

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 28 January 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Rolande Anderson
Aidan Christie QC
Malcolm Cohen
Justine Davidge – items 8-16
Judith Farbey QC
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
Chantal-Aimée Doerries (Chairman, Bar Council)
Lynne Gibbs (Council of the Inns of Court)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Joseph Bailey (Senior Policy Officer)
Anatole Bhaboukian (Research & Evaluation Officer) – items 8-16
Nicholas Bungard (Regulatory Risk Analyst)
Viki Calais (Head of Corporate Services)
Michael Carter (Case Officer)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Cliodhna Judge (Head of Supervision and Authorisation)
Sara Jagger (Director of Professional Conduct)
Tim Keeling (Change Programme Manager)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amit Popat (Policy Manager – Equality and Access to Justice)
Jessica Prandle (Senior Policy Officer, Equality & Diversity)
Pippa Prangle (Head of Regulatory Risk)
Simon Thornton-Wood (Director of Education & Training)
Hannah Wilce (Legal & Policy Assistant)
Natalie Zara (Operational Support Team Manager)
- Press:** Nick Hilborne (Legal Futures)
Chloe Smith (Law Society Gazette)

Note: Emily Windsor (Special Adviser) was not present for Part 1 of the agenda but did attend for some of Part 2.

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Item 1 – Welcome

1. The Chair welcomed Members to the meeting and made the following announcements:
 - it is the first meeting that Judith Farbey QC is attending in her formal role as a Board Member;
 - Matthew Nicklin QC has resigned as Special Adviser to the Board as he feels his role in respect of CPD is now complete;
 - Lynda Gibbs is substituting for James Wakefield as the COIC representative for the meeting;
 - Two new staff members are attending their first Board meeting ie
 - ❖ Anatole Baboukhan (Research & Evaluation Officer);
 - ❖ Hannah Wilce (Legal & Policy Assistant).

Item 2 – Apologies

2.
 - Rob Behrens;
 - Adam Solomon;
 - Anne Wright;
 - Andrew Langdon QC (Vice Chairman, Bar Council);
 - Lorinda Long (Treasurer, Bar Council);
 - James Wakefield (Director, COIC);
 - Amanda Thompson (Director for Governance Reform).

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 26 November 2015.

Item 5 – Matters Arising

5. None.

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

6. The Board noted progress on the action list. Malcolm Cohen asked that an item be added on regulatory responses to recommendations in the Youth Proceedings Advocacy Review Report.

JP to note

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list. It is likely that the items listed for February and March 2016 will be re-balanced. The Away Day will now include a workshop on the immigration thematic review.

Item 7 –Aggregated Diversity Data on the Barrister Profession

BSB 001 (16)

8. The following comments were made:
 - the report is based on data held as at 1 December 2015 and derived from the authorisation to practise exercise (this incorporates an E&D monitoring questionnaire);
 - completion rates for E&D data have increased, though responses for some categories remain low (religion or belief; sexual orientation and caring responsibilities);
 - the main issues are:
 - ❖ an underrepresentation of disabled practitioners;
 - ❖ a continuing disparity on gender, particularly at QC level;

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- ❖ no change on the progression of BME practitioners, again with an underrepresentation at QC level;
 - the BSB's Equality and Access to Justice Team will be closely involved in the design of the new Authorisation to Practise (AtP) portal which will be introduced in 2017. This should result in further improvements to completion rates for analysis in 2018.
9. Members commented as follows:
- the improving picture on disclosure rates is welcome;
 - the symposium on cross-cultural communication at the Bar held in January 2016 was particularly useful and we might possibly think in terms of developing a programme of similar events;
 - it would be useful to know how well the BSB compares with other regulators in terms of the disclosure rates it achieves;
 - it would be helpful to understand more about the storage and transferability of data;
 - a re-design of the Authorisation to Practise portal offers the chance to make a response mandatory. Although some might then use the “prefer not to say” option it may encourage more open responses from others;
 - we need to improve data on socio-economic background as the existing statistics may well be misleading. Nationally private education is small in scale compared to state education. The effect of low disclosure rates, however, may make it appear that these two categories are similar in size. This is not likely to be the case in reality;
 - there may be scope to improve how we ask some of the monitoring form questions eg making clear what we mean by “caring responsibilities”.
10. In response the following comments were made:
- other regulators face the same challenges on disclosure rates. The SRA is in a similar position to us and, in some categories, the BSB has the higher rate;
 - the data is stored indefinitely and is fully transferable to the incoming system. We can therefore build on what we have already recorded from previous AtP exercises. This assumes, however, that respondents will update their characteristics accordingly as some of these can change over time;
 - disclosure of data is voluntary so forcing a response through the re-design would run contrary to this principle;
 - the points on socio-economic status and caring responsibilities are noted and will be addressed as part of the re-design of the AtP portal / database.
- AP / JPr
to note
11. **AGREED**
to approve the Diversity Data Report 2015 for publication.
- AP / JPr
- Item 8 – Future Bar Training: Analysis of Consultation on Pathways to Qualification**
BSB 002 (16)
12. Simon Thornton-Wood presented the report on the recent BSB consultation on pathways to qualification. The salient points were:
- we received a very healthy response rate (58 replies in total from a range of interested parties);
 - the responses underlined the complexity of the issues involved;
 - the opinions expressed were very divergent.

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13. The responses have been summarised into a report by Courtney Brown from the Regulatory Policy Department and were circulated to Members under separate cover prior to the meeting.
14. The following comments were made:
- a significant proportion of responses came from Law Professors or University Law Schools. This might suggest we are light in terms of a voice on the vocational stage of training;
 - universities may have a particular agenda in mind and will need to be sure we get a balanced view.
15. In response, the following comments were made:
- policy will not be developed simply with a view to the perspective of universities. This consultation is only one part of a conversation on the future of legal education and training;
 - it can be the case that questions about educational standards provoke a defensive response from providers. We are already aware of this and the need for balance.
16. **AGREED**
to approve publication of the consultation analysis and to thank Courtney Brown for her work in preparing this document. **STW**

Item 9 – Review of the Disciplinary Tribunal Regulations – Consultation responses and final regulations for approval

BSB 003 (16)

17. Sara Jagger commented as follows:
- the report at Annex 1 summarises responses from last year's consultation on Disciplinary Tribunal Regulations Review;
 - the Working Group responsible for the Review has commented on the responses and reached a consensus on the majority. There are two issues which need further comment and a decision from the Board ie:
 - ❖ question 5 (powers for Tribunals to refer matters back to the BSB for the imposition of administrative sanctions)
 - ❖ question 11 (whether to retain existing arrangements for the publication of Disciplinary Tribunal decisions or amend these so that all decisions are available online – including those where cases were dismissed);
 - any rule change proposals will need to be approved by the LSB and are unlikely to take effect until the late Autumn as applications for changes to certain regulatory arrangements cannot be made during the period in which the BSB is being considered by the Lord Chancellor for designation as a licensing authority for ABSs
 - Michael Carter and Natalie Zara have both contributed significantly to this work and their work is gratefully acknowledged.
18. She also advised of a communication from COIC about the Board paper. The salient points were:
- the aim of COIC's co-ordinated response was to assist the BSB in assimilating the overall views of those responding on behalf of COIC. This combined view was derived from 20 individuals from three separate groups and all four Inns;
 - the Board paper, however, seems to weight the COIC response as 'one' ie equivalent to a single respondent which must be incongruous given the number of individuals and bodies the collective COIC response represents.

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19. With regard to this point, Sara confirmed that the Working Group had given due consideration (and due weight) to the views expressed by COIC in its subsequent deliberations. This also applied to COIC's response to question 8 of the consultation paper concerning the removal of its involvement in the disciplinary system except in relation to the pronouncement of disbarments. As set out in the paper, the view of the Working Group is that COIC's involvement is no longer required in the pronouncement of sentences in all cases ie for fines, reprimands and suspensions.
20. Members commented as follows:
- with reference to question 8, the views of the Working Group should be supported on the grounds expressed in the paper;
 - with reference to question 5, Tribunals should have the power to refer back matters to the BSB for administrative sanction, even if the likelihood of this happening in practice is small. The public interest is best protected by having this facility, particularly if the case against a barrister cannot be made to the necessary criminal standard of proof but there remains a residual need for some action to be taken;
 - in respect of question 11, the following points were made:
 - ❖ to publish full non-anonymised details may be unfair to the barrister concerned as a simple google search may well associate that individual with a disciplinary case, even though the case itself was dismissed;
 - ❖ a contrary view is that full transparency ought to be the default position and to do otherwise, even for dismissed cases, risks a perception that the BSB is compromising on its principles;
 - ❖ there is a case for greater public transparency and this is supported by COIC among others. The full judgment details could be published, rather than just the decision, if identity of the barrister was anonymised;
 - ❖ an "anonymised" entry on the web might not be effective as it may be possible to identify the individual from the circumstances described;
 - ❖ publishing a summary of the judgment should be sufficient to meet the public interest dimension for cases that have been dismissed. We could do this now without a rule amendment. However, there may be some cases that do warrant some extra disclosure. We would therefore need to build in some flexibility on this point and this would require a rule amendment;
 - ❖ there may be occasions when the barrister concerned would wish to waive anonymity so the rules should provide for this possibility.
21. The consensus view agreed was to amend the rule ie that a summary of dismissed cases will always be published and the default position is that this will be anonymised so the barrister is not identified. There will be some discretion available, however, insofar as:
- anonymity can be lifted if that is the wish of the barrister concerned;
 - the Tribunal can, exceptionally, order the full disclosure of the judgment if it considers this appropriate.
22. **AGREED**
- a) to note the consultation responses set out at Annex 1 of the report.
 - b) to amend the proposed rule changes in respect of questions 5 and 8 of the consultation in line with the above comments (mins 20 and 21).
 - c) subject to b) above, to approve the Disciplinary Tribunal Regulations as set out in Annex 1.

SJ

SJ to
note

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- d) to authorise final sign off of proposals to change the Disciplinary Tribunal Regulations to the Director General and the Chair of the Professional Conduct Committee.

Item 10 – Costs of Authorisation of a Bar Standards Board Alternative Business Structure

BSB 004 (16)

23. Cliodhna Judge highlighted the following:
- the proposed fees reflect the principle of full cost recovery and have been adjusted to take account of an anticipated take up rate of 20 per year. Those quoted in the paper are lower than stated in the consultation because we have since received revised (and lower) estimates for average costs per appeal to the First Tier Tribunal;
 - the single consultation response (from the Bar Council) endorsed the proposed approach and sliding scale of fees and emphasised the need for fee levels to remain competitive;
 - the proposed rates are considered competitive relative to the charges imposed by the Solicitors Regulation Authority;
 - the proposed fees are notably higher than those currently set for entities because the charges in respect of the latter were set with a higher take-up rate in mind (which has not subsequently occurred). To keep in line with the principle of full cost recovery, the fees for entities will therefore be reviewed in due course.
24. Members commented as follows:
- it is not clear how the estimated take-up figures have been identified;
 - we need to consider scalability, both in costs and resources so we can adjust cost and deploy staff effectively. We anticipate low take-up now but this could change over time and we should not over-recover our costs.
25. In response, the following comments were made:
- fees were modelled on a range of likely take up rates based on survey information and the figure quoted represents the median point;
 - the experience on entities shows that take-up rates are likely to be low but should this increase, we would have sufficiently flexibility in existing staff skills and knowledge to respond to the extra demand.
26. **AGREED**
- a) to note the consultation and responses.
 - b) to approve the proposed fee structure for ABS application and authorisation fees as set out in the paper.

**CJ to
note**

Item 11 – Education & Training: Annual Report to the Board for 2015

BSB 005 (16)

27. **AGREED**
to note the report.

Item 12 – Qualifications: Annual Report to the Board for 2015

BSB 006 (16)

28. **AGREED**
to note the report.

Item 13 – Chair’s Report on Visits and Meetings (Nov 15 - Jan 16)

BSB 007 (16)

29. **AGREED**

to note the report.

Item 14 – Director General’s Report

BSB 008 (16)

30. Vanessa Davies highlighted the following:

- two research projects are currently underway ie
 - ❖ public and licensed access review (jointly with LSB);
 - ❖ women at the Bar;
 Both have produced good levels of returns, particularly the latter;
- the standard report from the Resources Group is not included on this occasion but a more streamlined version will appear in future reports;

31. Members referred to the symposium held on 12 January entitled “Does cross cultural communication matter at the Bar?” which several Board Members attended. The following comments were made:

- this was a very useful event with very good speakers. We need to maintain our links with the voluntary sector organisations and consumer groups present;
- it is a good example of the BSB placing an emphasis on training and capacity building;

32. Rolande Anderson reminded colleagues on the Board of the online training for E&D and that a Task Completion Group for Equality Objectives will be established towards the end of the year. Members asked to be kept informed about the development of this Group.

**AP to
note**

33. The Chair also expressed his appreciation for the symposium organised by the Law Commission on proposals for reform of the law of Misconduct in Public Office (20 January 2016). This was organised by BSB Board Member Justine Davidge.

34. Vanessa Davies referred to the forthcoming market study on legal services by the Competition and Markets Authority (CMA). A summary of its scope has been received and Ewen Macleod has already met CMA representatives and will be drafting the BSB response. Full details are available on the CMA website.

35. **AGREED**

to note the report.

Item 15 – Any Other Business

36. None.

Item 16 – Date of next meeting37.

- Thursday 25 February 2016.

Item 17 – Private Session

38. 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;
- (2) Matters Arising;
- (3) Action points and progress – Part 2;
- (4) Regulatory Risk: regulator position, Index changes and Framework update;

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- (5) Future Bar Training – developing options for future regulation;
- (6) Complaints Diversity Analysis 2015;
- (7) LSB Licensing Authority application and issues arising;
- (8) The Bar Council's Defined Pension Scheme – referral from the GRA Committee;
- (9) MoJ Consultation update;
- (10) Any other private business.

The meeting finished at 5.40 pm.