

<p>BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

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

Thursday 28 September 2017, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Alison Allden OBE  
Rolande Anderson  
Aidan Christie QC  
Judith Farbey QC  
Steven Haines  
Zoe McLeod  
Andrew Mitchell QC  
Nicola Sawford  
Anne Wright CBE
- Bar Council in attendance:** Mark Hatcher (Special Adviser to the Chair of the Bar Council)  
Andrew Walker QC (Vice Chair, Bar Council)
- By invitation:** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Joseph Bailey (Policy & Projects Officer) – items 1-10  
Dan Burraway (Corporate Services Manager)  
Vanessa Davies (Director General)  
Rebecca Forbes (Governance Manager)  
Oliver Hanmer (Director of Regulatory Assurance)  
Sara Jagger (Director of Professional Conduct)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
Oliver May (Legal and Policy Officer) – items 1-10  
John Picken (Governance Officer)  
Wilf White (Director of Communications and Public Engagement)  
Julia Witting (Supervision Manager) – items 1-10  
Christopher Young (Policy Manager - Quality Assurance) – item 7 only
- Press:** Neil Rose (Legal Futures)

**Item 1 – Welcome**

1. The Chair welcomed Members to the meeting. He decided to change the order of the agenda such that item 7 (FBT Consultation) was taken after item 10 (GRA Annual Report). The intention for this was to allow time for the arrival of the FBT Programme Chair (Justine Davidge), who had been delayed at an ongoing tribunal. However, it later became apparent during the meeting that Justine would not be able to attend after all.

**Item 2 – Apologies**

2.
  - Justine Davidge
  - Naomi Ellenbogen QC (Vice Chair)
  - Adam Solomon
  - Anu Thompson

- Andrew Langdon QC (Chair, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- Malcolm Cree (Chief Executive, Bar Council)
- Amit Papat (Head of Equality and Access to Justice)

**Item 3 – Members’ interests and hospitality**

3. The following declarations of hospitality were made:
- Vanessa Davies and Ewen Macleod – attendance at a networking event held on 6 September 2017 hosted by Kingsley Napley (law firm).
  - Vanessa Davies – attendance at a breakfast meeting held on 14 September 2017 at the invitation of Menzies (a legal consultancy firm) and Think Marble (a cyber security firm).

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 27 July 2017.

**Item 5 – Matters Arising**

5. None.

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

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

**Item 6b – Forward Agenda (Annex C)**

7. The Board noted the forward agenda list.

**Item 7 – Future Bar Training: Autumn 2017 FBT Consultation**

BSB 061 (17)

8. Vanessa Davies reported on behalf of Justine Davidge (Chair of the Education and Training Committee and the FBT Programme Board) who was unable to attend (cf. min 1 above) but had sent in some written notes. The salient points were:
- the current draft consultation accurately incorporates the views of the Education & Training Committee and adopts an open stance to encourage feedback on a wide range of options;
  - the responses from this will help the Board determine a policy direction from first-principles and in a transparent and evidence based manner;
  - the consultation will be published in October with a second, shorter follow-up document next year on the form that the final rules will take;
  - the draft document is the product of a significant amount of work undertaken in the Strategy and Policy Department for which she expressed her sincere appreciation.
9. Regarding the text, she highlighted the following:
- some of the language used in the foreword and executive summary reflect earlier versions and should be re-phrased to capture the consultation’s “open” nature (cf pages 26 and 30 of the agenda papers);
  - the section on student membership of an Inn and the options for relaxing these requirements (para 72-76) could be made clearer – ie either that this is not mandated until the point of call to the Bar or that student membership is not required at all;
  - the section concerning the provisional practising certificate may need re-drafting (paragraph 175, bullet 2). We would expect pupils to gain sufficient practical experience of advocacy so as to meet the standard set out in the Professional Statement. However, the wording of the bullet point is open to misinterpretation on this point;

## Part 1 - Public

- in earlier versions of the draft the section on financial risks (paragraph 206) included a table on pupillage payment rates. This helped to illustrate the potential impact of a rise in pupillage awards. This table is no longer included and the reason for this is not apparent;
  - the equality impact assessment for pupillage awards does not reference the *numbers* of chambers offering pupillages who would be affected by a rise in the award to be commensurate with the national living wage, and the areas of practice they cover. There may be a disproportionate impact on those in the public sphere.
10. The following comments were made with reference to the above points
- the original intention on student membership of an Inn was to include an option that did not require this at all. However the distinction identified in Justine’s comments about point of call (cf min 9) is worth including in the text; **CY to note**
  - the bullet point identified in paragraph 175 will be re-worded. There is no intent to allow barristers to circumvent the underlying requirements of the Professional Statement; **CY to note**
  - any data we publish on pupillage awards needs to be current and accurate. That used in previous drafts was only collated until 2014 with no adjustments made for inflation;
  - the key points on pupillage awards are already included in the narrative. We could import some of this to give a fuller explanation of issues identified in the equality analysis. **CY to note**
11. The following comments were also made:
- we should include, as an annex, a list of all the questions we ask in the consultation paper; **CY to note**
  - we should encourage respondents to look beyond the strict confines of the options quoted in our questions - there may be instances of other valid alternatives that we have omitted to include;
  - the two tables in paragraphs 110 and 111 concerning conduct cases referred to the Inns’ Conduct Committee (ICC) need further explanation. It is not clear if one is a subset of the other; **CY to note**
  - the qualifying sessions referred to in the document do apply to transferring barristers but the Inns can also grant waivers for these if they so choose;
  - the BSB’s research identified that a key benefit from student membership of the Inns is the networking opportunities it offers. Given our aim of increasing access and diversity, it would help to know if this equally applies to those from lower income backgrounds. We do have anecdotal evidence to this effect but it would help if we could monitor progress over time.
12. In response to the latter point, Ewen Macleod confirmed that, though we plan to monitor target groups, this evidence has yet to be collated. It is a matter for future research projects.
13. Vanessa Davies referred to the revised timeline for the implementation such that rule changes will now be introduced from January 2019, subject to approval by the LSB. Applications from providers seeking designation as “Authorised Education and Training Organisations” will be received and processed in the three months prior to this, though formal approval will only be granted once the rules come into force.

14. **AGREED**

- a) to note the comments made by the Education and Training Committee in relation to the scope of the consultation.
- b) to approve the consultation as set out in Annex A of the report for publication subject to further amendment as identified above.

CY

**Item 8 – Response to the CMA Recommendations: Policy Consultation on Transparency Standards**

BSB 062 (17)

15. Ewen Macleod highlighted the following:
  - the consultation paper forms part of the BSB's response to the CMA's findings on its market study into legal services. We now plan to publish this on Monday 2 October 2017;
  - it proposes to make mandatory rule changes in respect of those transparency measures identified by the CMA which the BSB categorises as having "very high impact" for consumers;
  - those measures categorised as "high" or "medium" impact will be addressed through guidance to chambers;
  - subject to feedback from this initial consultation, a second document will be issued in March 2018 about final rule change proposals.
  
16. The following comments were made:
  - the foreword of the consultation stresses the high degree of flexibility that the BSB's approach encompasses. However, this make it harder for third parties to compare prices between chambers;
  - we might need to say more on accessibility, especially in considering clients with special needs. It would help to standardise language throughout ie be consistent in the use and definition of key terms;
  - there are no quality assurance schemes currently in operation which clients could use to compare chambers;
  - there is a potential unintended consequence of prices rising as a result of the new rules on transparency. It would help to know if a baselining exercise on prices will be completed in advance of implementation;
  - we need to take care not to stray into the territory of price regulation. This is purely about price transparency;
  - the consultation refers to the potential use of the BSB logo to identify those bodies that are BSB regulated. If adopted, it would be a departure from current policy as we have not permitted its use before now.
  
17. In response, the following comments were made:
  - the point on flexibility relates to the BSB's view that one size does not fit all. There needs to be greater transparency on prices but, equally, we must recognise that a range of options are necessary for this to be achieved;
  - the point on language is acknowledged. We shall conduct pilot exercises on planned changes to the rules in advance of the second consultation. We can use these to test points of language and consistency. We might expand the foreword to explain this more fully;
  - chambers will still have the option to vary fees according to client groups. Guidance will be given on how to describe fee structures;
  - the consultation acknowledges the risk that consumers may focus disproportionately on price rather than quality. There is scope to provide feedback on this point and the BSB will work with the Bar Council as necessary;

EM to  
note

- discussions on monitoring the impact of future changes (including prices) have already commenced and work on this will be developed in parallel with regulatory changes;
- there may be some value in using the logo more widely but we must make clear that this only relates to regulation and is not an endorsement of any particular set of chambers.

18. **AGREED**

to approve publication of the draft consultation on transparency standards as set out in Annex 1 of the paper.

EM

**Item 9 – Disclosure of sexual orientation and religion and belief data by chambers and entities**

BSB 063 (17)

## 19. Ewen Macleod commented as follows:

- the paper seeks to consult on rule changes on disclosure. At present data on sexual orientation and religion / belief is not reported unless every member of chambers has consented to the release of this information;
- a further rule prevents data on any protected characteristic from being reported where the complement within chambers is ten or fewer, unless there is consent from all those involved;
- the means that any one individual can prevent publication, even if the person concerned is not part of a protected group;
- the resulting low disclosure rates means that it is not possible to monitor these strands effectively making it difficult to establish evidence of any inequality. The Executive therefore wishes to review the current rules.

## 20. The following comments were made:

- there are sensitivities on this issue but we should proceed with the consultation as outlined;
- we need to think about how to encourage people to be more forthcoming about disclosure;
- we can clarify that our usual practice is not to identify individuals who respond to consultations, to encourage responses in confidence;
- it would be helpful for the Board to see the final draft consultation paper before publication.

21. **AGREED**

- a) to endorse the request to consult on a potential change to the equality rules, in order to promote disclosure of sexual orientation and religion / belief data.
- b) that the draft consultation paper be presented to the Board at a future meeting.

EM to note

EM / AP

**Item 10 – Annual report of the Governance, Risk and Audit Committee (GRA)**

BSB 064 (17)

## 22. Nicola Sawford referred to the report which covers the period October 2016 – September 2017. She also thanked Malcolm Cohen for his past chairmanship of the committee (Malcolm stood down from this role on 31 December 2016). The salient points were:

- key areas of work during this period included:
  - assessment of BSB performance against the Regulatory Standards Framework;
  - service complaints monitoring;

- work to converge the regulatory risk and corporate risk registers;
  - appointment of the BSB's internal auditors.
23. The following comments were made:
- it would be helpful for the internal auditors to present their findings at the Board as well as the GRA Committee;
  - the GRA Committee is developing plans for Board Member training on regulatory risk and knowledge sharing sessions will also be organised for staff. Sufficient notice will need to be given to Board Members to enable their attendance at the staff knowledge sharing sessions.
- DBu to note**  
**DBu to note**
24. **AGREED**  
to note the report.
- Item 11 – Performance Report for Q1 (April 2017 - June 2017)**  
BSB 065 (17)
- AGREED**
25. to note the report.
- Item 12 – Chair's Report on Visits and Meetings: September 2017**  
BSB 066 (17)
26. **AGREED**  
to note the report.
- Item 13 – Director General's Report**  
BSB 067 (17)
27. The Board considered the Director General's report. In response to a question on the cross-regulator risk forum on cyber crime, Vanessa Davies commented as follows:
- the risk forum was helpful and covered the cyber risks that regulators face (as well as those by the regulated community);
  - the levels of readiness vary but, in general, regulators have more to do in this area. This will be brought into sharper focus with the advent of the General Data Protection Regulations (GDPR) which come into effect from 25 May 2018;
  - GDPR is now included in the GRA risk register and we shall be working with the Bar Council to draft guidance to barristers.
28. Rolande Anderson referred to paragraph 43 of the report concerning the equality and diversity eLearning programme. This has been reviewed and updated so we might consider sending round the link to Members.
- AP to note**
- AGREED**
29. to note the report.
- Item 14 – Schedule of Board Meetings Jan 2018 – Mar 2019**  
BSB 068 (17)
30. The Board noted the schedule of meetings for January 2018 – March 2019. Board meetings from May 2018 will start at 5.00 pm, instead of 4.30 pm.
31. The Chair advised of an additional meeting date. The Board will now meet jointly with representatives of the Legal Ombudsman's Board on Thursday 17 May 2018.
- BSB Members to note**

**Item 13 – Any Other Business**

32. None.

**Item 14 – Date of next meeting**

33. Thursday 26 October 2017.

**Item 15 – Private Session**

34. 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 – 27 July 2017
  - (2) Matters arising
  - (3) Action points and progress – Part 2
  - (4) Budget Bid – 2018/19
  - (5) Corporate Risk Register
  - (6) Decision on PII arrangements for Single Person Entities (SPEs)
  - (7) Section 69 order update
  - (8) GRA Committee Reports referred to the Board for information:
    - Scheme of Delegations – update
    - BPTC Ethics Examination
  - (9) Any other private business
    - BSB Statement – Khawar Qureshi QC
  - (10) Review of the Board meeting in terms of conduct and outcomes.
35. The meeting finished at 5.45 pm.