

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 26 October 2017, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

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

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

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

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

Item 1 – Welcome

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

Item 2 – Apologies

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

Item 3 – Members' interests and hospitality

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 28 September 2017.

Item 5 – Matters Arising

5. None.

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

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

Item 6b – Forward Agenda (Annex C)

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

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

VLD to
note

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

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

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

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

BSB 076 (17)

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

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

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

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

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

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

AGREED

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

Item 11 – Any Other Business

24. None.

Item 12 – Date of next meeting

25. Thursday 23 November 2017.

Item 13 – Private Session

Part 1 - Public

26. The following motion, proposed by the Chair and duly seconded, was agreed. That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 28 September 2017
 - (2) Matters arising
 - (3) Action points and progress – Part 2
 - (4) Assuring competence of barristers
 - (5) Review of disciplinary tribunal services
 - (6) Regulatory operations – centralised assessment of incoming information
 - (7) Consultation on the LSB's Draft Strategic Plan
 - (8) Any other private business
 - (9) Review of the Board meeting in terms of conduct and outcomes.
27. The meeting finished at 5.05 pm.