

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



REGULATING BARRISTERS

**Meeting of the Bar Standards Board
Thursday 26 January 2017, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ**

Agenda - Part 1 – Public

			Page
1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes <ul style="list-style-type: none">• 24 November 2016 (*)	Annex A Chair	3-7
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	9-12
	b) Forward agenda	Annex C Chair	13-14
7.	Independent Observer's Report - November 2016 (4.40 pm)	BSB 001 (17) Isobel Leaviss	15-45
8.	BSB section 69 order – responses to the LSB consultation (5.00 pm)	BSB 002 (17) Ewen Macleod	47-69
9.	Publication of diversity data (5.20 pm)	BSB 003 (17) Amit Popat	71-94
10.	BSB Equality Objectives for 2017-19 (5.30 pm)	BSB 004 (17) Amit Popat	95-111
11.	Standing Orders and Scheme of Delegations – proposed amendments (5.45 pm)	BSB 005 (17) Rebecca Forbes	113-135
12.	Chair's Report on Visits and External Meetings, Dec 2016 to Jan 2017 (*)	BSB 006 (17) Chair	137-138
13.	Director General's Report (5.55 pm)	BSB 007 (17) Vanessa Davies	139-147

**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](#) before the meeting.*

BSB 260117

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

14. **Any other business**
15. **Date of next meeting**
 - Thursday 23 February 2017
16. **Private Session**

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
19 January 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 260117

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 24 November 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Rob Behrens CBE
Aidan Christie QC
Malcolm Cohen
Justine Davidge
Judith Farbey QC
Andrew Mitchell QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford
Adam Solomon
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
James Wakefield (Director, COIC)
- BSB Executive in attendance:** Dan Burraway (Corporate Support Manager)
Viki Calais (Head of Corporate Services)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
- Observers:** Faye Alessandrello (Regulatory Associate, Legal Services Board)
Steven Haines (incoming lay Board Member)
Emma Kelly-Dempster (Regulatory Project Manager, Legal Services Board)
Zoe McLeod (incoming lay Board Member)

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular the following:
 - Steven Haines (incoming Lay Board Member);
 - Zoe McLeod (incoming Lay Board Member);
 - Emma Kelly-Dempster, Regulatory Project Manager, LSB;
 - Faye Alessandrello, Regulatory Associate, LSB;
 - Dan Burraway, Corporate Support Manager.

Part 1 - Public

2. He also noted with regret that this would be the last full Board meeting for:
 - Malcolm Cohen (Chair of the Governance, Risk & Audit Committee);
 - Tim Robinson (HR Champion);
 - Prof Andrew Sanders (Chair, Education & Training Committee);
 - Keith Baldwin (Special Adviser to the Board).
3. He noted that both Tim and Keith would continue with their respective committee roles (Professional Conduct Committee and Qualifications Committee respectively). Nevertheless he warmly thanked retiring members for their commitment and effort in helping the BSB achieve its goals. There will be another opportunity to recognise their contribution at the December Away Day.

Item 2 – Apologies

4.
 - Rolande Anderson;
 - Anu Thompson;
 - Anne Wright CBE
 - Emily Windsor (Special Adviser);
 - Chantal-Aimiée Doerries QC (Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Stephen Crowne (Chief Executive, Bar Council);
 - Andrew Lamberti (Communications Manager).

Item 3 – Members’ interests and hospitality

5. None.

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 27 October 2016.

Item 5 – Matters Arising

7. None.

Item 6a – Action points and progress

8. The Board noted progress on the action list. Vanessa Davies also advised that the consultation on shared parental leave (min 25b – 29/09/16) has now been published, so this action can now be marked as “completed”.

JP to
note**Item 6b – Forward Agenda (Annex C)**

9. The Board noted the forward agenda list.

Item 7 – Appointment of lay Board members

BSB 083 (16)

10. The Board noted the paper on the appointment of the following three lay Board members with effect from 1 January 2017:
 - Alison Alden OBE;
 - Steven Haines;
 - Zoe McLeod.
11. The Chair gratefully acknowledged the work of the Independent Appointments Panel in making these selections.
12. **AGREED**
to note the report.

Item 8 – Performance Report for Q2

BSB 084 (16)

13. Viki Calais commented as follows:
The PRP Committee wishes to highlight the following key messages from the most recent performance report:
- the BSB remains tightly resourced both for the remainder of this financial year and for 2017/18. We are currently holding some vacancies and the Executive is undertaking a business plan prioritisation exercise. The Board will discuss the outcome of this at its Away Day in December 2016;
 - six business plan activities are marked as “amber” as described in paragraph 4b of the report. The Committee has flagged the Future Bar Training programme for a second time as this project remains under pressure both in terms of the proposed timeline and available resources;
 - the staff turnover figures for the organisation remain high (43.3% overall incorporating a 19% voluntary turnover rate);
 - the WorkSmart programme has been well implemented and positively received by staff. The Committee applauded the work of those involved in delivering this project.
14. We are likely to generate more income from the BPTC than originally anticipated. This is due to a higher number of students than expected (an actual figure of 1,400 compared to the 1,000 originally budgeted).
15. Members focused discussion on the staff turnover figures. The following comments were made:
- the turnover rate is a continuing concern. It is much higher than similar organisations and has been at this level for a considerable period of time;
 - we need to fully understand the reasons for these figures.
16. In response, the following comments were made:
- this is an organisation-wide issue ie the overall turnover rate is a composite figure for the Bar Council, Resources Group and the Bar Standards Board combined;
 - the PRP Committee and the Bar Council’s Audit Committee are both aware of the issue and the latter will specifically address this topic at its next meeting (8 December 2016);
 - the overall turnover figure includes the cessation of fixed term contracts and maternity leave so is somewhat inflated because of this;
 - one of the vacancies was caused following the unexpected and tragic death of a colleague;
 - four staff members did not complete their probation periods successfully;
 - the PRP Committee has previously analysed leaver data and one of the main reasons quoted was lack of career progression. The BSB has limited scope to address this given its size and the pay rates that can be offered by alternative regulators.
17. Members commented further as follows:
- high turnover rates has been a long standing issue, notwithstanding the effect of short term contracts and maternity cover. In the data analysed by the PRP Committee the largest respondent category was “prefer not to say”. This is disconcerting and it means the underlying causes are still not fully understood, notwithstanding the other feedback received;
 - the reasons identified in paragraph 13of the report reflects the feedback from the last staff survey;

Part 1 - Public

- the Board has already made a strategic decision to delegate greater responsibility to staff. This reflects good regulatory practice but success depends on staff having the capacity and capability to undertake this additional work. This is put at risk if turnover rates remain this high. It is helpful that the PRP Committee has analysed the data but the real cause(s) remain unclear so further work is required;
 - we could think in terms of targets and leadership objectives on retention and progression as well as succession planning if career progression is thought to be problematic.
18. In response the following further comments were made:
- the turnover figures were exceptionally affected by the restructure of job roles within the BSB;
 - we undertook a succession planning exercise in July 2016, so already have a good understanding of this issue.
19. **AGREED**
- a) to note the report.
 - b) to refer the issue of high staff turnover rates back to the PRP Committee for more in-depth analysis on the reasons for this.

VC & CS

Item 9 – Chair’s Report on Visits and Meetings: October 2016
BSB 085 (16)

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

Note: this report was prepared in advance of the Cyber Security summit on 17 November 2016, which the Chair was subsequently unable to attend.

Item 10 – Director General’s Report
BSB 086 (16)

21. Vanessa Davies referred to her report, in particular the recruitment rounds to the Advisory Pool of Experts (APEX) and the CPD roadshows. APEX has gone well and an induction for those joining will take place on 16 December 2016. Regarding the roadshows, the following comments were made:
- very positive feedback has been received from attendees at the roadshows;
 - the feedback from both practitioners and providers will be useful in further shaping BSB guidance on CPD – an update on this will be published in January 2017;
 - we are now preparing tailored presentations for specific sets of chambers;
 - the webinar on CPD was well received and a link to it will be included in the next Regulatory Update email to the profession.
22. Members also referred to the following:
- it would be helpful to know if changes to the anti-money laundering regulations will impact on barristers;
 - paragraph 30 of the report states that the Professional Conduct Department (PCD) currently has five vacancies. Notwithstanding ongoing recruitment procedures, this may impact on Q2 KPI figures.

23. In response, the following comments were made:
- it is possible that the checks that barristers have to undertake in compliance with these regulations will become more expensive. The government is currently reviewing transitional arrangements;
 - anti-money laundering procedures are already incorporated into the BSB's work in supervision. There is potentially more work for us to do but it is not clear if that will actually be the case;
 - the pressure on PCD staff is recognised. All the outstanding posts will be filled, though there may be instances where adjustments to roles are needed to dovetail with other, wider changes in the BSB.

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

Item 11 – Any Other Business

25. None.

Item 12 – Date of next meetings

26.
 - Thursday 15 December 2016 (Board Away Day);
 - Thursday 26 January 2017 (full Board meeting).

Item 13 – Private Session

27. 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;
 - a) outcome of meeting with BMIF;
 - b) Professional Conduct in relation to taxation.
 - (3) Action Points and Progress;
 - (4) Corporate Risk Register;
 - (5) Public and Licensed Access Review Interim Report;
 - (6) International work;
 - (7) Regulatory prioritisation;
 - (8) Discussion paper on potential impact of separation of BSB from Bar Council;
 - (9) Independent regulatory decision making at the Bar Standards Board;
 - (10) Any other private business (to include an update on the Future Bar Training Programme);
 - (11) Review of the Board meeting in terms of conduct and outcomes.
28. The meeting finished at 5.05 pm.

**BSB – List of Part 1 Actions
26 January 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
19b (24 Nov 16) – PRP performance data	refer the issue of high staff turnover rates back to the PRP Committee for more in-depth analysis on the reasons for this	Vanessa Davies / Viki Calais	immediate	08/12/16	Completed – item added to the PRP Committee meeting agenda for discussion on 2 February 2017
15b (27 Oct 16) – definition of “employed barrister (non-authorised 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	17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
27c (19 May 16) – Youth Proceedings Advocacy Review	seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system	Oliver Hanmer	Review April 2017	18/1/17	In hand – Taylor report published in December 2016. Meeting with MoJ officials to discuss next steps arranged for 18 Jan 2017
20d (26 Nov 15) – Gov review & revised SOs	establish two new roles to support the changes in education and training ie <ul style="list-style-type: none"> • a “Visitor” to hear challenges against Centralised Examination policy and procedures • an increased role for the Independent Observer to the Centralised Examination Board. 	Victoria Stec	before 31 March 16	13/01/17 08/11/16 17/10/16	In hand – Meeting with Governance team set up on 1.2.17 to discuss how to move on from interim arrangements. In hand – Interim Independent Examinations Observer participated in the resit Boards and this worked well. The arrangement will continue until internal audit is clarified. In hand – Interim Independent Examinations Observer appointed for work on resit Boards in October 2016. Contract will be ongoing but with 3-month termination clause so that when future of internal audit is clear, other arrangements can be made if needed.

BSB – List of Part 1 Actions

26 January 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
				20/09/16	In hand – title of “Independent Reviewer” rather than “Visitor” has been agreed and interim Independent Reviewer is in place on an ad hoc basis from July 2016; recruitment processes for permanent role not yet complete. See separate Board paper on Assurance Framework regarding Independent Observer.
				20/07/16	On track – recruitment processes not yet complete; interim appointments made for 2016 cycle, previously reported
				28/04/16	On track – recruitment in progress
				09/03/16	On schedule – role descriptions agreed and recruitment about to start
				16/02/16	In hand – agreed at GRA and recruitment being built into schedule; assurance framework in development.
				19/01/16	In hand – proposal before GRA on 19 January 2016

BSB – List of Part 1 Actions

26 January 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
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	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.
				20/07/16	On track – the LSB has now published its thematic review of restrictions on insurance provider. We are taking this into account as the economic analysis and other work is scoped.
				13/06/16	On track – tender issued for economic analysis to support policy development
				11/05/16	On track – internal project initiated
				09/03/16	On track – initial neutral response from LSB on our submission
				16/02/16	In hand – legal advice being used for submission to LSB on competition law aspects being prepared.
				19/01/16	Ongoing – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board.
				16/11/15	Ongoing – update in private session

BSB – List of Part 1 Actions
26 January 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
				04/09/15	Ongoing. A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.

Forward Agendas**Thursday 23 Feb 2017**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Youth Court Advocacy (Part 1)
- Draft BSB Business Plan for 2017-18 (Part 2)
- Corporate Risk Register (Part 2)
- Regulatory risk prioritisation (Part 2)
- Regulatory operations project update including further report on IDMB (Part 2)
- Standard of proof in disciplinary proceedings – update (Part 2)
- FBT consultation responses – initial report (Part 2)
- Update on Brexit implications (Part 2)
- Quality Assurance of Advocacy (Part 2)

Thursday 23 Mar 2017

- BSB Business Plan for 2017-18 (Part 1)
- Assurance Framework update (Part 1)
- Authorisations Governance Project (Part 1)
- Qualifications Fees – Consultation Update (Part 1)
- Entity Review (Part 1)
- Response to FBT Consultation (Part 1)

Thursday 27 Apr 2017 (Board Away Day)

- Remuneration for barrister members
- BSB public image, including logo and strapline
- LSB Vision paper / MoJ response to CMA recommendations (if available)
- Scenario planning (following Regulatory Risk prioritisation decision in February)

Thursday 25 May 2017

- PRP Report: includes the BSB YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Corporate Risk Register (Part 2)

Thursday 22 Jun 2017

- Draft Annual Report 2016-17 (Part 2)

Thursday 27 Jul 2017

- Annual Report 2016-17 (Part 1)
- Enforcement Report 2016/17 (Part 1)

Thursday 28 Sept 2017

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- GRA Committee Annual Report (Part 1)
- Schedule of Board meetings Jan 2018 – Mar 2019 (Part 1)
- Business Planning and Budget Bid for 2018-19 (Part 2)
- Corporate Risk Register (Part 2)

Thursday 26 Oct 2017

Thursday 23 Nov 2017

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Corporate Risk Register (Part 2)

Thursday 7 Dec 2017 (Board Away Day)

Thursday 25 Jan 2018

Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Draft BSB Business Plan for 2018-19 (Part 2)
- Corporate Risk Register (Part 2)

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19 (Part 1)

Independent Observer's Report - November 2016

Status:

1. For noting.

Executive Summary:

2. This is the Independent Observer's final report.
3. This report highlights key themes from her observations over the past five years and reviews the status of all her previous recommendations.

Recommendations

4. It is recommended that the Board considers and notes the report.

Background

5. The Independent Observer (IO) provides independent assurance that the BSB's enforcement system is operating in line with its aims and objectives.
6. Since taking up post in May 2011, the IO has presented six-monthly reports to GRA and annual reports to the Board.
7. The IO's contract concluded at the end of December 2016. As agreed with GRA in July, this report looks back over her term, highlights the major themes identified since her appointment in May 2011 and reviews all her previous recommendations.

Financial implications

8. The Director of Professional Conduct has indicated that there are no direct financial or staff resource implications arising from this report.

Equality Impact Assessment

9. The Independent Observer's role profile specifically refers to equality and diversity. Paragraphs 54-59 of this report directly address equality and diversity matters.

Risk implications

10. Throughout her term, the IO has made recommendations to mitigate risks that she has identified.

Regulatory objectives

11. The role of the IO is to provide independent assurance that the BSB's enforcement system is operating in line with its aims and objectives and ultimately the BSB's regulatory objectives.

Annexes

12. Appendix 1 – Independent Observer's report – November 2016.

Lead responsibility

Isobel Leaviss.



REGULATING BARRISTERS

Independent Observer

Final Report

November 2016

Executive Summary

1. The role of the Independent Observer is to provide assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's enforcement system is operating in line with its aims and objectives. The post was created following the 2007 Strategic Review of the BSB's Complaints and Disciplinary Process.
2. I became the Bar Standards Board's (BSB's) Independent Observer in May 2011. For the past five years I have been observing the BSB's enforcement system and reporting my observations and recommendations to the Governance, Risk and Audit Committee. In this, my final report, I look back at my term, highlight the major themes that have emerged and review all my past recommendations.
3. During the time I have been observing the BSB's enforcement system, there has been significant change. The operating environment, the 'rulebook' for barristers, the scope, profile and complexity of the BSB's complaints caseload, the BSB's approach to enforcement and many of the personnel involved have all changed.
4. Having said that, the professional standards expected of barristers remain broadly similar, the number of new external complaints has been remarkably stable (300/yr) and so has the proportion of disciplinary proceedings resulting in a finding ($\approx 85\%$).
5. 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.
6. I have not observed anything that causes me to question the integrity of the system or the decision-making. I have not identified any serious systemic problems with the operation of the system and I have not identified any individual cases that raise fundamental concerns. The system and staff have evolved and adapted in response to change, maintained focus, sustained momentum and demonstrated resilience.
7. 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. This framework is detailed and quite complex but well understood and conscientiously applied. 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.
8. I have observed determined efforts to minimise avoidable delays whilst ensuring that all parties have reasonable opportunities to raise issues and respond to concerns. I have observed good record keeping and administrative standards. I have observed clear communication of decisions and sensitive handling of complainants, barristers facing complaints and witnesses.

9. When I have identified issues or scope for improvement, I have made recommendations. I have made 66 in total, all of which have been accepted and the vast majority of which have been implemented. I am confident the remainder will be.
10. For the purposes of this report I have categorised my recommendations into five broad themes; fairness and openness, efficient case management, consumer engagement, feedback to the profession and organisational learning.
11. Taking stock, most of my recommendations have been fine-tuning, clarifying points of detail and promoting best practice rather than rectifying serious problems or glaring errors. In my view, the most significant recommendations have been to ensure complete and timely referral of LeO cases, to improve the accessibility of information about the enforcement system available via the BSB's website, to establish performance indicators for turnaround times and improve management information to help identify issues/delays, to strengthen departmental knowledge management and embed 'feedback loops' to capture and apply learning and to reinstate equality and diversity monitoring and training for Board and Committee members.
12. Through the implementation of my recommendations and, more importantly, through their own initiatives, including in response to issues arising from particular cases or proceedings, the Professional Conduct Department and Professional Conduct Committee have not only delivered against their aims and objectives but also demonstrated a genuine commitment to continuous improvement.
13. There are further changes and challenges for the enforcement system on the immediate horizon. I conclude my report by flagging some issues for the future.

Background

14. In July 2007, the BSB published 'A Strategic Review of Complaints and Disciplinary Processes'¹ undertaken by Robert Behrens, then the Complaints Commissioner and now a BSB Board member. The Review identified strengths of the system and areas for improvement.
15. One of the Review's 52 recommendations was that the Bar Standards Board should 'give serious consideration to appointing a 'Lay Observer' with responsibility for checking all aspects of the system to ensure that it is operating in line with the agreed objectives and procedures'. The review suggested that the 'Lay Observer' could be 'tasked with attending an agreed number of Complaints Committee meetings and tribunals as well as spot-checking files, particularly on dismissed cases'.

¹https://www.barstandardsboard.org.uk/media/1346882/bsb_strategic_review_of_complaints_and_disciplinary_processes_report_by_robert_behrens_complaints_commissioner_july_2007.pdf

16. In 2009, the BSB created the part time role of Independent Observer with a reporting line to the Governance, Risk and Audit Committee of the BSB. In May 2011, I was appointed as the second post holder following a short break in appointments.
17. The role of the Independent Observer is to provide assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's enforcement system is operating in line with its aims and objectives. The 'aims' and 'hallmarks' of the Enforcement Strategy and the 'aims' and 'objectives' of the Professional Conduct Department are published on the BSB's website (see **Appendix 1**).

Approach

18. Initially, I prepared quarterly reports but at the Governance Risk and Audit Committee's request moved to six-monthly reports and annual reports for the full BSB Board. For each reporting period, I have agreed particular 'areas of focus' with the Governance, Risk and Audit Committee in order to address all aspects of the complaints and disciplinary process over time whilst giving regular attention to aspects of greatest potential significance and risk such as 'inactive' cases, 'long-running' cases, appeals and requests for reviews (**Appendix 2**).
19. My role has been part time (55 days/year so roughly 1 day/week). I have spent almost all of this time at the BSB or BTAS offices, with a few days each year working from home report writing. I have observed the Professional Conduct Department at work, the Professional Conduct Committee meetings and Tribunal hearings first hand in order to observe the operation of the system. I have also reviewed case files, database records, performance reports, judgments, transcripts, minutes and other relevant documents.
20. My approach has been to report my observations in a straightforward and constructive manner. I have placed as much importance on reporting positive observations and examples of good practice as I have on highlighting issues and scope for improvement. I have tried to be as specific as possible with my feedback whilst respecting the need for confidentiality where necessary. I have given examples where relevant, but have focused on situations and issues rather than individuals.
21. I have focused my comments and recommendations on things that can be actioned rather than things that are outside the BSB's control and have made practical suggestions about how improvements might be made within the context of the existing system. I have avoided making recommendations for improvements that were already planned or in hand. When formulating my recommendations, I have hopefully been 'SMART' whilst avoiding being overly prescriptive.

Context

22. During the time that I have been observing, there has been significant change.
23. The regulatory landscape changed just prior to my appointment. The BSB became accountable for its performance to the new Legal Services Board. The LSB has an 'overriding mandate' to ensure that the interests of consumers are placed at the heart of legal regulation and has introduced a Regulatory Standards Framework that emphasises the need for outcomes-focused and risk-based, proportionate regulation.
24. The BSB's complaints jurisdiction changed shortly before I arrived. Responsibility for the handling of inadequate service complaints was transferred to the newly created Legal Ombudsman, leaving the BSB to focus on alleged breaches of the Code of Conduct and professional misconduct. I observed the latter stages of this transition and the establishment of new arrangements to ensure effective liaison and cross-referral of cases of cases between the two organisations.
25. Shortly before I was appointed, the BSB had restructured. It had abolished the post of Complaints Commissioner and transferred some decision-making functions to its Professional Conduct Committee and some to staff in re-configured teams within the Professional Conduct Department. I observed how the BSB supported and embedded these new arrangements and responsibilities, including establishing additional quality assurance reviews during the transition phase.
26. During the course of my term, many of the personnel involved in the process have changed within the Professional Conduct Department, the Professional Conduct Committee, the prosecutor panel (and at BTAS). I have observed handovers and the induction of new team members. I noticed the extent to which the PCD and PCC had historically relied upon the 'corporate memory', knowledge and experience of its longest serving staff and made recommendations designed to improve knowledge management systems and reduce this reliance on key individuals.
27. In July 2012, the Council of the Inns of Court (COIC) Disciplinary Tribunal and Hearings Review Group completed a review of COIC procedures. COIC administered the Bar's disciplinary tribunals to which the BSB refers allegations professional misconduct allegations. The Review identified administrative failures and made 82 recommendations. I observed how the BSB, which has statutory responsibility for these arrangements, worked with BTAS to pragmatically and efficiently address wide-ranging consequences for historic cases and to scrutinise the implementation of BTAS's action plan and establish new contractual arrangements.
28. During the period I have been observing the enforcement system, the rules and the BSB's approach to enforcement have changed. In January 2014, the BSB's new Handbook came into force, bringing together for the first time all the BSB's regulations into one publication and incorporating a 'thorough revision' of its Code of Conduct. The BSB has moved to a much more risk-based approach to enforcement, 'focusing its enforcement action on the issues that pose the greatest risk to the

regulatory activities’ and imposing administrative sanctions for breaches that do not amount to professional misconduct while reserving disciplinary action for the ‘most serious or persistent cases’. I observed how the Professional Conduct Department and Professional Conduct Committee prepared extensively for the launch and implementation of the new Handbook, including training all those involved in the process, and achieved a seamless transition for the enforcement system.

29. The PCD designed and implemented a new Enforcement Database for recording and managing complaint files and achieved a smooth transition; no mean feat.
30. During the time that I have been observing the BSB’s enforcement system, some features have remained remarkably constant. The headline number of new *external* complaints opened each year has hovered around 300.² The most common ‘aspects’ of complaints continue to be dishonesty/discreditable conduct (albeit that this is a broad category covering a wide range of scenarios) and the proportion of disciplinary proceedings resulting in a finding has remained broadly stable at around 85%.
31. Another constant feature has been a challenging caseload. Cases can arise in all areas of law, many are factually and/or legally complex and some involve extremely serious allegations with potentially profound consequences. Complainants and barristers facing complaints are often frustrated, angry and distressed and there are times when their expectations are unrealistic and their behaviour becomes unreasonable. My observation is that the increasing complexity of the caseload, the move to a risk-based approach, the rise in numbers of complaints from litigants in person and the apparent increase in barristers procedurally challenging disciplinary proceedings have all placed greater demands on the system and those involved.

Observations – key themes

32. Overall, I have been able to give the BSB a substantial level of assurance that its enforcement system has been operating in line with its aims and objectives.

Integrity of the system

33. I have not observed anything that causes me to question the integrity of the enforcement system or decision-making.
34. I have observed that there are appropriate mechanisms in place to prompt decision makers to excuse themselves from cases that might give risk to a potential conflict of interest or lack of impartiality and that they frequently do so.

² Enforcement Annual Report 2015/16 Page 6 Table 1.

35. I have not seen any evidence of parties outside the enforcement system influencing the outcomes of the enforcement system, despite occasional (and intense) pressure from some complainants and barristers to do so (for example, by directly approaching BSB Board members or the Director General).
36. Barristers are involved throughout the decision-making process but I have not seen any evidence of them protecting fellow barristers or the profession in general from valid criticism. The design and operation of the system requires the involvement of legally trained and qualified staff, Committee members and prosecutors. Many cases are legally complex and some require technical knowledge and understanding to determine whether there has been a potential breach of the Handbook. I have observed how the barristers involved use their expertise to clarify issues, offer insights and inform collective decision-making. At every stage of the process, the handling of a case needs to be fair and stand up to procedural scrutiny and occasionally challenge. I have observed how legal expertise throughout the process helps ensure that this is the case.
37. I have observed how the system benefits from the involvement of non-lawyers. They bring a wealth of relevant knowledge and experience to bear, including from other regulatory fields, as well as a lay perspective. Their involvement helps to challenge established thinking, received wisdom and accepted practices and to guard against the risk that decisions are taken in the vested interests of the profession. The role of lay members on the Professional Conduct Committee may not be widely understood but should instil public and consumer confidence. One of my recommendations was to give this greater prominence by publishing their biographies on the BSB's website.
38. I have observed healthy and constructive debate throughout the enforcement process. Those involved (within the executive and PCC) frequently debate issues, question and challenge each other. I have observed how these debates improve the quality of decision-making by testing and refining the reasoning for decisions. There is also respect for the process and collective responsibility once decisions are made.

Clarity of purpose; regulatory objectives, risk and proportionality

39. I have observed effective leadership and clarity of purpose throughout the enforcement system – both within the PCD and the PCC. Staff across the PCD teams are frequently involved in departmental initiatives which underpins their knowledge, understanding and support for the aims and objectives of the system.
40. The Enforcement Strategy (first published January 2014 and reviewed October 2015) sets a clear overall sense of direction and the regulatory objectives are prominent in policy and guidance documents and in communications with complainants and barristers. There is a clear focus on preventing further breaches and protecting the public, including, where appropriate, making use of the BSB's new power to impose immediate interim suspensions. Risk and proportionality are more explicit drivers of decision-making throughout the process. Formal risk assessments are undertaken at key stages of the process and are central to casework decision-making.

41. I have not identified any serious systemic problems with the operation of the system. I have observed that there is a comprehensive and robust framework of policies, procedures and ‘templates’ to support consistency and that these are well understood and thoughtfully applied. At each stage, I have observed due care being taken to ensure that decision-making is undertaken in accordance with the Handbook rules, policy frameworks and delegated authorities and takes account of regulatory risk.
42. I have not identified any individual cases giving rise to fundamental concerns. In instances where the BSB’s handling of particular cases has drawn formal criticism, for example from a Tribunal panel or Appeal Judge, the PCD has responded constructively to identify and address learning points at the earliest opportunity.
43. In addition to the Enforcement Strategy, the work of the Professional Conduct Department is guided by its ‘Departmental Aims and Objectives’ (extracts from both are in **Appendix 2**). The Departmental Objectives mirror the Intended Outcomes of the Enforcement Strategy. The Departmental Aims bear close resemblance to the Hallmarks of the Enforcement Strategy but they are different. For example, they make specific reference to the public interest, protection of the public and consumers, confidence in the process and consistency.
44. I note that the Departmental Aims and Objectives were first issued in November 2008 and reviewed in January 2014 and August 2014. They were due for review in August 2016. My observation is that whilst the Departmental Aims and Enforcement Strategy Hallmarks are different, they are similar and in my view not inconsistent with each other. However, in the interests of clarity, particularly for external parties, I suggest that as part of the next review of either or both documents, consideration is given to harmonising their wording and presentation so that there is direct read across.

Efficient caseload management

45. During the period that I have been observing the enforcement system, the PCD has introduced Key Performance Indicators (KPIs) and targets for turnaround times.
46. Dealing with cases in a timely manner is only one aspect of performance, but it is an important one.
47. The KPI framework and associated management information reports enable case officers and managers to identify, escalate and tackle delays (and underlying issues) within their caseload. I have observed how these routines have become well-established at departmental, team and individual levels.
48. Overall, I have observed determined efforts to minimise avoidable delays whilst ensuring that all parties have reasonable opportunities to raise concerns and respond to them. Some cases are inevitably long-running, for example due to adjournments pending the conclusion of related proceedings. Most delays now only occur for

reasons beyond the BSB's direct control. The framework of KPIs and reporting allows for ongoing scrutiny.

49. I have observed good record keeping and administrative standards. I have been consistently impressed by case officers' familiarity with the specific aspects of each of their cases, their detailed knowledge of policies, procedures and precedents and their attention to detail. In five years, I have only identified a handful of instances where papers or records were missing from files and these were readily retrieved. My observation is that the incidence of administrative errors is very low.
50. There are plans to upgrade the BSB's computer system infrastructure but in the meantime, the Enforcement Database (Flosuite) is fit for purpose. In my experience, it is reliable, accurate and user friendly. The PCD achieved a smooth transition from its previous database (MAGIC); no mean feat. I have not systematically audited the records or data but on the basis that I have not encountered any difficulties retrieving historic information and have interrogated the raw data behind the management report headlines, I have full confidence in data quality.
51. I have consistently observed that interactions with complaint parties (whether by telephone, email or letter) are professional, sensitive, patient and courteous. Callers do not have to navigate through a range of options with recorded messages. A named case officer is allocated to each case and the Enforcement Database enables colleagues to log (and in many cases respond to) enquiries in their absence. Staff within PCD do not have scripted responses, nor are they restricted in the length of time they can spend on a particular case or phone call.
52. My observation is that every person is treated as an individual and time is taken to clarify a person's concerns and address their queries.
53. Overall, I have observed clear communication of decisions and sensitive handling of complainants, barristers facing complaints and witnesses, even when their behaviour has become challenging and in some cases unreasonable.

Equality and Diversity

54. The BSB makes public commitments to 'ensure meaningful compliance with equalities legislation in every aspect of our work, to demonstrate best equalities and anti-discrimination practice and to embed the principles of equality and fairness into the day to day running of BSB business.'
55. I have not identified any causes for concern with respect to equality and diversity in relation to the general operation of the enforcement system or in relation to any of the individual cases that I have reviewed.
56. I have observed that the PCD and PCC take all allegations of discrimination very seriously and, where necessary, seek expert advice. I have observed the sensitive handling of complainants and barristers including PCD taking appropriate steps to ascertain whether complaint parties require any reasonable adjustments.

57. An independent Diversity Review of the Bar Standards Board’s Complaints System³ by specialist consultants recommended that the names of barristers subject to complaints should not be disclosed to the PCC except for the purpose of identifying conflicts of interest. More recently, following an internal report, the BSB decided that reports should avoid revealing the gender of barristers. I have recommended, and this has been actioned, that (like barristers) complainants should not be named in PCC reports in order to further reduce any potential for unconscious bias.
58. As I reported in July, I was surprised to discover that up-to-date recording and monitoring of equality and diversity data for BSB Board and Committee members (including the Professional Conduct Committee) was not in place and that arrangements for induction training had apparently lapsed. I made high priority recommendations in July that these matters be addressed. I am confident that internal responsibilities have been clarified and these matters suitably prioritised.
59. I also recommended that the PCD should record and monitor the diversity of its Prosecution Panel and should organise ‘refresher’ Equality and Diversity training for the Professional Conduct Committee. These recommendations did not arise due to any specific concerns but reflect best practice. Progress has been made on both fronts.

Knowledge management, organisational learning and continuous improvement

60. From the outset, I have found the PCD and the PCC to be receptive to evidence-based and constructive criticism and committed to continuous improvement.
61. In response to my observations and recommendations and in recognition of the risk of overreliance on the accumulated ‘corporate memory’, knowledge and experience of key individuals, the PCD created a Knowledge Manager role. The Knowledge Manager took a series of helpful practical steps, including creating an intranet site for the PCD, centralising policy and guidance resources that were previously stored in disparate locations and creating regular departmental and PCC newsletters to keep staff and Committee members updated about new developments.
62. More recently, the PCD appointed a Professional Support Lawyer who has taken over responsibility for knowledge management and is taking a more proactive role in analysing developments, sharing best practice, identifying issues and tracking follow-up. He has a ‘Lessons Learnt’ Log and with support from the rest of the management team, is fostering the culture of self-reflection and continuous improvement. All those involved in the handling of complaints now identify issues arising from case handling that may be of wider relevance and make suggestions about how departmental policies and/or practice could be refined or developed. In my view, the introduction of WorkSmart (flexible working and home working) makes this role even more critical.
63. In addition to my Independent Observer role there are other checks and balances that have been put in place to provide regular quality assurance. For example,

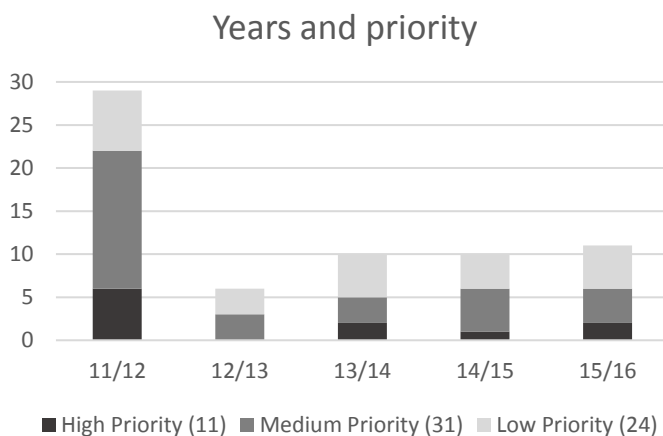
³ https://www.barstandardsboard.org.uk/media/1538013/inclusive_employers_-_diversity_review_-_bsb_complaints_system.pdf

certain categories of complaints or types of decision-making require advice from Experienced Members of the PCC or the involvement of more senior and experienced staff within the PCD and the Quality Review Sub-Committee (a sub-committee of the PCC) reviews samples of staff decisions.

64. Each year the PCD prepares a comprehensive, insightful and candid Annual Enforcement Report that analyses the caseload in detail, reviews outcomes and assesses system performance. The preparation of this report is an extremely important discipline and a valuable opportunity for the department to take stock, monitor trends and identify action points. It is also crucial for transparency. In addition to the publication of individual case outcomes, it is the key feedback mechanism for the profession and wider public.

Recommendations

65. I have made a total of 66 recommendations, all of which have been accepted. There are six outstanding recommendations (see **Appendix 3**). Actions are in hand and I am confident that they will be fully implemented.
66. I gave each recommendation a priority rating (11 High, 31 Medium, 24 Low) and the PCD, in consultation with me, assigned target deadlines for implementation (typically within 3 months, within 6 months, within 1 year) and 'closed' recommendations once they had been implemented. All my recommendations are listed in **Appendix 4**. For the purposes of this report, I have categorised them into broad themes.



67. Taking stock, most of my recommendations have been fine-tuning, clarifying points of detail and promoting best practice rather rectifying serious problems or glaring errors.
68. For example, I have
- commented on 'template' letters (including for warnings, administrative sanctions)

- suggested where policies and guidance could benefit from further clarification (e.g. Case Examiner report guidance)
- highlighted practices that could benefit from being formalised (such as centrally capturing learning from Disciplinary Tribunals and issuing appointment letters for prosecutors joining the BSB's panel)
- identified categories of cases that could benefit from more regular top-down monitoring (e.g. pre-complaints)

69. In my view, the most significant recommendations have been

- to improve the accessibility of information about the enforcement system available via the BSB's website for potential complainants and barristers facing complaints (significant progress has been made but there still remains scope for further improvements – see below),
- to introduce reconciliation procedures to ensure complete and timely referral of all LeO cases (my review identified discrepancies between the list of cases that LeO had referred and the list of cases that the PCD had received),
- to highlight to complainants the importance of providing evidence to substantiate their complaints (new box on Complaint Form and greater emphasis in template letters),
- to establish performance indicators for turnaround times (although I note that this had been long since debated prior to my arrival)
- to improve management information to help identify issues/delays (e.g. new reports showing 'long running' and 'inactive' cases, reports to monitor turnaround times for requests for review, reports to monitor cases at compliance stage i.e. fines due)
- to strengthen departmental knowledge management (new post of Knowledge Manager) and embed more systematic 'feedback loops' to capture and apply lessons
- to clarify and improve the prominence of the BSB's service complaints policy and to put systems in place to identify, record and monitor service complaints
- to increase feedback to the profession about the BSB's enforcement role, the outcomes of cases and wider lessons for the profession
- to reinstate equality and diversity monitoring and induction training for Board and Committee members

Unfinished business

70. There are further changes and challenges for the enforcement system on the immediate horizon including: the outcome of the current BSB governance review; enforcing standards for entities; introducing regulation of Alternative Business

Structures (ABSs); a review of the existing pro bono arrangements; extensive development of the BSB's IT systems and further consideration of whether continuing to use the criminal standard of proof for professional misconduct is appropriate in the modern era of professional regulation.

71. The following are also issues that I would flag for the future.

Consumer engagement

72. The PCD has historically regularly sought feedback from its 'consumers' (i.e. complainants and barristers subject to complaints) and reported findings and actions in its Annual Enforcement Report. At the recent PCC and Prosecutors Awayday, participants considered 'dismissal' letters from a complainant's perspective and generated a lot of positive suggestions for improvement that I hope are followed up.
73. Engagement with legal consumers and intermediaries has become a greater priority for the BSB corporately. I hope that the BSB continues to step up this work and uses it to inform the design and operation of its enforcement system.
74. For example, whilst most barristers are self-employed and are individually responsible for their professional standards, I wonder whether it would be helpful for consumers to be able to search for records of disciplinary findings by chamber or employer i.e. to show all findings for members of a particular set or organisation. I understand that this is something that other legal regulators may be considering but recognise there are issues that need to be considered carefully when considering this in the context of the self-employed Bar.
75. Another example would be, if you look up an individual barrister's disciplinary record on the BSB's website, the search function is not particularly sophisticated. It gives an identical 'nil return' whether you have entered the name incorrectly (i.e. it does not suggest 'close matches'), the individual is unregistered or the individual has been disbarred. I have flagged this with the Communications Team.

External facing information about the enforcement system

76. There has been significant progress to improve the enforcement pages on the BSB's website with support from external experts in the provision of legal information (Law for Life). The basic information is now easier to navigate and much clearer.
77. However, personally, I think that there is still further scope for improvement. The enforcement pages still have lots of very detailed information contained within attached documents and I suspect that it may still be difficult for newcomers (potential complainants, complainants and barristers) to find detailed information or even to appreciate the wealth of information that is available or what is of relevance to them.

78. Most other regulators have much more user-friendly homepages with clearer entry points, flow charts, signposting and for key categories of visitor such as ‘consumers’ and ‘members of the profession’. I understand that the BSB plans to restructure its website along these lines. This wider project needs resourcing and prioritising at a corporate level to further improve the transparency and accessibility of the BSB’s enforcement system.

Searchable database of Tribunal outcomes

79. The new Disciplinary Tribunal Regulations are expected to take effect early 2017 and amongst other things will change the approach to publication of Tribunal outcomes. There will be a *single published judgment* for all cases – both those resulting in findings *and those that do not* (the latter will be anonymised) – that can be cited by the BSB and respondents in other proceedings, albeit that they will not be binding. This will be an ideal opportunity, in the interests of transparency, for BTAS to establish a searchable database of Tribunal outcomes (as originally recommended by the 2007 Strategic Review⁴).

Value for money and risk-based resource allocation

80. It has been difficult for me to assess value for money or the extent to which enforcement system resources are allocated commensurate with risk to the regulatory objectives. In fact, I have observed how a relatively small number of complex, protracted and contested, but not necessarily high risk, cases have absorbed significant amounts of case officer and management time.
81. I have also observed that considerable resource is devoted to providing complainants with detailed analysis and reasoning when their cases are ‘dismissed’ and on undertaking reviews of these decisions upon the request of complainants. In a world of finite regulatory resources, the BSB will need to continually review its allocation of enforcement system resources and its approach to addressing the concerns of individual complainants.
82. I understand that the pending creation of “Centralised Assessment Team” will look to address some of these issues.

Social media

83. Social media use is a challenging area for all professional regulators. The BSB’s current stated policy on ‘media comment’ is already quite dated and narrow in scope. There are an increasing number of complaints relating to the use of social media by barristers. This was a topic of discussion at the recent PCC/Prosecutor Panel Awayday and there were a wide range of views.

⁴https://www.barstandardsboard.org.uk/media/1346882/_bsb__strategic_review_of_complaints_and_disciplinary_processes__report_by_robert_behrens_complaints_commissioner_july_2007.pdf

84. I think the BSB, informed by those involved in the enforcement system and recent cases, needs to refresh its guidance to the profession.

Departmental policy 'manual'

85. Personally, I have sometimes found the PCD policy and procedural framework challenging because it is contained in multiple distinct policy and guidance documents, albeit now stored and organised on a central drive and intranet site. I understand that there are medium/long term plans to consolidate departmental guidance electronically into a more modern consolidated electronic 'manual' with cross referencing, links and more sophisticated search tools.

Assurance

86. I am able to provide the BSB with a substantial level of assurance that during the period I have been observing it, the enforcement system has operated in line with its aims and objectives.
87. Specifically, I can assure the Board that
- Potential breaches of the Code/Handbook have been identified and appropriately pursued
 - Decisions have been taken in accordance with the procedural framework
 - Decisions have been fair and consistent
 - Communications have been clear
 - Decisions have been well reasoned
 - Staff have been polite and professional

Conclusion

88. I would like to thank the PCD, Professional Conduct Committee members and other BSB staff for responding so thoroughly, promptly and patiently to my enquiries and to GRA's support for my role.

Isobel Leaviss
Independent Observer
November 2016

Independent Observer Role Profile

Key responsibilities include:

- Establishing whether in respect of the BSB's enforcement system
 - Cases are handled in a timely manner in line with service standards;
 - Investigations of complaints are carried out, in accordance with policies and procedures, thoroughly and fairly and with appropriate consideration of equality and diversity issues;
 - Decisions of the Professional Conduct Committee and staff are made consistently and in accordance with agreed criteria;
 - The reasons for decisions are explained fully and clearly to the parties;
 - Cases are transferred effectively, efficiently and correctly between the BSB and the Legal Ombudsman
 - The arrangements made for holding disciplinary hearings are handled effectively by the BSB;
 - The handling of the BSB of the prosecution of disciplinary cases and appeals and the BSB's treatment of all parties is fair, effective and in accordance with laid down procedures; and
 - In all other respects, complaints are being dealt with in accordance with the intended outcomes and hallmarks of the BSB's Enforcement Strategy
- Developing an appropriate quality assurance programme; agreeing it with the Governance, Risk and Audit Committee (GRA); and working in accordance with the agreed plan.
- At the request of the (GRA) or the Bar Standards Board, conduct enquiries into identified issues of concern and report on such enquiries.
- To prepare and submit to the (GRA) six monthly reports containing
 - A summary of activities
 - Evidence based rational, robust observations and conclusions
 - Recommendations to address any systemic weaknesses identified or areas for improvement
 - An annual general assessment of performance in relation to the relevant aspects of the enforcement system for publication on the BSB's website.
- The IO should report findings and/or seek advice from the GRA Chair or Vice-Chair as necessary between formal reporting, for example in relation to urgent matters. In circumstances where it would be inappropriate to seek advice from the Committee Chair or one of its members, the IO should approach the Chair or a Vice-Chair of the Board.

The Independent Observer does not act as an independent adjudicator and is not tasked with reviewing the merits of individual decisions but rather the application of policies and procedures.

The Independent Observer has no powers to review the progress or outcome of individual complaints and cannot respond to individual parties about complaints.

The BSB's Enforcement Strategy (published January 2014, reviewed October 2015)¹

Intended Outcomes

The main objective is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions.

Enforcement action is intended to meet the **objectives** of:

- a) promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
- b) providing a credible deterrence to non-compliance with the BSB's regulatory arrangements;
- c) preventing further breaches; and
- d) preventing those who represent a serious risk to the public from practising.

Hallmarks

The hallmarks of the BSB's Enforcement Strategy are as follows:

- a) **Risk-based** – We will focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.
- b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
- e) **Flexibility** – We will use a range of enforcement tools to promote compliance with our regulatory arrangements.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond.
- g) **Timeliness** – we will take enforcement action, where necessary, in a timely and prompt way, having regard to the circumstances and complexity of the matter

¹ https://www.barstandardsboard.org.uk/media/1710431/140106_-_enforcement_strategy_-_live__updated__october_2015_.pdf

Extract from Professional Conduct Department Aims and Objectives²

Enforcement action is intended to meet the objectives of:

- a. promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
- b. providing a credible deterrence to non-compliance with our regulatory arrangements;
- c. preventing further breaches; and
- d. preventing those who represent a serious risk to the public from practising or working with people or entities regulated by the BSB.

The **aims** of the enforcement system are therefore to:

- i. Act in the public interest;
- ii. Protect the public and consumers of legal services;
- iii. Maintain high standards of behaviour and performance of the Bar;
- iv. Focus on the issues that pose the greatest risk to the regulatory objectives taking into account the BSB's identified strategic risks;
- v. Take proportionate action in light of identified risks;
- vi. Provide appropriate, proportionate and fair systems for dealing with concerns, from whatever source, about the way those we regulate conduct themselves;
- vii. Promote public and professional confidence in the enforcement process; and,
- viii. Ensure that complaints and reports of breaches of the Handbook are dealt with fairly, expeditiously, and consistently.

NB These are summarised (slightly different wording) on the enforcement pages of the website.³

² https://www.barstandardsboard.org.uk/media/1691274/140815_-_g17_-_departmental_aims_and_objectives_-_live__updated_august_2015_.pdf

³ <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/our-staff/professional-conduct-department/>

Agreed areas of focus and summary of activities

2011/12

Public-facing information	Internal policies and procedures
Initial assessments and LeO referrals	Samples of case files ('inactive', 'long running')
'Standard letter' templates	Operation of PCC
Decisions taken under staff delegations	Issues raised in recent press articles

2012/13

Investigation processes	Samples of case files ('inactive', 'long running')
BSB prosecutions and lessons learnt	Complainant requests for review

2013/14

Transcript requests	Browne Report
Tribunal hearings	Samples of case files ('inactive', 'long running')
Staff decision making	Handbook roll out

2014/15

PCC meetings	Tribunal hearings
Files not categorised as complaints	Administrative warnings
Complaints about BSB barristers	Complainant requests for review
Dismissals with advice	Samples of case files ('inactive', 'long running')

2015/16

Appeals	Samples of case files ('inactive', 'long running')
Judicial Reviews	New website pages

I have worked for 55 days/year and my activities have included

- observing the day-to-day workings of the Professional Conduct Department
- observing PCD departmental meetings, team meetings and training sessions
- observing PCC meetings, induction and training and Office Holder meetings
- observing Disciplinary Tribunal Hearings and Appeal Hearings
- attending PCD/PCC/Prosecutor awaydays

I have reviewed policy documents, casework documentation and database records including

- Departmental policies, procedures and guidance documents
- Performance Reports and other management information
- Case files (electronic and paper files)
- PCC bundles and Tribunal bundles
- Policy consultation documents
- All-staff briefings, Verity news, PCD and PCC newsletters

I have raised queries and discussed cases and issues with staff across the PCD, Office Holders, PCC members and prosecutors.

Summary of past recommendations – outstanding

Year	Theme	Priority	Recommendation	Status as at November 2016 <i>updated 17 January 2017</i>
15/16	Equality and Diversity	High	the BSB resumes equality and diversity data collection, recording and monitoring for its Board and Committee members	Internal responsibilities clarified. Arrangements put in place to store data securely. New forms issued by new Governance Manager to all current and incoming Board and Committee members on 11/11 requesting returns by mid-December. <i>As at 16th Jan, 40 returns received.</i>
15/16	Equality and Diversity	High	the BSB resumes equality and diversity induction training for its Board and Committee members	Internal responsibilities clarified. Records maintained centrally by Senior Policy Officer, Equality and Diversity. <i>The records now indicate that all Board and Committee members have completed induction training, except for 1 brand new Board member (still within their first month) and 16 members of the PCC (although three of the latter did attend the recent unconscious bias training session (attended by 15 PCC members in total) and some of the longer-standing members may have undertaken classroom training (pre-2015) before records began. The PCD are going to follow up all outstanding records and ensure that any member who has not received training completes the online induction.</i>
15/16	Equality and Diversity	Medium	the PCD monitors the diversity of its prosecution panel, including to inform its recruitment strategy for new panel members.	Letters sent to panel members requesting permission for BSB to access data from Records. <i>As at 16 Jan, 41 responses had been received; 39 giving consent to use E&D data from Core, and 2 declining. This leaves 18 outstanding; a reminder is to be sent.</i>
15/16	Fairness and openness	Low	That user friendly summary case notes (i.e. distilling and analysing the central issues, points, facts and decisions) are prepared for judgments made available on the BSB website and for those circulated internally and to PCC members and prosecutors so that users can more readily identify cases and issues of interest or relevance to them.	Due for completion January 2017.

Summary of past recommendations – all (outstanding shaded – as at January 2017)

Year	Theme	Priority	Recommendation
15/16	Equality and Diversity	High	the BSB resumes equality and diversity data collection, recording and monitoring for its Board and Committee members
15/16	Equality and Diversity	High	the BSB resumes equality and diversity induction training for its Board and Committee members
14/15	Consumer engagement	High	the BSB urgently confirms resourcing and sets a target completion date for overhauling the enforcement website pages
13/14	Fairness and openness	High	the BSB improves the accessibility and clarity of its service complaint policy on its website
13/14	Feedback to profession	High	upon completing its review of progress in implementing the Browne Report recommendations, the BSB ensures that there is appropriate feedback to the profession and the wider public
11/12	Efficient caseload management	High	The BSB agrees an action plan for establishing performance indicators and targets for the complaints and disciplinary processes
11/12	Efficient caseload management	High	The BSB works with the Legal Ombudsman (LeO), which is responsible for 'service' complaints, to ensure that the BSB receives prompt notifications regarding the outcome of referred cases and the prompt and full transfer of all relevant case papers
11/12	Efficient caseload management	High	The BSB systematically compares its list of 'referred cases' from LeO with LeO and addresses any discrepancies.
11/12	Efficient caseload management	High	The BSB continues to monitor case officer workloads, resourcing levels and particularly staff absences in order to make arrangements to minimise avoidable delays in complaint handling
11/12	Efficient caseload management	High	The BSB regularly reviews all 'inactive' cases to highlight potential issues and ensure that all cases are being actively progressed
11/12	Feedback to profession	High	The BSB provides an up-to-date user-friendly summary of headline quarterly and annual performance information for complaints and professional conduct proceedings on its website
15/16	Equality and Diversity	Medium	the PCD and Equality Team expedite plans to design and deliver tailored equality and diversity training for PCC members (e.g. unconscious bias).
15/16	Equality and Diversity	Medium	the PCD monitors the diversity of its prosecution panel, including to inform its recruitment strategy for new panel members.
15/16	Equality and Diversity	Medium	the PCD and Case Examiners anonymise complainants (i.e. do not name them) in the reports presented to the PCC

Appendix 4 of Annex 1 to BSB Paper 001 (17)

Year	Theme	Priority	Recommendation
15/16	Efficient caseload management	Medium	The PCD introduces measures to ensure that the Litigation Register is complete and regularly updated for its cases.
14/15	Efficient caseload management	Medium	PCD review the handling/monitoring of pre-complaint cases to ensure (i) information received is systematically logged on Flosuite; (ii) pre-complaint cases are added to case listings; and (iii) management has a more detailed picture of the nature and status of pre-complaint files to inform its approach.
14/15	Efficient caseload management	Medium	template wording is developed to clearly and consistently frame all administrative warnings
14/15	Efficient caseload management	Medium	template wording is developed to clearly and consistently frame formal advice that is given as to future conduct when complaints are dismissed but the barrister's conduct has given cause for concern
14/15	Organisational learning	Medium	a much clearer expectation is placed upon prosecutor panel members to attend events and contribute to knowledge sharing
13/14	Fairness and openness	Medium	Systems are put in place to properly identify, record and monitor service complaints about PCD
13/14	Fairness and openness	Medium	PCD provides additional guidance to barristers about expected format, content and evidence of 'mitigation/financial information' and considers offering barristers further opportunity to submit information before any final decision on the imposition of a sanction/final disposal of the complaint (rather than only in the initial investigation letter)
13/14	Consumer engagement	Medium	the BSB gives early priority to engaging with intermediary consumer groups to promote understanding of its enforcement role and, where appropriate, improve signposting to assist legal consumers
13/14	Organisational learning	Medium	PCD ensures that decisions to withdraw all charges or 'offer no evidence' are formally reported to PCC, including indicating the reasons for those decisions and as appropriate, any lessons learnt
12/13	Fairness and openness	Medium	the PCD extends its recently finalised Disclosure Policy to include Committee minutes and publishes it
12/13	Organisational learning	Medium	that the PCD captures lessons from 'dismissal reports' centrally, agrees an appropriate action plan and monitors implementation
12/13	Fairness and openness	Medium	that the BSB publishes a summary of the appointment process for its prosecutors; formalises appointments to the panel with an appointment letter and assigns an experienced 'mentor' to each of its new prosecutors
11/12	Fairness and openness	Medium	The BSB publishes its most recent performance reports

Appendix 4 of Annex 1 to BSB Paper 001 (17)

Year	Theme	Priority	Recommendation
11/12	Fairness and openness	Medium	The BSB expands the information on complaints handling on its website to include more detail about the steps that it take in dealing with complaints, examples of what constitutes misconduct, the standard of proof required and guidance/examples of the type of supporting documents or other evidence that a complainant needs to provide
11/12	Fairness and openness	Medium	The BSB updates the version of the Code of Conduct on its website to the latest version and adds a link in the Complaints section of the website
11/12	Fairness and openness	Medium	The BSB spells out its role and approach to complaint handling upfront when first acknowledging complaints, particularly LeO referrals; explains its approach at each stage, next steps and likely timescales
11/12	Fairness and openness	Medium	If the PCC decision differs from the Case Examiner's recommendation to dismiss, the rationale for the Committee decision is summarised by the Chair and formally recorded to provide a clear audit trail
11/12	Fairness and openness	Medium	That a summary of any advice given to barristers whose behaviour has given cause for concern should be disclosed to the complainant
11/12	Fairness and openness	Medium	That prior to adjourning complaints, the BSB should consider what, if any, contemporaneous enquiries should be made in order to capture evidence before memories fade/documents become difficult to obtain and that guidance to this effect should be incorporated into departmental guidance
11/12	Fairness and openness	Medium	The BSB formalise and publish its policy for commenting publically on complaints and disciplinary proceedings
11/12	Efficient caseload management	Medium	That a specific box be introduced to the complaint form prompting complainants to list evidence to substantiate their complaint and that the guidance explain the importance of evidence and provide examples
11/12	Efficient caseload management	Medium	That the review of BSB letter templates should be completed and that the specific comments on a number of letters are considered
11/12	Efficient caseload management	Medium	That time taken for Sponsors to accept a case, as well as actually deal with a case, should be monitored so that as far as possible delays can be addressed and minimized
11/12	Efficient caseload management	Medium	That case officers should be reminded to indicate specific issues about which information and/or clarification (rather than a general invitation for comments) in order to focus (and expedite) the investigation process.
11/12	Efficient caseload management	Medium	The BSB consider developing a simple 'checklist' for all letters in order to help embed best practice
11/12	Efficient caseload management	Medium	The BSB remind staff that in the event of a 'comeback', the complaints database should be updated immediately to help trigger prompt follow-up

Appendix 4 of Annex 1 to BSB Paper 001 (17)

Year	Theme	Priority	Recommendation
11/12	Feedback to profession	Medium	The BSB considered providing more regular feedback to the industry and the public about complaint volumes, the nature of findings and lessons
11/12	Organisational learning	Medium	The BSB identifies additional resources to more systematically keep Committee members and its prosecutors updated about developments on significant cases, rulings and judgements and considers what aspects of this could be made publically available
15/16	Efficient caseload management	Low	Corporately the BSB reviews the format of the Litigation Register to ensure that it is fit for purpose.
15/16	Fairness and openness	Low	That user friendly summary case notes (i.e. distilling and analysing the central issues, points, facts and decisions) are prepared for judgements made available on the BSB website and for those circulated internally and to PCC members and prosecutors so that users can more readily identify cases and issues of interest or relevance to them.
15/16	Consumer engagement	Low	That PCD consider engaging consumer organisations and/or consumers on issues raised in the consultation particularly the 'issues of principle' that will inform 'the potential direction of travel in the medium term' and/or any supporting guidance that is developed as part of the implementation of the new DT Regulations.
15/16	Efficient caseload management	Low	In the interests of efficiency, the PCD liaises with the High Court to ensure that it has ready access to copies of relevant BSB rules (e.g. Handbook, DT Regulations) and guidance (e.g. Sentencing Guidance)
15/16	Organisational learning	Low	The PCD considers how best (within the Litigation Register or elsewhere) to identify, address and disseminate any lessons arising from JR proceedings.
14/15	Fairness and openness	Low	the BSB formalises the principles it expects the PCC to apply when handling regulatory complaints involving barristers who undertake work on its behalf and draws these to the attention of barristers undertaking BSB enforcement roles and to complainants where relevant
14/15	Efficient caseload management	Low	all files showing outstanding fines/costs should be reviewed to ensure that the database accurately reflects the latest overall position and a report should be developed to enable monitoring of overall progress with compliance
14/15	Efficient caseload management	Low	reports listing 'live' comebacks are regularly monitored by the Assessment and Investigations and Hearings Team Managers
14/15	Organisational learning	Low	following the conclusion of regulatory complaints about PCD staff, PCC members or prosecutors, a review is undertaken to identify any lessons
13/14	Fairness and openness	Low	the PCD clarifies, on the BSB website, the options for complainants and/or barristers seeking to challenge enforcement decisions

Appendix 4 of Annex 1 to BSB Paper 001 (17)

Year	Theme	Priority	Recommendation
13/14	Fairness and openness	Low	QPRSC's remit be extended to include assessing timeliness and also whether the process has been 'open', 'transparent and accessible'
13/14	Efficient caseload management	Low	the PCD considers my suggestions to help expedite transcript requests
13/14	Efficient caseload management	Low	the PCD considers my suggestions to further improve communication with complaint parties
13/14	Feedback to profession	Low	the BSB uses the Handbook rollout as an opportunity to provide feedback to the profession about its enforcement caseload, the outcomes of complaints and 'lessons' for practitioners
12/13	Consumer engagement	Low	following the organisation-wide review of the 'Unacceptable Behaviour by Members of the Public – Guidance to Staff', the BSB publishes an external facing statement or version of this policy
12/13	Efficient caseload management	Low	that the instructing letter for prosecutors prompts them to given active consideration to preparing a case chronology to assist the Tribunal.
12/13	Organisational learning	Low	when the Committee discusses 'lessons' from cases, the Chair draws out any conclusions or actions for the minutes so that they can be recorded and more systematically followed up as appropriate
11/12	Fairness and openness	Low	The BSB convey more of the experience of the Professional Conduct Department staff and Committee members on its website
11/12	Fairness and openness	Low	The BSB considers renaming the 'sponsor' role in order to avoid any possible misimpression that the member advising on individual cases 'vouches' for either the complaint or the barrister
11/12	Efficient caseload management	Low	The BSB records the nature of enquiries made on the Complaints Information Line
11/12	Efficient caseload management	Low	The guidance on preparing Sponsor Reports be more fully spelt out to explain the type of analysis required, including explicit cross reference to the current policy document on decision making
11/12	Efficient caseload management	Low	The guidance for Committee members be clarified so that its meaning is clearer in relation to referral of matters not previously presented to the barrister
11/12	Efficient caseload management	Low	Prior to communicating Committee decisions to the parties involved, a review of the case chronology be undertaken so that, as appropriate, the reason(s) for lengthy timelines (and in particular avoidable delays) can be acknowledged, and if necessary apologised for
11/12	Organisational learning	Low	The BSB flag and explain material changes to the Complaints Committee Information and Guidance Pack when circulating updates

BSB section 69 order – responses to the LSB consultation

Status

1. For discussion and approval.

Executive summary

2. The Legal Services Board recently consulted on a draft order under s69 of the Legal Services Act 2007 to amend the Bar Council's powers, which would enable the BSB to discharge its functions more effectively. They have shared with us the consultation responses to enable us to consider the policy issues raised. This paper seeks the Board's view on taking this forward, in the light of views expressed in response to the consultation.

Recommendations

3. It is recommended that the Board:
 - a. Agrees in principle to continue with the s69 order;
 - b. Considers the appropriate power that is needed for First Tier Tribunal appeals;
 - c. Agrees to discuss detailed drafting points with the Ministry of Justice and the Legal Service Board before finalising the order, in particular around intervention powers and disciplinary powers.

Background

4. For some time, the BSB has been seeking an order under section 69 of the Legal Services Act 2007 (LSA) to alter the powers of the Bar Council (which would be exercised under delegation to the BSB). The BSB originally consulted in May 2015. Responses to the consultation were mixed – the Legal Services Consumer Panel (LSCP) and Legal Ombudsman (LeO) were broadly supportive, whilst responses representing the profession were more negative. The BSB decided to proceed with the order and entered into discussions with the Ministry of Justice (MoJ) to draft the necessary legislation. In the process of drafting the order a number of further policy questions arose. As a result, the BSB's decision notice – attached as **Annex A** – summarised some proposed policy changes that had not been included in the original BSB consultation in addition to the BSB's decisions on the subject of the consultation. In order to avoid undue delay, it was agreed with the Legal Services Board (LSB) that these policy issues would be included in the LSB's consultation on the draft order. The draft order is attached at **Annex B** and the original BSB consultation is available here:

https://www.barstandardsboard.org.uk/media/1665744/consultation_-_amendment_to_bar_standards_board_powers_-_may_2015_-_final.pdf

5. The LSB consultation paper is available here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2016/2016_08_30_BSB_s69_order_consultation_FINAL.pdf

6. In order to ensure that these new policy issues were properly considered by those affected, the BSB notified key stakeholders and offered briefing meetings in order to facilitate their responses to the LSB's consultation. The key groups with whom we met subsequently responded to the LSB's consultation.

7. This paper does not seek generally to revisit matters on which the BSB has already consulted and reached a decision. Its purpose is to enable to Board to consider the representations that were made on the new policy issues raised in the LSB's consultation so that it can form a view on how to proceed with the proposed order (having decided to proceed with an order already). If the Board is persuaded by the arguments discussed below, it may consider instructing MoJ to amend the order (this would have to be subject to the LSB agreeing to recommend any further changes to the Lord Chancellor).

Responses to the LSB consultation

8. The LSB has shared with us the responses received to its consultation on the draft order. There were three responses from:
 - a. The Bar Council (BC);
 - b. The Council of the Inns of Court (COIC); and
 - c. The Institute of Barristers' Clerks (IBC).
9. In general the respondents disagreed with the policy rationale for the order, the need for an order and the approach taken to consulting on the policy. There were general objections to what was perceived as seeking statutory powers that were not needed and which there may be no intention to use. This section considers each article of the order in turn.

Appellate body for regulatory decisions (Article 3 of the draft order)

Background

10. Our original consultation had proposed a power to enable appeals to the First Tier Tribunal (FTT) by entities against certain "authorisation-type" decisions. In the course of drafting it was suggested by MoJ that the order mirror the power that we have under the Crime and Courts Act 2013 to create an appellate jurisdiction to the High Court. The draft order on which the LSB consulted therefore did not specify which appeals would be heard by the First-tier Tribunal FTT. Instead, the BSB would be able to specify this in our rules. This would give the BSB a general power to make rules to send different decisions to the FTT in due course (which might include disciplinary appeals, albeit that is not our policy). Essentially the draft order would permit greater flexibility in the future (subject to consulting on any rule changes and getting LSB approval).

Consultation responses

11. There was agreement from the BC and COIC that "authorisation-type" decisions for entities and ABS should be heard by the FTT. However, the view was expressed that the appellate body for other decisions should not be permitted to change and COIC suggested that the order should confirm that appeals against disciplinary tribunals should be heard by the High Court. It was stated that appeals arising from disciplinary tribunals are fundamentally different in nature to licensing decisions. COIC stated that "the BSB should not be entitled to dictate by whom appeals from disciplinary tribunals are heard" and the BC suggested that any proposal to change the appeal structure should be debated and consulted on separately rather than included in this order.

12. It was also stated that it is wrong, in principle, for statutory powers to be granted that are not required. This was especially the case where those powers would involve an extension, by delegated legislation, to powers already given expressly by primary legislation, or an extension of powers in primary legislation into new situations.

Proposed BSB response

13. On balance, we took the view that it was a more sensible enabling power to mirror the equivalent provision in the Crime and Courts Act. It would not be possible for the BSB to change appeal routes from the High Court to the FTT without the usual consultations and approval by the LSB (and there is no intention to do so). But the broader power would enable greater flexibility for the future. Contrary to COIC's statement, it is the BSB's role to consider where appeals should go following decisions by a disciplinary tribunal, as this forms part of our regulatory arrangements.
14. There is no reason in principle why the existence of a statutory power under the Crime and Courts Act to send appeals to the High Court should prevent separate legislation permitting appeals also to go to the FTT. The Legal Services Act specifically envisages such orders being made where it assists an approved regulator to perform its role more effectively or efficiently. However, the Board may wish to take a view on whether this article is appropriately drafted in the light of comments.

Powers of intervention (article 4 of the draft order)

Background

15. The BSB had already consulted on the proposal to get statutory powers of intervention. It decided to proceed with the proposal after considering objections from some respondents to the original consultation.

Consultation responses

16. Views were nevertheless expressed that the fact that the Bar Council would acquire intervention powers for ABS entities once designated as a licensing authority was not sufficient justification for seeking the same powers over all regulated persons. The view was also reiterated that the power was disproportionate to the risks posed by barristers, given the prohibition on handling client money etc and the serious consequences of intervention for individuals.
17. The Bar Council raised some interesting points of detail about the extent to which simply applying Schedule 14 to the LSA (which is where intervention powers are derived) to the self-employed Bar is appropriate. For example, it was suggested that particular problems may arise where a barrister uses a single bank account for personal and business purposes, or uses an address in the same way, such that his or her personal mail could be redirected. A further practical point was raised that the draft order did not provide an adequate process for challenge and appeal. In addition to that the Bar Council proposed that if interventions are to exist then the power should be accompanied by an intervention strategy that details a two-stage test before an intervention can be initiated, but only where an intervention strategy can be justified in the first place.

Proposed BSB response

18. The BSB does not share the view that intervention powers are unnecessary. Although historically we have been able to regulate the profession without such powers, and we had previously taken the position that they were not necessary, we have identified a real risk in spite of the prohibition on barristers holding client money. Since then we have found evidence of that risk crystallising and have encountered a scenario where our supervision function may well have used intervention powers had they been available. In fact, we considered going to the High Court to seek an injunction over the regulated person in question – that process highlighted some potential difficulties in seeking to take such action without a clear statutory power to do so and reinforced our view that intervention powers (or at least the threat of intervention) was an important tool in the most serious cases where urgent action was needed to protect clients' interests. It is arguably the case that the risk of such events materialising may increase as novel business models develop in the future. It is therefore strongly recommended that we do not revisit the decision in principle to acquire a power of intervention.
19. It has been suggested that the scope of the power might be narrowed and that it is disproportionate to intervene in a manner that would put an individual's personal income/savings or personal communications at risk. In certain cases the order includes a reference to the High Court when the BSB is exercising an intervention power, which will provide some checks and balances in the system. For the BSB, the overriding consideration should be the public interest and whether intervention is needed to protect clients – the Board has already agreed an interventions policy for ABS entities which makes clear that an intervention should only be a last resort where other regulatory tools are not appropriate. A similar published policy would be in place for other interventions, should the order come into force. It will be a priority for the Board to ensure that interventions are monitored and undertaken proportionately. A narrowing of the scope of the power (which is consistent with similar powers for other regulators) might limit the public interest benefits of having it available as a last resort, but it seems sensible to discuss some of the Bar Council's concerns with the MoJ legal team. We could also look into clarifying further in supporting Handbook rules the circumstances in which intervention would be necessary, in order to make it clear that the power would not be abused.

Information gathering (Article 5 of the draft order)*Background*

20. The consultation did not propose anything substantively different to that contained in the original BSB consultation. Following the original consultation, the BSB decided to proceed.

Consultation responses

21. The Bar Council suggested that it was unnecessary for the BSB to have a statutory power for information gathering. This was on the basis that the BSB's existing powers are sufficient and that no case has been made for those proposed in the order, with no evidence or prospect of any material degree of risk of challenge to existing arrangements.

Proposed BSB response

22. The BSB has noted that a consensual regulatory regime may not be appropriate where there is disagreement between the parties. At present, a failure by a regulated person to share information with the regulator can only lead to disciplinary action under our rules – this is not satisfactory in situations where information might be needed urgently and the barrister is not co-operating. The alternative of seeking a court order to require disclosure of information would be cumbersome and might be subject to challenge. It is clearly in the public interest for a regulator to be able to require the disclosure of information and it is proposed that we continue with this provision.

Disciplinary arrangements (Articles 6 and 7 of the draft order)*Background*

23. The original consultation proposed only to put general disciplinary arrangements on a statutory basis for non-barristers (largely as a means of strengthening our regime in relation to entities). We stated that the scope of the power included entities and individuals acting as their owners and managers. The proposed order is broader in scope. The LSB's consultation explained the rationale for this: *In addition to the powers originally consulted on, the order will put the BSB's existing arrangements for regulating barristers on a statutory basis, replacing the existing contractual arrangements described in paragraph 13 above. This is because during the drafting process it became apparent that for the order to be effective it needs to apply to all those regulated by the BSB. This reflects that the power available to the BSB in Article 7 (disqualification) is determined by the scope of Article 6 (sanctions), with both falling under the description of disciplinary arrangements. In order for Article 7 to apply to individual barristers (and their employees), they must be included in Article 6.*¹
24. So the rationale for extending the scope of article 6 is linked to our policy objective in article 7, hence both are considered together here. The original proposal was that the disqualification power only would be applicable to all individuals, whether authorised persons or not (so would include clerks, for example). But this was not compatible with article 6 as originally drafted.

Consultation responses

25. The IBC was particularly concerned about the increased scope of article 6, noting that it would enable the BSB to introduce additional disciplinary rules for clerks (or other employees) beyond what was originally envisaged (i.e. that only the disqualification rule would apply to them). It felt that the BSB already has sufficient regulatory powers over chambers personnel and that these increased powers would be heavy handed. It also stated that, if the order proceeds in its current form, the BSB should commit to full consultation in advance of any changes to disciplinary rules that might affect clerks. This was in part to enable them to consider the possible legal consequences and how they might interact with their members' duties to employers. They were concerned that members might have "2 masters" (an employer and the BSB) and stated they could not envisage a situation where an employer would find an employee's conduct acceptable, but the BSB would take a contrary view.

¹ LSB consultation at para 35

Part 1 – Public

26. The Bar Council and COIC both queried the drafting in article 6(2)(c) and noted that an order to disbar a barrister (and certain other sanctions) can currently only be made by a disciplinary tribunal, and not by the BSB. Both also suggested that the order's limits on fines were unreasonably high (up to £50 million for individuals) and it was suggested that the order should avoid setting fine limits, leaving this to the regulator following consultation.
27. The Bar Council claimed that no problems had been identified with the current contractual basis for disciplinary arrangements and the objective of disqualifying barristers was not sufficient justification for placing the whole of our disciplinary arrangements on a statutory footing if that statutory power is not necessary. It was clear that the relationship between disciplinary powers and disqualification powers was not sufficiently clear in the proposals. In any event, the Bar Council suggested that rather than seeking statutory powers over those we already regulate, we should seek to carve out a statutory power only in relation to employees as that was where the gap had been identified, although it was not persuaded that there was a need for any statutory disqualification power.

Proposed BSB response

28. In relation to the IBC's concerns, it is recommended that the BSB does indeed commit not to increase the scope of regulation of barristers' clerks without full consultation. This would be an important part of any change in regulatory arrangements. The BS would not seek to get involved in normal employment matters between a barrister and his/her employees. The power of disqualification is there as a public interest protection where employment arrangements are insufficient (eg where it is necessary to prevent a person being employed elsewhere). The introduction of this power needn't be disproportionate regulation – it would only be deployed in the most serious of cases where necessary in the public interest.
29. In relation to comments on article 6(2) it is of course correct that under our current regulatory arrangements only a disciplinary tribunal can order the disbarment of a barrister as part of a sentence following a finding of professional misconduct. It does so under the authority of the BSB's regulatory arrangements, however, rather than under its own independent jurisdiction. It would therefore seem unnecessary to specify in legislation that such a decision can only be taken by a disciplinary tribunal (we will however consider the drafting point raised).
30. On fine limits, advice from MoJ has been that it is necessary to set a limit in the order (there would be no benefit to the profession of having an unspecified power to fine, as that could permit even higher fines). Whatever the statutory upper limit, fine levels will continue to be set by our regulatory arrangements, as approved by the LSB. Any proposed increases in our fines would have to be justified on grounds of proportionality. In theory we could choose a different fee limit, but the BSB has previously taken the view that it is logical to use the limits already set under the 2007 Act for other purposes.
31. The suggestion that current contractual arrangements should be used to disqualify individuals ignores the fact that barristers' employees would not have a direct contractual link with the BSB, which might lead to enforcement difficulties. We have always been clear that barristers' employees should be subject to the disqualification

power². The Bar Council's suggestion that we explore more targeted drafting to target non-barristers for disqualification powers is something that we could discuss with MoJ and the LSB, however the advice we have had to date is that this drafting is the only practical way of achieving our policy objectives, given the enabling powers for the s69 order. Barristers will be no worse off in practice if the source of our disciplinary arrangements is statutory rather than consensual. It is therefore recommended that we proceed, subject to further consideration of the BC's drafting points.

Practice rules on engaging disqualified persons (Article 8 of the draft order)

Background

32. The original BSB consultation did not explicitly refer to this clause, however it was clear that the disqualification power would become statutory in nature. This clause is intended to make clear the consequences of that disqualification.

Consultation responses

33. It was suggested by the Bar Council that the clause was not necessary because of rules in the BSB handbook and that those rules could provide disqualification powers in relation to individuals not currently regulated by the BSB. Even if we disagree and require the statutory disqualification power, the BC felt that this article would be unnecessary. We will discuss this with MoJ before proceeding.

Proposed BSB response

34. We will discuss further with MoJ the necessity for article 8. The substance of the rule remains BSB policy but we will seek advice to confirm whether it needs to be stated in the order.

Compensation arrangements (Article 9 of the draft order)

Background

35. The LSB consultation raised no new policy issues in relation to compensation arrangements.

Consultation Responses

36. The respondents felt that it was wrong in principle to seek statutory powers that are not necessary, given the BSB has no intention to use the power at present and the relatively low risk of clients suffering financial loss as a result of professional misconduct. It was felt that the BSB should not seek powers that might increase the burden of regulation without sufficient risk to justify it.

² In fact we originally proposed a broader disqualification power that would apply to a broader range of people engaged by barristers in the supply of legal services, but this was deemed ultra vires for the order. We therefore decided to proceed with authorised persons and their employees only. Under s176 of the LSA employees of authorised persons are "regulated persons"

Proposed BSB response

37. These responses raise no new issues and the Board has already agreed, following its own consultation, to proceed with this provision. It is therefore not proposed that we reconsider the question. The Board previously agreed that powers to establish compensation arrangements may be needed in the future, as the business and practising arrangements of barristers and entities evolve over time. It is important that the regulator can move quickly in such circumstances. There are sufficient safeguards to ensure that new regulatory arrangements are not imposed unnecessarily – they could not be imposed without significant consultation and approval by the LSB. That position was supported by the LSCP and LeO as being in consumers' interests.

Resource implications

38. When the order comes in to force there will be a need to update our rules and any associated processes. This has been accounted for in the budget bid for next year.

Equality impact assessment

39. An equality impact assessment has been undertaken at an earlier stage. We will consider whether any of the issues raised above lead to any additional equality and diversity concerns.

Risk implications

40. The s69 order addresses a number of risks that the BSB has identified – in particular it strengthens our ability to take prompt regulatory action where clients may be at risk.

Regulatory objectives

41. Ensuring that the regulator has the appropriate tools will enable it to act to promote the regulatory objectives.

Annexes

- A – BSB decision notice
- B – Draft order

Lead responsibility

Ewen Macleod
Director of Strategy and Policy

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Consultation Paper – Amendment to Bar Standards Board’s Powers

Decision document

Executive Summary

1. This paper sets out the responses to the Amendment to Bar Standards Board’s Powers consultation paper and the BSB’s response.
2. The LSB has recently approved an application from the BSB to become a regulator of entities. Whilst considering its new regulatory arrangements, the Bar Standards Board (BSB) identified a number of areas where additional powers were needed in order for the Bar Council to exercise the role of approved regulator, acting through the BSB, more effectively and efficiently. These included identifying areas where it would be useful to extend, or place on a statutory footing, the Bar Council’s powers and functions via an order under section 69 of the Legal Services Act 2007 (LSA). In approving these new arrangements, the LSB said that consideration should be given to amending the Bar Council’s statutory powers.
3. The proposed changes will affect not just new entities authorised by the BSB but potentially all persons regulated by the BSB. The key changes proposed are:
 - a. seek an order to give the Bar Council an express power to discipline persons other than barristers (including entities, their owners and managers).
 - b. give the Bar Council a statutory power of intervention equivalent to Schedule 14 of the LSA in respect of non-ABS persons.
 - c. place on a statutory footing the power to disqualify an individual from being employed by a BSB regulated person (with the BSB maintaining a list of such disqualified people).
 - d. give the Bar Council statutory information gathering powers.
 - e. create a jurisdiction for appeals relating to entity authorisation to be heard by the General Regulatory Chamber of the First Tier Tribunal; and
 - f. give the Bar Council a *power* to establish, maintain and require contributions to a compensation fund or similar compensation arrangements.
4. This paper discusses the views the BSB received in response to the consultation and the decision reached by the BSB after taking account of those responses. The BSB has decided to proceed with all elements of the order. Subsequent discussions with the Ministry of Justice over drafting have led to some changes in the scope of the order, discussed below. The LSB will undertake a further consultation on the draft

order, which will give interested parties an opportunity to comment on these changes in addition to the draft order itself.

Overview

5. An online consultation was launched in May 2015. The consultation document proposed a range of new powers for the General Council of the Bar (Bar Council) which would be delegated to the BSB, to enable it to exercise its functions as an approved regulator more effectively and efficiently. These powers would be obtained via a statutory order under section 69 of the LSA. The consultation sought views on whether respondents agreed with the proposed new powers. Six questions were posed in the consultation document. The six questions posed were:

Question 1: Do you have any comments on the proposal to place disciplinary powers over non-barristers on a statutory footing?

Question 2: Do you have any comments on the proposal to acquire statutory powers of intervention?

Question 3: Do you have any comments on the proposal to place the disqualification power on a statutory footing?

Question 4: Do you have any comments on the proposed information-gathering powers?

Question 5: Do you have any comments on the proposal to have entity authorisation appeals heard by the First Tier Tribunal?

Question 6: Do you have any comments in relation to the proposed power to establish compensation arrangements?

6. The BSB received eight responses to the consultation.
- Six provided an answer to question 1.
 - Six provided an answer to question 2.
 - Six provided an answer to question 3.
 - Five provided an answer to question 4.
 - Three provided an answer to question 5.
 - Seven provided an answer to question 6.
7. The consultation was available for comment on the BSB website throughout the consultation period. Of the eight responses received, six were from members of the Bar or their representative bodies. The remaining responses were received from the Legal Ombudsman and the Legal Services Consumer Panel. The BSB also held a presentation on the consultation for the Legal Practice Management Association, to seek their views on the proposed amendments. As they did not submit a formal consultation response they have not been included in the analysis below.

Summary of responses to consultation

Q1: Do you have any comments on the proposal to place disciplinary powers over non-barristers on a statutory footing?

Summary of responses

8. Of the eight responses to the consultation received, six directly answered this question. Four of the responses were supportive of the proposal, while two were not. One respondent did not respond directly to this question but expressed general opposition to all of the proposals included in the consultation, while one other expressed general support for the proposals.
9. The Legal Ombudsman encouraged the BSB's development of clear, consistent and suitably robust powers, and the Legal Services Consumer Panel also welcomed the proposal. The South Eastern Circuit and the Lincoln's Inn Bar Representation Committee acknowledged that the BSB ought to be able to effectively regulate all BSB regulated persons, and that this power would help the BSB to do so.
10. Blackstone Chambers believed that the BSB already has the necessary powers to discipline non-barristers on a contractual basis, and that a strong enough case had not been made for why these powers should be placed on a statutory footing. The Bar Council also opposed this proposal, and stated that it did not agree that regulation under statutory authority was inherently preferable to the current situation. It also believed that it would cause difficulties if barristers have to look partly to the Handbook and partly to statute to understand their obligations. The Bar Council believes that an extension of powers should only be made if it enables the BSB to exercise its regulatory functions more effectively and efficiently. It does not believe this is the case in relation to this proposal.

BSB decision

11. The BSB decided to proceed with this proposal because relying on a consent-based regime was not sufficient to ensure that the regulator was able to respond appropriately to all situations.
12. In subsequent discussions with the Ministry of Justice over drafting of the order, it was agreed that the scope of the order must be broader than originally consulted on in order to meet the BSB's policy objectives. The order will put the BSB's existing disciplinary powers (including those relating to barristers) on a statutory basis. This is because the BSB was advised that for the order to be effective it must apply to all those regulated by the BSB. The scope of any power to disqualify people (discussed below) is determined by the scope of the BSB's disciplinary powers. So in order for disqualification arrangements to apply to barristers and their employees, those individuals must be included in the general power to discipline. Therefore the power to make disciplinary arrangements will apply to barristers, entities, their managers and their employees.

Q2: Do you have any comments on the proposal to acquire statutory powers of intervention?

Summary of responses

13. Of the eight responses to the consultation received, six directly answered this question. Two of the responses were supportive of the proposal, while four were not. One respondent did not respond directly to this question but expressed general

opposition to all of the proposals included in the consultation, while one other expressed general support for the proposals.

14. The Legal Ombudsman supported the proposal and noted that in a changing legal landscape, the need for intervention becomes more apparent. They supported the proposals as they are keen to see relevant bodies being able to take quick and efficient action in the interests of consumer protection. The Legal Services Consumer Panel also saw the proposal as being positive for consumers, as they hoped that putting this power on a statutory footing would improve the ability of the BSB to intervene more swiftly in situations where there is evidence of consumer detriment.
15. Barrister A was opposed to the proposal and commented that there was no compelling justification for the proposed powers of intervention. They do not believe that the BSB should be able to intervene in a barrister's practice because they have personal financial difficulties. They are also of the view that it is unnecessary to be able to secure client papers, as client files are retained by solicitors or clients themselves in public access cases.
16. Blackstone Chambers commented that intervention powers over barristers or chambers – who must not handle client money – would be intrusive, costly, illogical and incompatible with risk-based regulation. If any such power was acquired, they believe it should be limited to a power only over those who handle client money in breach of the BSB Handbook. They do not believe that the BSB should have intervention powers over barristers just because other regulators have intervention powers over other kinds of professionals. Their view is that no clear need has been established for granting the BSB this additional intrusive power.
17. The Bar Council commented that no risk to the public has been established that warrants the extension of intervention powers, as barristers must not handle client money. They believe that the current regulatory tools are sufficient to meet the risks identified by the BSB, and that the use of intervention powers would be difficult to fund in a fair manner.
18. The South Eastern Circuit was of the view that it is not necessary to acquire a statutory power of intervention over non-ABS entities and individual barristers at this stage.

BSB decision

19. The BSB considered the responses received. It noted that if the Bar Council is designated as a Licensing Authority for ABS it will receive these powers anyway. It is therefore consistent to seek the same powers in relation to non-ABS entities and barristers. These powers would only be used in exceptional circumstances. For example, there may be circumstances where client money or client information is at risk despite existing provisions in the Handbook (such as the prohibition on holding client money and the duty to co-operate with the regulator). In these very rare instances, the BSB needs to be able to act decisively in the public interest. The same principle applies to individuals who experience insolvency events – insolvency proceedings in relation to an individual barrister should not normally trigger an intervention, but the BSB needs to be able to take action if necessary. The power would be exercised under guidance to the BSB executive which makes clear the circumstances in which the use of intervention powers would be appropriate and the process by which such action would be authorised. Intervention powers would only be used when necessary in the light of the regulatory objectives. The BSB therefore decided to proceed with this proposal.

Q3: Do you have any comments on the proposal to place the disqualification power on a statutory footing?

Summary of responses

20. Of the eight responses to the consultation received, six directly answered this question. Four of the responses were supportive of the proposal, while two were not. One respondent did not respond directly to this question but expressed general opposition to all of the proposals included in the consultation, while one other expressed general support for the proposals.
21. The Legal Ombudsman supported this proposal and commented that in the past they have received complaints about chambers employees who were not barristers, and thus have not been able to investigate them. These cases dealt with immigration matters where consumers were particularly vulnerable, and in these situations they would encourage the BSB to disqualify both regulated and non-regulated individuals. Both the Lincoln's Inn Bar Representation Committee and Barrister A agreed that the BSB should be able to disqualify an individual from employment in a regulated entity.
22. Blackstone Chambers felt that the consultation had not identified any case in which the current regulatory arrangements failed to operate efficiently or effectively, and which would have been avoided had the basis of the powers been statutory rather than contractual. They did not believe a case had been made for the proposed change.
23. The Bar Council commented that it was not clear whether this proposal constituted an extension of the BSB's powers or not. They felt it was unclear how the power would operate and why a power was needed that encompassed anyone employed by a company or person who provides services to a BSB authorised person. They do not see how this will improve the BSB's effectiveness or efficiency. They commented that if this proposal did constitute an extension of the BSB's powers, more cogent and evidence-based reasons for requiring the extension should be given.

BSB decision

24. The BSB decided to proceed with this proposal because it would not be appropriate to rely on a consent-based regime for disqualification powers, as this could be subject to challenge and there may not be express agreement of all employees/managers of BSB authorised persons to be bound by these rules. The new power is intended to place on a statutory basis rules already included in the BSB Handbook (which permits disqualification of people other than authorised persons already) but in order to be effective as an enforcement tool, the BSB believes they need to have statutory force. However, the Legal Services Act does not give the BSB the scope to extend its powers beyond those persons captured by s176 (i.e. authorised persons plus their employees and managers). Further primary legislation would be required to gain the full power that was consulted on. Powers of disqualification will therefore only apply to "regulated persons" as defined in the Act.

Question 4: Do you have any comments on the proposed information-gathering powers?

Summary of responses

25. Of the eight responses to the consultation received, five directly answered this question. One of the responses was supportive of the proposal, while four were not.

One respondent did not respond directly to this question but expressed general opposition to all of the proposals included in the consultation, while one other expressed general support for the proposals.

26. While agreeing the provision of information is a fundamental requirement of any regulatory regime, the South Eastern Circuit and the Bar Council opposed the proposal on the basis that the BSB already has the powers it needs. The Bar Council's view was that the existing power – whereby it is a breach of the BSB Handbook to fail to comply with requests for information by the BSB – is easily understood. They also stated the consultation provided no evidence that the existing power is functioning inefficiently or ineffectively, a view which was shared by Blackstone Chambers and the Lincoln's Inn Bar Representation Committee.
27. The Bar Council also stated the BSB Handbook has significant advantages over statute; first, that it is consensual rather than imposed, and secondly that it is more flexible. Their view was that consistency across all persons regulated by the BSB – individuals and entities – is not an end in itself, which was shared by Blackstone Chambers.
28. However, the Legal Ombudsman supported the proposal on the basis that clear, strong and consistent powers would be a positive development, bringing the BSB in line with other regulators and lessening consumer confusion.

BSB decision

29. The BSB noted that if the Bar Council is designated as a Licensing Authority for ABS, then it would acquire these powers in relation to ABS entities anyway. The BSB decided to proceed with this proposal because it was in the interests of consumers for the regulator to have clear and consistent powers with effective remedies if requests for information are not complied with. It is necessary for the regulator to have an effective method of enforcing any request for information and the BSB believes that simply taking disciplinary action after the event is not sufficient, particularly if information is needed urgently in cases where the public or consumer interest may be at risk.

Question 5: Do you have any comments on the proposal to have entity authorisation appeals heard by the First Tier Tribunal?

Summary of responses

30. Of the eight responses to the consultation received, three directly answered this question. All of the responses were supportive of the proposal. One respondent did not respond directly to this question but expressed general opposition to all of the proposals included in the consultation, while one other expressed general support for the proposals.
31. The Bar Council did not object to appeals in relation to entity authorisation being heard by the First Tier Tribunal. However, it commented that in the initial stages of entity authorisation, it may be helpful to have some High Court decisions in this area which could then serve as precedents. Blackstone Chambers supported the proposal, on the basis that changing the jurisdiction from the High Court to the First Tier Tribunal would be likely to lead to faster and more economical determination of appeals.

BSB decision

32. The BSB noted that this proposal was generally supported and decided to proceed because current arrangements with the High Court were only intended to be temporary. After discussions with the Ministry of Justice, it was agreed that the order should have a broader scope than that proposed in the consultation. It would give the BSB a general power to determine in its rules which decisions could be subject to appeal to the FTT (this would be subject to approval by the LSB). This approach would achieve the desired policy and give greater flexibility to make further changes in the longer term.

Question 6: Do you have any comments in relation to the proposed power to establish compensation arrangements?

Summary of responses

33. Of the eight responses to the consultation received, seven directly answered this question. Two of the responses were supportive of the proposal, while five were not. One respondent did not respond directly to this question but expressed general opposition to all of the proposals included in the consultation.
34. All persons regulated by the BSB – individuals and entities – are prohibited from holding client money. The Bar Council agreed with the BSB’s conclusions in the consultation that any breach of the ban would be exceptional – and any loss of client money incurred more so – and that the risks within its current regulatory regime are insufficient to justify the establishment of a compensation fund. The Bar Council also stated the establishment of a fund would be expensive, and that the burden would fall heavily on those with conventional advocacy practices. Its view was that this would be unfair and contrary to the BSB policy objective that its regulatory regime should be proportionate to the risks posed, which was shared by Blackstone Chambers. They stated that a compensation fund would, in addition to being costly and unfair for those whose activities create no risk, be unduly favourable to those whose activities may create a risk.
35. Regarding the proposal for a power to establish a compensation fund or similar compensation arrangements, Blackstone Chambers also stated that it can rarely, if ever, be justified to grant a power because it may come in useful in the future. This view was shared by the Lincoln’s Inn Bar Representation Committee. The Bar Council doubted additional regulatory powers could be justified on the basis that they “future proof” a regime. Its view was that it is unclear whether the LSB could recommend that the Lord Chancellor make an order under section 69 of the LSA to “future proof” an approved regulator. This is because it would not be for the purpose of enabling an approved regulator to carry out its existing role more effectively or efficiently, but would be to enable an approved regulator to perform better in the future. It also commented more generally that “future proofing” should be approached with caution, as there might be unintended consequences of an approved regulator acquiring powers that it does not need. The South Eastern Circuit strongly opposed any power to impose contributions to a compensation scheme, especially given the BSB’s own view that it is not currently necessary.
36. However, the Legal Ombudsman supported the proposed power to establish compensation arrangements, on the basis that “future proofing” would mean the BSB could react more quickly in the future to counter consumer detriment. The Legal Services Consumer Panel also supported the proposal, stating it is essential that flexibility is built into the BSB’s regulatory regime at this stage. They also commented

that it is a forward thinking development, reflecting a pragmatic approach to regulation of the ever evolving legal services market.

BSB decision

37. The BSB agreed that powers to establish compensation arrangements may be needed in the future, as the business and practising arrangements of barristers and entities evolve over time. It is important that the regulator can move quickly in such circumstances. The BSB agreed to proceed with the proposal, noting that the profession would have to be fully consulted on any proposals to move towards a compensation fund, prior to seeking LSB approval in the normal way.

Draft Order laid before Parliament under section 206(5) of the Legal Services Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No.

LEGAL SERVICES, ENGLAND AND WALES

**The Legal Services Act 2007 (General Council of the Bar)
(Modification of Functions) Order 2016**

Made - - - - - ***

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 64(2), (3) and (4), section 69(1), (4) and (6), and section 204(3) of the Legal Services Act 2007(a).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (5) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) — This Order may be cited as the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016.

(2) This article and articles 2, 3 and 5 to 9 come into force on the day after the day on which this Order is made.

(3) Article 4 comes into force on the 22nd day after the day on which this Order is made.

Interpretation

2. In this Order—

“the Act” means the Legal Services Act 2007;

“relevant authorised person” means a person authorised by the General Council of the Bar (other than by the grant of a licence under Part 5 of the Act) to carry on an activity which is a reserved legal activity(b).

(a) 2007 c. 29

(b) “Reserved legal activity” is defined in section 12(1) of the Act.

Power to make regulations or rules providing for appeals to the First-tier Tribunal

3.—(1) The General Council of the Bar may make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the General Council of the Bar in its capacity as an approved regulator, including in its role, if any, as a licensing authority.

(2) The regulations or rules made under paragraph (1) may provide for the First-tier Tribunal to suspend the effect of a decision of the General Council of the Bar (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

Power of intervention

4.—(1) Subject to the modifications in paragraphs (2) to (4), Schedule 14 to the Act (licensing authority's powers of intervention)(a) applies in relation to—

- (a) the General Council of the Bar in its capacity as an approved regulator (other than in its role, if any, as a licensing authority);
- (b) a relevant authorised person;
- (c) in the case of a relevant authorised person which is a body, a manager of the body, and
- (d) an employee of a relevant authorised person,

as it applies in relation to a licensing authority, a licensed body and a manager or employee of such a body.

(2) Schedule 14 to the Act is to be read as if each reference to—

- (a) a “licence” were a reference to an “authorisation”;
- (b) a “licensed body” were a reference to a “relevant authorised person”;
- (c) “the licensing authority” or “the relevant licensing authority” were a reference to “the General Council of the Bar”, and
- (d) a manager of a licensed body were a reference to, in the case of a relevant authorised person which is a body, a manager of the body.

(3) Paragraph 1 of Schedule 14 to the Act has effect as if—

- (a) for sub-paragraph (3) there were substituted—

“(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a relevant authorised person if—

- (a) in the case of a relevant authorised person who is an individual, the person has been made bankrupt or has made a composition or arrangement with the person's creditors in England or Wales;
- (b) in the case of a relevant authorised person which is a body, in England or Wales—
 - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986 (statutory declaration of solvency)(b);
 - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act (administration)(c);
 - (iii) an administrative receiver within the meaning of section 251 of that Act (interpretation) is appointed;
 - (iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company's insolvency)(d);

(a) Paragraph 11(9) of Schedule 14 was amended by section 91 of, and Schedule 12, Part 3, paragraph 189 to, the Postal Services Act 2011 (c. 5).

(b) 1986 c. 45

(c) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c. 40).

(d) Section 95 was amended by S.I. 2009/864 and 2010/18.

- (v) an order for the winding up of the body is made, or
- (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force;
- (c) in the case of a relevant authorised person which is a body, established outside the jurisdiction of England and Wales, the body is—
 - (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v), or
 - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”, and
- (b) for sub-paragraphs (5) and (6) there were substituted—

“(5) Where this Schedule applies in relation to a relevant authorised person by virtue of sub-paragraph (1)(a) it continues to apply—

 - (a) in the case of a relevant authorised person who is an individual—
 - (i) after the individual’s death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a relevant authorised person);
 - (ii) after the individual’s authorisation has been revoked or the individual’s authorisation has otherwise ceased to have effect;
 - (b) in the case of a relevant authorised person which is a body, after the body’s authorisation has been revoked or the body’s authorisation has otherwise ceased to have effect.

(6) For the purposes of this Schedule “relevant authorised person” includes—

 - (a) a person whose authorisation is suspended;
 - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a person whose authorisation has been revoked or whose authorisation has otherwise ceased to have effect.”
- (4) Paragraph 18 of Schedule 14 to the Act has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

“(za) if the relevant authorised person is an individual who is or was a partner in a partnership, any of the individual’s partners or former partners.”

Power to gather information

5.—(1) — The General Council of the Bar may make rules requiring a relevant authorised person to produce documents and provide information for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code issued, by the General Council of the Bar in its capacity as an approved regulator (other than in its role, if any, as a licensing authority) are being complied with.

- (2) Rules made under paragraph (1) may include provision that—
 - (a) the General Council of the Bar may, by notice, require a relevant authorised person to produce documents, or documents of a description, specified in the notice;
 - (b) the General Council of the Bar may, by notice, require a relevant authorised person to provide information, or information of a description, specified in the notice;
 - (c) the General Council of the Bar may, by notice, require a relevant authorised person to attend at a time and place specified in the notice to provide an explanation of any document produced or information provided by virtue of the rules;
 - (d) the General Council of the Bar, or a person appointed by it, may take copies of or extracts from a document produced by virtue of the rules;

(e) the General Council of the Bar may pay to a relevant authorised person such reasonable costs as may be incurred by that person in complying with a requirement imposed by virtue of the rules.

(3) A notice given to a relevant authorised person by virtue of rules made under paragraph (1)—

- (a) may specify the manner and form in which any documents are to be produced or information is to be provided;
- (b) must specify the period within which the documents are to be produced or information is to be provided;
- (c) may require documents to be produced or information to be provided to the General Council of the Bar or to a person specified by it.

(4) If a relevant authorised person refuses or otherwise fails to comply with a requirement imposed by virtue of rules made under paragraph (1) to produce documents, provide information, or comply with a notice under paragraph (2)(c), the General Council of the Bar may apply to the High Court for an order requiring the person to comply with that requirement.

Disciplinary arrangements: sanctions

6.—(1)— The General Council of the Bar may make disciplinary arrangements, including disciplinary rules, in relation to—

- (a) a relevant authorised person;
- (b) in the case of a relevant authorised person which is a body, a manager of the body, and
- (c) an employee of a relevant authorised person.

(2) The disciplinary arrangements made under paragraph (1) may, in particular, make provision for—

- (a) the revocation or suspension of a relevant authorised person's authorisation;
- (b) the imposition of conditions on a relevant authorised person's authorisation;
- (c) ordering the disbarment by the relevant Inn of Court of a relevant authorised person who is an individual;
- (d) the imposition of a fine not exceeding £250 million in relation to a relevant authorised person which is a body and £50 million in relation to an individual;
- (e) the giving of a notice that an individual must complete such continuing development activities as may be specified;
- (f) the giving of a warning, a reprimand or advice in relation to future conduct.

Disciplinary arrangements: disqualification

7.—(1)— The disciplinary arrangements made under article 6(1) may include provisions enabling the General Council of the Bar to disqualify those individuals set out in paragraph (2) from one or more of the activities in paragraph (3) if the disqualification condition is satisfied.

(2) The persons are—

- (a) a relevant authorised person who is an individual;
- (b) in the case of a relevant authorised person which is a body, a manager of the body;
- (c) an employee of a relevant authorised person.

(3) The activities are—

- (a) acting as HOLP or HOFA of a relevant authorised person which is a body;
- (b) being a manager of, or being employed or remunerated by, a relevant authorised person which is a body;

- (c) being employed or remunerated by a manager or employee of a relevant authorised person which is a body, in connection with that body's business of carrying on a legal activity^(a);
 - (d) being employed or remunerated by a relevant authorised person who is an individual, in so far as the employment or remuneration relates to that individual's practice of a legal activity;
 - (e) being employed or remunerated by an employee of a relevant authorised person who is an individual, in connection with that relevant authorised person's business of carrying on a legal activity;
 - (f) undertaking work in the name of, or under the direction or supervision of, a relevant authorised person, in so far as the work relates to that relevant authorised person's practice of a legal activity, and
 - (g) being employed or remunerated by a body (corporate or unincorporate) in which one or more relevant authorised person holds a material interest, in so far as the employment or remuneration relates to that relevant authorised person's practice of a legal activity.
- (4) The disqualification condition is satisfied in relation to an individual if—
- (a) that individual has (intentionally or through neglect)—
 - (i) breached obligations placed upon that individual by the General Council of the Bar, or
 - (ii) caused or substantially contributed to a breach of obligations imposed by the General Council of the Bar by a relevant authorised person, or a manager or employee of a relevant authorised person, and
 - (b) the General Council of the Bar is of the view that it is undesirable for that individual to continue to carry out one or more of the activities set out in paragraph (3).
- (5) The General Council of the Bar must keep a list of individuals who are disqualified by virtue of disciplinary arrangements made by virtue of this article and the activities from which they are disqualified.
- (6) In this article—
- (a) "HOFA" means an individual who is appointed Head of Finance and Administration for a relevant authorised person which is a body in accordance with rules made by the General Council of the Bar;
 - (b) "HOLP" means an individual who is appointed Head of Legal Practice for a relevant authorised person which is a body in accordance with rules made by the General Council of the Bar;
 - (c) "material interest" has the same meaning given in paragraph 3(1) of Schedule 13 to the Act.

Practice rules: engaging persons disqualified under disciplinary arrangements

- 8.—(1) The General Council of the Bar may make rules requiring a relevant authorised person to—
- (a) consider the list referred to in article 7(5) before engaging an individual to carry out any of the activities referred to in article 7(3), and
 - (b) seek its permission before engaging an individual to carry out any activity from which that individual is disqualified by virtue of disciplinary arrangements made by virtue of article 7.
- (2) The General Council of the Bar may make rules as to the effect that any permission given under rules made under paragraph (1)(b) is to have upon the disqualification of the individual the relevant authorised person is seeking to engage.

(a) "Legal activity" is defined in section 12(3) of the Act.

Compensation arrangements

9.—(1) The General Council of the Bar may make compensation arrangements(a).

(2) For the purpose of giving effect to paragraph (1) the General Council of the Bar may make rules which authorise or require it to make particular arrangements and such rules may include—

- (a) establishing and maintaining one or more funds;
- (b) requiring a relevant authorised person or a relevant authorised person of a description specified by the rules to contribute to any fund established and maintained by virtue of sub-paragraph (a) by making periodical payments as specified by the rules to the General Council of the Bar;
- (c) provision as to the investment of any money that forms part of any fund established and maintained by sub-paragraph (a) and otherwise as to the management, administration, insurance or protection of such fund;
- (d) provision as to the taking out and maintaining of insurance with authorised insurers by the General Council of the Bar;
- (e) requiring a relevant authorised person or a relevant authorised person of a description specified in the rules to contribute to the premium payable on any insurance policy maintained by virtue of sub-paragraph (d) by making periodical payments as specified by the rules;
- (f) provision as to the management and administration of any insurance policy taken out and maintained by virtue of sub-paragraph (d);
- (g) requiring a relevant authorised person or a relevant authorised person of a description specified in the rules to take out and maintain insurance with authorised insurers;
- (h) prescribing the conditions which an insurance policy taken out and maintained by virtue of sub-paragraph (g) must satisfy;
- (i) the circumstances in which a compensation claim may and may not be made;
- (j) the form and manner in which a compensation claim is to be made;
- (k) the procedure for determining a compensation claim;
- (l) the extent to which discretion may be exercised by the General Council of the Bar in determining whether payment in respect of a compensation claim should be made, and
- (m) the minimum and maximum amounts payable in respect of a compensation claim or a compensation claim of a description specified in the rules.

(3) In this article “compensation claim” means a claim for a grant or other payment under compensation arrangements made by the General Council of the Bar.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

(a) “Compensation arrangements” is defined in section 21(2) of the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the functions of the General Council of the Bar in respect of its regulatory arrangements as an approved regulator under the Legal Services Act 2007 (c. 29) (“2007 Act”).

The regulation of legal services in England and Wales is governed by the 2007 Act. Under that Act only a person who is authorised or who is exempt from the requirement to be authorised may carry on a reserved legal activity (as defined in section 12 of the 2007 Act). Authorisation can be given only by an approved regulator or, in relation to a licensable body, by a licensing authority.

Article 3 enables the General Council of the Bar to make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the General Council of the Bar in its role as an approved regulator, including in its capacity, if any, as a licensing authority.

Article 4 applies Schedule 14 (licensing authority’s power of intervention) to the 2007 Act to the General Council of the Bar in its capacity as an approved regulator only and to those listed in article 4(1)(b) and (c) as it applies to a licensing authority and licensed bodies (or managers or employees of such bodies) subject to the modifications in article 4(2) to (4).

Article 5 enables the General Council of the Bar to make rules enabling it to serve a notice requiring a relevant authorised person to produce documents and to provide information for the purpose of ascertaining whether or not the provisions of any rules, regulations or code made or issued by the General Council of the Bar are being complied with. If a relevant authorised person refuses or fails to comply with a requirement set out in the rules the General Council of the Bar may apply to the High Court for an order requiring the person to comply with the requirement.

Article 6 enables the General Council of the Bar to make disciplinary arrangements, including disciplinary rules, in relation to a relevant authorised person or a manager or employee of a relevant authorised person.

Article 7 enables the General Council of the Bar to include in any disciplinary arrangements the power to disqualify those listed in article 7(2) from the activities referred to in article 7(3) if the disqualification condition referred to in article 7(4) is satisfied. It also requires the General Council of the Bar to maintain a list of individuals disqualified under its disciplinary arrangements and the activities from which such individuals are disqualified.

Article 8 enables the General Council of the Bar to make practice rules requiring a relevant authorised person to consider the list of disqualified persons referred to in article 7 before engaging an individual to carry out any of the activities referred to in article 7(3) and to seek the permission of the General Council of the Bar before engaging an individual to perform any activity from which that individual is disqualified. The General Council of the Bar may also make rules as to the effect of any permission given upon the disqualification of the individual the relevant authorised person is seeking to engage.

Article 9 enables the General Council of the Bar to make compensation arrangements. To give effect to such arrangements the General Council of the Bar may make rules which may include, amongst other things, the power to establish and maintain a compensation fund, to require relevant authorised persons to contribute to that fund, to take out and maintain insurance or to require relevant authorised persons to contribute to the premium payable for that insurance or to require relevant authorised persons to take out and maintain insurance with an authorised insurer.

A regulatory triage assessment has been prepared for this instrument and can be found at www.legislation.gov.uk or obtained from the Head of Legal Services Policy, Justice and Courts Policy Group, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.

Publication of Diversity Data

Status:

1. For discussion and approval.

Executive Summary:

2. The Equality Act Specific Duties Regulations 2011 require the BSB to publish, every January, equality information relating to those who are affected by our policies and practices. The Legal Services Board (LSB) requires the BSB annually to publish aggregated diversity data on the barrister profession broken down by the following strands: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
3. This paper details how the BSB has collected diversity data from individual barristers via the online *Barrister Connect* portal in 2016. The data have been collected on the diversity strands mentioned above and have been broken down by seniority and set out in the Diversity Data Report 2016 (DDR) at Annex A.
4. The BSB Equality & Access to Justice (E&AJ) team extracted and analysed the data in December 2016 which showed that completion rates for the monitoring questionnaire have increased by an average of 3.2 percentage points since 2015. However it is advised that due to low disclosure levels, the data in the areas of disability, religion or belief, sexual orientation, socio-economic background and caring responsibilities are not reliable and cannot be used for drawing statistical conclusions. Good levels of data exist in the categories of gender, race, and age.
5. The DDR is being presented to the Board alongside the Equality Objectives for 2017-19. This DDR, and previous iterations of the report, informed the Equality Objectives. In particular, the DDR has helped to provide evidence of underrepresentation of women and disabled practitioners at the Bar and a lack of progression for Black and Minority Ethnic (BME) practitioners.

Recommendations

6. That the Board approves for publication on the BSB website the Diversity Data Report 2016 prepared by the E&AJ team at **Annex A**.

Summary of Legal and LSB Regulatory Requirements

Legal Requirements

7. The Equality Act 2010 Specific Duties Regulations 2011 came into force in September 2011. The regulations require that listed public authorities publish information annually, beginning in January 2012, to demonstrate compliance with the general equality duty (s.149 Equality Act 2010). The general duty requires public bodies to pay due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation;
 - Advance equality of opportunity between different groups; and
 - Foster good relations between different groups.
8. The information published should include information relating to those who are affected by the public bodies' policies and practices.

LSB Regulatory Requirements

9. In July 2011 the LSB issued guidance stipulating that Approved Regulators (ARs) must collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession. ARs must publish this data by the end of 2012, and at one year intervals thereafter. Data must be published on the following strands: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities. The BSB must publish the numbers of individuals in each group, and as a percentage of the total Bar. The data must be anonymised, aggregated, and broken down by seniority (i.e. QC, practising Bar, pupil).

Background

Collection of Diversity Data

10. The annual process of authorisation to practise (ATP) requires individual barristers to renew their practising certificate via the online *Barrister Connect* portal. This online system contains a voluntary monitoring page which allows barristers to input their personal diversity data. These data automatically populate the 'Core Database', which contains an electronic record of every individual barrister.
11. Since the introduction of *Barrister Connect* in 2012, the completion rates for the diversity monitoring page have been low in some areas. For example, in 2012 only 4.7% of barristers completed the question about sexual orientation and 3% of barristers completed the question about caring responsibilities for children. Since 2012, regular reminder emails have been sent from the BSB to the profession encouraging them to log back into the portal and submit their diversity data. In 2013 the *Barrister Connect* portal was amended so that a 'pop up' reminder about completing the monitoring form appears before a barrister exits the ATP process. Explanatory text was also added to the portal itself setting out the reasons why diversity data collection is important for the BSB and how the data is used. Following these interventions, completion levels have increased but in some areas remain below what is required for drawing meaningful conclusions.
12. Diversity data on pupils is collected through the Pupillage Registration Form, which must be completed before an individual commences their pupillage. The data from this form are collected annually, at the same time as the rest of the data on the profession are collected, to enable diversity monitoring of pupils to coincide with that of the rest of the profession.
13. The BSB E&AJ team extracted the anonymous diversity data on the profession from the Core Database on 1st December 2016. The data were cross-checked for anomalies by the BSB Research team and presented as the Diversity Data Report at Annex A.

Diversity Data Report 2016

Summary of Data

14. Completion rates across all monitoring categories have increased by an average of 3.2% since 2014, with the largest increase being 4.5% for both 'first generation to attend university' and 'caring responsibilities (other than for children)'. As a result of the data collection exercise, there are comprehensive data in some areas and poor data in other areas due to the low completion rates. The BSB has relatively high levels of data in the following areas, and hence some conclusions can be drawn:

- a) Gender
- The Core Database has gender data on 99.99% of barristers
 - The data show an underrepresentation of women at all levels of seniority; 36.5% of all barristers are female and at QC level 13.7% are female.
- b) Ethnicity
- The Core Database has ethnicity data on 91.8% of barristers
 - The data show there is an issue with career progression of BME barristers through the different levels of seniority; 16.3% of pupils are BME, but only 12.7% of the practising Bar is BME and 6.4% of QCs are BME.
- c) Age
- The Core Database has age data on 87.6% of barristers
 - The data show no significant under or overrepresentations, other than those for which there is a reasonable explanation e.g. the majority of pupils are aged 25-34.
15. There are low levels of data in the following areas, and reliable conclusions cannot be drawn:
- d) Disability
- The Core Database has disability data on 35% of barristers
 - 1.7% of barristers declared a disability, out of a total profession of 16,524.
- e) Religion or belief
- The Core Database has religion or belief data on 32.1% of barristers
 - The highest responses were in the following categories: 14.8% of all barristers declared they are Christian, 8.3% declared they have no religion, and 2.8% said they are Agnostic.
- f) Sexual orientation
- The Core Database has sexual orientation data on 31.8% of barristers
 - 27.9% of barristers declared that they are straight, 1.1% declared they are a gay man, 0.2% declared they are a gay woman and 0.4% declared they are bisexual.
- g) Socio economic background
- 31.3% of barristers completed the question about what type of school they attended, and 31.2% of barristers answered the question about whether they were the first generation of their family to attend university.
 - Even with this low response rate, barristers who primarily attended fee-paying secondary schools are overrepresented.
- h) Caring responsibilities
- 31.9% of barristers answered the question about caring responsibilities for children, and 30.8% of barristers answered the question about caring for others.
16. The BSB Research team has advised that the data in the categories above at paragraph 15 is unreliable due to the low completion rates and therefore cannot be used for statistical analysis or for formulating areas for action. This is problematic because the BSB has statutory and regulatory duties to promote equality and diversity in relation to all the protected characteristics listed in the Equality Act 2010. There is no set figure for the point at which the disclosure rates of diversity monitoring data become reliable.

17. The Diversity Data Report 2016 makes three main conclusions:
- a. There is an underrepresentation at the Bar of women, BME people, and people who did not attend fee-paying schools (and it is highly likely that there is an underrepresentation of people with disabilities).
 - b. The number of pupils that are women and BME is representative of the numbers of women and BME people in society, however this is not the case for the Bar as a whole, and is worst at QC level. This implies that the barriers experienced by women and BME practitioners relate more to retention than recruitment.
 - c. There is an overrepresentation among practitioners of people who primarily attended fee-paying secondary schools. Although only 31.3% of practitioners responded to this question, the proportion of those who went to fee-paying schools is already 1.5 times larger than in the population of England and Wales as a whole.

Action to Improve Quality of Diversity Data

18. It is accepted that it can take years for a profession to become familiar and comfortable with providing diversity data on a range of strands. Although it is positive to see that completion rates have increased every year since 2014, the current rates in some areas remain too low for statistical analysis to be undertaken. In light of this, the E&AJ team worked in partnership with the Bar Council Resources Group to implement the following changes to *Barrister Connect* prior to the 2016 ATP round commencing, with the aim of improving completion rates:
- a. Additional explanatory text was included on the Authorisation to Practise homepage and on the monitoring page itself setting out in greater detail the importance to the BSB of data collection and the ways in which the data are used; and
 - b. A reminder for individuals to update their diversity data was included on the automatic email that was sent to barristers once they had completed the 2016 ATP process.
19. These actions have contributed in some part to the continued increase in disclosure of diversity data. For the first time the disclosure rate of all questions asked is above 30%.
20. A new ATP portal using a different software provider is due to be designed and implemented by the Bar Council in 2017. The E&AJ team see this as a good opportunity to design a more visible and effective method of diversity data collection that will encourage a greater number of barristers to complete their monitoring questionnaire. It is hoped that this will achieve completion rates of around 50% across all monitoring categories by the end of the 2019 ATP process.

Publication and Promotion of Diversity Data

21. Once approved by the Board, the Diversity Data Report will be published (by 31 January at the latest) in the Equality and Diversity section of the BSB website. It is intended that the data will be publicised to the profession and the public through the BSB's monthly *Regulatory Update* email newsletter and the BSB Twitter feed.

Resource implications

22. Design and implementation costs for the new ATP portal are included in the agreed budget for Resources Group.

Equality Impact Assessment

23. It is anticipated that the publication of diversity data and the changes to *Barrister Connect* (and any future ATP portal) will not have any adverse impact on equality because these activities have been designed specifically to promote and advance equality and diversity. Accessibility issues will be taken into consideration when publishing diversity data and when designing a monitoring section for the new ATP portal.

Risk implications

24. The collection and publication of diversity data for the profession provides the BSB with an evidence base which is used to inform policies aimed at widening access to the profession and promoting diversity and social mobility. Analysis of the data enables the BSB to identify trends and is key to assisting the BSB in meeting its Public Sector Equality Duties. Failure to collect and publish diversity data would be a reputational risk for the BSB. The BSB would be left without an equality and diversity evidence-base for its decision-making and would be lacking in transparency.
25. The BSB Regulatory Risk Index lists a 'lack of a diverse and representative profession' as a significant market risk. The annual production of the Diversity Data Report is a key way in which the BSB attempts to mitigate this risk.
26. There are two key compliance issues relevant to the publication of the Diversity Data Report:
- Failure to comply with the Equality Act 2010 Specific Duties Regulations could lead to the BSB being issued with a compliance notice; and
 - Failure to meet the LSB deadline for publication of aggregated diversity data under the Section 162 guidance could lead to enforcement action.

Regulatory objectives

27. The collection and publication of diversity data for the Bar relates directly to the BSB's regulatory objective of "encouraging an independent, strong, diverse and effective legal profession".

Annexes

Annex A: Report on Diversity at the Bar, December 2016

Lead responsibility:

Amit Popat (BSB Head of Equality and Access to Justice)
Oliver May (BSB Senior Policy Officer, Equality & Diversity)



REGULATING BARRISTERS

**Report on Diversity at the Bar
December 2016**

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1. Executive Summary

This report presents a summary of the latest diversity data available for the Bar. The report assists the Bar Standards Board (BSB) in meeting its statutory duties under the Equality Act 2010 and sets out an evidence base from which relevant and targeted policy can be developed.

The database used to compile the findings in this report is the BSB's Core Database.

Key points from the report are outlined below:

- Response rates continue to increase across all categories (see Table 2 below for a comparison to 2015). The response rate is highest for Gender at 99.99% and lowest for Caring Responsibilities for Others at 30.8%.
- There has been a significant increase in response rates since 2012 when the BSB began collecting diversity data from individual barristers through the online *Barrister Connect* portal. In 2012 there were very low levels of data in a number of areas such as disability (5% response rate), sexual orientation (4.7% response rate) and Caring Responsibilities for Children (3% response rate).
- Gender representation in the profession still remains an issue as women account for 36.5% (an increase of 0.6 percentage points (pp) since 2015) of the practising Bar while men account for 63.4%. In addition, women account for just 13.7% of QCs while men account for 86.3%.
- There appears to be an underrepresentation of disabled practitioners at the Bar. Completion rates (35%) are low, but high enough that possible conclusions can be drawn. Only 1.7% of the Bar disclosed a disability, significantly lower than the percentage of disabled people in the UK population (approximately 19%¹).
- There continues to be a disparity between the total percentage of Black and Minority Ethnic (BME) barristers across the profession (12.2%), and the percentage of BME QCs (6.4%). This indicates an issue in relation to the progression of BME practitioners at the Bar.
- Despite a response rate of only 31.3%, it can already be stated that fee-paying schools are overrepresented in the profession. Even with over two thirds of barristers failing to respond to the question, the percentage of barristers who went to fee-paying schools (10.7%) is higher than for the population as a whole (approximately 7%²).

2. Introduction

The BSB is committed to providing clear and transparent statistical diversity data across every stage of a barrister's career. This Diversity Data Report is published annually, in line with the Specific Duties Regulations of the Equality Act 2010 and the statutory guidance of the Legal Services Board. It is a summary of the diversity data of the barrister profession available to the BSB, as at December 2016.

This report provides an overview of diversity at the Bar, and establishes evidence for both policy development and assessing the effectiveness of current initiatives aimed at increasing equality and diversity. All data are presented anonymously.

¹ *People with Disabilities in the Labour Market 2011*, Office for National Statistics, www.ons.gov.uk

² <https://www.isc.co.uk/research/>

Unless stated otherwise, all analysis in this report is broken down by seniority. Table 1 (below) shows the simple breakdown of the profession as a whole.

Table 1: Total number of people at the Bar (numbers)

Seniority	Numbers
Pupil	415
Practising Bar	14,435
Queen’s Counsel (QC)	1,674
Total	16,524

There are three sections to the diversity analysis of the profession: protected characteristics, socio-economic background, and caring responsibilities.

3. Methodology

The data for practising barristers in this report are from the BSB’s database (The Core Database). Diversity data on pupils is collected through the Pupillage Registration Form (PRF), which must be completed before an individual commences their pupillage. The data from this form are collected annually, at the same time as the data for the rest of the profession are collected, to enable diversity monitoring of pupils to coincide with that of the rest of the profession.

The Core Database

The Core Database receives data on the profession via the online “Authorisation to Practise” system, *Barrister Connect*, which was introduced in 2012. When renewing their practising certificate, the online portal includes a section which allows barristers to input their diversity monitoring data which automatically populates the Core Database. The rate of completion varies for individual monitoring strands, as each question is voluntary and some can be left blank if desired. Barristers can access the *Barrister Connect* portal at any time and update their diversity monitoring information. The diversity monitoring information used in this report was extracted from the Core Database on 1st December 2016, and represents a snapshot of the profession on this date.

Data on gender, ethnicity, age, and disability that had been collected by the Bar Council Records Department prior to 2012 was transferred to the Core Database to supplement the new monitoring data.

All numbers have been rounded, so in some cases the figures may not total 100%.

Response Rates

The response rate once again increased across all collected data in 2016. While progress is positive, the majority of questions asked are still only responded to by approximately 1/3 of barristers. The following diversity information was not provided in any way by 65% of barristers or more:

- **Disability**
- **Religion or belief**
- **Sexual orientation**
- **Socio-economic background**
- **Caring responsibilities**

Each question on both *Barrister Connect* and the PRF contains a 'prefer not to say' option, allowing individuals the option of giving a response without disclosing any information. 'Prefer not to say' is included as a response in the rates listed below.

Table 2: Response Rates in 2015 and 2016 (as a percentage of total barristers)

Category	2015	2016	% difference
Gender	99.5%	99.99%	+ 0.49pp
Ethnicity	91.4%	91.8%	+0.4pp
Age	86.4%	87.6%	+1.2pp
Disability	31%	35%	+4pp
Religion or belief	27.8%	32.1%	+4.3pp
Sexual orientation	27.6%	31.8%	+4.2pp
Type of school attended	26.9%	31.3%	+4.4pp
First generation to attend university	26.7%	31.2%	+4.5pp
Care of children	27.5%	31.9%	+4.4pp
Care for others	26.3%	30.8%	+4.5pp

4. Protected Characteristics

Gender

Chart 1 below shows gender at the Bar. There has been an increase in the percentage of women at the Bar overall (36.5% up from 35.9% in 2015), and at every level of seniority. Notably female pupils currently outnumber male pupils. While male QCs still considerably outnumber female QCs, the percentage of female QCs has increased by 0.7 percentage points (pp), with the percentage of male QCs decreasing by the same figure.

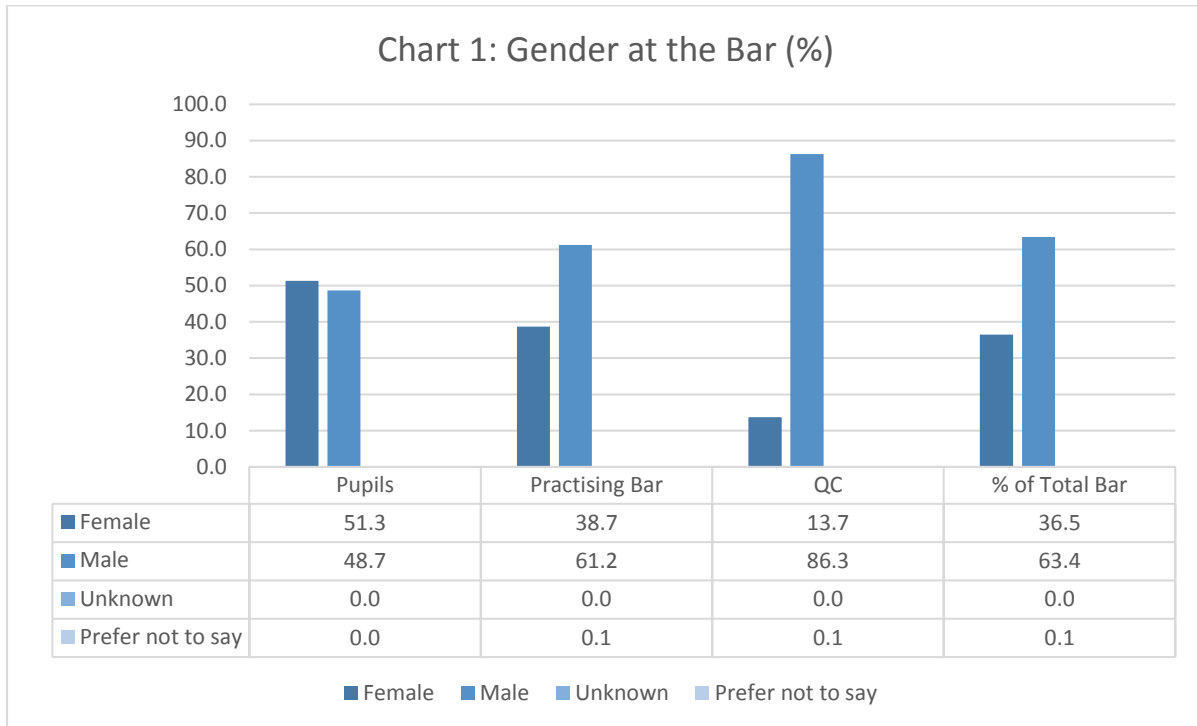


Table 3: Gender at the Bar (numbers)

	Female	Male	Prefer not to say	Unknown	Total
Practising Bar	5,588	8,830	15	2	14,435
QC	229	1,444	1	0	1,674
Pupils	213	202	0	0	415
Totals	6,030	10,476	16	2	16,524

Ethnicity

Chart 2 below shows a summary of ethnicity at the Bar. The total percentage of BME practitioners has increased by 0.2pp since 2015. The percentage of BME QCs has increased by 0.1pp since 2015, but still remains under half of the proportion in the wider population. BME pupils now make up 16.3% of total pupils, an increase of 0.9pp since 2015 and a figure approximately in line with the ethnic make-up of England and Wales as a whole³.

³

<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandnationalidentityinenglandandwales/2012-12-11>

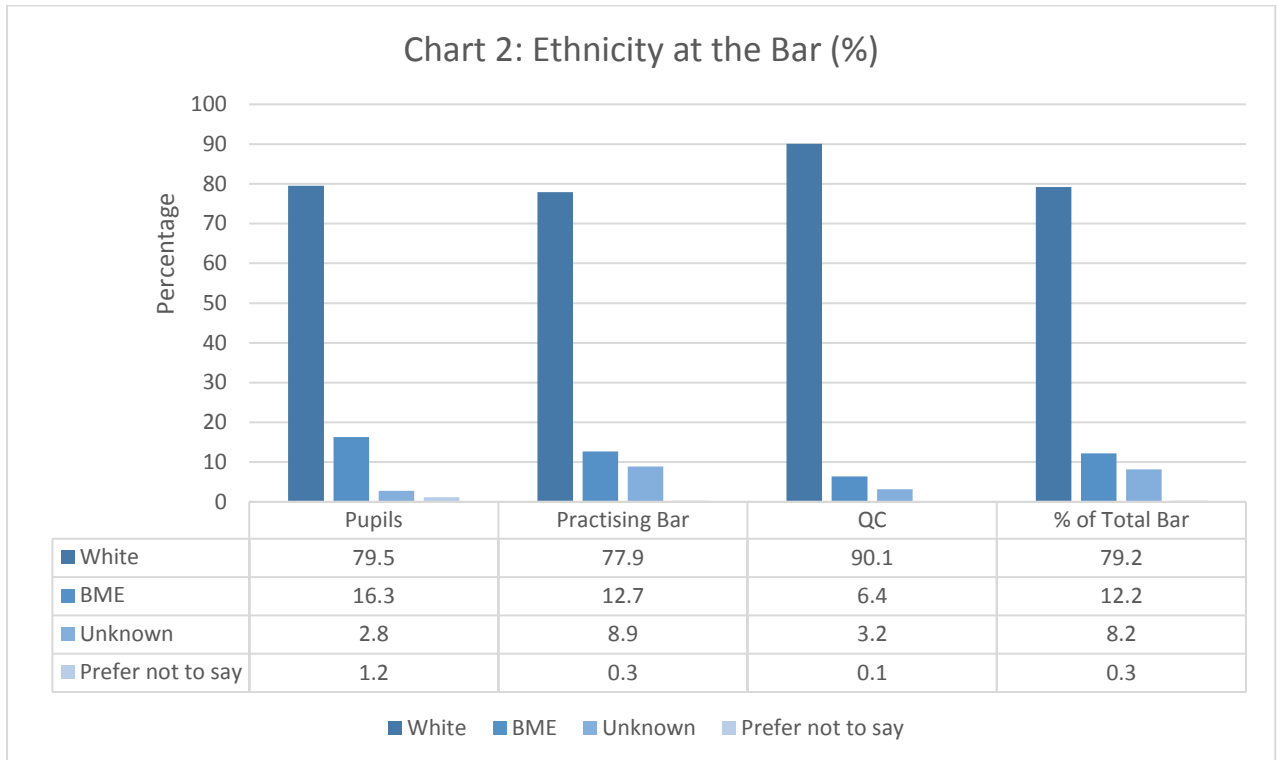


Table 4: Ethnicity at the Bar (numbers)

	Practising Bar	QC	Pupils	Totals
White - English/Welsh/Scottish/Northern Irish/British	10,379	1,448	299	12,126
White - Irish	334	23	7	364
Any other White background	537	38	24	599
White - Gypsy or Irish Traveller	1	0	0	1
White and Black Caribbean	47	1	4	52
White and Black African	37	0	3	40
White and Chinese	99	8	0	107
Any other mixed/multiple background	152	5	7	164
White and Asian	21	2	4	27
Black/Black British - Caribbean	175	8	8	191

Part 1 – Public

Black/Black British - African	214	5	10	229
Any other Black background	41	4	1	46
Asian/Asian British - Indian	412	26	11	449
Asian/Asian British - Pakistani	222	16	6	244
Asian/Asian British - Bangladeshi	77	3	3	83
Any other Asian background	137	4	5	146
Asian/Asian British - Chinese	62	2	2	66
Any other ethnic group	137	24	3	164
Arab	6	0	1	7
No Information	1,294	54	12	1,360
Prefer not to say	51	3	5	59
Total	14,435	1,674	415	16,524

Disability

Chart 3 below shows disability at the Bar. A disclosure rate of only 35% means that the figures for this protected characteristic may not be reliable. As with much of the data collected, the disclosure rate is best amongst pupils. The percentage of the Bar as a whole who have disclosed a disability is up by 0.2pp compared with 2015. Both the disclosure rate, and the percentage disclosing a disability, is lowest amongst QCs.

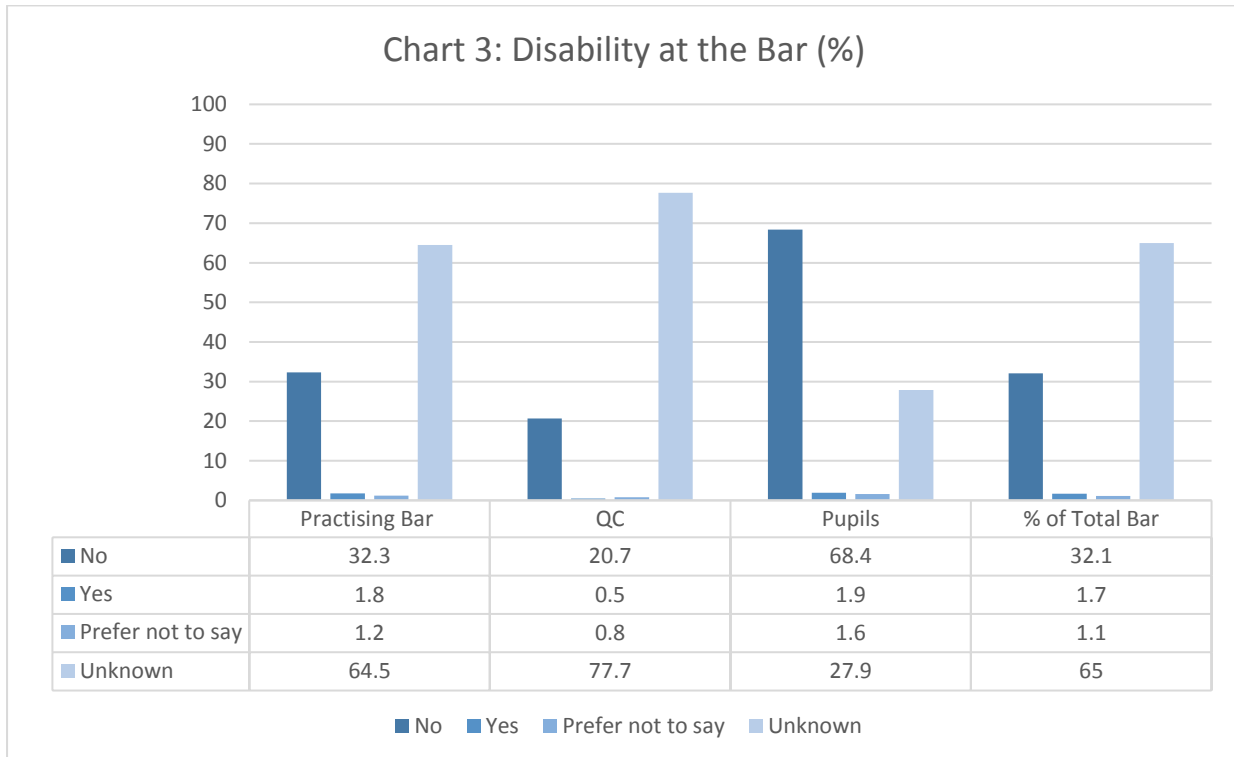


Table 5: Disability at the Bar (numbers)

	No	Yes	Prefer not to say	Unknown	Totals
Practising Bar	4,675	263	174	9,323	14,435
QC	348	9	15	1,302	1,674
Pupils	284	8	7	116	415
Totals	5,307	280	196	10,741	16,524

Age

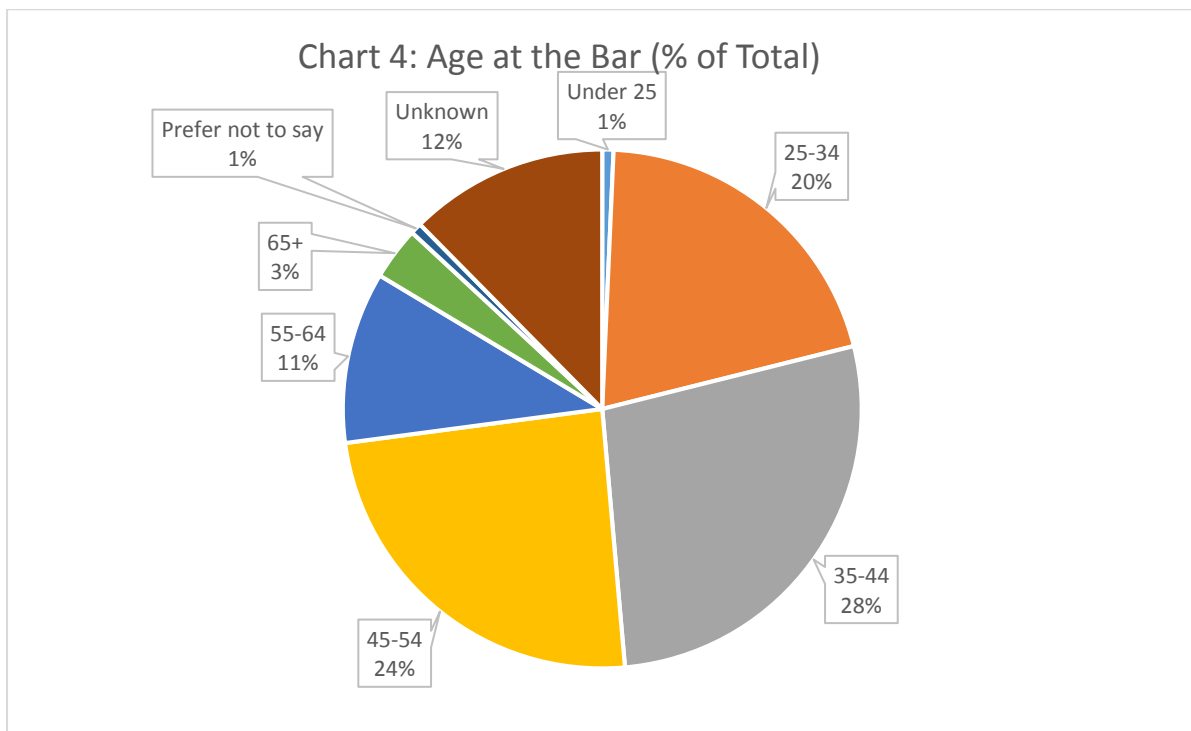
As Table 6 and Chart 4 show, age is fairly evenly distributed across the Bar as a whole. Those between the ages of 25 and 54 make up almost 75% of the profession. The only noteworthy change since 2015 is a 2pp increase in disclosure rate.

Table 6: Age at the Bar (numbers)

	Practising Bar	QC	Pupils	Totals	% of the total Bar
Under 25	34	0	86	120	0.7%

Part 1 – Public

25-34	3,093	0	285	3,378	20.4%
35-44	4,419	91	27	4,537	27.5%
45-54	3,449	556	14	4,019	24.3%
55-64	1,509	258	0	1,767	10.7%
65+	408	136	1	545	3.3%
Prefer not to say	97	10	1	108	0.7%
Unknown	1,426	623	1	2,050	12.4%



Religion and Belief

Chart 5 below shows the religion or belief of practitioners at the Bar, as a total of the whole profession. The breakdown amongst respondents is largely similar to the 2015 figures. The increased response rate is almost entirely accounted for by the increase in barristers disclosing they are Christian (up by 1.9 pp compared to 2015) or they have no religion/belief (up by 1.4 pp compared to 2015).

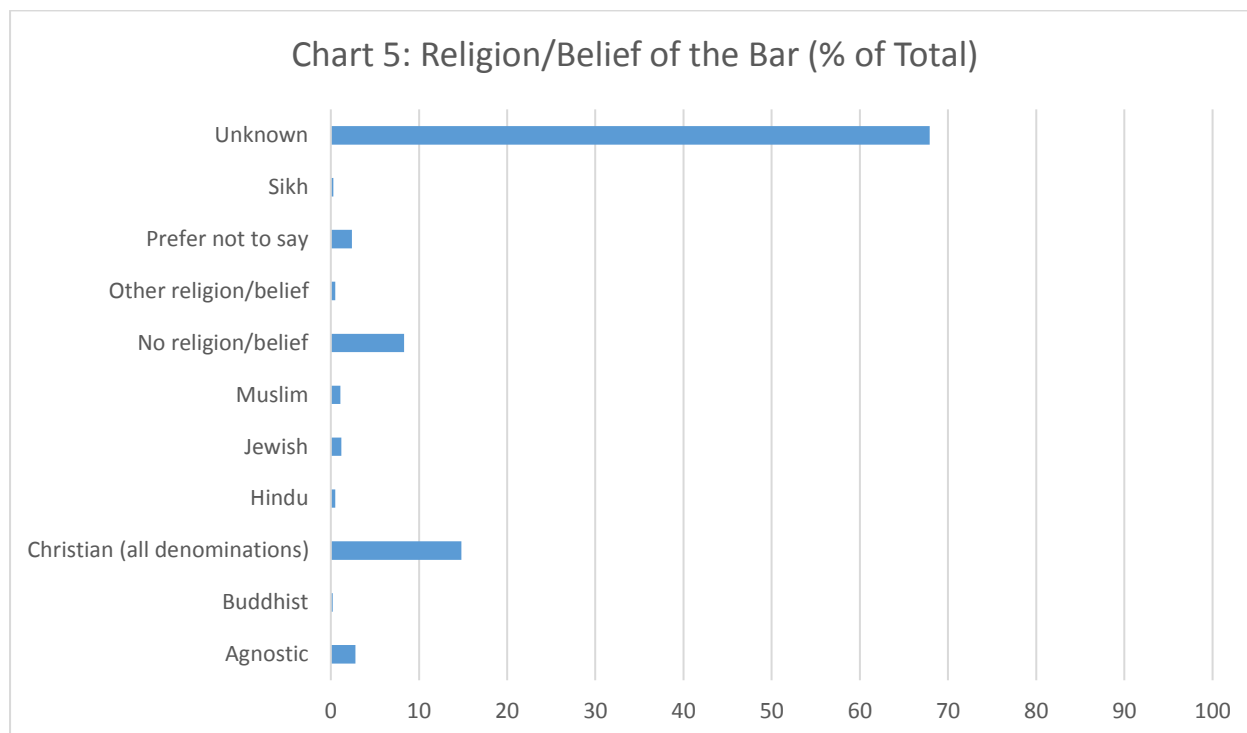


Table 7: Religion and Belief at the Bar (numbers)

	Practising Bar	QC	Pupils	Totals	% of total Bar
Agnostic	427	27	4	458	2.8%
Buddhist	27	1	1	29	0.2%
Christian (all denominations)	2,162	167	118	2,447	14.8%
Hindu	71	2	5	78	0.5%
Jewish	159	35	10	204	1.2%
Muslim	162	5	13	180	1.1%
No religion/belief	1,171	70	123	1,364	8.3%
Other religion/belief	79	3	3	85	0.5%
Prefer not to say	352	33	19	404	2.4%
Sikh	52	3	2	57	0.3%
Unknown	9,773	1,328	117	11,218	67.9%

Sexual Orientation

Chart 6 below shows the sexual orientation of practitioners at the Bar, as a total of the whole profession. The statistics remain largely similar to 2015, with the increase in disclosure being shared proportionately across the various options. The relatively low response rate means that it is difficult to draw meaningful conclusions from the data.

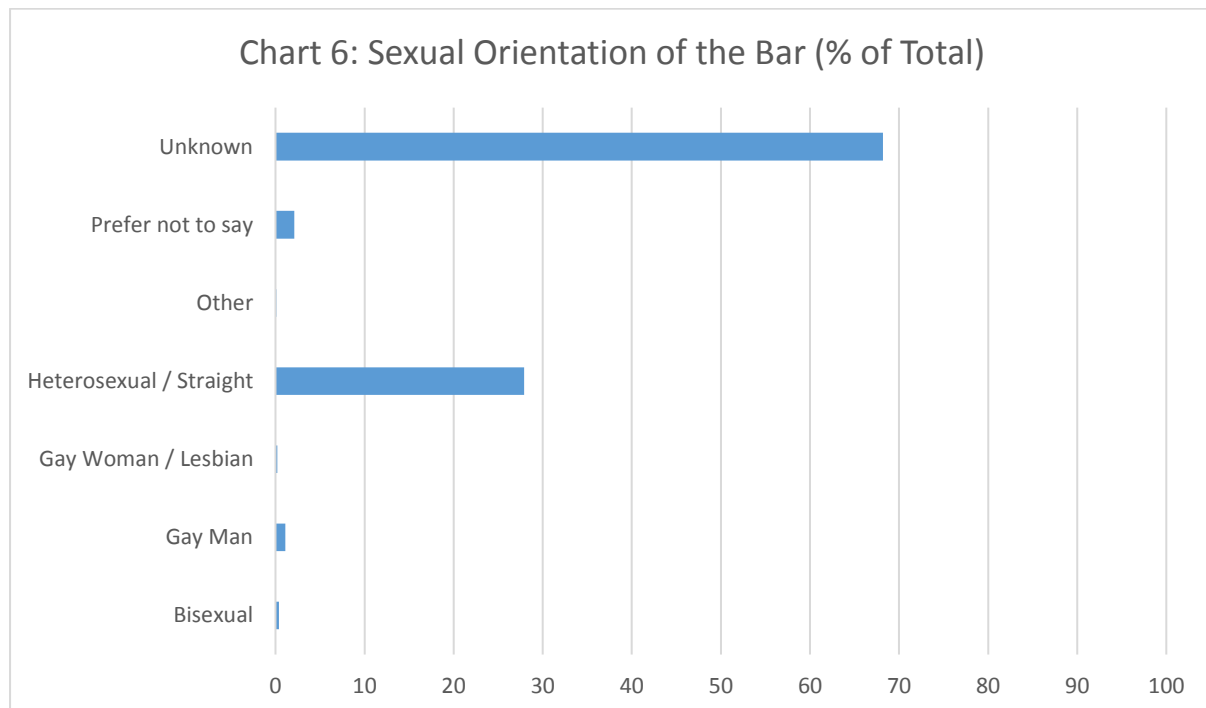


Table 8: Sexual Orientation of the Bar (numbers)

	Practising Bar	QC	Pupils	Totals	% of Total Bar
Bisexual	62	2	9	73	0.4%
Gay Man	167	7	9	183	1.1%
Gay Woman / Lesbian	36	0	2	38	0.2%
Heterosexual / Straight	4,041	303	262	4,606	27.9%
Other	17	2	1	20	0.1%
Prefer not to say	304	23	13	340	2.1%
Unknown	9,808	1,337	119	11,264	68.2%

5. Socio-Economic Background

Socio-economic background is not a protected characteristic under the Equality Act 2010. However where members have a balanced socio-economic background, it can be a good indicator of a meritocratic profession.

Unfortunately accurately measuring socio-economic background can be challenging, and there is no universal proxy for gathering such data. The BSB uses the socio-economic questions provided by the Legal Services Board, which are included on the *Barrister Connect* monitoring questionnaire and on the PRF. These questions use educational background of the barrister, and of their parents, as a proxy for determining a barrister's social class. There is a strong correlation between a person's social background and a parent's level of educational attainment – particularly when choosing the type of school to attend, type of university, and career choice.

Type of School Attended

Chart 7 below shows a summary of the type of school attended by practitioners at the Bar, as a total of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question asked is: "Did you mainly attend a state or fee-paying school between the ages 11-18?"

These statistics remains largely unchanged from 2015. The figures show that even if all of the barristers who chose not to respond had gone to state schools, a disproportionately high number of barristers went to fee-paying schools when compared with the wider population (10.7% of barristers compared to 7% of the population).

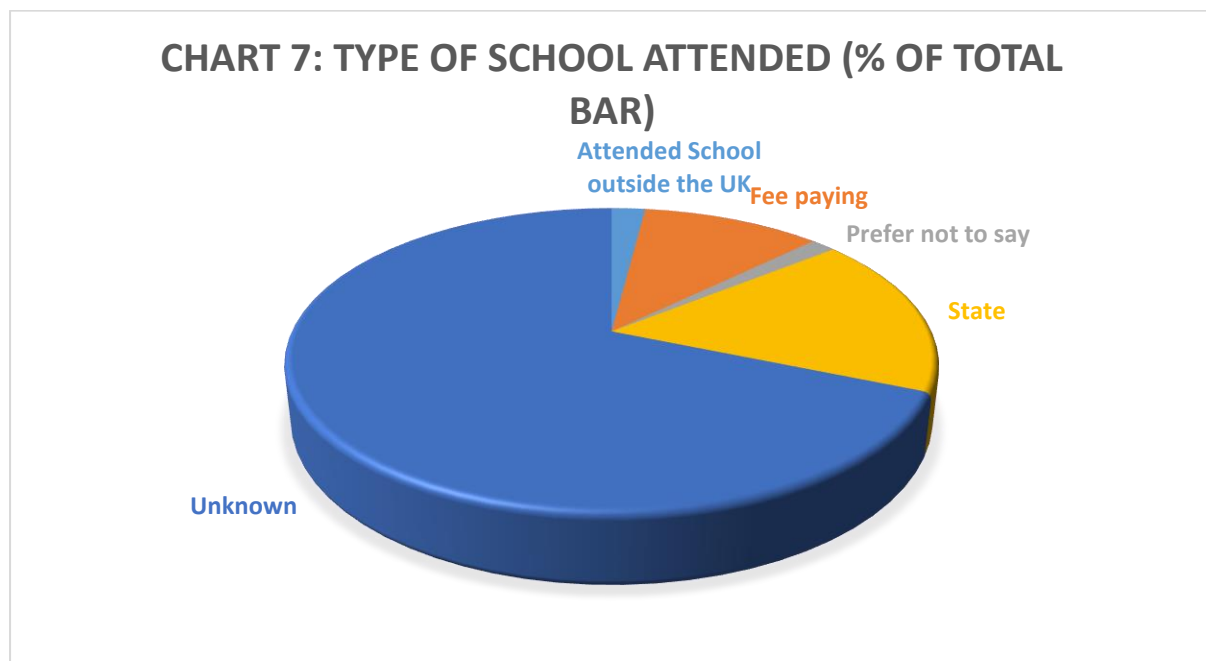


Table 9: Type of School Attended by the Bar (numbers)

Part 1 – Public

	Practising Bar	QC	Pupils	Totals	% of Total Bar
Attended School outside the UK	294	10	31	335	2%
Fee paying	1,492	187	87	1,766	10.7%
Prefer not to say	224	20	9	253	1.5%
State	2,538	115	171	2,824	17.1%
Unknown	9,887	1,342	117	11,346	68.7%

First Generation to Attend University

Chart 8 below shows whether practitioners at the Bar were the first generation of their family to attend university, as a percentage of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question asked is: “If you went to university (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?”

The statistics are very similar to in 2015. The increase in response rate has been evenly shared between those answering “yes” and those answering “no”.

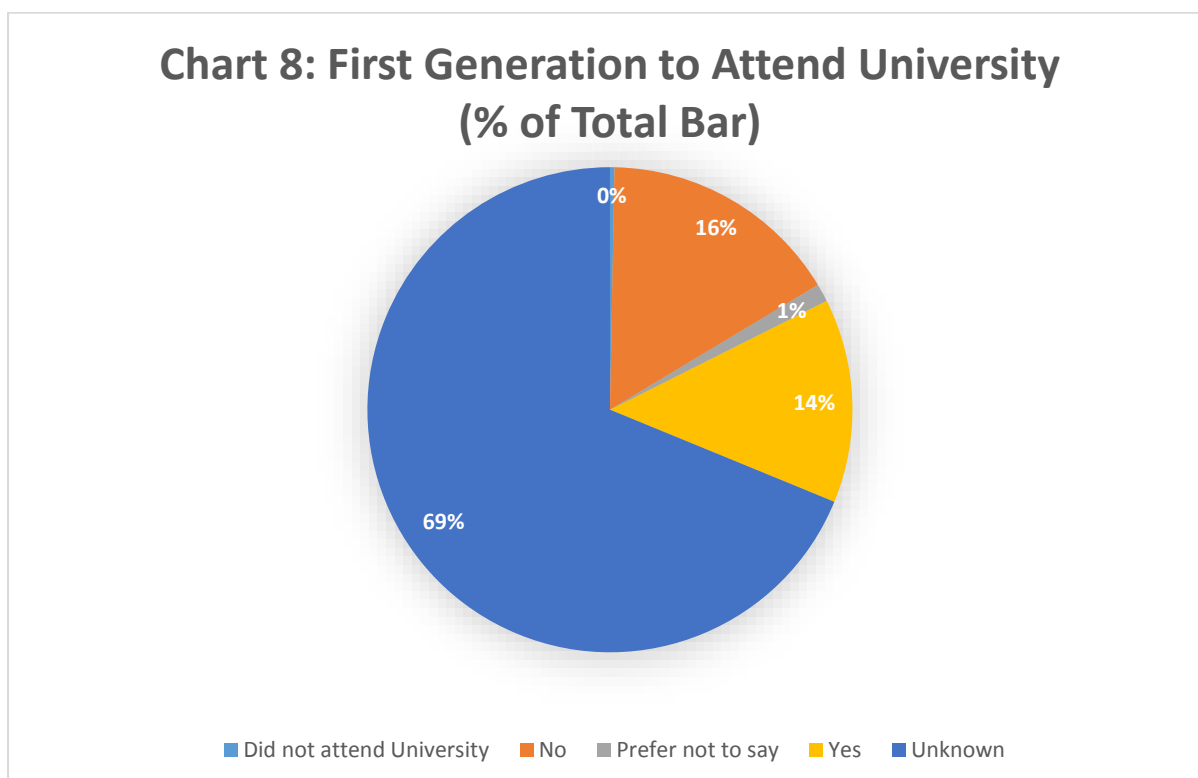


Table 10: First Generation to Attend University at the Bar (numbers)

Part 1 – Public

	Practising Bar	QC	Pupils	Totals	% of Total Bar
Did not attend University	34	13	3	50	0.3%
No	2,324	142	187	2,653	16.1%
Prefer not to say	177	17	6	200	1.2%
Yes	1,996	152	102	2,250	13.6%
Unknown	9,904	1,350	117	11,371	68.8%

6. Caring Responsibilities

The caring responsibilities categories used in this report are those provided to the BSB by the Legal Services Board. These questions are aimed at ascertaining whether or not an individual has child or adult dependants for whom they care.

Caring Responsibilities for Children

Chart 9 below shows a summary of childcare responsibility at the Bar. On the *Barrister Connect* monitoring questionnaire, the question asked is: “Are you a primary carer for a child or children under 18?”

The disclosure rate increased across the board, with the exception of pupils, whose disclosure rate fell by 17.3pp. The overall statistics remain largely the same as in 2015, with the changes broadly attributable to the change in disclosure rate.

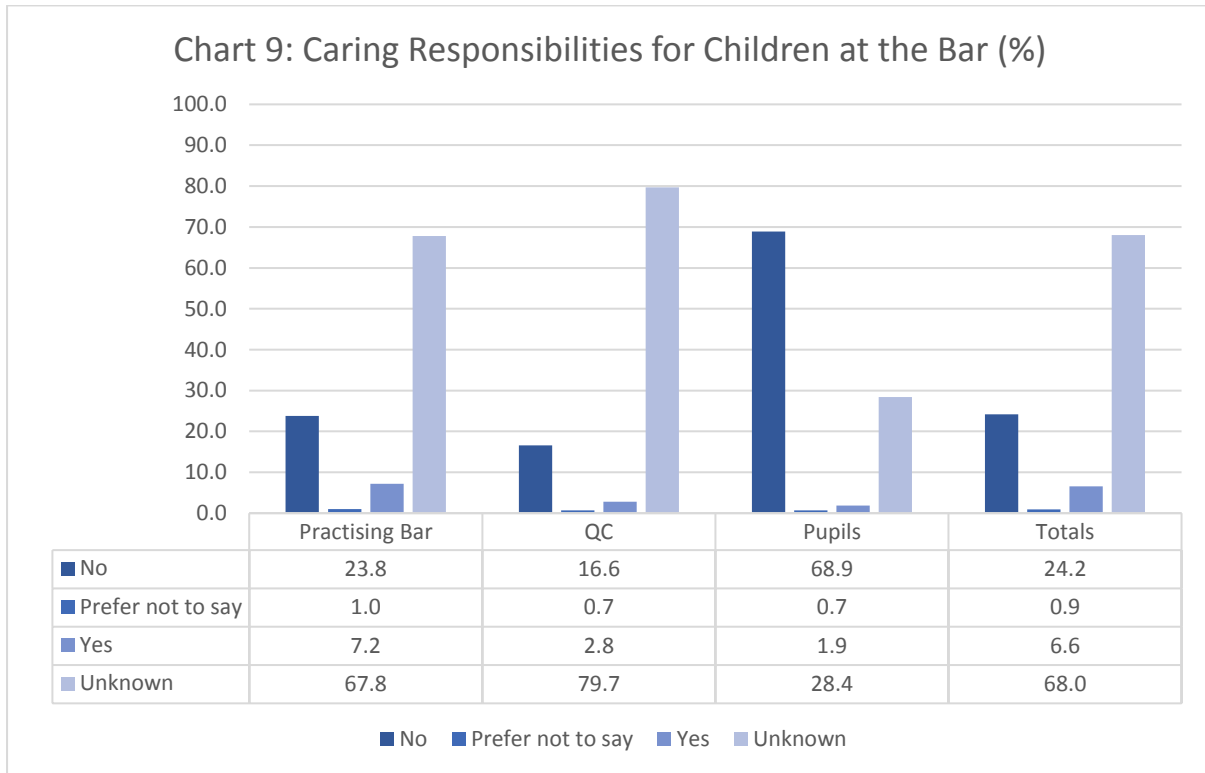


Table 11: Caring Responsibilities for Children at the Bar (numbers)

	Practising Bar	QC	Pupils	Totals
No	3,442	278	286	4,006
Prefer not to say	145	13	3	161
Yes	1,051	48	8	1,107
Unknown	9,797	1,335	118	11,250

Caring Responsibilities for Others

Chart 10 below shows practitioners at the Bar who have caring responsibilities for people other than children, as a percentage of the whole profession. On the *Barrister Connect* monitoring questionnaire, the question asked is “Do you look after, or give any help or support to family members, friends, neighbours or others because of either long-term physical or mental ill-health/disability or problems related to old age (not as part of your paid employment)?”

The spread of statistics has remained largely the same since 2015. Very few respondents provide this type of care for more than 19 hours per week, with the majority who answer saying “no” to this question.

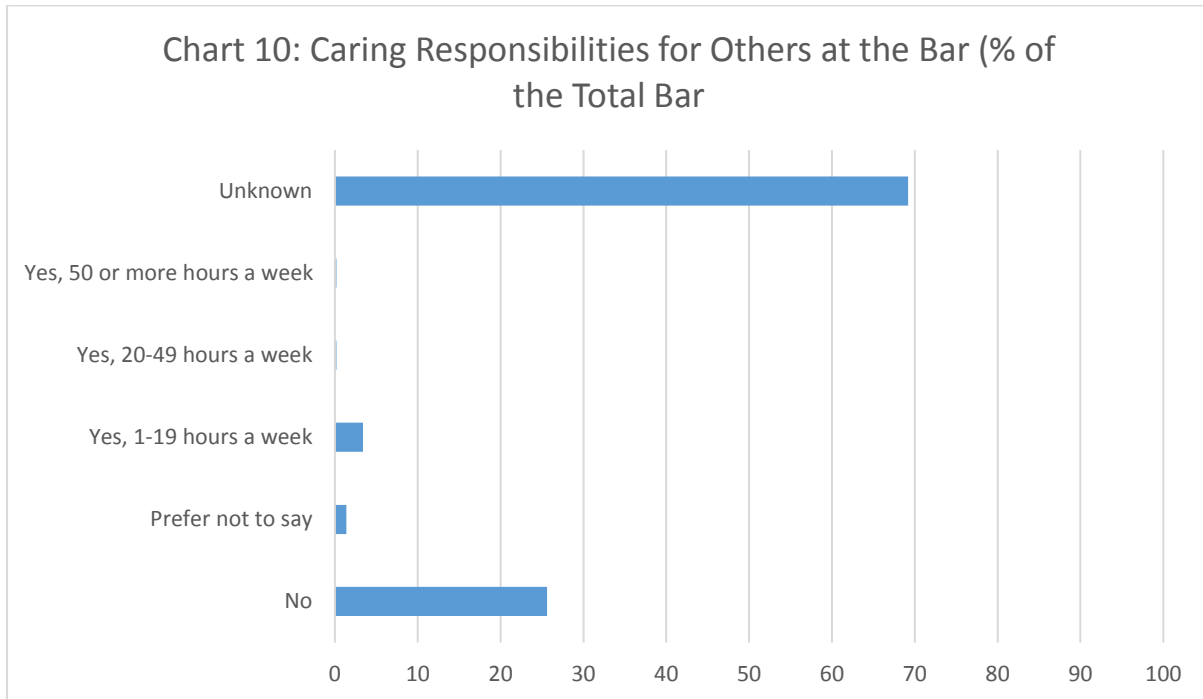


Table 12: Caring Responsibilities for Others at the Bar (numbers)

	Practising Bar	QC	Pupils	Totals	% of total Bar
No	3,697	263	277	4,237	25.6%
Prefer not to say	214	14	6	234	1.4%
Yes, 1-19 hours a week	500	49	14	563	3.4%
Yes, 20-49 hours a week	29	1	0	30	0.2%
Yes, 50 or more hours a week	23	2	0	25	0.2%
Unknown	9,972	1,345	118	11,435	69.2%

7. Conclusions

There have only been very minor changes in the reported profile of the Bar since 2015. However, this is to be expected when monitoring demographic changes in a profession on an annual basis.

Part 1 – Public

Disclosure continues to improve steadily, with all questions now responded to by over 30% of the profession. As the disclosure rate increases, so does the quality of the BSB's evidence base. Additionally, both gender and BME representation at the Bar continues to move towards more accurately representing the population as a whole. The gender and ethnic diversity of pupils is roughly in line with the population of England and Wales.

The current rate of change towards a Bar that matches the diversity of the general population remains slow, especially at QC level. At the current rates of change it would take over 50 years for women to make up 50% of QCs, and nearly twice as long for BME barristers to make up the 16% QCs that would draw them in line with the wider population of England and Wales. This implies that the barriers faced by women and BME barristers primarily relate to retention and progression within the profession.

The response rate for questions on socio-economic background is too low to draw detailed conclusions. However of those asked if they primarily attended fee-paying secondary schools, 10.7% answered "yes". Therefore even if all the 68.7% who failed to respond went to state-provided secondary education, there would still be 1.5 times more privately educated barristers than would be representative of society⁴.

There also appears to be an underrepresentation of disabled practitioners at the Bar. The response rate across the profession is low (at 35%), but is more than twice as high among pupils. Currently only 1.7% of the Bar disclosed a disability, which is very low when compared with the approximately 19%⁵ of disabled people in the wider population.

⁴ <https://www.isc.co.uk/research/>

⁵ *People with Disabilities in the Labour Market 2011*, Office for National Statistics, www.ons.gov.uk

BSB Equality Objectives for 2017-19

Status

1. For approval.

Executive summary

2. The Equality Act 2010 requires public bodies to publish equality objectives commencing on 6 April 2012. Objectives must be re-published at intervals of not greater than four years following the date of first publication. The BSB's equality objectives are aimed both externally at the barrister profession and internally at BSB staff.
3. The table at **Annex A** provides an update on the BSB's previous equality objectives, which were approved in May 2015 for the period 2015-16. All except one of these objectives has been completed – the outstanding objective will be carried forward and completed this year.
4. With new governance arrangements in place, the Equality and Access to Justice (E&AJ) team has developed new equality objectives with greater involvement from other BSB departments and Equality Champions, the Senior Management Team, the advisory pool of experts (APEX) members, in addition to engagement with consumer/voluntary organisations.
5. The new equality objectives have been set for the period 2017-19 in order to align with the BSB's strategic planning cycle. They include some work already underway, such as the work on youth courts and immigration.
6. The proposed objectives are attached at **Annex B**.

Recommendations

7. That the Board:
 - **Notes** the progress on the previous equality objectives at **Annex A**; and
 - **Approves** the 2017-19 equality objectives at **Annex B**.

Summary of Legal Requirements

8. The Equality Act 2010 Specific Duties Regulations 2011 came into force in September 2011. The regulations require that listed public authorities prepare and publish one or more objectives which it thinks it should achieve to meet any of the arms of the general equality duty (s.149 Equality Act 2010). The general duty requires public bodies to pay due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation;
 - Advance equality of opportunity between different groups; and
 - Foster good relations between different groups.
9. The Act stipulates that the objectives must be published not later than 6th April 2012 and subsequently at intervals of not greater than four years beginning with the date of last publication. Objectives must be specific, measurable, achievable, realistic and time-bound (SMART).

Background

Previous Equality Objectives 2015-16 (Annex A)

10. All but one of the previous equality objectives (11 in total) are complete. The E&AJ team and governance manager will oversee the completion of diversity monitoring of Board and committee members. The 2017-2019 objectives include an action to *'Review Board diversity data and produce an action plan to address any areas of underrepresentation'*.

New Approach to Developing Equality Objectives for 2016-17

11. The BSB Equality and Diversity Committee (EDC) was disbanded at the end of 2015 as part of the BSB governance review. The executive was restructured in order to provide greater leadership on equality and diversity issues and we have subsequently appointed people with equality and diversity expertise to APEX. At its final meeting in December 2015, the EDC approved a paper proposing a new approach to developing equality objectives. The new approach would involve greater engagement with other BSB departments, APEX members and external organisations to ensure that the objectives are aligned with BSB strategic priorities and are risk and evidence based.
12. The work completed to date has raised the profile of the equality and diversity agenda across the BSB and externally. The previous equality objectives included a commitment to *'Invite diverse groups to contribute to and inform our future diversity programme'*. To this end, we now have an E&D directory with over 150 external diversity organisations to target for further involvement and we have established relationships with a number of organisations that have helped us to develop our thinking. Examples of organisations whom we have engaged include: The Runnymede Trust, Changing Faces, Action for Hearing Loss, Social Mobility Foundation, Sutton Trust, and the Race Equality Foundation.
13. The BSB's Risk Outlook has identified the risks associated with lack of diversity, discriminatory working culture and practice as a priority theme for the BSB, which has led the Equality and Access to Justice team to seek to promote anti-discriminatory practices and improve cultural competence at the Bar. Additionally, support has been given to the BSB Consumer Programme to ensure that the BSB is an organisation where consumer engagement is embedded in our work and a diverse range of consumer perspectives is taken into account in everything we do.
14. The new objectives have been informed by a variety of activities undertaken as part of our equality and diversity programme: all BSB departments participated in workshops facilitated by Equality Champions; wider knowledge and skills from underrepresented communities was targeted through stakeholder engagement; a number of targeted equality and diversity events were held/attended; and specialist diversity organisations were invited to deliver knowledge sharing sessions. The E&AJ team has identified current issues and priorities by analysing published research, media coverage, outcomes of meetings with relevant stakeholders (the profession and other legal stakeholders), and undertaking a full review of the previous 2013 - 2016 equality and diversity strategy. Additionally, the E&D APEX lay member and SMT have all contributed to the development of our new objectives. The Board is invited to contribute to this process by reviewing the draft objectives. The Equality and Access to Justice team is available to discuss the objectives prior to the Board meeting – if you would like to do so please contact Amit Popat.

15. If the Board approves the objectives they will be published by 31 January 2017 with some supporting material to provide greater context to our equality and diversity work. The proposed objectives are listed at **Annex B** and a spreadsheet plotting implementation over the next two years is attached at **Annex C**.

Work with the Bar Council

16. The BSB has a memorandum of understanding with the Bar Council to clarify the respective roles and responsibilities of the Bar Council and the BSB with respect to equality and diversity. The equality objectives prioritise those actions that we believe are appropriate for the regulator but there is an important role for the representative body in promoting equality and diversity best practice. Where it is appropriate we will seek to collaborate with the Bar Council and to avoid any duplication of resources.

Financial implications

17. The cost of implementing the 2017-19 equality objectives has been factored into the budget bid for 2017-18 and these actions will be high priority in the subsequent year also.

Equality Impact Assessment

18. It is not considered that the equality objectives will have any adverse impact on equality because the objectives and associated actions been designed to specifically promote and advance equality and diversity.

Risk implications

19. Best practice dictates that public bodies should review and re-publish their equality objectives regularly. Failure to do so could lead to reputational issues for the BSB. These objectives directly target one of the priority risk areas identified in the BSB's Risk Outlook and Strategic Plan.

Regulatory objectives

20. The equality objectives relate directly to the BSB's regulatory objective of "encouraging an independent, strong, diverse and effective legal profession".

Annexes

- A – Update on previous Equality Objectives
- B – New Equality Objectives for 2017-19
- C – Gantt chart

Lead Responsibility

- Amit Popat (Head of Equality and Access to Justice)
- Oliver May (Senior Policy Officer, Equality and Diversity)

Update on Previous E&D Strategy Objectives 2013 - 2016

No.	Activity	Description	Finish	Status	Update
1	Research the impact the Equality Rules have had on Women at the Bar	<p>Women are currently underrepresented at the practising Bar, compared to those training to become a barrister. The number of women at the Bar decreases sharply after 12 years of being called to the Bar.</p> <p>The Equality Rules in the BSB Handbook were introduced, in part, to support the retention and progression of women.</p>	22 December 2015 (revised deadline May 2016)	Complete	Report published, letter to all heads of chambers sent by general director, Internal project group progressing actions - as set out in 2017-19 objectives.
2	Review the results of the new approach taken to Supervision and highlight any actions needed.	<p>The Supervision Department implemented a new risk-based approach to monitoring chambers and authorising entities. As a result chambers and entities are given a rating of high, medium and low risk.</p> <p>In addition, diversity monitoring forms are sent to all registered applicants for entity authorisation. It is important to review the results from the new approach to monitoring chambers and entities and to authorising entities and identify any equality and diversity issues that need to be addressed.</p>	25 September 2015	Complete	Training provided by E&AJ team to the Supervision team in new approach to supervising equality rules.

No.	Activity	Description	Finish	Status	Update
3	Increase the completion of diversity monitoring forms across the barrister profession.	The BSB hold good levels of data for some protected characteristics (over 79% disclosure for age, gender and race) but has lower levels of data in relation to other characteristics (19-24%).	28 August 2015 (revised deadline end 2016)	Complete	Disclosure rates for the monitoring forms have increased by an average of 6.3% across all categories since 2014. As the Barrister Connect System is due to be replaced, investment in significant changes in 2015 was not cost productive. The E&AJ team will feed into the design of a new system being developed and launched in 2017. For the 2016 Authorisation to Practise round, the E&AJ team worked with the Project Management office to implement smaller, in-house changes to the current system and we have sought to improve disclosure through better communications.
4	Receive completed diversity monitoring forms from the Board and all Committee members.	Monitoring of the Board and all Committee members diversity status has not been completed in the last year. The BSB currently have a low amount of completed diversity monitoring forms from the Board and all Committee members.	29 January 2016 (revised deadline mid 2016)	Incomplete	50% of Board and committees have returned their monitoring forms. The BSB chair has further requested completion of forms to all board and committee members. As featured in the 2017-19 objectives, a review of this data will be undertaken and where there is underrepresentation Positive Action plans will be progressed

No.	Activity	Description	Finish	Status	Update
5	Collecting diversity data across each stage of the barrister life-cycle.	<p>There is a disparity in the diversity data that is collected at each stage of the barrister life-cycle.</p> <p>The BSB needs full and correct diversity data of barristers in order to inform regulatory policy development.</p> <p>Widening access to the Bar and addressing inequalities for the barrister profession are key priorities for the BSB.</p>	28 August 2015	Complete	The diversity data audit was undertaken and a report presented to the Equality Diversity Committee (EDC) in April 2015. This has informed our new objectives in relation to increasing access to the profession.
6	Produce guidance on the reporting of discrimination and harassment for barristers.	<p>The Biennial Survey 2013 found that 25% of black minority ethnic (BME) barristers personally experienced bullying and harassment.</p> <p>Bullying and harassment also disproportionately affects female and disabled barristers.</p> <p>LawCare found that 15% of complaints were about bullying from legal professionals.</p>	25 September 2015	Complete	Handbook updated and communicated across sector. Guidance published on BSB website ¹

¹ https://www.barstandardsboard.org.uk/media/1594778/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external.pdf

No.	Activity	Description	Finish	Status	Update
		There has been a low number of reports to the Professional Conduct Department.			
7	Identify the current complaints against BME barristers and develop an action plan to counteract any potential disparity.	In 2013 a review into the professional conduct processes was completed and it was found that there was a disproportionate amount of complaints against BME barristers.	25 September 2015	Complete	A report with recommendations was presented to the Board in January 2016. The research showed that gender was a significant predictor of the outcomes of complaints but ethnicity was not. Anti-Discrimination Training was delivered to Professional Conduct Department in October 2015 and Professional Conduct Committee in December 2016 receiving positive evaluations. Race Equality partnership event was delivered with recommendations for the BSB to host a round table to identify solution to improving race equality within the profession. New objectives include a round table with BME barristers.
8	Ensuring Equality Analysis is integrated in Policy, Strategy and Business Planning.	A programme of work has commenced to reform the BSB's education and training regulation to ensure flexibility and high standards in barristers' services for the future. It is important that we assess each stage of development to ensure it does not have an adverse impact on diverse groups. A programme of work has commenced to identify key areas of risk to our regulatory objectives. This will make changes to the way the BSB works and we need to	See below	Complete	<i>See below for updates on each action area</i>

No.	Activity	Description	Finish	Status	Update
		ensure that the work produced has also been equality impact assessed.			
		<i>Meet with Future Bar Training (FBT) leaders to agree timescales for each EIA - produce plan</i>	07 May 2015	Complete	Complete – plan produced.
		<i>Complete an equality analysis of the review and reforms of education and training for the Bar (Future Bar Training Programme).</i>	22 May 2015	Complete	Completed over all four areas: - Academic stage - Vocational stage - Professional stage - Legal subjects/knowledge The FBT programme was adjusted to take into account the equality issues identified through the above EIAs.
		<i>Meet with Regulatory Risk Manager - produce plan</i>	22 May 2015	Complete	Risk framework now includes E&D and Anti Discriminatory Practice
		<i>Design an EIA training session</i>	30 July 2015	Complete	Training session designed
		<i>Deliver pilot EIA training sessions</i>	30 August 2015	Complete	Two pilot sessions delivered with positive evaluations
		<i>Complete an equality analysis for the work that has been produced from the Regulatory Risk Programme.</i>	30 October 2015	Complete	EIA screenings of the Risk Framework and Risk index have been completed.
		Contract Manual EIA- to agree actions	30 October 2015	Complete	EIA competed with recommendations – awaiting final contracts manual to formalise EIA
		Consumer Guidance EIA- to agree actions	22 December 2015	Complete	EIA of Consumer Guide first draft completed.

No.	Activity	Description	Finish	Status	Update
		ABS Implementation EIA	22 December 2015	Complete	EIA complete with project team and recommendations are now considered as part of the project plan.
9	Complete E&D e-learning training by the Board and Committee members.	The Board and all Committee members should ensure that their E&D knowledge is kept up-to-date and that they are well equipped to deal with issues that arise.	25 September 2015	Complete	All Board members and members of the EDC have completed the e-learning course. Approach to E&D training is being reviewed by the E&AJ Team.
10	Review diversity data of people who have applied for alternative pathways to the Bar and make recommendations to improve access for the underrepresented.	The BSB collects diversity data of people who have applied to the Qualifications Committee for a waiver or exclusion from the current prescribed route to the Bar. We should be aware of the diversity of those applying for alternative pathways in order to progress widening access to the Bar for underrepresented groups.	28 August 2015	Complete	Report on diversity of applicants to the Qualifications Committee presented to the EDC in June 2015. Regulatory Assurance department to work with E&AJ team and Research team to continue monitoring to identify trends over time, and include outcomes data in the analysis.
11	Invite diverse groups to contribute and inform our future diversity programme.	The BSB recognise the need to capture wider knowledge and skills from underrepresented communities and the wider public. These groups can provide vital intelligence to co-produce our equality and access to justice work.	29 January 2016	Complete	The E&AJ team have produced an E&D directory containing over 150 external diversity organisations to target for further involvement with our work. Over 30 delegates attended our cross-cultural communication event and registered their interest in working in partnership with the BSB in the future. Support has been given to the BSB Consumer Programme to ensure engagement and a consumer focus is embedded in our work.





No.	Activity	Description	Finish	Status	Update
		The BSB Business Plan 2015-2016 committed to establishing collaborative relationships with the public and consumers.			

Equality Objectives January 2017- March 2019		
Diversity at the Bar		
Equality Objectives:		
<ol style="list-style-type: none"> 1. Address the causes of discrimination experienced by those with protected characteristics at the Bar. 2. Reduce the barriers to progression and retention, and improve social mobility. 		
Focus	Actions	Completion
Women	Conduct workshops with female barristers to inform strategies to reduce discrimination. Produce a report of findings with associated action plan.	November 2017
	Implement the action plan.	December 2017 - 2019
Race	Host a roundtable with race equality organisations to identify specific approaches for regulation in improving race equality in the profession. Report on outcomes and produce an action plan.	December 2017
	Implement the action plan.	March 2018 – March 2019
All Protected Characteristics	Conduct research with the profession to develop an evidence base that informs strategies to reduce discrimination and increase Positive Action in the profession. Report the findings with an associated action plan.	August 2018
	Begin to implement the action plan.	March 2019
Access to the Profession		
Equality Objectives:		
<ol style="list-style-type: none"> 3. Improve our understanding of the diverse experiences of students training for the Bar. 4. Increase equality of access to the profession. 		

Focus	Actions	Completion
Bar Student Experience	Undertake targeted research in order to understand the experiences of students with the following protected characteristics: BME, women, disabled and, and in addition, those from lower socioeconomic backgrounds. Use research findings to inform decisions for FBT regarding increasing access. Produce and publish findings of the research.	July 2017
	Undertake qualitative research in order to assess how training providers' equality policies can have a positive impact on student experience.	January 2019
	Produce a report and begin work with providers to identify and influence best practice.	March 2019
Increasing Access for Diverse Consumers		
Equality Objective:		
5. Improve Access to Justice for vulnerable clients, with focus on immigration and young people.		
Focus	Smart Actions	Completion
Immigration	Develop a framework for barristers to identify, and improve best practice with, vulnerable consumers.	March 2018
	Produce guidance for immigration consumers on accessing barrister services, including guidance for intermediaries.	April 2018
Youth Court Advocacy	Improve the quality of advocacy available to young people by clearly defining what constitutes competent youth court advocacy.	April 2017
	Publish an accessible guide for young people about what to expect in youth court proceedings.	May 2017
	Compulsory registration for advocates undertaking youth court work.	March 2018

BSB Internal Practices		
Equality Objective:		
6. Embed E&D best practice across all BSB departments.		
Focus	Smart Actions	Completion
BSB Internal Practices	Each BSB department develops E&D SMART action plans annually.	From May 2017
	Anti-Discriminatory training for managers and leaders.	Sep 2017
	EIA trainer training for Equality Champions.	January 2018
	Analyse staff surveys for any potential E&D issues and agree appropriate actions to address surfacing issues.	May 2018
	Review Board diversity data and produce an action plan to address any areas of underrepresentation.	Review July 2017 Action Plan September 2017 Action Plan implemented Sep 2018
	Anti-Discriminatory training and vulnerability training for all staff.	October 2018
	Host four E&D Knowledge Sharing Sessions.	March 2019

	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17	Jul 17	Aug 17	Sep 17	Oct 17	Nov 17	Dec 17	Jan 18	Feb 18	Mar 18	Apr 18	May 18	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19		
Undertake research on experience of pupils with select protected characteristics (BME, Women, disabled and people lower SE background)				2																									
Introduce and implement a regulatory approach that promotes access to competent advocacy for young people				3																									
Publish an accessible guide for young people on what to expect from representation in youth court proceedings				3																									
Each BSB department develops E&D SMART actions annually.				4																									
Produce a report on research into the experiences of students with protected characteristics.						2																							
Conduct workshops with female barristers to identify strategies to reduce discrimination.							3																						
Review Board diversity data.							4																						
Produce a report of findings from workshops with female barristers with associated action plan.									2																				
Produce action plan from Board diversity data review to address areas of underrepresentation.									4																				
Host a roundtable with race equality organisations to identify specific approaches for regulation in improving race equality in the profession.										3																			
Implement the action plan from workshops with female barristers.										3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Report on outcomes of roundtable with race equality organisations.											3																		
Analyse staff surveys for E&D issues and implement appropriate actions to address surfacing issues.													4																
Implement the action plan from the roundtable on race equality.														3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Develop a framework for barristers to identify, and improve best practice with, vulnerable consumers.															3														
Produce guidance for immigration consumers on accessing barrister services, including for intermediaries.																3													
Conduct survey with the profession to identify strategies to reduce discrimination, increase Positive Action and influence inclusive cultures in																	3												
Report of findings from survey with the profession with associated action plan.																					3								
Implement action plan derived from Board diversity data review.																					4								
Undertake qualitative research in order to assess how training providers' equality policies can have a positive impact on student experience.																										2			
Implement action plan from survey with profession.																												3	
Produce a report on research to assess impact of training providers' equality policies on student experience.																												2	

Key	Objectives 1&2: 	Objectives 3&4: 	Objective 5: 	Objective 6: 
	1. Address the causes of discrimination experienced by those with protected characteristics at the Bar. 2. Reduce the barriers to progression and retention, and improve social mobility.	3. Improve our understanding of the diverse experiences of students training for the Bar. 4. Increase equality of access to the profession.	5. Improve access to justice for vulnerable clients, with focus on immigration and young people.	6. Embed E&D best practice across all BSB departments.

Standing Orders and Scheme of Delegations – proposed amendments

Status:

1. For discussion and decision.

Executive Summary:

2. The Board has power to agree Standing Orders, setting out its procedures and Terms of Reference for its committees. Board decisions taken in 2016 (particularly those to move towards disestablishment of the Qualifications Committee and to develop an assurance framework) require amendment of procedures and of the Terms of Reference for committees.
3. Proposed amendments to Standing Orders are attached as Annex 1. Amendments are proposed to allow implementation of previous Board decisions, and following review by the executive.
4. The Board's approval of changes to the wording of a delegation of one of its supervision powers is sought, (to correct references to source material only).
5. Delegation by the Qualifications Committee of its functions are reported, as required under Standing Orders.
6. Minor amendments to the Governance Manual are reported, for the information of the Board.

Recommendations

7. It is recommended that the Board:
 - a) **approve** the proposed revisions to Standing Orders;
 - b) **agree** that the revised Standing Orders take immediate effect;
 - c) **approve** the amended wording of delegation of its power to take action as a result of assessment against compliance with the BSB Handbook;
 - d) **note** the delegations made by the Qualifications Committee of its powers to the Director General, reported in accordance with Standing Orders; and
 - e) **note** the minor amendments to the Governance Manual.

Background

8. The Constitution of the Bar Standards Board 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.
9. At its meeting in September 2016, the Board approved proposals for the assurance framework which included changes to the remits of the Governance, Risk and Audit Committee (GRA) and the Planning, Resources and Performance Committee (PRP). The Board agreed that GRA's remit should include the oversight of the internal audit function and the development of first and second lines of defence by management and that the PRP expand its remit to also consider effectiveness of the BSB.
10. Proposed revisions to the respective Terms of Reference were submitted to the subsequent meetings of GRA and PRP. The GRA and PRP have approved the wording now submitted to the Board.

11. At its meeting in November 2016, the Board noted the transitional arrangements agreed by the Qualifications Committee for the Authorisations Governance Review. These include that all first instance decisions will be taken by staff from 1 January 2017 (who can seek advice from members of the Qualifications Committee acting as a pool of advisors). Further, from 1 April 2017, applications for review of first instance decisions will be determined by review panels, comprised of three members of the Qualifications Committee.
12. Two of the powers of the Qualifications Committee to make first instance decisions were not delegated to the executive, and one existing delegation used wording slightly different to that of the power delegated to the committee in Standing Orders. The Qualifications Committee has therefore delegated these powers to the executive, so that all first instance decisions are delegated and the wording is that used in the Standing Orders.
13. In accordance with Standing Order 46 (existing numbering), that delegation is now notified to the Board and will be recorded in the Scheme of Delegations. In particular, that the Qualifications Committee, on behalf of the Bar Standards Board (by delegation within Annex 2e of the Standing Orders) has delegated the power, including the power to sub-delegate, to the Director General to:
 - Determine applications for waivers from the pupillage funding and advertising requirements (rC113)
 - Determine applications for authorisation of Approved Training Organisations (rQ39)
 - Determine applications for waivers from the requirement to undertake Public Access work (rC120)
14. The delegation made by the Board of its power to take action as a result of assessment against compliance with the BSB Handbook currently lists the source as *rQ131, 132, 133 and BSB General Guide to CPD*. For correctness, it is proposed amending the source reference to *rQ130 – 138 and BSB General Guide to CPD (2016) and other supporting material*. This is to clarify that whilst new practitioners must still abide by the provisions set out in the *BSB General Guide to CPD ((2016)*, other supporting material is in development.
15. Amendment is proposed to the requirements for quorum set out in the Standing Orders to allow the Qualifications Committee to act as panels of three. Proposed wording is inserted into Standing Order 29 so that the existing requirements apply “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”.
16. The executive have taken the opportunity to propose a number of other amendments to Standing Orders, listed below in paragraphs 18 - 33. The major substantive changes include those to specify persons who cannot also be members of the Bar Council and its committees, to allow written resolutions to be achieved outside of meetings of the Board and its committees, and to simplify the procedures to convene panels for recruitment of committee members.
17. Review of Standing Orders necessitated a consequential review of the Governance Manual. A number of minor changes will be made by the executive for correctness and currency. These include punctuation, correction of minor typographical errors, correction of titles of individuals and entities, and correction of references to the Standing Orders. The substantive changes are to revise the text about the Independent

Observer (only so that it is in the past tense) and to state that GRA will appoint internal auditors and agree an annual audit plan. Given the minor nature of all other changes, an amended version is not attached.

Comment

18. The proposed amendments to Standing Orders include revising a number of references to the “BSB” to the “Board”. This is to ensure the correct use of those terms as set out in the Definitions in the Standing Orders (where the “BSB” can also refer to committees and any individual or group exercising the delegated powers of the Board).
19. A number of minor amendments have been made for correctness and compliance with BSB House Style. These include punctuation, correction of minor typographical errors, correction of cross referencing and correction of titles of individuals and entities.
20. Amendment is proposed to Standing Order 10 c) so that the requirement is that a third of a committee’s membership are barristers, but no longer necessarily practising barristers. Decisions as to whether a committee requires a barrister member or members to be currently practicing will be made at the time of recruitment.
21. Amendment is proposed to Standing Order 12 which states which office holders cannot also be a member of the Bar Council or any of its representative committees. These amendments include removing the Independent Observer (as that role has been disestablished) and inserting members of the Advisory Pool of Experts and Task Completion Groups.
22. Minor amendments are proposed to Standing Order 17 to make explicit that fees and expenses may be paid to members of the listed entities, not to the entities themselves.
23. Amendment is proposed to Standing Order 19 so that reviews of performance of members are conducted within the first 18 months of appointment, and that reviews are required for members of committees and the Advisory Pool of Experts but not for members of Task Completion Groups.
24. Amendment is proposed to Standing Order 20, so that the Board is still required to meet at least six times in a 12 month period but it is no longer specified that this is usually monthly except for August.
25. Amendment is proposed to Standing Order 23 so that the frequency of committee meetings is determined by the committee, rather than the Chair or convener. This is for consistency with Standing Order 10d) which states, in part, that a committee must adopt and maintain rules of procedure on an annual basis including frequency of meetings.
26. Amendment is proposed to Standing Order 25 to make explicit that invitation to the Chairman of the Bar Council and a person nominated by the Council of the Inns of Court to attend all or part of the Board’s private sessions shall be in accordance with the protocol for ensuring regulatory independence.
27. Amendment is proposed to Standing Order 29 as set out in paragraph 15 above, so that the Qualifications Committee is quorate when acting as a panel if the three members of the panel are present.

28. Amendment is proposed to Standing Order 34 to clarify that minutes are approved at the next appropriate meeting of the Board or committee. The text referring to the practice of seeking the Chair's further approval of ratified minutes has been deleted, as that is not the usual practice of the BSB.
29. A new Standing Order 35 is proposed, to allow the Board and its committees to pass resolutions outside of meetings. This mirrors the rules for out of session decisions of the Board set out within the Governance Manual. It includes that the resolution must be signed or approved by email by two thirds of members and must be formally ratified at the next meeting so it appears in the minutes.
30. Amendment is proposed to Standing Order 46 (new numbering), to clarify that the Board cannot delegate policy decisions about whether to make payments to members of particular entities but can delegate decisions on payments of fees and expenses to individual members of those entities. Reference to the Recruitment Panel is also deleted, as a consequence of the proposed amendments to Annex 3 (setting out appointments processes for BSB committees).
31. Amendment is proposed to Standing Order 51 (new numbering) to clarify that the BSB appoints its own staff, and that responsibility for appointment of staff other than the Director General will be delegated by the Board to the Director General.
32. Annex 2b (Terms of Reference of GRA) and Annex 2c (Terms of Reference of PRP) have amendments proposed as recommended by those committees.
33. Amendments are proposed to Annex 3 (Appointments Processes for BSB Committees) to rationalise the processes for appointments. The requirement for the Board to appoint a Recruitment Panel annually has been deleted, and it is proposed that selection panels are convened as and when required. The constitution of selection panels is specified (one independent member, at least one and a maximum of two Board members, and a member of BSB senior staff as delegated by the Director General). In the case of recruitment to the Professional Conduct Committee, unless one of the Board members appointed is an Office Holder of that committee, then an Office Holder of the committee will be appointed in place of one of the Board members. It is also proposed that the Chair of the BSB makes appointments of committee members on the recommendation of selection panels (rather than the Recruitment Panel).

Resource implications

34. There are no resource implications arising from the proposed amendments to Standing Orders.

Equality Impact Assessment

35. This proposal does not itself pose equality impact risks. Reference in Standing Orders (2h)) to the BSB's commitment to conducting its business in accordance with its Statement of Governance Principles, and its explicit commitment to anti-discriminatory approaches within that statement, make clear the Board's approach to equality and diversity.
36. Changes to the operations of the Qualifications Committee as a consequence of the Authorisations Governance project (during the transitional period and thereafter) will be assessed as part of the equality impact assessment of the overall project.

Risk implications

37. Revising the Terms of Reference of GRA and PRP addresses any risk of the Board making decisions which are not subsequently enacted, and ensures that governance remains robust.
38. The amendments to the Standing Order for quorum addresses the risk of panels of the Qualifications Committee determining reviews of first instance decisions when they are inquorate.
39. The risk implications of not making the other proposed amendments are low, both in terms of impact and likelihood.

Impacts on other teams / departments or projects

40. Changes to Standing Orders impact all teams and departments, as the executive must ensure that business is conducted in compliance with the Standing Orders. The impact is negligible, given that it is usual practice for other teams and departments to seek guidance of the Governance team on application of the Constitution and Standing Orders.

Consultation

41. The proposed revisions to the Terms of Reference for the GRA and PRP Committees have been the subject of consultation with those committees. The proposed changes to quorum to allow the Qualifications Committee to act in panels of three has been the subject of consultation with the Chair and Vice Chairs of that committee. Amendment of Standing Orders is not a matter which the Board is required to consult upon externally.

Regulatory objectives

42. The proposals clarify the procedures by which the BSB operates, and do not in themselves further the regulatory objectives.

Publicity

43. No publicity is planned. The amended Standing Orders will replace the version published on the website and will be promulgated to all BSB staff.

Annexes

44. Annex 1 – BSB Standing Orders with the proposed amendments tracked.

Lead responsibility:

Rebecca Forbes
Governance Manager



**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 ~~01 January 2016~~ 26 January 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 ~~s~~Standing ~~e~~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 ~~50~~ 51.

“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 ~~Rule [6]~~ 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.

“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; ~~and~~
 - g. working cooperatively with the Inns of Court, the ~~Inns' Council~~ Council of the Inns of Court and BTAS; ~~and~~
 - h. ~~c~~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 ~~3~~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 then from time to time.

PART 4 – COMMITTEES

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;
 - d. The Professional Conduct Committee; and
 - e. 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 BSB 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 practising 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); ~~and~~
 - 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.
11. The BSB may appoint a Task Completion Group on such terms and as it considers appropriate.

12. 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;
- c. the Advisory Pool of Experts; or
- ~~b.d.~~ Task Completion Groups.
- ~~e.e. or act as a BSB Independent Observer.~~

13. A person shall cease to be a BSB Committee 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 ~~ceased~~ to be a practising barrister or ~~became~~become a member of the Bar Council or one of its representative committees;
- e. they ~~failed~~ 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.

14. 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.

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

Advisory Pool of Experts

16. 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

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

Obligations of members

18. All Board and Committee 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] or any other ad hoc reviews of individual members that the Board or the Chair of the Board or Committee determines are required.
19. All Committee and ~~Task Completion Group~~ Advisory Pool of Experts members are subject to a minimum of a review of performance within ~~one year~~ 18 months of appointment and a review of performance preceding any reappointment decision.

PART 5 – PROCEEDINGS OF THE BSBBOARD AND ITS COMMITTEES

Meetings

20. The Board must meet at least six times in a 12 month period; ~~usually monthly except for August, unless it decides otherwise.~~
21. If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone or email if necessary.
22. Each Board meeting may be separated into public and private sessions.
23. Committee meetings are held in private and the frequency of such meetings is to be determined by the ~~relevant Chair or convener~~ Committee.

Attendance at meetings

24. The Chairman of the Bar Council and a person nominated by the President of the ~~Inns'~~ 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 Chairman of the Bar Council may attend and speak (but not vote) at any public session of a meeting of the Board.
25. The BSB may invite the Chairman of the Bar Council and any person or persons nominated by the Chairman of the Bar Council, and a person nominated by the President of the ~~Inns'~~ 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.
26. 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.
27. The Board or a Committee, may at any time invite any person to attend their meetings in an advisory or consultative capacity.

Quorum

28. 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.

29. 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 32), 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.
30. 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.
31. 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.
32. 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.

Minutes

33. Decisions made by the Board and Committees must be recorded in writing.
34. Minutes of the decisions taken and where ~~the~~ 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., ~~when agreed, shall be approved either electronically or in writing at the appropriate meeting or as soon as practicable if the former is not appropriate, by the person chairing that meeting.~~

Written resolutions

- 34-35. A decision taken outside a meeting is valid if:
- reasonable notice of the matter to be decided has been given to all members of the Board or the Committee;
 - it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote;
 - 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;
 - the decision is formally ratified at the next meeting and appears in the minutes of that meeting.

Agenda papers

- 35-36. The agenda and papers for any meeting of the Board or a Committee 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

- 36-37. The Board may decide which of the papers considered at its meetings should be made public after each Board meeting.
- 37-38. The Board may also publish its agenda and minutes of its meetings.
- 38-39. There is a presumption in favour of publication of Board papers unless the Board considers there is good reason not to do so.

PART 6 – MEMBERS’ INTERESTS

~~39-40.~~ 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.

~~40-41.~~ With regard to conflicts of interest, a member of the Board or a Committee must:

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

~~41-42.~~ A member of the Board or a Committee must, in accordance with the Gifts and Hospitality Policy, declare any reportable hospitality offered or received in that capacity.

PART 7 – DELEGATION

~~42-43.~~ Pursuant to paragraph 14(4) of the Constitution, the following arrangements are made for delegation of the functions of the Board.

~~43-44.~~ 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 5.

~~44-45.~~ The Board may, to the extent it considers appropriate and subject to paragraph 46, delegate in writing any function ~~subject to paragraph 45~~ to the Chair of the BSB, a Committee, the Chair of a Committee, or one or more ~~members of BSB staff~~ either by name or by a position so specified in the delegation, and shall establish and maintain a scheme of delegations s 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 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 atas they consider appropriate.

~~45-46.~~ 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 ~~39-40~~;
- ~~c. appointment of members of the Recruitment Panel;~~
- ~~d. approval of the budget bid;~~
- ~~e. making of rules forming part of the regulatory arrangements; or; and~~
- ~~f. decisions about policy on payment of fees or expenses under paragraph 2317.~~

~~46-47.~~ A Committee may delegate any function within its terms of reference to a member of BSB staff either by name or by thea position specified in the delegation. Any such

delegation must be recorded in writing, notified to the Board, and recorded in the scheme of delegations.

47.48. Nothing in paragraphs 42.43-47.48 prevents the [BSB Board](#) or a Committee whose function has been delegated from exercising that function itself.

PART 8 – RESOURCES

General

48.49. The Bar Council's financial management controls are set out in the Finance Manual produced by its Finance ~~and Audit~~ Committee. The BSB will abide by the Finance Manual.

The Annual Budget

49.50. 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 [BSB Board](#) considers its budget for submission in accordance with the Finance Manual procedures.

Staff

~~50.51. The BSB appoints its own officers and support staff and determines their remuneration. Persons so appointed shall be employees of the Bar Council and the BSB shall consult fully with the Bar Council in matters relating to that employment. 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 ~~BSB-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 develop the BSB's internal audit function including the appointment of the Board's Internal Auditors. To agree the annual audit plan and include any audit reviews that the Board wishes to see conducted. 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 ~~(including the Independent Observer)~~ 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;⁵⁷
7. A lay or barrister vice chair;⁵⁷ 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 [sS](#)Strategic [pP](#)lan and annual [bB](#)usiness [pP](#)lan 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 [sS](#)Strategic and [bB](#)usiness [pP](#)lans, 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
- ~~6-7. 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.~~
- ~~7. to agree how the BSB monitors, measures and reports performance to best effect, with appropriate transparency and in a timely and consistent manner. To consider the quarterly performance reports prior to submission to the Board.~~

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

8. Five members, including a [cC](#)hair who must be a member of the Board, and have an overall lay majority.

Annex 2d - Professional Conduct

The ~~€~~**T**erms of ~~€~~**R**eference 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 4~~four~~ vice chairs. There must be 2~~two~~ lay and 2~~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 judg~~e~~ment 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. The BSB appoints a Recruitment Panel annually to oversee the selection of new members of its Committees. Unless this proves impractical, all Recruitment Panels constituted for members of the Professional Conduct Committee shall contain a Board member who also sits on the Professional Conduct Committee.~~
- ~~3.2.~~ Appointments of BSB 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.
- ~~4. The Recruitment Panel is responsible for:-~~
 - ~~a. appointing a selection panel for each committee where there is a vacancy;~~
 - ~~b. ensuring that each selection panel consists of:-~~
 - ~~i. two members of the recruitment panel, preferably being a lay member and a practising barrister member of the BSB,;~~
 - ~~ii. an independent person with knowledge of the CPA Code of Practice or similar skills and experience in good recruitment procedures.~~
- ~~5. The Recruitment Panel must consider the recommendations of each selection panel before deciding on an appointment.~~
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 ~~selection panel~~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. For the avoidance of doubt, the Recruitment Panel must exercise its functions under this Annex itself and has no power to appoint a sub-committee or working group. However, with the consent of the Board, the Chair may appoint former members of the Board or former members of the Committees to carry out such tasks as the Board may agree.~~

~~9.8.~~ 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.

Chair's Report on Visits and External Meetings, December 2016 to January 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**

1 December	Attended the Sir Thomas More annual lecture at Lincoln's Inn, followed by a dinner
7 December	Attended the Inns Strategic Advisory Group, followed by a drinks reception
12 December	Lunched with the Chairman of the Bar Council, Andrew Langdon QC
13 December	Represented the BSB at the Finance Committee meeting
14 December	Chaired the Chairmen's Committee meeting
14 December	Met with the Chair of the Independent Appointments Panel, Stephen Redmond
14 December	Attended the inaugural address of the Bar Council Chairman
18 January	Met with the Brexit working group of the Bar Council
20 January	To meet and have lunch with Derek Wood QC
21 January	To give a report at a Bar Council meeting
24 January	To attend the Chairmen's Committee meeting
25 January	To attend a Treasurers Dinner hosted by the President of the Council of the Inns of Court (COIC)

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Sir Andrew Burns KCMG

Director General's report - BSB meeting 26 January 2017

For consideration and noting.

Director General

1. The series of CPD events which I led came to a close at the end of 2106 and the scheme has now gone live. Several stakeholders who had received dedicated presentations have asked for follow-up meetings to monitor their progress in adapting to the new scheme and I have been pleased to agree to take those on over the coming months. Other next steps on the scheme are reported elsewhere. An FBT round-table event was co-hosted with King's College London on 19 January, and I made a short presentation to facilitate a discussion focussing on the impact of our proposals on the academic study of law.
2. The CMA report is discussed elsewhere on the agenda. I have worked with other regulatory CEOs to agree handling and the approach to implementation across front-line regulators. The consumer –facing approach in the report is of course entirely consistent with overall BSB strategy for 2016-19 and so we feel well placed to respond, albeit needing to prioritise carefully within available resources. The shift in our consumer –focus over the last few years will prove to have been helpful in responding to the CMA recommendations. We had further evidence of that shift in, for example, the public acknowledgement of our research reports in 2106 that was made at the Civil Justice Council's National Forum on Access to Justice for Litigants in Person which I participated in for the BSB in December.
3. As also reported elsewhere, we now have a full first complement of APEX members, barrister and lay, and I led the induction session for the group last month. This received excellent feedback and we now look forward to drawing members of APEX into our work: their contribution to the equality and diversity work presented this month represents an excellent start.
4. Internally, mid-year reviews have now all been completed and our new BSB Leadership and Management Development programme has just launched.

ASPIRE

5. ASPIRE continues to progress in line with the action plans with a particular focus on embedding our consumer and risk based approach to regulation. We shall be looking at the approach to programme closure over the next few months and will be inviting GRA to manage that process through a final self-assessment exercise. The programme has been important in bringing coherence to a number of activities but as they become business as usual over the coming 6-12 months there is less need to maintain formal programme governance arrangements. Progress on the governance reform strand continues to be made.
6. A report on progress will be provided to the LSB on 10 February.

Strategy and Policy***Research***

7. Since the Board meeting in November, work has progressed in a number of areas.

8. IRN has been appointed to undertake research with Family Law clients, part of our consumer research programme. We have been working with IRN and the Communications and Public Engagement Team to facilitate access to key stakeholders, as well as quality assuring the research approach taken.
9. The team has been working with the QC Appointments Panel to support their research project looking into lower application rates by women to become QCs. The data collection for the research has been completed, and we are currently supporting the delivery of a stakeholder workshop in February to discuss the findings of the research.
10. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority to develop a proposal for research into judicial perceptions of criminal advocacy of both barristers and solicitor advocates. The Invitation to Tender will be sent out at the end of January with work on the research due to start at the beginning of March.
11. We have put out to tender qualitative research into barriers to access to the profession to inform the Future Bar Training programme, with a supplier due to be appointed and work started on the research by the end of January. The research team has also produced summary research reports on barriers to the profession and differential achievement on the BPTC to inform work on the FBT programme and with BPTC providers. We have also worked on scoping research and data requirements for further final policy development and future evaluation required for FBT.
12. We have received the first draft of the Market study of the provision of legal services by barristers from Pye Tait. The Project Team led by Oliver Hanmer will sign off the final version of the study by the end of January and will define the next steps in terms of publication and risk assessment.
13. We are working on an evaluation framework for the implementation of the Immigration Thematic Review.
14. We have produced updated statistics for the profession in 2016 and worked with the Equality and Access to Justice team to produce the most recent Diversity at the Bar report, to be presented to the January BSB meeting. Following the public release of the diversity report the statistics pages on the BSB website will also be updated with the new data.
15. We will shortly be publishing internally the Quarterly Research Round up for Q3 of 2016-17.

Regulatory Risk

16. The risk team has continued to work closely with the Centralised Assessment project team on testing and applying the risk assessment policy to all incoming information.
17. Work on risk reporting continues to progress. Our data analyst has agreed the data requirements with the Information Services team and they aim to produce a tool that will capture data from the data warehouse mapped to our Regulatory Risks by Mid-February. A recent meeting with the APEX Risk Advisor (Paul Dyer) helped evolve our thinking on Risk reporting, and we will share a paper with the SMT, setting out our proposals, soon.

18. The Board approved an approach to risk prioritisation at the December away day. Work is underway to develop a means of taking this forward, and we have a further meeting with Paul Dyer to facilitate this.
19. We have arranged the first meeting of a new cross-regulator risk forum on 9 March, and are now working on a short Survey Monkey to send to all regulators to understand better their use of risk in regulation, their current priority risks and any areas where there might be opportunities for cross-regulator working.

Equality and access to justice

20. The shared parental leave consultation (outlining proposed changes to the parental leave rules in the BSB Handbook) is scheduled to close on the 17th of February 2017. In the run up to this date the E&AJ team have been receiving and compiling responses to the consultation. The response rate thus far has been very low, with the number of detailed responses in single figures. The E&AJ team will be working alongside the Communications team to promote interest in the consultation in the run up to its close.
21. At the beginning of December 2016 the E&AJ team, with the help of the Research team, extracted and analysed the diversity data on the profession as a whole. This was then compiled into the Diversity Data Report 2016, which appears elsewhere on the agenda. The data included in the report helps inform the workplan of the E&AJ team, and has helped in the development of the new equality objectives for the BSB, which the Board is also being asked to agree elsewhere on the agenda.
22. The PCC, the Strategy and Policy Directorate and the Equality Champions all received Anti-Discrimination Training from the Head of Equality and Access to Justice. Feedback was very positive.
23. In December meetings with 3 LGBT organisations took place to review how we monitor gender identity, whether we should amend the rule prescribing chambers' duty to disclose members' sexual orientation data, and how we can best promote the importance of data disclosure amongst practitioners.

Policy

Future Bar Training

24. The FBT consultation events have now come to an end (with the final event held at Kings College London on 19 January, focussing on the academic study of law). As a result of all of our consultation activities, we have engaged with well over 100 professionals and, to date, received over 60 written responses. The deadline for responses to the FBT consultation paper was extended to the end of January (to allow for feedback on the COIC proposal, which we have publicised through Twitter, our Regulatory Update and at recent consultation events). A final paper on the outcome of the consultation will be presented to the board in March.
25. Work on the wider FBT programme continues. To provide resilience and increase capability, we are recruiting a dedicated FBT Programme Manager (on a two year fixed-term basis). We have also completed a review of programme governance and refreshed the terms of reference for the FBT programme board. As a result, we will be bringing additional HE and professional experience to the programme board.

26. We continue to build the evidence base to inform our thinking on FBT. We are in the process of commissioning new research on access to the profession, including on social mobility.

Professional Standards

27. Following the publication of the CMA's final report into the legal services market, the interim Public and Licensed Access review report is being revised to make reference to the CMA's recommendations, and to ensure that it is consistent with work the BSB undertakes in response to the CMA's report. The final Public and Licensed Access review report will then be published in due course, with proposed changes to regulatory arrangements put to consultation.
28. Since the last board meeting, BMIF have confirmed they will continue to offer insurance to Single Person Entities for the coming policy year. We are in the process of arranging a meeting between some BSB board members and BMIF board members to discuss more fully BMIF's concerns about current arrangements. We also plan to arrange a meeting with key APEX members to discuss strategy and policy options for our work on PII for 2017/18.
29. The annual review of all Authorisation to Practise (AtP) policy and guidance documents has been completed, ready for the launch of the AtP process in February.
30. We have met HMRC to discuss the Finance Bill and related work on tax avoidance. A paper is being presented to the board on this.
31. The professional standards team have received over 50 enquiries (In December and January) relating to a wider range of conduct issues. Half of these were from members of the public; the majority of the remainder were from solicitors and barristers.
32. Work is also underway on the review of the staff-led Policy Forum (which assists policy owners across the organisation with the development of proposals), and the development of policy gateways for the BSB's policy development framework. The policy gateways will allow the executive to more consistently and systematically assess the quality of policy-making, and the level of adherence to the policy development framework

Professional Conduct

Quarter 3 Key Performance Indicators

33. Overall we achieved a performance of 78.7% of cases concluded within service standards. We remain on course to achieve the overall target of 80% at year-end but staff vacancies are likely to impact on the Q4 out turn.

PCC Lay Recruitment

34. The Professional Conduct Committee has concluded the recruitment exercise for Lay members. The field was strong and five new Lay members have been appointed, who will start attending meetings after the induction training planned for 26 January.

Anti-Discriminatory Practice/Unconscious bias training

35. The session was delivered on 7 December and feedback received from Committee members who attended was extremely positive. We will be working with the Equality &

Access to Justice Team over the next year to continue to develop our Equality & Diversity training for PCC members.

Disciplinary Tribunal Working Group

36. We are currently working with other the approved regulators to develop an operational protocol for the sharing and disclosure of information in relation to enforcement matters.

Litigation

37. Since the last update we have been informed that, in the discrimination case that was dismissed by the Court of Appeal, permission has been granted by the Supreme Court in relation to the narrow point of the limitation of claim. There is no indication of when this will be listed at the time of writing.
38. The Employment Tribunal case continues and is due to be heard again in March 2017 where it is anticipated that the particulars will be identified more clearly.
39. The BSB have also received a new claim from a barrister who was subject to an investigation. The claim alleges negligence and a breach of contract amongst other particulars. This is being considered by external solicitors and the BSB will be responding in due course.

Regulatory Assurance Department

Operational update for Training Supervision

40. We are in the process of setting up a round of visits to all BPTC providers. This year, the visits will include an opportunity for an in-depth discussion with senior staff at provider universities to get an initial indication of what plans they may have for development of courses under the Future Bar Training programme. This will give us an early indication of how the market is likely to respond. Either the Director General or Director of Regulatory Assurance will attend each of these discussions.
41. We are working to map the BPTC Handbook to the Professional Statement and Threshold Standard in order to enable us to develop an Authorisation Framework against which we will be able to assess proposals that result from the Future Bar Training programme.
42. We carried out an accreditation visit to BPP Bristol and have approved the site for delivery of the BPTC to a maximum of 48 full-time students from September 2017, subject to a number of conditions being met.

Operational update for Examinations

43. Formative assessments for the three centralised examination subjects have been sent to all providers. For Civil and Criminal Litigation, standard setting methodologies were applied to determine the pass marks.
44. Work is well under way for the first sit (and contingency) papers for BPTC and BTT summative assessments.
45. An additional Assistant Chief Examiner, Helen Tinkler, has been recruited for Civil Litigation. Interviews for an additional Assistant Chief Examiner for Criminal Litigation will take place in early February.

Authorisations

46. The Qualifications Committee met on 13 December 2016. It undertook reviews of five decisions of its Panels and staff, upholding the original decision in three cases and amending the original decision in two cases.
47. The Qualifications Committee agreed that there will be no further meetings of its Panels from 1 January 2017, from which date all first instance decisions taken formerly by the Panels (and the Committee) will be taken by staff. Staff will continue to seek guidance from those members of the Committee assigned to the new pool of advisors until the Committee is disbanded on 31 August 2017. This is reflected in the Standing Order item elsewhere on the Board agenda.
48. It is likely that the Qualifications Committee will meet on two further occasions to consider reviews of first instance decisions before 1 April 2017. The first of these meetings will be held in early February 2017. After 1 April, this review function will be carried out by those members of the Committee assigned to the new pool of reviewers.
49. The Qualifications Committee also agreed to approve, in principle, the revised criteria and guidelines for its applications. There will be some further amendments to the documents, e.g. for consistency of language, incorporation of references to the Professional Statement, etc. It is intended to submit final drafts of the documents to the Committee for approval at its next meeting in February 2017.

CPD

50. The new CPD scheme is now live having been approved by the LSB at the end of 2016. Relevant supporting materials have been produced and are on the BSB website.
51. CPD is now more closely aligned with the overall FBT project. The Education and Training Committee has approved the PID for the second phase of implementation of the new CPD scheme.
52. The second phase of CPD implementation consists of a number of work streams. In particular continuing communication and engagement with the profession, development of an assessment framework and analysis and review of the new CPD scheme.

Pupillage

53. We have mapped the Pupillage Handbook and Checklist to the Professional Statement and Threshold Standard and Competences. We are currently preparing an implementation plan for 2017, in conjunction with the FBT Programme Board and the Education and Training Committee.

Centralised Assessment of Incoming Information (“CAT”)

54. The Project Team has completed a series of workshops to define the user requirements for the Information Management Programme.
55. The Project Team has continued to develop the risk assessment methodology, to align it with the new BSB Risk Assessment Policy, and is currently testing it against past enforcement and supervision cases.

Licensed Body (“ABS”) Implementation

56. Pending parliamentary approval – anticipated in early 2017 - we are operationally ready to launch the scheme.

Statutory Interventions

57. The position remains largely unchanged as the acquisition of initial intervention powers depends on the BSB’s designation as a licensing authority. Additional powers of intervention into other authorised persons (both barristers and entities) through an order under section 69 of the LSA 2007 is expected later in 2017 and is discussed elsewhere on the agenda.
58. Training has been scheduled for 1 February, to be delivered jointly by the BSB’s preferred intervention agent partners. The training will be two-fold:
- Targeted technical and practical intervention training for a cohort of key staff who will be directly involved with interventions;
 - Broader training for a wider range of staff who, whilst not directly involved, will be required to recognise and escalate risks and scenarios potentially indicative of an intervention.

Youth Court Advocacy

59. Charlie Taylor’s report, commissioned by the Ministry of Justice, *Review of the Youth Justice System in England and Wales* was published in December 2016. The review made a series of recommendations relating to the youth justice system and advocacy standards in Youth Courts. Notably, that:
- Regulators should introduce specific mandatory training of all advocates appearing in Youth Courts; and
 - The Ministry of Justice should review the fee structure of cases heard in Youth Courts in order to raise the status of such work.
60. We welcome the findings of the review and will continue to engage closely with the Ministry of Justice over the coming months.
61. We have been working on a competency statement and related guidance for Youth Court advocates. These will provide the basis for the BSB’s approach to the regulation of advocacy in Youth Courts, and will be presented to the Board in February.

Communications and Stakeholder Engagement

62. Since this report was prepared for the November Board meeting, the following press releases and announcements have been issued:
- 22 November: Press release to launch the consultation about shared parental leave for self-employed barristers
 - 24 November: Press release announcing a tribunal decision to disbar barrister, Tariq Rehman
 - 25 November: Press release announcing the BSB’s three new lay Board members
 - 25 November: News announcement about our first appointments for the new Advisory Pool of Experts (APEX)

- 1 December: Press release to extend the Future Bar Training consultation and to include a new proposal from COIC and the Bar Council
 - 8 December: Press release about an unregistered barrister disbarred for dishonesty
 - 12 December: BSB statement welcoming the Ministry of Justice review into youth justice
 - 12 December: Press release about a barrister suspended for 12 months following a conviction for stalking
 - 13 December: Press release to accompany the publication of new guidance and a template for the new regime for barristers' CPD starting on 1 January
 - 15 December: BSB statement welcoming the CMA report into the legal services market
 - 21 December: News announcement about the addition of three barristers to the Advisory Pool of Experts.
63. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

64. 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 launch of a new Equality, Diversity, and Access to Justice Strategy; and
 - communication to support the forthcoming changes to the Disciplinary Tribunal Regulations.
65. The team is also working on the following projects:
- researching the User Experience (UX) on the BSB website to better understand the site's users and their needs from it;
 - preparing communication lines in respect of the BSB's actions following the publication of the CMA report into the legal services market;
 - organising a joint forum event with King's College London to discuss how the proposed regulatory reform of training for the Bar will affect the academic study of law; and
 - considering new communication materials to help young people prepare for appearing in youth court proceedings.

Online and social media

66. During November, 28,010 users visited the BSB website with a further 24,875 visiting during December. At the time of writing, we have 16,162 followers on Twitter and 2,667 followers on LinkedIn.

Corporate Services

Corporate Support

67. The 2017/18 Business Plan is being developed by the executive, building on the prioritisation discussion at the Board's December Away Day. The draft plan will be presented to the PRP Committee and Board in due course. Responding to the CMA and finalising FBT are the top emerging priorities for the 2017/18 financial year.
68. The COIC / BTAS agreement has been extended until December 2019, with some minor variations to the original agreement.
69. The team is working with LSB on some cost transparency principles, which are due to be agreed and published in March 2017. All legal services regulators will be expected to progress the new principles.
70. The work on the assurance framework continues, with the first stage, an assurance mapping exercise, currently being planned.

Governance

71. The second round of recruitment to the Advisory Pool of Experts (APEX) was completed in late November 2016, with offers made to and accepted by three barrister members. They are Emma Dixon (Equality and Diversity Law), Louise Price (Equality and Diversity Law and Regulatory Law), and Suzanne Rab (Competition Law). All 11 members of APEX (eight lay and three practitioners) attended a day's formal induction on 16 December 2016. With one exception, appointments commenced on 1 January 2017, and three requests for engagement of members have already been actioned.
72. A formal induction session will be held on Friday 20 January 2017 for the three newly appointed Board members. It is anticipated that other induction activities will be planned for the coming months, including visits to chambers.
73. Equality and diversity monitoring forms have been sent to all Board and committee members, with a reminder to submit returns sent in mid-December. The Chair of the BSB has been actively promoting a best practice approach beyond strict legal compliance, and encouraging members in the BSB's governance structures to submit returns, with the intent that the BSB itself can be seen as an exemplar.

Key Resource Group updates

74. The Q3 report on Resources Group activity was received on 12 January 2017. Most teams continue to progress well against their plans and service level targets. The PRP Committee and the Board will be considering this report during February 2017 alongside the BSB's quarterly performance report.

Vanessa Davies
Director General BSB
18 January 2017