monitoring.

The Governance, Risk and Audit (GRA) Committee is responsible for ensuring the maintenance of good governance standards and internal control processes and advises the Board on the corporate risk management framework. The Director General and senior managers are responsible for the areas of risk that relate to their departments. The corporate risk register is reviewed at least quarterly by our Senior Management Team, GRA Committee and the Board as set out in the Risk Management policy. In addition, the GRA Committee conducts an in-depth risk review at each meeting.

The lay Independent Observer, Isobel Leaviss, provided independent assurance that our enforcement system was operating in line with its aims and objectives, until that role was dissolved as part of our governance review at the end of 2016. In 2017/18 we will appoint internal auditors to provide independent assessment of our assurance processes..

Our income and expenditure

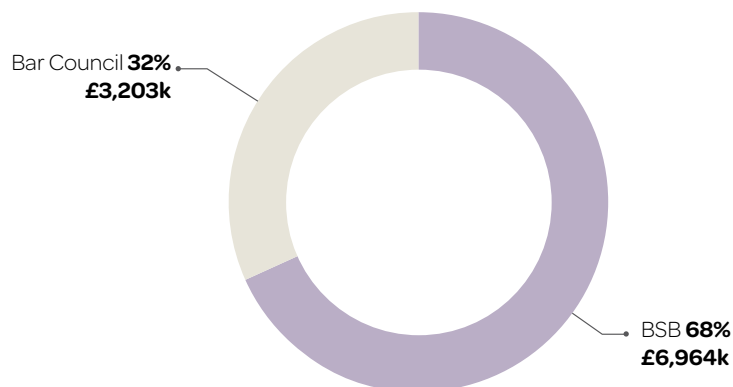
Our budget year ran from 1 April 2016 to 31 March 2017. The Bar Council and BSB's full financial statements can be found on the Bar Council's website (normally published in September).

Income

Part of our income comes from charges we levy for services we provide, described below as 'directly controlled'. This includes the fees from Bar Professional Training Course (BPTC) providers, the Bar Transfer Test (BTT) and other charges. The remainder of the BSB's funding is income derived from the Practising Certificate together with a share of contributions from the Inns of Court. These two income streams are not directly controlled by the BSB.

A proportion of the PCF is spent on regulation by us and a proportion is spent by the Bar Council on some of its functions (as permitted under s51 of the LSA07).

Allocation of PCF between Bar Council and BSB



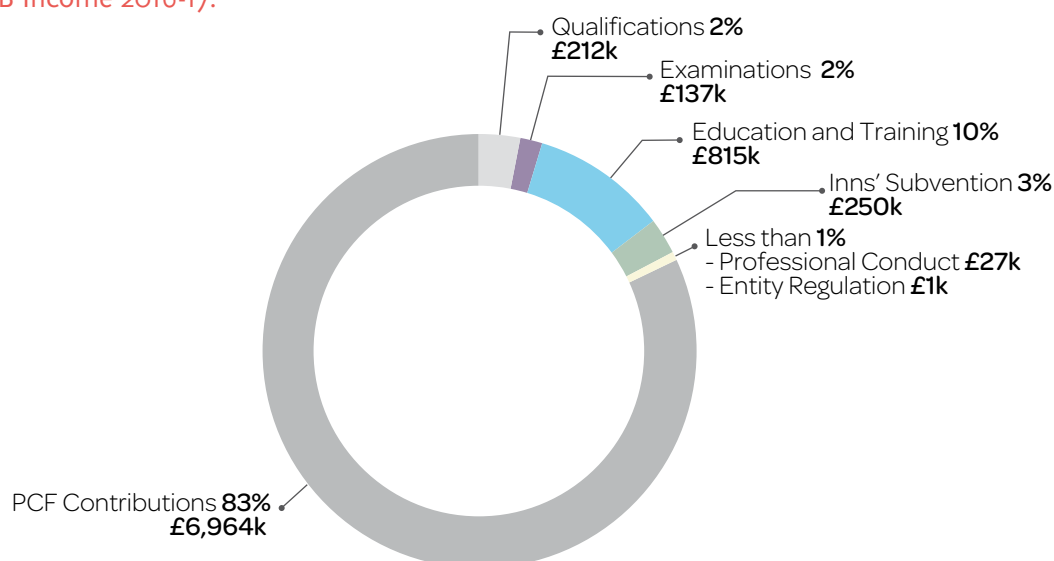
Income directly controlled by the BSB

	£K
Examinations (including BCAT)	137
Education and Training (including BPTC, BTT and CPD accreditation)	815
Qualifications	212
Entity Regulation	1
Professional Conduct (fines and cost recovery)	27
Total BSB generated income	1,192

Income not directly controlled by the BSB

PCF contributions	6,964
Inns' Subvention	250
Total income not directly controlled by the BSB	7,214
Total regulatory income	8,406

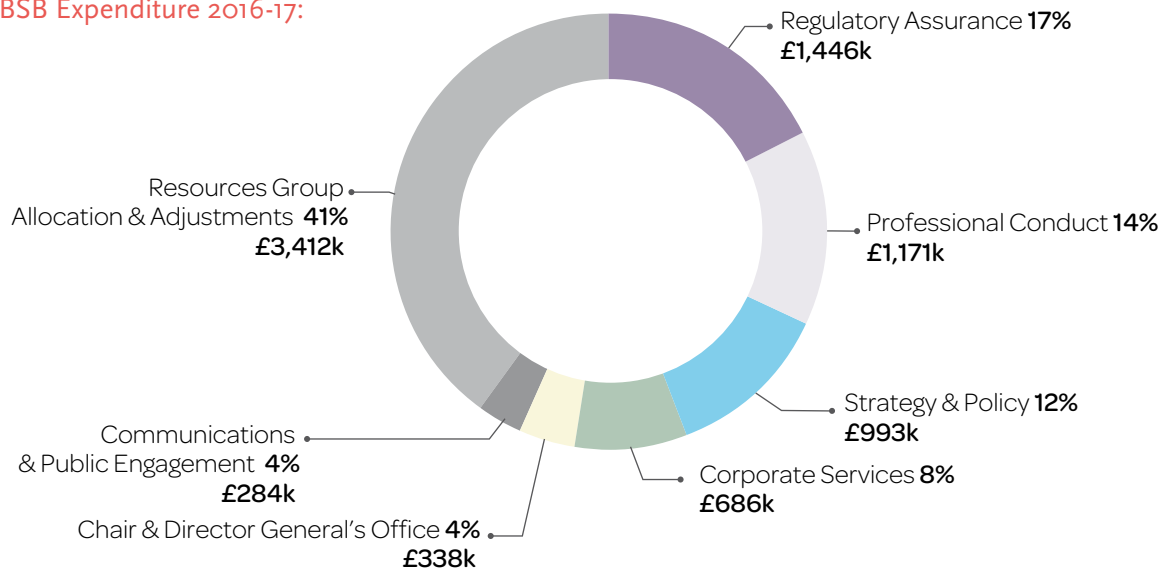
BSB Income 2016-17:



Expenditure

The BSB directly controlled expenditure was £4,918k against a year end forecast of £5,196k, a £278k (6%) underspend. This does not reflect the full cost of regulation as we must also include an allocation of shared costs (IT, Finance and HR including a share of premises cost) from the Bar Council Resources Group. The Resources Group budget is managed separately, outside the direct control of the BSB and is apportioned to the organisation.

Department	£K
Regulatory Assurance	1,446
Examinations	345
Qualifications	231
Entity Regulation and ABS	86
Supervision (Pre Qualification)	345
Supervision (Post Qualification)	439
Professional Conduct	1,171
Strategy and Policy	993
Corporate Services	686
Chair and Director General's Office	338
Communications and Public Engagement	284
Total BSB Expenditure	4,918
Resources Group allocation & adjustments	3,412
Total cost of regulation	8,330
Surplus	76

BSB Expenditure 2016-17:**Commentary on 2016-17 budget performance****Income**

Our initial budget for BCAT and BPTC income was set conservatively, based on the assumption that the Future Bar Training programme might lead to more students deferring enrolment. We budgeted for 1200 students and had over 1423 students register for the BPTC in 2016-17.

Expenditure**Staff costs**

Higher than expected staff turnover has resulted in a saving on direct staff costs across the BSB of approximately 270k (5%) which has been offset in part by overspend in recruitment costs of 23k and other staffing related costs.

Overall there was a total underspend of £227k (5%) on staff related expenditure.

Non-staff costs

Training and development costs were more than initially budgeted. This is primarily due to the delivery of a leadership and management programme where the cost was more than originally budgeted. However, a decision was made that it still offered good value for money and supported the governance changes that have been made across the BSB.

Originally we had planned to manage governance recruitment for the Board and Committee members in house. However, due to resource constraints we were unable to do so and there was an overspend in this area. After a tendering exercise we have partnered with a new recruitment specialist in order to realise value for money savings in subsequent years.

The budget for enforcement (Professional Conduct Department) activity was formulated based on previous years' activity and trend analysis. It was thought that the number and complexity of cases would increase over time. The budget for out-sourced casework and legal fees was increased to reflect this. This was not the case during the year and actual expenditure was underspent in this area.

Our research costs were higher than was originally budgeted. This was primarily related to a single piece of research on Professional Indemnity Insurance and Competition Law that was over the original allocated budget due to the nature of the expertise required. We successfully managed the pressures caused by this overspend and were able to make requisite savings in other areas.



In focus: Monitoring Expenditure

Since our inception we have always lived within our direct operating expenditure budgets. We pay close attention to what we spend our money on:

- Our budgets are set annually and our budget envelopes are informed by our business plans;
- The budget is divided up into departmental budgets which our Directors look after;
- Each month we receive management accounting reports which enable us to keep a close eye on our business;
- Each quarter we think about what we might need to spend in the future and produce forecasts;
- We tightly monitor our largest area of spend which is our staffing costs;
- We make sure that our resources are directed at our biggest priorities; and
- Our financial performance is scrutinised by our Planning, Resources and Performance Committee, and it is also reported to the Board in public session.

Legal Services Board's standard cost of regulation

A schedule containing information about our cost of regulation, as defined by the Legal Services Board, is available on our website.

Remuneration and expenses

	Salary / Fees	Pension	Expenses	Allowance
Sir Andrew Burns KCMG – (Chair)	£89,264	–	£1,083	–
Naomi Ellenbogen QC – (Vice-Chair)	£35,858	£712	£215	–
Aidan Christie QC	–	–	–	–
Justine Davidge	–	–	£651	–
Judith Farbey QC	–	–	–	–
Andrew Mitchell QC	–	–	–	–
Adam Solomon	–	–	–	–
Anupama Thompson	–	–	–	–
Alison Allden OBE	£2,310	–	£137	–
Rolande Anderson	£9,230	–	£23	–
Rob Behrens CBE (resigned wef 31 March 2017)	£9,230	–	–	–
Dr Malcolm Cohen JP (until 31 December 2016)	£6,923	–	–	–
Steven Haines (from 1 January 2017)	£2,310	–	–	–
Zoe McLeod (from 1 January 2017)	£2,310	–	–	–
Tim Robinson (until 31 December 2016)	£6,923	–	£471	–
Prof Andrew Sanders (until 31 December 2016)	£6,923	–	£1,325	–
Nicola Sawford	£9,230	–	–	–
Dr Anne Wright CBE	£9,230	–	–	–
Keith Baldwin (Special Advisor until 31 December 2016)	£9,230	–	£534	–
Emily Windsor (Special Advisor until 31 December 2016)	–	–	–	–
Dr Vanessa Davies (Director General)	£138,268	£19,358	£2,614	£1,300

Notes:

- Barrister Board members are not paid salaries (apart from the Vice-Chair).
- Board member positions do not attract a pension (apart from the Chair and Vice-Chair).
- Expenses include travel and subsistence costs.
- International travel expenses were incurred by the Chair and Director General (International Conference of Legal Regulators in Washington DC).
- Special Advisors received fees, not salaries.
- Fees and expenses paid for attendance at BSB committee meetings by non-Board committee members are not included here.
- All staff members receive an allowance **BSB 270717** in addition to basic salary.

Our organisational values

The way in which we undertake our work is very important to us. We do this by adhering to a number of organisational values. These are:

Integrity

- We operate to the highest ethical standards
- We are honest, open, and inspire trust
- We consider the social and environmental impact of our action

Excellence

- We are committed to quality
- We are creative, innovative, and lead change
- We are responsive, accessible, and accountable for our actions

Fairness

- We act responsibly, proportionately, and in the public interest
- We promote equality of opportunity and equal access to justice for all
- We value inclusion and diversity

Respect

- We respect and support others
- We value expertise, learning, and knowledge-sharing
- We foster a collaborative and developmental working environment

Value for money

- We are cost-effective and accountable for our use of resources
- We work efficiently with an entrepreneurial and commercial mind-set
- We strive for clarity, simplicity, and straightforwardness

Contact us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent and proportionate. We welcome feedback on our services, particularly where the level of service has exceeded or fallen below expectations. Comments and suggestions are important to us as they will help us to meet our obligations and improve our performance.

Write to us:

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Cost Transparency Metrics

2016/17



Cost Transparency Metrics

The Bar Standards Board is committed to the principle of transparency and has regularly published financial and other transparency metrics as part of Annual Reports and Business Plans. As part of the Legal Services Board's (LSB) Cost of Regulation Project, a review of best practice relating to the availability and accessibility of costs information was undertaken. As a result of their recommendations the BSB is publishing these Cost Transparency Metrics separately in addition to information in the Annual Report. This is to increase transparency about the cost of the legal services regulators in England and Wales.

Practising Certificate Fees (PCF)

Barristers are only entitled to undertake reserved legal activities if they are authorised to do so by the BSB. They do so by holding a current Practising Certificate renewed annually via a process known as Authorisation to Practise which includes payment of a fee (PCF). These fees fund the expenditure that falls within the 'permitted purposes' as defined by the Legal Services Board¹ (LSB). The PCF is shared between the Bar Standards Board who deliver the regulatory functions, the Bar Council who deliver non-regulatory permitted activities and a provision for non-operating costs².

Metric	2015/16	2016/17
Total PCF Reported	£ 10,773 k	£ 10,885 k

In 2016/17 of the total £10,885k collected £10,167k was for operating expenditures, shared 68% (£6,964k) for the BSB and 32% (£3,203k) for the Bar Council.

Portion of PCF funding 'non-regulatory permitted purposes' ³	32%	32%
Total Permitted Purposes reserves	(£ 90 k)	(£ 367 k)

BSB Specific Finances

Income - (PCF)	£ 6,671 k	£ 6,964 k
Income - Non PCF Sources ⁴	£ 1,994 k	£ 1,442 k
Total Income	£ 8,665 k	£ 8,406 k
Total Regulatory Expenditure⁵	£ 8,734 k	£ 8,330 k
Surplus / (Deficit)	(£ 69 k)	£ 76 k

The Profession

Number of authorised individuals ⁶	15,631	15,853
Number of authorised entities	52	67

In April 2015, the BSB began authorising entities. These are owned and managed by lawyers only, including barristers, solicitors and other legally qualified persons. From April 2017, the BSB began authorising licensed bodies or Alternative Business Structures (ABSs) which are entities owned by both lawyers and non-lawyers. The entity and ABS regulation schemes at the BSB operate on a full economic cost recovery (FECR) model and fees are published on our [website](#)⁷.

Average cost of regulator for each authorised individual	£ 427	£ 439
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	2015/16	2016/17
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Staff Resources

Headcount ⁸	89 (86.7 FTE)	77 (75.2 FTE)
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Remuneration of Officers / Executive

Chair of Board total remuneration ⁶	£89,695	£89,264
Vice Chair total remuneration	£35,608	£36,570
Director General total remuneration	£153,228	£158,926

The median salary at the BSB in 2016/17 was £33,290¹⁰, the ratio between this and the Director General (salary: £138,268) is 1:4.15. As well as the Director General, the Bar Standards Board has four Senior Managers¹¹ paid in a salary band between £70,000 and £90,000.

Summary

Staff costs	£ 4,343 k	£ 4,094 k
Board ¹² costs	£ 315 k	£ 199 k

¹ In accordance with s51 of the Legal Services Act 2007 (LSA) and the rules made thereunder.

² Currently provision for the LSB (Legal Services Board), OLC (Office for Legal Complaints) operating costs and pension liabilities shared between the Bar Council and the BSB.

³ All BSB activities are considered regulatory activities under the definition in the LSA07.

⁴ Part of our income comes from charges we levy for the services we provide. Directly controlled income streams include the fees from the Bar Professional Training Course (BPTC) providers, the Bar Transfer Test (BTT), fees related to waivers and entity & ABS authorisation fees.

⁵ This includes a share of the premises at 289-293 High Holborn, as well as support staff and costs from the Resources Groups (e.g. HR, Finance and IT). The Resources Group budget is managed separately and part of it is apportioned to the BSB.

⁶ This is the number of barristers holding a practising certificate as of 31 March 2017. In addition, there are approximately 49,000 unregistered barristers who do not hold practising certificates but who are subject to enforcement action for breaches of the Handbook.

⁷ <https://www.barstandardsboard.org.uk/regulatory-requirements/entities,-including-alternative-business-structures/fees-and-charges/>

⁸ Snapshot of direct headcount at end of each financial year, this does not include support staff in the shared Bar Council / BSB Resources Group.

⁹ Total remuneration includes; Salary; Pension Contributions and, for staff members only, a fixed allowance of £1,300.

¹⁰ Median salary in 2015/16 was also £33,290 and ratio 1:4.

¹¹ Director of Communications and Public Engagement, Director of Regulatory Assurance, Director of Professional Conduct and Director of Strategy & Policy.

¹² Including salary costs for Chair, Vice-Chair and all lay board members.

Contact us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent and proportionate. We welcome feedback on our services, particularly where the level of service has exceeded or fallen below expectations. Comments and suggestions are important to us as they will help us to meet our obligations and improve our performance.

Write to us:

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London WC1V 7HZ

DX: 240 LDE

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Enforcement Annual Report 2016/17**Status:**

1. For noting
2. Public

Executive Summary:

3. Attached is the annual Enforcement Report covering the work of the Professional Conduct Committee and Professional Conduct Department for the year 1 April 2016 to 31 March 2017.
4. This year's report should be read against the background of staff shortages in the Professional Conduct Department (PCD) throughout the year, which meant that the department was operating at anywhere from 15% -25% under full staff complement. There were also vacancies in the Professional Conduct Committee (PCC) in the early part of year. These factors had an impact our ability to progress cases. Nevertheless, we met the KPI target, of 80% of cases concluded at the initial assessment and investigation stages within the service standards, by achieving a year-end outturn of 80.1%. This is the first time in three years the KPI has been met.
5. The underlying trend in complaints received or opened, as well as cases subject to disciplinary action, is a gradual decrease over recent years. This trend has, to an extent, been obscured by the large number of complaints present in the system relating to one barrister and the chambers in which that barrister worked. The barrister is referred to throughout the report as "Barrister B". A total of 139 complaints related to Barrister B have been dealt with over the last three years which represents a significant proportion of the live caseload. Therefore, to provide a more accurate picture of the underlying casework trends, we have included, where relevant, two sets of figures: one which includes these multiple complaints and another which excludes them.
6. For the first time, we have included a section on "pre-complaints". This is a term used to describe information received and registered on our case management system (other than formal complaints submitted by members of the public or others) which may indicate a breach of the Handbook has occurred. They include reports of serious misconduct and other types of information received. Pre-complaints do not necessarily result in formal complaints being opened but addressing them forms a considerable part of the work carried out by staff in the Assessment Team.
7. **User Feedback Survey results:** the report this year does not include the results of the User Feedback Survey. This is a rolling survey carried out of the views of all complainants and barristers following the conclusion of a case. We normally include the results in the Enforcement Report but this year there were problems in carrying out the survey which led to its suspension for the first quarter of the year and questionnaires thereafter being sent out very late. Consequently, the survey was not complete at the year end and direct comparisons with previous years have not been possible. We will be considering, how and when we report the results to the Board after further analysis.

8. The main statistical findings from this year's Enforcement report are as follows:
- a. The number of pre-complaints registered went up in 2016/17 (from 882 to 960). However, the number of resulting formal complaints opened went down slightly from 203 to 191. This shows that the PCD is handling more enquiries and reports that do not require any further action.
 - b. Reports of serious misconduct increased with 110 such reports being received in 2016/17 as compared to 80 in 2015/16: a rise of 38%. This trend indicates that awareness of the requirements to report serious misconduct, introduced in January 2014, is becoming more widespread. The statistics also indicate that barristers are rightly erring on the side of caution in reporting serious misconduct as overall only approximately 53% of reports result in a formal complaint being raised by the BSB.
 - c. The volume of cases worked on during the year has decreased. In 2016/17, we worked on 625 cases as compared to 760 in 2015/16. The number of cases in relation to Barrister B was high in both years but excluding these from the figures still leaves an overall picture of a reduced caseload: down by 15%.
 - d. The number of new complaints received or opened has also decreased. In total, we opened 366 complaints over the course of 2016/17 both internal and external. This is 15.7% fewer than last year and the lowest number of registered new complaints in the last five years. However, in contrast, in quarter 4, we received the highest number of new external complaints (91) in one quarter in the last five years. These extremes in one year indicate the difficulty in drawing firm conclusions from trends in casework.
 - e. Staff decision making has also increased which reflects the impact of the BSB's revised governance principles that emphasise the need for decisions to be taken at the lowest appropriate level. While the 95% of decisions taken by staff at the initial assessment stage is in line with previous years, post-investigation decisions taken by staff reached the highest level in three years. Such decisions have gone up from 42% in 2014/15 to 69% this year. This also shows that PCC decision making powers are increasingly reserved for the most serious and high-risk cases, with 70% of decisions to refer to disciplinary action being taken by the PCC.
 - f. The number of referrals to disciplinary action has reduced slightly if Barrister B is excluded from the figures: down from 53 last year to 46 in 2016/17. The uphold rate in relation to disciplinary proceedings remains high at 86% and is in line with previous years. This year saw a significant rise in the number of barristers disbarred with 19 being disbarred as compared to seven in 2015/16. In the main the disbarments related to criminal convictions.
 - g. As well as meeting the KPI this year, the end to end times for concluding cases has reduced. The average time taken to conclude all cases has reduced to 2.8 months from 4.4 months in 2014/16 and 3.4 months in 2015/16. This indicates that overall progression of cases is speeding up.

- h. **Requests for review:** the number of requests for review of decisions taken by the PCD or PCC has decreased from 60 to 32 but this is mainly due to a change in approach in identifying the requests. However, the number of such requests that resulted in a change to the original decision has gone up substantially (from 1 last year to 8 this year). This is therefore an area of concern but is likely to have been effected by the staff shortages.

Recommendations and action points

- 9. There are no specific recommendations for the Board to consider but the Board should note the conclusions and action points as set out in section 6 which are:
 - a) Maintain and enhance our staff skills through a comprehensive programme of training and skills development
 - b) Continue to monitor closely the time taken to conclude disciplinary cases to ensure that all avoidable delay is addressed
 - c) Consider any improvements that can be made at the initial assessment stage to reduce the number of decisions overturned on review
 - d) Continue to develop our system of logging lessons arising from cases to support continuous improvement

Resource implications

- 10. There are no new resource implications associated with this report. The action points can be addressed internally by the Professional Conduct Department within the current staffing complement.

Equality Impact Assessment

- 11. Not applicable

Risk implications

- 12. Not applicable

Impacts on other teams / departments or projects

- 13. Not applicable

Consultation

- 14. Not applicable

Regulatory objectives

- 15. Monitoring and reporting on our enforcement work assists with ensuring the regulatory objectives of protecting and promoting the public interest and the interests of consumers are met.

Publicity

16. The report will be published on the BSB's website.

Annexes

17. The full report is Annex 1 to this paper.

Lead responsibility

Sara Jagger, Director of Professional Conduct
Aidan Christie QC, Chair of the Professional Conduct Committee

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Enforcement

Annual Report 2016/17

Professional Conduct Committee
Professional Conduct Department

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Introduction and overview of our work

- 1.1 This annual report provides an overview of the Bar Standards Board's ("BSB") work, in the year from 1 April 2016 to 31 March 2017, on enforcing the professional obligations of barristers and entities authorised by the BSB as set out in the BSB Handbook ("the Handbook").
- 1.2 The work of enforcing the terms of the Handbook is carried out by the Professional Conduct Department ("PCD") and the Professional Conduct Committee ("PCC"). We consider all information received which may indicate a breach of the Handbook¹. Where we are satisfied, there is sufficient evidence of a potential breach, we will carry out a formal investigation and, if appropriate, take enforcement action.

Contents of the report

- 1.3 This report is divided into four parts. The first: "What we did", reports on our handling of information and complaints received over the year including trends in caseloads and outcomes. The second part: "How well did we perform", looks at our performance including performance against the agreed indicators and quality assurance of our work. The third: "Continuous improvement and knowledge management" provides an overview of our mechanisms to improve the enforcement system and the lessons that we can learn from key cases and their outcomes. Finally, in the fourth part we report on the "Wider work of the PCD".
- 1.4 In addition to the information contained in this report, all the key supporting raw data is published on our website in an accompanying Statistical Report for 2016/17.

Data sources

- 1.5 Our enforcement system is supported by a comprehensive Case Management System

(CMS) in which all actions taken on information received are recorded. This allows us to track, monitor and assess the progress and outcomes of cases and provide the statistical information set out in this report.

- 1.6 We also carry out an ongoing User Feedback Survey. However, in 2016/17, due to staffing issues, the survey was suspended from January to March 2017 and thereafter there was a delay in sending out questionnaires. This has meant full data for the year is not available and the survey was incomplete at the year end. Therefore, the results of the survey are not included in this report.

Impact of multiple complaints about one barristers

- 1.7 In recent years, the statistics in our Enforcement Reports have been affected by the presence of an unprecedented number of complaints and cases of disciplinary action against one barrister ("Barrister B") and the chambers in which that barrister worked. The high level of complaints about one barrister has inevitably led in places to a slightly distorted picture of the underlying trends in casework on which we have commented in past reports. By the end of 2016/17 all cases related to Barrister B, some of which were several years old, had been closed following the disbarment of the barrister in question. We have therefore included in this report, where appropriate, two sets of figures: one which includes these multiple complaints and another which excludes them. We hope, in doing so, to provide a more accurate reflection of the overall trends in our casework.

Our approach to enforcement work

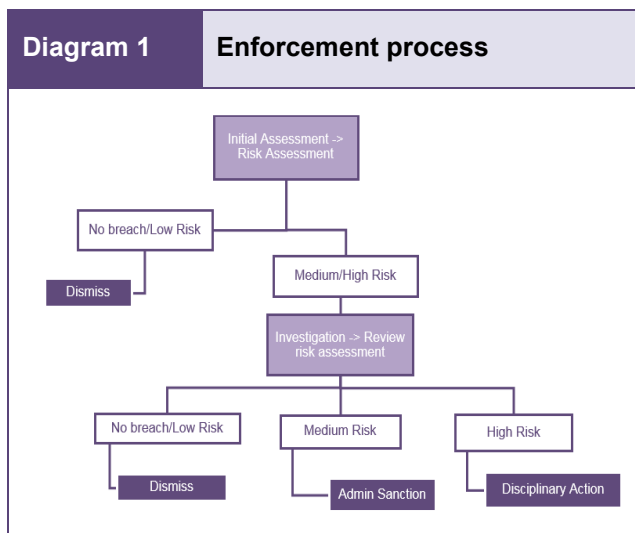
- 1.8 The BSB takes a risk based approach to regulation which includes decisions on

¹ Part 2 of the Handbook contains the Bar's Code of Conduct.

enforcement action. This means our resources are concentrated on those issues which present the greatest risks to the regulatory objectives². Our Enforcement Strategy³ sets out our approach in more detail and all decisions are taken in accordance with this strategy.

Decision making structure

- 1.9 The enforcement system of the BSB is governed by regulations set out in Part 5 of the BSB Handbook, in particular the Complaints Regulations and the Disciplinary Tribunal Regulations. Under the Complaints Regulations, the power to take decisions in relation to the initial assessment and investigation of complaints is given to the Professional Conduct Committee (PCC). However, the PCC authorises staff in the Professional Conduct Department (PCD) to take a range of decisions on its behalf.
- 1.10 Diagram 1 shows in outline our enforcement process: more detail about which can be found in subsequent sections.



Professional Conduct Department

- 1.11 The PCD consists of 27 staff divided into three teams.
- 1.12 The staff in the Assessment Team are responsible for the initial assessment of incoming information and complaints. They are authorised by the PCC to take decisions to refer cases for formal investigation or take no action on them. The team also provides advice and assistance to the public in making complaints via our telephone Information Line.
- 1.13 Formal investigations are carried out by staff in the Investigations and Hearings Team. This team is authorised by the PCC, where appropriate, to impose administrative sanctions and in some circumstances, refer cases to disciplinary action. Where disciplinary action is taken, it is this team that prepares and, with the support of our panel of prosecutors, presents cases to Disciplinary Tribunals.
- 1.14 The Operational Support Team has no decision-making powers but provides administrative support to the Professional Conduct Committee.

Professional Conduct Committee

- 1.15 The PCC has the full range of powers to take decisions on enforcement action including imposing administrative sanctions, referring cases of professional misconduct to disciplinary action and, under the Determination by Consent procedure, adjudicating on charges of professional misconduct. The PCC also provides advice to the PCD staff where needed.
- 1.16 The PCC consists of 36 members; currently 20 lay and 16 barristers. It is divided into two teams and meets every three weeks to take decisions on complaints.

Disciplinary action

² The regulatory objectives are set out at section 1 of the Legal Services Act 2007.

³ Our Enforcement Strategy is published on the BSB website: https://www.barstandardsboard.org.uk/media/1710431/140106_-_enforcement_strategy_-_live_updated_october_2015_.pdf

Part 1 – Public

- 1.17 Where the PCD or PCC decide there is sufficient evidence of a breach of the Handbook which is serious enough to amount to professional misconduct the matter will be referred to disciplinary action. Disciplinary action can either be taken under the Determination by Consent procedure (where charges are decided with the barrister’s consent by the PCC) or by an independent Disciplinary Tribunal.
- 1.18 Disciplinary Tribunal panels are convened and administered by the Bar Tribunal and Adjudication Service (BTAS). The BSB’s role is to bring charges of professional misconduct in front of the independent tribunal panels. In doing this, we are supported by a panel of practising barristers who assist us with the preparation of tribunal cases and represent us at hearings. The panel currently consists of 65 barristers who provide their services pro bono.

the Assessment Team, Adrian Turner, who had been with the organisation for 20 years, died in September 2016. The sudden loss of his wealth of experience was a blow to the department.

- 1.20 Despite the challenges, performance during the year was maintained and in some areas improved.

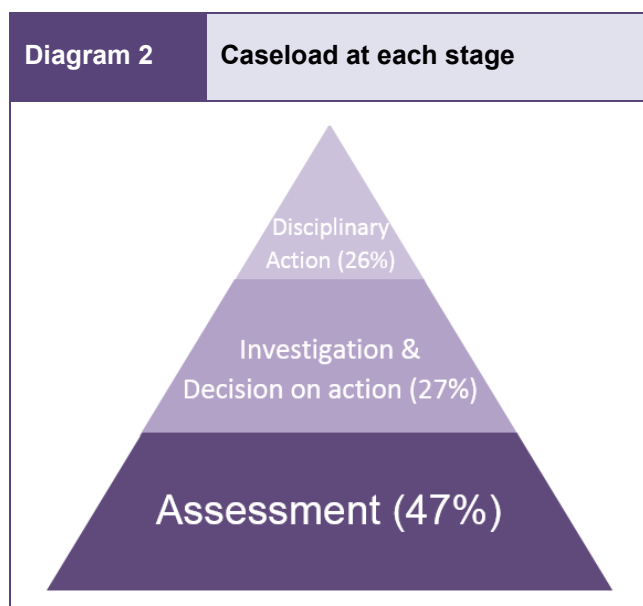
Staffing issues in 2016/17

- 1.19 During 2016/17, the PCD experienced a number of staffing problems and this report should be read against that background. Throughout the course of the year, the department operated without its full staff complement. Staff vacancies were at any one time, between 15 -25% understaffed due mainly to longer term staff moving on and maternity leave. Very sadly, the manager of

Our aims and objectives	
<p>Our main aims are to:</p> <ul style="list-style-type: none"> • Act in the public interest; • Protect the public and other consumers of legal services; • Maintain the high standards of the Bar; • Promote confidence in the complaints and disciplinary process; and • Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. 	<p>Our objectives are to:</p> <ul style="list-style-type: none"> • Deal with complaints made against barristers promptly, thoroughly and fairly; • Ensure appropriate action is taken against barristers who breach the BSB Handbook; and • Be open, fair, transparent and accessible.

Part 1: What we did

- 2.1 The BSB's complaints procedure consists of four formal stages: initial assessment; investigation; decision on action; and disciplinary action. Prior to commencing the formal process, we also handle a large number of what we term "pre-complaints". The paragraphs below outline the trends in information received, formal complaints registered and the actions taken on cases during the year.
- 2.2 The number of new complaints registered each year represents only a proportion of the cases we work on during a year. However, as this section will show, the underlying pattern is one of decreasing casework. In 2016/17 we worked on 625 cases with 200 remaining open at the end of the year. We therefore closed 425 cases (more than we opened). Last year, 2015/16, the total active caseload was 760 with 245 remaining open at year end. While the number of cases in relation to Barrister B was high in both 2015/16 (89) and 2016/17 (53), excluding these from the figures still leaves an overall picture of a reduced caseload: down by 15%.



- 2.3 As diagram 2 shows, the number of cases at each stage of the process reduces as decisions are taken with ultimately only 26% of formal complaints this year resulting in disciplinary action.

Pre-complaints

- 2.4 In previous Enforcement Reports, we have not reported separately on the statistics relating to "pre-complaints". To provide a more comprehensive picture of the extent of our work, we are for the first time including more detailed information on such complaints.
- 2.5 "Pre-complaint" is a term used to describe information received (other than formal complaints submitted by members of the public or others) which may indicate a breach of the Handbook has occurred. They fall into four broad categories:
- general enquiries received via our Information Line⁴ or other means, which have resulted in a complaint form being sent to the enquirer or the matter being passed to the Legal Ombudsman⁵;
 - reports of non-compliance with Handbook provisions from other sections of the organisation e.g. authorisation to practise;
 - reports from barristers in accordance with their reporting obligations e.g. reports of serious misconduct;
 - information received from any other source (other than formal complaints) which may indicate a breach of the Handbook has occurred e.g. press reports.
- 2.6 All this incoming information is logged on our system as "pre-complaints". Where a complainant returns a complaint form, the case will be converted into a formal

⁴ Our Assessment Team operates an information line from 9am-5pm weekdays for the purposes of providing the public with initial advice on making a complaint.

⁵ Our regulations require that complaints from clients of barrister are first referred to the Office of the Legal Ombudsman.

complaint. Matters referred to the Legal Ombudsman will be closed. In all other cases, the information is assessed to determine whether regulatory action is required (see “Initial Assessment section below for more information”).

- 2.7 Where appropriate, we may refer issues to a barrister’s chambers or other bodies to address. If there is evidence of a potential breach of the Handbook and that breach represents a medium or high risk to the regulatory objectives, we will convert the pre-complaint to an internal complaint⁶ and the matter will be referred for investigation.
- 2.8 In 2016/17, we logged 960 pre-complaints, which was a significant increase on the number logged in 2015/16 (882)⁷. 191 of the pre-complaints were subsequently converted into complaints, a slight decrease on last year (203). However, the trend indicates that the PCD is handling an increasing number of general enquiries and communications that are not reflected in the number of formal complaints we deal with.
- 2.9 In the paragraphs below, we set out in more detail the trends in relation to some areas of the “pre-complaints” we handle.

Serious misconduct reports

- 2.10 Under the terms of the BSB Handbook, barristers are required to report their own serious misconduct (rC65.7) and also

serious misconduct by others (rC66). These requirements were introduced in 2014 and inevitably, with awareness of them becoming more widespread, there has been a year on year rise in the number of such reports. This year we received 110 such reports as compared to 80 in 2015/16: a rise of 38%.

- 2.11 The statistics indicate that barristers are rightly erring on the side of caution in reporting serious misconduct as overall only approximately 53% of reports result in a formal complaint being raised by the BSB.

Self-reports of serious misconduct

- 2.12 In 2016/17 we received 77 self-reports of serious misconduct from barristers, a considerable increase from the previous two years when the number stood at 30. Looking at the subject matter of these self-reports, they relate to issues such as: dishonesty in professional or personal life; inappropriate communications and drafting; failing to act independently; and holding out as a barrister.
- 2.13 There was a significant increase in 2016/17 in self-reports for failure to obtain/renew a practising certificate, and a small increase in self-reports of misconduct in relation to a barrister’s duties to their client: in particular, failing to preserve client confidentiality. There were 11 self-reports of criminal convictions and two for dishonesty, which

	Pre-complaint cases	Pre-complaint cases converted	Conversion rate
2014/15	914	206	22.5%
2015/16	882	203	23.0%
2016/17	960	191	19.9%

⁶ Internal complaints are formal complaints raised by the Bar Standards Board of its own motion.

⁷ Prior to 2014/15, pre-complaints were logged in a different format than at present, so the data before that time is not comparable.

was broadly similar to the numbers in previous years.

- 2.14 Of the 77 reports submitted in 2016/17, 31 have been assessed as revealing a potential breach of the Handbook warranting further action and therefore converted to formal internal complaints. The self-reports that were taken forward related to a wide range of matters but examples include four convictions for drink driving, five other criminal convictions and the two dishonesty matters referred to above, as well as nine practising certificate matters.
- 2.15 32 reports were closed without any action being taken: 15 of these related to reports of failing to obtain a practising certificate of which seven arose from circumstances in a single chambers where, inadvertently, barristers working on secondment had not obtained dual capacity certificates. Five of the reports related to speeding or driving offences which barristers are not required to report. The others related to matters such as failure to keep proper records, potential loss of confidential information, late payment of court judgements and holding out as a barrister when not authorised to do so. The circumstances of these latter reports were assessed as being low risk and therefore did not warrant formal action being taken.

Reports of serious misconduct by others

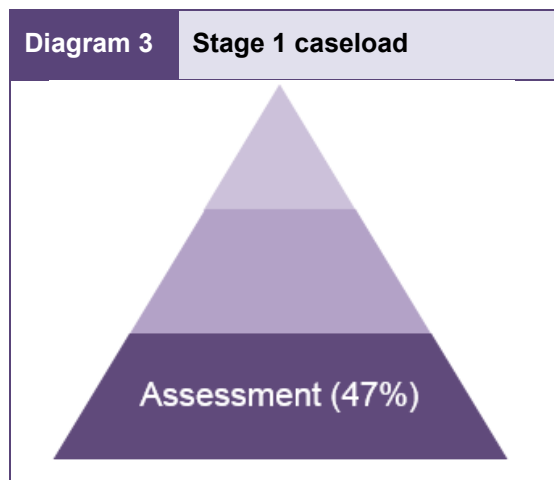
- 2.16 In 2016/17 we received 33 reports of serious misconduct by others, which was a significant drop from last year (50 reports) but the same number as in 2014/15 (35 reports). The drop is equally spread across all types of conduct reported and, given the very small numbers of reports as compared to the practising population, it is impossible to draw any conclusions from the decrease.
- 2.17 Of the 33, so far 14 have resulted in internal complaints being raised. They related to matters such as dishonesty in professional or personal life, inappropriate communications, failing to act independently and holding out as a barrister.

Internal and external complaints

- 2.18 All internal complaints, i.e. those that the BSB raises of its own motion, start as pre-complaints (see above). It is only following an initial assessment that the decision to raise an internal complaint is made.
- 2.19 External complaints are those we receive from external sources such as members of the public, solicitors, other professionals and organisations or clients of barristers (via the Legal Ombudsman). These are subject to initial assessment after being registered on our system.

Complaint Source	2012/13	2013/14	2014/15	2015/16	2016/17
External	316	300	297	300	254
Internal	175	108	143	134	112
Total	491	408	440	434	366

Stage 1 – Initial Assessment of complaints



- 2.20 The first stage of the formal enforcement process is carrying out an initial assessment of the information/complaints to determine whether there is evidence of a potential breach of the Handbook that warrants formal investigation with a view to taking enforcement action.
- 2.21 The initial assessment involves an assessment of whether the available evidence reveals a potential breach of the Handbook. If so, a risk assessment is carried out to determine the level of risk to the regulatory objectives: low, medium or high. In most cases, a low level of risk will result in no action being taken but medium and high risk cases will be referred to formal investigation.
- 2.22 In total, we opened 366 complaints over the course of 2016/17 both internal and external. This is 15.7% fewer than last year and the lowest number of registered new complaints in the last five years. The reasons for this decline are rehearsed in more detail below but the reduction in new complaints about Barrister B was a significant factor. In total, over the last three years, 139 complaints were raised or made about Barrister B or those working in his chambers. If the complaints relating to Barrister B are

excluded from the figures, the overall drop in complaints is only 7.6%.

Risk assessments

- 2.23 As previously indicated, if it is determined that the information received, either as an external or internal complaint, discloses a potential breach of the Handbook then the matter is risk assessed.
- 2.24 Risk assessment is a tool used to assist us in determining the most proportionate form of regulatory action taking into account the outcomes set out in the Handbook and the regulatory objectives. The higher the assessment of risk, the more likely it is that the case will be referred for investigation and potential disciplinary action. A low risk level at the initial assessment stage will usually lead to no further action being taken or the matter, if appropriate, being referred elsewhere such as to our Supervision Team, chambers or another body. A medium or high risk level would normally result in a referral to formal investigation.

How do we assess risk?

Each case is rated High, Medium or Low risk based on a combination of two tests:

- *Firstly, a series of questions covering common areas of risk or possible risk to consumers of legal services and the public (such as whether the information relates to dishonesty on the part of the barrister). The answers are used to calculate a risk level;*
- *Secondly, a Case Officer of the PCD will assess the case in context and determine whether the risk level calculated from the answers to the questionnaire is appropriate.*

- 2.25 A total of 445 cases were subject to initial assessment in 2016/17. This includes cases outstanding from 2015/16 and excludes cases that were still to be assessed at the end of 2016/17. Of the 445 assessments,

47% (208) did not require a risk assessment as no breach of the Handbook was revealed by the information/complaint or the matter was over 12 months old and did not represent a risk to the regulatory objectives.

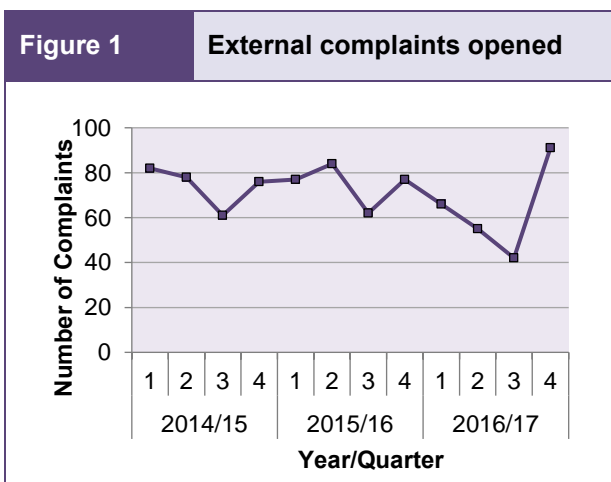
2.26 Of the 237 risk assessments carried out, in 2016/17, the number assessed as high risk was considerably lower than last year at 69 compared to 133 (almost a 100% decrease). However, an analysis of the relevant cases shows that these figures were significantly affected by the large number of high risk cases relating to Barrister B in 2015/16 (42

Risk Profile	Percentage	Count
High risk	29%	[69]
Medium risk	28%	[66]
Low/no risk	43%	[102]

cases). Nevertheless, the underlying trend in high risk cases is still down.

External Complaints

2.27 **Number:** as Table 2 indicates, the number of external complaints opened in 2016/17 reduced by 46 as compared to 2015/16. However, last year, 38 new external complaints were opened, related to Barrister B, whereas only two were opened in 2016/17⁸. Therefore, the sharp reduction in external complaints this year is almost



⁸ The majority of complaints related to Barrister B involved either a failure to administer chambers properly or failures to co-operate with the Legal Ombudsman i.e. a failure to comply with orders by the Ombudsman to return fees and/or pay compensation to clients.

entirely due to the absence of new complaints about this barrister. The underlying trend in receipt of external complaints is a gradual decline of about 10 complaints year on year for the last three years.

2.28 While the general trend in external complaints over the last five years has been downward, the last quarter of 2016/17 saw a very sharp increase in the number of external complaints received, with 91 being registered (Figure 1). This is higher than any other quarter in the last five years. It is still too early to tell whether this is an isolated occurrence or the start of an upwards trend in receipt of complaints.

2.29 **Sources of external complaints:** the trends in relation to the various sources of external complaints remain similar to previous years. The majority of complaints are from civil or family law litigants numbering 49 (19%) and 35 (14%) respectively.

2.30 We also record whether complaints are received from litigants in person. The number of complaints from litigants in person has been gradually declining year on year from the peak in 2011/12. In that year, they rose from previous single figures per year to 80 but by 2016/17 the number had gradually dropped to 47. Nevertheless, they still account for almost one fifth (18.4%) of all external complaints submitted. The gradual reduction may indicate that the justice system and barristers are becoming more used to, and better able to deal with, the increasing presence of litigants in person within the system.

2.31 It is also interesting to note the categories of sources of external complaint that did not give rise to any, or any significant numbers, of complaints in 2016/17. Complaints from criminal defendants remained low at only 19 (7%) of all external complaints. This low

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pattern has existed since the Legal Ombudsman came into existence in 2010 and all complaints from clients of barristers have been channelled through the Ombudsman’s Office. The low level of conduct referrals indicates that the concerns of criminal clients are mainly associated with the level of service provided and not the professional conduct of their barristers.

- 2.32 Also, the BSB started authorising and regulating entities, as opposed to just individual practitioners, in April 2015. As at end of March 2017, 64 entities had been authorised but no complaints had been received about any of these entities.
- 2.33 2016/17 saw a sharp increase in the number and percentage of complaints where the source of the complaint was classified as “other”: up from 45 in 2015/16 to 75 in 2016/17 which represents nearly 30% of the recorded sources of external complaints. It will always be the case that we receive complaints which are hard to classify. An analysis of these complaints indicates that there has been an increase in complaints from members of the public who have no

direct connection with the barrister they are complaining about and the issues relate to matters they have heard or read about in the press or on social media, including actions of politicians who are called to the Bar. However, the increase in the “Other” category indicates that a review of our categorisation and further staff training in this area is required.

- 2.34 **Subject matter of external complaints:** Table 3 shows the most common categories of breaches of the Handbook about which external complaints are made. These categories cover nearly 90% of complaints received. The figures show that there have been some changes in the subject matter of external complaints in the last year.
- 2.35 Allegations about all forms of misleading (the court, persons or statements/submissions) were still the largest category and increased by 27% from 71 in 2015/16 to 97 in 2016/17. Allegations about inappropriate handling of evidence or information, while still small in number, increased substantially: up by 143% from seven last year to 17 in 2016/17.

Table 3		External complaint statistics in 2016/17																													
Total complaints received	254	Referrals from the Legal Ombudsman	13																												
Complaint categories <table border="1"> <caption>Complaint Categories Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Other Categories</td> <td>50%</td> </tr> <tr> <td>Civil Litigants</td> <td>19%</td> </tr> <tr> <td>Family Law Litigants</td> <td>14%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>10%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>7%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	50%	Civil Litigants	19%	Family Law Litigants	14%	Barristers/Solicitors/Judges	10%	Criminal Proceedings	7%	Complaint aspects <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Misleading the Court</td> <td>48</td> </tr> <tr> <td>Making misleading submissions or statements</td> <td>41</td> </tr> <tr> <td>Inappropriate communications with clients or others</td> <td>18</td> </tr> <tr> <td>Inappropriate handling of information or evidence</td> <td>17</td> </tr> <tr> <td>Dishonesty</td> <td>15</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>13</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Misleading the Court	48	Making misleading submissions or statements	41	Inappropriate communications with clients or others	18	Inappropriate handling of information or evidence	17	Dishonesty	15	Rudeness/misbehaviour out of Court	13	...	
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However, 88% of these complaints were dismissed without an investigation.

- 2.36 There were also significant decreases in some categories: allegations of dishonesty dropped by 40% from 25 to 15 but 12 of these were dismissed. Allegations of rudeness/misbehaviour out of court saw a similar drop from 23 in 2015/16 to 13 this year (43%) with the majority being dismissed (9) on initial assessment.
- 2.37 With such small numbers, it is difficult to draw any conclusions from these statistics about the potential conduct of barristers but the fluctuations provide some indication of the nature of public concerns whether or not they are assessed as amounting to breaches of the Handbook.

Internal Complaints

- 2.38 The section above on pre-complaints provides an overview of the types of cases that result in internal complaints being raised. In general, as Table 2 shows, the ongoing trend is a downwards one with 112 internal complaints being opened in 2016/17 as compared to 134 in 2015/16 (a 16%

fluctuations are across the board.

Approximately 40% (42) of the complaints opened related to reports of serious misconduct. However, it should be noted that there are difficulties in comparing types of complaints to previous years as the categories we assign were amended during 2015/16 to better reflect the terms of the Handbook.

- 2.39 **Subject matter of internal complaints:** of the 112 internal complaints opened 55% (62) related to non-compliance with practising requirements mainly failure to renew or obtain a practising certificate (54). This is an increase on last year of 38% when the number of such cases was 39. Most of the practising certificate complaints relate to the authorisation process not being completed on time. In many cases the period in which the barrister practised without a certificate was short. Nevertheless, such conduct presents a risk given that exercising rights of audience when not authorised to do so is potentially a criminal offence and clients, during the period of non-authorisation, are

Table 4

Aspects opened for internal complaints – annual comparison 2015/16 to 2016/17

Aspect	2015/16	%	2016/17	%
Failing to renew practising certificate	5	4%	28	25%
Failure to obtain practising certificate	5	4%	26	23%
Performing reserved legal activities when not authorised to do so	6	4%	8	7%
Holding out as a barrister when not authorised to do so	3	2%	7	6%
Criminal conviction other than drink driving	15	11%	7	6%
Failing to provide information promptly to the BSB	15	11%	2	2%
Practising without a practising certificate	15	11%	N/A	0%
Failure to complete Authorisation to Practice	14	10%	N/A	0%
...				

drop). The decrease cannot be attributed to specific types of complaint as the

not able to seek redress from the Legal Ombudsman.⁹

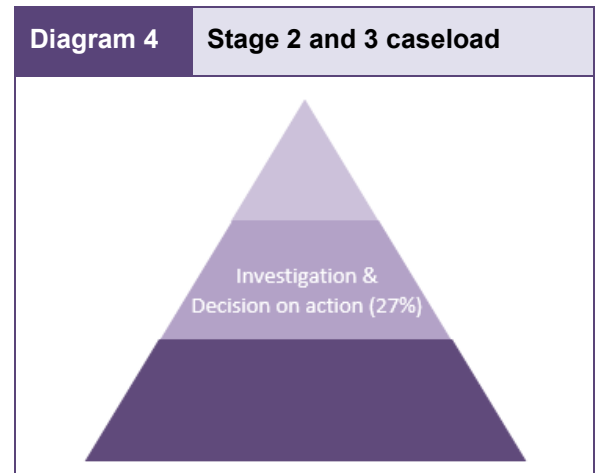
- 2.40 One area that has seen a decrease is the number of cases relating to barristers failing to provide information promptly to the BSB. Last year we reported that there were 14¹⁰ such cases, this year there were only two. Closer analysis shows that half the complaints in this category last year related to referrals from the Supervision Team in relation to barristers failing to provide income validation when requested to do so. The requirement to provide income levels as part of the authorisation to practise process was first introduced in 2016. Therefore, it is positive that the number of internal complaints in this area has decreased.

Outcome of complaints at the initial assessment stage

- 2.41 In total 194 formal complaints were closed at the initial assessment stage without any action being taken in 2016/17: 192 of which were external complaints. This equates to 45.5% of all decisions taken on complaints, which is an increase on 2015/16 when 40% were closed at the initial assessment stage but below the figure of 50% closed at this stage in 2014/15. As stated above, the main reason for closing complaints at this early stage was insufficient or no evidence of a breach of the Handbook. Decisions at the initial assessment stage are normally taken

by staff under delegated authority and it is rare that cases are referred to the PCC for decision. In 2016/17, 95% of initial assessment decisions were taken by staff which is in line with previous years.

Stage 2 and 3 – Investigation and decision



- 2.42 Following a referral to formal investigation, the distinction between external and internal complaints become less relevant as the same investigation process is followed for all complaints.
- 2.43 In 2016/17, 175 new cases were referred to formal investigation and added to the number of cases outstanding from 2015/16, the overall number of live investigations in 2016/17 was 228.

Case study

The PCD received a complaint from a member of the public who was involved in civil litigation. The complainant had overheard the barrister on the other side make a disparaging comment about her to her representative whilst in court. She felt the remark was insulting and not what would have been expected of a barrister, nor directly relevant to the case before the court. At the initial assessment stage it was determined that, while there was evidence of a breach of the Handbook, the risk to the regulatory objectives was low and did not require regulatory intervention. It was considered a more proportionate approach was for the matter to be dealt with under the chambers' complaints procedure. The complaint was therefore dismissed but referred to the chambers. The chambers investigated and partially upheld the complaint. The barrister apologised to the complainant.

⁹ The Legal Ombudsman's jurisdiction only covers barristers who are authorised to practise at the time the event giving rise to a complaint occurs.

¹⁰ Number differs to that presented in Table 4 due to data error last year which was corrected post publication.

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- 2.44 At end of an investigation, the case is reviewed and a decision taken as to what action, if any, should be taken. In some cases, the investigation shows that no breach of the Handbook has occurred or there is insufficient evidence of a breach and the case will be dismissed. In others, where the breach is supported by the evidence, the risk may be considered too low to warrant regulatory action. In the remaining cases a decision will be taken as whether the risk (seriousness of the conduct) is one that warrants the imposition of an administrative sanction or referral to disciplinary action. Such decisions can either be taken by staff under delegated authority or will be taken by the PCC at a meeting.
- 2.45 Administrative sanctions (warnings and fines) are not disciplinary in nature. They are imposed where there is evidence of a breach of the Handbook on the balance of probabilities and the breach is not sufficiently serious to amount professional misconduct.
- 2.46 In 2016/17 a total of 111 cases were closed at the investigation stage which is in sharp contrast to the 235 closed at this stage in 2015/16.
- 2.47 **Dismissals:** the majority of the closures (73) at the investigation stage were dismissed. This represents 16% of the total closures during the year. This compares to 157 that were dismissed at this stage in 2015/16. The reduction in numbers is a reflection of the decreasing caseload overall (see paragraph 2.2 above). In most cases the decision to dismiss a complaint post-investigation was due to insufficient evidence of a breach or the conduct being of such a low risk that action would not have been appropriate.
- 2.48 **Administrative sanctions:** In 2016/17, 38 cases were the subject of administrative sanctions (9% of all cases closed), 33 of which were warnings. In the main, the sanctions were imposed for breaches of the practising requirements regulations. The

number of administrative sanctions in 2015/16 was much higher at 77 but this was due to an unexpected rise in that year in the number of pupils failing to complete the authorisation process properly on first registration. Proactive steps were taken to address that issue and no such cases arose in 2016/17. Overall, the trend in administrative sanctions is an upwards one which reflects the increasing use of this power as a more proportion form of action for medium risk cases.

- 2.49 **Referrals to disciplinary action:** a total of 66 new cases were referred to some form of disciplinary action in 2016/17: 58 to a tribunal and eight to the Determination by Consent (DBC) procedure. The number of referrals to Tribunal was significantly lower than 2015/16 when 103 cases were referred. However, this picture is distorted by referrals in relation to Barrister B. If these are removed, the figures show a more consistent pattern with referrals in 2016/17 standing at 46 as compared to 53 in 2015/16. This underlying falling trend reflects greater use of administrative sanctions and the overall decrease in caseload.

Table 5 Complaint outcomes 2016/17

Outcome	#	%
Closed without investigation	194	52%
Closed after investigation (No enforcement action)	73	20%
Administrative sanction	38	10%
Referred to disciplinary action	66	18%

- 2.50 **Decisions post investigation:** one striking feature of the decisions taken post-investigation, is the increase in the number of staff decisions. This reached the highest

level in three years, building upon increases in previous years. In 2014/15, 42% of decisions were taken by staff, in 2015/16 it stood at 58% and this year 69%. While some of the staff decisions were in relation to complaints about Barrister B, the rise demonstrates a wider trend reflecting our risk based approach. It also reflects the BSB's revised governance principles that emphasise the need for decisions to be taken at the lowest appropriate level. The PCC decision making powers are therefore rightly and increasingly reserved for the most serious and high risk cases: indeed, 70% of the decisions to refer to disciplinary action were taken by the PCC with only 30% taken by staff.

Requests for Review

- 2.51 Under the Complaints Regulations, where there is new evidence, or some other good reason, the PCC or staff (under delegated authority) can reopen a complaint and reconsider it. In most cases, this arises where a complaint has been dismissed, either before investigation or afterwards.
- 2.52 This year there were 32 such requests, eight of which resulted in a decision to dismiss being reopened. This shows a very different picture to 2015/16 when 60 such requests for review were recorded but only one resulted in a decision to reopen or reconsider. The reduction in the number of

such reviews arises from a decision in the Assessment Team to apply a more stringent interpretation on the registering of requests for review. This approach has since been changed and we will again be registering disagreements with a decision as “request for reviews” even though an explicit request may not have been made. It is therefore likely that the number of reviews recorded will increase again in 2017/18.

- 2.53 The number of valid requests for review where the original decision was changed rose significantly in 2016/17: from 1 to 8. Seven involved a review of a decision to dismiss a complaint at the initial assessment stage which were replaced with decisions to investigate. The remaining one involved a decision to dismiss a complaint after investigation but the case was reopened on the basis of new evidence. This is a worrying increase in successful reviews but an anomaly as compared to the low level of cases reopened in previous years. It is likely it is due to the unusual staff turnover and level of staff vacancies in the Assessment Team over the year.

Stage 4 - Disciplinary action

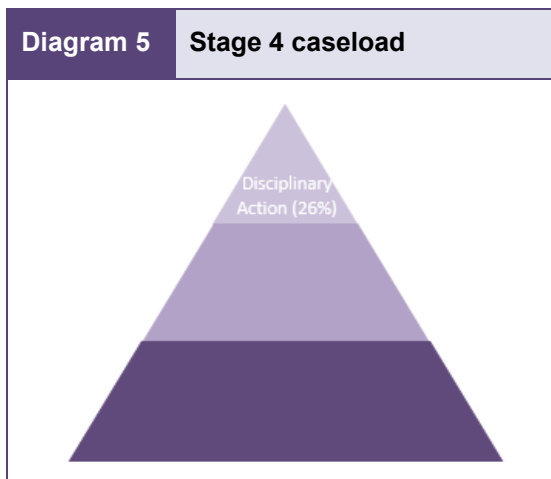
- 2.54 Cases that are referred to disciplinary action are those where the conduct is assessed as being serious, considering all the circumstances, and poses the greatest risk to the regulatory objectives. A decision to

Case study

A barrister reported to the BSB the serious misconduct of another barrister. The report related to an assertion in court that certain correspondence had been sent when it had not and therefore the assertion was false and misleading. Following an initial assessment of the report, it was determined that there was sufficient evidence of a potential breach of the Handbook by the barrister and that the conduct was high risk given the potential impact on the administration of justice. An internal complaint was raised and an investigation carried out.

The investigation revealed that while the misleading statement had been made, it had been made in good faith. The barrister had confirmed with the instructing solicitors that the communication had been sent and relied on this when making the assertion to the court. It subsequently turned out that the information he had been given was incorrect. Therefore, at the end of the investigation, it was determined that there no breach had occurred as the barrister had not knowingly or recklessly misled the court. The complaint was dismissed.

take disciplinary action will only be made where it has been determined that: an administrative sanction is not appropriate; there is a reasonable prospect of proving professional misconduct to the criminal standard; and it is in the public interest to



take action.

- 2.55 Disciplinary action takes two forms: Determination by Consent (DBC) and Disciplinary Tribunal. DBC is an entirely consensual process reserved for lower level professional misconduct which would not attract a sanction greater than a fine and the facts are not in dispute. Decisions on DBC cases are made by the PCC on the papers. All other cases of professional misconduct are heard in front of independent Disciplinary Tribunals convened by the Bar Tribunal and Adjudications Service (BTAS).
- 2.56 In 2016/17 110 cases¹¹ were closed at the disciplinary action stage: nine by DBC and 101 during Tribunal proceedings although not all reached a final hearing. This represents 26% of all case closures in 2016/17.
- 2.57 **DBC:** Of the nine DBC cases, eight arose from internal complaints relating to reporting requirements such as reports of lower level criminal convictions (e.g. convictions for

drink driving). These were cases where the BTAS sentencing guidance indicates that a reprimand or low level fine is appropriate. Eight of the DBC cases resulted in a disciplinary finding which included four in relation to criminal convictions and two related to breach of practising requirements. One case was dismissed when scrutiny of the material provided during the process meant that professional misconduct could not be proved.

- 2.58 **Disciplinary Tribunals:** A total of 101 tribunal cases were concluded in 2016/17, four of which were withdrawn in the early stages following advice from a member of the prosecution panel. 97 cases were determined by a Tribunal. This is a significant increase on previous years but reflects the large number of cases involving Barrister B that were finally heard or concluded in 2016/17 having been commenced up to three years earlier. Almost half the cases determined by a Tribunal (49) were withdrawn by the BSB offering no evidence. In nearly all these cases this action was taken following the disbarment of the barrister and therefore it was no longer necessary to pursue other outstanding disciplinary cases. In the case of Barrister B, 46 cases were withdrawn at the end of the year when he was formally

Determination by Consent

The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal.

Under DBC, if the barrister agrees, the case against them will be dealt with on the papers and the PCC decides whether the individual is in breach of their professional obligations as set out in the Handbook and, if so, what sentence to impose. Sanctions can include reprimands or fines, but not suspensions or disbarments which can only be imposed by a Disciplinary Tribunal panel.

The barrister is given the opportunity to accept or reject the PCC's finding(s) and sentence.

The aim of the DBC procedure is to conclude the disciplinary process more quickly than a referral to a Disciplinary Tribunal hearing.

¹¹ This number does not represent the number of hearings as cases can be heard together.

disbarred after all avenues of appeal had been exhausted.

2.59 If the withdrawn cases are removed from the figures, 51 cases were fully considered by a Tribunal which is more in line with previous years. Of these 51 cases, 44 resulted in one or more charges being proved: an uphold rate of 86% which is similar to previous years. This level of successful prosecutions is in no small part due to the dedication and expertise of our panel of pro bono barristers who provide invaluable assistance by representing the BSB at Tribunals.

2.60 Of the four cases where all charges were dismissed, in three of these the panel heard the barrister give live evidence and found that the facts were not proved to the criminal standard of proof. In the other, the panel found the facts were proved but did not find that the conduct amounted to professional misconduct.

2.61 **Disciplinary sanctions:** Table 6¹² shows the sanctions imposed following a disciplinary finding either by DBC or by a Disciplinary Tribunal. In line with previous years, the most common sanction was a fine which was imposed in 52% of cases. This year saw a significant rise in the number of barristers disbarred with 19 being disbarred as compared to seven in 2015/16. Eleven disbarments related to criminal convictions

(seven for dishonesty) which is also an increase (last year there were only three disbarments for criminal convictions all for fraud). Three disbarments related to dishonesty in another form. Other reasons for disbarment include findings by the Solicitors Disciplinary Tribunal and, in one case, posting anti-Semitic comments on Twitter.

2.62 **Recovery of fines:** Fines imposed totalled £31,900 in 2016/17: £27,550 in disciplinary fines and £4,350 in administrative sanction fines. This is consistent with the previous two years. Of the 25 fines due to be paid in 2016/17, seven were paid within the time allowed and 23 overall. We continue to chase the other two outstanding. The BSB has no express power to recover fines owing. Where there is non-compliance we try to work with the barrister to achieve payment including allowing payment by instalments. If after concerted attempts, it is not possible to obtain full payment, we will raise an internal complaint for failing to comply with a disciplinary finding.

Appeals

2.63 Where administrative sanctions have been imposed, or findings of professional misconduct have been made by a Disciplinary Tribunal, barristers have the right to appeal against the findings and/or

Sentence	2015/16		2016/17	
	Barristers	%	Barristers	%
Disbarred	7	21%	19	40%
Suspended	9	27%	5	10%
Fined	16	47%	25	52%
Reprimanded	10	29%	16	33%
Advised as to Future Conduct	1	3%	1	2%
Other	0	0%	0	0%

¹² The number of sanctions imposed is higher than the number of cases as multiple sanctions can be imposed in relation to one case.

the sentence imposed. Appeals against administrative sanctions are heard by an Appeal Panel convened by BTAS, whereas appeals against Disciplinary Tribunals are made to the High Court.

- 2.64 Only one appeal was received against the imposition of an administrative sanction in 2016/17, which is in line with previous years. The panel found the imposition of the administrative sanction for failing to maintain a complaints procedure, was warranted but reduced the fine imposed from £1000 to £750.
- 2.65 Five new appeals to the High Court were lodged against Disciplinary Tribunal decisions in 2016/17. This is considerably fewer than in 2015/16 although the 21 disciplinary appeals lodged in that year were filed by only six individual barristers and Barrister B lodged 15 of them. At the start of 2016/17, 20 appeals remained outstanding.
- 2.66 However, 23 appeals were decided during the year¹³, considerably more than in previous years, leaving only three outstanding appeals at the end of the 2016/17 year. Of these 23 appeals, 19 (83%) were dismissed and four (including the appeal against the administrative sanction

referred to above) were successful, which is a broadly similar number of successful appeals to previous years.

- 2.67 In one of the four appeals that was allowed, the BSB unsuccessfully sought to cross-appeal on the basis of what we considered to be an unduly lenient sentence. We always review the outcome of Disciplinary Tribunal cases and consider whether, in the public interest, an appeal would be appropriate where charges are dismissed. However, we rarely lodge appeals against findings of Disciplinary Tribunals which is reflection of the quality of decisions taken by BTAS Tribunals.

Legal action

- 2.68 In addition to the right of appeal, barristers can also exercise their right to challenge decisions made by the BSB or by a Disciplinary Tribunal by way of Judicial Review proceedings. Challenge by way of judicial review is also available to complainants. Claims against the BSB are also occasionally lodged in the employment and civil courts.

Case study

A barrister made a self-report to the BSB of serious professional misconduct. It followed an internal chambers investigation that had established the barrister had been undertaking public access work over a period of three years without informing chambers or sending client care letters. In doing so, he had not only breached the public access rules in place to protect clients but had also deliberately avoided paying chambers fees on the income from the public access work.

The initial assessment determined that there was sufficient evidence of more than one breach of the Handbook and the risk to the regulatory objectives was high given the potential dishonesty involved. An internal complaint was raised and the matter investigated. At the end of the investigation, the matter was referred to the PCC. The PCC concluded there was clear evidence of breaches of the Handbook, that the conduct was high risk and amounted to professional misconduct. It was therefore not suitable for the imposition of an administrative sanction and the PCC referred the case to a five-person Disciplinary Tribunal on the basis that the dishonesty involved would, if proved, warrant consideration of a disbarment. The Tribunal found the charges in relation to dishonesty proved and disbarred the barrister.

¹³ This includes appeals outstanding from 2015/16, as well as some appeals that were lodged in 2016/17.

- 2.69 The number of legal claims dealt with in 2016/17 were similar to previous years. At the start of 2016/17, there were three judicial review applications pending and two discrimination claims – one in the Employment Tribunal and one in the Court of Appeal. During the course of the year a further two judicial review applications were made.
- 2.70 Two of the pending applications for judicial review were lodged by Barrister B. The applications were refused as being totally without merit by the High Court and an Extended Civil Restraint Order was made against Barrister B.
- 2.71 The third pending judicial review matter was somewhat more complex. The BSB had previously successfully judicially reviewed a decision of a cost assessor who had been appointed by a Disciplinary Tribunal following an unsuccessful prosecution of charges by the BSB. The barrister subsequently appealed the judicial review decision, with partial success. The Court of Appeal remitted the matter back to a reconvened Disciplinary Tribunal to fix the correct costs rate and the outcome is still awaited.
- 2.72 The two new judicial review applications received during the year were made by complainants in relation to complaints which had been dismissed in whole or in part. One application for review was dismissed. The second application remains outstanding and has not yet reached permission stage although a connected application for an injunction to stop disciplinary proceedings was refused.
- 2.73 In relation to the two discrimination claims, the Employment Tribunal matter had not reached a final hearing and remained outstanding at the end of the year. The Court of Appeal claim was unsuccessful; however, permission has been granted to the appellant to appeal to the Supreme Court on a specific point relating to the limitation period for bringing the claim.
- 2.74 The department was also the subject of one further civil claim in relation to an investigation and a subsequent referral to a tribunal which we later withdrew. The case was settled.

Part 2: How well did we perform

- 3.1 The BSB uses a number of mechanisms to monitor the performance of the enforcement system to ensure that we handle complaints fairly, consistently and with reasonable speed. These include: key performance indicators and other service standards and quality assurance mechanisms. We also strive for continuous improvement by reviewing outcomes of cases for indications of systemic and quality issues that need to be addressed.
- 3.2 This section sets out the results of this performance monitoring during the year.

Performance Indicators

- 3.3 The PCD is committed to dealing with complaints in a prompt manner. We have three operational performance indicators (OPIs) which we use to track how long it takes us to assess and investigate complaints. These are combined to produce an over-arching corporate Key Performance Indicator (KPI), which we use to monitor overall performance in these areas.
- 3.4 The KPI and our three operational indicators (OPIs) are set out in Table 7, along with our performance against them for the year. Our

KPI target for the year was to conclude or refer to disciplinary action 80% of cases within our service standards (i.e. eight weeks for the initial assessment of complaints, five months for concluding internal complaint investigations and eight months for concluding external complaint investigations)¹⁴.

- 3.5 In 2016/17 we met the KPI target of 80% with a year-end outturn of 80.1%. Compared to the two previous years this is an improvement as we did not meet the target. In 2015/16 our performance against the KPI was 75.7% and in 2014/15, 68.9%. While the target was achieved against a background of falling caseloads, it also came in a year of understaffing across the department and vacancies in the PCC. On balance, it represents an improvement in performance for which the staff and PCC are to be commended.
- 3.6 **Outcome against the OPIs:** performance in relation to each of the underlying operational indicators was slightly different. Our aim of completing initial assessments of external complaints within eight weeks of receipt was met in nearly 85% of cases and therefore exceeded the target of 80%. However, we fell short of our aims in relation to the time

Indicator	Description	Performance	Target
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	80.1%	80%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	84.6%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	70.4%	80%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	76.4%	80%

¹⁴ The calculations exclude periods of time that complaints are put on hold e.g. pending the outcome of court proceedings.

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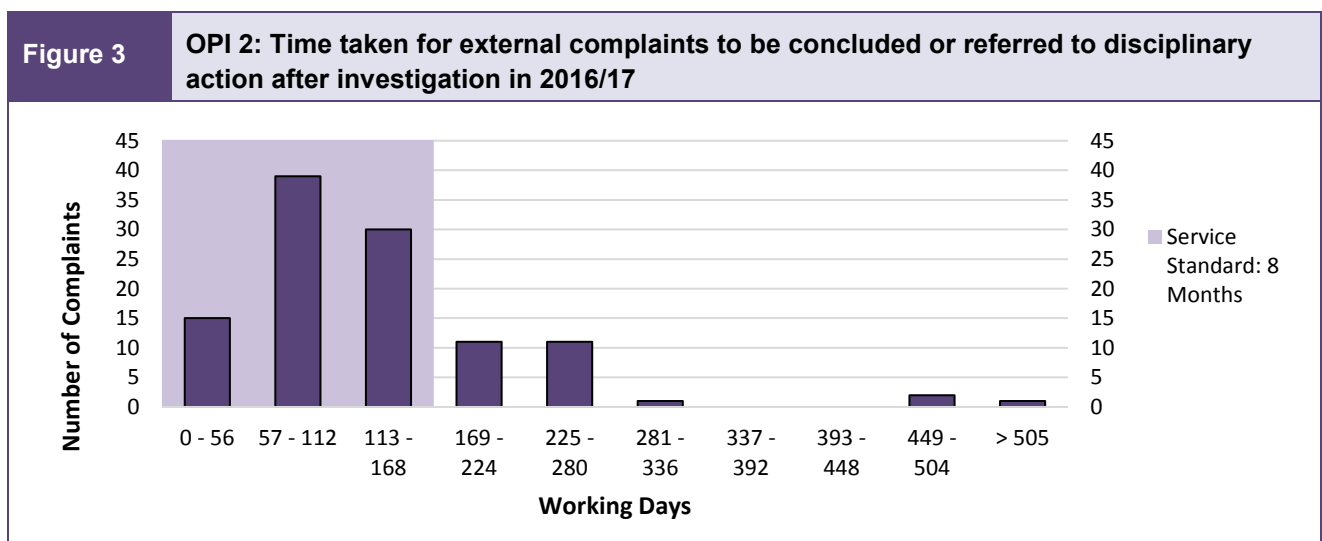
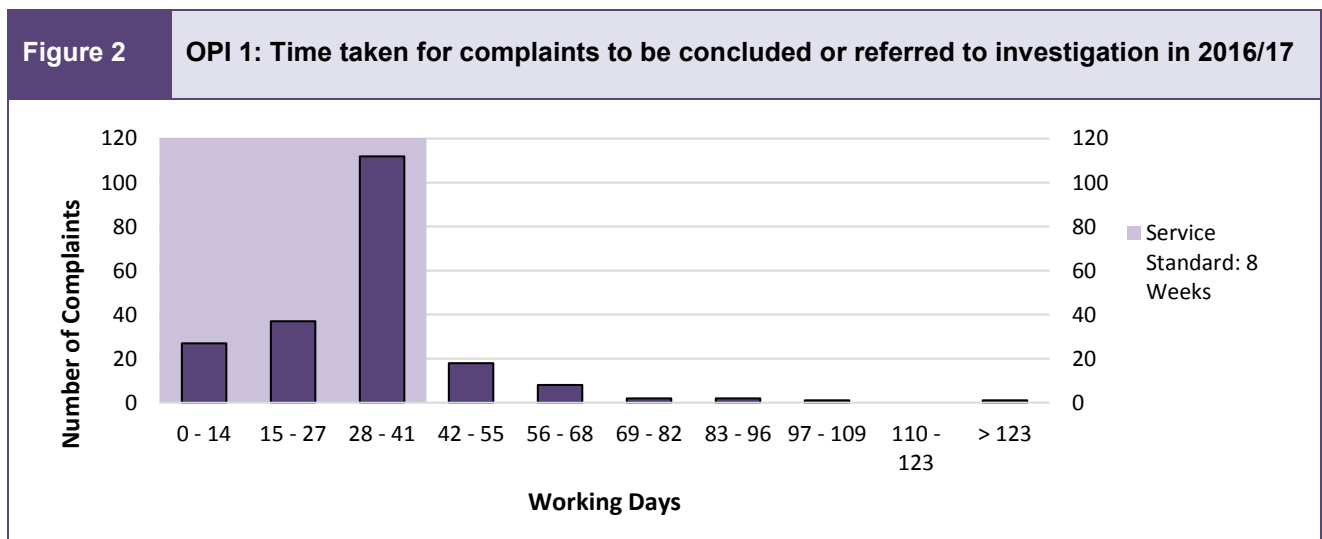
taken to investigate complaints which includes referral of any relevant matters to the PCC and taking decisions to impose administration sanctions. Our aim is to try to complete investigations of external complaints within eight months of receipt of a complaint and we achieved this in 70% of cases against a target of 80%. Performance was better in relation to the investigation of internal complaints, which we try to complete in five months: we did so in 76% of cases against the target of 80%.

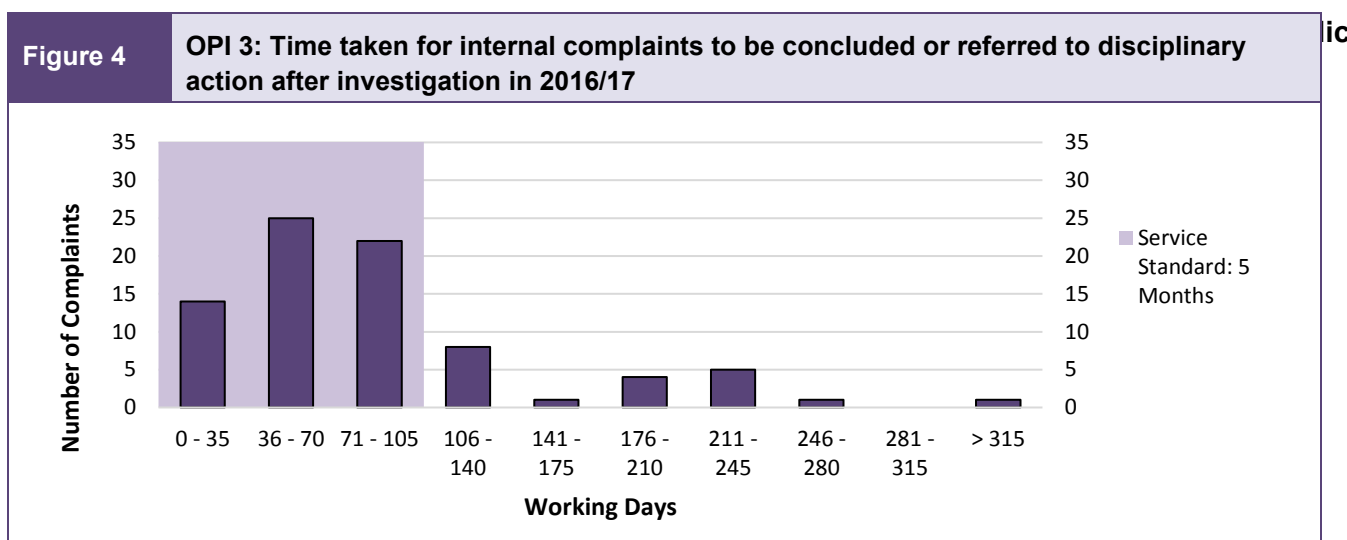
3.7 There is no one clear reason for why the targets for investigations were missed this year but overall, the staffing issues in the Investigations and Hearings Team combined

with vacancies on the PCC in the first half of the year led to it taking longer to complete some cases.

3.8 An analysis of the cases closed outside OPI's indicates that a relatively common theme was delays at PCC level. These delays are a product of the summer period when availability is more limited, the absence of a PCC meeting in August and vacancies on the PCC which were not filled until the beginning of 2017.

3.9 Figures 2 to 4 illustrate how long it took us to assess and investigate complaints in 2016/17.





Disciplinary action – service standards

3.10 While we do not have formal performance indicators in relation to disciplinary action, we still monitor the time taken to conclude Determination by Consent and Disciplinary Tribunal cases and have internal service standards for these stages. Our aim is to conclude DBC cases within 93 days of the date of the referral to the process following investigation. The service standards for the completion of Tribunal proceedings, following referral, differ according to whether the proceedings relate to an internal or external complaint and whether they are in front of a three or five-person tribunal panel.

Table 8 shows the relevant service standards and compares those figures to the completion of the Determination by Consent and Disciplinary Tribunal stages in 2016/17.

- 3.11 Performance in concluding the disciplinary action stages has improved slightly. However, it remains the position that the service standards are not achieved in most cases.
- 3.12 **DBC:** four out of the eight cases dealt with under the DBC procedure were concluded outside the 93 working days service standard as compared to seven out of 10 last year. This is a small improvement but still represents a relatively low performance against our standards. During the year, we reviewed whether the time allowed to

Stage	Type	Service Standard		Stages Completed		Percentage of Stages Within Service Standards	
		(Days)	(Months)	2015/16	2016/17	2015/16	2016/17
Determination by Consent	Internal	93	3	10	8	30%	50%
3-person Disciplinary Tribunal	Internal	86	2.8	5	14	0%	0%
3-person Disciplinary Tribunal	External	166	5.4	1	7	0%	29%
5-person Disciplinary Tribunal	Both	197	6.4	10	73	40%	56%

complete the DBC process was reasonable and concluded that it was.

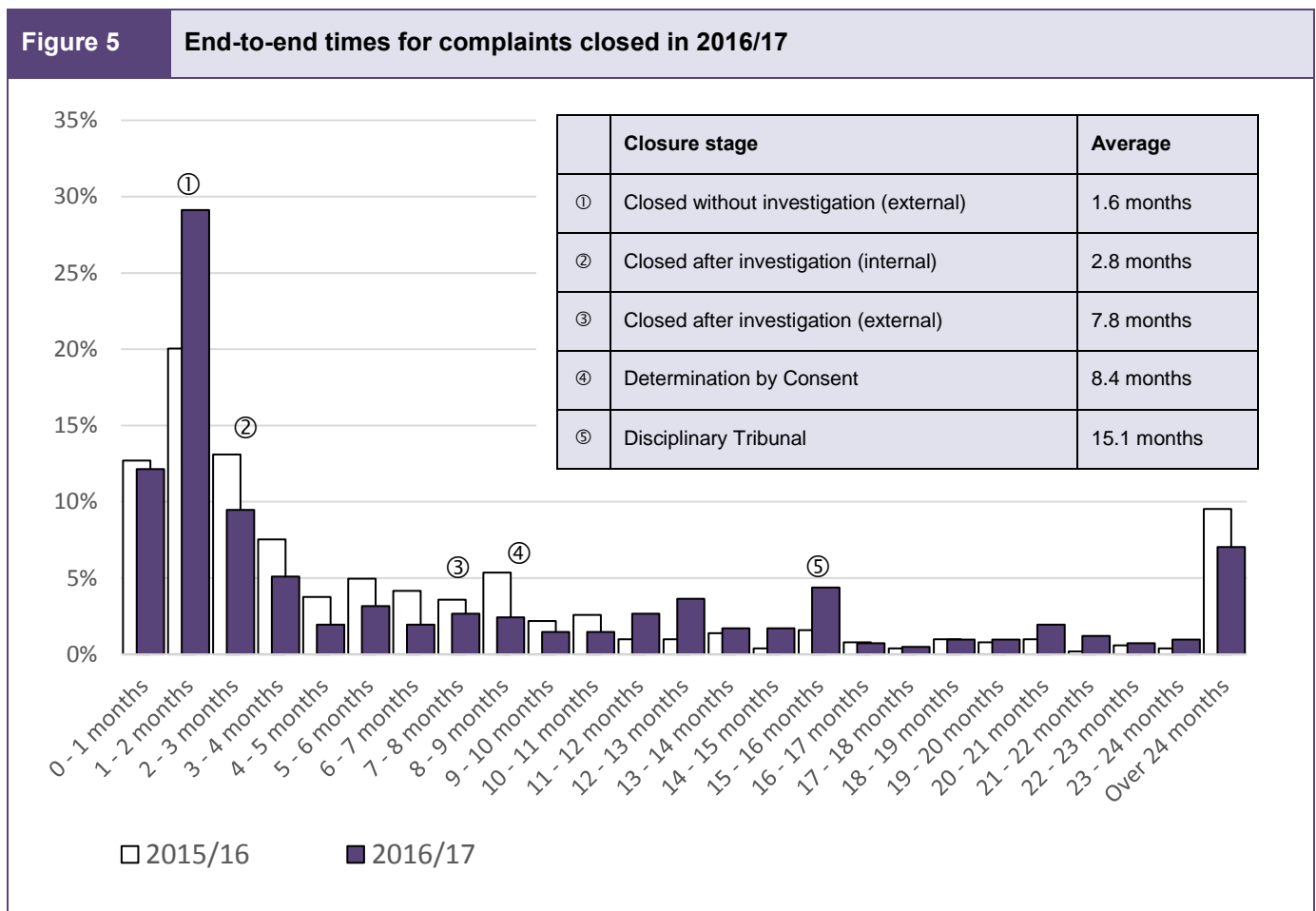
3.13 **Disciplinary Tribunals:** the time taken for Disciplinary Tribunals to progress from referral to hearing improved compared with 2015/16, with 29% of three-person Tribunals arising from external complaints concluding within our service standards compared to none in 2015/16. Also, we managed to conclude 56% of five-person Tribunals within the service standard: up from 40% in 2015/16. Unfortunately, it remained the case that no three person Tribunals in relation to internal complaints were completed within the service standards as was the case in 2015/16.

3.14 The progress of Tribunal cases is, to a large extent, outside our direct control and is always subject to unpredictable delays arising from issues such as defence challenges and applications to adjourn. As

we have commented on in previous annual reports, disciplinary casework continues to be increasingly litigious and this is a significant factor in the length of time it takes to conclude cases.

3.15 It is important that we progress cases as swiftly as possible and therefore we closely monitor the progress of disciplinary cases. We are satisfied that there are no clear areas of avoidable delay in the system and the Independent Observer recognised the efforts made to minimise avoidable delay (see paragraph 3.29 below).

3.16 We will continue to monitor this area closely in 2017/18. Revised Disciplinary Tribunal Regulations are due to be introduced in Autumn 2017 which include a number of provisions that we hope will streamline the Tribunal process.



End-to-end times

- 3.17 The performance indicators and service standards described above exclude any periods when a case is put on hold or is formally adjourned by a Tribunal. This is invariably because the barrister is suffering from ill health or there are ongoing court or other proceedings which are relevant to the consideration of a complaint and therefore no action can be taken until they are concluded. The indicators also only show what proportion of complaints fell inside or outside of the time periods allowed. We therefore also report on end-to-end times for our entire enforcement process. These indicate how long – in real time – complaints took to close in 2016/17.
- 3.18 Figure 5 illustrates how long each of the complaints closed in 2016/17 took from opening to final closure: whether this was at the initial assessment, investigation or disciplinary action stages. Also marked on the chart, are the average times taken for different complaint outcomes.
- 3.19 Overall the average time to conclude cases of all types reduced from to 3.4 months to 2.8 months which is a significant improvement on 2014/15 when it stood at 4.4 months. The figures show that there has been a slight decrease in the average time for a complaint to be closed after initial assessment down from 1.8 months to 1.6 months. However, there has been a small increase in the average time to close external complaints after investigation: up from 7.4 months to 7.8 months. Further, the percentage of cases closed within three months was greater in 2016/17 than in the previous year - approximately 50.7% of cases as compared to 45.7%.
- 3.20 There are more marked improvements in the time taken to conclude disciplinary cases, with DBC taking on average 1.5 months less than in 2015/16 and the average time taken to conclude Tribunals also decreasing by 1.5

months from 16.6 months last year to 15.1 months this year.

- 3.21 It is also apparent that the percentage of long running cases, over two years in age, has reduced. In 2015/16, there were 50 such cases and this has reduced to 33. Our close tracking of these cases shows that progress on all these cases has been delayed due to lengthy periods when the cases have been put on hold or a Tribunal has ordered that a matter be adjourned. In nearly all cases this is due to the ill health of the barrister or connected ongoing police/or court action which must be concluded before the BSB can proceed further.

Quality assurance

- 3.22 As well as monitoring performance against service standards, we also have a number of quality assurance mechanisms in place to ensure the enforcement system is operating effectively.

Quality Review Sub-Committee (QRSC)

- 3.23 As indicated above, the PCC has authorised staff in PCD to take certain decisions on complaints including the ability to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the staff decision making remains high, twice a year, the Quality Review Sub-Committee (QRSC) of the PCC – a three-member panel with a lay chair – spot-checks a percentage of staff decisions. The QRSC assesses the timeliness, thoroughness, transparency and accessibility of PCD decision-making along with the decision itself.
- 3.24 The QRSC reviewed 10% of the decisions made by PCD staff during the course of 2016/17. In total 25 cases were reviewed in 2016/17 and the QRSC agreed with the decisions taken by staff in all cases. The panel provided useful feedback for staff on the clarity of one letter to a complainant but also commended staff on the content of

another letter which they assessed as “very good”.

Independent Observer

- 3.25 Another quality assurance mechanism the BSB had in place up until the end of 2016, was the lay Independent Observer (IO) who was tasked with monitoring the enforcement system to ensure that it was operating in line with its aims and objectives. The role reported to the Governance, Risk and Audit Committee (GRA) and as such worked independently from the enforcement system, the PCD and the PCC.
- 3.26 The second IO, Isobel Leaviss, was appointed in May 2011 and remained in post until December 2016 when the role was dis-established.
- 3.27 The IO role provided invaluable oversight of the system and a wide range of improvements were made as a result of IO recommendations. However, a review of the BSB’s organisation wider quality assurance mechanisms has led to the introduction of a new quality assurance framework. This framework provides for an external audit function covering all aspects of the BSB’s work and not just the enforcement system. This will allow the BSB to focus on the areas of highest risk and ensure our resources are directed effectively. Therefore, a separate and dedicated audit function for the enforcement system is no longer considered necessary.
- 3.28 During her tenure, the IO made a total of 66 recommendations, all of which were accepted by the BSB. They covered issues such as: reviewing the enforcement web pages; making the BSB’s service complaints policy more accessible for complainants; a more rigorous system for monitoring cases referred to the BSB by the Legal Ombudsman; various changes to the case management system to allow for better

monitoring; and, most recently, improvements to the equality and diversity monitoring and training for the PCC and the prosecution panel.

- 3.29 The IO presented a final report on her work to the Board in January 2017 covering the period 2011-2016¹⁵. In it, she commented that:

“Overall, I am able to give the BSB a substantial level of assurance that its enforcement system has been operating in line with its aims and objectives... Throughout the period, I have observed effective leadership and clarity of purpose. The BSB’s enforcement strategy has become more risk-based and outcome focused and there is a comprehensive framework of policies, procedures and ‘templates’ to support well-reasoned, robust and consistent decision-making... I have been impressed by the collective dedication of all those involved to ensuring that due process is followed and the handling of cases is thorough, considered and fair... I have observed determined efforts to minimise avoidable delays whilst ensuring that all parties have reasonable opportunities to raise issues and respond to concerns.”

¹⁵ The IO’s final report can be found at: https://www.barstandardsboard.org.uk/media/1818794/final_io_report_2016.pdf

Part 3: Continuous improvement and knowledge management

- 4.1 The results and feedback from the various performance monitoring mechanisms described in Part 3 above, are used by the PCD management to make improvements and ensure that we continue to meet our commitment to providing a high-quality service. We also regularly review our procedures following the conclusion of cases, particularly tribunal hearings, judicial reviews and appeals. Any lessons that we can learn from these cases are fed back into the system to ensure continuous improvement.
- 4.2 To assist with this work, we appointed a Professional Support Lawyer (PSL) who joined the department in October 2015. Therefore 2016/17 was the first full year when we had benefit of this post. This has led to improvements in knowledge management and a more robust and rigorous approach to identifying lessons to learn from cases and acting on them.
- 4.3 We maintain a central 'Lessons to Learn' log which is available to all staff and captures any issues arising from cases at any stage of the process including issues arising from Tribunal cases and High Court appeal judgments. The log is reviewed monthly by the PCD Managers when action points are identified and taken forward. Such issues include: amending our approach to, and internal guidance document on, service of documents; adapting our standard letters to make them clearer; extending and developing the use of investigation plans; and taking witness statements an earlier stage in the process.
- 4.4 This lessons to learn log also provides a mechanism for identifying issues for inclusion in our regular newsletters to staff, the PCC and members of the prosecution panel. Reader feedback indicates that these

newsletters are widely read and are an effective means of communication to assist with keeping participants in the enforcement system up to date.

- 4.5 **Training:** we also use performance and feedback information to inform the PCD training programme which is designed to ensure the maintenance, updating and development of legal knowledge and associated skills within the Department. In 2016/17 the training programme included: refresher training on disclosure of evidence and data protection as well as defence approaches to conducting litigation that are encountered in some of our more complex investigations and hearings. We also ran a two-day course provided by external trainers on investigative practice which covered investigation techniques and plans, interviewing witnesses, taking statements, and report writing. A small number of staff from other legal regulators also attended the course.

Casework lessons

- 4.6 A wide range of issues learnt from cases have led to changes and improvements or have revealed wider matters that the BSB may need to consider. Set out below are just a few of these arising from appeal judgments and legal action against the BSB.
- 4.7 In one appeal case, where we cross-appealed on the basis of undue leniency in the sentence, the appellant was successful in having the finding overturned due to the submission of new medical evidence on appeal. However, the High Court in its judgment also considered the issue of whether charges relating to a lack of integrity could be proved without the conduct also including dishonesty. It decided that integrity and dishonesty are synonymous and therefore the charges laid by the BSB, which covered a lack of integrity only without dishonesty, could not have been proved

(they related to the inappropriate sexual touching of females at a chambers party). This interpretation of integrity was also taken in another case decided by the High Court in relation to an appeal against a Solicitors Disciplinary Tribunal (SDT) decision and we understand the decision is being appealed to the Court of Appeal. However, another recent appeal to the High Court from a decision of the SDT, although not central to the decision, the Court indicated that there was a distinction between integrity and dishonesty. The position is therefore uncertain but the recent interpretation of integrity has implications for the wording of the BSB's Core Duty 3 – "*you must act with honesty and integrity*" - and we are closely watching developments in the courts.

- 4.8 In another appeal, the High Court overturned one of two professional misconduct charges found against the barrister on the basis that the Tribunal had wrongly concluded that the criminal offence to which the charges related included an element of dishonesty. The case related to a criminal conviction following call to the Bar that arose from behaviour prior to call. While not pivotal to the High Court decision, the court raised a question as whether the BSB had jurisdiction over such conduct. This has prompted consideration by our Strategy and Policy department as to whether there is a need to change our Handbook provisions and also a review of our existing cases to assess whether any of them were similarly affected
- 4.9 Another, widely reported, appeal that was decided in 2016/17 related to a disciplinary case that commenced in 2012 but was not heard until this year. The BSB was heavily criticised by the High Court for our approach in the case to taking and relying on witness statements. The complainant had refused to give live evidence and we therefore asked the Tribunal to admit the complainant's statement into evidence which it agreed to do. However, the statement had been taken

by the complainant's solicitors who had a vested interest in the outcome of the complaint. The court considered the BSB acted entirely wrongly in relying on the statement produced by the solicitors and that we should have taken steps to obtain an independent statement from the complainant. It also considered we should have taken greater steps to ascertain the reasons why the complainant could not attend by making direct contact with the witness.

- 4.10 Previous cases had highlighted there may be an issue with our approach to taking witness statements and the stage in our process when this is done. Therefore, by the time the appeal was heard, steps had already been taken to address the issues which included the commissioning of training on investigative techniques and taking witness statements. Case Officers are now required to prepare and follow investigation plans, which are continually reviewed to ensure that appropriate, independent witness statements are taken.

Wider issues

- 4.11 The outcomes of several Tribunal hearings provide a useful insight into the enforcement issues we are currently dealing with and the issues facing the profession.
- 4.12 **The internet and social media:** a live and very pertinent issue is that of barristers' use of social media to express their views. We receive an increasing number of complaints each year about comments made by barristers on social media. This often involves the PCC considering the boundaries between professional and personal life as well as freedom of expression. Many of the complaints are dismissed as being legitimate expressions of opinions. Even though the comments may be offensive to some, or indeed many, as a regulator we need to

balance our regulatory reach with barristers' rights to express their views.

- 4.13 However, in one case decided in 2016/17, an unregistered barrister was disbarred as a result of a large number of offensive "tweets" made from his private Twitter account, in which he had also occasionally mentioned that he was a barrister. The tweets were anti-Semitic and were also abusive towards other groups of persons. The Tribunal considered that tweets issued from an open Twitter account were not conduct in a person's private life, and were equivalent to the barrister shouting comments out of a window or standing in the street. The Tribunal concluded that, while persons can say what they like as a matter of law, to be a member of the Bar is to be a member of an honourable profession. If a person known to be a barrister speaks in a way which is highly disparaging of groups of people it was the Tribunal's view that it would be highly probable that it would diminish not only the trust and confidence the public placed in the individual barrister but also in the profession.
- 4.14 As a result of this case, in February 2017, the BSB published updated guidance for barristers using social media¹⁶.
- 4.15 In another disciplinary case, a barrister was found to have committed professional misconduct as a result of information published on his professional website. The barrister made statements about his performance as compared to others working in the same field which could not be independently supported and were misleading.
- 4.16 These cases demonstrate that, as social media and the internet becomes more prominent in our daily lives, there is an increasing need for barristers to be very

careful about what they post whether in their professional or personal lives.

- 4.17 **Failure to report:** as usual, a number of the professional misconduct findings in 2016/17 related to relatively low level criminal convictions or findings by other regulators which must be reported. While it is inevitable that disciplinary action will follow from a criminal conviction, the level of sanction will differ according to the seriousness of the offence but also according to whether the conviction was voluntarily and promptly reported. A failure to report will result in an additional disciplinary charge and could lead to more serious sanctions being imposed. In one case, a barrister unsuccessfully appealed the imposition of a £250 fine for failing to report a conviction. The High Court, in dismissing the appeal, referred to the barrister's "non-delegable and inescapable duty" to self-report.

Proceeding in the barrister's absence

- 4.18 An increasing number of hearings proceeded in the absence of the barrister in recent year - this is particularly the case with unregistered barristers. There are provisions in the Handbook (rule E148, Disciplinary Tribunal Regulations 2014) that allow for hearings to proceed in the absence of the defendant if the Tribunal considers it just to do so. However, it is important for barristers to attend disciplinary hearings, as Tribunals have the power to proceed and even disbar them in their absence.

¹⁶ The link to the updated guidance for barristers using social media can be found here: https://www.barstandardsboard.org.uk/media/1821624/bsb_social_media_guidance_pdf.pdf

Part 4: Wider work of the PCD

5.1 The PCD and PCC's primary function is to consider and take action where the BSB Handbook has been breached. However, our work throughout the year encompasses a number of other areas including participating or leading on change projects. This work is outlined in the paragraphs below.

Disciplinary history checks

5.2 The PCD holds the records for disciplinary findings against barristers and therefore we are the source of information for enquiries about the disciplinary history of barristers. Such enquiries are usually made for the purpose of issuing a Certificate of Good Standing. However, we also provide information to: the Judicial Appointments Commission (for use in processing applications for judicial office); the Queen's Counsel Appointments body (in relation to applications for silk) and the Inns of Court (in relation to appointments of pupil supervisors). In 2016, we also started carrying out checks for the Chartered Institute of Legal Executives (CILEx) in relation to prospective registrants.

5.3 Disciplinary checks are carried out by the PCD's Operational Support Team (OST) and in 2016/17 they completed a total of 878 disciplinary history checks including 241 in relation to Queen's Counsel applications, 124 in relation to judicial applications and 315 for CILEx.

Data Protection Act enquiries

5.4 The PCD regularly receives requests under the Data Protection Act from individuals asking for copies of personal data that the BSB holds about them. These are known as subject access requests (SARs). They are handled by trained staff in our OST and can take up a considerable amount of time and staff resource given the statutory time lines for responding.

5.5 In 2016/17, we received seven SARs. Of these, five were from barristers who were the subject of complaint(s) and two were from complainants. Such requests can be a considerable drain on resources and can involve several weeks of work.

Projects

Public Information Project

5.6 We concluded the Public Information Project in 2016 which started in 2014. This project was designed to improve the information we provide to the public about the enforcement system. In 2015/16 we completed the overhaul of the website pages with the assistance of Law for Life a specialist Public Legal Education organisation. The final phase of the project was to review our leaflets and create new versions based on the work carried out in the website. The revised leaflets were posted on the BSB website in September 2016 and are now distributed in hard copy with all relevant communications.

Joint Disciplinary Tribunals Working Group

5.7 As part of an initiative led by the Legal Services Board and the Chief Executives of the Approved Regulators (ARs) to find ways to work more collaboratively within legal professional regulation, a Joint Disciplinary Working Group was set in 2016 to take forward ideas on the potential alignment of aspects of the ARs' disciplinary systems. Senior managers in the PCD are involved in the Group.

5.8 The work carried out in 2016/17 involved completing the mapping of the various disciplinary processes operated by the ARs to identify both differences and similarities with a view, in time, to aligning them where possible. Work also started on mapping the approaches taken to the publication of disciplinary information with a view to

aligning the information available to the public and the terminology used. The Group will continue this work in 2017/18 and a conference is planned for autumn 2017 to discuss relevant issues arising from disciplinary cases.

Disciplinary Tribunal Regulation Review

- 5.9 The project to implement the revised Disciplinary Tribunal Regulations, which commenced in 2014, continued throughout 2016/17. It was originally envisaged that the new regulations would be introduced in January 2017 but delays occurred due to the need to process other applications and also issues with the framing of the original application which was resubmitted. The Legal Services Board approved the revised regulations after the end (June 2017) and they will come into force in October 2017.

Standard of Proof project

- 5.10 Over recent years, the BSB has been considering the issue of the appropriate standard of proof to apply to professional misconduct allegations. A public consultation paper on whether the standard of proof applicable to professional misconduct allegations should be changed from the criminal standard (beyond reasonable doubt) to the civil standard (on the balance of probabilities) was developed during 2016/17 and issued in late April 2017. The outcome of the consultation will be made public in Autumn 2017 and reported in our 2017/18 Enforcement Report.

Governance review – enforcement decision making processes

- 5.11 The PCD is also involved in two major projects arising from the BSB's ongoing modernisation of its governance and regulatory approach. Both projects are ongoing and will continue through to 2019/20.
- 5.12 **Centralised Assessment:** this project started in 2014/15. Its aim is the

centralisation of the assessment of all incoming information to replace the various assessment processes carried out in different departments across the BSB. This will allow for more consistent handling of incoming information and risk assessment. The idea is to create a Centralised Assessment Team (CAT) which will handle all initial assessments including those carried out in relation to enforcement complaints.

- 5.13 Enforcement decision making: the Board has also agreed, in principle, to changing the model of enforcement decision making post-investigation/PCC level. The idea is to allow for smaller panels of decision makers to take decisions on referrals of complaints to disciplinary action and DBC cases. This will involve replacing the PCC with a pool of decision makers from which the smaller panels can be appointed. These panels will take decisions on all regulatory matters that require independent decision making. The detailed proposals on this are still being worked up and the intention is to carry out a public consultation on the changes in early 2018 with a view to changing the system in April 2019.

Conclusions and action points

- 6.1 2016/17 was a difficult and challenging year for the PCD and PCC given the background of staffing issue in the PCD and vacancies on the PCC. Against this background, the overall out turn for the year has been very positive and shows improvements in many areas.
- 6.2 After several years, the unprecedented level of complaints associated with one barrister, and his chambers, have now been concluded. The ongoing presence of these cases in the system over the last few years has distorted the figures and distracted from the underlying trends.
- 6.3 The underlying trend is that new complaints are declining and therefore consequently the numbers of investigations and disciplinary cases are also decreasing.
- 6.4 In this context, it may not be surprising that we have been able to meet the KPI, of 80% of cases closed within the relevant service standards, for the first time in three years. However, we have also dealt with an increase in general enquiries and pre-complaints while continuing to reduce the average time to process complaints: down from 4.4 months in 2014/15 to 2.8 months this year. The number of long running cases has also reduced. These are achievements for which the PCC and PCD members should be commended given the challenging circumstances. They also indicate that, regardless of any particular annual issues, the enforcement system is becoming more efficient.
- 6.5 The performance outlined in this report indicates that the BSB's enforcement system remains robust and is operating efficiently. This conclusion was supported by the Independent Observer in her outgoing report of performance over the last five years.
- 6.6 There are also clear indications that the BSB's changes to its regulatory approach in recent years are proving to be effective. The trends in this report, demonstrate that our regulation and the enforcement system are now more focussed on risk and outcomes. This is demonstrated by the upwards trend in level of reports of serious misconduct by the profession, the underlying increase in the use of administrative sanctions and the PCC's increasing focus on the more serious conduct cases.
- 6.7 It is positive, that the uphold rate at Tribunals remains high with 86% of professional misconduct cases resulting in a finding on one or more charges. This shows that we are referring appropriate cases to disciplinary action.
- 6.8 The impact of the BSB's governance reforms and our commitment to ensuring that decisions are taken at the lowest appropriate level can also be seen in the increased level of staff decision making: up from 42% in 2014/15 to 69% this year.
- 6.9 Our continuous improvement and knowledge systems have also developed over the last year. The appointment of a PSL has created more robust feedback mechanisms that assist us with ensuring that we identify issues from the outcome of cases and we make appropriate improvements.
- 6.10 On the downside, there has been an increase in the number of decisions taken at the initial assessment stage that have been overturned on review. This may indicate an issue with our approach to decisions taken at this stage which needs to be addressed.
- 6.11 We have also been subject to one high profile High Court appeal in which the BSB was severely criticised but from which we have learnt lessons that have fed back into improving the system.

Action points

- 6.12 As well as continuing to work on the long-term projects to modernise the system, we intend to carry out the following actions in

2017/18 to improve further the efficacy of the enforcement system:

- Maintain and enhance our staff skills through a comprehensive programme of training and skills development
- Continue to monitor closely the time taken to conclude disciplinary cases to ensure that all avoidable delay is addressed
- Consider any improvements that can be made at the initial assessment stage to reduce the number of decisions overturned on review
- Continue to develop our system of logging lessons arising from cases to support continuous improvement

Sara Jagger

Director of Professional Conduct

Aidan Christie QC

Chair of the Professional Conduct Committee

July 2017

Authorisations Governance Review: Update on Implementation

Status:

1. For **noting and approval**.

Executive Summary:

2. This is a report on progress to implement the proposals arising from the review of procedures for the taking of decisions previously undertaken by the Qualifications Committee.
3. The Board has power to agree Standing Orders setting out its procedures and the Terms of Reference for its Committees. Board decisions taken in 2017 to disestablish the Qualifications Committee require amendment of procedures and of the Terms of Reference for committees.
4. Proposed amendments to Standing Orders are attached as Annex 1. Amendments are proposed to allow implementation of previous Board decisions, including the establishment of Authorisations Review Panels.
5. The Board's approval of additions to the Scheme of Delegations is sought (attached as Annex 2) to ensure that decision making powers are properly delegated to the executive.

Recommendations

6. It is recommended that the Board:
 - a) note the report;
 - b) approve the proposed revisions to Standing Orders;
 - c) agree that the revised Standing Orders take effect from 1 September 2017;
 - d) note the amendments to the Scheme of Delegations consequential to its prior decision to disestablish the Qualifications Committee; and
 - e) approve the proposed new delegations to take immediate effect.

Background

7. Until now, the Qualifications Committee has been responsible for determining a range of applications made to the BSB, including applications for waiver from the requirements for qualification as a barrister, for authorisation as a pupillage training organisation, for waiver from the rules governing entitlement to practise as a barrister and for the grant of licensed access. It also determines applications for review of its own decisions, of decisions on entity authorisation, of decisions of the Records Office on the issue of practising certificates and of decisions of the Inns Conduct Committee on student admission and discipline.
8. In February 2016, the Board agreed that in the future all first instance decisions taken by the Qualifications Committee would be taken by staff supported by advice from the Advisory Pool of Experts (APEX) and all applications for review currently considered by the Qualifications Committee would be determined by panels drawn from a pool of independent reviewers.
9. In March 2017, the Board resolved that the Qualifications Committee be disestablished with effect from 31 August 2017. Consequentially, Standing Orders require amendment to remove references to the Qualifications Committee and to allow for the establishment and conduct of Authorisations Review Panels. The opportunity to conduct a general review of Standing Orders was taken and a small number of unrelated but minor amendments are also proposed.

10. As a further consequence of the decision to disestablish the Qualifications Committee, the powers previously delegated by the Board to the Qualifications Committee within the Scheme of Delegations will be delegated to the Director General. The attached revised Scheme of Delegations reflects that amendment and a number of other related amendments.
11. A number of new delegations are proposed to ensure that decision making powers previously delegated to the Qualifications Committee within its Terms of Reference are properly delegated to the executive.

Report

12. We have been moving towards full implementation of the proposals since February 2016 in three distinct phases.

Phase 1 - Preparation

13. During 2016, each Panel of the Qualifications Committee revised its published “*Criteria and Guidelines*” documents to clarify the criteria against which decisions are made and so to make them easier for staff to apply and for applicants to understand. The Qualifications Committee approved final versions of these guidelines at its meeting on 21 February 2017. They were then published on a newly structured page of the website.

Phase 2 - Transition

14. In January 2017, members of the Qualifications Committee were split into two “*pools*”, one of “*advisors*” and one of “*reviewers*”.
15. Since 1 January 2017, the Committee has delegated first instance decision-making to staff, who have been able to seek advice from members of the pool of advisors where necessary. To date, advice has been sought on 11 applications (out of a total of 672 first-instance decisions).
16. From 1 April 2017, all applications for review have been considered by a panel of three members of the Qualifications Committee. There have to date been two sittings - 8 May and 21 June 2017. A third is scheduled to take place on 24 July 2017.

Phase 3 – Full Implementation

17. We have recently recruited eight Authorisations Review Panel members (three barristers and five lay) and two members of the APEX. We are in the process of checking their references and their eligibility and should be able to publish their names shortly.
18. From 1 September 2017, all first-instance decisions currently taken under delegated authority from the Qualifications Committee will be taken by staff under delegated authority directly from the Board via the Director-General. Staff will be able to seek advice from the APEX members in the same way that, during the transitional period, they have sought advice from the Qualifications Committee.
19. From 1 September 2017, all applications for review currently determined by the Qualifications Committee will be determined by Authorisations Review Panels, each consisting of one barrister and two lay members drawn from the eight member pool.

Quality Assurance

20. We have put in place the following quality assurance mechanisms to ensure the standard and quality of our decisions is monitored:
- i) A sample of at least 10% of each type of first-instance decisions is considered by the Authorisations Team Manager monthly to confirm consistency and accuracy.
 - ii) We are also monitoring the following:
 - the numbers of applications made to the review panels for review of first-instance decisions;
 - the number of first-instance decisions amended by review panels;
 - the number of appeals against decisions of review panels made to the High Court;
 - the number of decisions of review panels amended by the High Court.

Standing Orders

21. The Constitution of the BSB states that the Board shall have power to regulate its own procedure (paragraph 14(1)). The Board agrees its Standing Orders as the mechanism by which it sets out its procedure.
22. The definition of “The Inns’ Council” and “COIC” has been removed from the list of definitions as the only reference to one of those terms was within the Terms of Reference for the Qualifications Committee. The Council of the Inns of Court is now always referred to as that within the body of the document.
23. The list of definitions has been amended by inclusion of a definition of “Authorisations Review Panels” as a panel of three members convened from a pool of appointed panellists to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook.
24. The structure has been amended so that Part 4 now applies to Committees and Authorisations Review Panels only (bodies with delegated authority to take decisions) and a new Part 5 has been inserted to cover the Advisory Pool of Experts and Task Completion Groups (bodies that are advisory only). Where necessary, similar clauses are repeated in both Parts for clarity.
25. Additional clauses are proposed in Part 4, setting out that the BSB may establish Authorisations Review Panels on the terms it considers appropriate, and that they are convened to ensure that all requests for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook are determined fairly, efficiently and effectively, in accordance with relevant regulations and guidelines. It is proposed that Authorisations Review Panel members be precluded from also holding office as a member of the Board, to ensure absolute independence (actual and perceived).
26. It is proposed that a person would cease to be an Authorisations Review Panel member for the same reasons that one would cease to be a Committee member (expiry of period of appointment, resignation, ceasing to be a lay person or a practising barrister if appointed on that basis, etc).
27. Members of the Bar Council and any of its representative committees are precluded from appointment as an Authorisations Review Panellist.

28. An additional clause has been inserted requiring a report on the outcomes of matters considered by Authorisations Review Panels to be submitted to the Board at least annually but as often as required by the Board.
29. Authorisations Review Panel members have been made subject to the same obligations as Board and Committee members, including continuing satisfactory performance, compliance with the Standing Orders and Governance Manual, and reviews of performance.
30. A new clause is proposed, setting out that Authorisations Review Panel meetings are held in private and that the frequency of such meetings is to be determined by the BSB (as is set out for Committees).
31. The quorum requirements for the Qualifications Committee to act as a panel have been deleted. Quorum requirements for Authorisations Review Panels are set out, that three members must be present of whom two must be lay members and one must be a barrister member.
32. An additional clause for written resolutions of Authorisations Review Panels is proposed, setting out that the decision must be recorded in a single written document signed by at least three members.
33. Part 7 (new numbering) on Member's Interests has been expanded to require the same declarations on interest and receipt of gifts and hospitality from members of Authorisations Review Panels as from members of the Board or its Committees.
34. The Standing Order for delegation has been amended, to allow delegation by the Board to Authorisations Review Panels. A further amendment is proposed, to allow delegation to "any other body or person" (in addition to the Chair of the BSB, a Committee, the Chair of a Committee, an Authorisations Review Panel, or one or more members of BSB staff). This is to allow for example, delegation to BTAS. The wording mirrors that of the BSB Constitution which states that the Board may delegate any of its functions to any other person or body.

Scheme of Delegations

35. Delegation 5 has been amended so that where it previously delegated power to grant waivers from the requirements of the Handbook except *those which are the responsibility of the Qualifications Committee*, those exceptions are now spelt out both by the number within the Scheme and in words for clarity.
36. The Director General's sub-delegation of delegation 5 has been amended to include the Head of Policy Programmes, given that the power is already delegated to one of his direct reports (Policy Manager, Professional Standards). It has been specified that the power is only to be exercised by the Policy Manager, Professional Standards where expressly delegated by the Director of Strategy and Policy. The sub-delegation has also been amended to include staff within the Regulatory Assurance Department, as a transitional measure prior to responsibility for all waivers moving to that department. Once that responsibility has been fully transferred, staff within the Strategy and Policy Department will be removed from the sub-delegation.
37. Two new delegations are proposed (29 and 30 in the new numbering) which concern pupil registration and the issue of qualification certificates. Delegation 29 allows staff to register a pupillage on behalf of the Board. Delegation 30 allows staff to issue a provisional qualification certificate to a barrister who has completed the non-practising period of pupillage and a full qualification certificate to a barrister who has completed the whole of pupillage. These powers are currently delegated to the Education and Training

Committee. However, the 2016 merger of the Education and Training and Authorisation teams and functions means these powers are now most appropriately delegated to staff in the Regulatory Assurance Department.

38. Three new delegations (31, 32 and 33 in the new numbering) are proposed to cover the power previously delegated by the Board to the Qualifications Committee to *supervise and, where necessary, decide questions concerning the issue of practising certificates and the registration of pupil supervisors*. This power was delegated within the Committee's Terms of Reference (clause 5)).
39. A new delegation is proposed (34 in the new numbering) to grant waivers from any fee generally charged for any application for waiver from or authorisation under any provision of the Handbook. Whilst not specifically provided for in the rules, fee waiver applications (which typically travel alongside substantive applications) require evaluative consideration of information. Given the potential impacts on access to the profession and equality and diversity we propose formal delegation to ensure decisions are made at the appropriate level.
40. A new delegation is proposed (35 in the new numbering), to allow the consideration of requests for review by Authorisations Review Panels in place of the previous Qualifications Committee. In addition to the powers for review listed in the Terms of Reference for the Qualifications Committee, it is proposed that reviews of decisions made under Part 1 4A of the Handbook be inserted. This is to capture those matters which do not have reviews set out in the Handbook, and which it was our previous practice to submit to the full Qualifications Committee.

Resource Implications

41. All resource implications have already been taken into account in this year's budget.

Equality Impact Assessment

42. We have undertaken an Equality Analysis Screening and no adverse equality impacts were identified.

Annexes

43. Annex 1 – revised Standing Orders
44. Annex 2 – revised Scheme of Delegations

Lead responsibility:

Joanne Dixon, Authorisations Manager
 Rebecca Forbes, Governance Manager
 Clodhna Judge, Head of Supervision and Authorisation

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**STANDING ORDERS
FOR THE BAR STANDARDS BOARD**

FOREWORD

The following Standing Orders are issued under the Authority of paragraph 14(1) of the Bar Standards Board Constitution.

This edition of the Standing Orders came into effect on ~~26 January~~1 September 2017

PART 1 – INTRODUCTION

Definitions

1. In these Standing Orders, unless the context requires otherwise:

“The Bar Council” means the Council of the General Council of the Bar of England and Wales.

“The Bar Standards Board” and “BSB” means the Board, Committees established under these Standing Orders and any individual or group exercising the delegated powers of the Board.

“Board” means the Board of the BSB established under Paragraph 2 of the BSB's Constitution.

“BSB staff” means the employees of the Bar Council appointed by the BSB in accordance with paragraph ~~51~~61.

“BTAS” means the Bar Tribunals and Adjudication Service, an independent body set up by the Council of the Inns of Court to appoint and administer Disciplinary Tribunals and other relevant panels on behalf of the BSB.

“Committee” means a Committee established by the BSB pursuant to Part 4 of these Standing Orders.

“CPA” means the Commissioner for Public Appointments.

~~“The Inns’ Council” and “COIC” means the Council of the Inns of Court.~~

“Internal Governance Rules” means the Internal Governance Rules made by the Legal Services Board.

“Lay person” has the meaning given in paragraph 2(4) of Schedule 1 to the Legal Services Act 2007 and “lay member” has a corresponding meaning.

“Practising barrister” means a barrister holding a current practising certificate issued by the Bar Council.

“Regulatory arrangements” has the meaning given in section 21 of the Legal Services Act 2007.

“Regulatory functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Representative functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Authorisations Review Panel” means a panel of three members convened from a pool of appointed panellists, to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook.

“Seven Principles of Public Life” means the principles, also known as the “Nolan Principles”, as laid down in the Committee on Standards in Public Life’s thirteenth report “Standards Matter” and referred to in paragraph B4 of the Constitution and reproduced in Annex 1.

"Task Completion Group" means an ad hoc group established by the BSB to complete a specific task or tasks. At the time of the establishment the BSB shall specify a time limit for completion of the tasks. Such time can only be extended by the BSB.

Any terms used in the Legal Services Act 2007 have the same meaning as in that Act.

PART 2 – THE BAR STANDARDS BOARD

General

2. The BSB is committed to:

- a. providing regulation of advocacy and expert legal advice in the public interest;
- b. acting in a way that is compatible with the regulatory objectives, having regard to the regulatory principles as required by section 28 of the Legal Services Act 2007;
- c. conducting its business in harmony with the Seven Principles of Public Life;
- d. making its regulatory decisions independently of the Bar Council;
- e. consulting with the Bar Council as required by the Legal Services Act 2007 and the Internal Governance Rules;
- f. undertaking regulatory functions only and not undertaking any representative functions;
- g. working cooperatively with the Inns of Court, the Council of the Inns of Court and BTAS; and
- h. conducting its business in accordance with its Statement of Governance Principles as published by the BSB.

Consultation on exercise of regulatory functions

3. When proposing to make or alter the regulatory arrangements, and in other cases where it considers it appropriate, the BSB will normally consult, in the way it considers appropriate:
 - a. The regulated community (including its representative body and sections of the Bar); and
 - b. Other interested parties (including for example, the public, other approved regulators, the judiciary, barristers' clerks, academic providers and other education providers) as it considers appropriate.
4. In relation to proposals to make or alter the regulatory arrangements, the BSB will normally allow a period of three months for consultation before a decision is taken.

Saving for defects etc

5. All acts done in good faith by the BSB shall (so far as is lawful), notwithstanding any defect, be as valid as if there were no such defect or error.

PART 3 – OBLIGATIONS TO THE BAR COUNCIL

6. The BSB will make information and papers available to the Bar Council for the purpose of the Bar Council fulfilling its function as an Approved Regulator including its obligations under the Legal Services Board's Internal Governance Rules as made by ~~them~~ from time to time.

PART 4 – COMMITTEES AND AUTHORISATIONS REVIEW PANELS**Committees of the BSB ~~and Task Completion Groups~~**

7. The Board establishes the following Committees whose terms of reference and membership are set out in Annex 2:
- a. The Education and Training Committee;
 - b. The Governance, Risk and Audit Committee;
 - c. The Planning, Resources and Performance Committee; and
 - ~~d. The Professional Conduct Committee; and~~
 - e.d. The Qualifications Committee.
8. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of all Committees.
9. Without prejudice to the power of the Board to amend Annex 2 on its own initiative, a Committee may at any time propose an amendment to its terms of reference or membership for consideration by the Board.
10. Save where provided for in these Standing Orders each Committee may determine its own composition and procedure subject to the provisions of Part 5 and the following general requirements:
- a. Each Committee is to have a minimum of a Chair and a Vice Chair. Wherever possible, at least one of these two office holders should be a member of the Board;
 - b. At least a third of the Committee's membership must be lay persons;
 - c. At least a third of the Committee's membership must be barristers;
 - d. Each Committee must adopt and maintain rules of procedure on an annual basis addressing meeting arrangements (including frequency of meetings and arrangements for urgent business outside regular meetings);
 - e. The Chair of each Committee or, in that person's absence, a Vice Chair, shall take the chair at every meeting of the Committee. In the absence of the Chair and any Vice Chair, or where an interest has been declared by them for a specific item only, the members present may proceed to elect a chair from among their number for the purposes of that meeting or that item; and
 - f. Members of a Committee shall be appointed and reappointed in accordance with the Procedures set out in Annex 3.

Authorisations Review Panels of the BSB

11. The BSB may establish Authorisations Review Panels on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.
12. Authorisations Review Panels are convened to ensure that all requests for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook are determined fairly, efficiently and effectively, in accordance with relevant regulations and guidelines.
13. Authorisations Review Panel members may not hold office as a member of the Board. The BSB may appoint a Task Completion Group on such terms as it considers appropriate.
- ~~11-14.~~ 14. A member of the Bar Council or any of its representative committees may not hold office as Chair, Vice Chair or as a member of:
- a. the Board;
 - b. any of the BSB's committees; or
 - b-c. Authorisations Review Panels.
 - ~~c. the Advisory Pool of Experts; or~~
 - d. ~~Task Completion Groups.~~
- ~~12-15.~~ 15. A person shall cease to be a BSB Committee or Authorisations Review Panel member if:
- a. the period for which they were appointed expires (and their appointment is not renewed);
 - b. they resign their membership by notice in writing;
 - c. they were appointed as a lay person and cease to be a lay person;
 - d. they were appointed as a practising barrister and cease to be a practising barrister or become a member of the Bar Council or one of its representative committees;
 - e. they fail to attend four or more meetings in any rolling 12 month period and the Committee or Board resolves that they should cease to be a member;
 - f. the Board resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise); or
 - g. the Board resolves to disestablish or substantively restructure a Committee of which a person is a member so as to be inconsistent with continued office by that person, upon three months' notice.
- ~~13-16.~~ 16. Committees ~~and Task Completion Groups~~ may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.

17. A Committee must report to the Board at least annually but as often as required by the Board.

18. A report on the outcomes of matters considered by Authorisations Review Panels must be submitted to the Board at least annually but as often as required by the Board.

~~Advisory Pool of Experts~~

~~14.~~ The BSB may establish an Advisory Pool of Experts on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.

Payments to members

~~15-19.~~ The BSB may decide to pay fees and expenses to members of the Board or of Committees or of Authorisations Review Panels ~~of the Advisory Pool of Experts or of Task Completion Groups~~ on terms it may set.

Obligations of members

~~16-20.~~ All Board and Committee and Authorisations Review Panel members are subject to continuing satisfactory performance and compliance with the Standing Orders and Governance Manual. Such persons may be removed from office for failing to meet these obligations, based on the reviews outlined in paragraph ~~19~~21 or any other ad hoc reviews of individual members that the Board or the Chair of the Board or Committee determines are required.

~~17-21.~~ All Board and Committee and Authorisations Review Panel ~~Advisory Pool of Experts~~ members are subject to a minimum of a review of performance within 18 months of appointment and a review of performance preceding any reappointment decision.

PART 5 –BSB ADVISORY BODIES

22. The BSB may appoint a Task Completion Group on such terms as it considers appropriate.

23. Task Completion Groups may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.

24. The BSB may establish an Advisory Pool of Experts on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.

25. A member of the Bar Council or any of its representative committees may not be appointed as a member of:

a. Task Completion Groups; or

b. the Advisory Pool of Experts.

Payments to members

26. The BSB may decide to pay fees and expenses to members of Task Completion Groups or of the Advisory Pool of Experts on terms it may set.

PART ~~56~~ – PROCEEDINGS OF THE BOARD AND ITS COMMITTEES AND AUTHORISATIONS REVIEW PANELS

Meetings

~~18-27.~~ The Board must meet at least six times in a 12 month period.

~~19-28.~~ If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone, videoconference or email if necessary.

~~20-29.~~ Each Board meeting may be separated into public and private sessions.

~~30.~~ Committee meetings are held in private and the frequency of such meetings is to be determined by the Committee.

~~21-31.~~ Authorisations Review Panel meetings are held in private and the frequency of such meetings is to be determined by the BSB.

Attendance at meetings

~~22-32.~~ The Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court are entitled to attend and speak (but not vote) at any public session of a meeting of the Board. The Chair of the BSB may also agree that any other person or persons nominated by the Chair of the Bar Council may attend and speak (but not vote) at any public session of a meeting of the Board.

~~23-33.~~ The BSB may invite the Chair of the Bar Council and any person or persons nominated by the Chair of the Bar Council, and a person nominated by the President of the Council of the Inns of Court, to attend all or part of the Board's private sessions. Such invitation shall be in accordance with the Protocol for ensuring regulatory independence as agreed and adopted by the Bar Council and the BSB.

~~24-34.~~ If a Committee Chair is not a Board member, the Committee Chair has ex-officio rights to attend and speak (but not vote) at any public session of a meeting of the Board and, at the invitation of the Chair, at all or part of any private session.

~~25-35.~~ The Board or a Committee, may at any time invite any person to attend their meetings in an advisory or consultative capacity.

Quorum

~~26-36.~~ The quorum for a Board meeting is five members of whom at least two must be lay members and at least two must be barrister members.

~~27-37.~~ No business may be transacted at any meeting of a BSB Committee unless one third of its appointed members are present, in person or by telephone or videoconference (subject to paragraph 3240), ~~except when the Qualifications Committee is operating as a panel.~~
~~When the Qualifications Committee is operating as a panel, no business may be transacted unless three members are present, in person or by telephone or videoconference.~~

~~28-38.~~ If a vote is required by the Board or a Committee, decisions must be made by simple majority. The Chair will have a casting vote in the event of a tie.

~~29-39.~~ Either the Chair or the Vice Chair must be present at each meeting of the Board unless the Board resolves to dispense with that requirement for a particular meeting.

~~40.~~ In the case of the Professional Conduct Committee, no business may be transacted at any meeting unless one sixth of the members are present of whom at least two must be practising barristers and at least two must be lay members.

~~30-41.~~ No business may be transacted at any meeting of an Authorisations Review Panel unless three members are present, of whom two must be lay members and one must be a barrister member.

Minutes

~~31-42.~~ Decisions made by the Board and Committees and Authorisations Review Panels must be recorded in writing.

~~32-43.~~ Minutes of the decisions taken and where appropriate the proceedings of each meeting of the Board and its Committees shall be drawn up and approved at the next appropriate meeting of the Board or the Committee.

Written resolutions

~~33-44.~~ A decision taken outside a meeting of the Board or a Committee is valid if:

- a. reasonable notice of the matter to be decided has been given to all members of the Board or the Committee;
- b. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote;
- c. the decision is recorded in a single written document signed by at least two thirds of members or approved by email by at least two thirds of members; and;
- d. the decision is formally ratified at the next meeting and appears in the minutes of that meeting.

45. A decision taken outside a meeting of an Authorisations Review Panel is valid if:

- e. reasonable notice of the matter to be decided has been given to at least three Authorisations Review Panel members;
- f. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote; and
- d-g. the decision is recorded in a single written document signed by at least three members.

Agenda papers

~~34-46.~~ The agenda and papers for any meeting of the Board or a Committee or an Authorisations Review Panel shall be sent to its members at least four working days before a meeting. With the consent of the Chair or Vice Chair shorter notice may be given.

Publication of agendas, papers and minutes by the BSB

~~35-47.~~ The Board may decide which of the papers considered at its meetings should be made public after each Board meeting.

~~36-48.~~ The Board may also publish its agenda and minutes of its meetings.

~~37-49.~~ There is a presumption in favour of publication of Board papers unless the Board considers there is good reason not to do so.

PART ~~67~~ – MEMBERS' INTERESTS

~~38-50.~~ The Board must establish and maintain policies on declarations of interest and on offers and receipt of gifts or hospitality by members of the Board and Committees and Authorisations Review Panels.

~~39-51.~~ With regard to conflicts of interest, a member of the Board or a Committee or an Authorisations Review Panel must:

- a. Where they have an interest in an item of business to be transacted at a meeting of the Board or a Committee or an Authorisations Review Panel, declare that interest;
- b. Where the Policy so requires, absent themselves from the meeting while that item is under consideration.

~~40-52.~~ A member of the Board or a Committee or Authorisations Review Panels must, in accordance with the Gifts and Hospitality Policy, declare any reportable hospitality offered or received in that capacity.

PART ~~78~~ – DELEGATION

~~41-53.~~ Pursuant to paragraph 14(4) of the Constitution, the following arrangements are made for delegation of the functions of the Board.

~~42-54.~~ The functions of the Board in relation to the matters within the terms of reference of a Committee stand delegated to the relevant Committee as set out under paragraph 7 and Annex 2 and in accordance with paragraph 10 and Part ~~56~~.

~~43-55.~~ The Board may, to the extent it considers appropriate and subject to paragraph ~~4656~~, delegate in writing any function to the Chair of the BSB, a Committee, the Chair of a Committee, an Authorisations Review Panel, ~~or~~ one or more members of BSB staff, or any other body or person, either by name or by a position so specified in the delegation, ~~and~~ The Board shall establish and maintain a scheme of delegations identifying each function so delegated including details of the body or person (designated by office or name) to whom it is delegated, and the conditions (if any) on which it is delegated. Notwithstanding such scheme

Part 1 – Public

of delegations the Board may delegate such matters as it considers appropriate to the Director General who in turn can delegate such matters to such BSB staff as they consider appropriate.

44-56. The following functions must be exercised by the Board itself and may not be delegated:

- a. adoption and amendment of the Standing Orders of the BSB;
- b. adoption of the Declaration of Interests Policy and the Gifts and Hospitality Policy required by paragraph 4050;
- c. approval of the budget bid;
- d. making of rules forming part of the regulatory arrangements; and
- e. decisions about policy on payment of fees or expenses under paragraphs 4719 and 26.

45-57. A Committee may delegate any function within its terms of reference to a member of BSB staff either by name or by a position specified in the delegation. Any such delegation must be recorded in writing, notified to the Board, and recorded in the scheme of delegations.

46-58. Nothing in paragraphs 43-4853-58 prevents the Board or a Committee whose function has been delegated from exercising that function itself.

PART 89 – RESOURCES

General

47-59. The Bar Council's financial management controls are set out in the Finance Manual produced by its Finance Committee. The BSB will abide by the Finance Manual.

The Annual Budget

48-60. The BSB will prepare an annual budget in accordance with the procedures set out in the Finance Manual. The Planning, Resources and Performance Committee will scrutinise the BSB budget proposals before the Board considers its budget for submission in accordance with the Finance Manual procedures.

Staff

49-61. The Board appoints its own staff in accordance with the employment policies agreed from time to time with the Bar Council. Responsibility for appointment of staff other than the Director General will be delegated by the Board to the Director General.

Annex 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE (NOLAN PRINCIPLES)

Selflessness Holders of public office should act solely in terms of the public interest.

Integrity Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty Holders of public office should be truthful.

Leadership Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Annex 2 – TERMS OF REFERENCE OF BSB COMMITTEES

Annex 2a - Education and Training

The Terms of Reference of the Education and Training Committee are:

1. On behalf of the BSB to provide specialist oversight of the regulation of education, training and quality assurance and for that purpose it will:
 - a. monitor action taken by the BSB;
 - b. endorse substantial and substantive policy proposals to the Board that have been developed by the BSB; and
 - c. actively keep under review the regulatory arrangements relating to its terms of reference and report periodically to the Board as to the need for its continued operation.
2. The BSB may direct the Education Committee as to its scope of work.

The membership of the Education and Training Committee shall consist of:

1. A chair who shall also be a member of the Board;
2. Two lay members, normally also Board members;
3. Two practising barristers, normally also Board members; and
4. Two senior legal academics with experience of vocational training (in addition to the lay members above).

Annex 2b - Governance, Risk and Audit Committee

The Terms of Reference of the Governance, Risk and Audit Committee are:

1. to advise the Board on the effectiveness of the corporate governance structures, and to monitor and recommend to the Board action in respect of the effectiveness of the strategic arrangements for governance, risk management and audit. This includes agreeing a programme of Board member training and development to satisfy corporate governance guidelines;
2. to monitor and recommend to the Board action in respect of the Board's management of risks, including arrangements for business continuity and disaster recovery;
3. to agree action in respect of the effectiveness of the Board's financial management and control systems, and internal business processes, including accounting policies, anti-fraud and whistle-blowing arrangements;
4. to provide oversight of the internal audit function and the development of the first and second lines of defence of the BSB's assurance framework. To appoint the Board's Internal Auditors and agree the annual audit plan including any audit reviews that the Board wishes to see conducted. To monitor and recommend to the Board the results of the Board's internal audit arrangements and the effectiveness of the response to issues identified by audit activity; and
5. to review relevant assessment reports and assurance reports to secure an understanding of improvements that could be made and best practice revealed by such reports. To provide necessary assurances to the Board, that in turn provides assurances to the Bar Council's Audit Committee.

The membership of the Governance Risk and Audit Committee shall be:

6. A lay chair who must also be a Board member;
7. A lay or barrister vice chair; and
8. Three other members who must not be Board members.

Annex 2c - Planning, Resources and Performance Committee

The Terms of Reference of the Planning, Resources and Performance Committee are:

1. to consider, and support the Board and the executive in formulating, the overall strategy for the BSB, with particular emphasis on horizon scanning, vision, mission statement, priorities, activities and outcomes. To scrutinise the BSB's three-year Strategic Plan and annual Business Plan before the Board's signoff is sought. Agree actions to ensure that the BSB's associated strategies (Communications, IT, HR and research) are aligned to the corporate strategy;
2. to oversee operational and programme delivery (without duplicating the detailed oversight provided by any other committee or programme/project governance structure) as well as financial performance against the objectives and targets set out in the Business Plan. To support the Board and executive with finalising the BSB's Annual Report publications;
3. to consider the annual budget and revenue, in the context of the Strategic and Business Plans, to question whether proposed funding is adequate and properly and effectively allocated across the business, and agree certain levels of virement between programmes (as anticipated in the Finance Manual with levels set by the Committee from time to time);
4. to consider how the BSB presents financial information to best effect and with appropriate transparency and comprehensiveness. To consider the reliability of forecasting and how the pursuit and achievement of efficiency savings are reported;
5. to review and agree actions on the effectiveness of service level agreements within the organisation;
6. to consider how the BSB undertakes planning activity to best effect and in a timely and consistent manner, as well as to review the robustness of programme and project plans. To support the Board and the executive with the planning and monitoring of the implementation of the Regulatory Standards Framework; and
7. to agree how the BSB monitors, measures and reports organisational performance, regulatory effectiveness and value for money with appropriate transparency and in a timely and consistent manner. To consider the quarterly performance and regular effectiveness reports prior to submission to the Board.

The membership of the Planning Resources and Performance Committee shall be:

8. Five members, including a chair who must be a member of the Board, and have an overall lay majority.

Annex 2d - Professional Conduct

The Terms of Reference of the Professional Conduct Committee are:

1. to carry out the functions and exercise the powers under Part 5 of the BSB Handbook;
2. to respond to and, where appropriate, defend appeals against and other challenges to actions and decisions of the Committee and of disciplinary tribunals and panels constituted under the regulations and rules referred to at (1) above;
3. to make recommendations to other committees or to the Board about matters of professional conduct, including changes to rules referred to at (1) above when the Committee considers it appropriate to do so;
4. to liaise, where appropriate, with other BSB Committees, the Bar Tribunals and Adjudication Service, the Legal Ombudsman and any other bodies relevant to the work of the Committee in exercising its functions;
5. to undertake such other tasks as the Board may require; and
6. to report to the Board on its work as and when required.

The membership of the Professional Conduct Committee shall be:

7. A chair and four vice chairs. There must be two lay and two barrister vice chairs. The chair can be either a lay or barrister member;
8. A minimum of 10 lay members and a maximum of 24 lay members; and
9. Subject to a minimum of 10, a number of barristers to enable the Committee in the judgement of the Chair to carry out its business expeditiously.

~~Annex 2e – Qualifications~~**~~The Terms of Reference of the Qualifications Committee are:~~**

- ~~1. to consider and determine:—~~
 - ~~a. applications for exemption from any requirement of the Bar Training Rules (Section 4B of the Handbook); and~~
 - ~~b. any request for review made under 4B10, 3C6 or 3E11 of the Handbook.~~
- ~~2. to consider and determine all applications for authorisation under the following (including dispensations from and waivers):—~~
 - ~~a. waivers from the requirement to work with a “qualified person” (rS20 & rS21);—~~
 - ~~b. authorisation to conduct litigation (rS49)–~~
 - ~~c. waivers from the requirement to undertake Public Access work (rC120)–~~
 - ~~d. waivers or extensions of time in relation to the Continuing Professional Development Regulations (section 4C)–~~
 - ~~e. waivers from the pupillage funding and advertising requirements (rC113);–~~
 - ~~f. authorisation of Approved Training Organisations (rQ39);–~~
 - ~~g. approval for licensed access; and–~~
 - ~~h. any other rule or regulation as may be delegated to it by the Board.–~~
- ~~3. to discharge the functions of the Bar Council and the Inns in respect of the recognition of European lawyers conferred upon them pursuant to the European Communities (Recognition of Professional Qualifications) Regulations 2007 and the European Communities (Lawyers’ Practice) Regulations (2000);–~~
- ~~4. to exercise the powers of the Board to designate Legal Advice Centres;–~~
- ~~5. to supervise and, where necessary, decide questions concerning the issue of practising certificates and the registration of pupil supervisors;–~~
- ~~6. to liaise, where appropriate, with other BSB Committees, representative committees of the Bar Council, the Inns’ Council and any other body on any matters of concern or common interest;—~~
- ~~7. to undertake such other tasks as the Board may require; and–~~
- ~~8. to report to the Board on its work as and when required.–~~

~~The membership of the Qualifications Committee shall be:~~

- ~~9. A chair and three vice-chairs, of whom two must be lay persons and two must be practising barristers;—~~
- ~~10. At least three lay persons; and–~~
- ~~11. At least six practising barristers.–~~

Annex 3 – APPOINTMENTS PROCESS FOR BSB COMMITTEES

1. The BSB appoints and reappoints all Chairs, Vice Chairs and members of its Committees on merit.
2. Appointments of Board members to the posts of BSB Committee Chairs and BSB members of Committees are made by the BSB Chair in consultation with the BSB Vice Chair and BSB Director General.
3. Appointments of new members of BSB Committees are made by the BSB Chair on the recommendation of a selection panel, convened as required for each recruitment.
4. The selection panel convened for recruitment of members of BSB Committees is to consist of:
 - a. an independent person with knowledge of the Code of Practice of the Commissioner for Public Appointments, or similar skills and experience in good recruitment procedures;
 - b. at least one and a maximum of two members of the Board;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
5. All selection panels convened for the Professional Conduct Committee shall have the composition set out in paragraph 4, unless one of the Board members appointed is not also an Office Holder of the Professional Conduct Committee. In that case, an Office Holder of the Professional Conduct Committee shall be appointed in place of one of the Board members.
6. Appraisals must inform retention and reappointment recommendations and decisions. The BSB Chair or their nominees must carry out the appraisals.
7. All appointments made by the BSB Chair shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the Chair of the Committee concerned is satisfied that:
 - a. the person has performed to the standard to be expected of the office held, and
 - b. it is in the interests of the BSB to renew the appointment.
8. In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six year period of appointment permitted above. Any resolution to make a limited offer of extension must:
 - a. allow for an extension of no more than 18 months in duration,
 - b. be made by offer in writing, and
 - c. be made for a specific reason that is articulated in the offer of extension.

Scheme of Delegations

The Board is responsible for creating an organisational structure capable of meeting its regulatory obligations and implementing its strategic plan by establishing and maintaining a scheme of delegations. This scheme of delegations therefore describes the authority granted by the Board to its committees and executive to carry out regulatory functions on its behalf. A separate scheme of delegations which details responsibility for the BSB's internal corporate management functions, including such remits as financial, risk management, and communications decisions exists elsewhere and is under revision.

The scheme comprises:

- A. delegation from the Board to the Director General
- B. sub-delegation of Board powers from the Director General to the executive
- ~~C. delegation from the Qualifications Committee to the Director General~~
- ~~D. sub-delegation of Qualifications Committee powers from the Director General to the executive~~
- C. delegation from the Board to other bodies, listed in the Standing Orders
- E.D. delegation from the Board to other bodies, not listed in the Standing Orders
- F.E. delegation from the Professional Conduct Committee to the executive

A. The Bar Standards Board delegates the powers below to the Director General, including the power to sub-delegate, to:	B. The Director General sub-delegates the powers granted by the Board as specified in column A, in accordance with decision-making criteria, to:
Regulatory policy	
1. Approve formal/published guidance on the interpretation of rules and regulations	Any Director
2. Make "exempt changes" to the rules, including the Handbook (source and reference: Legal Services Act paragraph 19(2)(c) of Schedule 4)	Any Director
3. Approve and implement regulatory changes and policy that enact "exempt changes"	Any Director

* decision-making criteria are not yet specified

4. Approve and implement rules, systems or policies required to give effect to policies and regulatory arrangements previously agreed by the Board	Any Director
5. Grant waivers from requirements of the Handbook where appropriate, except <u>delegations 20, 22, 23 and 27 in this Scheme (applications for waivers: from the requirement to work with a “qualified person”; to undertake Public Access work; or extensions of time in relation to the Continuing Professional Development Regulations; and from the pupillage funding and advertising requirements) those which are the responsibility of the Qualifications Committee</u>	<p>Director of Strategy and Policy</p> <p><u>Head of Policy Programmes</u></p> <p>Policy Manager, Professional Standards (<u>where expressly delegated by the Director of Strategy and Policy</u>)</p> <p><u>Director of Regulatory Assurance</u></p> <p><u>Head of Supervision and Authorisation</u></p> <p><u>Authorisations Manager</u></p> <p><u>Senior Supervision and Authorisation Officer</u></p> <p><u>Supervision and Authorisation Officer</u></p>
Supervision	
6. Approve a decision to take supervisory action (including but not limited to agreeing action, visiting, requesting information), to take no action or to refer the case to PCD	<p>Director of Regulatory Assurance</p> <p>Head of Supervision and Authorisation</p> <p>Supervision Manager</p> <p>Senior Supervision and Authorisation Officer</p> <p>Supervision and Authorisation Officer</p>
7. Approve a decision to request barristers to submit their CPD record <u>Plan and record</u> for supervision (source: rQ130 – 138 and BSB General Guide to CPD (2016) and other supporting material)	<p>Director of Regulatory Assurance</p> <p>Head of Supervision and Authorisation</p> <p>Supervision Manager</p> <p>Senior Supervision and Authorisation Officer</p> <p>Supervision and Authorisation Officer</p>

* decision-making criteria are not yet specified

8. Take action as a result of assessment against compliance with the BSB Handbook (source rQ131, 132, 133 and <i>BSB General Guide to CPD</i>)	Director of Regulatory Assurance Head of Supervision and Authorisation Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
BSB Entity Authorisation/Licensing	
9. Authorise, license or refuse entity applications (including applications for litigation extensions) and revoke or suspend these authorisations/licences	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
10. Extend the decision period for considering entity applications	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
11. Impose or modify a BSB entity's authorisation or licence including conditions imposed on it at any point	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer

* decision-making criteria are not yet specified

12. Approve or reject an owner, manager, Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA), including emergency/temporary HOLPs or HOFAs	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
Intervention	
13. Authorise the use of intervention action, in accordance with the powers set out at Schedule 14 to the Legal Services Act 2007	Any Director
Education and Assessments	
14. Approve and implement rules, systems or policies required to give effect to policies and regulatory arrangements previously agreed by the Board with regard to assessment of standards for qualification/authorisation	Director of Regulatory Assurance Director of Strategy and Policy Examinations Manager Head of Training Supervision and Examinations
15. Approve and implement rules, systems or policies required to give effect to policies and regulatory arrangements previously agreed by the Board with regard to training specification requirements and delivery	Director of Regulatory Assurance Director of Strategy and Policy Head of Training Supervision and Examinations
16. Decide the approval, refusal and rescinding of approval of individuals and organisations to provide training, supervision or assessment where required by the regulations, and the contracting of services for training delivery where not specified in the regulations	Director of Regulatory Assurance Authorisations Manager Head of Training Supervision and Examinations Head of Supervision and Authorisation Training Officer (CPD)

* decision-making criteria are not yet specified

17. Decide on management activity required to supervise, monitor and ensure quality in the provision of training to meet the required standards	Director of Regulatory Assurance Head of Training Supervision and Examinations Authorisations Manager Examinations Manager
Signed on behalf of the Bar Standards Board _____ date _____	Signed by the Director General _____ date _____
<u>Authorisations and waivers</u>	
C. The Qualifications Committee, on behalf of the Bar Standards Board (by delegation within Annex 2e of the Standing Orders) delegates the power, including the power to sub-delegate, to the Director General, to:	D. The Director General sub-delegates the powers granted by the Qualifications Committee as specified in column C, in accordance with decision-making criteria, to:
18. Determine applications for exemption from any requirement of the Bar Training Rules (Section 4B of the Handbook);	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
19. Determine applications for transfer of Qualified Solicitors and Qualified Foreign Lawyers (under section 4B)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
20. Determine applications for waivers from the requirement to work with a “qualified person” (rS20 & rS21)	Director of Regulatory Assurance Head of Supervision and Authorisation

* decision-making criteria are not yet specified

	Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
21. Determine applications for authorisation to conduct litigation (rS49)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
22. Determine applications for waivers from the requirement to undertake Public Access work (rC120)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
23. Determine applications for waivers or extensions of time in relation to the Continuing Professional Development Regulations (section 4C)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
24. Determine applications for approval for licensed access	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
25. Determine applications for transfer of Qualified European Lawyers or registration of Registered European Lawyers	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer

* decision-making criteria are not yet specified

	Supervision and Authorisation Officer
26. Designation of Legal Advice Centres as suitable for the attendance or employment of barristers, including by imposing conditions	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
27. Determine applications for waivers from the pupillage funding and advertising requirements (rC113)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
28. Determine applications for authorisations of Approved Training Organisations (rQ39)	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
<u>29. Register a pupillage or refuse to register a pupillage (rQ63 & rQ65)</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>
<u>30. Issue or refuse to issue a provisional qualification certificate or a full qualification certificate (rQ68 to rQ73)</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>

* decision-making criteria are not yet specified

<u>31. Issue a provisional practising certificate (rS46.2)</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>
<u>32. Enter a barrister on or refuse to enter a barrister on the register of approved pupil supervisors (rQ45 & rQ46)</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>
<u>33. Remove a barrister from the register of approved pupil supervisors (rQ52)</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>
<u>34. Waive any fee generally charged by the BSB for any application for waiver from or authorisation under any provision of the BSB Handbook</u>	<u>Director of Regulatory Assurance</u> <u>Head of Supervision and Authorisation</u> <u>Authorisations Manager</u> <u>Senior Supervision and Authorisation Officer</u> <u>Supervision and Authorisation Officer</u>
Signed on behalf of the Qualifications Committee of the Bar Standards Board _____ date _____	Signed by the Director General _____ date _____
<u>EC. The Bar Standards Board delegates the power to the following to:</u>	

* decision-making criteria are not yet specified

<u>29-35.</u> Determine any request for review made under Part 3 C6, Part 3 E11, or Part 4 B10 of the Handbook, or review of decisions taken under Part 1 4A of the Handbook	<u>Authorisations Review Panels</u>
D. The Bar Standards Board delegates the power to the following to:	
<u>30-36.</u> Determine whether applications for review of decisions of the Bar Transfer Test Examining Board are referred to the Independent Reviewer	Director of Regulatory Assurance Head of Training Supervision and Examinations
<u>31-37.</u> Determine applications for review of decisions of the Bar Transfer Test Examining Board	Independent Reviewer (external independent contractor)
<u>32-38.</u> Determine whether applications for review of cohort-level decisions of central assessments are referred to the Independent Reviewer	Director of Regulatory Assurance Examinations Manager
<u>33-39.</u> Determine applications for review of cohort-level decisions of central assessments	Independent Reviewer (external independent contractor)
<u>34-40.</u> To make arrangements for the conduct of disciplinary hearings and to take disciplinary action according to the regulatory arrangements in respect of entities, their managers and employees	Bar Tribunal and Adjudications Service

FD. The Professional Conduct Committee, on behalf of the Bar Standards Board (by delegation within Annex 2d of the Standing Orders) delegates the power to the Executive team in accordance with the following table which is updated on a regular basis:

<https://www.barstandardsboard.org.uk/media/1699744/150810 - p09 - authorisations under part 5 - table - annex 1 live updated september 2015 .pdf>

* decision-making criteria are not yet specified

After the Event Insurance

Status

1. This paper is for discussion and **approval**.

Executive Summary

2. The BSB has received a number of queries about whether BSB entities and self-employed barristers are permitted to recommend and arrange After the Event (ATE) insurance policies, and a number of representations to the effect that they should be. The most likely scenario would be an entity or self-employed barrister acting directly for lay clients, conducting personal injury litigation and wishing (in order to be able to provide additional services to clients) to be able to arrange ATE insurance policies, particularly in connection with conditional fee agreements.
3. The paper recommends that BSB entities should be permitted to recommend and arrange ATE insurance policies either by way of obtaining Financial Conduct Authority (FCA) regulation, or becoming appointed representatives (ARs) of FCA regulated firms. The paper also recommends that self-employed barristers should be permitted to become ARs of FCA regulated firms (as FCA regulation is firm-based, self-employed barristers are not able to obtain FCA regulation themselves).
4. If the BSB applied to become a designated professional body (DPB) for financial services activities, this would permit BSB entities to recommend and arrange ATE insurance policies without either obtaining FCA regulation or becoming ARs of FCA regulated firms. However, as the BSB is a specialist regulator of advocacy and legal advice, the paper recommends that the BSB should not apply to become a DPB for financial services activities.
5. The paper notes that permitting these activities would not result in any exposure to the Bar Mutual Indemnity Fund (BMIF) or other entity insurers. It also notes that the BSB's approach to ATE insurance would likely align with that of CILEx Regulation. It therefore recommends that the Board agrees to negotiating and agreeing a joint MoU with the FCA and CILEx Regulation (only in respect of ATE insurance), and delegates negotiation and sign-off to the Director General and Director of Strategy and Policy.

Recommendations

6. It is recommended to the Board that it:
 - a) **Agrees** BSB entities and self-employed barristers should be permitted to recommend and arrange ATE insurance policies;
 - b) **Agrees** BSB entities should be permitted to recommend and arrange ATE insurance policies by obtaining FCA regulation, and that entities and self-employed barristers should be permitted to do so by becoming ARs of FCA regulated firms;
 - c) **Notes** the regulatory guidance on ATE insurance (annexed), which is in draft pending further discussions with the insurance APEX member;
 - d) **Agrees** the BSB (and therefore, the Bar Council) should not apply to become a DPB for financial services activities;

- e) **Notes** BSB entities which obtain FCA regulation could remain insured by BMIF in respect of legal services; and
- f) **Agrees** to negotiating and agreeing a joint MoU with the FCA and CILEx Regulation (only in respect of ATE insurance and ARs), and delegates negotiation and sign-off to the Director General and Director of Strategy and Policy.

Background

7. Recommending and arranging an After the Event (ATE) insurance policy in the course of a claim is an insurance mediation activity. As such, it is a regulated activity for the purposes of the Financial Services and Markets Act 2000 (FSMA). Any person carrying on a regulated activity must be regulated by the Financial Conduct Authority (FCA).
8. The FSMA enables firms who are authorised and regulated by a regulator other than the FCA to be treated as exempt professional firms and carry on exempt regulated activities. A firm may only be regarded as an exempt professional firm if its regulator is one of the designated professional bodies (DPBs) recognised by the FCA.¹
9. The Law Society, and therefore the Solicitors Regulation Authority (SRA) on its behalf, is a DPB. The SRA's Financial Services (Scope) Rules (2001) set out the scope of the regulated activities which exempt professional firms regulated by the SRA may undertake.² Rules 4.1(a) and (b) are key. They state 'A *firm* which carries on any *regulated activities* must ensure that: **the activities arise out of, or are complementary to**, the provision of a particular *professional service* to a particular *client*' and 'the manner of the provision by the *firm* of any service in the course of carrying on the activities is **incidental** to the provision by the *firm* of *professional services*'.
10. However, the Bar Council and therefore, the BSB, is not a DPB and so a BSB entity cannot be an exempt professional firm and would need to either a) seek FCA regulation, or b) become an appointed representative (AR) of an FCA regulated firm. An AR is entitled to engage in regulated activities notwithstanding that they are not themselves FCA regulated, as they act as a representative of an FCA regulated firm.
11. As FCA regulation is firm-based, self-employed barristers are not able to obtain FCA regulation themselves. Self-employed barristers wishing to recommend and arrange ATE insurance policies would therefore need to become an AR of an FCA regulated firm.
12. The BSB has received a number of queries about whether BSB entities and self-employed barristers are permitted to recommend and arrange ATE insurance policies, and a number of representations to the effect that they should be. Although there is no rule explicitly prohibiting such activity, we are considering the issue now so that appropriate guidance can be given to the profession. The most likely scenario would be an entity or self-employed barrister acting directly for lay clients, conducting personal injury litigation and wishing (in order to be able to provide additional services to clients) to be able to arrange ATE insurance policies, particularly in connection with conditional fee agreements.

¹ <https://www.handbook.fca.org.uk/handbook/glossary/G286.html>

² <http://www.sra.org.uk/solicitors/handbook/finersscope/content.page>

Rationale for ATE Insurance

13. The SMT has agreed that, in principle, BSB entities and self-employed barristers should be permitted to recommend and arrange ATE insurance policies (indeed there is no rule prohibiting this at present). The rationale is as follows:
- a) in accordance with the BSB’s entity regulation policy statement, this would only be a minor or incidental example of an activity which is carried on in the course of supplying legal services, and would not materially detract from the focus of the entity being legal.³ An analogy for solicitors would be the SRA’s Financial Services (Scope) Rules (2001). Under these rules, exempt professional firms which are regulated by the SRA and recommending and arranging ATE insurance policies are considered to be carrying on an activity which is ‘complementary’ and ‘incidental’ to the provision of legal services;
 - b) BSB entities could apply for SRA regulation instead. They would therefore be exempt professional firms which would be permitted to recommend and arrange ATE insurance policies. However, BSB entity authorisation applicants report that a disincentive to applying for SRA regulation is the cost of professional indemnity insurance. The BSB permitting the recommending and arranging of ATE insurance policies would therefore increase choice and allow BSB entities – and self-employed barristers – to compete more effectively with firms regulated by the SRA. This would help the BSB to achieve its regulatory objective of promoting competition in the provision of legal services; and
 - c) as explained at paragraph 12, the most likely scenario would be a BSB entity or self-employed barrister acting directly for lay clients, conducting personal injury litigation and wishing to be able to recommend and arrange ATE insurance policies, particularly in connection with conditional fee agreements (“no win, no fee” agreements). This may stimulate innovation, improve the consumer experience and help the BSB to achieve its regulatory objective of improving access to justice. These are identified as priorities in the BSB’s Risk Outlook.⁴ ‘Failure to meet consumer demand’ and ‘affordability or value concerns’ are also identified as key market risks in the BSB’s Risk Index.⁵ Permitting the recommending and arranging of ATE insurance would therefore directly support existing BSB priorities.
14. **It is therefore recommended to the Board that it agrees BSB entities and self-employed barristers should be permitted to recommend and arrange ATE insurance policies.**

ATE Insurance – Options

FCA Regulation

15. A BSB entity wishing to recommend and arrange ATE insurance policies could apply for and obtain FCA regulation. **If a BSB entity obtained FCA regulation, they would be responsible for complying with the FCA’s regulatory requirements, including professional indemnity insurance for that part of their practice.**

³ https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf

⁴ https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf, page 9

⁵ https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf, page 9

16. If a BSB entity obtained FCA regulation, their BSB authorisation would normally, in accordance with Rules S114 and S116 of the BSB Handbook, be made subject to a number of conditions. A comparison exercise with the SRA's Financial Services (Scope) Rules and Financial Services (Conduct of Business) Rules (2001) has been done, and additional conditions which would normally need to be imposed on authorisations identified. These conditions are listed at paragraph 12 of the draft regulatory guidance on ATE insurance (annexed). Authorisations could also be made subject to such other conditions as the BSB considers appropriate.

Appointed Representatives

17. A BSB entity or self-employed barrister wishing to recommend and arrange ATE insurance policies could also become an AR of an FCA regulated firm. Notwithstanding that they are not themselves FCA regulated, an AR is entitled to engage in regulated activities as they act as a representative of an FCA regulated firm. **The FCA regulated firm would be required to undertake its own due diligence in respect of the BSB entity to ensure its own compliance with the FCA's regulatory requirements.**
18. If a BSB entity became an AR of an FCA regulated firm, their BSB authorisation could be subject to the same types of condition discussed at paragraph 16 and in the draft regulatory guidance.
19. If a self-employed barrister became an AR of an FCA regulated firm, the barrister would be required to notify the BSB under Rule C80 of the BSB Handbook and then, in accordance with Rule S72, conditions could be placed on their practising certificate which are similar to those discussed above in relation to the BSB entities.
20. **It is therefore recommended to the Board that it agrees BSB entities should be permitted to recommend and arrange ATE insurance policies by obtaining FCA regulation and that entities and self-employed barristers should be permitted to become ARs of FCA regulated firms. The Board is also asked to note the regulatory guidance on ATE insurance (annexed), which is in draft pending further discussions with the insurance APEX member.**

Application by the BSB to Become a Designated Professional Body

21. Another option would be for the BSB to apply (on behalf of the Bar Council) to become a DPB recognised by the FCA. If an application was granted, BSB entities would be exempt professional firms which could carry on exempt regulated activities under the FSMA (subject to the BSB's regulatory rules stating which regulated activities were exempt).
22. The SMT has not recommended this option. The BSB is a specialist regulator of advocacy and legal advice, which suggests that it would not be appropriate for it to become a designated professional body for financial services activities. There has been little demand for the BSB to be so designated and the application process would likely be resource intensive, requiring approval of new regulatory arrangements; therefore, applying for designation would likely be disproportionate.
23. **It is therefore recommended to the Board that it agrees the BSB should not apply for the Bar Council to become a designated professional body for financial services activities.**

Compliance with Other BSB Handbook Requirements

24. If a BSB entity obtained FCA regulation, or a BSB entity or self-employed barrister became an AR of an FCA regulated firm, recommending and arranging ATE insurance policies would not affect the need for compliance with other BSB Handbook requirements. In particular:
- Acting in clients' best interests;
 - Maintaining independence and prohibition on referral fees;
 - Providing a competent standard of work and service;
 - Not misleading clients and potential clients;
 - Duty to report certain matters to the BSB;
 - Client money and third party payment services;
 - Record keeping; and
 - Complaints rules.
25. Full details of the need for continuing compliance with other BSB Handbook requirements are at paragraphs 29 – 44 of the draft regulatory guidance on ATE insurance (annexed).

Professional Indemnity Insurance

26. If a BSB entity or self-employed barrister became an AR of an FCA regulated firm, the FCA regulated firm would be responsible for complying with the FCA's professional indemnity insurance requirements.
27. If a BSB entity obtained FCA regulation, the provision of ATE insurance would, as a financial services activity, be excluded from the BSB's minimum terms of entity cover. There would therefore be no exposure to the Bar Mutual Indemnity Fund (BMIF) or other insurers, and BSB entities which obtain FCA regulation would be required to obtain additional professional indemnity insurance under the FCA's regime. This should not affect their insurance for legal services (we have been discussing this informally with BMIF and will seek formal confirmation in due course).

MoU with the FCA and CILEx Regulation

28. The SMT agreed that before permitting BSB entities and self-employed barristers to recommend and arrange ATE insurance policies, we should be assured we have an adequate working relationship with the FCA. The BSB and other approved regulators already have a framework MoU with the FCA.⁶ However, it may be useful for the BSB to have a more detailed agreement with the FCA in respect of ATE insurance and ARs only.
29. CILEX Regulation has requested that we make a joint approach to the FCA. It has confirmed that it will permit its regulated entities to both obtain FCA regulation, and become ARs of FCA regulated firms. It has also confirmed that it will not apply to become a designated professional body for financial services activities.
30. **It is therefore recommended to the Board that it agrees to negotiating and agreeing a joint MoU with the FCA and CILEx Regulation (only in respect of ATE insurance and ARs), and delegates negotiation and sign-off to the Director General and Director of Strategy and Policy.**

⁶

https://www.barstandardsboard.org.uk/media/1834321/framework_memorandum_of_understanding_010617.pdf

31. The SRA has a MoU with the FCA concerning exempt and authorised professional firms. This covers the notification of matters likely to be of material concern, the annual return of information about firms, information about exempt regulated activities, information on investigations and disciplinary proceedings and complaints handling arrangements concerning exempt regulated activities.
32. The joint MoU with the FCA and CILEx Regulation should, insofar as possible, reflect the detail of the SRA's agreement. It should also cover the notification by the FCA of potential breaches of the BSB authorisation conditions (discussed at paragraphs 16 – 19).

Insurance Distribution Directive 2016

33. The Board will also wish to note that the Insurance Distribution Directive (IDD) 2016 updates the Insurance Mediation Directive (IMD) 2002, and must be transposed into national law by 23 February 2018. The government intends to transpose and implement the IDD on schedule.
34. The FCA therefore recently issued the first of two planned consultations on the implementation of the IDD (the second consultation will include matters such as those IDD requirements which are yet to be adopted by the European Commission).⁷ The proposals they implement from both consultations will take effect on 23 February 2018.
35. The FCA's website states that the IMD 'was designed to encourage competition between insurance firms, as well as ensure appropriate levels of protection for customers, across the EU. The IDD aims to strengthen and consolidate the existing rules of IMD'. The requirements of the IDD therefore go beyond those of the IMD and accordingly, the FCA's current rules. For example:
 - The IDD introduces a requirement for non-life insurance distributors to provide the customer with a standardised Insurance Product Information Document (IPID), although this requirement has yet to be adopted by the EU Commission;
 - The IDD introduces a minimum of 15 hours continuing professional development (CPD) for staff. This is different from the BSB's regulatory approach where, as of January 2017, barristers on the Established Practitioners' Programme (EPP) are no longer required to complete a minimum number of CPD hours;
 - The IDD establishes minimum professional indemnity insurance cover levels, and the FCA proposes to increase its minimum levels in line with these;
 - The IDD requires firms to establish, maintain and keep appropriate records to demonstrate employee competence; and
 - The FCA proposes to incorporate the IDD requirements in its rules by a) requiring insurance distributors to act honestly, fairly and professionally in the best interests of their customers ('the customer's best interests rule', which has an equivalent in the BSB Handbook Core Duty), b) requiring that all marketing communications be clearly identifiable as such and c) prohibiting remuneration and performance management practices that would conflict with the customer's best interests rule.
36. The IDD also introduces ancillary insurance intermediaries (AIIIs) as a new category of insurance intermediary. These are firms which meet the following requirements: a) the firm's principal professional activity is not insurance distribution, and b) the firm only distributes insurance products which are complementary to goods and services they

⁷ <https://www.fca.org.uk/publication/consultation/cp17-07.pdf>

provide as their primary professional activity. BSB regulated entities which recommend and arrange ATE insurance policies will therefore be AIs.

37. The proposals which will take effect on 23 February 2018 will go beyond the FCA's current rules. In some cases – for example, the CPD requirements – they will also go beyond the requirements of the BSB's regulatory regime. However, none of the proposals will affect compliance with BSB Handbook requirements.
38. While the FCA's rules will be more onerous from 23 February 2018, BSB entities which obtain FCA regulation will continue to be responsible for complying with the FCA's regulatory requirements. If a BSB entity or self-employed barrister becomes an AR of an FCA regulated firm, the firm will also continue to be responsible for ensuring that the BSB entity or self-employed barrister complies with the FCA's regulatory requirements. The more onerous rules from 23 February 2018 will therefore not impact on the BSB's authorisation and supervision processes.

Equality Impact Assessment

39. An equality analysis screening has been completed for the ATE insurance proposals. The screening did not identify any adverse impacts in relation to any of the protected groups under the Equality Act 2010.

Risk Implications

40. As explained at paragraph 13c), this has the potential to stimulate innovation and improve the consumer experience. These are identified as priorities in the BSB's Risk Outlook. 'Failure to meet consumer demand' and 'affordability or value concerns' are also identified as key market risks in the BSB's Risk Index. Permitting the recommending and arranging of ATE insurance would therefore directly support existing BSB priorities.
41. The additional authorisation conditions (discussed at paragraphs 16 – 19) and the joint MoU will help the Authorisation and Supervision Teams to manage the regulatory risks associated with recommending and arrange ATE insurance. For example, the joint MoU should cover the notification by the FCA of potential breaches of the BSB authorisation conditions.

Impacts on Other Teams/Departments or Projects

42. The Professional Standards Team will liaise closely with the Authorisation Team in the Regulatory Assurance Department regarding making the authorisation of BSB entities and self-employed barristers subject to conditions (as explained at paragraphs 16 – 19).
43. We also intend to engage the insurance APEX member to ensure we have fully understood the implications, and that our arrangements are sufficient.

Regulatory Objectives

44. As explained at paragraphs 13b) – c), the ATE insurance proposals would help the BSB to achieve its regulatory objectives of promoting competition in the provision of legal services, improving access to justice and protecting and promoting the interests of consumers.

Annex

After the Event Insurance Guidance (Draft).

Lead responsibility:

Joseph Bailey – Senior Policy Officer, Professional Standards.
Ewen Macleod – Director of Strategy and Policy.

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 After the Event Insurance Guidance

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Introduction

CURRENT GUIDANCE

1. This guidance document is for prospective and existing BSB entities, and self-employed barristers, who wish to recommend and arrange After the Event (ATE) insurance policies for clients.
2. This may occur where a BSB entity or self-employed barrister is acting directly for a lay client under a conditional fee agreement, and conducting personal injury litigation.
3. Recommending and arranging an ATE insurance policy is an insurance mediation activity. As such, it is a regulated activity for the purposes of the Financial Services and Markets Act 2000 (FSMA). Under section 19 of the FSMA, any person carrying on a regulated activity must be regulated by the Financial Conduct Authority (FCA) or exempt from this requirement. Under section 23 of the FSMA, it is a criminal offence for a person to carry on a regulated activity when neither authorised nor exempt.
4. Part XX of the FSMA enables firms who are authorised and regulated by a regulator other than the FCA to be treated as exempt professional firms and undertake exempt regulated activities. A firm will only be an exempt professional firm if its regulator is one of the designated professional bodies (DPBs) recognised by the FCA.¹
5. As the BSB is a specialist regulator of advocacy and legal advice, it is not a DPB for financial services activities. **BSB entities wishing to recommend and arrange ATE insurance policies must therefore either a) apply for and obtain FCA regulation, or b) become an appointed representative (AR) of an FCA regulated firm. See Section 1 or 2 below.**
6. As FCA regulation is firm-based, self-employed barristers are not able to obtain FCA regulation. **Self-employed barristers wishing to recommend and arrange ATE insurance policies must therefore become an AR of an FCA regulated firm. See Section 2 below.**

¹ <https://www.handbook.fca.org.uk/handbook/glossary/G286.html>

Section 1: BSB entities – FCA Regulation

7. A BSB entity wishing to recommend and arrange ATE insurance policies can apply for and obtain FCA regulation. **If a BSB entity obtains FCA regulation, they will be responsible for complying with the FCA’s regulatory requirements in addition to BSB regulation.**
8. The BSB’s view is that recommending and arranging ATE insurance policies is an incidental example of another activity which is carried on in the course of supplying the main service, and does not materially detract from the focus of the entity being legal. **Recommending and arranging ATE insurance policies therefore does not automatically mean that a BSB entity is unsuitable for BSB regulation.**

Prospective BSB entities – FCA Regulation

9. A prospective BSB entity applying for authorisation and wishing to recommend and arrange ATE insurance policies should either:
 - a) In response to the question ‘please provide details of any services, other than legal services, that you will provide’, indicate that it intends also to apply for and obtain FCA regulation; or
 - b) In response to the question ‘are you [the applicant entity] authorised to carry out non-legal professional services by an organisation which is not an approved regulator under the Legal Services Act 2007?’, indicate that it has already obtained FCA regulation.
10. Prospective BSB entities should be aware that if a substantial part of the services to be provided are high-volume, standardised legal transactional services direct to lay clients, this factor would indicate that it may not be appropriate for the BSB to regulate the entity (paragraph 15d) of the BSB’s entity regulation policy statement).²
11. However, the BSB will assess all of the information which is provided by an applicant in a flexible and holistic way to determine whether the entity is appropriate for the BSB to regulate. Applicants are encouraged to read the full entity regulation policy statement, which explains the BSB’s approach in more detail:
https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf
12. If the application is approved the authorisation will normally, in accordance with Rule S114 of the BSB Handbook, be given subject to the following conditions:
 - a) Recommending and arranging ATE insurance policies is the only financial services activity which the BSB entity will be permitted to carry on;

² https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf

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- b) This activity must arise out of, or be complementary to, supplying legal services to clients, and must be incidental to supplying legal services to clients. It is not permitted to carry on this activity for clients in isolation;
 - c) The BSB entity must be regulated by the FCA in respect of this activity;
 - d) The BSB must be notified within 7 days of the date on which the BSB entity first becomes regulated by the FCA in respect of this activity; and
 - e) The BSB must be notified within 7 days if the BSB entity is no longer regulated by the FCA in respect of this activity.
13. The authorisation may also be given subject to such other conditions as the BSB considers appropriate.

Existing BSB entities – FCA Regulation

14. If an existing BSB entity obtains FCA regulation in order to recommend and arrange ATE insurance policies, this will be a material change to the entity which must be notified to the BSB. This is because it may affect the BSB's supervision of the entity, or its suitability to be regulated by the BSB.
15. In addition, the authorisation of the BSB entity will normally, in accordance with Rule S116 of the BSB Handbook, be modified to make it subject to conditions identical to those in paragraph 12 above. The authorisation may also be modified to make it subject to such other conditions as the BSB considers appropriate.

Section 2: BSB entities and Self-Employed Barristers – Appointed Representatives

16. A BSB entity wishing to recommend and arrange ATE insurance policies can also become an AR of an FCA regulated firm.
17. Notwithstanding that they are not themselves FCA regulated, an AR is entitled to engage in regulated activities as they act as a representative of an FCA regulated firm. **The FCA regulated firm is required to undertake its own due diligence in relation to the BSB entity to ensure its own compliance with the FCA’s regulatory requirements.**
18. Rule C21 of the BSB Handbook also requires BSB entities to avoid conflicts of interest between their interests and the interests of clients in respect of particular matters. If a BSB entity becomes an AR of an FCA regulated firm and recommends and arranges ATE insurance policies, in each case they are required to undertake due diligence to avoid a conflict of interest. This requires robust governance arrangements to be in place between the BSB entity and FCA regulated firm.

Prospective BSB entities – Appointed Representatives

19. A prospective BSB entity applying for authorisation and wishing to recommend and arrange ATE insurance policies should either:
 - a) In response to the question ‘please provide details of any services, other than legal services, that you will provide’, indicate that it intends to become an AR of an FCA regulated firm; or
 - b) In response to the question ‘do you have any associates or associations as defined in the BSB Handbook?’, indicate that it is already an AR of an FCA regulated firm.
20. If the application is approved the authorisation will normally, in accordance with Rule S114 of the BSB Handbook, be given subject to the following conditions:
 - a) Recommending and arranging ATE insurance policies is the only financial services activity which the BSB entity will be permitted to carry on;
 - b) This activity must arise out of, or be complementary to, supplying legal services to clients, and must be incidental to supplying legal services to clients. It is not permitted to carry on this activity for clients in isolation;
 - c) The BSB entity must be an AR of an FCA regulated firm in respect of this activity;
 - d) The BSB entity must provide such details of the FCA regulated firm to the BSB as it may require;

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- e) The BSB entity must take reasonable steps to satisfy itself that the FCA regulated firm is in good standing with the FCA;
 - f) The BSB entity must agree a protocol with the FCA regulated firm which (i) details the governance arrangements in place between them, (ii) ensures the entity's compliance with Rule C21 of the BSB Handbook and (iii) will be made available to the BSB on request;
 - g) The BSB must be notified within 7 days of the date on which the BSB entity first becomes an AR of the FCA regulated firm in respect of this activity; and
 - h) The BSB must be notified within 7 days if the BSB entity is no longer an AR of the FCA regulated firm in respect of this activity, or if the firm is no longer regulated by the FCA.
21. The authorisation may also be given subject to such other conditions as the BSB considers appropriate.

Existing BSB entities – Appointed Representatives

22. If an existing BSB entity becomes an AR of an FCA regulated firm in order to recommend and arrange ATE insurance policies, this will be a material change to the entity which must be notified to the BSB. This must be done:
- a) **During the annual entity renewal process**, by completing the material change declaration. Refer to the entity renewal guidance for more information: https://www.barstandardsboard.org.uk/media/1729846/entity_renewal_guidance.pdf; or
 - b) **Outside of the annual entity renewal process**, by completing the associations notification form and returning it to the BSB's Supervision Team. The form must be completed as, in addition to being a material change to the entity which must be notified to the BSB, acting as an AR falls within the definition of 'an association' in the BSB Handbook.³ Rule C80 of the BSB Handbook states that associations must be notified to the BSB. The form is available on the BSB's website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>.
23. In addition, the authorisation of the BSB entity will normally, in accordance with Rule S116 of the BSB Handbook, be modified to make it subject to conditions identical to those in paragraph 20 above. The authorisation may also be modified to make it subject to such other conditions as the BSB considers appropriate.

³ BSB authorised persons are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any person other than a BSB regulated person, in a manner which does not require the association to be authorised as an entity under the Legal Services Act 2007

Self-Employed Barristers – Appointed Representatives

24. Self-employed barristers wishing to recommend and arrange ATE insurance policies must become an AR of an FCA regulated firm.
25. Notwithstanding that they are not themselves FCA regulated, an AR is entitled to engage in regulated activities as they act as a representative of an FCA regulated firm. **The FCA regulated firm is required to undertake its own due diligence in relation to the self-employed barrister to ensure its own compliance with the FCA’s regulatory requirements.**
26. Rule C21 of the BSB Handbook also requires self-employed barristers to avoid conflicts of interest between their interests and the interests of clients in respect of particular matters. If a self-employed barrister becomes an AR of an FCA regulated firm and recommends and arranges ATE insurance policies, in each case they are required to undertake due diligence to avoid a conflict of interest. This requires robust governance arrangements to be in place between the self-employed barrister and FCA regulated firm.
27. If a self-employed barrister becomes an AR of an FCA regulated firm in order to recommend and arrange ATE insurance policies, they must complete the associations notification form and return it to the BSB’s Supervision Team. The form must be completed as acting as an AR falls within the definition of ‘an association’ in the BSB Handbook.⁴ Rule C80 of the BSB Handbook states that associations must be notified to the BSB. The form is available on the BSB’s website:
<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>
28. The BSB may then, in accordance with Rule S72 of the Handbook, place conditions on the self-employed barrister’s practising certificate which are similar to those in paragraph 20 above. The BSB may also place such other conditions on the self-employed barrister’s practising certificate as it considers appropriate.

⁴ *BSB authorised persons are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any person other than a BSB regulated person, in a manner which does not require the association to be authorised as an entity under the Legal Services Act 2007*

Section 3: Compliance with Other BSB Handbook Requirements

29. **If a BSB entity obtains FCA regulation, they will be responsible for complying with the FCA's regulatory requirements in addition to BSB regulation.**
30. **However, if a BSB entity or self-employed barrister becomes an AR of an FCA regulated firm, the FCA regulated firm is required to undertake its own due diligence in relation to the BSB entity or self-employed barrister to ensure its own compliance with the FCA's regulatory requirements.** BSB entities and self-employed barristers which become ARs of FCA regulated firms should also refer to the following sections of the BSB Handbook in more detail: Rule C21 on accepting instructions and conflicts of interest (and associated guidance), and Rules C79 – C85 on associations with others (and associated guidance).
31. In addition, **all BSB entities and self-employed barristers which recommend and arrange ATE insurance policies should note that this does not affect the need for compliance with other BSB Handbook requirements.** In particular:

Acting in Clients' Best Interests

32. Core Duty 2 in the BSB Handbook states that 'you must act in the best interests of each client'. It may, for example, be in clients' best interests to obtain ATE insurance to protect against adverse costs orders and disbursements that arise in personal injury cases, but only if they do not already have sufficient legal expenses insurance in place. Clients may also be exempt from some court fees and so do not need to obtain ATE insurance for this purpose. In addition, while BSB entities and self-employed barristers may recommend ATE insurance policies, clients should retain the ultimate choice as to whether to obtain them.

Maintaining Independence and Prohibition on Referral Fees

33. Core Duty 4 in the BSB Handbook states that 'you must maintain your independence'. Guidance C18 also states that 'offering, promising or giving: any commission or referral fee...to any client, professional client or other intermediary' may reasonably be seen as compromising independence. Paying or receiving referral fees is in any case prohibited by Rule C10. BSB entities and self-employed barristers should familiarise themselves with BSB guidance on referral fees⁵ and ensure they avoid any prohibited commission for recommending and arranging ATE insurance policies.

Providing a Competent Standard of Work and Service

34. Core Duty 7 in the BSB Handbook states that 'you must provide a competent standard of work and service to each client'. Guidance C38.2 also states that 'a competent

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https://www.barstandardsboard.org.uk/media/1666553/9_guidance_on_referral_and_marketing_arrangements_for_barristers_permitted_by_the_bsb.pdf

standard of work and service...includes: seeking to advise your client, in terms they can understand', which is relevant when recommending ATE insurance policies. Once clients have agreed that ATE insurance policies should be obtained, BSB entities and self-employed barristers should arrange them as soon as possible.

Not Misleading Clients and Potential Clients

35. Rule C19.4 of the BSB Handbook states that 'if you supply, or offer to supply, legal services, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, legal services about: whether you are entitled to supply those services and the extent to which you are regulated when providing those services and by whom'. Guidance C57 states that 'knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could...result in you being in breach of Rule C19', and Guidance C53 also states that 'you must consider how matters will appear to the client'.
36. BSB entities and self-employed barristers should therefore be clear to clients that:
- While they are regulated by the BSB, in order to recommend and arrange ATE insurance policies they have either also obtained FCA regulation, or are acting as an AR of an FCA regulated firm; and
 - Recommending and arranging ATE insurance policies is the only financial services activity which they are permitted to carry on.
37. To ensure compliance with Rule C19.4 of the BSB Handbook, BSB entities and self-employed barristers should confirm this to clients in writing when they first accept instructions to act in a matter (in accordance with Rule C22 of the BSB Handbook). If BSB entities and self-employed barristers are acting as an AR of an FCA regulated firm, they should also provide clients with the name and address of the firm.

Duty to Report Certain Matters to the BSB

38. Rule C65.3 of the BSB Handbook states that 'you must report promptly to the Bar Standards Board if: you (or an entity of which you are a manager) to your knowledge are the subject of any disciplinary or other regulatory or enforcement action by another Approved Regulator or *other regulator*, including being the subject of disciplinary proceedings'. The reference to 'action by...[another] regulator' includes the FCA.

Client Money and Third Party Payment Services

39. Rule C73 of the BSB Handbook states that 'you must not receive, control or handle client money apart from what the client pays you for your services'. If BSB entities and self-employed barristers are recommending and arranging ATE insurance policies for clients, they may therefore not hold ATE fees in their account on behalf of the client to pay the insurer.

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40. BSB entities and self-employed barristers are also reminded that, if they use a third party payment service for making payments to, from or on behalf of their clients, Rule C74 of the BSB Handbook states that they must:
- Ensure the service they use will not result in their receiving, controlling or handling client money;
 - Only use the service for payments to, from or on behalf of their clients which are made in respect of legal services (such as fees, disbursements or settlement monies); and
 - Take reasonable steps to check using the service is consistent with their duties to act competently and in their clients' best interests.
41. In addition, BSB entities and self-employed barristers which are using third party payment services should refer to the guidance to Rule C74 in the BSB Handbook, particularly Guidance C109 – C111.
42. If BSB entities and self-employed barristers are not arranging ATE insurance policies themselves, but doing so through other providers, the client will need to make any payment direct or use a third party payment service themselves.

Record Keeping

43. Rule C87.2 of the BSB Handbook states 'you must take reasonable steps to ensure that: proper records of your practice are kept'. Best practice is that records of recommending and arranging ATE insurance policies should be kept for six years. This is because the Limitation Act 1980 states that the limitation period for bringing a simple contract claim is six years.

Complaints Rules

44. Rule C99.1 of the BSB Handbook states that 'you must notify clients in writing when you are instructed, or, if that is if not practicable, at the next appropriate opportunity: of their right to make a complaint...how, and to whom, they can complain, and of any time limits for making a complaint'. This includes not only a client's right to complain to the Legal Ombudsman (if they have such a right), but also, in respect of recommending and arranging ATE insurance policies, their right to complain to the Financial Ombudsman.

Section 4: Professional Indemnity Insurance

45. If a BSB entity or self-employed barrister becomes an AR of an FCA regulated firm, the FCA regulated firm is responsible for complying with the FCA's professional indemnity insurance requirements.

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46. If a BSB entity obtains FCA regulation, the provision of ATE insurance is likely to be excluded from their insurer's terms of cover. In any event, BSB entities must ensure that they comply with the FCA's professional indemnity insurance requirements.

July 2017
Bar Standards Board

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

22 June	Chaired meeting with other Board members to discuss Board competencies for the forthcoming recruitment exercise
4 July	Attended Middle Temple Garden Party
5 July	Gave lunch to Jeremy Mayhew, Chair of the Finance Committee of the Corporation of London, LSB Board member, Wilf White also attended
5 July	Attended the Bar Council and American Inns of Court Roundtable Forum
6 July	Attended the Garden Party of the Treasurer and Masters of the Bench of the Honourable Society of Lincoln's Inn
11 July	Attended SMT meeting
12 July	Undertook 1 Board member's appraisal meeting
13 July	Met with Charles George, Faculty Master
14 July	Addressed the BPTC Conference
17 July	Met with Lord Keen & MoJ officials with Vanessa Davies Attended extra meeting of the Education & Training Committee
18 July	Attended GRA Committee meeting
19 July	Attended the Chairs' Committee
19 July	Attended the Board Members seminar on Future Bar Training
19 July	Attended the LPMA Summer Party
20 July	Attended a BSB/CILEx/SRA meeting with Vanessa Davies
20 July	Attended the Bar Council Reception
21 July	Attended The Honourable Society of Gray's Inn – Reception in the Walks
27 July	Attended BSB Board meeting

Director General's report - BSB meeting 27 July 2017

For consideration and noting.

Director General

1. My work in the last month has focussed significantly on FBT, and the curriculum and assessments review and authorisation framework (AF) projects in particular. We are all grateful to the Education and Training Committee and the FBT Programme Board members for the additional time they have been putting in to the projects over the last month (and have committed to spend in August). I assisted with the facilitation of sessions at the BPTC conference, participants at which engaged very helpfully in further work on the curriculum and assessments review and AF.
2. I accepted an invitation to present on the new CPD scheme to Thomas More Chambers on 1 July, and (with Ewen Macleod) to present a regulatory update to BACFI members last week.
3. We have established contact with a new set of MoJ officials working on the domestic legal services market and on Brexit. In connection with the former, the Chair and I called on Lord Keen on 17 July to update him on the work of the BSB.

Strategy & Policy*Professional Standards*

4. The Professional Standards Team is working on some minor revisions to the Handbook. These are provisionally set to be published in the autumn, subject to LSB approval. The Team has also published new guidance on making changes to the Handbook, and organised a Knowledge Sharing Session with the LSB to help build capability across the BSB on the rule change process.
5. In June, the team received 90 calls and emails to the professional standards enquiry line. This brings the total number of enquiries received this year (Jan-June) to just under 600.
6. We published our Action Plan to address the recommendations contained in the CMA report into legal services at the end of June. The Professional Standards team are leading work on the transparency recommendations and, together with the Research team, are conducting research into price and service transparency provided by barristers.
7. We issued our consultation on changes to the Public and Licensed Access Rules at the end of June. The consultation will close at the end of September. Work is also underway on drafting new guidance on the conduct of litigation (one of the recommendations of the Public and Licensed Access review report).
8. Guidance on immigration services for both consumers and the professionals who work with them was published on the 30 June, meeting the Business Plan commitment to deliver in Q1. Work is ongoing to ensure the guidance is effectively disseminated, and this includes translating the consumer guidance into key languages and providing a number of consumer organisations with hard copies. Work has also begun on developing a "Vulnerability Framework" for barristers, to help them identify, assess and manage client vulnerability. A TCG including board members is being established to oversee this work.

9. Protocol on international working has been signed between the Bar Council and the BSB.
10. Work on a review of PII arrangements continues. A progress report is before the Board this month.
11. A paper on the implications of recommending and arranging After the Event (ATE) insurance will be discussed by the Board at its July meeting. Regulatory guidance on the subject has also been drafted.
12. 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. The current focus is on testing and writing guidance ready for the launch of the portal.

Research

13. We have started work on our research project concerning price and service transparency provided by barristers. A Project Steering Group has been convened and met for the first time this month and work is now progressing.
14. The latest Research Roundup has been published on verity (the intranet). The Roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.
15. The Family Law research project undertaken by IRN is complete and was published on the BSB website on the 11th July. The research involved a survey of 1200 consumers who had experienced a recent family law issue, alongside 50 interviews with clients of family law barristers. A knowledge sharing event has already been held to publicise the findings internally.
16. We are working with NatCen Research to finalise the report for the Bar Training research project. This project has conducted qualitative research into barriers to access to the profession to inform further aspects of the Future Bar Training programme, consisting of 25 interviews with recent BPTC students and 25 interviews with recent pupillage applicants. NatCen presented the emerging findings to a Future Bar Training seminar on the 19th June and the final report is due to be published by the end of summer.
17. We are working on research analysing differential attainment between different groups on the BPTC and in obtaining pupillage. This research is due to be published at the end of the summer.
18. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. ICPR have been appointed to carry out the research, consisting of 60 qualitative interviews with Crown Court judges. ICPR have received final approval from the Judicial Office and have started the first round of pilot interviews.
19. We are working with the Policy team on research into the choice of insurance by single-person entities and Alternative Business Structures. A survey of single and multi-person entities was launched in July.

Part 1 – Public

20. Pixl8 are continuing their research into users of the BSB website to inform future improvements. A survey for website users is ongoing, to be followed by a round of interviews, and we will continue to work with the communications department to shape and quality assure the research going forward.
21. We are working with the Policy team on research into the operation of the Qualified Persons rule for new practitioners, with a survey of New practitioners and Qualified Persons launched in July.
22. We are working with the Equality and Access to Justice team to develop a proposal for further research to determine policies aimed at improving retention of women at the Bar and address the issues raised by last year's 'Women at the Bar' research into the operation of the Equality Rules and the experiences of women in the profession. This research will also inform delivery of one of the BSB's Equality Objectives.

Future Bar Training programme*Rule Change – Consultation and Application*

23. We are developing a new timeline following the Education & Training Committee and Programme Board meetings on 4 July 2017. It was agreed that prior to consulting on the rule changes, we should hold a further consultation to collect evidence and views on the proposed policy changes necessary to implement Managed Pathways and ensure the FBT objectives are met. The consultation will cover the policy direction for both pupillage and the role of the Inns of Court.
24. We intend to take a draft policy consultation to the September E&T Committee to approve the consultation, which will then be brought to the September Board meeting for final approval. Subject to confirmation of the timeline by the FBT Programme Board, we intend to bring the summary of responses and proposed policy changes to the March 2018 Board meeting for approval. If the changes are agreed, this will be followed by a short consultation period on rule changes.

Authorisation Framework

25. The Authorisation Framework will set out what the BSB expects to see from providers of training, based on the four principles (accessibility, flexibility, affordability and high standards) set out in our policy statement; how we will make decisions on authorising providers and pathways; and how we will make all these things work in practice.
26. We have engaged a consultant, Jane Chapman (who worked on the Professional Statement) to help unify the voice and give internal consistency to the Framework, given that many actors will have contributed to its design.
27. Following on from a session we ran on the Authorisation Framework with providers at the BPTC Providers Forum on 26 May, we held an additional session with providers and other key stakeholders (including Inns education personnel, external examiners etc) at the BPTC Conference on 14 July.
28. A draft Authorisation Framework will be included in the October 2017 consultation.

Role of the Inns in Bar training

29. Following on from discussions at the 4 July Education & Training Committee, the Role of the Inns in Bar training will be explored by the Board at the private FBT seminar on 19 July.

Review of Curriculum and Assessments

30. This work has so far involved a review of all of the evidence relating to the BPTC in its current form, including provider-set assessments and external examiner reports. The group is also seeking out input from recent pupils and pupil supervisors to identify potential gaps, ie what is needed at the professional stage of training that is not currently being addressed at the vocational stage. This will include a review of the courses currently undertaken as part of the New Practitioners' Programme. The work is being undertaken by a small group of external experts (Deverall Capps, Maria Tighe, Helen Tinkler) supported by executive staff (Vanessa Davies, Victoria Stec, Natasha Ribeiro, Hayley Langan). Emerging findings from the review so far were the subject of a presentation and discussion at the BPTC Conference on 14 July 2017.

Pupillage reform

31. The pilot project to ensure that pupillage training is designed to meet the competences set out in the Professional Statement, Threshold Standard and Competences (PSTS&C) is underway. We are continuing to engaging with stakeholders to finalise a pilot group of Pupillage Training Organisations.
32. We are hosting two roundtable events in early August for both recent pupils and Pupil Supervisors. The roundtables will explore specific elements of the current pupillage arrangement including embedding the principles of the Professional Statement, training courses and assessments during pupillage and the flexibility of pupillage arrangements.

Regulatory Risk*Risk Prioritisation*

33. Work is in progress to develop a process for risk prioritisation, the starting point for which is to set our appetite for regulatory risk. Following a discussion by the SMT on 8 June, the Board took a paper on risk prioritisation at their 22 June meeting, which sought the Board's view on criteria to consider when setting risk appetite. The Board asked for a further opportunity to consider appetite for all the risks on the BSB's Risk Index. The Board will discuss this on 27 July.

Risk Reporting

34. Following the SMT's agreement to proposals for introducing Departmental Risk Reporting, the SMT have considered the role of the Risk Champions and have agreed a number of revisions to their role giving them responsibility for producing their department's report on regulatory risk. Directors will select staff for the new role of Departmental Risk Officers (DROs) in July, after which the regulatory risk team will discuss with each DRO the requirements for introducing Departmental reporting, in order to agree a format which works best for the Department and for the SMT.
35. The SMT have also agreed an approach to producing enhanced Risk Reporting, which will provide a high-level view of all risks, consolidating Regulatory, Strategic and Operational into one report. The regulatory risk team are developing content for the report, with a view to producing a first draft for consideration by SMT and GRA in the autumn, and are also considering the future reporting cycling.

Risk Assessment

36. The regulatory risk team have worked with the IT team to develop a tool that will allow us to test our approach to undertaking consistent risk assessment of incoming information. They have also produced a project initiation document and a project plan setting out how testing will be undertaken over the coming months, and have met the assessors who will undertake the testing. Assessors were taken through the guidance, shown the testing tool and discussed the methodology. Feedback from those meetings has been taken into account in revisions to the guidance and the tool, ahead of testing beginning in July.
37. Work has commenced on reviewing the separate impact and likelihood tables used for risk assessment by the corporate risk and regulatory risk teams with a view to consolidating these into one table. This will provide consistency of approach and begin to 'knit together' the corporate and regulatory risk approaches.

Cross-regulator risk forum

38. BSB hosted a cross-regulator risk forum attended by a number of other legal regulators. They discussed a range of topics and agreed an agenda of items for future meetings. Colleagues from BSB are encouraged to bring topics for discussion to the forum, and the BSB's Risk Forum have been engaged with this process.

Equality and Access to Justice

39. With the parental leave rule change having been approved by the Board in May, the E&AJ Team have been drafting an application to the LSB to approve the rule change. A draft has been shared with the LSB ahead of the formal approval process.
40. Progress has been made regarding the review of the rule that governs how chambers report the anonymous sexual orientation data of their members. The Team met with Brie Stephens-Hoare QC to discuss her opinions on if and how the rule might be changed, including how to ensure there were no negative ramifications of making reporting easier. A member of the team also attended a networking event hosted by Freebar to build a rapport with barrister members of the LGBT+ community and to discuss the potential change to the data reporting rules.
41. The Head of Equality and Access to Justice met with Lincoln's Inn to review the training input he has provided as part of pupillage training. As a result it has been agreed that the length of the equality and diversity session will be extended.
42. The Head of Equality and Access to Justice presented at an LSB research launch round table that focused on mental health and dementia. He presented how BSBs work on access to legal services for vulnerable people is applicable and could help guide the work of other legal regulators.

Professional Conduct Department*Performance*

43. The annual Enforcement Report for 2016/17 is included in the agenda as a separate item. As the Board is aware the year end out turn against the corporate KPI of concluding 80% of cases within the service standards, was 80.1%. Performance in the first quarter of 2017/18 stood at 73.8%: this is a good outturn for the first quarter.

General Data Protection Regulations

44. In preparation for the General Data Protection Regulations (GDPR) in May 2018, we have been undertaking extensive preparatory work in conjunction with other departments in the BSB and Bar Council. The PCD's work has been focussed on Subject Access Requests, which is the area in which the majority of our data protection work occurs. However, we have also provided advice on the Bar Council's Privacy and Data Retention & Disposal Policies. We are working with their Project Management Office to agree a data governance action plan to ensure that we are compliant by the time the GDPRs come into force.

Independent Observer recommendations

45. We have now completed the remaining two outstanding recommendations of the Independent Observer (IO); namely Equality & Diversity monitoring of the Prosecution Panel, and Equality & Diversity induction training for all members of the Professional Conduct Committee. We plan to work with the Research department to analyse the 59 responses we received from the Prosecution Panel and use this information to inform future recruitment. Both of these recommendations will now be closed.

Disciplinary Tribunal Regulations review

46. The Legal Services Board has approved the revised Disciplinary Tribunal regulations and they are due to come into effect in October 2017.

Staff training

47. On 21 June, PCD staff and members of the Regulatory Assurance Department attended a very useful training session on legal and professional privilege from a member of the BSB Prosecution Panel. The session covered a refresher on general principles but also focussed on communications with barrister members of the PCC as well the potential risks in wider internal distribution of enforcement advice.

Litigation

48. There have been no changes to the position in relation to the matter before the Supreme Court (an appeal against previous decisions to dismiss a claim for discrimination on the basis the claim was time-barred) and the matter before the Employment Tribunal (a discrimination claim by a disbarred barrister). We are still awaiting hearing dates.
49. The only outstanding Judicial Review application, made by a complainant against a decision to dismiss part of his complaint, is still at the permission stage. The consideration of permission has been adjourned as the new material which was referred to in the original application has now been provided to the BSB. We are in the process of reviewing the new information in line with our usual procedures to establish if the previously dismissed aspects of the complaint should be reopened.

Regulatory Assurance Department*Youth Proceedings Advocacy*

50. This month, we asked young people their opinions on the draft version of our guide about what to expect from their barrister and the court. Work has started to update the guide to reflect the comments we received. We will be continuing to engage with other experts in the sector to refine the final version.

51. We continue to develop and maintain our relationships with stakeholders in the sector. We have recently met the vice chair of the Criminal Bar Association, attended a meeting of Youth Offending Team managers and attended a Youth Justice Reform conference.
52. We have contacted our stakeholders and invited their comments on the practice areas consultation which ends on 15th September. This has included those who worked with us to develop the youth proceedings competences and those who attended the round table events we held last year. Anecdotally, stakeholders are supportive of a new requirement that all barristers conducting work in proceedings involving young people register this fact with the BSB.

Authorisations

53. A Review Panel of the Qualifications Committee sat on 21 June 2017. It considered eight applications for review. It upheld the original decision in seven cases and amended the original decision in one case.
54. We have received a claim for judicial review of a decision made by the Qualifications Committee earlier in the year. We are responding on the basis that the applicant has not made use of his entitlement to appeal to the High Court and so permission should not be granted.

Licensed Bodies (“ABS”)

55. The scheme is now operating as business-as-usual alongside the authorised body (entities) scheme. Whilst take-up continues to be low, the 4 pilot participants have satisfied all pre-licensing requirements and are now licensed by the BSB to provide legal services. Details are listed on our website in the Entities Register.
56. At time of writing there are 72 BSB authorised bodies (entities) with a steady – albeit small - stream of applications underway.

Training Supervision

57. The annual BPTC Conference was held on 14 July 2017 and was well-attended by provider representatives as well as other external stakeholders. The conference included interactive sessions on Future Bar Training, in particular the review of curriculum and assessments and development of the Authorisation Framework. There were also sessions on assessment standard setting, the use of IT at the Bar and public legal education.
58. The BPTC Handbook for 2017/2018 has been finalised and will be typeset and published by the end of July 2017.

Examinations

59. A thorough rechecking process took place regarding Professional Ethics results, the outcome of which was that the marks of six candidates improved from a fail to Competent (a passing grade). No students were disadvantaged by this process. Given this additional work, and the engagement we have had with providers, the Chair’s report will now be issued in September.

Communications and Stakeholder Engagement

60. Since this report was last prepared for the Board, the following press releases have been issued:
- 9 June: A press release about a pair of unregistered barristers disbarred, following convictions for fraud in Gibraltar;
 - 9 June: A press release about a barrister ordered to be suspended for a total of two years for several practice failings;
 - 12 June: A press release to accompany the publication of our consultation on new declaration rules for barristers;
 - 19 June: A press release to accompany our annual statistical information on student performance on the BPTC and showing that becoming a barrister remains highly competitive;
 - 23 June: A news announcement inviting tenders for an internal auditor;
 - 26 June: A press release to accompany the publication of our consultation on simplifying the Public and Licensed Access Rules;
 - 29 June: A press release to accompany the publication of our plan to act on the CMA recommendations;
 - 30 June: A press release to accompany the publication of new guidance for the public and for professionals on immigration and asylum related legal issues; and
 - 5 July: A news announcement about opening the recruitment process for the new Chair and new lay Board members.
61. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

62. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- the publication of our research findings into consumer experiences in family law matters;
 - some further research relating to the Future Bar Training programme; and
 - the publication of the 2016-17 BSB Annual Report.
63. The team is also working on the following projects:
- developing a stakeholder engagement and communication plan to support the next phase of work on the Future Bar Training programme;
 - designing and finalising the 2016-17 BSB Annual Report;
 - preparing and writing content for the new “My Bar” portal area of the website;
 - analysing the results of the staff survey about the intranet; and
 - preparing to analyse the results of the BSB website user experience survey.

Online and social media

64. During June, 21,965 users visited the BSB website. At the time of writing, we have 17,436 followers on Twitter, 2,784 followers on LinkedIn and 373 followers on Facebook.

Corporate Services

Corporate Support

65. As part of the ongoing work on the Assurance Framework and Governance Reform, the Corporate Services team issued an Invitation to Tender for Internal Audit Services (closing 24 July). The team are currently supporting the rest of the organisation by process mapping current assurance processes in place in the organisation.
66. Work has begun on the 2018/19 budget bid, working with colleagues' within the BSB and Resources Group preparing scenario plans and income forecasts. Current predictions are that we will continue to operate with a leanly resourced budget.

Governance

67. Minor changes to the Constitution of the BSB have been agreed by the Bar Council. All references to the Chairman and Vice-Chairman (of the BSB) are amended to Chair and Vice Chair respectively, except for the references under the transitional provisions which refer to the Chairman and Vice-Chairman who were in post at a point in time.
68. 15 requests for engagement of APEX members to support policy development have been submitted, with one request declined by one expert due to other commitments and the urgency of the request (that request accepted by two other experts). Requests have been made of all of the eleven appointed experts.
69. Advertisements seeking applications for the Chair and three lay Board members of the BSB were published on 4 July 2017. Applications for the Chair close on 10 August and applications for lay members close on 15 September. The successful applicants will take up post from 1 January 2017.
70. Recruitment will shortly commence for one barrister member of the Governance, Risk and Audit Committee, to take up post from 1 January 2017. Following changes to the BSB's Standing Orders in January 2017, eligibility is no longer limited to practising barristers.
71. Recruitment to APEX to support staff taking regulatory decisions in authorisations, and to Authorisations Review Panels to consider reviews of those decisions, has nearly concluded. Verbal offers have been accepted by two APEX members and eight Authorisations Review Panel members (five lay and three barrister), and formal written offers will be sent once our due diligence has been completed. These members will take up post from 1 September 2017 (following the formal disestablishment of the Qualifications Committee on 31 August 2017).

Resources Group

72. The quarterly report from Resources Group was reviewed by the combined BC / BSB senior leadership team on 13 July and an update on activity and performance will be provided to PRP. Q1 shows a marked improvement in the staff turnover figures and most projects running according to schedule.

Vanessa Davies
Director General BSB
20 July 2017