



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 28 July 2016, 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">• 23 June 2016 (*)	Annex A Chair	3-5
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	7-8
	b) Forward agenda	Annex C Chair	9
7.	Statutory Intervention (4.40 pm)	BSB 051 (16) Ewen Macleod	11-19
8.	Professional Statement Threshold Standard and Competences (4.55 pm)	BSB 052 (16) Andrew Sanders / Simon Thornton- Wood / Jane Chapman	21-118
9.	Entity Authorisation - Report on Activity (5.15 pm)	BSB 053 (16) Bernard MacGregor	119-128
10.	Enforcement Annual Report (5.25 pm)	BSB 054 (16) Sara Jagger	129-176
11.	Bar Standards Board Annual Report 2015-16 (5.40 pm)	BSB 055 (16) Wilf White	177-223
12.	Chair's Report on Visits and Meetings: Jun-July 2016 (*)	BSB 056 (16) Chair	225-226
13.	Director General's Report (5.50 pm)	BSB 057 (16) Vanessa Davies	227-237
14.	Any other business		
15.	Date of next meetings <ul style="list-style-type: none">• Thursday 29 September 2016		
16.	Private Session		

**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 280716

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
21 July 2016

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BSB 280716

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 23 June 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
Judith Farbey QC
Andrew Mitchell QC
Tim Robinson
Professor Andrew Sanders
Nicola Sawford
Anu Thompson
Dr Anne Wright CBE
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Chantal-Aimée Doerries QC (Chairman, Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Oliver Jackling (Research & Evaluation Officer)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amit Popat (Policy Manager – Equality and Access to Justice)
Pippa Prangle (Head of Regulatory Risk)
Amanda Thompson (Director for Governance Reform)
Simon Thornton-Wood (Director of Education & Training)
Rob Wall (Head of Policy Programmes)
Wilf White (Director of Communications and Public Engagement)

Item 1 – Welcome

1. The Chair welcomed Members to the meeting. He also introduced Rob Wall, the new Head of Policy Programmes, who was attending his first Board meeting.

Item 2 – Apologies

2.
 - Rolande Anderson
 - Justine Davidge
 - Adam Solomon
 - Emily Windsor
 - Andrew Langdon QC (Vice Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - James Wakefield (COIC representative)
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
 - Viki Calais (Head of Corporate Services)
 - Oliver Hanmer (Director of Supervision)

Item 3 – Members’ interests and hospitality

3. None.

Private Session

4. The following motion, proposed by the Chair and duly seconded, was agreed:

*That the BSB will go into private session to consider the next item of business:
(1) Women at the Bar Report – communications and action plan.*

5. The Board agreed to invite the Chairman and the Chief Executive of the Bar Council to remain for that item. This was because it covered an issue of equal relevance to the Bar Council. The notes from the ensuing discussion are included in the Part 2 (private) minutes.

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 19 May 2016.

Item 5 – Matters Arising

7. None.

Item 6a – Action points and progress

8. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

9. The Board noted the forward agenda list.

Item 7 – Chair’s Report on Visits and Meetings: May – June 2016

BSB 044 (16)

10. **AGREED**
to note the report.

Item 8 – Director General’s Report

BSB 045 (16)

11. Vanessa Davies highlighted the following:
- Sarah Charlesworth will be leaving the BSB in July. Sarah has contributed significantly both in the Equality and Access to Justice Team and the Regulatory Policy Department. Her work on the Women in the Bar Survey was particularly welcome;
 - an event will be held on 7 July 2016 (5 pm) at Holborn Bars entitled “The Future of Bar Training: the debate”;
 - the 2016 BPTC Conference will take place on Friday 15 July 2016 (9-5 pm) at 44 Hallam St, London W1W 6JJ. Board Members are welcome to attend;
 - knowledge sharing sessions such as the one identified in the report at paragraph 8 are a useful means of raising awareness among BSB staff. Some Board members have also attended these which is very encouraging to see.
12. In response to a question about the Regulators’ Forum, Amanda Thompson commented as follows:
- the Forum will jointly consider feedback from the LSB on its recent assessments of regulators against the Regulatory Standards Framework and will be considering opportunities for collaboration;
 - there are instances where collaboration is already occurring eg on the content and style of client care letters;

Part 1 - Public

- there may also be opportunities for a joint approach to other research projects.
13. **AGREED**
to note the report.
- Item 9 – Any Other Business**
14. None.
- Item 10 – Date of next meeting**
15. • Thursday 28 July 2016.
- Item 11 – Private Session**
16. 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 – note of board decision process on the Independent Regulatory Decision Making Body;
 - (3) Action Points and Progress;
 - (4) BTAS Service Level Agreement;
 - (5) Memorandum of Understanding between the BSB and the Bar Mutual Indemnity Fund;
 - (6) Update on APEX recruitment;
 - (7) EU Referendum: impact of possible outcomes on BSB;
 - (8) Annual Communications Team Metrics;
 - (9) Any other private business:
 - update on QASA;
 - the “Panama Papers”;
 - Board recruitment
 - Operation of Board meetings
 - (10) Review of the Board meeting in terms of conduct and outcomes.
17. The meeting finished at 5.25 pm.

**BSB – List of Part 1 Actions
28 July 2016**

(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
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	by end Sept 16	20/07/16	On track for completion by end of September. In part the approach to this issue and the timing is dependent upon the outcome of the Taylor Review into Youth Justice which is due to be published before the end of July. A review of this action will follow that report.
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. 	Simon Thornton-Wood	before 31 March 16	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
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	Kuljeet Chung	by 31 Jul 15	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

BSB – List of Part 1 Actions

28 July 2016

(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
				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
				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 29 Sept 2016**

- GRA Annual Report – includes the Report from the Independent Observer
- Approval of consultation on future model for training regulation, for publication
- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Budget bid for 2017/18
- Approval of BSB position on professional indemnity insurance and compliance with competition law. Approval of rule change in relation to SPEs (if necessary)
- Assurance framework (Part 2)
- APEX progress report
- Equality rules: shared parental leave
- Centralised Assessment Team Project (Part 2)

Thursday 27 Oct 2016

- Protocol on International working
- Consumer engagement communications plan – sign off
- Prioritisation of regulatory risks – an approach to the next phase of work
- Independent regulatory decision making at the Bar Standards Board (Part 2) – update on progress
- Public and licensed access review (Part 2)
- Amending the definition of in-house employed practice (Part 1)

Thursday 24 Nov 2016

- Independent Decision Making – final proposals
- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Independent regulatory decision making at the Bar Standards Board (Part 2)
- New equality objectives 2017-18

Thursday 15 December 2016 (Board Away Day)**Thursday 26 Jan 2017**

- Response to FBT Consultation
- APEX update
- Publication of diversity data

Thursday 23 Feb 2017

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2017-18
- Corporate Risk Register
- Regulatory risk prioritisation

Thursday 23 Mar 2017

- Revised Standing Orders

Statutory Intervention

Status

1. For information and discussion.

Executive Summary

2. This paper updates the Board on preparations for the introduction of new statutory powers of intervention.
3. In March 2016 the Legal Services Board (LSB) approved our application to be designated a licensing authority under Part 5 of the Legal Services Act 2007 (LSA). If the Lord Chancellor and Parliament approve the designation, we will be able to license alternative business structures (ABS – also known as licensed bodies – which include non-lawyer managers and owners). At the same time we will acquire statutory powers of intervention in relation to these bodies. In order to prepare for this we need to ensure we have the necessary systems and processes in place to support the new intervention powers. These powers are set out at Schedule 14 to the LSA.
4. The BSB is seeking similar powers of intervention in relation to relevant authorised persons (both barristers and entities) through an order under section 69 of the LSA, but initially we will only be able to exercise these powers as a licensing authority (i.e. in relation to ABS).
5. We are drafting a statutory interventions strategy which sets out the over-arching principles that will inform our approach to the use of these powers. This strategy will be underpinned by more detailed operational guidance. The draft strategy is attached at **Annex A**.

Recommendations

6. The Board is asked to
 - (i) **note** the work underway on interventions; and
 - (ii) **discuss** the draft interventions strategy at **Annex A**.

Background

7. The BSB is getting ready to regulate licensed bodies. This follows the LSB approval of our application to act as a licensing authority earlier this year.
8. If the designation is confirmed, we will be granted the powers of intervention outlined in Schedule 14 to the LSA. These are significant new powers including the power to enter premises and seize papers, the power to require a person to produce and deliver documents and the power to recover and receive client money. Many of these powers will require a High Court Order to have effect. To ensure the BSB has the same powers to intervene into authorised persons, we are also in the process of applying for intervention powers through an order under section 69 of the LSA. This will ensure we ultimately have the same powers over all our regulated individuals and bodies.

9. The grounds for intervention are set out in Schedule 14. These include failure to comply with one or more terms of the licence, insolvency, suspected dishonesty or if necessary to protect the interests of clients. The potential grounds for intervention are rather broad and the Board has previously agreed that the exercise of the powers should be subject to an agreed strategy to ensure they are only used in a clear and consistent manner and when it is proportionate to do so.
10. The draft statutory interventions strategy (attached at **Annex A**) seeks to set out the BSB approach to the exercise of intervention powers. We will bring a final strategy to the Board in the Autumn for approval – alongside more detailed operational guidance (which is currently being prepared). The purpose of this paper is to enable the Board to comment on the high level principles in order to inform the more detailed operational guidance.

Statutory interventions strategy

General

11. The strategy has been drafted as a set of broad principles to inform our approach to the use of the new statutory powers. A key principle is that interventions are *protective* rather than *punitive* and that the powers will only be used where it is necessary and proportionate to do so and where there is a clear public interest.
12. It sets out in broad terms what the powers are, to whom they will apply, when they will be used and how decisions regarding their use will be made.
13. It is intended to be a public statement of our approach to interventions. In keeping with the principles of good regulation, the final strategy will be published to ensure we are open and transparent about our approach. We will also publish information about individual interventions where this is in the public interest.
14. The draft strategy attached at **Annex A** refers only to licensed bodies as we will initially only have those powers when acting as a licensing authority. Once the order under section 69 of the LSA is made, the scope of the strategy will be extended to include other authorised persons.

Intervention agents

15. The strategy states that, once a decision to intervene has been made, the BSB may instruct an agent to carry out the intervention on our behalf. Decisions on when to use intervention agents will be made on a case by case basis. However, due to the likely resources needed to maintain capability and capacity for such work in-house, it is likely that intervention agents will be used in the majority of cases.
16. The BSB will shortly go out to tender for this work. We will be approaching organisations with experience and expertise in management interventions. The tender will include a requirement to provide appropriate training on interventions to BSB staff. We plan to enter into a number of call-off contracts with suppliers which will mean that (with the exception of training costs) we will only pay for agents when they are used. We are currently gathering information on likely costs.

Operational guidance

17. The strategy is intended to be a broad statement of policy. It will be underpinned by detailed operational guidance for decision-making staff. This guidance will place the power of statutory intervention in context – essentially as a regulatory tool of last resort, to be considered when other options are not appropriate. The guidance will outline how the principles in the strategy will be implemented in practice. This includes directions for determining when an intervention is necessary, the decision-making process, policy on costs and internal assurance and review mechanisms. The guidance will be for internal use only.

Resource implications

18. There will be significant resource implications arising from the use of statutory intervention powers – both in terms of staff capability and financial resources (primarily instructing intervention agents). We are conducting a skills audit to better understand capacity and capability needs. We are also working with other approved regulators to scope costs. Interventions are expected to occur in very rare but high risk situations. The legislation permits the BSB to recover the costs of an intervention from the relevant licensed body by seeking an order from the High Court. This may not, however, always be possible (in the case of insolvency, for example).

Equality impact assessment

19. The draft strategy contains an equality statement. This includes a commitment to review the strategy (and our wider approach to statutory interventions) to ensure there is no disproportionate impact on any particular group or sector.
20. The Equality and Access to Justice Team has been engaged at an early stage on this work. They will continue to be consulted on the design of operational guidance. The primary drivers for an intervention are the needs of clients and the public interest, but they may occur at times of extreme pressure for those on the receiving end, who may be experiencing financial hardship, bereavement etc. The guidance will ensure that impact assessments are made in advance of any intervention to ensure that we understand and manage (amongst other things) the potential impact on the health and wellbeing of individuals who are managers or employees of bodies being intervened into.

Risk implications

21. There are a number of risks associated with the introduction of intervention powers. In particular:
 - reputational / regulatory risk. These are significant new powers. If the BSB is seen to use these powers inappropriately, or if an individual intervention is poorly carried out, this could have a negative impact the reputation of the regulator, the licensed body and/or the regulatory objectives. The production of detailed guidance, and the use of professional intervention agents, are actions intended to help mitigate this risk; and
 - resourcing risks. Interventions can be costly. We will seek to recover costs where we can – although the experience of other regulators is that this can be difficult.

Consultation

22. We have worked, and continue to work, with other approved regulators who already have these powers. The information and advice provided has proved extremely helpful and has informed large parts of our approach to date.

Regulatory objectives

23. As the draft strategy makes clear, intervention action will only be considered in pursuit of our regulatory objectives. This is one of the tests that must be passed before an intervention can be sanctioned.

Annexes

Annex A – Draft statutory interventions strategy

Lead responsibility

Clíodhna Judge, Head of Supervision and Authorisation
Rob Wall, Head of Policy Programmes



STATUTORY INTERVENTIONS STRATEGY

Introduction

1. This strategy sets out the core principles which underpin the approach of the Bar Standards Board (BSB) to statutory interventions and provides a framework within which decisions are made on when an intervention is necessary. The operational processes for carrying out an intervention are set out in separate documentation.
2. We take an outcomes focused, risk-based and proportionate approach to all our regulatory activities. This is reflected in our use of statutory interventions. Decisions are also informed by the approach to identifying and managing risk set out in the [BSB Risk Framework](#).
3. This strategy should be read alongside the BSB's [Enforcement Strategy](#) and [Supervision Strategy](#).

Purpose

4. The main objective of this strategy is to provide a framework within which to take decisions on the use of intervention powers. The statutory powers of intervention are set out at Schedule 14 to the Legal Services Act 2007 ("the Act"). This strategy sets out the principles which inform the BSB's use of those powers.

Statutory Intervention

5. Intervention action is only considered in pursuit of our regulatory objectives of:
 1. Protecting and promoting the public interest;
 2. Supporting the constitutional principle of the rule of law;
 3. Improving access to justice;
 4. Protecting and promoting the interests of consumers;
 5. Promoting competition in the provision of services;
 6. Encouraging an independent, strong, diverse and effective legal profession;
 7. Increasing public understanding of the citizen's legal rights and duties; and
 8. Promoting and maintaining adherence to the following professional principles:
 - a. That authorised persons act with independence and integrity;
 - b. That authorised persons maintain proper standards of work;
 - c. That authorised persons act in the best interests of their clients;
 - d. That authorised persons comply with their duty to the court to act with independence in the interests of justice; and
 - e. That the affairs of clients are kept confidential.

6. Interventions are protective rather than punitive actions. The aim is to protect the public interest and the interests of individual clients. Intervention is distinct from the revocation or suspension of an authorisation or licence, or the suspension of a practising certificate. The trigger for an intervention is circumstances which require immediate regulatory action to address serious issues of concern. However, even in such circumstances, intervention action is only used where we are satisfied that it is both necessary and proportionate.

Scope

7. We are able, under the terms of the Act, to use intervention powers against BSB licensed bodies. A BSB licensed body is a partnership, LLP or company that has been and continues to be licensed to act as a licensed body by the BSB in accordance with section 3.E of the [BSB Handbook](#).

Intervention powers

8. The powers of intervention are set out at Schedule 14 to the Act. We are able to provide notice to a licensed body that they need to produce or deliver all documents in their possession or under their control.
9. We are also able to apply to the High Court for orders:
- Requiring a person to provide information about any money held by the person on behalf of a licensed body;
 - Preventing a person holding money on behalf of a licensed body from making any payment of the money, except with the leave of the court;
 - Requiring the licensed body to produce or deliver all documents in its possession or under its control in connection with its activities, of which possession can then be taken;
 - Authorising a person appointed by the BSB to enter premises to search for and take possession of documents;
 - Redirecting postal, electronic and telephone communications to an intervention agent; and
 - Recovering the costs of the intervention from the licensed body.
10. Where a licensed body is holding client money, we have the right as a licensing authority to recover or receive this money, and it will vest in the BSB if we decide this is appropriate. This applies to all sums of money held by or on behalf of the licensed body in connection with:
- Its activities as a licensed body;
 - Any trust of which it is or was a trustee; or
 - Any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.
11. The BSB will seek to recover costs where it is economic to do so.

The decision to intervene

12. In order to effect an intervention a two stage test must be satisfied:
1. Has one of the statutory grounds for intervention arisen?; and
 2. Is the BSB satisfied that it is necessary and proportionate to exercise the powers of intervention to protect the regulatory objectives?

13. The statutory grounds for intervention are set out at Schedule 14 to the Act (see attached Annex A) but can be broadly summarised as:
 - Failure to comply with one or more terms of the licence;
 - The appointment of a receiver or another defined insolvency event;
 - Suspected dishonesty by a manager or employee;
 - Undue delay in dealing with a matter; or
 - It is necessary to exercise the power for the benefit of clients (including former or potential clients).
14. We make a decision to use intervention powers where the above tests have been met and an internal assessment has been undertaken. Factors relevant to this decision may include, but are not limited to:
 - The potential impact on the regulatory objectives;
 - The urgency and seriousness of the case;
 - The level of co-operation and engagement with the BSB by the licensed body;
 - The size of the practice or body;
 - The number of clients that could potentially be affected;
 - The practice area of the practice or body; and
 - Whether any laws have been breached.
15. The internal assessment is undertaken in line with the BSB's [Risk Framework](#) and takes account of the risks outlined in the [Risk Index](#).
16. Interventions are distinct from our investigation, supervision and enforcement processes. In deciding whether to take intervention action, we consider whether an investigation, regulatory supervision or enforcement action is more appropriate in the particular circumstances. Our approach to enforcement and supervision is set out in our respective [enforcement](#) and [supervision](#) strategies.

The decision-maker

17. Decisions to take intervention action under this strategy are taken by the Director General of the BSB, or by a member of the Senior Management Team (SMT) where so delegated by the Director General. The Director General may seek external advice before taking a decision to intervene.
18. Once a decision has been made to intervene, we may instruct an intervention agent to carry out the intervention on our behalf.

Review of decisions

19. We keep any decision that an intervention is necessary under continual review. Should there be a change in circumstances that means that intervention is no longer necessary or proportionate, the Director General, or a person with delegated authority, can end the intervention action.
20. A licensed body that wishes to challenge the BSB's decision to intervene can seek to do so through the courts.

Public information on interventions

21. We publish our written policies, such as this Statutory Interventions Strategy, to ensure that they are transparent and available to the public.
22. We publish notice that an intervention into a licensed body has taken place where this is in the public interest.

Review

23. This strategy comes into effect on [date].
24. The strategy is reviewed regularly. The first review will take place by the end of 2018. We welcome feedback on the strategy's content.
25. We are committed to ensuring the application of this strategy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. BSB regulated persons or bodies subject to this strategy should advise us of any reasonable adjustment or specific requirements they have. These will be accommodated as far as is reasonably practicable and in line with our obligations under the Equalities Act 2010.
26. We monitor any intervention action taken under this strategy to ensure there is no disproportionate impact on any equalities groups within the community we regulate.

October 2016

Annex A: Schedule 14 to the Legal Services Act 2007 – Intervention powers

The exact wording of the Act is set out below.

The intervention conditions are—

- (a) that the licensing authority is satisfied that one or more of the terms of the licensed body's licence have not been complied with;*
- (b) that a person has been appointed receiver or manager of property of the licensed body;*
- (c) that a relevant insolvency event has occurred in relation to the licensed body;*
- (d) that the licensing authority has reason to suspect dishonesty on the part of any manager or employee of the licensed body in connection with—*
 - (i) that body's business,*
 - (ii) any trust of which that body is or was a trustee,*
 - (iii) any trust of which the manager or employee of the body is or was a trustee in that person's capacity as such a manager or employee, or*
 - (iv) the business of another body in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;*
- (e) that the licensing authority is satisfied that there has been undue delay—*
 - (i) on the part of the licensed body in connection with any matter in which it is or was acting for a client or with any trust of which it is or was a trustee, or*
 - (ii) on the part of a person who is or was a manager or employee of the licensed body in connection with any trust of which that person is or was a trustee in that person's capacity as such a manager or employee,**and the notice conditions are satisfied;*
- (f) that the licensing authority is satisfied that it is necessary to exercise the powers conferred by this Schedule (or any of them) in relation to a licensed body to protect—*
 - (i) the interests of clients (or former or potential clients) of the licensed body,*
 - (ii) the interests of the beneficiaries of any trust of which the licensed body is or was a trustee, or*
 - (iii) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.*

Professional Statement Threshold Standard and Competences

Status

1. For decision

Executive summary

2. This paper sets out a summary of responses to the recent consultation on the draft Threshold Standard & Competences (TS&C) for the Professional Statement (PS) (ie the requirements of a barrister at the point of qualifying to apply for a first full Practising Certificate), and proposes changes accordingly. The TS&C define the required outcomes of pre-qualification training: the standards that must be achieved by all those entering practice. They are an essential requirement for the future design of training.

Recommendation

3. The Board is asked to **approve** the revised Threshold Standard & Competences for publication in light of responses to the consultation, along with the summary of consultation responses.

Background

4. The development of a Professional Statement was agreed by the Board at the inception of the Future Bar Training programme in 2014, in response to the clear direction for future training regulation that was set by the Legal Education & Training Review (2013), and consistent with the outcomes-focused approach enshrined in the Legal Service Board's Statutory Guidance (published February 2014).
5. In contrast to the SRA, the BSB plan for the Professional Statement addresses specifically the threshold standard required at the point of authorisation. This gives clarity to its purpose, maximises the opportunity for engagement with the profession and has the virtue of resulting in an uncomplicated statement.
6. The initial work on the Professional Statement was planned to define the scope of knowledge, skills and attributes required, which past standards had articulated less consistently. This work was consulted upon over the summer of 2015 and the Statement published in November.
7. That work anticipated this second stage, detailing the standards required.
8. This is an important step in the development of the Future Bar Training programme. By setting out clear competences for pre-qualification training, we will help training providers to work to a consistent standard. We expect that an emphasis on competences will help us to promote innovation in the way training is delivered, at all stages.
9. The TS&C were anticipated as a second stage in the development of the Professional Statement, and we benefitted in their initial drafting from the views and evidence submitted in the previous consultation, which closed in October 2015. The contribution of the Council of the Inns of Court was particularly helpful and their contributions were incorporated where possible.

Terminology

10. The **Professional Statement** is divided into four principle domains, each of which comprises a set of **knowledge, skills and attributes** that all barristers should possess. These have been agreed by the Board and published last year.
11. The **threshold standard** is a generally applied description of the quality expected in performance of each of the **competences**. These were set out in draft in this consultation. The responses to the consultation have been closely analysed and incorporated. We anticipate that they may change in the future following a structured review as a result of wider exposure to the experience of the Bar and of trainers and the academic community.

Comment

12. The Board is asked to approve the attached threshold standard and competences (Annex 3) that have been drafted and consulted upon over the past six months, with input from experienced consultants, an expert reference group and involvement of consumer representative groups as well as the full open consultation (Annex 2) that closed early in June.
13. The responses to the consultation are summarised in Annex 1, and the revised TS&C are attached at Annex 3, with changes to the published draft marked accordingly.
14. Overall, the responses to the consultation were positive and helpful, and we are extremely grateful for the evidence time and attention given by respondents to the detail of the draft.
15. Responses to the consultation were reviewed by the Education & Training Committee at their meeting on 4 July, and the redrafted TS&C reflect their recommendations on the principle points raised by respondents.
16. Following approval of the TS&C by the Board, we plan to publish them as an integrated document with the Professional Statement, ensuring that there is one point of reference for these inter-related documents. Annex 4 is the consolidated version of Professional Statement, threshold standards and competences.
17. After publication of the 2016 edition Handbooks for the BPTC and pupillage, we will plan the incorporation of the PS, TS&C in those publications, which are the definitive points of reference for BSB training and authorisation requirements. The revised editions will be published as usual in July 2017, though drafts may be made available to training providers at an earlier date to help them with any transition.
18. Separately, changes to the Qualifications Committee, delegation of authorisation decisions to staff and consequent development of guidelines for decision-making will be taken forward with the TS&C as the point of reference. This work is planned through the 2016/17 business year.

Risk implications

19. The agreement of the PS and TS&C provides a clearer point of reference for the identification of regulatory risks associated with the competence of barristers, and will ensure that training is focused on the appropriate priorities and standards.

Resource implication

20. The TS&C have been developed through specialist consultants with close oversight by the Director of Education & Training and Future Bar Training Programme Manager.

Equality & Diversity implications

21. The Equality & Access to Justice team has been consulted through the process of developing the TS&C (and indeed for the PS previously). An Equality Impact Assessment is included at Annex 5.

Consultation

22. Prior to formal consultation, the draft TS&C were reviewed by a consultative group of barristers, including one with senior level experience in vocational training and by the BSB Education and Training Committee and Board. The feedback provided was used to test the basic approach, terminology, the validity of the competences, appropriateness of the standard and overall usefulness and clarity. Amendments were made on the basis of this feedback before going out to consultation.
23. The draft TS&C were strongly informed by extensive consultation that was conducted through 2015 in the preparation of the Professional Statement. Subsequent consultation with consumer groups in 2016 has also been useful.

Lead responsibility

Simon Thornton-Wood, Director of Education & Training

Annex 1: Consultants' report on responses to the consultation (which will form the basis of the summary of consultation responses)

Annex 2: Full consultation document

Annex 3: revised Threshold Standard & Competences

Annex 4: consolidated Professional Statement, threshold standard and competences

Annex 5: Equality Impact Assessment

ANNEX 1

FUTURE BAR TRAINING:

THE PROFESSIONAL STATEMENT FOR BARRISTERS

THRESHOLD STANDARD AND COMPETENCES CONSULTATION

REPORT ON RESPONSES FOR THE BOARD

DOCUMENTS TO BE READ WITH ANNEX 1

Annex 2 - Full consultation document

Annex 3 - Revised threshold standard and competences with track changes

Annex 4 - Consolidated Professional Statement Threshold Standard and Competences for Barristers

BACKGROUND

- 1) The purpose of the consultation was to seek views on the draft threshold standard and competences. The threshold standard and competences were developed to elaborate on the Professional Statement and clearly demonstrate the abilities and standards required of any barrister on 'day one' of practice. The full consultation document is attached. The draft Professional Statement was the subject of a full consultation exercise prior to the adoption by the Board of the definitive Professional Statement for Barristers and its publication in October 2015. No further comments were invited on the Professional Statement in this consultation.
- 2) The threshold standard and competences were developed by reference to:
 - a) existing standards;
 - b) responses to the original consultation on the Professional Statement;
 - c) the Solicitors Regulation Authority *Statement of solicitor competence* (in order to ensure that there is consistency between the two professional regulatory bodies where that is appropriate);
 - d) various other professional statements including the medical profession, civil servants and legal executives.
- 3) The draft threshold standard and competences were reviewed by a consultative group of barristers, including one with senior level experience in vocational training, and by the BSB Education and Training Committee and Board. The feedback provided was used to test the basic approach, terminology, the validity of the competences, appropriateness of the standard and overall usefulness and clarity. Amendments were made on the basis of this feedback before going out to consultation.

METHODOLOGY

- 4) The consultation went live on 14 March 2016. Respondents were able to respond online, by e-mail or by post. Respondents were asked to answer nine specific questions and given an opportunity to make any other comments they wished in answer to question ten. The online questionnaire allowed only limited opportunity for written replies.

PUBLICITY

- 5) Publicity took several forms:
- Press release on the BSB website;
 - Email to key stakeholders;
 - Promotion by members of the Education and Training team at meetings of BPTC providers and with members of the profession including the Inns of Court.

Initial publicity was followed up by three reminder messages to members (via the BSB Regulatory Update email) during the consultation period. Reminders were also provided via Twitter to the BSB's followers.

PROCESS

- 6) The consultation period ended on 5 June 2016, at which time 19 responses had been received. It is noted that 22 responses were received regarding the full consultation exercise on the draft Professional Statement.
- 7) Responses comprised:
- 15 full written submissions;
 - 2 completed online questionnaires;
 - 1 incomplete online questionnaire (only the first question being answered);
 - 1 incomplete online questionnaire (no questions being answered).
- 8) Although all respondents could request anonymity none did so although one respondent did not provide their name. Full responses are available on request.
- 9) The table below indicates the types of respondent and the code letters assigned to each in this report. The code letters for respondents who represent a collective response have been emboldened in the table and throughout this report. Due weight has been given to those respondents who represent large constituencies.

Type	Number	Code
Representative bodies of the Bar	6	C, F, E, N, S, H
Individuals	5	A, I, M, O, Q
Others	8	G, D, J, K, L, P, R, B
Total	19	

- 10) Additionally, the BSB undertook a consumer engagement meeting lasting three hours on 2 June 2016 which was attended by six representatives of consumer groups. The group discussion was led by the BSB team. The Future Bar Training and the Professional Statement were discussed.

ANALYSIS

General comments

- 11) All online respondents were individuals. They were very largely supportive of the content and layout of the threshold standard and competences. They did not indicate a need to revisit the draft.
- 12) Written responses took a variety of forms with only a minority of respondents confining themselves to answering the questions posed in the consultation document. Some chose not to address the specific targeted questions at all providing instead a commentary on the draft threshold standard and competences as a whole. Most of the responses were a mixture of these two approaches. Some respondents also offered specific drafting proposals.
- 13) Each response was read and a framework constructed around the specific consultation questions, the respondents' comments going beyond the basic questions and the specific proposals for re-drafting. This enabled a structured analysis of the data. Answers and comments were further examined to find a deeper understanding of what the responses indicated. The specific drafting proposals, including those relating to the draft threshold standard, were examined in detail. This method was applied to all responses.
- 14) A summary of responses to the specific consultation questions and themes and points of information were identified for and considered by the Education and Training Committee (the Committee) at its meeting on 4 July. The recommendations made below were all agreed by the Committee unless otherwise indicated. Guidance from the Committee on the themes informed the redrafting of the threshold standard and competences. It was agreed by the Committee that detailed redrafting be undertaken

cautiously in light of the full consultation on the draft Professional Statement. Major changes at this stage risk jeopardising the internal coherence of the document and changes made at the behest of one respondent will not have been seen and considered by the other respondents. Redrafting has been carried out cautiously so that the threshold standard and competences remain recognisable to all stakeholders (see attached document).

- 15) Although some respondents requested minor changes to the Professional Statement itself, i.e the knowledge, skills and attributes and commentaries, it is **recommended** that no such amendments are made. As explained above, the Professional Statement was the subject of a full consultation prior to its publication in October 2015 and needs time to become embedded before a review takes place.

Summary of responses to specific consultation questions

- 16) Three respondents (**H**, **M**, **N**) provided only general comments and did not directly answer the specific questions, one respondent (**Q**) provided no substantive response.

- 17) Questions 1-4 have been grouped together in order to avoid repetition.

Question 1 – Are there any competences missing?

Question 2 – Is the scope of each knowledge, skill and attribute captured by its corresponding competences?

Question 3 – Do the competences contain the appropriate level of detail?

Question 4 – Have the competences been drafted sufficiently widely to enable educators, training organisations and pupil supervisors to design training and develop more detailed outcomes and assessment criteria?

Most respondents answered favourably, ie 'No', 'Yes', 'Yes' and 'Yes' respectively.

Some of these responses were subject to caveats in the form of specific re-drafting proposals which have been considered. However, one respondent (**C**) felt that there were some competences missing, some were inaccurate and some too widely drawn and offered specific examples. One respondent (**R**) was unsure and would have liked to see the mapping exercise used in the development of the competences. The same respondent questioned whether some were not in fact competences but rather 'personal professional standards'. One respondent (**N**) commented that the document was over prescriptive, that it was 'unnecessary and inappropriate to include the competences' and that the Professional Statement is sufficiently clear without them.

- 18) *Question 5 – Do the standards in the threshold standard and competences when read together reflect what would be expected of a barrister on 'day one' of practice?*

Most respondents answered favourably ie 'Yes'. Some of these responses were subject to caveats in the form of re-drafting proposals in relation to specific competences. Three respondents (**C**, **F**, **R**) made suggestions for re-drafting the threshold standard. This is discussed further below. One respondent (**C**) felt that the standards were 'too vague'.

- 19) *Question 6 – Will the threshold standard and competences be a useful tool to help educators, training organisations, pupil supervisors, prospective barristers and consumers understand the required competences of a barrister on ‘day one’ of practice?*

While most respondents answered ‘Yes’, some respondents (A, B, E) questioned their usefulness to consumers. Academic institutions requested further clarity about the routes to qualification, the allocation of responsibility for achievement of the standard and for assessment and, in particular, the standards to be achieved at the end of the vocational stage. The last point, ie a request for ‘staging posts’ in relation to standards throughout the training pathway, is discussed further below. One respondent (C) answered ‘No’ and commented that the language used is too vague, the standards insufficiently defined and the balance between ‘judge-facing competences and client facing competences’ is not correct’.

- 20) *Question 7 – Do the threshold standard and competences strike the right balance between the broad qualification which our research tells us is encompassed by the title barrister, and the degree of focus which comes in time with practice in a particular area?*

Most respondents answered ‘Yes’ although one respondent (C) felt they were ‘too vague’ and another respondent (F) felt the question was incorrectly framed.

- 21) *Question 8 – Have we articulated sufficiently the distinction between (a) the Professional Statement, Threshold Standard and Competences (in particular its use for education and training) and (b) the role of the BSB Handbook and Code of Conduct (in defining how a barrister must conduct themselves throughout their career)?*

Some respondents answered ‘Yes’ but a number required greater clarity. This is discussed at greater length below.

- 22) *Question 9 – Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the threshold standard and competences as a tool to assist our regulatory activities? If yes, what are these?*

Most respondents answered ‘No’. Two respondents (D, K), both academic institutions, referred to the tension between retaining standards and encouraging equality and diversity. Another respondent (G) anticipated that the competence based system would have positive effects on equality and diversity.

- 23) *Question 10 – Do you have any other comments? If yes, what are they?*

Most respondents answered ‘No’ having made their general comments in answer to the other questions or in their introductory paragraphs.

Themes/points of information

- 24) The principle themes/points of information identified are:
- i) Threshold standard
 - ii) Disciplinary matters/professional complaints
 - iii) Mandatory wording and whether ‘must’ ought to be changed to ‘should’
 - iv) ‘day one’ of practice
 - v) Format and publication of the final document
 - vi) Clarity for consumers
 - vii) Clarification of ‘client’s instructions/acting in client’s best interests’
 - viii) Clarification around ‘direct access/litigants in person’
 - ix) Treatment of non-contentious drafting
 - x) Request for ‘staging posts’ in relation to standards throughout the training pathway
 - xi) Belief that the BSB may be going beyond their role as regulator
 - xii) Clarification as to what is and is not within the role of a barrister

It is important to note that not all of the above produced the same level of response. However, the fact that that some respondents represent large constituencies has been taken into consideration.

- 25) A summary of each theme/point of information, taking into account the advice from the Committee, with a recommendation for the Board is provided below.

(i) - Threshold standard

- 26) The threshold standard was referred to specifically in questions 5, 6 and 7 set out in full above. There was broad agreement, subject to one notable exception (see below) and some caveats relating primarily to the use of the word ‘good’, that the standards in the threshold standard and competences when read together reflect what would be expected of a barrister on ‘day one’ of practice. It should be noted that the word ‘good’ has only been used in the competences when cross-referencing knowledge, skills or attributes defined as such in the Professional Statement. The drafting of the Professional Statement is no longer open for debate. For the same reason it is **recommended** that no amendment should be made in response to the requests to replace ‘good’ with ‘excellent’ in the context of English language skills as this would mean altering the Professional Statement.

- 27) One respondent (C) felt that the standards ‘are so widely and vaguely drawn that they will not provide very much help to those trying to decide what the appropriate standard is, or whether the standard is met’. However, given the broad acceptance of the

threshold standard and the changes proposed below the Committee agreed that the threshold standard be revisited only after it has been tested in practice.

- 28) In relation to the precise wording of the threshold standard the same respondent (**C**) suggested that the single threshold standard be replaced, that each knowledge, skill or attribute should be followed by a specific standard couched in terms of the extent to which it should be achieved, for example 'Where the competence is one which must be fully met, ...the Threshold Standard need only say that the Competence must be fully met'. However, fully meeting a competence does not necessarily import a standard; a standard requires a level of attainment not achievement simpliciter. The respondent's suggestion will not work unless the competence itself incorporates a standard (and not all of the competences do so).

Two respondents (**F, R**) suggested alternative wording for the threshold standard. It is **recommended** that some of the alternative wording suggested by one respondent (**F**) is adopted as their revised version is more succinct.

- 29) This same respondent (**F**) also proposed re-writing element a) of the threshold standard. Their proposal for re-writing element a) was as follows:

'a) always achieve a standard of service to the client, which is appropriate to the purpose for which the barrister has been instructed.'

This respondent appears to share with the BSB the same expectations of the minimum level of attainment to be demonstrated. The Committee advised that these proposed words could be read as clarifying a barrister's role e.g. if a barrister is instructed to act as a second junior in a commercial case then they would be expected to act in a way appropriate for a second junior. The proposed words are intended to clarify rather than change the standard. However, as the proposed words are limiting, in that they only refer to service to the client, the Committee suggested that a combination of the original element a) and the proposed words be adopted. The current draft of the threshold standard reflects this proposal.

It is **recommended** that the final version of the threshold standard incorporates only the changes suggested above.

- 30) The other respondent (**R**) offers two possible alternatives to element a) of the threshold standard. The first is to substitute the word 'good' for 'satisfactory' on the ground that the standard being set is too low. However, another respondent (**G**) '...support the acknowledgement in the threshold standard that barristers cannot be expected to demonstrate a level of excellence on day one of practice (although many, of course, do demonstrate exactly that)'. It is **recommended** that the word satisfactory should be retained. Note that the incorporation of standards within some of the competences means that in some cases satisfactory performance must be at a high level eg 1.9 (i) Write with clarity, accuracy and precision. If the writing is not clear, accurate and precise it is not satisfactory.

31) The same respondent (**R**) also suggests the following words as a replacement for element a) viz: ‘demonstrating the competences at the level required to protect clients, preserve trust and confidence in the profession and facilitate the effective administration of justice’. The inclusion of these words in the threshold standard would be circular as they repeat the competences e.g. in 1.2 and 2.1. There is also a question over the clarity of a standard phrased in this way. It is **recommended** that the threshold standard is not amended in this way.

ii - Disciplinary matters/professional complaints

32) A number of respondents (**A, E, F, G, R, C, K**) raised concerns over the lack of clarity in the consultation document over the relationship between the Professional Statement threshold standard and competences, and the Code of Conduct. The Professional Statement for Barristers is very clear about this relationship. In the Introduction it states:

‘The Professional Statement will not replace the Code of Conduct, and all barristers must continue to comply with the regulations set out in the BSB Handbook, which will remain the sole reference point for all disciplinary matters.... Complaints will continue to be dealt with under the Code of Conduct.’

In addition Appendix A of the Professional Statement, paragraph 3 states:

‘The Professional Statement does not focus on what barristers must do; this is dealt with in the BSB handbook (inclusive of the Code of Conduct and associated Core Duties), with which all barristers must continue to comply. The Professional Statement may be used as an evidential point of reference when a breach of the requirements for competent practice (set out in the Code of Conduct) have been raised as a matter of complaint.’

It is not the BSB’s intention to deviate from this policy decision.

It is **recommended** that when published, the consolidated Professional Statement Threshold Standard and Competences document should retain both the words from the Introduction and Appendix A thus re-iterating the policy decision of the Board and the advice of the Committee.

iii - Mandatory wording and whether ‘must’ ought to be changed to ‘should’

33) Whereas the Professional Statement introduces the knowledge, skills and attributes within each of the four domains with the words ‘barristers will’, the competences are currently preceded by the words ‘barristers must’. Three of the respondents (**E, F, C**) suggested changing ‘must’ to ‘should’. In light of the policy decision referred to in the paragraph above, and the advice of the Committee, this amendment has been made.

iv - 'day one' of practice

34) There are three points raised by respondents:

- a) Some respondents (**D, E, J, K, L, R**) felt that there could be confusion as to the meaning of 'day one' of practice. Currently it has been defined in the published Professional Statement as:

'i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practicing certificate'.

In order to address this it is **recommended** that a footnote be added to the final published document which will read as follows:

'for the majority of barristers this will be at the end of the practising period of pupillage ("second six")'.

- b) Two respondents (**D, G**) commented on whether the competences accurately reflect the level of specialisation that might be expected on 'day one' of practice. One put forward the view that the competences should more strongly describe the specialist legal knowledge required, the other that the competences do reflect the breadth of experience required. As the overall response to question 7 was that the threshold standard and competences strike the right balance it is **recommended** that no amendment is made in response to this point.
- c) There was criticism from one respondent (**E**) that some of the competences relating to organisational and management skills go beyond what a barrister should be expected to do on 'day one' of practice. The respondent indicates that the removal of the mandatory language, referred to and recommended above, would assist in resolving this problem.

v - Format and publication of the final document

- 35) One respondent (**F**) offers useful suggestions to make the documentation more straightforward and self-explanatory for all stakeholders. The staged consultation process has necessarily resulted in several versions of the documentation being published. Accordingly, it is **recommended** that the final presentation of the Professional Statement should take the form of the existing version as published in October 2015 incorporating the threshold standard and competences and that this final version should replace all previous versions¹ (see attached document). Multiple versions containing different levels of detail are **not recommended** as they are likely to lead to confusion.

¹ However the two grammatical mistakes in the published version will be corrected and there may be non-substantive amendments required in order to incorporate seamlessly the threshold standard and competences.

vi – Clarity for consumers

- 36) There was some concern as to whether consumers would a) understand the documentation and b) use it as the basis for complaints. The latter point was linked to the points on disciplinary matters/professional complaints and mandatory wording already referred to above.

It is hoped that by taking into account suggestions made by respondents wherever that is appropriate, the final document will be clear for all stakeholders.

Some respondents (**E,F,C,K**) object to any repetition of words in the commentary and competences on the grounds of lack of clarity. When drafting the competences repetition was avoided where possible. The commentary provides an explanation of the knowledge, skills and attributes; it is fuller in some places than others and is for guidance only. On the other hand, the competences are comprehensive and represent more than guidance as they should be demonstrated by barristers. The commentary and competences therefore have different functions and the Committee agreed that a limited level of repetition is unavoidable.

vii - Clarification of 'client's instructions/acting in client's best interests'

- 37) A number of very pertinent points were made by two respondents (**C, F**) around clarifying client's instructions and acting in the client's best interests. It was recommended to the Committee that the drafting of the relevant competences be adjusted to reflect these points and this has been done.

viii - Clarification around 'direct access/litigants in person'

- 38) A number of very pertinent points were made by three respondents (**E, L, S**) around clarifying the distinction between direct access clients and litigants in person. It was recommended to the Committee that the drafting of the relevant competences be adjusted to reflect these points and this has been done,
- 39) One respondent (**E**) requested additional protection to ensure that a fair and appropriate fee is charged for persons instructing counsel on a direct access basis. The respondent points out that there is no such duty under the Code of Conduct but that it is included in the rules of professional conduct in other jurisdictions. The Committee agreed that this consultation is not the appropriate forum for amendments of this type, however valid the suggestion may be.

ix - Treatment of non-contentious drafting

- 40) Two respondents (**C, K**) are concerned that the competences relating to drafting are included exclusively under the heading of Advocacy. It is assumed that the word 'advocacy' was meant to be read in its widest sense. It is **recommended** that the words 'non-contentious' are added to the relevant competences under the heading

Advocacy to clarify the situation and avoid the need to amend the published Professional Statement at this stage.

- x - Request for 'staging posts' in relation to standards throughout the training pathway.
- 41) Four academic respondents (**D,L,R,K**) requested that the BSB issue guidance on the standard to be achieved at various points along the training pathway, in particular entry to the BPTC and the first day of pupillage. The Committee agreed that the correct place to deal with this is in future documentation.
- xi - Belief that the BSB may be going beyond their role as regulator
- 42) One respondent (**F**) suggests that the BSB should be careful, in framing the competences, to refrain from exceeding the scope of its remit as regulator by imposing additional obligations where barristers are already bound by rules laid down by other agencies. The threshold standard and competences have been redrafted on the basis that if the competence falls squarely within the scope of the knowledge, skills or attributes as described in the Professional Statement and commentary and the Code of Conduct then the competence be retained. All proposals for redrafting have been discussed with and agreed by the BSB Education & Training Director.
- xii - Clarification as to what is and is not within the role of a barrister
- 43) Some respondents raised particular points as to where they considered the competences go beyond the role of what a barrister does – eg

At 1.12 Employ effective research skills – an objection to the reference to non-legal research. Respondents' proposals for redrafting have been adopted taking into account comments made by the Committee.

At 1.4 Have an awareness of the wide range of organisations supporting the administration of justice – an objection to the reference to advising 'clients of alternative sources of advice and funding available to them'. Note that this reference is in the commentary, already published and therefore has been decided to come within the remit of a barrister. The words 'as appropriate' have been added to soften the requirement.

At 1.18 Only accept work which they believe they are competent to undertake - two respondents (**C, F**) want to remove the requirement to refer a client to others where the barrister declines to act. This is not referred to in the Code of Conduct or commentary; on the advice of the Committee the requirement has been removed.

- 44) One respondent (F) proposed the addition of wording to cover numeracy skills at 1.8. After discussion with the Committee it is **recommended** that the words proposed in the redraft at 1.3 and 1.5 are adopted as an alternative method of covering numeracy skills.

CONCLUSION

- 45) The principle of developing the threshold standard and competences is supported by all but one respondent.
- a) The majority of the respondents believe that the threshold standard and competences will work in elaborating the Professional Statement and demonstrating the abilities and standards required for any barrister on 'day one' of practice.
 - b) There is a healthy amount of constructive criticism of the draft. Many good points have been made in reasoned answers and criticisms are usually combined with alternative wording suggestions to aid clarity. Each of the main suggestions have been carefully evaluated including those that relate to the threshold standard.
 - c) The main themes that the Committee considered and advised on have been identified above. Different respondents placed emphasis on different aspects of the draft when constructing their response and we have identified this in the analysis above.
 - d) The Committee's guidance on the main themes informed the redrafting of the threshold standard and competences.
 - e) The Committee agreed that detailed proposals for amendments to the competences should be accepted only where they improve the understanding of the Professional Statement without compromising either the overall purpose and integrity of the final document or other respondents' comments.
 - f) Since the Committee meeting in July the specific suggestions for drafting of the competences have been examined in detail and all proposed amendments have been agreed with the BSB Director of Education and Training.
 - g) A final draft of the threshold standard and competences is before the Board (see attached document).

Jane Chapman

Carol Wadsworth-Jones

19 July 2016

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Future Bar Training

The Professional Statement for Barristers

Consultation on Threshold Standard and Competences

Introduction

1. This consultation paper is an essential component of the Future Bar Training (FBT) programme.
2. FBT is our programme for change in education and training. We hope that by changing how we regulate, we can:
 - make education and training for the Bar more consistent, innovative and flexible;
 - remove unnecessary barriers to entry to the profession, including bringing down the cost of training.
3. In October 2015 we published a [Professional Statement](#) which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice (i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate). The Professional Statement provides:
 - a. a clear and objective point of reference for the regulation of training for the Bar and the development of training pathways;
 - b. a baseline for more detailed training specifications, education standards and establishing routes to authorisation;
 - c. a starting point for development of a threshold standard and competences.
4. The purpose of this consultation is to seek views on the draft threshold standard and competences. A summary of the relationship between these and the Professional Statement is attached in [Annex 1](#). The drafts for consultation are attached in [Annex 2](#).
5. The threshold standard and competences have been developed to elaborate on the Professional Statement and clearly demonstrate the abilities and standards required for any barrister on 'day one' of practice.
6. We have developed the threshold standard and competences to meet the needs of our regulated community and its consumers. We have worked with the Solicitors Regulation Authority to ensure consistency of requirements between the two professions where our

training intersects, and particularly in relation to the academic stage, where divergent competences could make a coordinated approach unworkable.

7. This consultation document describes how we have developed the draft threshold standard and competences and invites comments on them.

Equality impact assessment

8. We have undertaken an initial screening of the function of the Professional Statement threshold standards and competences and did not identify any potentially significant adverse impacts.

The Professional Statement, threshold standard and competences

What is the Professional Statement?

9. The Professional Statement describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice.
10. The statement was the subject of a full consultation exercise prior to the adoption of the definitive Professional Statement for Barristers by the Board and its publication in October 2015. No further comments are invited on it.

What are the competences?

11. Competences have been defined for each knowledge, skill and attribute contained in the Professional Statement. Barristers must demonstrate all the competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.
12. The competences must be sufficiently comprehensive to encapsulate the breadth of the requirements of barristers on 'day one' of practice. They must be concise, assessable and suitable to act as an umbrella for training pathways and learning outcomes to be developed and used by educators, training organisations and pupil supervisors.
13. We have not set out a full specification of the knowledge requirements in this document (i.e. a syllabus). We will address these requirements separately.

What is the threshold standard?

14. The threshold standard is the minimum standard to which the competences must be performed on 'day one' of practice. Newly qualified barristers will aspire to higher standards but must meet the minimum standard.
15. Standards are also incorporated within the competences, and therefore the threshold standard and the competences must be read together.
16. It is important that the threshold standard is set at the right level for barristers on 'day one' of practice. The threshold standard must protect clients, preserve the trust and confidence which the public places in the profession and facilitate the administration of justice, whilst recognising that a newly-authorized barrister cannot be expected to work at the same level as one who has practised for some years. The LSB's *Statutory Guidance on Education and Training* requires that regulators set standards that "find

the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements”.

Who are the Professional Statement, threshold standard and competences for?

17. **The Bar Standards Board:** They will assist us in maintaining standards of both those entering practice and those providing education and training. They will inform the development of alternative pathways to qualifications and the assessments we control.
18. **Those involved in the design and delivery of education and training for the Bar:** They will be used to inform the development of education and training materials and pathways.
19. **Aspiring barristers:** Clearly understanding the competences that must be achieved in order to be authorised will help aspiring barristers make informed decisions about their future development.
20. **Practising barristers:** The Professional Statement, threshold standard and competences describe the essential knowledge, skills and attributes that they should expect of themselves and their peers and the minimum standard that they must adhere to. They do not replace the *Code of Conduct*, and all barristers must continue to comply with the regulations set out in the *BSB Handbook*, which will remain the sole reference point for disciplinary matters.
21. **Consumers:** The Professional Statement, threshold standard and competences may be used to inform an understanding of the barrister’s role and the service a consumer can expect to receive. Complaints will continue to be dealt with under the *Code of Conduct* or the Legal Ombudsman.

Terminology

22. The threshold standard and competences have been written in such a way as to achieve a balance between that which is understandable and usable, whilst also maintaining a reasonable level of detail.

The evidence base for the threshold standard and competences

23. Standards for the profession are currently found in a number of our documents including:
 - a. the BPTC Handbook;
 - b. the BSB Handbook;
 - c. the Pupillage Handbook;
 - d. QASA Handbook.

These existing standards were ‘mapped’ to the Professional Statement and used in the development of the threshold standard and competences.

24. The threshold standard and competences were developed by two legal academics with extensive experience in both the academic and vocational stage of training. The approach taken was to develop a set of competences to sit beneath each knowledge,

skill and attribute defined in the Professional Statement and a single threshold standard that would apply to all competences.

25. The threshold standard and competences were developed by reference to:
- a. existing standards (as highlighted in the mapping document referred to above);
 - b. responses to the original consultation on the Professional Statement;
 - c. the Solicitors Regulation Authority *Statement of solicitor competence* (in order to ensure that there is consistency between the two professional regulatory bodies where that is appropriate);
 - d. various other professional statements including the medical profession, civil servants and legal executives.
26. The draft threshold standard and competences have been reviewed by a consultative group of barristers, including one with senior level experience in vocational training. The draft threshold standards and competences have also been reviewed by our Education and Training Committee.

Their feedback has been used to test the basic approach, terminology, the validity of the competences, appropriateness of the standard and overall usefulness and clarity. Amendments were made on the basis of their responses.

Structure

27. The diagram in Annex 1 explains the terminology used and the relationships between the various elements of the Professional Statement and the newly drafted threshold standard and competences (by reference to examples).
28. The draft threshold standard and competences are in Annex 2. They are contained in boxes within the Professional Statement.

Consultation questions

Question 1

Are there any competences missing?

Question 2

Is the scope of each knowledge, skill and attribute sufficiently captured by its corresponding competences?

Question 3

Do the competences contain the appropriate level of detail?

Question 4

Have the competences been drafted sufficiently widely to enable educators, training organisations and pupil supervisors to design training and develop more detailed

outcomes and assessment criteria?

Question 5

Do the standards in the threshold standard and competences when read together reflect what would be expected of a barrister on 'day one' of practice?

Question 6

Will the threshold standard and competences be a useful tool to help educators, training organisations, pupil supervisors, prospective barristers and consumers understand the required competences of a barrister on 'day one' of practice?

Question 7

Do the threshold standard and competences strike the right balance between the broad qualification which our research tells us is encompassed by the title barrister, and the degree of focus which comes in time with practice in a particular area?

Question 8

Have we articulated sufficiently the distinction between (a) the *Professional Statement Threshold Standard and Competences* (in particular its use for education and training) and (b) the role of the *BSB Handbook and Code of Conduct* (in defining how a barrister must conduct themselves throughout their career)?

Question 9

Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the threshold standard and competences as a tool to assist our regulatory activities? If yes, what are these?

Question 10

Do you have any other comments? If yes, what are they?

PLEASE GIVE REASONED ANSWERS IN YOUR RESPONSES

Further steps following the consultation

30. After this consultation we will:

- a. analyse and address your feedback;
- b. address the knowledge requirements referred to at paragraph 13 above;
- c. develop an assessment strategy;
- d. undertake a full equality impact assessment for the threshold standard, competences and assessment strategy.

How to respond

31. We welcome feedback on everything we do as a regulator. There are many ways in which we engage with the public and the profession, from open meetings to webinars and social media. Our website always has up-to-date information about these opportunities. To share your views on this consultation, please contact us in the following ways:

Online, by visiting:

<https://www.surveymonkey.co.uk/r/PSThresholdStandards>

By email*, to

futurebartraining@barstandardsboard.org.uk

By post*, to:

Future Bar Training – Professional Statement consultation
The Bar Standards Board
C/O Hannah Wilce
289-293 High Holborn
London
WC1V 7HZ

* With postal and email responses, please state:

- your name or the name of the person on whose behalf you are responding (unless you wish to respond anonymously);
- your role (e.g. barrister, consumer, legal academic);
- your location;
- if you wish for us to treat any part or aspect of your response as confidential.

Responsible officer

32. The officer responsible for this work at the BSB is Hannah Wilce. Please return your responses, or direct any questions, to futurebartraining@barstandardsboard.org.uk.

Deadline

33. Please submit your response by 5 June 2016.

Confidentiality

34. We may publish a list of respondents to the consultation. Please state clearly if you do not wish your name and/or response to be published. Although we may not publish all individual responses, it is our policy to comply with all Freedom of Information requests.

Our consultants and advisors

35. Our consultants are Jane Chapman and Carol Wadsworth-Jones; their work was informed by a consultative group of barristers: Rebecca Foulkes, Samantha Pullin, Paul Mertens and Deveral Capps.
36. Jane qualified as a solicitor and joined the College of Law (now the University of Law)

in 1985. In 2000 she became an Associate Professor and Director of Academic Programmes. In 2003 Jane was appointed to the Board of Management of the College of Law; as Board Member Operations she had over-arching responsibility for all programmes. In 2012 Jane was appointed Vice President (Academic Governance, Quality and Standards), Chair of the Academic Board, a member of the Academic Standards Committee and a member of the executive management team. Jane was responsible for quality assurance and standards of the academic and professional programmes (including the BPTC). She left the University to pursue consultancy work in professional legal education. Jane holds a BA in Law.

37. Carol qualified as a solicitor in 1979, practised until 1988 then entered Higher Education. She was latterly Associate Professor and the Director of Programmes at the College of Law (now University of Law) responsible for the delivery of all programmes (including the BPTC) across the University. She has edited sections of Halsbury's Laws, and sat on the SRA's Education and Training Committee and various accreditation panels. She is a member of the Society of Legal Scholars and a fellow of the Higher Education Academy. She now consults independently. Carol holds a BA in Law and French.

ANNEX 1:

Relationship between the Professional Statement, Threshold Standard and Competences

	Terminology	Explanation	Example
PROFESSIONAL STATEMENT	Knowledge Skills and Attributes	<p>The knowledge, skills and attributes are grouped under four domains:</p> <ol style="list-style-type: none"> 1. Barristers' distinctive characteristics; 2. Personal values and standards; 3. Working with others; 4. Management of practice. <p>Barristers will have all the knowledge, skills and attributes on 'day one' of practice.</p>	2.2 Be honest in their dealings with others.
	Commentary	A set of explanatory notes on the knowledge, skills and attributes to be used for guidance only	They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.
THRESHOLD STANDARD AND COMPETENCES	Competences	<p>Ability to perform the roles and tasks required by one's job to the expected standard.</p> <p>Competences have been defined for each knowledge, skill and attribute. Barristers must demonstrate all the competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.</p> <p>Competences are assessable.</p>	<p>Barristers must:</p> <ol style="list-style-type: none"> a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16]; b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status; c) Ensure that any information they give is accurate, true, complete and not likely to mislead.
	Threshold Standard	<p>The threshold standard is the minimum standard to which the competences must be performed on 'day one' of practice. Newly qualified barristers will aspire to higher standards but must meet the minimum standard.</p> <p>Standards are also incorporated within the competences: the threshold standard and competences must be read together.</p> <p>The draft threshold standard is set out in Annex 2.</p>	

ANNEX 2: The Professional Statement threshold standard and competences

Threshold standard

The Professional Statement describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice (i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate).

Competences are defined for each knowledge, skill and attribute. Barristers must demonstrate all competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.

The statement below describes the minimum level or standard to which the competences must be performed. Standards are also incorporated within the competences: the threshold standard and the competences must be read together. Newly qualified barristers will aspire to higher standards, but must meet the minimum standard.

On 'day one' of practice, barristers cannot be expected to demonstrate the level of excellence that might be expected of a barrister of some years standing. Newly qualified barristers must:

- a) always perform at an acceptable standard, that is the standard of performance must be at least satisfactory (fit for purpose though not necessarily outstanding or perfect);
- b) perform within a reasonable timeframe (a reasonable timeframe for a newly qualified barrister may be longer than it is for an experienced barrister);
- c) be able to deal with straightforward or uncomplicated or familiar work unaided;
- d) recognise and ask for support when it is needed in order to complete more complex or complicated or unfamiliar work.

Competences

The competences have been devised from existing standards articulated in the BSB Handbook and other established sources. The competences are identified by a box underneath the knowledge, skills and attributes, and commentaries, which have previously been defined in the Professional Statement (preceded by the words 'Barristers must'). Where there is a cross-reference in square brackets, the intention is to incorporate all the competences under that knowledge, skill or attribute.

1. Barristers' distinctive characteristics

Legal knowledge, skills and attributes

Barristers will:

1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.

They will recognise and abide by their paramount duty in this regard including where this may require them to act against their own or their client's best interests.

<p>Barristers must:</p> <ul style="list-style-type: none">a) Thoroughly recall and comprehend the Core Duties and their interrelationship.b) Ensure that their conduct justifies their clients' and colleagues' trust in them and the public's trust in the profession by:<ul style="list-style-type: none">(i) consistently applying the Core Duties and in particular the paramount duty to the court in the administration of justice;(ii) demonstrating a thorough comprehension of the principles and values in the Professional Statement for Barristers.

1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

<p>Barristers must:</p> <ul style="list-style-type: none">a) Thoroughly recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice prescribed by the Bar Standards Board.b) Be aware of significant changes to these principles and rules.

1.3 Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.

They will have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practise. They will have a good understanding of the rules of practice and procedure operating in courts relevant to their area(s) of practice. For example, the rules relating to jurisdiction, evidence, disposals, financial orders and costs. They will understand the processes by which disputes can be resolved outside court, such as arbitration and mediation.

Barristers must:

- a) Thoroughly recall and comprehend the core law and rules of procedure and practice relevant to their area of practice.
- b) Know the legal texts, journals, materials, documents and research tools relevant to their area of practice.
- c) Accurately apply to the matters they are dealing with the law and rules of procedure and practice relevant to their area of practice.
- d) Keep their knowledge and skills in their specific area of practice up-to-date.
- e) Comprehend and be able to identify and advise clients of situations where alternative forms of dispute resolution may be appropriate to their given circumstances.

1.4 Have an awareness of the wide range of organisations supporting the administration of justice.

They will understand that the system for administration of justice comprises more than the judicial system alone and will have an awareness of the other elements wherever they are relevant to their work. They will also have an awareness of the sources of advice and funding available to clients, their additional responsibilities in cases that are not self-funded, and the implications of the same on the conduct of a case.

Barristers must:

- a) Be aware of the wide range of organisations supporting the administration of justice and their respective roles.
- b) Be able to identify and advise clients of alternative sources of advice and funding available to them.
- c) Understand the implications on the conduct of the case and the additional responsibilities owed in circumstances where the client is not self-funded.

1.5 Apply effective analytical and evaluative skills to their work.

They will identify the relevant facts of a matter and apply their legal and procedural knowledge to those facts to analyse the issues. They will acquire an understanding of their client's circumstances, needs, objectives, priorities and constraints. They will use that analysis and understanding to evaluate the available options and communicate them to their client.

Barristers must:

- a) Identify all necessary information and seek clarification of instructions using appropriate communication skills.
- b) Rigorously assess facts and evaluate key issues and risks.

- c) Analyse financial information.
- d) Recognise inconsistencies and gaps in information.
- e) Methodically evaluate the quality and reliability of the information.
- f) Use multiple sources of information to make effective judgements.
- g) Employ effective research skills [1.12].
- h) Identify relevant legal principles.
- i) Accurately apply legal principles to factual issues to devise the most appropriate solution taking into account the client's circumstances, needs, objectives, priorities and constraints.
- j) Reach reasoned decisions supported by relevant evidence.
- k) Be able to explain and justify their analysis, synthesis and evaluation.

1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it.

Advice in writing will include written opinions and advising by email. Oral advice will include conducting conferences and advising by telephone. This will also include advising on the need and preparation for trial where an earlier disposal of the case does not occur, and the ability to convey unpalatable advice where necessary.

Barristers must:

- a) When giving advice take into account the client's circumstances and objectives.
- b) Ensure that advice is informed by appropriate analysis, synthesis and evaluation and where appropriate identifies and evaluates the consequences of different options.
- c) Address and present all relevant legal and factual issues in communicating their advice.
- d) Exercise good communication skills [1.9].

1.7 Negotiate effectively.

They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client.

Barristers must:

- a) Identify in so far as possible all parties' interests, objectives and limits.

- b) Develop and formulate best options for meeting parties' objectives.
- c) Present options for compromise cogently.
- d) Recognise, evaluate and respond to options presented by the other side.
- e) Develop appropriate compromises between the options or parties.
- f) Bring the negotiation to an appropriate conclusion depending on the outcome.

Practical knowledge, skills and attributes

1.8 Exercise good English language skills.

They will have an effective command of the language and be able to use it appropriately, accurately and fluently so as to handle complex and detailed argumentation. They will use correct English grammar, spelling and punctuation.

Barristers must:

- a) Use correct vocabulary, English grammar, spelling and punctuation in all communications.
- b) Speak fluent English.

1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.

They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.

Barristers must:

- a) Identify the audience and respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances [3.3].
- b) Select the appropriate medium of communication taking into account the message and the audience.
- c) Adapt language and non-verbal communication taking into account the message and the audience.
- d) Use appropriate listening and questioning techniques when obtaining information.

- e) Analyse written information.
- f) Request and provide clarification of meaning when appropriate.
- g) Recognise and respond appropriately to communications from others (whether in writing, verbal or non-verbal).
- h) Exercise good English language skills [1.8].
- i) Write with clarity, accuracy and precision.
- j) Speak articulately and fluently.
- k) Present arguments cogently and succinctly.
- l) Exercise these skills appropriately in meetings and conferences (whether conducted face-to-face or remotely).

1.10 Make sound judgements in their work.

They will ensure their judgements are independent, based on a good understanding of the relevant law and evaluation of relevant facts and information, and that any advice they give or decisions they make are reasoned and supported by evidence.

Barristers must:

- a) Apply effective analytical and evaluative skills to their work [1.5].
- b) Ensure that they act independently so that their judgements are not influenced by external pressures.
- c) Take responsibility for their decisions.

1.11 Ensure they are fully prepared.

They will be familiar with the facts and law applicable to any matter on which they are working, as well as their client's circumstances and goals, so as to be able to supply their client with a good standard of work.

Barristers must:

- a) Ensure that they are fully prepared in order to act in the best interests of the client [3.1] and provide a competent standard of work and service to the client [CD7].

1.12 Employ effective research skills.

Using either paper or electronic media, they will be able to recognise and identify relevant legal issues as well as recognise the need to research areas beyond the law that are relevant to their work. They will undertake any research accurately and efficiently. This will involve assessing the quality and relevance of sources,

interpreting and evaluating the results of the research and presenting those results clearly and accurately.

Barristers must:

- a) Accurately identify the legal and non-legal issues.
- b) Recognise when legal and non-legal research is required.
- c) Use appropriate methods and resources (paper, electronic or other media and/or relevant experts) and ensure that sources are up-to-date.
- d) Assess the quality and relevance of sources.
- e) Interpret and evaluate the results of the research.
- f) Apply effective analytical and evaluative skills to their work [1.5].
- g) Apply the research to the issues identified in order to draw conclusions.
- h) Evaluate and present the results clearly and accurately.

Advocacy

1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.

They will be able to draft standard court documents. For example, claim forms, statements of case, witness statements, applications, indictments, orders and appeal documents. They will be able to draft these documents in clear language which focuses on the issues relevant to the case.

Barristers must:

- a) Draft accurate and legally effective documents.
- b) Utilise precedents where appropriate and also be able to draft without them.
- c) Address all relevant legal and factual issues.
- d) Comply with appropriate formalities.
- e) Exercise good English language skills [1.8].
- f) Exercise good communication skills [1.9].

1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.

They will be able to draft skeleton arguments that have clarity of purpose, are of an appropriate length and which comply with any applicable rules. Their arguments will identify the issues and will cite authorities and external materials in an appropriate manner.

Barristers must:

Undertake a comprehensive case analysis applying effective analytical and evaluative skills to their work [1.5] and employ effective research skills [1.12] as appropriate.

Identify and select the pertinent information for the skeleton argument.

Draft the skeleton argument so as to be a valuable aid to oral advocacy and useful to the court by:

- (i) Presenting the information in a structured and focused manner;
- (ii) Providing a summary of the proceedings to-date;
- (iii) Relating issues to one another;
- (iv) Using appropriate citations;
- (v) Summarising in writing a reasoned argument in a clear, logical, succinct and persuasive way;
- (vi) Presenting a cogent statement of reasons for disposing of the case in the manner requested.

1.15 Have persuasive oral advocacy skills.

They will be able to communicate their client's case effectively. They will be able to deliver coherent, well-structured and concise submissions and cite legal authorities and materials appropriately. They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients.

When delivering submissions and questioning witnesses, they will be able to communicate audibly, using both pace and language that are appropriate to the tribunal. They will be able to handle witnesses in accordance with the rules of the court. They will ask questions which assist the court, focus on the real issues in the case and avoid the irrelevant. They will listen to the answers and demonstrate appropriate conduct towards the witness.

Barristers must:

- a) Thoroughly recall and comprehend and accurately apply to the matters they are dealing with the law and procedure relevant to advocacy.
- b) Apply effective analytical and evaluative skills to their work [1.5].
- c) Identify strengths and weaknesses from different parties' perspectives.

- d) Prepare how they will effectively communicate the argument.
- e) Manage facts to support the argument or position.
- f) Present orally a reasoned argument in a clear, logical, succinct and persuasive way.
- g) Use and cite legal authority appropriately.
- h) Comply with all relevant formalities.
- i) Recognise the role of different types of witness and use appropriate techniques for witness handling having particular regard to vulnerable witnesses.
- j) Listen and respond effectively to questions and opposing arguments.
- k) Deploy advocacy skills efficiently and effectively in response to legitimate pressures and/or short notice.

Professional standards

1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.

They will clearly understand a barrister's core duties and apply them in all aspects of their work.

Barristers must:

- a) Identify the most recent Code of Conduct and other applicable rules and regulations relevant to their practice and the conduct of any matters they are dealing with.
- b) Recognise potential ethical situations and identify ethical issues.
- c) Behave ethically in accordance with the Code of Conduct and other applicable rules and regulations.
- d) Consistently act in accordance with the Code of Conduct and other applicable rules and regulations.

1.17 Know how to conduct themselves appropriately in court.

They will know and use the required dress, accepted forms of address, formalities of proceedings and established conventions and customs in each forum where they represent clients.

Barristers must:

- a) Use the required dress, accepted forms of address, observe formalities of proceedings and follow established conventions and customs in each forum where they represent clients.

1.18 Only accept work which they believe they are competent to undertake

They will be able to assess the level of their own knowledge, skills and attributes, to enable them to make an informed judgement on the acceptance of work and have the resilience to decline to act where necessary.

Barristers must:

- a) Recognise and operate within the limits of their competence.
- b) Explain clearly the limits of their competence and knowledge to relevant others.
- c) Consult others where appropriate.
- d) Make an informed judgement on the level of knowledge, skills and attributes required in a particular case.
- e) Decline to act where necessary and refer a client to an appropriate other where this serves the client's best interests.

2. Personal values and standards

Barristers will:

2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.

They will be aware of and recognise the explicit and implicit pressures to behave in any other way and resist those pressures even where to do so may be against their personal interests.

Barristers must:

- a) Identify situations where their integrity and/or independence may be put at risk.
- b) Act with integrity including:
 - (i) Identifying and avoiding personal bias;
 - (ii) Maintaining their independence from external pressures;
 - (iii) Identifying potential conflicts of interest, being open about conflicts of interest, declaring conflicts of interest formally and being prepared to exclude themselves from acting.
- c) Uphold the reputation of the Bar and observe their duty to the court in the administration of justice [1.1].
- d) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- e) Take responsibility for their actions and advice.

2.2 Be honest in their dealings with others.

They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.

Barristers must:

- a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status.
- c) Ensure that any information they give is accurate, true, complete and not likely to mislead.

2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.

They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.

Barristers must:

- a) Actively observe and uphold the law on equality, diversity and discrimination.
- b) Be alert to the potential for unconscious bias.
- c) Take active steps to act fairly and inclusively and show respect to others.
- d) Identify situations where there is a risk of breach of the law on equality and diversity.
- e) Promote diversity in the workplace and where appropriate challenge others if their behaviour does not comply with the spirit of the law relating to equality, diversity and discrimination.

2.4 Ensure their work does not incur unnecessary fees.

They will establish with a client at the outset of any matter the basis for charging fees and then follow those arrangements in a cost-effective manner. They will only undertake work which they believe promotes their client's interests.

Barristers must:

- a) Establish the basis for charging fees, at the outset of any matter, with the client.

- b) Follow those arrangements in a cost effective manner, agreeing any necessary changes to the arrangements with the client.
- c) Undertake work that promotes the client's best interests.
- d) Progress matters expeditiously.

2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.

They will continually assess their weaknesses, limitations or knowledge gaps, analysing them accurately and honestly. They will acknowledge these to others if appropriate, and learn from the reflective process.

Barristers must:

- a) Recognise limitations of personal knowledge and skills and act to resolve the situation.
- b) Take appropriate action when experiencing difficulties with work that is beyond their professional competence and disclose as appropriate.
- c) Identify their errors of judgement, omissions and mistakes and take appropriate action.
- d) Ask for and make effective use of feedback, guidance, advice and support.
- e) Take appropriate action to manage personal difficulties that might otherwise affect their work.

2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

They will be able to plan and develop their career by identifying their strengths and preferences and the risks and opportunities of the environment in which they work. They will be able to assess their legal knowledge and skills and their working environment regularly, then eliminate any perceived knowledge or skills shortfall, ensuring their abilities remain relevant for the work they wish to undertake.

Barristers must:

- a) Take responsibility for planning and undertaking personal development and learning.
- b) Identify strengths and areas for development and take positive steps to address them.
- c) Reflect on and learn from their own and others performance and achievements.
- d) Record reflection and learning.
- e) Maintain and develop relevant knowledge and skills.

- | |
|--|
| f) Regularly take part in activities that maintain and develop their competence and performance. |
|--|

3. Working with others

At work

Barristers will:

3.1 Understand and exercise their duty to act in the best interests of their client.

They will apply this core barrister's duty in every case except where it conflicts with their duty to the court in the administration of justice.

Barristers must:

- | |
|--|
| a) Provide a competent standard of work and service to each client [CD7]. |
| b) Identify the client's best interests. |
| c) Recognise and evaluate any conflict between the client's best interests and their duty to the court, their obligation to act with honesty and integrity and to maintain their independence. |
| d) Take the appropriate course of action in light of the Code of Conduct and other applicable rules and regulations. |

3.2 Understand and apply principles of team working where appropriate.

They will have an understanding of how teams work and the benefits of team working and be able to use their individual knowledge and skills to work collaboratively with others towards a common goal. They will be able to play an active role in supporting a team-working ethos, work co-operatively with others and willingly give help and support to colleagues, know when to offer assistance and advice and do so when required.

Barristers must:

- | |
|---|
| a) Work collaboratively with others, respecting their skills and contributions. |
| b) Comprehend how their behaviour may affect others within and outside teams. |
| c) Reflect on own strengths and weaknesses as a team member. |
| d) Understand the division of responsibilities within the team. |
| e) Understand the relationship between counsel and instructing solicitor, and leading and junior counsel. |
| f) Delegate to and supervise others effectively. |
| g) Establish and maintain effective professional relations with others. |

3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.

They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences, or those who have characteristics which are protected under the Equality Act 2010. They will be receptive and responsive to how those needs might be met through making adjustments to their own practices.

Barristers must:

- a) Be aware and active in the pursuit of equality and respect for diversity [2.3].
- b) Provide information in a way that others can understand taking into account their personal circumstances and any particular vulnerability.
- c) Recognise and respond effectively to others' particular needs, objectives, priorities and constraints.
- d) Recognise and take reasonable steps to meet the particular needs of clients including those who are disabled or vulnerable.

3.4 Treat all people with respect and courtesy, regardless of their background or circumstances.

They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all. They will know how and where to demonstrate empathy, and act accordingly. In their own workplace, they will treat senior, junior and support colleagues with respect and courtesy, recognising where an adversarial approach is not suitable.

Barristers must:

- a) Demonstrate suitable professional practice, politeness and respect in communications and personal interactions with others.
- b) Recognise people's differences and modify their behaviour where appropriate to take account of those differences.

3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.

They will be able to identify situations where keeping the client informed is their responsibility and in those circumstances they will be able to establish with their clients a suitable structure, including timescales, for communicating significant developments in their case and communicate those effectively. This will include telling the client about options as their case develops, possible outcomes and associated risks.

Barristers must:

- a) Identify the level of their responsibility to consult with and to communicate case progress to a particular client.

- b) Inform clients in a timely manner of key facts and issues including key dates, risks, progress towards objectives and costs.
- c) Identify and evaluate possible courses of action and their consequences and assist clients in reaching a decision.
- d) Manage clients' expectations including in relation to options, the range of possible outcomes, risks and timescales.
- e) Respond appropriately to clients' concerns and complaints.

Lay individuals

3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

They will understand and apply the relevant elements of the Code of Conduct for barristers in this regard and the need to maintain a balance between their duty not to take unfair advantage and their duty to the court. They will recognise and appreciate the potential lack of understanding where clients or opponents have an inadequate knowledge of the law and procedure compared with those whose cases are conducted through qualified legal advisors and the effect this may have on the handling of a matter.

Barristers must:

- a) Recognise and appreciate the position of direct access clients or opponents not represented by qualified legal advisors (litigants in person) and the potential effect on the handling of the matter.
- b) Act in accordance with the Code of Conduct and other rules and regulations applicable to direct access clients or litigants in person.

4. Management of practice

Personal practice management

Barristers will:

4.1 Where appropriate, possess a strong understanding of the specific implications of being:

4.1.1 a self-employed barrister.

They will be able to supervise the day-to-day management of their practice by clerks and other employees and accept overall responsibility for all delegated work.

Barristers must:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to a self-employed barrister.
- b) Demonstrate a thorough understanding of the commercial, organisational and financial context in which they work and their place in it.

4.1.2 an employed barrister.

They will understand the specific implications of being employed as a barrister. They will be able to identify and deal with any conflicts of interest that arise as a result of their employed status and act with independence.

Barristers must:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to an employed barrister.
- b) Demonstrate a thorough understanding of the commercial, organisational and financial context in which they work and their place in it.

4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.

They will have an awareness of skills such as time and project management, planning, record keeping, using IT effectively and personal development. They will analyse their own needs for such skills then acquire and apply them to a good standard where necessary. They will have a basic understanding of risk analysis so as to be able to apply it to their work. The employed barrister in particular will ensure they understand the governance structure of the organisation in which they work and achieve a balance between their obligations to that organisation and their professional duties.

Barristers must:

- (a) Be competent in all aspects of their work, including organisation, management of practice and risk.
- (b) Competent organisation includes:
 - (i) Keeping accurate records (including financial records and time-recording) and files;
 - (ii) Allocating time efficiently;
 - (iii) Prioritising;
 - (iv) Observing deadlines;
 - (v) Using resources (including IT systems) effectively;
 - (vi) Being fully prepared.
- (c) Competent management includes:
 - (i) Planning;
 - (ii) Putting in place human and non-human resources;
 - (iii) Coordinating;
 - (iv) Leading or directing;
 - (v) Checking progress against plans to accomplish the goal or target.
- (d) Competent risk management includes:

- (i) Identifying, evaluating and measuring the probability and severity of risks to their practice;
 - (ii) Proactively deciding what to do about risks and acting appropriately.
- (e) Comprehend the relevance of strategic planning, financial planning and business development in the context in which they work.

4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

They will ensure their workload is manageable. They will have a basic understanding of business continuity so as to be able to deal with unplanned circumstances. They will be sufficiently organised to ensure absences are planned so as to enable them to honour commitments.

Barristers must:

- a) Clarify instructions so as to agree the scope and objectives of the work.
- b) Make an informed judgement on the time required to prepare a matter.
- c) Take account of their availability and that of other resources.
- d) Decline to act where there is insufficient time and opportunity to prepare.
- e) Prioritise and plan workload to meet commitments.
- f) Meet timescales, resource requirements and budgets.
- g) Monitor and keep relevant others informed of progress.
- h) Deal effectively with unplanned circumstances and re-prioritise as necessary.

At workplace level

4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

They will contribute to the efficient operation of their workplace where appropriate through such actions as the sharing of work when necessary, the developing of the business, and the creation of effective support systems.

Barristers must:

- a) Contribute to efficient operation of the workplace including:
 - (i) Sharing work when necessary;
 - (ii) Undertaking business development activity;
 - (iii) Creating effective support systems;
 - (iv) Working effectively within governance structures.

- | |
|--|
| b) Understand the contractual basis on which legal services are provided including where appropriate how to calculate and manage costs and bill clients. |
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Professional compliance and work

4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.

They will be aware of and be able to use either electronic or hard copy information management systems so as to ensure the confidentiality and security of their client's information as well as comply with current file storage and destruction regulations.

Barristers must:

- | |
|--|
| a) Identify how they will act in accordance with the Code of Conduct and other rules and regulations applicable to maintaining the confidentiality and security of information relating to third parties including that of their current and former clients. |
| b) Comply with relevant data protection requirements. |

4.6 Exercise good time-keeping in face-to-face or telephone encounters.

They should attend meetings, conferences and court appearances punctually and fully prepared unless prevented by matters beyond their control.

Barristers must:

- | |
|---|
| a) Attend all appointments punctually and as fully prepared as possible in the circumstances. |
|---|

4.7 Where necessary, be diligent in keeping good records and files of cases.

They will be able to identify situations where keeping records and files is their responsibility and in those circumstances they will ensure that the records they keep may be understood by others as well as themselves, are organised, accurate, contain sufficient details to portray a true record and are up-to-date.

Barristers must:

- | |
|--|
| a) Identify when compiling and keeping records and files is their responsibility. |
| b) Prepare and compile appropriate records at the same time or as soon as possible after the events that they are recording. |
| c) Ensure records are clear, accurate and legible and contain sufficient detail for their purpose. |
| d) Organise records so that they are retrievable by themselves and other authorised persons. |

Revised Threshold Standard and Competences

Amendments made following Consultation (May/June 2016) and Education and Training
Committee Meeting (04/07/16)

Track Changes

19/07/16

Relationship between the Professional Statement, Threshold Standard and Competences

	Terminology	Explanation	Example
PROFESSIONAL STATEMENT	<p>Knowledge Skills and Attributes</p> <p>Commentary</p>	<p>The knowledge, skills and attributes are grouped under four domains:</p> <ol style="list-style-type: none"> 1. Barristers’ distinctive characteristics; 2. Personal values and standards; 3. Working with others; 4. Management of practice. <p>Barristers will have all the knowledge, skills and attributes on ‘day one’ of practice.</p> <p>A set of explanatory notes on the knowledge, skills and attributes to be used for guidance only</p>	<p>2.2 Be honest in their dealings with others.</p> <p>They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.</p>
THRESHOLD STANDARD AND COMPETENCES	<p>Competences</p> <p>Threshold Standard</p>	<p>Ability to perform the roles and tasks required by one’s job to the expected standard.</p> <p>Competences have been defined for each knowledge, skill and attribute. Barristers shouldmust demonstrate all the competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.</p> <p>Competences are assessable.</p> <p>The threshold standard describes the minimum level or standard to which the competences shouldmust be performed on ‘day one’ of practice. Standards are also incorporated within the competences: the threshold standard and the competences must be read together. Newly qualified barristers will aspire to higher standards, but shouldmust meet the minimum standard.</p>	<p>Barristers mustshould:</p> <ol style="list-style-type: none"> a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16]. b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status. c) Ensure that <u>to the best of their knowledge and belief</u> any information they give is accurate, true, complete and not likely to mislead.

The Professional Statement Threshold Standard and Competences

Threshold standard

The Professional Statement describes the knowledge, skills and attributes that all barristers will have on 'day one' of practice (i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate)¹.

Competences are defined for each knowledge, skill and attribute. Barristers should demonstrate all competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.

The statement below describes the minimum level or standard to which the competences should be performed on 'day one' of practice. Standards are also incorporated within the competences: the threshold standard and the competences must be read together. Newly qualified barristers will aspire to higher standards, but should meet the minimum standard.

On 'day one' of practice, barristers cannot be expected to demonstrate the level of excellence that might be expected of a barrister of some years standing. Newly qualified barristers should:

- a) always perform at an acceptable standard, that is the standard of performance must be at least satisfactory (fit for purpose though not necessarily outstanding or perfect);
- a)b) always achieve a standard of service to the client that is appropriate to the purpose for which the barrister has been instructed;
- b)c) perform within a reasonable timeframe (a reasonable timeframe for a newly qualified barrister may be longer than it is for an experienced barrister);
- c)d) be able to deal with straightforward or uncomplicated or familiar work unaided;
- d)e) recognise and ask for support when it is needed in order to complete more complex or complicated or unfamiliar work.

Competences

The competences have been devised from existing standards articulated in the BSB Handbook and other established sources. The competences are identified by a box underneath the knowledge, skills and attributes, and commentaries, which have previously been defined in the Professional Statement (preceded by the words 'Barristers must'should'). Where there is a cross-reference in square brackets, the intention is to incorporate all the competences under that knowledge, skill or attribute.

¹ For the majority of barristers this will be at the end of the practising period of pupillage ('second six').

1. Barristers' distinctive characteristics

Legal knowledge, skills and attributes

Barristers will:

1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.

They will recognise and abide by their paramount duty in this regard including where this may require them to act against their own or their client's best interests.

Barristers mustshould:

- a) Thoroughly recall and comprehend the Core Duties and their interrelationship.
- b) Ensure that their conduct consistently justifies their clients' and colleagues' trust in them and the public's trust in the profession by:
 - i consistently applying the Core Duties and in particular the paramount duty to the court in the administration of justice;
 - ii complying with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16];
 - iiii demonstrating a thorough comprehension of the principles and values in the Professional Statement for Barristers.

1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers mustshould:

- a) Be able to Thoroughly recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice prescribed specified by the Bar Standards Board.
- b) Be aware ofable to keep up to date with significant changes to these principles and rules.

1.3 Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.

They will have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practise. They will have a good understanding of the rules of practice and procedure operating in courts relevant to

their area(s) of practice. For example, the rules relating to jurisdiction, evidence, disposals, financial orders and costs. They will understand the processes by which disputes can be resolved outside court, such as arbitration and mediation.

Barristers mustshould:

- a) Thoroughly Be able to recall and comprehend the core law and rules of procedure and practice relevant to their area of practice.
- b) Know the legal texts, journals, materials, documents and research tools relevant to their area of practice.
- c) Accurately apply to the matters they are dealing with the law and rules of procedure and practice relevant to their area of practice.
- c)d) Ensure that the amount of any financial remedy or penalty (including interest and costs) has been competently assessed.
- d)e) Keep their knowledge and skills in their specific area of practice up-to-date.
- e)f) Comprehend and be able to identify and advise clients of situations where alternative forms of dispute resolution may be appropriate to their given circumstances.

1.4 Have an awareness of the wide range of organisations supporting the administration of justice.

They will understand that the system for administration of justice comprises more than the judicial system alone and will have an awareness of the other elements wherever they are relevant to their work. They will also have an awareness of the sources of advice and funding available to clients, their additional responsibilities in cases that are not self-funded, and the implications of the same on the conduct of a case.

Barristers mustshould:

- a) Be aware of the wide range of organisations supporting the administration of justice and their respective roles.
- b) Be able to identify and advise clients of alternative sources of advice and funding available to them, as appropriate.
- c) Understand the implications foron the conduct of the case and the additional responsibilities owed in circumstances where the client is publicly funded or otherwise not self-funded.

1.5 Apply effective analytical and evaluative skills to their work.

They will identify the relevant facts of a matter and apply their legal and procedural knowledge to those facts to analyse the issues. They will acquire an understanding of their client's circumstances, needs, objectives, priorities and constraints. They will use that analysis and understanding to evaluate the available options and communicate them to their client.

Barristers mustshould:

- a) Identify all necessary information and seek clarification of instructions using appropriate communication skills.
- b) Rigorously assess facts and evaluate key issues and risks.
- c) Exercise appropriate numeracy skills.
- d) Ensure that the aAnalysis ofe financial and other statistical information has been competently carried out.
- c)e) Analyse other relevant information, including expert and medical reports.
- d)f) Recognise Identify inconsistencies and gaps in information.
- e)g) Methodically evaluate the quality and reliability of the information.
- f)h) Use multiple reliable sources of information to make effective judgements.
- g)i) Employ effective research skills [1.12].
- h)j) Identify relevant legal principles.
- i)k) Accurately apply legal principles to factual issues to devise the most appropriate solution taking into account the client's circumstances, needs, objectives, priorities and any constraints.
- j)l) Reach reasoned decisions supported by relevant evidence.
- k)m) Be able to explain and justify their analysis, synthesis and evaluation.

1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it.

Advice in writing will include written opinions and advising by email. Oral advice will include conducting conferences and advising by telephone. This will also include advising on the need and preparation for trial where an earlier disposal of the case does not occur, and the ability to convey unpalatable advice where necessary.

Barristers mustshould:

- a) When giving advice take into account the client's circumstances and objectives.
- b) Ensure that advice is informed by appropriate analysis, synthesis and evaluation and where appropriate identifies and evaluates the consequences of different options.
- c) Address and present all relevant legal and factual issues in communicating their advice.

d) Exercise good communication skills [1.9].

1.7 Negotiate effectively.

They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client.

Barristers mustshould:

- a) Identify in so far as possible all parties' interests, objectives and limits.
- b) Develop and formulate best options for meeting the clientparties 's' objectives.
- c) Present options for compromise_resolution cogently.
- d) Recognise, evaluate and respond to options presented by the other side.
- e) Develop appropriate compromises between the options or partiesconsistent with the client's instructions.
- f) Bring the negotiation to an appropriate conclusion.depending on the outcome.

Practical knowledge, skills and attributes

1.8 Exercise good English language skills.

They will have an effective command of the language and be able to use it appropriately, accurately and fluently so as to handle complex and detailed argumentation. They will use correct English grammar, spelling and punctuation.

Barristers mustshould:

- a) Use correct and appropriate vocabulary, English grammar, spelling and punctuation in all communications.
- b) Speak fluent English.

1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.

They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.

Barristers mustshould:

- a) Identify the audience and respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances [3.3].
- b) Select the appropriate medium of communication taking into account the message and the audience.
- c) Adapt language and non-verbal communication taking into account the message and the audience.
- d) Use appropriate listening and questioning techniques when obtaining information.
- e) Analyse written information.
- f) Request and provide clarification of meaning when appropriate.
- g) Recognise and respond appropriately to communications from others (whether in writing, verbal or non-verbal).
- h) Exercise good English language skills [1.8].
- i) Write with clarity, accuracy and precision.
- j) Speak articulately and fluently.
- k) Present arguments cogently and succinctly.
- l) Exercise these skills appropriately in all engagements with others, including meetings, and conferences and in court (whether conducted face-to-face or remotely).

1.10 Make sound judgements in their work.

They will ensure their judgements are independent, based on a good understanding of the relevant law and evaluation of relevant facts and information, and that any advice they give or decisions they make are reasoned and supported by evidence.

Barristers mustshould:

- a) Apply effective analytical and evaluative skills to their work [1.5].
- b) Ensure that they act independently so that their judgements are not influenced by external pressures.
- c) Take responsibility for their decisions.

1.11 Ensure they are fully prepared.

They will be familiar with the facts and law applicable to any matter on which they are working, as well as their client's circumstances and goals, so as to be able to supply their client with a good standard of work.

Barristers must should:

- a) Ensure that they are fully prepared in order to act in the best interests of the client [3.1] and provide a competent standard of work and service to the client [CD7].

1.12 Employ effective research skills.

Using either paper or electronic media, they will be able to recognise and identify relevant legal issues as well as recognise the need to research areas beyond the law that are relevant to their work. They will undertake any research accurately and efficiently. This will involve assessing the quality and relevance of sources, interpreting and evaluating the results of the research and presenting those results clearly and accurately.

Barristers should must:

- a) Accurately identify the legal and non-legal issues.
- b) Recognise when legal and non-legal research is required.
- c) Use appropriate methods and resources (paper, electronic or other media and/or relevant experts) and ensure that legal sources are up-to-date.
- d) Ensure that research into non-legal issues has been competently carried out and effectively communicated to the client.
- d)e) Assess the quality and relevance of all sources.
- e)f) Interpret and evaluate the results of all the research.
- f)g) Apply effective analytical and evaluative skills to their work [1.5].
- g)h) Apply the research to the issues identified in order to draw conclusions.
- h)i) Evaluate and present the results clearly and accurately.

Advocacy

1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.

They will be able to draft standard court documents. For example, claim forms, statements of case, witness statements, applications, indictments, orders and appeal documents. They will be able to draft these documents in clear language which focuses on the issues relevant to the case.

Barristers mustshould:

- a) Draft accurate and legally effective documents (whether contentious or non-contentious).
- b) Utilise precedents where appropriate and also be able to draft without them.
- c) Address all relevant legal and factual issues.
- d) Comply with appropriate formalities.
- e) Exercise good English language skills [1.8].
- f) Exercise good communication skills [1.9].

1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.

They will be able to draft skeleton arguments that have clarity of purpose, are of an appropriate length and which comply with any applicable rules. Their arguments will identify the issues and will cite authorities and external materials in an appropriate manner.

Barristers mustshould:

- a) Have a thorough knowledge of the Rules and Practice Directions and other protocols relevant to their area of practice which relate to the drafting of skeleton arguments.
- b) Draft skeleton arguments which comply with those Rules and Practice Directions and protocols.
 - a) Undertake a comprehensive case analysis applying effective analytical and evaluative skills to their work [1.5] and employ effective research skills [1.12] as appropriate.
 - b) Identify and select the pertinent information for the skeleton argument.
 - c) Draft the skeleton argument so as to be a valuable aid to oral advocacy and useful to the court by:
 - (i) Presenting the information in a structured and focused manner;
 - (ii) Providing a summary of the proceedings to-date;
 - (iii) Relating issues to one another;
 - (iv) Using appropriate citations;

- ~~(v) Summarising in writing a reasoned argument in a clear, logical, succinct and persuasive way;~~
- ~~(vi)(i) Presenting a cogent statement of reasons for disposing of the case in the manner requested.~~

1.15 Have persuasive oral advocacy skills.

They will be able to communicate their client's case effectively. They will be able to deliver coherent, well-structured and concise submissions and cite legal authorities and materials appropriately. They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients.

When delivering submissions and questioning witnesses, they will be able to communicate audibly, using both pace and language that are appropriate to the tribunal. They will be able to handle witnesses in accordance with the rules of the court. They will ask questions which assist the court, focus on the real issues in the case and avoid the irrelevant. They will listen to the answers and demonstrate appropriate conduct towards the witness.

Barristers must should:

- ~~a) Thoroughly recall and comprehend and accurately apply to the matters they are dealing with the law and procedure relevant to advocacy.~~
- ~~a)c) Apply effective analytical and evaluative skills to their work [1.5].~~
- ~~b)d) Identify strengths and weaknesses from different parties' perspectives.~~
- ~~c)e) Prepare how they will effectively communicate the argument.~~
- ~~d)f) Manage facts to support the argument or position.~~
- ~~e)g) Present orally a reasoned argument in a clear, logical, succinct and persuasive way.~~
- ~~f)h) Use and cite legal authority appropriately.~~
- ~~g)i) Comply with all relevant formalities.~~
- ~~h)j) Recognise the role of different types of witness and use appropriate techniques for witness handling having particular regard to vulnerable witnesses.~~
- ~~i)k) Listen and respond effectively to questions and opposing arguments.~~
- ~~j)l) Deploy advocacy skills efficiently and effectively, in compliance with the Core Duties, so far as possible, notwithstanding that they may be required to act at short notice or under other legitimate pressure. in response to legitimate pressures and/or short notice.~~

Professional standards

1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.

They will clearly understand a barrister's Ccore Dduties and apply them in all aspects of their work.

Barristers mustshould:

- a) Identify the most recent Code of Conduct and other applicable rules and regulations relevant to their practice and the conduct of any matters they are dealing with.
- b) Recognise potential ethical situations and identify ethical issues.
- b)c) Be aware of and make effective use of relevant guidance, advice and support regarding ethical issues.
- c) Behave ethically in accordance with the Code of Conduct and other applicable rules and regulations.
- d) Cand consistently act in accordance with the Code of Conduct and other applicable rules and regulations.

1.17 Know how to conduct themselves appropriately in court.

They will know and use the required dress, accepted forms of address, formalities of proceedings and established conventions and customs in each forum where they represent clients.

Barristers mustshould:

- a) Use the required dress, accepted forms of address, observe formalities of proceedings and follow established conventions and customs in each forum where they represent clients.

1.18 Only accept work which they believe they are competent to undertake

They will be able to assess the level of their own knowledge, skills and attributes, to enable them to make an informed judgement on the acceptance of work and have the resilience to decline to act where necessary.

Barristers mustshould:

- a) Recognise and operate within the limits of their competence.
- b) Explain clearly the limits of their competence and knowledge to relevant others.
- c) Consult relevant others, where appropriate.
- d) Make an informed judgement on the level of knowledge, skills and attributes required in a particular case.

- e) Decline to act where the Code of Conduct requires them to do so.necessary and refer a client to an appropriate other where this serves the client's best interests.

2. Personal values and standards

Barristers will:

2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.

They will be aware of and recognise the explicit and implicit pressures to behave in any other way and resist those pressures even where to do so may be against their personal interests.

Barristers mustshould:

- a) Identify situations where their integrity and/or independence may be put at risk.
- b) Act with integrity including:
 - (i) Identifying and avoiding personal bias;
 - (ii) Maintaining their independence from external pressures;
 - (iii) Identifying potential conflicts of interest, being open about conflicts of interest, declaring conflicts of interest formally and being prepared to exclude themselves from acting.
- c) Uphold the reputation of the Bar and observe their duty to the court in the administration of justice [1.1].
- d) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- e) Take responsibility for their actions and advice.

2.2 Be honest in their dealings with others.

They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.

Barristers mustshould:

- a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status.

- c) Ensure that to the best of their knowledge and belief any information they give is accurate, true and not likely to mislead.

2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.

They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.

Barristers mustshould:

- a) Actively observe and uphold the law on equality, diversity and discrimination.
- b) Be alert to the potential for unconscious bias.
- c) Take active steps to act fairly and inclusively and show respect to others.
- d) Identify situations where there is a risk of breach of the law on equality and diversity.
- e) Promote diversity in the workplace and where appropriate challenge others if their behaviour does not comply with the spirit of the law relating to equality, diversity and discrimination.

2.4 Ensure their work does not incur unnecessary fees.

They will establish with a client at the outset of any matter the basis for charging fees and then follow those arrangements in a cost-effective manner. They will only undertake work which they believe promotes their client's interests.

Barristers mustshould:

- a) Establish the basis for charging fees, at the outset of any matter, with the client. Ensure that, where fees are chargeable, the basis for charging fees is established with the client at the outset of any matter.
- b) Follow those arrangements in an efficient and cost effective manner, ensuring that agreeing any necessary changes to the arrangements are agreed with the client.
- c) Undertake work that promotes the client's best interests.
- d) Progress matters expeditiously.

2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.

They will continually assess their weaknesses, limitations or knowledge gaps, analysing them accurately and honestly. They will acknowledge these to others if appropriate, and learn from the reflective process.

Barristers mustshould:

- a) Recognise limitations of personal knowledge and skills and act to resolve the situation.
- b) Take appropriate action when experiencing difficulties with work that is beyond their professional competence and disclose as appropriate.
- c) Identify their errors of judgement, omissions and mistakes and take appropriate action.
- d) Ask for and make effective use of feedback, guidance, advice and support.
- e) Take appropriate action to manage personal difficulties that might otherwise affect their work.

2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

They will be able to plan and develop their career by identifying their strengths and preferences and the risks and opportunities of the environment in which they work. They will be able to assess their legal knowledge and skills and their working environment regularly, then eliminate any perceived knowledge or skills shortfall, ensuring their abilities remain relevant for the work they wish to undertake.

Barristers mustshould:

- a) Take responsibility for planning and undertaking personal development and learning.
- b) Identify strengths and areas for development and take positive steps to address them.
- c) Reflect on and learn from their own and others performance and achievements.
- ~~d) Record reflection and learning.~~
- e)d) Maintain and develop relevant knowledge and skills.
- f)e) Regularly take part in activities that maintain and develop their competence and performance.

3. Working with others

At work

Barristers will:

3.1 Understand and exercise their duty to act in the best interests of their client.

They will apply this core barrister's duty in every case except where it conflicts with their duty to the court in the administration of justice.

Barristers mustshould:

- a) Provide a competent standard of work and service to each client [CD7].
- b) Identify the client's best interests in accordance with the client's lawful instructions.
- c) Recognise and evaluate any conflict between the client's best interests and their duty to the court, their obligation to act with honesty and integrity and to maintain their independence.
- c)d) Ensure that subject to c) above they do not act contrary to the client's lawful instructions.
- d)e) Act in accordance with Take the appropriate course of action in light of the Code of Conduct and other applicable rules and regulations.

3.2 Understand and apply principles of team working where appropriate.

They will have an understanding of how teams work and the benefits of team working and be able to use their individual knowledge and skills to work collaboratively with others towards a common goal. They will be able to play an active role in supporting a team-working ethos, work co-operatively with others and willingly give help and support to colleagues, know when to offer assistance and advice and do so when required.

Barristers mustshould:

- a) Work collaboratively with others, respecting their skills and contributions.
- b) Comprehend how their behaviour may affect others within and outside teams.
- c) Reflect on own strengths and weaknesses as a team member.
- d) Understand the division of responsibilities within the team.
- e) Understand the relationships between counsel and instructing solicitor, and leading, and junior counsel, pupil, clerk and solicitor.
- f) Delegate to and supervise others effectively.
- g) Establish and maintain effective professional relations with others.

3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.

They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences, or those who have characteristics which are protected under the Equality Act 2010. They will be receptive and responsive to how those needs might be met through making adjustments to their own practices.

Barristers mustshould:

- a) Be aware and active in the pursuit of equality and respect for diversity [2.3].
- b) Provide information in a way that others can understand taking into account their personal circumstances and any particular vulnerability.

- c) Recognise and respond effectively to others' particular needs, objectives, priorities and constraints.
- d) Recognise and take reasonable steps to meet the particular needs of clients including those who are disabled or vulnerable.

3.4 Treat all people with respect and courtesy, regardless of their background or circumstances.

They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all. They will know how and where to demonstrate empathy, and act accordingly. In their own workplace, they will treat senior, junior and support colleagues with respect and courtesy, recognising where an adversarial approach is not suitable.

Barristers mustshould:

- a) Demonstrate suitable professional practice, politeness and respect in communications and personal interactions with others.
- b) Recognise people's differences and modify their behaviour where appropriate to take account of those differences.

3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.

They will be able to identify situations where keeping the client informed is their responsibility and in those circumstances they will be able to establish with their clients a suitable structure, including timescales, for communicating significant developments in their case and communicate those effectively. This will include telling the client about options as their case develops, possible outcomes and associated risks.

Barristers mustshould:

- a) Identify the level of their responsibility to consult with and to communicate case progress to a particular client.
- b) Inform clients in a timely manner of key facts and issues including key dates, risks, progress towards objectives and costs.
- c) Identify and evaluate possible courses of action and their consequences and assist clients in reaching a decision.
- d) Manage clients' expectations including in relation to options, the range of possible outcomes, risks and timescales.
- e) Respond appropriately to clients' concerns and complaints.

Lay individuals

3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

They will understand and apply the relevant elements of the Code of Conduct for barristers in this regard and the need to maintain a balance between their duty not to take unfair advantage and their duty to the court. They will recognise and appreciate the potential lack of understanding where clients or opponents have an inadequate knowledge of the law and procedure compared with those whose cases are conducted through qualified legal advisors and the effect this may have on the handling of a matter.

Barristers mustshould:

a) Recognise and appreciate the position of direct access clients. Adapt their communication and handling of the matter to ensure that public access clients are fully informed of the actions which are being taken on their behalf and the purpose and possible consequences of those actions.

b) Recognise and appreciate the position of opponents not represented by qualified legal advisors (litigants in person).

a) Understand the professional duties to the litigant in person, the court and their own client, which arise when appearing against the litigant in person, and the potential effect on the handling of the matter. or opponents not represented by qualified legal advisors (litigants in person) and the potential effect on the handling of the matter.

c)

b)d) Act in accordance with the Code of Conduct and other rules and regulations applicable to publicdirect access clients or litigants in person.

4. Management of practice

Personal practice management

Barristers will:

4.1 Where appropriate, possess a strong understanding of the specific implications of being:

4.1.1 a self-employed barrister.

They will be able to supervise the day-to-day management of their practice by clerks and other employees and accept overall responsibility for all delegated work.

Barristers mustshould:

a) Demonstrate a thorough understanding of the scope of practice rules relevant to a self-employed barrister.

a)b) Demonstrate a thorough understanding of the context in which they work (including commercial, organisational and financial) and their place in it.

~~a) Demonstrate a thorough understanding of the commercial, organisational and financial context in which they work and their place in it.~~

4.1.2 an employed barrister.

They will understand the specific implications of being employed as a barrister. They will be able to identify and deal with any conflicts of interest that arise as a result of their employed status and act with independence.

Barristers mustshould:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to an employed barrister.
- b) Demonstrate a thorough understanding of the context in which they work (including commercial, organisational and financial) context in which they work and their place in it.

4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.

They will have an awareness of skills such as time and project management, planning, record keeping, using IT effectively and personal development. They will analyse their own needs for such skills then acquire and apply them to a good standard where necessary. They will have a basic understanding of risk analysis so as to be able to apply it to their work. The employed barrister in particular will ensure they understand the governance structure of the organisation in which they work and achieve a balance between their obligations to that organisation and their professional duties.

Barristers mustshould:

- (a) Be competent in all aspects of their work, including organisation, management of practice and risk.

Competent organisation includes:

- (i) Keeping accurate records (including financial records and time-recording) and files, electronic or hard copy;
- (ii) Allocating time efficiently;
- (iii) Prioritising;
- (iii)(iv) Diarising;
- (iv)(v) Observing deadlines;
- (v)(vi) Using resources (including IT systems) effectively;
- (vi)(vii) Being fully prepared.

Competent management includes:

- (i) Planning;
- (ii) Putting in place human and non-human resources;

- (iii) Coordinating;
- (iv) Leading or directing;
- (v) Checking progress against plans to accomplish the goal or target;
- ~~(v)~~(vi) Financial management.

Competent risk management includes:

- (i) Identifying, evaluating and measuring the probability and severity of risks to their practice;
 - (ii) Proactively deciding what to do about risks and acting appropriately.
- (be) Comprehend the relevance of strategic planning, financial planning and business development in the context in which they work.

4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

They will ensure their workload is manageable. They will have a basic understanding of business continuity so as to be able to deal with unplanned circumstances. They will be sufficiently organised to ensure absences are planned so as to enable them to honour commitments.

Barristers mustshould:

- a) Clarify instructions so as to agree the scope and objectives of the work.
- b) Make an informed judgement on the time required to prepare a matter.
- c) Take account of their availability and that of other resources.
- d) Decline to act where there is insufficient time and opportunity to prepare.
- e) Prioritise and plan workload to meet commitments.
- f) Meet timescales, resource requirements and budgets.
- g) Monitor and keep relevant others informed of progress and availability.
- h) Deal effectively with unplanned circumstances and re-prioritise as necessary.

At workplace level

4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

They will contribute to the efficient operation of their workplace where appropriate through such actions as the sharing of work when necessary, the developing of the business, and the creation of effective support systems.

Barristers mustshould:

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|---|
| <p>a) Contribute to efficient operation of the workplace including:</p> <ul style="list-style-type: none">(i) Sharing work when necessary;(ii) Undertaking business development activity;(iii) Creating effective support systems;(iv) Working effectively within governance structures. <p>b) Understand the <u>contractual</u> basis on which legal services are provided (<u>contractual or otherwise</u>) including, where appropriate, how to calculate and manage costs, <u>and</u> bill clients <u>and the operation of internal budgets for legal advice</u> .</p> |
|---|

Professional compliance and work

4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.

They will be aware of and be able to use either electronic or hard copy information management systems so as to ensure the confidentiality and security of their client's information as well as comply with current file storage and destruction regulations.

Barristers mustshould:

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| <p>a) Identify how they will act in accordance with the Code of Conduct and other rules and regulations applicable to maintaining the confidentiality and security of information relating to third parties including that of their current and former clients.</p> <p>b) Comply with relevant data protection requirements.</p> |
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4.6 Exercise good time-keeping in face-to-face or telephone encounters.

They should attend meetings, conferences and court appearances punctually and fully prepared unless prevented by matters beyond their control.

Barristers mustshould:

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| <p>a) Attend all appointments punctually and as fully prepared as possible in the circumstances.</p> |
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4.7 Where necessary, be diligent in keeping good records and files of cases.

They will be able to identify situations where keeping records and files is their responsibility and in those circumstances they will ensure that the records they keep may be understood by others as well as themselves, are organised, accurate, contain sufficient details to portray a true record and are up-to-date.

Barristers mustshould:

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| <p>a) Identify when compiling and keeping records and files is their responsibility.</p> |
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- b) Prepare and compile appropriate records at the same time or as soon as possible after the events that they are recording.
- c) Ensure records are clear, accurate and legible and contain sufficient detail for their purpose.
- d) Organise records so that they are retrievable by themselves and other authorised persons as appropriate.

ANNEX 4

FUTURE BAR TRAINING

**CONSOLIDATED PROFESSIONAL STATEMENT
THRESHOLD STANDARD AND COMPETENCES FOR
BARRISTERS**

JULY 2016

INTRODUCTION

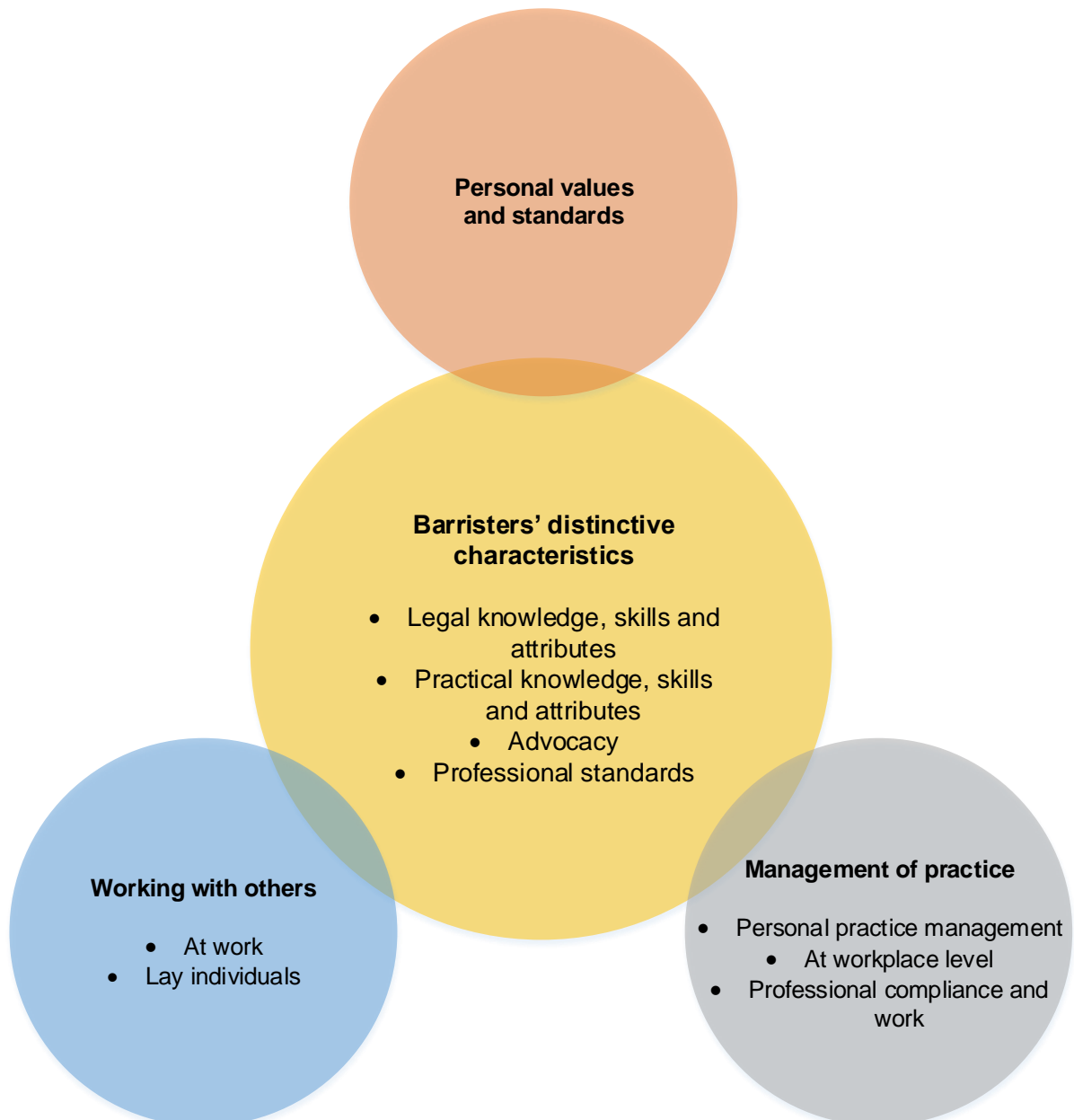
The Professional Statement describes the knowledge, skills and attributes that all barristers will have on 'day one' of practice. Competences are defined for each knowledge, skill and attribute. Barristers should demonstrate all competences in order to evidence that they have the specified knowledge, skills and attributes. The threshold standard describes the minimum or standard to which the competences should be performed on 'day one' of practice. Standards are also incorporated within the competences: the threshold standard and the competences must be read together. This is the standard to be achieved by a barrister upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate.¹

Who is this for?

- **The BSB:** This document sets out the parameters of competent practice that will assist the regulator in maintaining standards both of those entering practice and providers of education and training.
- **Those involved in the design and delivery of education and training for the Bar:** This document will be used to inform the development of educational materials (including outcomes and assessment) and pathways.
- **Aspiring barristers:** This document describes the knowledge, skills and attributes which should be developed in order for them to qualify as a barrister. This will help aspiring barristers make informed decisions about their future development.
- **Practising barristers:** This document describes the essential knowledge, skills and attributes that they should expect of themselves and their peers. The Professional Statement will not replace the Code of Conduct, and all barristers must continue to comply with the regulations set out in the BSB Handbook, which will remain the sole reference point for all disciplinary matters. However, this document may be used as an evidential point of reference when a breach of the requirement for competent practice set out in the Code of Conduct has been raised as a matter of complaint.
- **Consumers:** This document may be used to inform an understanding of the barrister's role and the service consumers can expect to receive. Complaints will continue to be dealt with under the Code of Conduct.

¹ For the majority of barristers this will be at the end of the practising period of pupillage ('second six').

The Professional Statement: an overview



The Professional Statement Threshold Standard and Competences

Threshold standard

The Professional Statement describes the knowledge, skills and attributes that all barristers will have on 'day one' of practice (i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate)².

Competences are defined for each knowledge, skill and attribute. Barristers should demonstrate all competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.

The statement below describes the minimum level or standard to which the competences should be performed on 'day one' of practice. Standards are also incorporated within the competences: the threshold standard and the competences must be read together. Newly qualified barristers will aspire to higher standards, but should meet the minimum standard.

On 'day one' of practice, barristers cannot be expected to demonstrate the level of excellence that might be expected of a barrister of some years standing. Newly qualified barristers should:

- a) always perform at an acceptable standard, that is the standard of performance must be at least satisfactory (fit for purpose though not necessarily outstanding or perfect);
- b) always achieve a standard of service to the client that is appropriate to the purpose for which the barrister has been instructed;
- c) perform within a reasonable timeframe (a reasonable timeframe for a newly qualified barrister may be longer than it is for an experienced barrister);
- d) be able to deal with straightforward or uncomplicated or familiar work unaided;
- e) ask for support when it is needed in order to complete more complex or unfamiliar work.

Competences

The competences have been devised from existing standards articulated in the BSB Handbook and other established sources. The competences are identified by a box underneath the knowledge, skills and attributes, and commentaries, which have previously been defined in the Professional Statement (preceded by the words 'Barristers should'). Where there is a cross-reference in square brackets, the intention is to incorporate all the competences under that knowledge, skill or attribute.

² For the majority of barristers this will be at the end of the practising period of pupillage ('second six').

1. Barristers' distinctive characteristics

Legal knowledge, skills and attributes

Barristers will:

1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.

They will recognise and abide by their paramount duty in this regard including where this may require them to act against their own or their client's best interests.

Barristers should:

- a) Thoroughly recall and comprehend the Core Duties and their interrelationship.
- b) Ensure that their conduct consistently justifies their clients' and colleagues' trust in them and the public's trust in the profession by:
 - i applying the Core Duties and in particular the paramount duty to the court in the administration of justice;
 - ii complying with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16];
 - iii demonstrating a thorough comprehension of the Professional Statement for Barristers.

1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers should:

- a) Be able to recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice specified by the Bar Standards Board.
- b) Be able to keep up to date with significant changes to these principles and rules.

1.3 Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.

They will have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practise. They will have a good understanding of the rules of practice and procedure operating in courts relevant to their area(s) of practice. For example, the rules relating to jurisdiction, evidence,

disposals, financial orders and costs. They will understand the processes by which disputes can be resolved outside court, such as arbitration and mediation.

Barristers should:

- a) Be able to recall and comprehend the core law and rules of procedure and practice relevant to their area of practice.
- b) Know the legal texts, journals, materials, documents and research tools relevant to their area of practice.
- c) Accurately apply to the matters they are dealing with the law and rules of procedure and practice relevant to their area of practice.
- d) Ensure that the amount of any financial remedy or penalty (including interest and costs) has been competently assessed.
- e) Keep their knowledge and skills in their specific area of practice up-to-date.
- f) Comprehend and be able to identify and advise clients of situations where alternative forms of dispute resolution may be appropriate to their given circumstances.

1.4 Have an awareness of the wide range of organisations supporting the administration of justice.

They will understand that the system for administration of justice comprises more than the judicial system alone and will have an awareness of the other elements wherever they are relevant to their work. They will also have an awareness of the sources of advice and funding available to clients, their additional responsibilities in cases that are not self-funded, and the implications of the same on the conduct of a case.

Barristers should:

- a) Be aware of the wide range of organisations supporting the administration of justice and their respective roles.
- b) Be able to identify and advise clients of alternative sources of advice and funding available to them, as appropriate.
- c) Understand the implications for the conduct of the case and the additional responsibilities owed in circumstances where the client is publicly funded or otherwise not self-funded.

1.5 Apply effective analytical and evaluative skills to their work.

They will identify the relevant facts of a matter and apply their legal and procedural knowledge to those facts to analyse the issues. They will acquire an understanding of their client's circumstances, needs, objectives, priorities and constraints. They will use that analysis and understanding to evaluate the available options and communicate them to their client.

Barristers should:

- a) Identify all necessary information and seek clarification of instructions using appropriate communication skills.
- b) Rigorously assess facts and evaluate key issues and risks.
- c) Exercise appropriate numeracy skills.
- d) Ensure that the analysis of financial and other statistical information has been competently carried out.
- e) Analyse other relevant information, including expert and medical reports.
- f) Identify inconsistencies and gaps in information.
- g) Methodically evaluate the quality and reliability of the information.
- h) Use reliable sources of information to make effective judgements.
- i) Employ effective research skills [1.12].
- j) Identify relevant legal principles.
- k) Accurately apply legal principles to factual issues to devise the most appropriate solution taking into account the client's circumstances, needs, objectives, priorities and any constraints.
- l) Reach reasoned decisions supported by relevant evidence.
- m) Be able to explain and justify their analysis and evaluation.

1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it.

Advice in writing will include written opinions and advising by email. Oral advice will include conducting conferences and advising by telephone. This will also include advising on the need and preparation for trial where an earlier disposal of the case does not occur, and the ability to convey unpalatable advice where necessary.

Barristers should:

- a) When giving advice take into account the client's circumstances and objectives.
- b) Ensure that advice is informed by appropriate analysis, synthesis and evaluation and where appropriate identifies and evaluates the consequences of different options.
- c) Address and present all relevant legal and factual issues in communicating their advice.
- d) Exercise good communication skills [1.9].

1.7 Negotiate effectively.

They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client.

Barristers should:

- a) Identify in so far as possible all parties' interests, objectives and limits.
- b) Develop and formulate best options for meeting the client's objectives.
- c) Present options for resolution cogently.
- d) Recognise, evaluate and respond to options presented by the other side.
- e) Develop appropriate compromises consistent with the client's instructions.
- f) Bring the negotiation to an appropriate conclusion.

Practical knowledge, skills and attributes**1.8 Exercise good English language skills.**

They will have an effective command of the language and be able to use it appropriately, accurately and fluently so as to handle complex and detailed argumentation. They will use correct English grammar, spelling and punctuation.

Barristers should:

- a) Use correct and appropriate vocabulary, English grammar, spelling and punctuation in all communications.
- b) Speak fluent English.

1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.

They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.

Barristers should:

- a) Identify the audience and respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances [3.3].
- b) Select the appropriate medium of communication taking into account the message and the audience.
- c) Adapt language and non-verbal communication taking into account the message and the audience.
- d) Use appropriate listening and questioning techniques when obtaining information.
- e) Analyse written information.
- f) Request and provide clarification of meaning when appropriate.
- g) Recognise and respond appropriately to communications from others (whether in writing, verbal or non-verbal).
- h) Exercise good English language skills [1.8].
- i) Write with clarity, accuracy and precision.
- j) Speak articulately and fluently.
- k) Present arguments cogently and succinctly.
- l) Exercise these skills appropriately in all engagements with others, including meetings, conferences and in court (whether conducted face-to-face or remotely).

1.10 Make sound judgements in their work.

They will ensure their judgements are independent, based on a good understanding of the relevant law and evaluation of relevant facts and information, and that any advice they give or decisions they make are reasoned and supported by evidence.

Barristers should:

- a) Apply effective analytical and evaluative skills to their work [1.5].
- b) Ensure that they act independently so that their judgements are not influenced by external pressures.
- c) Take responsibility for their decisions.

1.11 Ensure they are fully prepared.

They will be familiar with the facts and law applicable to any matter on which they are working, as well as their client's circumstances and goals, so as to be able to supply their client with a good standard of work.

Barristers should:

- a) Ensure that they are fully prepared in order to act in the best interests of the client [3.1] and provide a competent standard of work and service to the client [CD7].

1.12 Employ effective research skills.

Using either paper or electronic media, they will be able to recognise and identify relevant legal issues as well as recognise the need to research areas beyond the law that are relevant to their work. They will undertake any research accurately and efficiently. This will involve assessing the quality and relevance of sources, interpreting and evaluating the results of the research and presenting those results clearly and accurately.

Barristers should:

- a) Accurately identify the legal and non-legal issues.
- b) Recognise when legal and non-legal research is required.
- c) Use appropriate methods and resources (paper, electronic or other media and/or relevant experts) and ensure that legal sources are up-to-date.
- d) Ensure that research into non-legal issues has been competently carried out and effectively communicated to the client.
- e) Assess the quality and relevance of all sources.
- f) Interpret and evaluate the results of all research.
- g) Apply effective analytical and evaluative skills to their work [1.5].
- h) Apply the research to the issues identified in order to draw conclusions.
- i) Evaluate and present the results clearly and accurately.

Advocacy

1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.

They will be able to draft standard court documents. For example, claim forms, statements of case, witness statements, applications, indictments, orders and appeal documents. They will be able to draft these documents in clear language which focuses on the issues relevant to the case.

Barristers should:

- a) Draft accurate and legally effective documents (whether contentious or non-contentious).
- b) Utilise precedents where appropriate and also be able to draft without them.
- c) Address all relevant legal and factual issues.
- d) Comply with appropriate formalities.
- e) Exercise good English language skills [1.8].
- f) Exercise good communication skills [1.9].

1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.

They will be able to draft skeleton arguments that have clarity of purpose, are of an appropriate length and which comply with any applicable rules. Their arguments will identify the issues and will cite authorities and external materials in an appropriate manner.

Barristers should:

- a) Have a thorough knowledge of the Rules and Practice Directions and other protocols relevant to their area of practice which relate to the drafting of skeleton arguments.
- b) Draft skeleton arguments which comply with those Rules and Practice Directions and protocols.

1.15 Have persuasive oral advocacy skills.

They will be able to communicate their client's case effectively. They will be able to deliver coherent, well-structured and concise submissions and cite legal authorities and materials appropriately. They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients.

When delivering submissions and questioning witnesses, they will be able to communicate audibly, using both pace and language that are appropriate to the tribunal. They will be able to handle witnesses in accordance with the rules of the court. They will ask questions which assist the court, focus on the real issues in the case and avoid the irrelevant. They will listen to the answers and demonstrate appropriate conduct towards the witness.

Barristers should:

- a) Thoroughly recall and comprehend and accurately apply to the matters they are dealing with the law and procedure relevant to advocacy.
- b) Apply effective analytical and evaluative skills to their work [1.5].
- c) Identify strengths and weaknesses from different parties' perspectives.

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| d) | Prepare how they will effectively communicate the argument. |
| e) | Manage facts to support the argument or position. |
| f) | Present orally a reasoned argument in a clear, logical, succinct and persuasive way. |
| g) | Use and cite legal authority appropriately. |
| h) | Comply with all relevant formalities. |
| i) | Recognise the role of different types of witness and use appropriate techniques for witness handling having particular regard to vulnerable witnesses. |
| j) | Listen and respond effectively to questions and opposing arguments. |
| k) | Deploy advocacy skills efficiently and effectively, in compliance with the Core Duties, so far as possible, notwithstanding that they may be required to act at short notice or under other legitimate pressure. |

Professional standards

1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.

They will clearly understand a barrister's Core Duties and apply them in all aspects of their work.

Barristers should:

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| a) | Identify the most recent Code of Conduct and other applicable rules and regulations relevant to their practice and the conduct of any matters they are dealing with. |
| b) | Recognise potential ethical situations and identify ethical issues. |
| c) | Be aware of and make effective use of relevant guidance, advice and support regarding ethical issues. |
| d) | Behave ethically and consistently act in accordance with the Code of Conduct and other applicable rules and regulations. |

1.17 Know how to conduct themselves appropriately in court.

They will know and use the required dress, accepted forms of address, formalities of proceedings and established conventions and customs in each forum where they represent clients.

Barristers should:

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| a) | Use the required dress, accepted forms of address, observe formalities of proceedings and follow established conventions and customs in each forum where they represent clients. |
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1.18 Only accept work which they believe they are competent to undertake.

They will be able to assess the level of their own knowledge, skills and attributes, to enable them to make an informed judgement on the acceptance of work and have the resilience to decline to act where necessary.

Barristers should:

- a) Recognise and operate within the limits of their competence.
- b) Explain clearly the limits of their competence and knowledge to relevant others.
- c) Consult relevant others, where appropriate.
- d) Make an informed judgement on the level of knowledge, skills and attributes required in a particular case.
- e) Decline to act where the Code of Conduct requires them to do so.

2. Personal values and standards

Barristers will:

2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.

They will be aware of and recognise the explicit and implicit pressures to behave in any other way and resist those pressures even where to do so may be against their personal interests.

Barristers should:

- a) Identify situations where their integrity and/or independence may be put at risk.
- b) Act with integrity including:
 - (i) Identifying and avoiding personal bias;
 - (ii) Maintaining their independence from external pressures;
 - (iii) Identifying potential conflicts of interest, being open about conflicts of interest, declaring conflicts of interest formally and being prepared to exclude themselves from acting.
- c) Uphold the reputation of the Bar and observe their duty to the court in the administration of justice [1.1].
- d) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- e) Take responsibility for their actions and advice.

2.2 Be honest in their dealings with others.

They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.

Barristers should:

- a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status.
- c) Ensure that to the best of their knowledge and belief any information they give is accurate, true and not likely to mislead.

2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.

They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.

Barristers should:

- a) Actively observe and uphold the law on equality, diversity and discrimination.
- b) Be alert to the potential for unconscious bias.
- c) Take active steps to act fairly and inclusively and show respect to others.
- d) Identify situations where there is a risk of breach of the law on equality and diversity.
- e) Promote diversity in the workplace and where appropriate challenge others if their behaviour does not comply with the spirit of the law relating to equality, diversity and discrimination.

2.4 Ensure their work does not incur unnecessary fees.

They will establish with a client at the outset of any matter the basis for charging fees and then follow those arrangements in a cost-effective manner. They will only undertake work which they believe promotes their client's interests.

Barristers should:

- a) Ensure that, where fees are chargeable, the basis for charging fees is established with the client at the outset of any matter.
- b) Follow those arrangements in an efficient and cost effective manner, ensuring that any necessary changes to the arrangements are agreed with the client.
- c) Undertake work that promotes the client's best interests.
- d) Progress matters expeditiously.

2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.

They will continually assess their weaknesses, limitations or knowledge gaps, analysing them accurately and honestly. They will acknowledge these to others if appropriate, and learn from the reflective process.

Barristers should:

- a) Recognise limitations of personal knowledge and skills and act to resolve the situation.
- b) Take appropriate action when experiencing difficulties with work that is beyond their professional competence and disclose as appropriate.
- c) Identify their errors of judgement, omissions and mistakes and take appropriate action.
- d) Ask for and make effective use of feedback, guidance, advice and support.
- e) Take appropriate action to manage personal difficulties that might otherwise affect their work.

2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

They will be able to plan and develop their career by identifying their strengths and preferences and the risks and opportunities of the environment in which they work. They will be able to assess their legal knowledge and skills and their working environment regularly, then eliminate any perceived knowledge or skills shortfall, ensuring their abilities remain relevant for the work they wish to undertake.

Barristers should:

- a) Take responsibility for planning and undertaking personal development and learning.
- b) Identify strengths and areas for development and take positive steps to address them.
- c) Reflect on and learn from their own and others performance and achievements.
- d) Maintain and develop relevant knowledge and skills.
- e) Regularly take part in activities that maintain and develop their competence and performance.

3. Working with others

At work

Barristers will:

3.1 Understand and exercise their duty to act in the best interests of their client.

They will apply this core barrister's duty in every case except where it conflicts with their duty to the court in the administration of justice.

Barristers should:

- a) Provide a competent standard of work and service to each client [CD7].
- b) Identify the client's best interests in accordance with the client's lawful instructions.
- c) Recognise and evaluate any conflict between the client's best interests and their duty to the court, their obligation to act with honesty and integrity and to maintain their independence.
- d) Ensure that subject to c) above they do not act contrary to the client's lawful instructions.
- e) Act in accordance with the Code of Conduct and other applicable rules and regulations.

3.2 Understand and apply principles of team working where appropriate.

They will have an understanding of how teams work and the benefits of team working and be able to use their individual knowledge and skills to work collaboratively with others towards a common goal. They will be able to play an active role in supporting a team-working ethos, work co-operatively with others and willingly give help and support to colleagues, know when to offer assistance and advice and do so when required.

Barristers should:

- a) Work collaboratively with others, respecting their skills and contributions.
- b) Comprehend how their behaviour may affect others within and outside teams.
- c) Reflect on own strengths and weaknesses as a team member.
- d) Understand the division of responsibilities within the team.
- e) Understand the relationships between counsel, pupil, clerk and solicitor.
- f) Delegate to and supervise others effectively.
- g) Establish and maintain effective professional relations with others.

3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.

They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences, or those who have characteristics which are protected

under the Equality Act 2010. They will be receptive and responsive to how those needs might be met through making adjustments to their own practices.

Barristers should:

- a) Be aware and active in the pursuit of equality and respect for diversity [2.3].
- b) Provide information in a way that others can understand taking into account their personal circumstances and any particular vulnerability.
- c) Recognise and respond effectively to others' particular needs, objectives, priorities and constraints.
- d) Recognise and take reasonable steps to meet the particular needs of clients including those who are disabled or vulnerable.

3.4 **Treat all people with respect and courtesy, regardless of their background or circumstances.**

They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all. They will know how and where to demonstrate empathy, and act accordingly. In their own workplace, they will treat senior, junior and support colleagues with respect and courtesy, recognising where an adversarial approach is not suitable.

Barristers should:

- a) Demonstrate suitable professional practice, politeness and respect in communications and personal interactions with others.
- b) Recognise people's differences and modify their behaviour where appropriate to take account of those differences.

3.5 **Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.**

They will be able to identify situations where keeping the client informed is their responsibility and in those circumstances they will be able to establish with their clients a suitable structure, including timescales, for communicating significant developments in their case and communicate those effectively. This will include telling the client about options as their case develops, possible outcomes and associated risks.

Barristers should:

- a) Identify the level of their responsibility to consult with and to communicate case progress to a particular client.
- b) Inform clients in a timely manner of key facts and issues including key dates, risks, progress towards objectives and costs.
- c) Identify and evaluate possible courses of action and their consequences and assist clients in reaching a decision.

- d) Manage clients' expectations including in relation to options, the range of possible outcomes, risks and timescales.
- e) Respond appropriately to clients' concerns and complaints.

Lay individuals

3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

They will understand and apply the relevant elements of the Code of Conduct for barristers in this regard and the need to maintain a balance between their duty not to take unfair advantage and their duty to the court. They will recognise and appreciate the potential lack of understanding where clients or opponents have an inadequate knowledge of the law and procedure compared with those whose cases are conducted through qualified legal advisors and the effect this may have on the handling of a matter.

Barristers should:

- a) Adapt their communication and handling of the matter to ensure that public access clients are fully informed of the actions which are being taken on their behalf and the purpose and possible consequences of those actions.
- b) Recognise and appreciate the position of opponents not represented by qualified legal advisors (litigants in person).
- c) Understand the professional duties to the litigant in person, the court and their own client, which arise when appearing against the litigant in person, and the potential effect on the handling of the matter.
- d) Act in accordance with the Code of Conduct and other rules and regulations applicable to public access clients or litigants in person.

4. Management of practice

Personal practice management

Barristers will:

4.1 Where appropriate, possess a strong understanding of the specific implications of being:

4.1.1 a self-employed barrister;

They will be able to supervise the day-to-day management of their practice by clerks and other employees and accept overall responsibility for all delegated work.

Barristers should:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to a self-employed barrister.
- b) Demonstrate a thorough understanding of the context in which they work (including commercial, organisational and financial) and their place in it.

4.1.2 an employed barrister.

They will understand the specific implications of being employed as a barrister. They will be able to identify and deal with any conflicts of interest that arise as a result of their employed status and act with independence.

Barristers should:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to an employed barrister.
- b) Demonstrate a thorough understanding of the context in which they work (including commercial, organisational and financial) and their place in it.

4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.

They will have an awareness of skills such as time and project management, planning, record keeping, using IT effectively and personal development. They will analyse their own needs for such skills then acquire and apply them to a good standard where necessary. They will have a basic understanding of risk analysis so as to be able to apply it to their work. The employed barrister in particular will ensure they understand the governance structure of the organisation in which they work and achieve a balance between their obligations to that organisation and their professional duties.

Barristers should:

- (a) Be competent in all aspects of their work, including organisation, management of practice and risk.

Competent organisation includes:

- (i) Keeping accurate records (including financial records and time-recording) and files, electronic or hard copy;
- (ii) Allocating time efficiently;
- (iii) Prioritising;
- (iv) Diarising;
- (v) Observing deadlines;
- (vi) Using resources (including IT systems) effectively;
- (vii) Being fully prepared.

Competent management includes:

- (i) Planning;
- (ii) Putting in place human and non-human resources;
- (iii) Coordinating;
- (iv) Leading or directing;
- (v) Checking progress against plans to accomplish the goal or target;

- (vi) Financial management.
- Competent risk management includes:
- (i) Identifying, evaluating and measuring the probability and severity of risks to their practice;
 - (ii) Proactively deciding what to do about risks and acting appropriately.
- (b) Comprehend the relevance of strategic planning, financial planning and business development in the context in which they work.

4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

They will ensure their workload is manageable. They will have a basic understanding of business continuity so as to be able to deal with unplanned circumstances. They will be sufficiently organised to ensure absences are planned so as to enable them to honour commitments.

Barristers should:

- a) Clarify instructions so as to agree the scope and objectives of the work.
- b) Make an informed judgement on the time required to prepare a matter.
- c) Take account of their availability and that of other resources.
- d) Decline to act where there is insufficient time and opportunity to prepare.
- e) Prioritise and plan workload to meet commitments.
- f) Meet timescales, resource requirements and budgets.
- g) Monitor and keep relevant others informed of progress and availability.
- h) Deal effectively with unplanned circumstances and re-prioritise as necessary.

At workplace level

4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

They will contribute to the efficient operation of their workplace where appropriate through such actions as the sharing of work when necessary, the developing of the business, and the creation of effective support systems.

Barristers should:

- a) Contribute to efficient operation of the workplace including:
 - (i) Sharing work when necessary;
 - (ii) Undertaking business development activity;
 - (iii) Creating effective support systems;
 - (iv) Working effectively within governance structures.

- b) Understand the basis on which legal services are provided (contractual or otherwise) including, where appropriate, how to calculate and manage costs, bill clients and the operation of internal budgets for legal advice .

Professional compliance and work

4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.

They will be aware of and be able to use either electronic or hard copy information management systems so as to ensure the confidentiality and security of their client's information as well as comply with current file storage and destruction regulations.

Barristers should:

- a) Identify how they will act in accordance with the Code of Conduct and other rules and regulations applicable to maintaining the confidentiality and security of information relating to third parties including that of their current and former clients.
- b) Comply with relevant data protection requirements.

4.6 Exercise good time-keeping in face-to-face or telephone encounters.

They should attend meetings, conferences and court appearances punctually and fully prepared unless prevented by matters beyond their control.

Barristers should:

- a) Attend all appointments punctually and as fully prepared as possible in the circumstances.

4.7 Where necessary, be diligent in keeping good records and files of cases.

They will be able to identify situations where keeping records and files is their responsibility and in those circumstances they will ensure that the records they keep may be understood by others as well as themselves, are organised, accurate, contain sufficient details to portray a true record and are up-to-date.

Barristers should:

- a) Identify when compiling and keeping records and files is their responsibility.
- b) Prepare and compile appropriate records at the same time or as soon as possible after the events that they are recording.
- c) Ensure records are clear, accurate and legible and contain sufficient detail for their purpose.
- d) Organise records so that they are retrievable by themselves and other authorised persons as appropriate.

Summary

1. Barristers' distinctive characteristics

Legal knowledge, skills and attributes

- Barristers will:
- 1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.
 - 1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.
 - 1.3 Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.
 - 1.4 Have an awareness of the wide range of organisations supporting the administration of justice.
 - 1.5 Apply effective analytical and evaluative skills to their work.
 - 1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it.
 - 1.7 Negotiate effectively.

Practical knowledge, skills and attributes

- 1.8 Exercise good English language skills.
- 1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.
- 1.10 Make sound judgements in their work.
- 1.11 Ensure they are fully prepared.
- 1.12 Employ effective research skills

Advocacy

- 1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.

Part 1 – Public

- 1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.
- 1.15 Have persuasive oral advocacy skills.

Professional standards

- 1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.
- 1.17 Know how to conduct themselves appropriately in court.
- 1.18 Only accept work which they believe they are competent to undertake.

2. Personal values and standards

- Barristers will:
- 2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.
 - 2.2 Be honest in their dealings with others.
 - 2.3 Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.
 - 2.4 Ensure their work does not incur unnecessary fees.
 - 2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.
 - 2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

3. Working with others

At work

- Barristers will:
- 3.1 Understand and exercise their duty to act in the best interests of their client.
 - 3.2 Understand and apply principles of team working where appropriate.
 - 3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.
 - 3.4 Treat all people with respect and courtesy, regardless of their background or circumstances.
 - 3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.

Lay individuals

- 3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

4. Management of practice

Personal practice management

- Barristers will:
- 4.1 Where appropriate, possess a strong understanding of the specific implications of being:
 - 4.1.1 a self-employed barrister;
 - 4.1.2 an employed barrister.
 - 4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.
 - 4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

At workplace level

- 4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

Professional compliance and work

- 4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.
- 4.6 Exercise good time-keeping in face-to-face or telephone encounters.
- 4.7 Where necessary, be diligent in keeping good records and files of cases.

Appendix A: Relationship between Professional Statement and Code of Conduct

1. A healthy profession is one that goes beyond basic compliance with its regulatory code. To practise effectively in today's dynamic marketplace, barristers should be adaptive, systematic and flexible. Related knowledge, skills, attributes and behaviours will support them in upholding the regulatory standards of the BSB Handbook
2. The Professional Statement describes what barristers should be able to do upon entry to the profession: the essential knowledge, skills, attributes and behaviours that all barristers should be able to demonstrate when issued with a full practising certificate. It is an entry standard which barristers should expect of themselves and their peers. It is also a resource which may be used by consumers to inform their understanding of a barrister's role and the service that they can expect to receive. Furthermore, it can be used by those developing and delivering training to inform the development of effective future educational tools and pathways.
3. The Professional Statement does not focus on what barristers must do; this is dealt with in the BSB Handbook (inclusive of the Code of Conduct and associated Core Duties), with which all barristers must continue to comply. The Professional Statement may be used as an evidential point of reference when a breach of the requirements for competent practice (set out in the Code of Conduct) has been raised as a matter of complaint.
4. The Professional Statement forms part of the regulatory regime governing entry to the profession. The BSB Handbook details the regulatory landscape for subsequent practice, following admission.
5. Much of the knowledge, skills and attributes described in the Professional Statement can be related directly to the Core Duties set out in the BSB Handbook, as would be expected in any document that is used in admitting people to a profession. The Professional Statement refers to the BSB Handbook wherever compliance with its regulations is essential to demonstrating the knowledge, skills, attributes and behaviours that should be expected of a barrister. This relationship is illustrated by demonstrating which elements of the Core Duties are to be found in each element of the Professional Statement (an exercise known as mapping). The knowledge, skills, attributes and behaviours needed for a new barrister to practise in accordance with the Code of Conduct are revealed with clarity by this process.
6. A detailed mapping of the Professional Statement to the Core Duties is contained below.

The Core Duties

- CD1** You must observe your duty to the court in the administration of justice.
- CD2** You must act in the best interests of each client.
- CD3** You must act with honesty and integrity.
- CD4** You must maintain your independence.
- CD5** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- CD6** You must keep the affairs of each client confidential.
- CD7** You must provide a competent standard of work and service to each client.
- CD8** You must not discriminate unlawfully against any person.
- CD9** You must be open and co-operative with your regulators.
- CD10** You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

How the Professional Statement relates to the barrister's Core Duties

1. Barristers' distinctive characteristics		
	<u>Legal knowledge, skills and attributes</u>	
	Barristers will:	
1.1	Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.	CD1 CD3 CD4 CD5
1.2	Have a knowledge and understanding of the key concepts and principles of public and private law.	CD7 CD10
1.3	Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.	CD7 CD10
1.4	Have an awareness of the wide range of other organisations supporting the administration of justice.	
1.5	Apply effective analytical and evaluative skills to their work.	CD7
1.6	Provide clear, concise and accurate advice in writing and orally and take responsibility for it.	CD7
1.7	Negotiate effectively.	CD7
	<u>Practical knowledge, skills and attributes</u>	
1.8	Exercise good English language skills.	CD7
1.9	Exercise good communication skills, through any appropriate medium and with any audience as required in their work.	CD7
1.10	Make sound judgements in their work.	CD7
1.11	Ensure they are fully prepared.	CD7
1.12	Employ effective research skills.	CD7

Part 1 – Public

	<u>Advocacy</u>	
1.13	Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.	CD7
1.14	Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.	CD7
1.15	Have persuasive oral advocacy skills.	CD7
	<u>Professional standards</u>	
1.16	Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.	CD9
1.17	Know how to conduct themselves appropriately in court.	CD1 CD3 CD4 CD5
1.18	Only accept work which they believe they are competent to undertake	CD7

2. Personal values and standards		
Barristers will:		
2.1	Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.	CD2 CD3 CD4
2.2	Be honest in their dealings with others.	CD3
2.3	Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.	CD8
2.4	Ensure their work does not incur unnecessary fees.	CD6
2.5	Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.	CD3 CD7
2.6	Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.	CD7

3. Working with others		
<u>At work</u>		
Barristers will:		
3.1	Understand and exercise their duty to act in the best interests of their client.	CD2
3.2	Understand and apply principles of team working where appropriate.	CD10
3.3	Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.	CD2 CD8
3.4	Treat all people with respect and courtesy, regardless of their background or circumstances.	CD3 CD5 CD8
3.5	Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.	CD7

	<u>Lay individuals</u>	
3.6	Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.	CD2 CD7 CD10

4. Management of practice		
<u>Personal practice management</u>		
Barristers will:		
4.1	Where appropriate, possess a strong understanding of the specific implications of being: 4.1.1 a self-employed barrister; 4.1.2 an employed barrister.	CD10
4.2	Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.	CD7 CD10
4.3	Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.	CD7 CD10
<u>At workplace level</u>		
4.4	Understand the organisational systems or structures within which they work and which support their delivery of a professional service.	CD7 CD10
<u>Professional compliance and work</u>		
4.5	Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.	CD6 CD10
4.6	Exercise good time-keeping in face-to-face or telephone encounters.	CD7 CD10
4.7	Where necessary, be diligent in keeping good records and files of cases.	CD7 CD10

Appendix B Relationship between the Professional Statement Threshold Standard and Competences

	Terminology	Explanation	Example
PROFESSIONAL STATEMENT	Knowledge Skills and Attributes	<p>The knowledge, skills and attributes are grouped under four domains:</p> <ol style="list-style-type: none"> 1. Barristers' distinctive characteristics; 2. Personal values and standards; 3. Working with others; 4. Management of practice. <p>Barristers will have all the knowledge, skills and attributes on 'day one' of practice.</p>	2.2 Be honest in their dealings with others.
	Commentary	A set of explanatory notes on the knowledge, skills and attributes to be used for guidance only	They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.
THRESHOLD STANDARD AND COMPETENCES	Competences	<p>Ability to perform the roles and tasks required by one's job to the expected standard.</p> <p>Competences have been defined for each knowledge, skill and attribute. Barristers should demonstrate all the competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.</p> <p>Competences are assessable.</p>	<p>Barristers should:</p> <ol style="list-style-type: none"> a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16]. b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status. c) Ensure that to the best of their knowledge and belief any information they give is accurate, true and not likely to mislead.
	Threshold Standard	<p>The threshold standard describes the minimum level or standard to which the competences should be performed on 'day one' of practice. Standards are also incorporated within the competences: the threshold standard and the competences must be read together.</p> <p>Newly qualified barristers will aspire to higher standards, but should meet the minimum standard.</p>	

Equality Analysis (EA) template

Date of Assessment	18 July 2016
Assessor Name & Job Title	Christopher Young, Policy Manager (Quality Assurance)
Name of Policy/Function to be Assessed	Future Bar Training, work stream 1: Professional Statement threshold standard and competences
Aim/Purpose of Policy	The Threshold Standard and accompanying competences have been developed to elaborate on the Professional Statement. Together, they clearly demonstrate the abilities and standards required for any barrister specifically at the point of being issued a full practising certificate.

1. Evidence

<p>What evidence will you use to assess impact on equality?</p> <p>The Professional Statement threshold standard and competences were drafted by two expert consultants who were briefed on specific equality and diversity issues and briefed to minimise the negative impacts on particular groups as well as promoting and embedding equality and diversity principles.</p> <p>A group of subject matter experts were engaged in reviewing early drafts of the document. They were briefed to look out for issues relating to equality and diversity, and identified none. The BSB Equality & Access to Justice team reviewed the threshold standard and barrister competences prior to the consultation and gave feedback on the accessibility of language and more detail about equality and diversity competences. They will continue to be involved throughout the project lifecycle.</p> <p>The threshold standard and competence elements of the document have been developed to supplement the already-published Professional Statement. A full equality impact assessment was completed for the Professional Statement. This identified no significant risks. The Professional Statement was developed with a number of safeguards in place to ensure that equality and diversity issues were monitored throughout the project. These included:</p> <ul style="list-style-type: none"> the appointment of an expert in equality and diversity and member of the BSB's Equality and Diversity Committee as the chair of the Professional Statement Working Group. The Working Group did not identify any issues pertaining to equality and diversity in the drafting of the Professional Statement. As the two documents are closely related this impacts on the fairness of the threshold standard and competences; taking caution during drafting to ensure that that potentially discriminatory language was not used, particularly with regards to specifically identified risks. We have sought to ensure that the language used was kept gender neutral. <p>The threshold standard and competences were publicly consulted on. In this consultation we specifically asked respondents to highlight any aspects of the standard or competences which could impact on equality and diversity, either positively or negatively. Most respondents highlighted no issues with equality & diversity. One respondent felt that the introduction of a threshold standard</p>
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and competences would be a positive step. Two respondents from the academic community felt that there was a tension between retaining standards and encouraging equality & diversity. However, they did not highlight any specific competences which would cause direct or indirect discrimination.

2. Impact on Equality

Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4).	
Race	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Gender	<p>The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.</p> <p>There is a risk that the Professional Statement could be inferred to set a new level of prescription and lack of flexibility in training, making it more difficult for some individuals to achieve the threshold standard and competences outlined in the Professional Statement. Specifically, concern has been expressed that this could adversely impact those with caring responsibilities.</p>
Disability	<p>The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.</p> <p>There is a risk that the Professional Statement could be inferred to set a new level of prescription and lack of flexibility in training. This could limit the ability of some with disabilities from achieving the standard required. Those with disabilities are more likely to study part time, or choose more flexible training pathways and it needs to be ensured that the requirements of the Professional Statement can still be met through these routes.</p>
Age	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Sexual Orientation	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Religion/Belief	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Gender Reassignment	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.

Pregnancy/ Maternity	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Marriage and Civil Partnership	The Threshold Standard & Competences are expected to provide a greater degree of objectivity in the setting of standards and thus to help mitigate risk of bias against specific groups.
Other Identified Groups	There is a risk that those from different socio-economic backgrounds may find it more difficult to access certain routes to training. It may be more difficult for those from certain socio-economic backgrounds to access an appropriate level of training to reach the required threshold standard and competences for 'day one' of practice.

How does the policy advance equality of opportunity?
The Professional Statement threshold standard and competences will provide greater objectivity in setting outcomes for future training pathways. By permitting greater flexibility in how those standards are achieved, we anticipate a wider range of individuals being enabled to pursue a career at the Bar.

How does the policy promote good relations between different groups?
The Professional Statement threshold standard and competences include provision to ensure that barristers interact with those from a range of different background appropriately. An example of this is 3.3(a) which requires barristers to be competent in: "Being active in the pursuit of equality and respect for diversity [2.3]". These competences are essential for all authorised barristers to attain on 'day one' of practice and maintain throughout their career. These competences will ensure that equality and diversity is embedded as part of training, as it will be a requirement for authorisation. This should lead to greater awareness of equality and diversity issues within the profession in relation to clients and other professionals.

3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	X
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	

d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision: The Threshold Standard & Competences set a more objective point of reference for the standards required at authorisation than has been available in the past, and this is expected to support the greater inclusion of people associated with protected groups.		

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.			
Action Required	Desired Outcome	Person Responsible	Timescale
Ensure that training pathways are developed to be adequately flexible and ensure the standards can be met in an appropriate way.	Sufficient flexibility within the training pathways, when they are developed to accommodate those that require it.	Christopher Young, Policy Officer (Quality Assurance)	September 2016
When the threshold standard and barrister competences are published they are made available in alternative formats as well as ensuring that the published format is accessible.	To ensure that the Professional Statement threshold standard and competences is accessible to a wide audience, including those that have a disability.	Christopher Young, Policy Officer (Quality Assurance)	July 2016

Completed EA forms should be sent to Equality@BarStandardsBoard.org.uk. The E&D team may suggest revisions or additions to your EA before it is finalised.

Entity Authorisation - Report on Activity

Status:

1. For noting.

Executive Summary

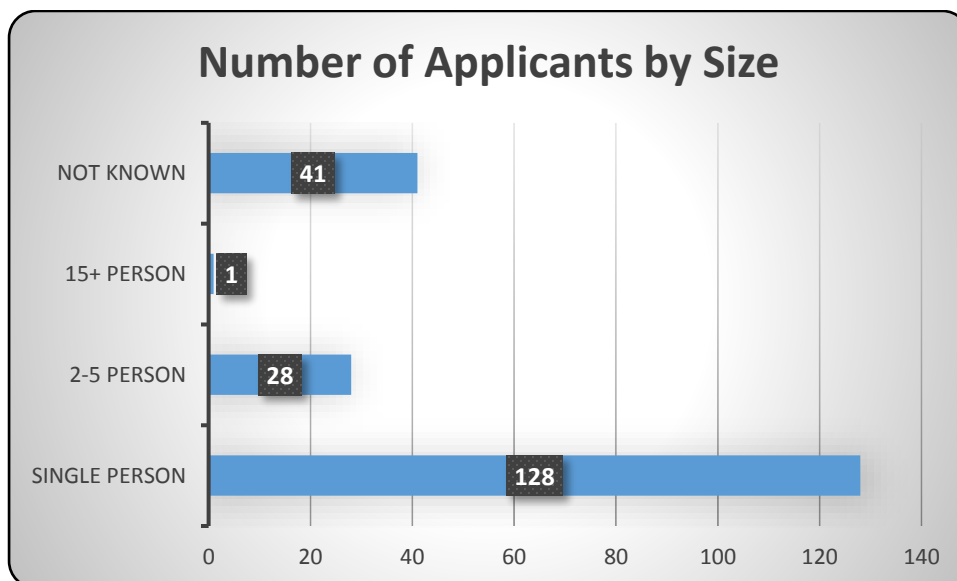
2. The BSB's Entity Authorisation regime launched in April 2015. This paper describes activity over the 12 month period between 5 April 2015 and 4 April 2016 and outlines next steps for 2016 / 2017.

Background

3. The BSB's objectives, policy and approach to entity authorisation are set out in its Entity Regulation Policy Statement which can be found at Annex A.

Applications Received

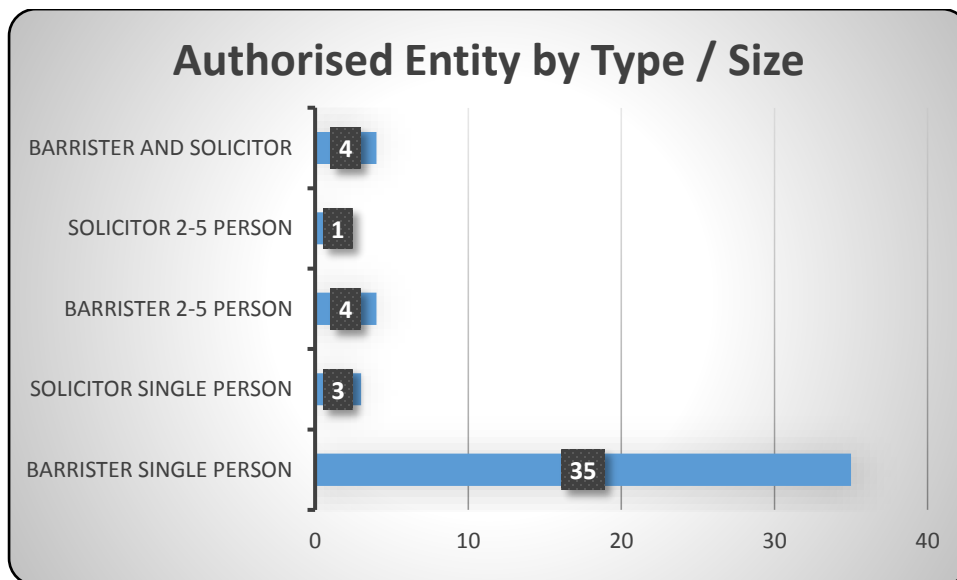
4. In the first 12 months of activity, we received 198 expressions of interest for entity authorisation. These expressions of interest represented barristers completing initial registration. However in the majority of cases the applications were not completed. This difference between expressions of interest and completed applications is a lesson that can be learned for the Licensed Body (ABS) project.
5. The vast majority of these expressions of interest were from single barristers. There was a significant cohort (20.7%) which had neither fully settled on size or did not indicate it in the application.



6. There were 4 applications formally withdrawn before the assessment stage. The reasons given:
- The amount of effort required to complete the application was viewed as excessive;
 - The entity was no longer required;
 - An applicant intending to practice in criminal law encountered significant difficulties securing Legal Aid Agency contracts.¹
7. 130 (65%) of the applications were registered on the original system. Feedback from applicants about the system was that it was “clunky” and “hard to navigate”. We launched our bespoke online entity authorisation portal in July 2015, reflecting user comments and suggestions to streamline the application and assessment processes. Feedback on the new system, which includes online payment functionality, has been positive. Importantly the number of technical queries on which staff time was spent has materially reduced.

Authorised Bodies

8. In the 12 month period, we authorised 47 entities. Details of all authorised entities are published on the Entity Register on our website which is updated weekly.
9. The size and type of these entities is depicted in the following chart.



¹ The Legal Aid Agency (“LAA”) has advised that, in principle, there is no objection to a barrister changing their status to become a single person entity. However, in practice, it would require the LAA to introduce legally binding indemnities specific to the individual and then to effect operational changes to ensure the right payments were made to the right accounts. The LAA has indicated that at present it does not have the resources to facilitate this change.

10. There were no applications refused or decisions reviewed or appealed.
11. Reasons given for applying to become a BSB regulated entity include:
 - Financial benefits, including the ability to operate flexibly and manage costs, e.g. balance home office working with needs based rental of office space;
 - Opportunity to offer end-to-end client service, e.g. barrister / solicitor entity. In many cases the entity also offered services in niche practice areas such as sports or media law.
 - Ability to be competitive, e.g. tender for contracts or work and resource flexibly;
 - Access to complimentary skills, e.g. office manager.
12. Other noteworthy information gathered about the authorised entities:
 - 19 (40.4%) had a primary practising address in London. The remainder were spread relatively evenly throughout England and Wales;
 - 38 (80.9%) practised primarily in civil law;²
 - 20 (42.5%) were authorised to conduct litigation;
 - 22 (46.85%) indicated they intended to provide public access services.

Assessment Time

13. Our rules require us to issue authorisation decisions within 6 months of receiving an application with the time running from when the application fee is received. We can extend this to 9 months if necessary.
14. The average time taken to determine an application was 104 days, with the range 28 – 176 days. The reason for the longer time taken was due in all cases to delay by the applicant in responding to our requests for clarification or additional information.
15. At present, we have a single KPI being “*The % of authorisation decisions made within the service standard*” where authorisation decisions are approvals, withdrawals and any negative determinations. Given there are factors outside our control which impact the timeline and contribute to delays, we set KPIs as 90% within 6 months and 100% within the extended 9 months.
16. The performance statistics for the 12 month period are:
 - Within 6 months = 93%
 - Within 9 months = 100%.
17. We are actively engaged with the Assurance Framework team to determine suitable and meaningful qualitative and quantitative assurance measures for the coming 12 months. In the interim we are taking steps to ensure that data and information are captured and can be reported.

² Further breakdown of this figure is available but has limited meaning given the low take-up.

Risk-Based Approach

18. As stated in our policy, we adopt a flexible and holistic risk-based approach to determine whether a particular applicant entity is appropriate for BSB regulation, i.e. what potential risks are posed that could prevent the regulatory objectives from being achieved. Our aim is to effect regulation which is transparent, proportionate, consistent and targeted. .
19. The BSB's view on the introduction of entity regulation in April 2015 was that, in order to best achieve the regulatory objectives and in the public interest, our approach to risk should be "*cautious*", i.e. gather as much information about the proposed entity at the application stage to ensure (insofar as possible) the risk posed by entity would be Low. To this end we ask applicants to provide detailed information on proposed business and governance models, key roles and positions, processes and policies.
20. The BSB developed its Risk Framework and Risk Index during 2015 / 2016, publishing in April 2016.
21. With this in mind, and as part of the Licensed Body (Alternative Business Structures) project, in early 2016 we carried out a review of the entity application and assessment processes, involving key staff from the Supervision, Authorisation and Professional Conduct departments. Drivers for the review were to ensure consistency of approach between the existing and new authorisation regimes and to identify how we could align with and embed the Risk Index / Framework.
22. The review combined evidence gathered (albeit limited) to suggest the risks *actually* posed by entities. The results helped us identify how we could leverage our experience, increased staff capability and robust supervision activities to prioritise and focus on the risks posing the greatest threat to the regulatory objectives. It also suggested where certain risks may be most appropriately managed, i.e. either at authorisation or through our supervisory regime. As a result, within the scope of the policy statement we have made certain refinements to our assessment process, including targeting risks posed to the public interest rather than more specifically on market risks to the entity itself. We believe our supervision function is more suited to addressing these risks.
23. With the eventual addition of licensed bodies, we will continue to adopt an evidence-based evaluative approach to entities thus ensuring we are consistent and proportionate in our regulation of all BSB entities.

Entity Renewals

24. The Entity Renewals process ran successfully for the first time at end March 2016 through a newly designed automated portal. All 47 entities renewed with the exception of 1 single person entity. Whilst we did not carry out a full review of each entity, we did use the opportunity to engage with each by email, ask them to proactively declare whether there

have been any material changes since authorisation and, if so, to provide details which would then be subject to risk-based assessment.

Entity Fees

25. Entity fees are calculated on a full cost recovery basis. Prior to launch in April 2015, our three year estimate projected that, in the first 12 months' of operation, we would approve 380 single-person entities and 8 multi-person entities. These projections were based largely on the responses to our fees consultation and additional research carried out.

26. Income generated over the 12 months is shown in the table below.

Fee Type	Amount (£)
Application Fee	15,885
Authorisation Fee	20,415
Authorisation to Conduct Litigation Fee	1,710
Authorisation Renewal Fee	£18,315
TOTAL INCOME	£56,325

27. Whilst the take-up and therefore income generated were lower than anticipated, they were offset to a degree by the reduction in resource costs. We intend carrying out a review of fees in 2016 / 2017. Additionally our experience with entities is reflected in our Licensed Body (ABS) authorisation fees.

Entity Team / Resources

28. We estimated, on the basis of projected take-up, 2.75 FTE of staff time at multiple levels of seniority would be needed for entity authorisation. In fact, the staff requirement was approximately 1 FTE. Reflective of the department's approach to flexible working / cross-skilling the resource is allocated across a pool of staff capable of making authorisation decisions. The extra resource was directed towards wider supervision activities.

Supervision

29. When an applicant is authorised, it become subject to risk-based supervision, the approach for which is informed by the BSB's overall Supervision Strategy and thus consistent with the Risk Index / Framework.

30. Each entity is assigned a regulatory contact who is provided with all information provided by the applicant, assessment details and risk rating. The risk rating reflects the view of the risks posed by a particular entity at point of authorisation and is consistent with the supervision risk rating profiles.

31. With the exception of 2 entities, the risk rating for all entities was Low at the point of authorisation.

32. The risk rating for 2 entities was reviewed during the 12 month period on the basis of information provided to us.³

Communications and Engagement

33. The BSB believes its entity authorisation regime helps address the Risk Themes identified in the Risk Outlook, most particularly “*Failure to Meet Consumer Needs*” and “*Commercial Pressure on Providers*”. Regulated entities provide more choice for consumers and allow innovative business models to be developed which allow for more flexible and competitive provision of legal services.
34. Since launch in April 2015 we have been proactive in briefing external bodies including the Legal Practice Management Association. We actively participated in a session held at the Annual Bar Conference 2015 and are taking an even more active role in the 2016 event. Regular press updates are released with generally positive feedback and comment.
35. We have positive ongoing engagement with a number of authorised bodies. The Entity section of our website has recently been revamped to include case studies from 4 firms who describe their experience with the authorisation process and providing services in different ways.
36. Finally, the Authorisation Team promotes entity authorisation through positive engagement with all those who contact us, including explaining the common pitfalls made when applying for authorisation.

Next Steps

37. Over the coming months we intend reviewing key aspects of the entity authorisation process with a view to continuous improvement. Initiatives in planning include:
- Visiting a small number of entities to discuss their first year of operating as a BSB entity, including the advantages and / or disadvantages of regulation;
 - Review of entity fees;
 - Sampling, monitoring and introduction of key qualitative and quantitative assurance measures, (aligned as appropriate with the Assurance Framework).

Annex

Annex 1 – Entity Regulation Policy Statement.

Lead responsibility:

Clíodhna Judge

³ Given the small number, further information could permit the entity to be identified.

Entity regulation policy statement

1. Part 3 of the Handbook sets out the requirements for authorisation as an entity by the BSB. This paper expands on the discretionary criteria in those rules and is the entity regulation policy statement referred to in rS99, gS20 and rS101.
2. To be authorised by the BSB as an entity, an applicant must:
 - a. Satisfy the mandatory requirements in rS83 and rS84
 - b. Be considered by the BSB to be an appropriate entity for it to regulate (rS99)
 - c. Satisfy the BSB that it will be competently managed and comply with the rules, and that its owners, managers, HOLP and HOFA meet the suitability criteria rS101)
3. If an applicant does not meet the mandatory criteria, it cannot be authorised by the BSB and its application will be refused.
4. If an applicant does meet the mandatory criteria, then the BSB will consider whether it is an appropriate entity for it to regulate. If it concludes that it is, the BSB may nevertheless refuse to authorise it if it is not satisfied that it will be adequately managed and run in compliance with the rules. This is discussed further in paragraphs below.
5. In reaching its decision on whether an entity is an appropriate one for it to regulate, the BSB must take account of its analysis of the risks posed by the applicant, the regulatory objectives and this entity regulation policy statement.

BSB Policy Objectives

6. The Bar Standards Board (BSB) is a specialist legal services regulator. Its particular specialist focus is on the regulation of advocacy and related litigation services and expert legal advice. In designing its entity regulation regime it has analysed the legal services market and its own capacities and capabilities, in addition to the opportunities for regulation by other Approved Regulators and identified the market segment that is appropriate for BSB regulation.
7. The overall policy objectives of the BSB are that:
 - a. The market should have the opportunity to develop, with authorised persons being able to innovate in ways that are compatible with the regulatory objectives and the associated risks being managed effectively and proportionately;
 - b. As business models change, the specialist skills and expertise associated with the Bar should be preserved and standards of advocacy should be maintained, thereby safeguarding the public interest;
 - c. Individual responsibility (in particular the accountability of the individual advocate or other authorised individual to the Court and the client) should be at the heart of the regulation of advocacy and related services;
 - d. Regulatory arbitrage is minimised;
 - e. The BSB should build on its regulation of individual barristers to give entities the option of being regulated by the BSB, particularly those wanting to specialise in advocacy and litigation;
 - f. The BSB minimises the risk of regulatory failure by regulating only those entities that fit well with its capacities and capabilities, ensuring that entities and their managers consent to the jurisdiction of the BSB;
 - g. Risk assessment and management should be at the heart of the BSB's regulatory arrangements;

- h. Entities which the BSB authorises should manage their own risks well and comply with their regulatory obligations;
- i. The BSB regulatory regime is proportionate to the risks it needs to regulate.

BSB approach

8. The BSB has developed its policy on what entities it would be appropriate for it to regulate in the light of these objectives. In exercising its discretion, the BSB will be sensitive to developments in the market and innovative practices that might be in clients' interests and which might differ from the type of entity described below. In such cases, the BSB will assess the risks posed by the entity in question and decide whether it is in the public interest for the BSB rather than another Approved Regulator to authorise such an entity.
9. This policy statement reflects the BSB's decision that it should be a niche regulator concentrating on those entities whose activities are similar to those traditionally undertaken by the Bar (and which the BSB therefore has experience of regulating), which do not hold client money, whose structure is simple and transparent, with work being closely overseen by authorised individuals and minimal risk of divergent interests between owners and managers. As both the BSB and those it regulates gain experience, and as the market develops, the BSB will consider whether it would be in the public interest for it to widen the scope of its entity regulation and if so it will publish a revised policy statement.
10. The BSB's risk framework (published alongside this policy statement) will be central to any decision to authorise an entity and to the BSB's approach to ongoing supervision of the entity. The BSB will assess the nature of the risks posed by an entity, taking into account its structure and governance arrangements, the kind of the services it is intending to provide, its impact on the wider legal services market and its own risk assessment and mitigation procedures.
11. The BSB would normally only authorise an entity if:
 - a. any owner¹ of the entity is also a manager;
 - b. the entity will not be a multi-disciplinary practice².
12. There may be exceptional circumstances where the BSB would authorise an entity that is not able fully to satisfy the criteria in paragraph 11 but, in the BSB's judgment, poses similar risks to those posed by entities which do satisfy the criteria.
13. When assessing the risks associated with an entity, the BSB will also take other factors into account, including:
 - a. the services that the entity intends to provide and the nature and extent of any non-reserved activities;
 - b. the proposed proportion of managers to employees;
 - c. the proposed proportion of authorised individuals to non-authorised individuals;
 - d. the extent to which its managers have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;
 - e. whether any persons with an ownership interest (whether material or not) are not individuals;
 - f. whether any managers are not individuals;

¹ Owner as defined in the BSB Handbook as person who holds a material interest in the entity

² A multi-disciplinary practice combines the provision of reserved legal activities and non-reserved activities traditionally associated with legal professionals with other (non-legal) professional services (subject to any minor or incidental examples of other activities which are carried on in the course of supplying the main service and do not materially detract from the focus of the entity being legal)

- g. whether the entity is intending to provide high-volume, standardised legal advice or standardised legal transactional services direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of its practice; and
 - h. the systems that the entity will have in place to manage such services and associated risks.
14. The following factors, when present, would tend to indicate that it may be appropriate for the BSB to regulate an entity:
- a. all owners and all managers are individuals;
 - b. 50% or more of the owners and 50% or more of the managers are entitled to exercise rights of audience in the Higher Courts;
 - c. a substantial part of the services to be provided are advocacy and/or litigation services and expert legal advice;
 - d. the entity is not intending to provide high-volume, standardised legal transactional services;
 - e. 75% or more of owners and 75% or more of managers are authorised individuals³;
 - f. a substantial proportion of employees are going to be authorised individuals; and
 - g. each manager supervises only a small number of employees.
15. The following factors, when present, would tend to indicate that it may not be appropriate for the BSB to regulate an entity:
- a. not all owners and managers are individuals;
 - b. fewer than 50% of owners and fewer than 50% of managers are entitled to exercise rights of audience in the Higher Courts;
 - c. the provision of specialist advocacy and/or litigation services or other expert legal advisory services is not a significant proportion of the proposed practice;
 - d. a substantial part of the services to be provided are high-volume, standardised legal transactional services direct to lay clients;
 - e. fewer than 75% of owners and 75% of managers are authorised individuals⁴; and
 - f. a substantial proportion of employees will be non-authorised individuals.
16. The factors listed above are not exhaustive of the matters that may be relevant to the BSB's consideration of the appropriateness of an entity for BSB regulation. In each case, the BSB retains a discretion to grant or refuse authorisation in the light of its overall consideration of the risks posed by the entity, the regulatory objectives and the BSB's policy objectives.
17. In particular, even if the factors listed in paragraph 14 are present, the BSB may refuse authorisation if its analysis of the risks posed by the entity indicate that it may not be appropriate for BSB regulation. In making this decision it will take into account not only the extent to which the entity has assessed its own risks and put in place appropriate systems to manage those risks, but also whether the BSB itself has the necessary experience and skills to regulate the entity effectively.

Management and compliance

18. Rules rS101 and rS102 set out the aspects of management, control and compliance about which the BSB must be satisfied before granting authorisation. In exercising its discretion under these rules, the BSB will consider whether the arrangements are satisfactory for the nature and type of business which the applicant intends to provide. If the BSB concludes that the minimum requirements are satisfied and that it should therefore authorise the applicant, it will take account of its conclusions about the strength of the controls and

³ Only relevant to ABSs

⁴ Only relevant to ABSs

management in its assessment of the risks posed by the entity and hence the future monitoring and supervision arrangements which would be appropriate.

19. In considering whether a person meets the suitability criteria despite having disclosed an event which might call that suitability into question, the BSB will have regard to when that event took place and any evidence about subsequent behaviour. The test it will normally apply is whether the person is currently suitable for the role concerned and whether it and the public can have confidence in that person in that role.

Enforcement Annual Report 2015/16**Status:**

1. For noting
2. Public

Executive Summary:

3. Attached is the Annual Report for the Professional Conduct Committee and Professional Conduct Department providing an overview of our enforcement work for the year 1 April 2015 to 31 March 2016.
4. The main statistical findings are as follows:
 - a. We received a similar number of external complaints (299) as previous years, but opened 7% fewer internal complaints (134) compared with 2014/15. This contributed to a decrease in the caseload of the department during 2015/16 and we ended the year with 21% fewer active complaints than we started the year with. A major contributing factor to this was a significant increase in the number of cases closed during the year – up 40% on last year (513 cases as compared to 364).
 - b. We made 106 new referrals to disciplinary action in 2015/16 and imposed 76 administrative sanctions. The latter is a 600% increase on 2014/15 when 11 were imposed. We concluded 66 cases that had been referred to disciplinary action, with findings of professional misconduct made in 46 cases. Seven barristers were disbarred in 2015/16.
 - c. Our performance figures were much improved compared to those from 2014/15. The overall percentage of cases concluded or referred within our KPI target was 75.7% for 2015/16 (the figure for 2014/15 was 68.9%). While 75.7% is under our 80% target, the high throughput of work in the year should be noted (54% more cases were progressed through the three OPIs compared to 2014/15). Part of the reason that the 80% target was missed was that after a difficult end to 2014/15, many cases had already ticked over the target time for closure or referral before the year had begun. After those cases were closed or referred, we can see from the quarterly KPI statistics that by quarter four, we were better placed to handle cases inside of the KPI (in Q1 we achieved a percentage of 64.5% inside the KPI, but in Q4 the percentage was 88.7%).
 - d. Our User Feedback survey results were broadly similar to previous years in terms of staff performance, timeliness/efficiency and accessibility of our enforcement procedures. We aim to improve the levels of accessibility going forward, in particular in relation to the BSB website. As with previous years, we observed a strong correlation between the outcomes of complaints and the perceived openness and transparency of the system. We will continue to work on this area in 2016/17 to inform and manage the expectations of complainants when they bring potential issues of misconduct to us.

Recommendations

- 5. There are no specific recommendations but the Board are asked to note the conclusions set out at page 43 of the report and the action points on the same page and below:

Action points

- 6. We intend to carry out the following actions during the course of the next twelve months to further improve the enforcement system.
 - a) Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (based on the Risk Outlook, Framework and Index) is reflected in our enforcement work. This work will be focused in 2016/17 on the development of the proposals for a Centralised Assessment Unit.
 - b) Continue to improve our IT systems (as part of Bar Council's Information Management Programme) to improve communication and the sharing of data across relevant departments.
 - c) To maintain and enhance our staff training and up skilling programmes. This will prepare the PCD staff to take on an increased amount of executive decision making.
 - d) Continue our KPI monitoring programme to ensure that we can deal with the over-running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcements processes.
 - e) Carry out a review of our KPIs and OPIs to ensure they remain an appropriate and effective means to monitor performance.
 - f) Update and revise our leaflets as well as continue improving the website pages as part of the ongoing Public Information Project.

Resource implications

- 7. There are no new resource implications associated with this report. All other action points will be addressed internally by the Professional Conduct Department.

Equality Impact Assessment

- 8. Not applicable

Risk implications

- 9. Not applicable

Impacts on other teams / departments or projects

- 10. Not applicable

Consultation

- 11. Not applicable

Regulatory objectives

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

Publicity

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

Annexes

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

Lead responsibility:

Sara Jagger
Director of Professional Conduct

Aidan Christie QC
Chair of the Professional Conduct Committee

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Enforcement

Annual Report 2015/16

Professional Conduct Committee
Professional Conduct Department

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Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers are required to comply. Where there is evidence that the Handbook has been breached, the BSB will consider what action may be necessary by way of enforcement or otherwise. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This report provides an overview of our enforcement work for the year 1 April 2015 to 31 March 2016. In this report we focus on the key trends in the new complaints that we received or raised, the caseload that we worked on throughout the period and the outcomes of this work. We then go on to analyse our performance over the year in terms of the time we took to progress cases and also in areas such as the accessibility of our service, staff performance in handling complaints and the openness and transparency of our enforcement system.
- 1.3 In addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2015/16 which is available on the BSB website.
- 1.4 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy and expert legal services – in the autumn of 2014 and formally authorised the first entity in April 2015. No complaints about entities or employees of entities were received or opened in 2015/16 and, therefore, the casework and

performance sections of this report do not include statistics on entity complaints.

Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all the cases we open. This allows us to report on the types of complaints we receive, the outcomes of our investigations and disciplinary action, and performance information in relation to the progression of complaints.
- 1.6 To gain further insight into our handling of complaints, we also carry out a User Feedback Survey. Upon the conclusion of cases, all complainants and barristers are sent a questionnaire and asked to provide feedback on how we did and how we can do better. We sent out 520 questionnaires in 2015/16 and received 145 responses as compared to 467 questionnaires in 2014/15 and 169 responses.

Our approach to cases

- 1.7 We take an outcomes-focused, risk-based approach to our enforcement activities.
- 1.8 Part 2 of the BSB Handbook¹ sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as that “*the proper administration of justice is served*” (oC2). The outcomes are derived from the regulatory objectives defined in the Legal Services Act 2007. The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when concerns are raised about the conduct of a barrister.
- 1.9 Our Enforcement Strategy² sets out our approach to taking enforcement action, underpinned by the provisions of Part 5 of the Handbook. We take a risk-based

¹ In January 2014, the 8th edition of the Bar’s Code of Conduct was replaced with the BSB Handbook

² Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page.

https://www.barstandardsboard.org.uk/media/1555518/140105_-_the_enforcement_strategy_-_handbook_-_final.pdf

approach to enforcement – focused on achieving the outcomes outlined in the Handbook. This enables us to concentrate our resources on those issues which present the greatest risk to the regulatory objectives. When we first receive a complaint or information that may lead us to raise a complaint³, our first step is to assess whether there is any evidence of a breach of the Handbook and whether there is a risk to consumers of legal services or the wider public. This enables us to make a decision on whether or not to carry out a formal investigation.

- 1.10 Where we investigate a complaint, we will write to the barrister and any other people who we consider might provide information of relevance to the complaint, asking for comments and relevant documents. Once we have all the information we need we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook. Where there is, we will decide the appropriate action to take. This could include the imposition of an administrative sanction in the form of a written warning or a fine of up to £1,000 for individuals and £1,500 for entities, or, for

more serious matters amounting to professional misconduct, disciplinary action.

- 1.11 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure (see the section on “Disciplinary action outcomes”) or an independent Disciplinary Tribunal.

Enforcement structure

Professional Conduct Committee

- 1.12 The Professional Conduct Committee (PCC) has the delegated authority of the Bar Standards Board to take decisions on complaints. It has the power to refer complaints to disciplinary action, impose administrative sanctions and resolve complaints with the Determination by Consent procedure⁴. The PCC – split into two teams – meets every three weeks to make decisions on cases. Individual members of the Committee, both barrister and lay, can also provide advice on complaints during the assessment and investigation of complaints.

Our aims and objectives

Our main aims are to:

- Act in the public interest;
- Protect the public and other consumers of legal services;
- Maintain the high standards of the Bar;
- Promote confidence in the complaints and disciplinary process; and
- Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed.

Our objectives are to:

- Deal with complaints made against barristers promptly, thoroughly and fairly;
- Ensure appropriate action is taken against barristers who breach the BSB Handbook; and
- Be open, fair, transparent and accessible.

³ Under the Enforcement Regulations we can consider complaints made by persons other than the Bar Standards Board and also raise complaints on behalf of the Bar Standards Board.

⁴ The full powers of the Professional Conduct Committee are detailed in Part 5 of the BSB Handbook.

Professional Conduct Department

- 1.13 The Professional Conduct Department (PCD) considers complaints under the authority of the Professional Conduct Committee. The staff of the PCD assess and investigate complaints and, where appropriate, take action against barristers who have breached the BSB Handbook. The staff are also responsible for developing policy, managing enforcement projects and the day-to-day work of supporting the PCC and keeping the enforcement system operating efficiently and fairly.

BSB representatives (prosecutors)

- 1.14 When we decide to refer a case to a Disciplinary Tribunal on charges of professional misconduct, it is the BSB's role to bring charges against the barrister before an independent panel convened by the Bar Tribunal and Adjudication Service (BTAS). We rely primarily on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 47 barristers⁵, one of whom will be instructed immediately after a referral to disciplinary action is made and will remain with the case through to the Tribunal.

⁵ The PCD is currently carrying out a recruitment exercise for new prosecutors to join the panel.

Casework

- 2.1 By way of introduction to this section, it is important to note a major factor which has affected this year’s data and statistics. One particular chambers was the source of 11% of all new complaints raised in 2015/16. Two barristers from that chambers had 48 cases opened against them. To put that in context, the total number of complaints that we opened for all chambers over the year was 433.
- 2.2 As Table 1 illustrates, the 433 new complaints we opened in 2015/16 represents a similar figure to that of last year (a 2% decrease). There was no significant difference in the number of complaints being made to the BSB (the “external complaints”); but the number of internal complaints opened on behalf of the BSB fell by 7%. Our overall caseload, having increased during 2014/15, decreased in 2015/16 from 311 complaints at the start of the year to 246 at the close of the year.

New external complaints

- 2.3 We receive complaints from clients of barristers (via the Legal Ombudsman⁶), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints, treating the person who made the complaint as the

“complainant” and keeping them informed throughout the lifecycle of the case.

- 2.4 Since the Legal Ombudsman started operating in September 2010 we have consistently received around 300 complaints per year from external sources – and 2015/16 was no different as we received 299 complaints. Many of the trends we have seen in recent years were also repeated in 2015/16:
- Civil litigants were the source of the highest number of individual complaints (20% of external cases) followed by criminal law litigants and solicitors;
 - Referrals from the Legal Ombudsman made up 20% [60] of external complaints (for comparison, in 2014/15 referrals from the Legal Ombudsman made up 14% of external complaints);
 - In 2015/16, the most common allegations were dishonesty (18% of external complaints) and failing to co-operate with the Legal Ombudsman (17% of external complaints).

Complaint Source	2011/12	2012/13	2013/14	2014/15	2015/16
External	308	316	300	297	299
Internal	320	175	108	144	134
Total	628	491	408	441	433

⁶ The Legal Ombudsman receives complaints from clients of barristers: its jurisdiction extends only to investigating issues relating to the service provided. Where the Legal Ombudsman identifies any potential conduct issues arising from service complaints then those matters are referred to the Bar Standards Board.

Legal Ombudsman

2.5 In 2015/16 we opened 60 complaints following referrals by the Legal Ombudsman. While this was a similar figure to previous years, it should be noted that the two individual barristers referred to in paragraph 2.1 accounted for 77% [46] of the referrals made by the Legal Ombudsman. Similarly, in 2014/15 70% of the referrals from the Legal Ombudsman related to barristers from the same chambers as those mentioned in paragraph 2.1. This means that for two consecutive years one chambers has had a significant impact on our statistics in this area. Due to the effect of ongoing enforcement action one of the barrister's ability to practise has been restricted. This should result in a diminishing number of referrals next year from the Legal Ombudsman. Given the relatively small number of complaints that the BSB handles on an annual basis, situations like this where individual barristers are subject to multiple complaints can have a significant effect on the caseload and overall complaint figures.

2.6 In 2015/16, the vast majority of the referrals from the Legal Ombudsman were for barristers failing to co-operate with the Ombudsman service. Although this occurred last year as well, the increase compared to previous years is purely as a result of the two barristers highlighted above.

Aspects of external complaints

2.7 As previously noted, the most common allegations in the external complaints received in 2015/16 were failing to co-operate with the Legal Ombudsman (17%) and discreditable or dishonest conduct (18%). "Discreditable or dishonest conduct" was previously something of a "catch-all" category⁷ for general conduct issues as defined by paragraph 301 of the 8th edition Code of Conduct, covering a wide range of issues from conduct in the handling of cases to conduct outside of barristers' professional lives. The BSB Handbook, which came into force in January 2014, takes a different approach, instead referring to a barrister's honesty, integrity and independence.

Table 2		External complaint statistics in 2015/16																											
Total external complaints received	299	Referrals from the Legal Ombudsman (LeO)	60																										
Complaint categories <table border="1"> <caption>Complaint Categories Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Other Categories</td> <td>44%</td> </tr> <tr> <td>Civil Litigants</td> <td>20%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>13%</td> </tr> <tr> <td>Family Law Litigants</td> <td>11%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>12%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	44%	Civil Litigants	20%	Criminal Proceedings	13%	Family Law Litigants	11%	Barristers/Solicitors/Judges	12%	Complaint aspects <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Dishonesty</td> <td>53</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>52</td> </tr> <tr> <td>Making misleading submissions or statements</td> <td>29</td> </tr> <tr> <td>Other misleading the court</td> <td>27</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>22</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Dishonesty	53	Failure to co-operate with LeO	52	Making misleading submissions or statements	29	Other misleading the court	27	Rudeness/misbehaviour out of Court	22	...	
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⁷ Such categories are referred to internally, and elsewhere in this report, as 'aspects'. A complaint may be recorded as having more than one aspect.

- 2.8 In 2015/16 we started using new, more specific allegation categories in our case management software. Although this makes comparisons with previous years more difficult, as a result of the new categories we have been able to provide a more detailed view of the allegations made against barristers and provide the best possible information for identifying and monitoring risks to the regulatory objectives⁸. Of course, the fact that an allegation is made does not mean that the BSB Handbook has been breached and a finding of professional misconduct will be made. Where disciplinary findings are made, we were already recording those under the new rules and Core Duties of the BSB Handbook (paragraph 2.55) when the conduct post-dated January 2014.
- 2.9 The number of complaints with allegations of discrimination has fallen since 2012. In 2012/13 there were 26, but since 2013 this figure has consistently been in the region of 14 to 20, with the number in 2015/16 being 15. We take these complaints very seriously and frequently obtain expert advice prior to making any decisions on discrimination complaints. However, in many cases the allegations are unsubstantiated meaning that we cannot consider taking enforcement action. To date we have closed 11 of the 15 cases without taking any enforcement action.

Adjournments

- 2.10 Often we receive complaints about barristers where the parties to the complaint are involved in ongoing litigation and the involvement of the BSB could be disruptive to the resolution of those proceedings, or where there are other ongoing proceedings which may affect our consideration of a

complaint. In such circumstances we usually postpone consideration of the complaint pending the conclusion of the legal proceedings and explain to the parties the reasons for our having done so. We then regularly review these cases to ensure that it is appropriate that they remain on hold and the parties are kept updated.

- 2.11 Of the 299 new external complaints opened in 2015/16, we immediately put 20 (7%) on hold⁹ – 18 because of ongoing legal proceedings, and two because of ongoing proceedings with other organisations. The median length of time that new external complaints remained on hold was 11 months. The number of these types of cases being placed on hold has halved since last year (when there were 40 such cases). As the number of external complaints opened last year was similar (297), this means that the percentage of cases that were immediately put on hold fell by 6% during the year. This fall can be attributed to the nature of the complaints received but also to the more robust approach that has been taken to progressing complaints while litigation is ongoing.

New internal complaints

- 2.12 In using the term “internal complaints” we are referring to complaints raised where the BSB itself identifies a potential breach of the Handbook. Where the breach is brought to the attention of the PCD directly – for example via a barrister’s reporting obligations under the Code or an external source such as a press report – a risk assessment is completed. A manager of the PCD or an Office Holder of the Professional Conduct Committee may then authorise the raising of a formal (internal) complaint for

⁸ As set out in Part 1 of the Legal Services Act 2007.

⁹ For the purposes of this report, we have differentiated between the terms “on hold” and “adjourned”. The term “on hold” is used to describe situations where an internal decision has been taken to pause consideration of a complaint pending the outcome of another event/issue, and the term “adjourned” is used to describe situations where a tribunal/other panel/directions judge has ordered that proceedings be formally adjourned.

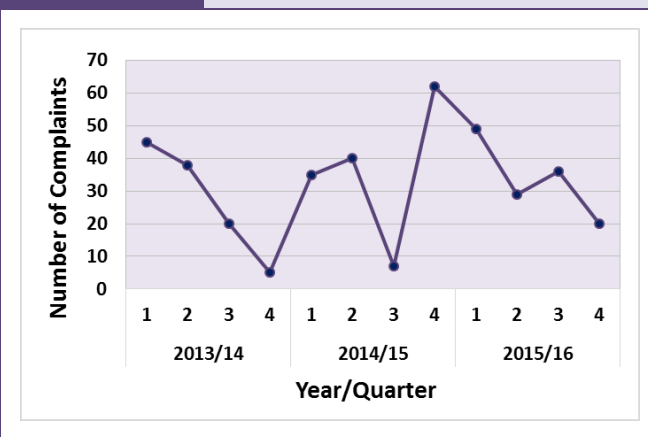
investigation. We also receive referrals from other sections of the BSB and the Bar Council such as barristers who have failed to comply with the Authorisation to Practise requirements for the profession.

2.13 In our Enforcement Annual Report 2014/15 we highlighted an increase in the number of internal complaints we were opening. To some extent this trend was reversed in 2015/16. We assessed around 300 reports and pieces of information in 2015/16 and opened 134 internal complaints which were assessed to be medium or high risk or a priority area for the BSB – a 7% decrease in complaint numbers compared with the previous year. However, as Figure 1 shows, the fall in the number of internal complaints was not spread evenly across the year – as the number of these rose in Q3 as a result of referrals from our Supervision Department for failures to complete CPD.

2.14 Table 3 shows the nature of the new aspects we investigated in 2015/16 relating to internal complaints, showing the eight most

common in order of frequency. The most common category during the year was for cases involving allegations of barristers practising without a practising certificate. It should be noted however, that the number of

Figure 1 Internal complaints opened



these occurrences has fallen greatly: there were only 15 this year, as opposed to 49 last year. Last year, half of these types of complaints related to new barristers who completed their pupillage and began

Table 3 Aspects opened for internal complaints – annual comparison 2014/15 to 2015/16

Aspect	2014/15	%	2015/16	%
Criminal conviction other than drink driving	8	6%	16	12%
Practising without a practising certificate	49	34%	15	11%
Failing to provide information promptly to the BSB ¹⁰	N/A	0%	14	10%
Failure to complete Authorisation to Practise	3	2%	14	10%
Performing reserved legal activities when not authorised to do so ¹¹	N/A	0%	9	7%
Dishonesty/discreditable conduct	38	26%	8	6%
Failure to obtain practising certificate ¹²	N/A	0%	8	6%
Dishonesty in professional or personal life ¹³	N/A	0%	7	5%
...				

¹⁰ N.B. This category was only introduced in 2015/16.

¹¹ As above.

¹² As above.

¹³ As above.

practising but did not realise that they needed to apply for a new practising certificate (inadvertently practising while not authorised to do so). The reduction in this category since last year can be attributed to the steps that have been taken within the BSB's Education and Training and Supervision teams to ensure that barristers are well informed of their obligations once they complete pupillage. Table 3 also shows that the numbers of complaints involving allegations of failing to complete authorisation to practise increased since last year. Some of the increase can be explained by the fact that reminders to renew practising certificates are now sent by email rather than by post. Following investigation, it transpired that a number of barristers had not informed us of a change of their work email address and therefore did not receive the reminder emails. All of the barristers affected by this issue were quick to remedy the situation and none of these cases resulted in enforcement action.

- 2.15 As noted above, during 2015/16 we introduced several new complaints categories in our case management software. As a result, four of the eight categories in Table 3 have results of 'N/A' for 2014/15, as those categories did not exist in the system at the time. Despite this, we can draw a comparison between the aspect "Failing to provide information promptly to the Bar Standards Board" and two categories from 2014/15: "Failure to co-operate with BSB" (3) and "Failure to comply with BSB Supervision team" (7). The 2015/2016 and 2014/2015 results of 14 and 10 respectively are broadly comparable.
- 2.16 Another trend that we can see in Table 3 is that the number of new internal complaints opened relating to allegations of dishonesty/discreditable conduct have fallen from 38 in 2014/15 to eight in 2015/16. While superficially this may seem to suggest that

dishonesty/discreditable conduct is reducing, it needs to be taken into account that other new complaint categories have been added to the system that also cover such conduct (e.g. "dishonesty in professional/professional life"). To put this into context, before 2015/16, there were only 68 allegation categories to choose from, which provided much less specificity in identifying the nature of allegations. Since the start of this year (April 2015) we have 151 allegation categories available for selection when cases are opened. As mentioned in the "aspects of external complaints" section (paragraph 2.7), discreditable or dishonest conduct was something of a "catch-all" category. The new allegation categories seek to provide more specificity when cases are logged and to bring the data on our case management system more in line with the BSB Handbook.

Reports of serious misconduct

- 2.17 Under the BSB Handbook, barristers are required to report promptly to the BSB when they have committed serious misconduct (rC65.7) and when they believe that there has been serious misconduct by another barrister or a registered European lawyer (rC66).
- 2.18 In 2015/16 we received 30 such reports from barristers about themselves and a further 51 such reports about other barristers. Of these 81 reports, 35 were assessed as high or medium risk and converted to internal complaints. Of the reports that were converted to complaints, the most frequently reported issues included: criminal convictions [6] and dishonesty/discreditable conduct [5].

2.19 A further 38¹⁴ reports were assessed but not opened as complaints. These included an instance where two live complaints regarding the same issue were already being considered by the Profession Conduct Department, so it was deemed unnecessary to raise an internal complaint. Other such reports involved allegations of misleading the court, which had been caused by the barristers receiving inaccurate information from other sources, and the errors were quickly appreciated and rectified in these cases. In such cases the barristers' behaviour was assessed as low risk or it was decided that the conduct did not constitute a potential breach of the Handbook. While not all reports of "serious misconduct" are ultimately deemed to fall within this category as defined by the Handbook (gC96), it is in the public interest that the BSB is made aware of potential instances of serious misconduct and we encourage barristers to continue making reports.

Interim Suspension

2.20 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence¹⁵ – the PCC will consider whether the barrister should be suspended from practice pending a Disciplinary Tribunal hearing. Where the PCC considers that such a course of action is justified for the protection of the public, the Committee will refer the matter to an Interim Panel convened by BTAS. The PCC (or the Chair on its behalf) may also, in exceptionally high risk situations, impose an immediate interim suspension which will remain in force until the matter can be considered by an Interim Panel.

2.21 In the majority of cases, barristers facing potential Interim Suspension will voluntarily undertake not to practise or to place restrictions on their practice until disciplinary proceedings have concluded, meaning that the Interim Suspension procedure does not need to be invoked. One new interim suspension procedure was initiated in 2015/16 and renewed. The former involved a practising barrister who had been struck off by the Solicitors Disciplinary Tribunal for misconduct as a solicitor.

Fitness to Practise

2.22 In the context of barristers, Fitness to Practise refers only to whether a barrister's health impacts on their ability to practise. A barrister's fitness to practise is brought into question if it appears that they have an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister's ability to practise is impaired to such an extent that

How do we assess risk?

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

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

restrictions on practice are necessary to protect the public.

¹⁴ 8 reports were still undergoing assessment at the close of 2015/16.

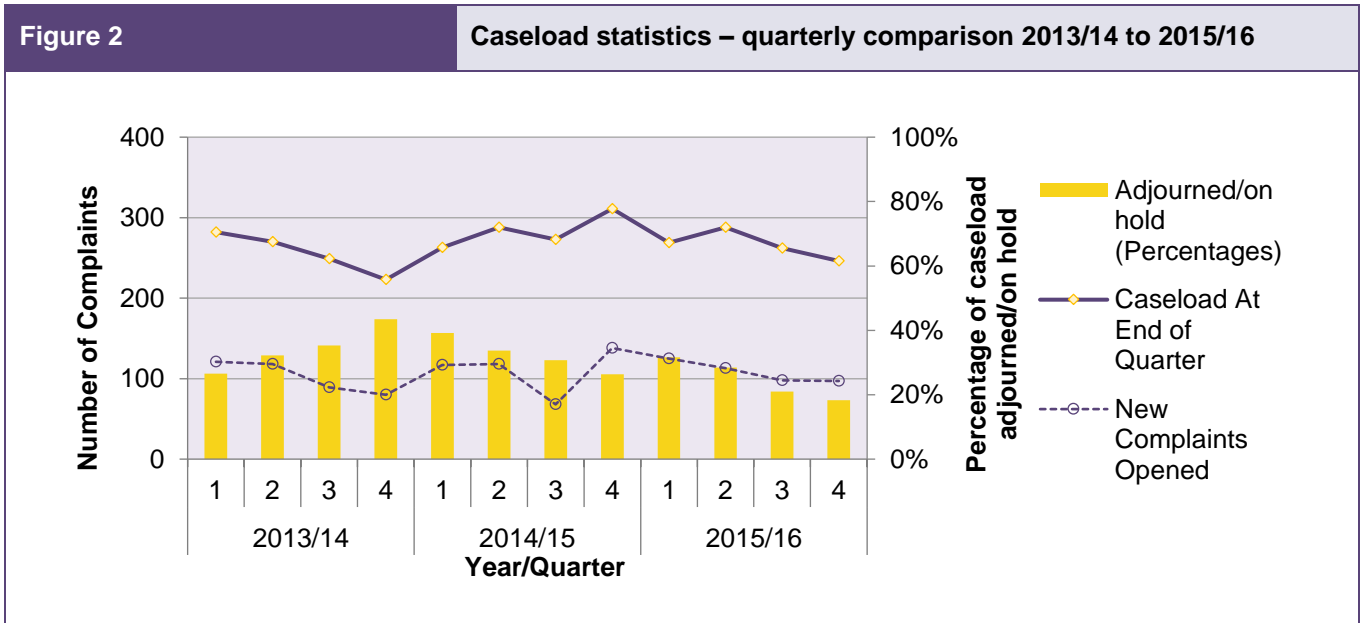
¹⁵ The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

2.23 When the PCC receives information which raises genuine concerns as to a barrister’s fitness to practise, the matter will be referred to a Fitness to Practise panel convened by BTAS. The panel – which will include a medically qualified member – must consider all of the available evidence and act to protect the public.

report, the panel made clear that the BSB was right to have begun Fitness to Practise proceedings in this case.

Caseload

2.26 In our Enforcement Annual Report 2014/15 we highlighted an increase in the caseload of the Professional Conduct Department. This



2.24 Where a Fitness to Practise panel has decided that an individual is unfit to practise it may decide to place a restriction on the barrister or place a condition on the individual such as submitting to a regular medical examination.

2.25 We began one new Fitness to Practise proceeding in 2015/16 – it concluded in the same year. The Fitness to Practise panel confirmed that the barrister was fit to practise, allowing the barrister in question to continue practising without restriction or conditions. On the basis of an earlier medical

trend was reversed in 2015/16. We started the year with 311 active complaints within the department and ended with 246 complaints, albeit 45 complaints were either on hold or adjourned.¹⁶ In total we worked on 760 active cases in 2015/16. If we compare this to the previous year, during which we worked on 675 cases, we can see that staff throughput was much higher in 2015/16. During 2015/16 we closed more complaints than we opened (as stated above, the opposite happened in the previous year).

¹⁶ 4 complaints were adjourned by Disciplinary Tribunals. The remaining 41 were placed on hold at the assessment or investigation stages for the following reasons:

Ongoing legal proceedings	33	Pending criminal investigation	4
Ongoing litigation	4		

2.27 The factors contributing to the decrease in our caseload include:

- An 2% decrease in the number of complaints being opened (compared with the previous year);
- A different quarterly pattern in internal complaints. As Figure 1 illustrates, we opened 20 internal complaints in the fourth quarter of 2015/16 compared with 62 in the fourth quarter of 2014/15. This meant that far fewer internal complaints remained ongoing at the end of the year.
- A considerable increase in the number of cases closed compared to the previous year – in 2015/16 we closed 513 compared to 364 cases closed in 2014/15. One of the reasons for this was that in 2015/16, a large number of linked cases [49] against two barristers (from the chambers mentioned in paragraph 2.1) were closed. Another barrister was subject to 10 linked complaints which were closed during the year. Further,

much quicker than external complaints and 2015/16 saw an increase in such complaints.

2.28 We finished the year with a lower figure of 246 complaints ongoing within the department. It is worth noting however, that 47 of those complaints (19%) are about a single barrister.

2.29 As predicted in last year's annual report, there was a large increase in internal complaints¹⁷ in the first quarter of 2015/16 (four times higher than the average internal complaint closure rate of 2014/15), after the gradual build-up of cases in the previous year.

Case study

The BSB received a complaint from a member of the public who had been a witness in a criminal trial. The complaint was that in the course of their closing speech the defence barrister made a misrepresentation of fact, which was not corrected before the jury.

The BSB Handbook states that a barrister has a duty to the court and must not 'knowingly or recklessly mislead or attempt to mislead the court'. Based on the information received which indicated that was a possible breach of the BSB Handbook, the Professional Conduct Department investigated the complaint. A transcript of the closing speech was obtained as were the observations of the Recorder who heard the case. The evidence was reviewed by a member of the Professional Conduct Committee (PCC) who assessed that the transcript did not indicate any deliberate misleading of the court by the barrister and that the decision not to correct the fact before the jury was made by the Recorder having heard from both parties in the case.

Given this, the PCC agreed that there was no evidence of a breach of the Handbook by the barrister and the complaint was dismissed.

internal complaints tend to be concluded

¹⁷ The number of decisions on cases made by PCD staff rose by more than 100 since 2014/15. Please see paragraph 2.35.

Risk

2.30 Where we initially identify some evidence of a breach of the Core Duties or an outcome in the Handbook that has been adversely affected or put at risk, we carry out a risk assessment. This assessment establishes the likelihood and impact of a risk to the Regulatory Objectives and informs our decisions on the enforcement action, if any, that we will take. Both the PCD and the PCC monitor and sometimes alter a case's risk level as the investigation progresses and further information becomes available.

Risk Profile	High risk	36% [133]
	Medium risk	17% [61]
	Low/no risk	47% [171]

2.31 In total we completed 365 risk assessments in 2015/16, both to determine whether we would raise internal complaints (based on incoming reports and information) and to inform our decision making on all complaints. The outcomes of these were as follows:

2.32 A further 209 assessments were not rated for risk due to a lack of evidence of a breach of the BSB Handbook or an adverse effect on the outcomes in the Handbook. We have no power to take enforcement action where there is no evidence of a breach of the Handbook and cases that are assessed as being low or no risk will not generally proceed to enforcement action as we focus our resources on the areas which are the greatest risk to the regulatory objectives and the public. The option to refer cases to the Chambers¹⁸ of the barrister in question to be dealt with under the Chambers' internal

complaints procedure is used in low risk cases where the issues raised by complainants might be better resolved by a remedy available to Chambers – such as an apology.

Most common aspects assessed as high risk:

Failure to co-operate with Legal Ombudsman ¹⁹	45
Criminal conviction other than drink driving	13
Dishonesty in professional or personal life	6
Failure to report criminal charges/convictions	6
Making misleading submissions/statements	5

Complaint decisions

2.33 Following the assessment and investigation of complaints we can take enforcement action by imposing administrative sanctions and/or referring complaints to disciplinary action. We came to a decision on 552 complaints during 2015/16, as illustrated by Table 4.

2.34 Although the proportion of complaints that we referred to disciplinary action was slightly lower than in 2014/15 (20%), the figures were generally consistent with the trends we have reported in recent years.

¹⁸ We referred six complaints to Chambers during 2015/16. In these circumstances, if the complainant is not happy with the way in which their complaint has been dealt with by Chambers, it is open to them to ask the BSB to reopen the original complaint and consider any conduct issues.

¹⁹As previously mentioned in paragraphs 2.5 and 2.6, this number is unusually high due to one particular chambers with two barristers accounting for 41 out of the 45 high risk cases that were opened following referrals from the Legal Ombudsman.

2.35 PCD staff took 67% of decisions – including 36%²⁰ of decisions to refer cases to disciplinary action – whereas the PCC took 29%. The remainder of the cases were either withdrawn or referred to the barristers' Chambers for consideration. The high percentage of decisions taken by the PCD staff was effected by the number of multiple complaints against individual barristers. The number of decisions taken by staff rose by 100 as compared to 2014/15 mainly for this reason.

2.36 In addition we concluded 67 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 513.

Outcome	#	%
Closed without investigation	213	39%
Closed after investigation (No enforcement action)	157	28%
Administrative sanction	76	14%
Referred to disciplinary action	106	19%

²⁰ Regarding the cases referred to disciplinary action, those referred by PCD staff related to 10 barristers and those referred by the PCC related to 50 barristers.

Decisions to close without action

- 2.37 In total we closed 369 complaints without taking enforcement action during the year. Table 5 illustrates the differences in the decisions we made for external and internal cases. The patterns are similar to previous years: complaints from external sources are more likely to be unsubstantiated or do not disclose a breach and therefore not apt for investigation compared with internal complaints, which are only raised where we have some evidence of a breach of the Handbook.

Most common aspects closed without enforcement action:

Discreditable/dishonest conduct	73
Misleading the court	49
Rudeness/misbehaviour out of Court	25
Discrimination	19
HoC ²¹ failing to administer chambers properly	19

Requests for review and reconsiderations

- 2.38 Under our requests for review policy, if a complainant disagrees with a PCD or PCC decision to close a complaint without taking enforcement action – either before or after investigation – they can ask us to review the decision and submit further evidence if it has come to light. Of the 306 external complaints we closed without a referral, to date we have received such requests in relation to 57 complaints (19%). This proportion is typical of previous years.
- 2.39 After reviewing the complaints, the original decision was overturned in only one case. In this case, the original decision not to investigate was reviewed by a member of the Committee and a decision was taken to

reopen the complaint and to refer it to the Investigations & Hearings team.

- 2.40 A further 4 cases were reopened due to the submission of new information but, after reconsideration, it was decided the original decision should stand. Three cases are still being considered and in relation to the remaining 49, it was decided there was no reason to reopen or reconsider the decisions.

Most common aspects closed with administrative sanctions imposed:

Practising without a practising certificate	48
Failure to complete Authorisation to Practise	3
Dishonesty/discreditable conduct	3
Failing to provide information promptly to BSB	3
Breach of practice rules	2

Enforcement decisions

- 2.41 Following investigation of a complaint, either the Professional Conduct Committee or the staff of the PCD will make a decision as to whether or not enforcement action should be taken, either by means of an administrative sanction or a referral to disciplinary action. In line with our Enforcement Strategy, since January 2014 the decision will be based on, amongst other factors: the risk posed to, or the impact on, one or more of the regulatory objectives; whether any of the outcomes in the BSB Handbook have been adversely affected and, where disciplinary action is contemplated, whether there is a realistic prospect of a finding of professional misconduct being made.

²¹ Head of Chambers.

sanction is a more proportionate form of enforcement action than disciplinary action.

Administrative sanctions

Key Stats	Barristers	76
	Total fines	£2,650

- 2.42 Where the PCC or staff of the PCD consider that there is evidence that the BSB Handbook has been breached but the breach is not so serious as to amount to professional misconduct, we will consider whether to impose an administrative sanction in the form of a written warning or a fine of up to £1,000.
- 2.43 We imposed a total of 76 administrative sanctions – 70 warnings and six fines – in relation to medium to low risk complaints. This number has increased substantially since 2014/15 when only 11 were imposed. Last year we correctly anticipated that administrative sanctions would become more common as staff became more used to the risk based approach and to exercising the new power to impose administration sanctions for any breach of the Code which was introduced 2014. In many medium risk cases, the imposition of an administrative

Referrals to disciplinary action

- 2.44 Over the course of 2015/16, we referred 92 complaints to Disciplinary Tribunals and a further 14 complaints to the Determination by Consent (DBC) procedure. In total this equalled 31% of our post-investigation decisions.
- 2.45 The number of complaints referred to disciplinary action increased in 2015/16 as Figure 3 illustrates. This is due to the fact that the number of new cases being opened in Q4 of 2014/15 and Q1 of 2015/16 was higher than usual. This in turn meant that there were more cases available to be assessed and then referred on to disciplinary action. If we look at the statistics relating to barrister numbers, the 92 cases referred to disciplinary tribunal relate to just 45 barristers²² (in 2014/15 the cases involved 38 barristers).

Most common aspects referred to disciplinary action:

Failing to co-operate w/ Legal Ombudsman ²³	35
Discreditable/dishonest conduct	18
Criminal conviction(s) - other	14
Failure to report criminal charges/convictions	10
Criminal conviction(s) – drink driving	4

Table 5			External and internal complaint outcomes 2015/16		
External complaints:			Internal complaints:		
Outcome	#	%	Outcome	#	%
Closed without investigation	210	58%	Closed without investigation	3	2%
Closed after investigation	96	27%	Closed after investigation	137	71%
Referred to disciplinary action	53	15%	Referred to disciplinary action	53	27%

²² One of these 45 barristers had 39 cases open at the disciplinary tribunal stage.

²³ 28 of the 35 cases mentioned here relate to one barrister from one chambers (see paragraphs 2.5 and 2.6).

Most common aspects closed at the Disciplinary Tribunal stage:

Discreditable/dishonest conduct	17
Failure to co-operate with Legal	7
Criminal convictions – other	6
HoC failing to administer chambers properly	6
Practising without a practising certificate	6

Disciplinary action outcomes**Determination by Consent**

- 2.46 A total of 11 cases were closed following referrals to the Determination by Consent procedure. This is a procedure by which the Professional Conduct Committee can, with the barrister's agreement, make a finding of professional misconduct. In all 11 cases the PCC found the barrister guilty of professional misconduct after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.

Most common aspects closed at the Determination by Consent stage:

Discreditable/dishonest conduct	3
Criminal conviction(s) - other	3
Criminal conviction(s) - drink driving	2
Failure to renew practising certificate	2
Disciplinary finding by other professional body	1

Disciplinary Tribunals

- 2.47 Where we have made a decision to refer a complaint to a Disciplinary Tribunal, the case is heard before an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudication Service (BTAS) with the BSB acting as prosecutor. Disciplinary Tribunals can make findings of professional misconduct and have additional powers of sentencing compared with the PCC – including suspension and disbarment.

- 2.48 A total of 55 cases were concluded at the Disciplinary Tribunal stage in 2015/16: 42 at hearings and a further 13 cases which were withdrawn prior to a Tribunal hearing taking place. Eight of these cases were reconsidered before serving charges on the defendant as a result of new information coming to light which reduced the prospects

Determination by Consent

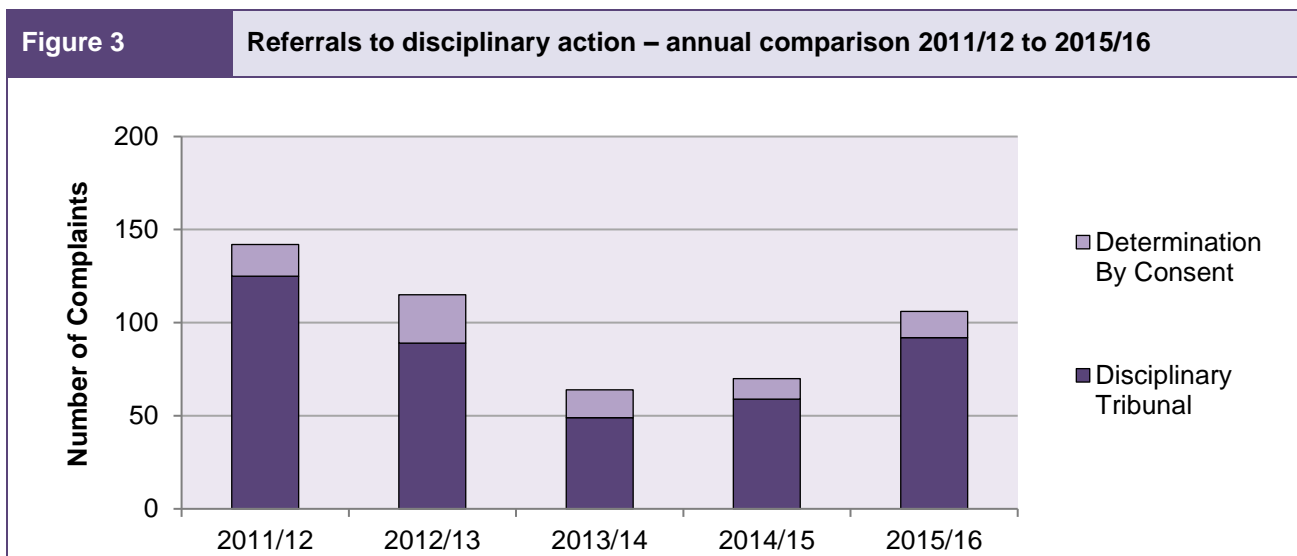
The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal.

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

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

The aim of the DBC procedure is to conclude the disciplinary process more quickly than a referral to a Disciplinary Tribunal hearing where the issues are straightforward and the facts are not in dispute.

of success or changes in circumstances meant it was not proportionate to continue or, as a result of a disbarment in other proceedings meant it was not in the public interest to pursue the cases further. The remaining five cases were concluded at the directions stage.



Directions

- 2.49 The directions stage refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the Disciplinary Tribunal hearing.
- 2.50 Five of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. In all of these cases we chose to “offer no evidence” – effectively withdrawing the cases without contest. Three of these cases were linked cases relating to one barrister. The cases were dismissed as another case against that barrister already addressed the charges (effectively making the three cases superfluous duplicates). Regarding the two other cases, one of them was stayed at the suggestion of the Directions Judge as the allegation had already been considered by a different Tribunal. On the other, the case was reconsidered on the basis of the receipt of further evidence and information.

Tribunal Hearings

- 2.51 In total 42 complaints were heard before a Disciplinary Tribunal panel in 2015/16. In 35 cases (83%), one or more charges against the barrister were proved²⁴. In these cases the barristers were found guilty of professional misconduct and sanctions were imposed. With respect to the remaining seven cases, four were dismissed by the Tribunal panels, on one case the BSB offered no evidence, and on another two cases the Tribunal ordered a stay of the proceedings.
- 2.52 Issues that arose in the four cases that were dismissed include a case where it was considered that the conduct issues were not serious enough to warrant a finding of professional misconduct as well as a case in which the matters (contempt of court) were more appropriately dealt with in court than in a tribunal. In the two cases where the Tribunal ordered a stay of the proceedings, the reason was the barrister’s ill health and lack of ability to give evidence. In relation to

²⁴ 13 out of the 26 barristers facing charges at Disciplinary Tribunals pleaded guilty to one or more charges of professional misconduct (52%). Eight of the 26 barristers did not attend the hearing, and were treated as not having admitted the charges in line with the Regulations.

the case where the BSB offered no evidence, the BSB received new evidence just before the tribunal. In just one case the barrister applied for costs and was given them after the Tribunal held that the case should not have been brought by the BSB, on the basis that the facts did not support a realistic prospect of a finding of professional misconduct being reached. This was the only case where costs were awarded, meaning that the panels considered that the BSB was acting properly in bringing the cases before the Tribunals even though the charges were dismissed.

- 2.53 The total number of complaints where we “offered no evidence” in 2015/16 was six – or 11% of all cases closed at the Disciplinary Tribunal stage. This is a similar level to previous years where we withdrew 10-12% of complaints in this way.
- 2.54 Whenever charges are dismissed at hearings or we offer no evidence, we conduct a review of the case to establish where we could improve and what lessons we can learn. However, we need to ensure that the lessons really are learned and fed back effectively into improvements in our enforcement processes. We noted last year that there is more that we can do in relation to knowledge management and quality assurance and, therefore, we have recruited a Professional Support Lawyer in the PCD to

both support our existing systems and to drive improvements.

Charges proved and sentencing

Key Stats	Barristers	35
	Disbarments	7
	Total fines	£22,000

- 2.55 In total, 35 barristers had one or more charges against them proved in 2015/16. Table 6 illustrates the most common charges that were proved during the year. The majority of the charges related to the 8th Edition of the Code of Conduct which preceded the Handbook, with charges under rules or Core Duties of the BSB Handbook becoming more common towards the end of the year.
- 2.56 All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.
- 2.57 Where findings of professional misconduct are made against barristers, it is open to the Disciplinary Tribunal panel (or the PCC for

Table 6	Charges proved in 2015/16	[Charges under the Handbook in bold]
Charge	Cases	
301(a)(i) Being dishonest or otherwise discreditable	9	
Other Breach of duties	8	
404 HoC ²⁵ / rC89 Failure to ensure proper administration of chambers	7	
301(a)(iii) Acting in a manner likely to bring prof into disrepute	6	
rC64.1 Failing to provide information to BSB promptly	6	
905(b) Failing to report criminal charges or convictions	5	
rC8 Undermining honesty, integrity or independence in public eyes	2	
rC64.2 Failing to comply with a decision or sentence of BSB/BTAS panel	2	
...		

Determination by Consent case) to impose sanctions on the barristers in question. Table 7 illustrates the sanctions that were imposed during the year.

- 2.58 The most severe sanction available is disbarment and seven barristers were disbarred in 2015/16. These were the most serious cases heard at Disciplinary Tribunals and included charges relating to criminal convictions (three fraud convictions) and dishonesty (four cases) including false declarations in application forms and failing to inform the BSB that they were the subject of another Tribunal or restrictions order. The most common sanctions imposed by Disciplinary Tribunal during 2015/16 were suspensions [8], disbarments [7] and fines [10]²⁶. This is an indication that only the most serious and highest risk cases are being referred to Disciplinary Tribunals now that we have options to take more proportionate enforcement action by way of administrative sanctions.

Appeals

- 2.59 Where administrative sanctions are imposed or findings of professional misconduct are made by a Disciplinary Tribunal, barristers have the right to appeal against either the findings or the sentence imposed. Appeals against administrative sanctions are heard

by an Appeal Panel convened by BTAS whereas appeals against Disciplinary Tribunals are made to the High Court.

- 2.60 In total we received one new appeal against an administrative sanction and five barristers appealed to the High Court against Tribunal decisions²⁷. To date, five of the 26 barristers sentenced at Disciplinary Tribunals in 2015/16 have appealed. We concluded appeals in relation to 16 cases in 2015/16, with just one allowed. The appeal that was allowed was against an administrative warning issued by the PCD. The appeal panel took the view that the allegation against the barrister was not proved, on the basis that it had not been identified to the barrister with sufficient specificity. The administrative sanction was therefore cancelled. We have since amended our processes to prevent this error recurring.
- 2.61 At the close of the year, four barristers had appeals against disciplinary findings or sentences pending. However, even though the number of appeals ongoing at any one time is small, these cases often take up a significant amount of PCD resources.

Legal action

- 2.62 Beyond our appeal and request for review procedures, barristers and complainants have the right to challenge decisions, or the

Table 7

Sanctions imposed by Disciplinary Tribunal panels or the Professional Conduct Committee (DBC) – annual comparison 2014/15 to 2015/16

Sentence	2014/15		2015/16	
	Barristers	%	Barristers	%
Disbarred	13	32%	7	20%
Suspended	8	20%	8	23%
Fined	18	44%	18	51%
Reprimanded	15	37%	11	31%
²⁶ Advised as to Future Conduct	4	10%	1	3%
²⁷ Other	4	10%	2	6%

way we made decisions, through the courts. These normally take the form of judicial reviews of the decisions taken.

Judicial reviews

- 2.63 Applications for Judicial review include attempts to challenge the manner in which enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel – as well as the substance of the decision. At the start of 2015/16 we were handling seven judicial reviews and one new application was received during the year.
- 2.64 Two of these eight reviews were dealt with in June 2015. One was remitted to the Visitors²⁸ on 25 June 2015 and the other was submitted in error and was listed for directions on 23 June 2015, where it concluded. This left six cases at judicial review.
- 2.65 In October a further two cases were dealt with. One case was refused permission and this has not been challenged. Another case was converted to a High Court appeal as it was challenging a Tribunal finding and the appeal route had not been exhausted.
- 2.66 In February 2016, the BSB was served with proceedings in the Employment Tribunal arising out of a professional conduct case. At the end of 2015/16, this was at the preliminary stage and the Tribunal was considering whether it had jurisdiction to hear the matter.

Case study:

A barrister who had completed pupillage failed to obtain a full practising certificate within a month of completion. They had erroneously assumed that the Full Qualification Certificate issued at this time was sufficient. Once the matter came to light, the barrister reported the matter to the BSB and immediately rectified the situation.

This meant that there was period of around 6 weeks when the barrister carried was practising when not authorised to do so. Practising without a practising certificate is a failure to comply with a regulatory obligation and a breach of the BSB Handbook Barristers not observing their regulatory obligations are identified as a strategic risk by the BSB and are normally considered to be 'high risk'.

A risk assessment was carried out and the matter was deemed to be "medium risk" on the basis that although there had been a breach of the BSB Handbook, 1) The barrister had reported the breach as soon as possible; 2) Prompt action had been taken to remedy the breach, which was a one off; 3) There was genuine remorse and willingness to apologise on the barrister's part. Taking these factors into account, the barrister was issued with an administrative warning in accordance with the complaints regulations.

²⁸ The Visitors to the Inns of Court was the previous appeal route from Disciplinary Tribunal. The case remitted was still subject to this jurisdiction. The route of appeal is now with the High Court.

Compliance and revenue

- 2.67 In 2015/16 we issued administrative fines totalling £1,750 and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £22K. We received payments totalling £22K in payment of fines imposed both in 2015/16 and outstanding amounts from previous years.
- 2.68 Currently we have no express powers to reclaim debts, so if a barrister fails to pay a fine, our normal recourse is to raise an internal complaint about the barrister for failing to comply with a disciplinary finding²⁹. While in many cases this will be the right course of action, in some it is disproportionate. Further, disciplinary proceedings do not provide a means to enforce payment. Fortunately, such events are the exception rather than the rule. Of the fines that were due in 2015/16, 70% of barristers have complied to date. We closely monitor compliance with administrative and disciplinary fines and we offer the option for the fines to be paid in instalments where a barrister is having difficulties in paying.

²⁹ One of the core values of the BSB is “value for money” so while the option to make a debt recovery claim to the courts is available, any decision to take civil recovery action is taken on a case by case basis, applying the value for money principles in a proportionate manner .

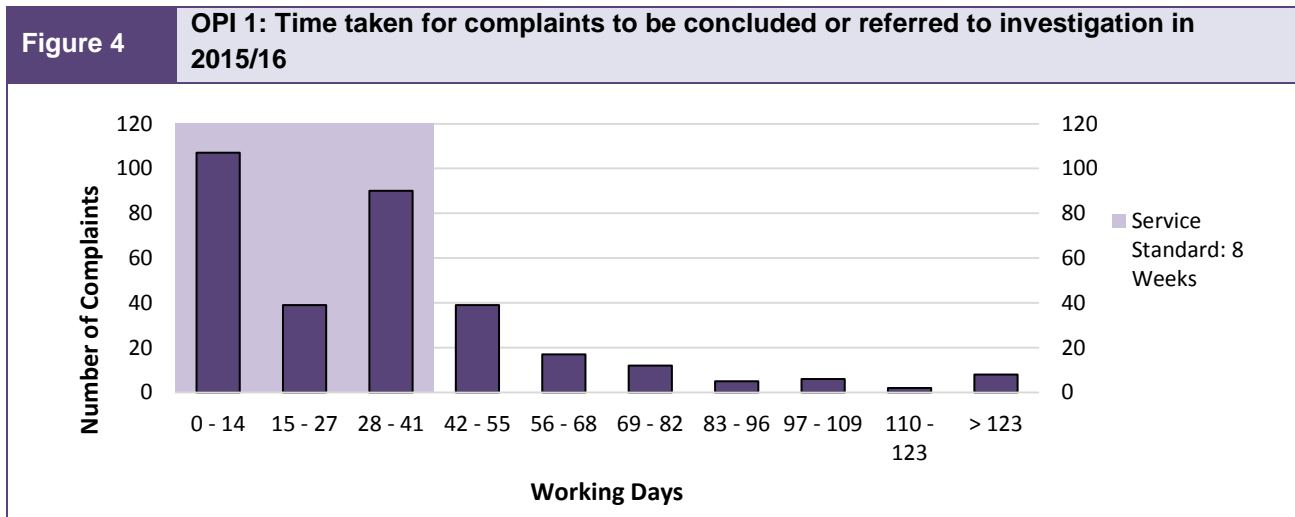
Performance

- 3.1 We are committed to providing a high-quality service. In particular, we are committed to:
- Dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
 - Making sure the action we take fits the circumstances of the case and is necessary to protect the public, by acting proportionately and taking an outcome focused and risk based approach to maintaining the standards of the profession;
 - Working in an open way which takes account of the need to protect, as far as possible, the confidentiality of clients, complainants and barristers;
 - Giving clear and well-reasoned explanations for decisions; and
 - Being polite and professional in all our dealings with people.
- 3.2 We make every effort to track our performance, particularly by tracking the timeliness of our casework using our Enforcement Database and by surveying both barristers and complainants with recent experience of our service. In our User

Feedback Survey we ask questions in five key areas: accessibility; staff performance; timeliness and efficiency; transparency and openness; and quality of service.

- 3.3 There are also checks and balances in place in the form of an Independent Observer (see paragraph 3.53) – whose role is to check that the enforcement system is operating in line with its aims and objectives; and the Quality Review Sub-Committee – a sub-Committee of the PCC tasked with checking the quality of the decision-making within the Professional Conduct Department.
- 3.4 The combined approach of database monitoring, surveying and the checks and balances we have in place ensures that we identify both areas where we are performing well and areas where we need to improve. As mentioned above, we have employed a Professional Support Lawyer who has been contributing to improving our quality assurance systems further.

Table 8		KPI performance in 2015/16	
Indicator	Description	Performance	Target
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	75.7%	80%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	72.6%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	81.3%	80%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	79.2%	80%



Timeliness

Key Performance Indicator

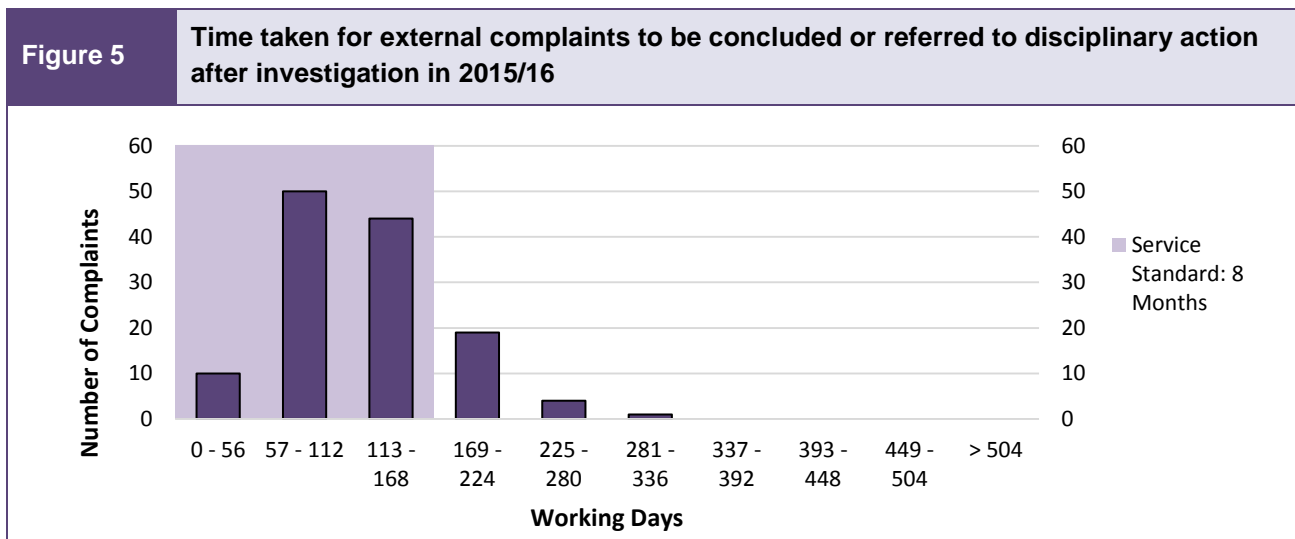
- 3.5 One of our main aims is to ensure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. We have three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. We then have an overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action.
- 3.6 Our Performance Indicators for 2015/16 are set out in Table 8 along with our performance figures for the year. Our KPI target for the year was to conclude or refer to disciplinary action 80% of cases within our service standards.
- 3.7 Unfortunately, at the close of the year we narrowly failed to meet the KPI target for 2015/16, concluding or referring 75.7% of cases within service standards. While our target in terms of timeliness was narrowly missed, last year our overall KPI was 68.9% and so our performance in progressing

cases has improved. In addition to that, the throughput of the department has improved

significantly whilst maintaining these faster timescales. If we compare the total number of cases that passed through all three OPIs: in 2014/15 407 cases were dealt with under these OPIs, but in 2015/16 the figure was 626. This equates to a rise in 54% and so this also is a significant improvement.

- 3.8 The operational performance indicators show that the main reason why the target was missed was an issue at the assessment stage (OPI1) in quarter one. In late 2014/15, two key members of our small Assessment Team left the organisation. The failure to meet the performance target in quarter four of 2014/15 was a result of staff shortages and meant that many of the cases³⁰ that were allocated to the team in Q1 of 2015/16 had already gone over the 8 week service target, thereby causing the percentage of cases dealt with inside the service standard target to be lower than average [56%] (despite much higher output than average for the team in that quarter).

³⁰ Of the 102 complaints undergoing assessment at the close of 2014/15, we had 31 cases with the team that had already exceeded the eight week limit.



First OPI: Assessment

- 3.9 When we receive an external complaint, we aim to make a decision as to whether or not to investigate the complaint within eight weeks. We measure how long it takes from the point at which we receive a complaint until the point at which the complaint is either accepted for investigation or the complainant is provided with the reasons why we do not intend to carry out a formal investigation.
- 3.10 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We met this target in both the second and fourth quarters of the year but in the first and third quarters of the year the target was not met. In those quarters, the results were 56% and 62% respectively. The lower performance figures in these quarters can be explained: for quarter one, please see paragraph 3.8. The reason that the performance target was met in quarter two but was not met in quarter three is that the cases that were concluded in quarter two were younger in age than those dealt with in quarter three. As a result most of the cases that were not dealt with in quarter two would probably have already passed (or almost passed) the eight week time frame by the start of the quarter three, making it inevitable for a lower percentage of cases being closed

or referred on within the target in quarter three.

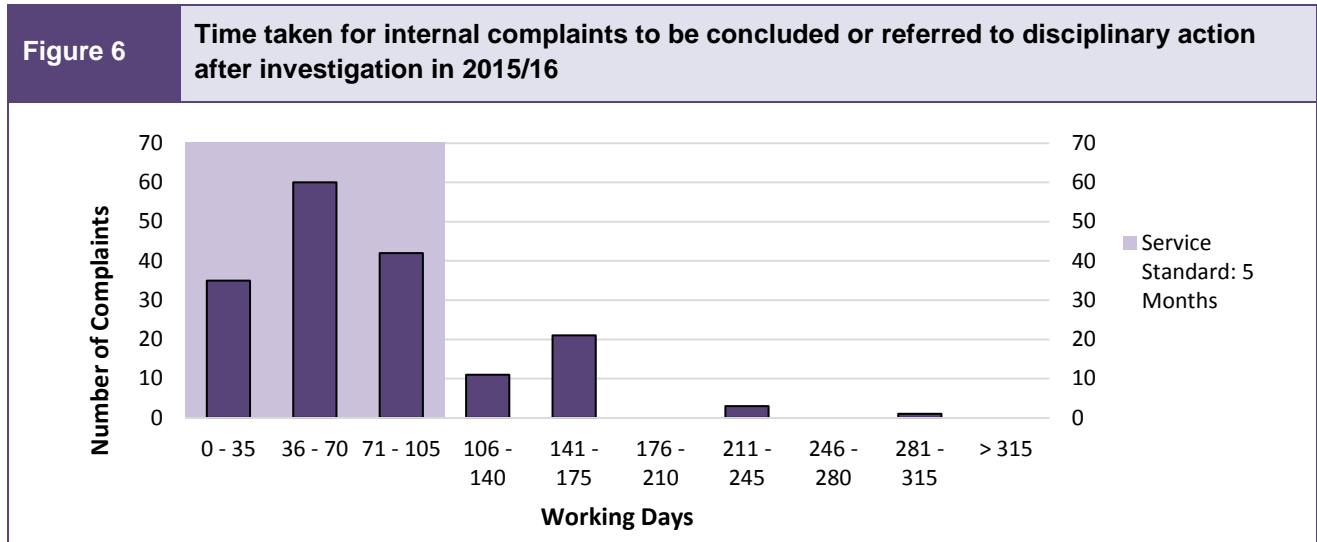
- 3.11 The impact of the first quarter figures meant we missed our target of 80% for the year, concluding or referring for investigation 73% of complaints within eight weeks. Figure 4 illustrates how long each of our assessments took in 2015/16.

Second OPI: Investigation of external complaints

- 3.12 For external complaints, we aim to conclude the investigation and make a decision as to whether or not to refer the complaint to disciplinary action within eight months. We measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation. This includes the Professional Conduct Committee stage of the process if the decision is made by the PCC.
- 3.13 Our target for the year was to conclude or refer to disciplinary action 80% of external cases within eight months. We failed to meet this target in the first and second quarters of 2015/16 as we cleared a small backlog of complaints that were over-running at the end of the previous year. However, a strong performance in the remaining quarters

meant that overall we met the target, concluding or referring 81% of external complaints within eight months.

the year of 79.2%. The issue was our performance in the first quarter (70%). To a large extent the first quarter figures were affected by the nature of the caseload at the



3.14 Figure 5 illustrates how long it took us to assess and investigate external complaints in 2015/16.

Third OPI: Investigation of internal complaints

3.15 For internal complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within five months. We reason that internal complaints should take less time than external complaints as we do not need to take the time to clarify the complaint and correspond with a complainant. As with external complaints, we measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation.

3.16 Our target for the year was to conclude or refer to disciplinary action 80% of cases within five months. We narrowly missed this target with an overall performance figure for

end of 2014/15. In quarter four of 2014/15, 62 internal complaints were opened, much higher than the usual quarterly trend of about 35. Also, only nine cases were closed or referred to disciplinary action in that quarter. As a result, a larger than normal number of cases fell to be dealt with under OPI 3 in quarter one of 2015/16. It is clear that a large number of older cases were dealt with in the first quarter of 2015/16 – 26 out of the 87 cases were outside of the five month target. It should be noted however, that while quarter one had the worst statistical percentage relating to the OPI target in the year, it was by far the quarter with the highest throughput, with more cases being concluded or referred to disciplinary action than the other three quarters combined. This was a result of a push in that quarter to bring down the number of internal complaints in our caseload³¹.

³¹ This is backed up by the fact that the average age of cases at the Investigation stage in the first half of 2015/16 was 11 months, whereas in the second half of the year the cases at this stage had been open for a period of four months on average.

3.17 While the situation at the end of 2014/15 was unfavourable, the situation at the end of 2015/16 is very different. The percentage of cases for OPI 3 overrunning at the end of the year is 14% compared to 27% at the end of 2014/15. This puts us in a healthier position for the start of 2016/17.

3.18 Figure 6 illustrates how long it took us to investigate internal complaints in 2015/16.

Forecast of performance for 2016/17

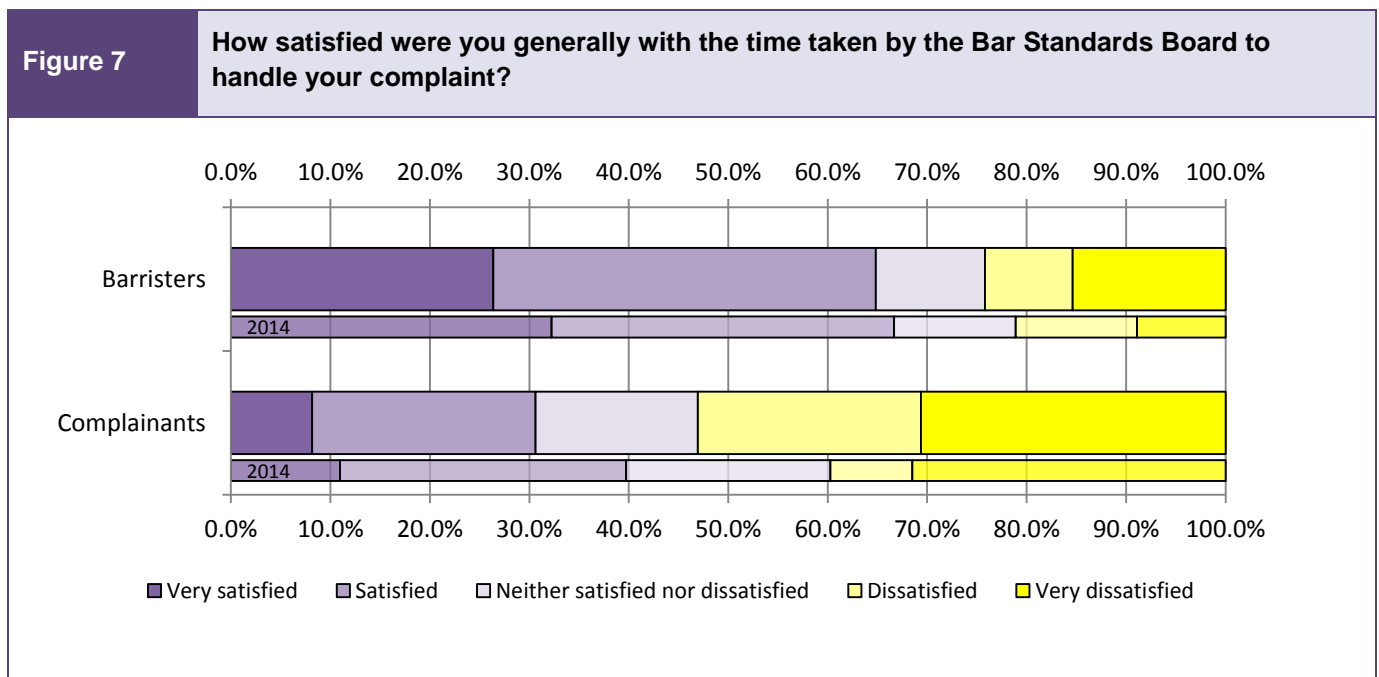
3.19 There will always be some instances where we need to obtain more information from complainants or barristers, seek expert advice or have to deal with other factors which will cause a case to over-run our service standards. To account for some of these instances we set our targets at 80%. In 2014/15 we added additional monitoring tools to our case management system which help us to track our caseload and identify

possible issues. These help us both to take action in advance and see where cases are already over-running our service standards – forecasting the impact this will have on our future performance figures.

3.20 At the end of 2015/16, 14% of complaints undergoing assessment or investigation were over-running our service standards. While these complaints will contribute negatively to future performance figures, the percentage of over-running cases is lower than at the end of 2014/15 (25%). The over-running cases relate to our OPIs as follows:

- OPI 1:** 8 cases outside eight weeks (15%);
- OPI 2:** 8 cases outside eight months (12%);
- OPI 3:** 6 cases outside five months (14%);

3.21 Given the fact that the percentages for each of the three OPI’s are looking healthy at the start of 2016/17 – all with under 20% outside the target – we are well placed for the year ahead. As of the end of May 2016, each OPI still has 80% or more of the cases within the target. Therefore, depending on the age of the cases closed or referred, we can expect



to meet our OPI and KPI targets in quarter one of 2016/17.

Feedback survey results

“ *The complaint took too long to resolve. Other than that it was handled well and with care.*

Complainant response #12833

3.22 To accompany our performance figures in 2015/16, we asked barristers and complainants how satisfied *they* were generally with the time we took to handle their complaints. There was no significant change compared with the previous year, with 67% of complainants and 73% of barristers either responding that they were satisfied or having no strong opinion. However, this still leaves around a third of complainants dissatisfied with the time we took to handle their complaints.

3.23 We also asked some specific questions about timeliness which show some improvements in the time we took to acknowledge complaints (or notify barristers of the complaints against them) and both complainants and barristers tended to agree that the time taken to respond to calls, emails and letters was acceptable. The big issue for complainants – and the biggest area of disparity between complainants and barristers – was the time taken to come to a final decision on their complaint. Just over half of complainants responded that they

were either very dissatisfied or dissatisfied, which points to a more general dissatisfaction with the overall timescale of our enforcement procedure. In contrast, just under two-thirds of barristers were either satisfied or very satisfied with the time we took. This trend is consistent with our survey results in previous years.

“ *My complaint was handled fairly and openly. The only issue was the long delay in reaching a decision.*

Barrister response #12951

3.24 The consistency of our survey results across recent years shows that the dissatisfaction amongst complainants is not due to any performance issues specific to 2015/16. Still, it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of assessment and investigation could take up to eight months³² – as per our second Operational Performance Indicator – or whether they consider our service standards to be too long. We took considerable care in setting our performance indicators at a realistic level; taking into account all of the relevant factors that impact on our consideration of a complaint. These include the need to operate a fair and transparent system (obtaining responses from both barristers and complainants and keeping all parties updated), the high proportion of cases which require further enquiries to be carried out or require expert advice and the

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
³² Please see paragraph 10.1.1. Determination by Consent	Internal	10	93	30%
Three-person Disciplinary Tribunal	Internal	5	86	0%
Three-person Disciplinary Tribunal	External	1	166	0%
Five-person Disciplinary Tribunal	Both	10	197	10%

need to refer many cases to the Committee for a decision to be made.

Disciplinary action service standards

- 3.25 Our KPI provides a measure of the time it takes us to come to a decision on whether to refer a case to disciplinary action. We also monitor the time taken for the Determination by Consent procedure and Disciplinary Tribunals so that we can give barristers and complainants an indication of how long disciplinary proceedings take and also to identify areas where we can improve. Where a referral to a Disciplinary Tribunal has been made, the BSB acts as the prosecutor in each case and the timely progress of the cases becomes less under our control. This makes Disciplinary Tribunals less suitable for setting key performance indicators but nevertheless it is imperative that we monitor the time taken and set internal standards. In contrast, the Determination by Consent procedure is substantially within our control. Table 9 compares our figures for 2015/16 for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.
- 3.26 Following on from the trend observed in 2014/15, Determination by Consent procedures continued to take longer than the service standard, with only 30 percent of cases concluding within the time limit. As with last year, in three of the seven cases that took longer, there were delays in the barristers agreeing to the charges and facts of the cases which made it impossible to complete the cases within the time limit³³. This poses a problem as the DBC process cannot continue without the barristers' involvement and the alternative – should we terminate the DBC process – would be a more costly and time consuming Disciplinary Tribunal. Therefore, we must endeavour to conclude rather than stop the process.
- 3.27 As the Determination by Consent procedure is substantially within our control, there are opportunities for improvement and we must be aiming to conclude more than half of complaints within the service standard.
- 3.28 The time taken for Disciplinary Tribunals to progress from referral to hearing worsened compared with 2014/15, with no external three-person Tribunals concluding within our service standard³⁴ along with 40% of five-person Tribunals. It should be noted however that, of the cases that are being referred to disciplinary action, the proportion of those that are going to Disciplinary Tribunals has greatly reduced since 2014/15 – the percentage falling from 84% to 62%. This shows us that cases are more commonly being dealt with through the Determination by Consent procedure. If this trend of smaller numbers of complaints going to Tribunal continues, we can hope for higher percentages of targets being met in our statistics for this area.
- 3.29 The lower percentages from 2015/16 compared to the previous year indicate that more cases of an older age (and therefore out of the target time) were closed, showing that the backlog of older cases is being dealt with. This is backed up by the fact that cases which were closed at Disciplinary Tribunals (DTs) in 2015/16 were on average 101 days older than the average age of cases closed at DTs from the previous three years. As we have seen no spikes in the number of new cases opened in 2015/16, we can hope that any cases needing to be referred to

³³ The longest running case was unusual in that the PCD had to seek additional advice from a Committee member during the course of the DBC procedure. The service standard does not allow any time for seeking advice. A further two cases fell only a matter of days outside the service standard.

³⁴ In our Enforcement Annual Report 2014/15 we reported that 54% of external three person Disciplinary Tribunals concluded within the 166 day service standard.

disciplinary action in 2016/17 will be closed within targets. It is however difficult to predict without knowing the number of new cases that will be opened in the year or the complexity of the issues raised.

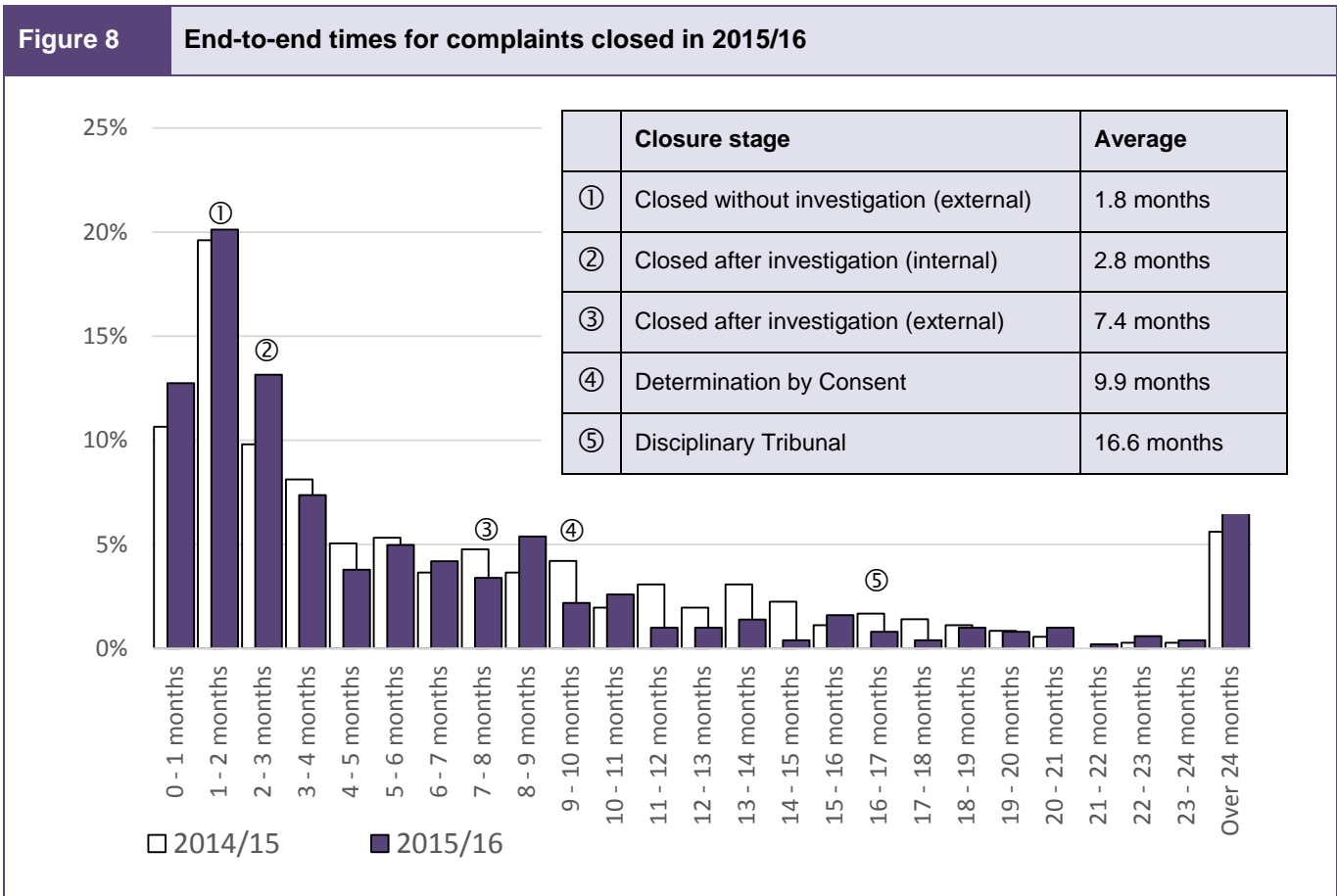
End-to-end times

3.30 Our performance indicators have been designed to give an accurate indication of the length of time which complainants and barristers should expect that it will take for complaints to be assessed (eight weeks) and investigated (five or eight months). However, in our reporting we only indicate what proportion of complaints fell inside or outside of these indicators. To provide further information, we also publish end-to-end

times for our entire enforcement process. These indicate how long – in real time – complaints took to close in 2015/16³⁵.

3.31 Figure 8 illustrates how long each of the complaints closed in 2015/16 took from opening to final closure: whether this be at assessment, investigation or a Disciplinary Tribunal. Also marked on the chart are the average times taken for different complaint outcomes³⁶.

3.32 The general pattern reflects our performance indicators, with a decrease in the average time for a complaint to be concluded from 4.4 months in 2014/15 to 3.4 months in 2015/16. For comparison, the overall KPI of 2015/16 was 76% up from 69% in 2014/15.



³⁵ Periods of adjournment and periods where cases were placed on hold are included in the figures, so if, for example, a complaint was on hold for 10 weeks pending the outcome of a court case and then assessed in 6 weeks, the reported figure will be 16 weeks.

³⁶ As the data is skewed to the right, the figures given are median averages rather than mean averages.

The graph shows us that this year more complaints were closed earlier in the process than in the previous year (in the 0-3 months bracket) and that overall fewer cases were closed after the 3 month bracket. It should be noted however, that while more cases were closed earlier this year than in the previous year, the average time taken for complaints referred to Determination by Consent or to Disciplinary Tribunals to close (from first opening to final hearing) rose by on average around 1.5 to 2 months respectively. This can be seen in Figure 8 by the larger proportion of complaints taking more than 18 months to conclude.

Accessibility

- 3.33 We aim to make it as easy as possible for someone to make a complaint to the Bar Standards Board. We also aim to ensure that barristers are able to access everything they need when they are facing a complaint against them. Our approach is to try to ensure everyone knows how our enforcement system works, thereby allowing complaints to be progressed efficiently and managing expectations.

“ [On whether the BSB could improve the complaints system]:

No, it is very easy to understand.

Barrister response #03077

“ [The BSB should] enable the complainant to find out how to make a complaint – it should be more user friendly.

Complainant response #02985

- 3.34 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.
- 3.35 We asked complainants where they first heard about the BSB’s enforcement procedure. In common with last year’s result, a third of respondents told us that the internet was where they first heard about us. However, there remained quite a spread of different sources³⁷. The most important thing is that potential complainants find out about the BSB and that they can complain to the regulator. In that respect it is positive that complainants hear about us in a variety of ways.
- 3.36 Just over a third of complainants telephoned the PCD before making their complaint

Case study:

The BSB were made aware by the police of a barrister having received a conditional discharge. Upon closer investigation of previous convictions, it emerged that the barrister had not declared all of these on their application to their Inn of Court.

The PCC considered the matter and agreed that in light of the dishonesty the matter was high risk and was a breach of the Code of Conduct in place at the time of the declaration to the Inn. They referred the matter to a five person disciplinary tribunal.

Agreeing with the PCC, the Disciplinary Tribunal found two charges of professional misconduct proved. In ordering that the barrister be disbarred, the Tribunal found that there had been prolonged dishonesty and that there would be serious harm to the reputation of the profession if the defendant was permitted to practise in the future.

³⁷ Other sources include: solicitors [10%], the Bar Council [10%] and the Legal Ombudsman [8%]. Full results are included in the Statistical Report accompanying this report.

seeking advice or assistance and all of those that did were able to speak to someone. In rating the advice or assistance they received, satisfaction levels decreased compared to the previous year. The number of complainants who were satisfied decreased to 56%, however only 6% of respondents indicated that they were not satisfied as opposed to 12% in the previous year.

“ *The online complaint form is difficult to complete. It was impossible to save a partly completed form.*

Complainant response #02955

- 3.37 We asked complainants whether making a complaint to the BSB was easy and 45% of respondents agreed that it was easy. Unfortunately this was a worse result to the previous year where 67% of respondents agreed that it was easy. However, on the whole complainants and barristers gave similar responses to previous years: just over half of complainants felt that our complaints form was easy to fill in and information was easy to obtain. In addition, 41% of complainants and 79% of barristers felt that the procedures for handling complaints were made clear. There is, however, more that we can do for the 23% of complainants and 7% of barristers who indicated in the survey that they felt unclear about our procedures. We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

Leaflets

- 3.38 In 2015/16, 42% of complainants could recall receiving a leaflet and of those that did, 84% found them easy to understand and informative. Similarly, while fewer barristers recall receiving a leaflet (25%), of those that

did, 96% found them easy to understand and informative.

Website

- 3.39 Just over 70% of complainants and just under 50% of barristers recalled looking for information on our enforcement procedure on the BSB website. The survey results show a similar result as the previous year in the percentage of complainants who were able to find the information they were looking for without too much trouble (68%), but still 25% of complainants and 23% of barristers could not easily find the information and 6% of complainants could not find the information they needed at all. These figures show an increase in usage of the website by both barristers and complainants, however, the ease of finding information has not improved since last year, according to the results of this survey.

“ *A screen is required on the website with simple buttons that will direct you to relevant areas.*

Barrister response #12935

- 3.40 Over the last year we have acted upon similar feedback and the enforcement web pages have been revised and were relaunched in March 2016 (as part of the Public Information Project – please see the section called “Projects” for more information on this), with more updates and improvements still in progress. It is disappointing that some of those surveyed

“ *Your information on the whole is accessible.*
Complainant response #03221

struggled to find the information that they needed on the website – however it should be noted that nearly all the questionnaires would have been completed before the new

web pages went live. We hope that future feedback in relation to this area (for example, in next year’s report covering 2016/17) will have improved by the time it is produced.

Staff Performance

- 3.41 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall, 80% of barristers rated their experience as good or excellent. Complainants’ ratings were lower with 35% giving our staff a positive rating but 39% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous three years. Further analysis confirms the correlation, seen in previous years, with the outcomes of complaints – where complaints were referred to disciplinary action, all of the complainants responding in 2015/16 rated the staff as excellent, good or average.

“ *Very satisfied with your service at present.*
Complainant response #03218

- 3.42 We also asked some specific questions about staff performance. The majority of complainants and barristers rated our staff as good or excellent at being polite and professional and handling calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.
- 3.43 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). This was the area, as with previous years, where our staff received their lowest ratings. Although 79% of barristers rated the staff average or above average, only 58% of complainants agreed.

- 3.44 So where complainants have issues they tend to be around our performance in providing updates and, to some extent answering queries; both of which suggests that complainants may be looking for a more personalised service than we currently provide. Whether or not this is appropriate in the context of our role as a regulator, as opposed to a complaints handling body, has been an issue of concern in recent years. Nonetheless, we want complainants to feel that they can come to us with issues and we continue to train our staff to help us to achieve this.

“ *The process took too long and left all concerned anxious for longer than necessary.*

Barrister response #02807

In-house training

3.45 We are always looking for ways to improve our staff performance. The BSB has a training programme for all staff members, which this year included legal training for members of staff without legal qualifications. In addition, we run our own training programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2015/16 we ran several training sessions on topics such as:

- Legal Aid;
- Project Management
- Entity regulation training
- Data protection
- Case law updates

3.46 We intend that our in-house training programme should continue in this forthcoming year with a particular emphasis on casework and casework administration skills and case law.

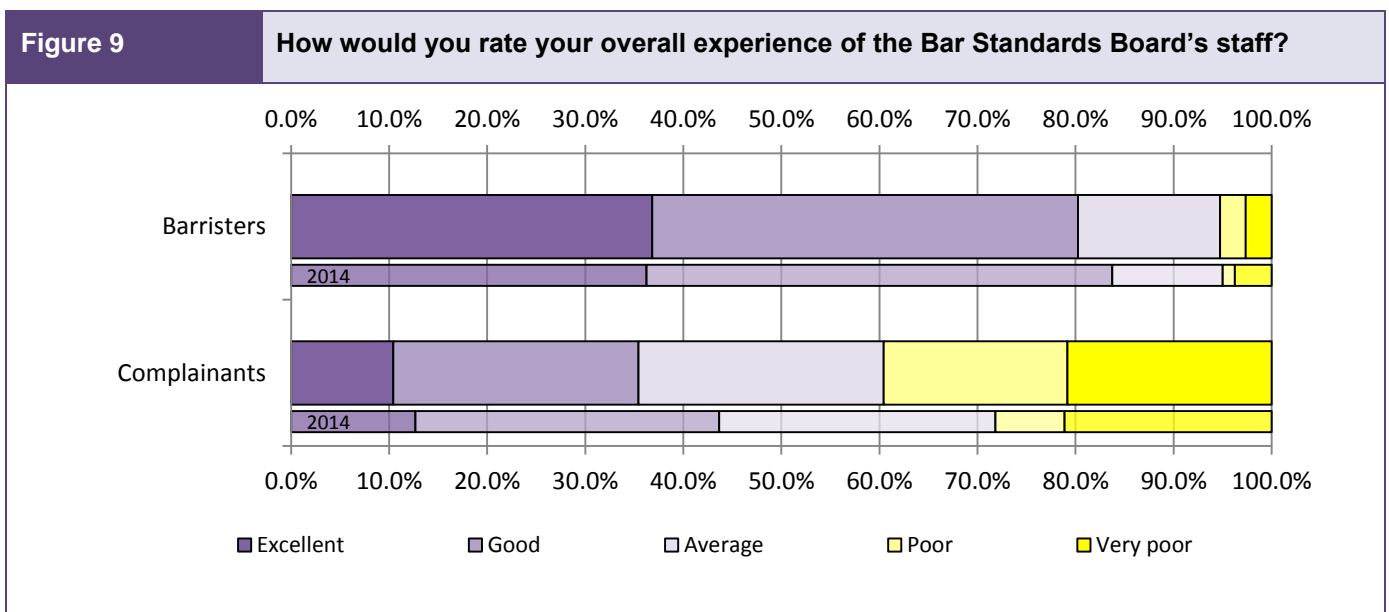
Transparency and openness

3.47 Openness, fairness and transparency are of critical importance to our enforcement work. A legal regulator cannot operate any other

way. We asked barristers and complainants whether they would agree that the BSB’s complaints process is open and fair. In past surveys this question has revealed a marked difference between the views of barristers and complainants and our past research has shown that the outcome of a case often has a considerable impact on responses.

3.48 Figure 10 shows that this year 79% of barristers agreed that our enforcement process is open and fair and only 8% disagreed. For complainants, 14% agreed and 69% disagreed. These figures show that the responses from barristers have remained relatively constant, however those from the complainants have been less positive than they were last year. The disparity between the views of complainants and barristers is still there and the gap between them has increased. For complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, all of the complainants agreed that we were open and fair.

3.49 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and transparency of



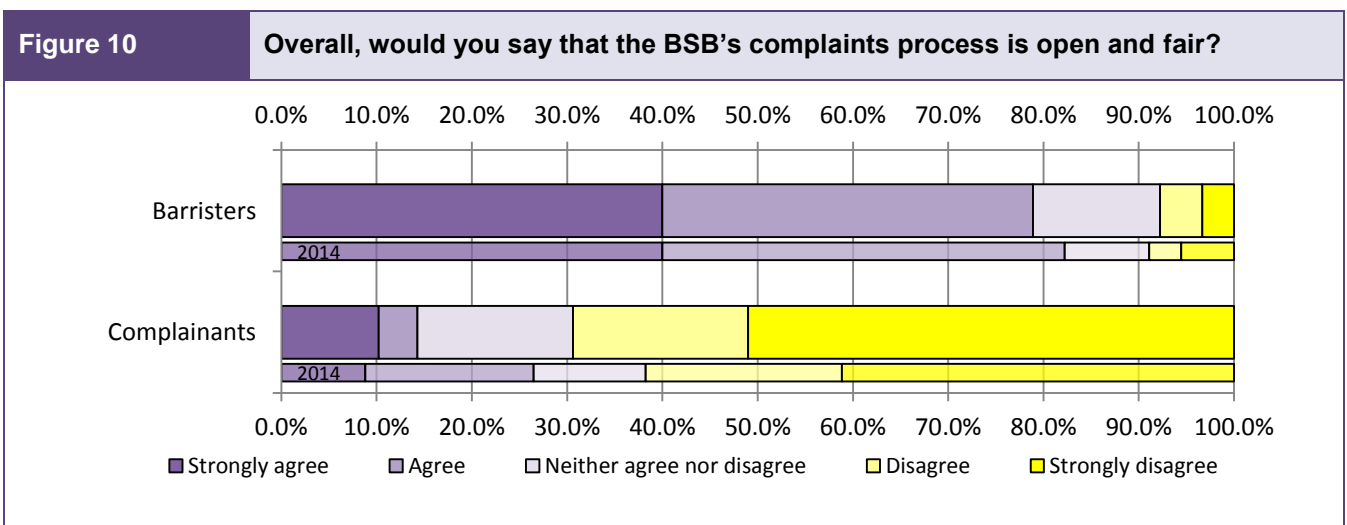
the enforcement system. The big issues for complainants remain the same: 69% of complainants felt that we did not consider all of the evidence relating to their complaint and 63% of complainants disagreed that the reasons for the final outcome were clear³⁸. We also saw a familiar pattern in the comments left by complainants, whereby upon receiving a decision that we do not intend to refer a complaint to disciplinary action, some complainants say that we did not take their concerns seriously or suspect that we are siding with the barristers.

“ *If an allegation is made of professional conduct against a barrister the BSB should exhaust all lines of enquires*
 Complainant response #03113

3.50 When we close a case without a referral to disciplinary action we inform the complainant of the precise reasons why we took that decision. This is an area where we have completed a considerable amount of work over recent years – particularly at the initial assessment stage. Despite our ongoing commitment and work towards improvements, the survey results show that more complainants than last year felt that the complaints process is not open and fair. The work of the Independent Observer (see

below) assures us that the issue is one of perception rather than a systemic problem but it remains an issue nonetheless. It may be no coincidence that the embedding of risk-based and outcomes-focussed approach has come at the same time as an increase in the dissatisfaction of individual complainants.

3.51 Understandably, dissatisfaction levels are highest amongst those complainants whose complaints we deemed unsuitable for disciplinary action, but a large proportion of external complaints we receive are unsubstantiated, do not represent a breach of the Handbook or represent very little, if any, risk to the public or the regulatory objectives. We cannot take action in these cases but we must endeavour to demonstrate clearly that our processes are open and fair. Not to do so would run the risk of dissuading members of the public from bringing issues of concern to the attention of the BSB in the future. But we have to recognise that the purpose of the enforcement system is not to provide a personalised resolution service that is characteristic of complaints handling bodies. Our role is in maintaining the high standards of the profession rather than working with complainants to provide the outcomes they want. We need to ensure that we can keep



³⁸ In addition, 35% of complainants disagreed that they were given adequate opportunity to put forward their case.

complainants involved with our processes but balance this against the need to perform our functions as regulator. It would seem that many complainants feel that we should be working in their best interests rather than the wider public interest.

“ *A finely tuned balanced: proportionate service fair to the complainant and the practitioner.*

Barrister response #02409

Checks and balances

3.52 Our PCD managers carry out regular checks on our caseload (including spot-checking and case review meetings to ensure cases are progressing as they should), but often a review from outside the PCD is the most effective means of identifying potential issues and driving improvements. To this end we have an Independent Observer taking an overview of our enforcement system and a sub-committee of the PCC reviewing staff decisions.

Independent Observer

3.53 The BSB appoints a lay Independent Observer (IO) to ensure that the enforcement system is operating in line with its aims and objectives. The second IO, Isobel Leaviss, was appointed in May 2011.

3.54 The latest IO report to the Governance, Risk and Audit Committee (covering the period July 2015 to December 2015) spanned six months of 2015/16. In this report, the IO gave the work of the PCD and PCC a positive assessment commenting that:

“I have continued to observe that complaints and disciplinary proceedings are being handled in line within the BSB’s Enforcement Strategy and in accordance with the

PCD’s policies and procedures. I have not identified any systemic issues or any individual cases giving rise to serious concerns.”

- 3.55 All reports by the Independent Observer are published on the Bar Standards Board website.
- 3.56 Based on her observations, the IO made five new recommendations which were accepted by the PCD. These were:
- That the PCD introduces measures to ensure that the Litigation Register³⁹ is complete and regularly updated for its cases and that corporately the BSB reviews the format of the Litigation Register to ensure that it is fit for purpose.
 - 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).
 - That user friendly summary case notes 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.
 - The PCD considers how best (within the Litigation Register or elsewhere) to identify, address and disseminate any lessons arising from Judicial Review proceedings.
 - That the 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’

³⁹ This is the he BSB wide tool for recording cases before the courts, rather than those part of the enforcement process.

and/or any supporting guidance that is developed as part of the implementation of the new Disciplinary Tribunal Regulations.

- 3.57 The work of the Independent Observer is highly beneficial in ensuring the enforcement system is operating effectively and the recommendations made to date have resulted in many improvements to the enforcement processes and the public facing work of the PCD.

QRSC

- 3.58 Members of the PCD staff are authorised by the Professional Conduct Committee to make certain decisions to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the decision making remains high, the Quality Review Sub-Committee (QRSC) of the PCC – a three member panel with a lay chair – spot-checks these staff decisions twice a year. The QRSC assess the timeliness, thoroughness, transparency and accessibility of PCD decision-making along with the decision itself.
- 3.59 The QRSC reviewed 10% of the decisions made by PCD staff during the course of 2015/16. These were all examples of either cases dismissed by staff, cases in which staff had made the decision to pursue disciplinary action or where an administrative sanction had been imposed by staff.
- 3.60 The QRSC agreed that all but two⁴⁰ of the dismissal cases had been handled in accordance with the relevant regulations and procedures and were fairly dismissed. They

also deemed two⁴¹ cases to have not been dealt with in an open and transparent manner, despite agreeing with the decision made.

- 3.61 When reviewing the cases that were referred to disciplinary action they agreed that the decisions were appropriate given the circumstances of the cases.
- 3.62 In reviewing the administrative sanctions, the QRSC agreed with all of the sanctions imposed and that, in all but one case⁴², the handling of the cases was open, honest and accessible.
- 3.63 This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place – not only in providing quality checks but also in driving improvement. The feedback received has improved the audit trail of the decision making process and the reasons for decisions on cases as well as looking at matters from different perspectives.

Quality of Service

- 3.64 As an overall measure, we asked complainants and barristers to leave aside the final outcome and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 80% of barristers were satisfied with our handling of the complaints against them compared with 27% of complainants. While this was a slight improvement for barristers, the views of complainants did not markedly change since the previous year.

⁴⁰ In one of these cases, the QRSC were of the view that the case should have been put on hold (the issue was there was an ongoing investigation with another regulator at the same time). In the other case, it was decided that there was at least a possibility of further investigation into whether the barrister may have been providing legal services without a practising certificate.

⁴¹ In both of these two cases, the QRSC decided that a fixed penalty fine (FPF) would have been better suited. The cases involved strict liability offences (SLOs) and FPF's should be the starting point in cases such as these.

⁴² The QRSC decided that a fixed penalty fine would have been more appropriate in the circumstances surrounding this case, rather than just an administrative warning. The case involved issues relating to strict liability offenses.

3.65 So in two fundamental areas – the openness and fairness of the complaints process and the overall quality and speed of service – complainants responding to our survey were less satisfied than in the previous year and the gap between the views of barristers and complainants increased. Realistically, the high proportion of external complaints which we close without a referral to disciplinary action and the impact this has on the perceived fairness of the system makes it impossible to achieve parity in this area. However, we are committed to improving and it is disappointing that despite the work that has been carried out in recent years, the views of complainants have not improved in any of the areas questioned in this year’s survey.

“ *The time taken to investigate my complaint seemed very long [...] I only received two letters during the whole investigation.*

[The BSB could improve by] keeping clients better informed about their complaint.

Complainant responses #03140 and #02864

“ *[On whether the BSB could improve their service]:*

No. It was very efficient.

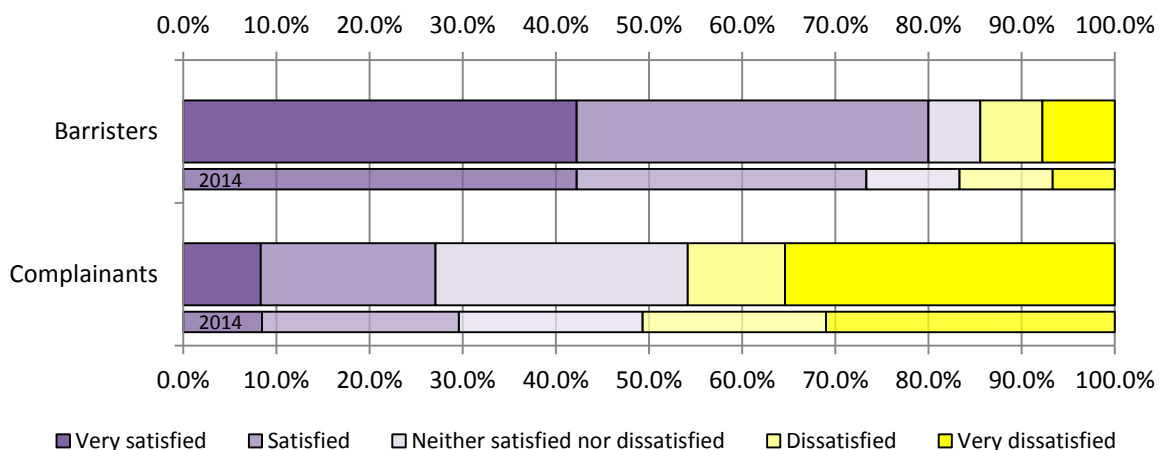
Consistency and one port of call.

Complainant responses #02533 and #03192

3.66 There is no doubt that the information provided by complainants is extremely valuable and we need potential complainants to feel confident in bringing potential issues of misconduct to our attention. However, we are no longer the same complaints handling body that we were in 2010 when we dealt with complaints about poor service and made findings in support of the complainants. Our role now is in taking action for breaches of the Handbook where there is a real risk to the regulatory objectives and maintaining the high standards of the profession. If anything, though, our connection with complainants is now stronger than it was in 2010 as we have made considerable efforts to engage with complainants and develop the detailed reasons we give for the decisions we make. At the same time, the introduction of

Figure 11

Leaving aside the final outcome, how satisfied were you with the way in which the Bar Standards Board handled your complaint?



outcomes-focused and risk-based regulations is taking us in a direction that may be perceived by complainants as dismissive of their concerns. Dismissing a complaint where there is evidence of a breach but the risk is too low to warrant enforcement action may be a hard concept for complainants to understand and lead to greater levels of dissatisfaction.

- 3.67 The issue is one of managing expectations: inviting complainants to provide information and still keeping them up to date and informed, but making it very clear that we operate in the public interest, that we may not be taking action in relation to their individual issues and not using terminology that encourages complainants to think that we act for them. We may still not see the improvements in the feedback we receive, but the enforcement system will be more transparent and stronger. We are currently looking at restructuring the assessment processes across the BSB and in doing so we will be looking at the role complainants play in our regulatory system including ways we can manage expectations.

“ *What impressed me was the quick turnaround between notifying me of the complaint and the thoroughness of the reasoning behind the decision.*

Barrister response #02920

Other work areas

- 4.1 While our primary function is in taking action where the BSB Handbook has been breached, our work throughout the year encompassed a number of other areas of work.

Disciplinary history checks

- 4.2 A disciplinary history check is where we cross reference a barrister against our Enforcement Database and report on any disciplinary findings made against the barrister. This is usually for the purpose of issuing a Certificate of Good Standing but we also respond to requests from the Judicial Appointments Commission (for use in handling applications for judicial office) and the Inns of Court (pupil supervisors).
- 4.3 In addition we have a memorandum of understanding with the Queen’s Counsel Appointments (QCA) body in which we agree to report on any disciplinary findings or ongoing disciplinary proceedings for each Queen’s Counsel (QC) applicant. These are then taken into consideration when QCA are assessing applications.
- 4.4 We completed 850 disciplinary history checks in 2015/16, including checks on 241 QC applicants.

Information provided to the public

- 4.5 Although we are not currently subject to the Freedom of Information Act, we work in the spirit of the Act when we receive requests for enforcement data. We regularly receive requests from researchers, reporters, complainants and other members of the public, typically asking for numbers for different types of complaints or outcomes and sanctions we have imposed. Where the information is available we always comply with the request and provide anonymised data. In 2015/16, we received and answered

over 20 requests from external sources for data.

- 4.6 We want our enforcement data to be as transparent as possible and so accompanying this Annual Report is a Statistical Report of data that will address many of the data requests that we anticipate receiving. This will allow for fast access to information for the public without us having to generate custom reports each time. The Statistical Report can be found on our website.

Projects

Alternative Business Structures

- 5.1 During 2015/16 the BSB made an application to become a licensing authority for Alternative Business Structures (ABS) – organisations that can include non-barrister ownership. An ABS Implementation Project was set and in collaboration with other BSB departments, the PCD has been ensuring that we have appropriate systems in place to deal with this pending extension to our jurisdiction. For PCD this has involved re-examining our policies and procedures to ensure that we are able to take appropriate action if concerns are raised about an ABS.

Centralised Assessment Team

- 5.2 A project is underway to improve the consistency of our risk based assessment systems across the BSB. The desired result is to design and implement a centralised assessment unit to deal with all incoming information. In conjunction with moves to upgrade our Information Systems, it is intended that this team will, in due course, provide a more aligned, effective and consistent approach to assessing incoming information on the basis of risk.

Public Information Project

- 5.3 During 2015/16 we carried out a comprehensive review of the BSB's available public information on the enforcement system. This resulted in a complete rewrite of the relevant web pages which went live in March 2016. Informal feedback so far indicates that users are finding the pages much easier to use and navigate. The Project has now moved onto revising our public leaflets and we hope to launch new leaflets later in the year.

Disciplinary Tribunal Regulations Review

- 5.4 A project to review the Disciplinary Tribunal Regulations commenced in 2014 and a revised set of regulations was developed in 2015/16. Following a public consultation, the Board agreed the revised Regulations early in 2016 and it is intended, following approval by the Legal Services Board, the Regulations will come into force by the end of 2016. The project has now moved on to the implementation phase. This will include revising guidance, developing revised supporting policies and procedures and training staff, Committee Members, Prosecutors and Tribunal members.

Conclusions and action points

- 6.1 2015/16 has been a year of consolidation and continuous improvement following the introduction of the BSB Handbook in 2014 but also a period of planning for change. The risk based approach to decision making is firmly embedded in our processes and appears to be working well. This is demonstrated by the increase in use of administrative sanctions (up nearly 600%) and the outcomes of Tribunals where the most common sanctions were disbarment and suspensions. Our monitoring systems are continually improving which in turn have allowed us to learn from our experiences and implement appropriate changes. In particular the changes to our allegation categories are allowing us to report more accurately on the nature of the concerns that are raised with us. The full benefit of this is likely to be seen in the forthcoming year and beyond.
- 6.2 Our performance in just missing the KPI by 4% (76% against a target of 80%) is disappointing particularly given the dedication and hard work of the staff. However, this needs to be contrasted with the significant increase in throughput. Staff dealt with far more cases this year (up 40%) and it is to their credit that they were able to improve on last year's performance despite the ongoing impact of staff shortages in 2014/15. Further the number of outstanding cases at the end of the year was 21% less than last. We ended the year with a much smaller proportion of complaints over-running our service standards than the previous year, allowing us to start 2016/17 on a better footing with a strong prospect of meeting the KPI in 2016/17.
- 6.3 Overall this report demonstrates that the enforcement system is working well. The uphold rate at Tribunal, at 83%, is healthy and the fact we were only subject to one cost award indicates that even where charges were dismissed, the cases were rightly

brought. The checks and balances in the system in the form of the Independent Observer and the Quality Review Sub-Committee have provided assurance that the decisions are being taken fairly and openly in line with our objectives. However, it is clear that complainants still do not perceive this to be the case given the ongoing low rates of satisfaction in relation to the openness and transparency of the system. We have worked hard to try to manage expectations and ensure our role is clear and we will continue to do so. It may, however, always remain the case that satisfaction will be low in light of the direct correlation between outcomes and satisfaction and the overall percentage of external complaints that do not result in enforcement action (on average 80% or more).

Action points

- 6.4 We intend to carry out the following actions during the course of the next twelve months to further improve the enforcement system.
- Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (based on the Risk Outlook, Framework and Index) is reflected in our enforcement work. This work will be focussed in 2016/17 on the development of the proposals for a Centralised Assessment Unit.
 - Continue to improve our IT systems (as part of Bar Council's Information Management Programme) to improve communication and the sharing of data across relevant departments.
 - To maintain and enhance our staff training and up skilling programmes. This will prepare the PCD staff to take on an increased amount of executive decision making.
 - Continue our KPI monitoring programme to ensure that we can deal with the over-

running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcements processes.

- Carry out a review of our KPIs and OPIs to ensure they remain an appropriate and effective means to monitor performance.
- Update and revise our leaflets as well as continue improving the website pages as part of the ongoing Public Information Project.

Sara Jagger

Director of Professional Conduct

Aidan Christie QC

Chair of the Professional Conduct Committee

July 2016

Bar Standards Board Annual Report 2015-16

Status

1. For discussion and decision.

Executive Summary

2. This paper contains a near final draft of the 2015-16 Annual Report for consideration by the Board. The draft reflects comments and direction given by the Planning, Resources and Performance Committee, as well as input from the Chair and Director General. This paper contains a designed version to enable the Board to see the look and feel of the report as well as the text.

Recommendations

3. The Board is invited to:
 - a. **Discuss** the content of the report;
 - b. **Agree** that the report be published on 1 August, and promoted accordingly.

Comments

4. The Planning, Resources and Performance Committee considered the 2015-16 Annual Report at its meeting on 2 June. Members provided direction as to the content and tone of the report at that meeting, and have since seen an earlier draft of the text for comment.
5. The 2015-16 Annual Report is the last of the corporate publications associated with the 2013-16 Strategic Plan. It has therefore been designed to look like previous annual reports.
6. However, to reflect the fact that it relates to the 2013-16 period, the Annual Report also contains a number of elements that look back on the BSB's achievements over a three year period as well as the 2015-16 year itself. These elements include a "Timeline of developments and achievements" running throughout much of the report.
7. Unlike in previous years, the report includes a number of infographics designed to represent the BSB's activities during 2015-16. These infographics will also be used within social media to help us promote the report and the BSB in general.
8. As in previous years, the report itself will not be printed and will only be published in electronic format. However, for the first time, we plan to produce a brief "highlights" leaflet featuring the infographics and other key messages. This will be printed in order to be made available at BSB events over the coming year, for example at the Bar Conference. This will be designed once the Annual Report itself has been finalised.
9. A final proof read and accuracy check will be made before final publication. Comments are welcome regarding any element of the report's content and design.
10. Please note that in order to minimize printing costs, only the first few pages of the report attached to this Board paper have been printed in colour. The pdf version to be made available on the website will all appear in colour.

Resource implications

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

Equality Impact Assessment

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

Risk implications

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

Impacts on other teams / departments or projects

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

Regulatory objectives

15. The report relates to performance against the Strategic Aims in the Strategic Plan 2013-16. Those aims in turn were developed in the light of the regulatory objectives.

Publicity

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

Annexes

17. Annex 1 – draft annual report.

Lead responsibility:

Wilf White, Director of Communications and Public Engagement

NOTE

The BSB Annual Report will be formally launch w/c 1 August 2016

In consequence the report has been embargoed for external publication until then.

It will be made available on the BSB website as from the publication date

Chair's Report on Visits and External Meetings, June – July 2016**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**

21 June	Attended the Modernising Justice Conference
21 June	Chaired a meeting of the BSB Independent Appointments Panel
22 June	Attended the Chairmen's Committee
22 June	Attended the Inns Strategic Advisory Group meeting
29 June	Attended a meeting with the Chair and CEO of the Legal Services Board
7 July	Gave an introductory speech at the debate on the Future of Bar Training, hosted by the BSB
8 July	Met and had lunch with the Chair and former Chair of the BSB Independent Appointments Panel
15 July	Gave an introductory speech at the 2016 BPTC Annual Conference, hosted by the BSB
16 July	Attended the Bar Council meeting
20 July	Chaired the Chairmen's Committee

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 28 July 2016

For consideration and noting.

Director General

1. My externally facing work in the last month has been largely in three areas. I chaired the FBT debate event on 7 July and opened and attended the BPTC providers' conference on 15 July. This involvement has been especially useful as I am overseeing the final phase of work on the next FBT consultation.
2. I gave evidence on legal services regulation to the Justice Committee on 28 June, covering nine main topics and in conjunction with my counterpart at the SRA. The Bar Council and Law Society were also represented at the session. Transcripts and videos are available on www.parliament.uk. It remains unclear as to when any consultation on changes to legal services regulation legislation may paper.
3. I attended the Temple Women's Forum event for women across the legal profession on 11 July where it was very useful to alert others present to the publication the next day of our Women at the Bar report. I continue to meet with stakeholders in relation to the report and our action plan.
4. I was able to represent the Chair of the Board at the swearing – in on 21 July of the first ever female Lord Chancellor. We hope to be meeting with Ms Truss and her new ministerial team very soon.
5. Internally we have launched the BSB Learning and Development Plan for the coming 12 months. This puts considerable emphasis on learning on the job and from each other, and on leadership and management development. Enhancing technical skills in a range of areas is also a key aspect of the plan. If any Board members would like to see the plan they should get in touch.
6. I would ask the Board to note that on 1 August we will put into place a further phase of our internal operational restructuring premised on bringing like regulatory functions together more rationally and efficiently, as set out in the Strategic Plan. Our discrete Education and Training department is being fully integrated into our wider regulatory functions.
7. The current BPTC team and centralised examination team from the Education and Training department will be integrated into the supervision and authorisation functions to create a new Regulatory Assurance Department. Oliver Hanmer will lead the enlarged department and his job title will change to Director, Regulatory Assurance. Dr Victoria Stec will become Head of Training Supervision and Examinations. FBT policy staff (1 FTE) will move to the Regulatory Policy team and the education and training data analyst will move to the Research team.
8. The Education and Training Committee continues to operate with no changes to its Standing Orders, but the Scheme of Delegations at executive level will be amended to incorporate the changed job titles and reporting lines.
9. The post of Director of Education and Training will be removed. Dr Simon Thornton Wood, who has been with us for nearly four years, will leave the BSB on 16 September. Simon has shown great single mindedness and resilience in transforming the regulatory approach to education and training and in getting FBT to the major milestone of the next consultation. I would like to thank him publicly on behalf of the Board for his dedicated service and wish him well in his future professional ventures.

10. Finally, the Board may wish to note that I will be on leave from 16 August to 5 September.

ASPIRE

11. The LSB has published the action plan that we agreed with them on the activities required to achieve satisfactory under the Regulatory Standards Framework – the Board will recall that ASPIRE is the programme through which that activity is managed. The Programme Board met on 6 July to review the progress of ASPIRE and to discuss risks to the effective completion of the programme. The main challenge relates to ensuring that adequate resources are available to the programme and the senior management team has subsequently discussed options for addressing resource gaps.
12. The impact of ASPIRE continues to be positive; in particular the ‘champions’ for each of the areas of the programme are actively engaged in promoting the cultural and operational changes within their respective departments to enable our new approach to regulation to be embedded across the organisation. This approach has encouraged ownership and responsibility for embedding change across a wide range of staff.

Regulatory Policy

Professional standards

13. Recruitment is taking place for a new policy officer and new senior policy officer.
14. PII: Work on the Memorandum of Understanding with BMIF is progressing well. Consultants have been commissioned to start work on an economic analysis of the PII market for the Bar. A Task Completion Group, including members of the Board, have met to agree the scope of the analysis and will continue to provide comment and challenge as the work progresses.
15. International: A paper on international risks is being prepared. This was discussed at the Risk Forum and, together with possible policy responses and mitigating actions, will be discussed at the Policy Forum in August.
16. Immigration Thematic Review: The project has progressed onto the implementation stage and a PID and project plan have been prepared based on each of the report recommendations.
17. Public and Licensed Access Review: The evidence gathering and analysis phases of the project are complete. The internal Project Team is now beginning options development, which will be shared with the Task Completion Group in September. It was decided that the project timeline should be adjusted to align with the Regulators’ Forum’s work on client care letters. The team is now looking to take the project to the October Board meeting.

Regulatory Risk

18. Recruitment is taking place for a new Regulatory Risk Manager who will focus on implementation of the published risk framework. Primarily this will mean supporting staff with skills, knowledge and ways of working they will need to embed risk into what they do day to day; alongside managing the regular cycle of risk activity such as reporting and Tactical Risk Forum meetings.

19. In the interim, the Risk Champions team has now met twice. There has also been one-to-one support for each team representative to help to develop an action plan for each department. This will help embed risk further and identify any development support needs for the champions themselves.
20. Risk work has focused on a review of draft material produced by the Centralised Assessment project team and on education and training (through FBT and BPTC stakeholder events and work with the QA policy manager and Qualification team). Risk Forum meetings have focused on international issues, including but not limited to the recent referendum result. Another internal meeting with the senior management team has been scheduled for later this month in order to scope requirements for any formal Brexit working group.
21. The Risk Forum has also now begun an exercise to review of each of the Risk Outlook themes to draw together any new insights gleaned since publication of our initial report. This will inform initial risk reporting work, though timescales are being impacted by the vacancy in the risk team.
22. A meeting took place with the Legal Services Board to discuss identification of emerging market risks to establish areas of common interest and share relevant work. This topic has already been discussed with other legal regulators and we will be looking, through the Regulators' Forum, to begin discussions on how we might work together to do this more efficiently and with benefit of more diverse insights from different organisations.

Equality and Access to Justice

23. The E&AJ team have delivered an event on 23rd June 'Race Equality in the legal profession' in partnership with the Law Society, Bar Council and Solicitors Regulation Authority. 25 people were in attendance and the event has received positive evaluations. Requests to the E&AJ team to continue dialogue have been received and meetings in place with key organisations to further develop our work in this area.
24. On 14 June the E&AJ policy manager delivered a Cross Cultural Communication workshop at Inner Temple to 60 delegates, mainly HE careers advisors. The workshop focused on the challenges of CCC at entry level to the profession.
25. The Women at the Bar research project has now fully concluded. An action plan is in place with immediate actions for supervision and proposals to review how this research features in the emerging equality objectives. A letter to heads of chambers has been sent from the Director General reminding them of their obligations to implement the equality rules. Meetings have taken place with the Institute of Barristers Clerks and the Legal Practice Management Association to secure support for our future work related to gender equality.
26. The E&AJ team has continued with its programme of supporting all departments in the completion of equality impact assessments (EIAs). EIAs completed in the May - June period include the changes to the pupillage handbook and the Bar Council's Worksmart programme.
27. In July a meeting of the Shared Parental Leave Task Completion Group (SPL TCG) took place. The group explored a potential change to the parental leave rules in the BSB Handbook to better reflect the SPL leave provisions currently available to employed barristers. Hypothetical scenarios were used to examine how SPL might work in practice in chambers. The E&AJ team will work with the TCG to undertake an impact assessment of the different options, weighing up the potential advantages of

SPL at the Bar against the impacts associated with compliance. A consultation containing the options is scheduled for release in September. We will also be consulting on potential amendments to clarify the scope of the Core Duty not to discriminate, in the light of a recent conduct case. Board members who would like more information prior to launch of the consultation should contact Amit Popat.

28. The E&AJ team met with the Director of HR and the Bar Council Equality team following the release of the Staff Survey results. The results were analysed from an equality and diversity perspective with aggregated data being broken down by protected characteristic and job level. Some trends were identified that required further attention and investigation. It was agreed that HR would explore options for next steps, including potential 'culture audits' and mentoring schemes.
29. The E&AJ Policy Manager chaired a Wellbeing workshop at the BPTC conference 'Is prevention better than cure? The role of providers in managing and improving wellbeing at the Bar'. Speakers included Anne Charlton, Coordinator for England and Wales, LawCare and Louise McCullough, Barrister at Charter Chambers and member of the Bar Council's Wellbeing at the Bar Working Group. The workshop was attended by approximately 20 delegates, many agreeing to further engage LawCare to advise on how students can access independent wellbeing support.

Education and Training

30. A lively debate on options for future routes to qualification as a barrister was held on 7 July, attracting an audience of nearly 100 people. The debate provided an opportunity for proponents of each of the different training models under consideration to make their pitch, followed by questions from the audience. The event attracted positive comment from participants, and provided an opportunity for different views to be heard and the complexities of the policy issues to be exposed.
31. The Education & Training Committee reviewed a number of significant policy changes relating to the delivery of the BPTC, creating new flexibility in the way that the course may be delivered and taking effect from September 2016. The new edition of the BPTC Handbook, incorporating these changes, will be published before the start of the new academic year, but course providers have already been notified. These "enabling changes" are carefully planned within the Future Bar Training programme of reform, and will be followed by further changes to reflect the Professional Statement in 2017.
32. The annual BPTC Conference was held on 15 July at the Hallam Conference Centre, with a focus on Future Bar Training. The conference was well attended. Sessions were also run on vulnerability in the justice system, wellbeing for students and employability. We remain on course to issue the next major FBT consultation in October.
33. A draft submission for approval of planned changes to the Bar Course Aptitude Test (BCAT) was shared with the LSB and their feedback has been received prior to formal submission at the end of July.
34. A substantially revised edition of the Pupillage Handbook is on course for publication at the end of July.

Professional Conduct***Enforcement Annual Report***

35. The year end 2015/16 report on the performance of the BSB's enforcement functions (Professional Conduct Department and Committee) is included as a separate item on the Board agenda.

Quarter 1 2016/17 KPI performance

36. The first quarter of 2016/17 has seen a strong performance against the Professional Conduct KPI, with 88.5% of cases concluded within service standards against an overall and individual OPI targets of 80%. In terms of the individual Operational Performance Indicators (OPIs), the percentage of complaints concluded or referred to investigation within 8 weeks was 89.5% (OPI 1); the percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation was 86.7% (OPI 2); and the percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation was 76.5% (OPI 3).

PCC Appraisals

37. As part of the aim to achieve continuous improvement in the performance of the Bar Standards Board's enforcement regime, a process of appraising the performance of all PCC members, lay and barrister, is carried out annually. This complements the staff appraisals carried out each year. The PCC appraisal process is intended to be positive, aimed at helping individuals to improve their contribution to the work of the Committee and to receive suggestions about enhancing the Committee's functioning. This year's appraisals process for PCC members for the period May 2015 to April 2016 commenced in July 2016: we aim to have completed the process by the end of September 2016.

Public Information Project (PIP)

38. Phase 3 of the PIP commenced at the end of June and aims to ensure that the leaflets we send to barristers and complainants are as user-friendly as the enforcement pages on the BSB website. The latter were re-designed last financial year with input from Law for Life, a specialist Public Legal Education organisation, and went live in March. While we do not yet have any formal feedback on the revised webpages, anecdotal feedback indicates that the improvements have been successful in providing clearer information and we hope the leaflets will build on this.

Joint Disciplinary Tribunals Working Group

39. As part of the general initiative led by the LSB and the Chief Executives of the front-line Regulators to find ways to work more collaboratively within legal professional regulation, a Joint Disciplinary Working Group has been set up. In the initial stages this Group has involved the BSB, the Solicitors Regulation Authority (SRA) and the Chartered Institute of Legal Executives Regulation (CILEx Regulation) but is due to be expanded across the full breath of the front line Regulators in the near future.
40. Senior management representatives of the PCD are involved in leading the Group which is currently working on scoping the differences in the publication of disciplinary information and the operation of preliminary assessment/investigatory decision-making processes. The results of this work will be reported to the CEOs forum in later in the year which may lead to proposals to change the way the BSB approaches these issues.

Litigation

41. Since the last report there has been one new application for permission for judicial review. This is by a complainant who has previously been unsuccessful in challenging the decision to dismiss a number of aspects of his complaint without investigation. The new application relates to the decision of the PCC to dismiss the remaining aspects after investigation. Although the application has been lodged, an extension to serve grounds has been sought. This has been opposed.
42. The discrimination claim before the Court of Appeal was heard on 13 July 2016. Judgement has been reserved until the Michaelmas Term. The Employment tribunal claim is still expected to take place in October 2016.

Supervision***Entity Authorisation***

43. As of 15 July 2016 54 entities have been fully authorised and have paid the authorisation fee and obtained appropriate insurance. There are a further 2 entities about to complete the authorisation process, and 8 more entities in the assessment stage.

CPD

44. Development of the new CPD scheme is continuing. The consultation on the new rules and regulations is ongoing. The CPD assessment Team is currently working with the Communications and Public Engagement Department to publicise the change to the EPP CPD regime to the profession as a whole.

CPD Accreditation

45. The deadline for the Interim Monitoring Cycle for 2016, reflecting delivery period 1 January to 31 May 2016, occurred on 11 July 2016. Some 400 accredited CPD providers were required to comply with this monitoring requirement. Work is now underway to record and review the returns, as well as chasing those who failed to submit a report.
46. A positive response from the profession to the launch of the online Forensic Accounting course has been received following a targeted email sent to those to whom the requirement applies.

Qualification Authorisations

47. The Qualifications Committee met on 18 July 2016. It considered two applications for review of decisions of its Panels. It upheld the original decision in each case.
48. Each Panel of the Committee continues to work hard with the Executive to revise its Criteria and Guidelines documents in preparation for full delegation of decision-making.
49. Two Supervision officers (equating to one Full Time Equivalent) are continuing to support the transition of the qualifications team to the department by assessing applications.

Equality and Diversity

50. The Supervision Team has been working closely with the Equality and Access to Justice Team to respond to the findings in the BSB's "Women at the Bar" report. The department's Equality Champion and the Equality and Access to Justice Team designed and delivered a workshop focussed on equipping the department with the tools needed to embed good practice during supervision of chambers and entities. The team have also contributed examples of good practice at Chambers in the letter that has been sent to Heads of Chambers.

Pupillage

51. We have updated the Pupillage Handbook. There have been no rule changes. The main aims of this review were:
- Signalling changes to come next year in relation to the Professional Statement and Threshold Standard and Competences. This will impact the current pupillage checklists, which will be developed to align with the Professional Statement in 2017. Pupil supervisors and training organisations therefore need to be aware that they must plan for implementation of these new requirements, which will be reflected in the 2017 Pupillage Handbook.
 - Making it easier to read. Particularly by:
 - Being clearer about which requirements stem from the BSB rules and which represent good practice.
 - Making it clear which sections are aimed at pupils, and which at supervisors or training organisations.
 - Removing duplication and detail that was inappropriately prescriptive for a regulatory document.
 - Being clearer about the Employed Bar.
52. A draft copy was shared with the Inns and the Government Legal Department. It will be published very shortly.
53. The Supervision Manager contributed a piece on regulation for the Inner Temple training for Pupil Supervisors.

Central Assessment Team

54. The CAT Project Team has completed a methodology for assessing incoming information and has shared it with the CAT Project Board and the Information Management project team. The Project Team is testing it with some PCD and Supervision cases.

Youth Proceedings Advocacy Review

55. Our work to build a Competency Framework aimed at barristers practising within the youth justice sector has continued. We will be holding workshops in August and September 2016 to define the competencies expected of an advocate in the youth justice sector. The workshops will consist of advocates, consumer organisations as well as other professionals working within this sector.

56. Approximately 35 members of BSB staff attended a knowledge sharing session on Task Completion Groups on 23 June. There are also a wider discussion about the new ways of working at the BSB, of which Task Completion Groups are one part. Task Completion Groups have proved successful, with nine established to date and more to be established shortly.

Licensed Body (“ABS”) Implementation

57. Progress is on track to deliver to a late 2016 date (subject to the relevant approvals). As with authorised bodies (“entities”), we are adopting a 2-phase internal / external approach to the licensed body pilot. The internal pilot began in mid-July with testing of the newly designed system, guidance and forms by representatives from the Regulatory Policy, PCD, Research, Communications, Project Management Office, Information Services departments and the Director General’s Office. Feedback is being reviewed and will be reflected in the system as appropriate.
58. There has been encouraging interest in the external pilot. In addition to enquiries received since launch of the authorised body regime, we have also been contacted as a result of communications published on our revised website and via our Regulatory Update. The external testing is planned for 6 weeks over August / September when we hope to work with approximately 5 applications covering a mix of licensed body types. We are currently collating details and contacting all interested parties to determine availability over the period.

Statutory Interventions

59. An Interventions Strategy has been drafted and is before the Board for comment. We are currently working on detailed internal operational guidance to underpin and support the strategy, outlining how the principles will be practically implemented. Areas to be covered include directions for determining when an intervention is necessary, the decision-making process, policy on costs and cost recovery and internal assurance and review mechanisms.
60. Given the significant resource implications arising from the use of intervention powers, we will conducting a skills audit to better understand capacity and capability needs. We are also working with other approved regulators to scope costs.
61. Both the draft strategy and operational guidance will include a detailed equality statement wherein we outline our commitment to review our approach to interventions to ensure there is no disproportionate impact on any particular group or sector. Additionally we will ensure assessments are made in advance of all interventions to understand and manage the potential impact on the health and wellbeing of impacted individuals.

Governance Reform

62. Following the joint discussion with the Planning, Resources and Performance and Governance, Risk and Audit Committees, work has progressed on the assurance framework with a fuller proposal being developed. The internal Governance Champions group has assisted with this, applying their knowledge of their areas to develop examples of how the assurance framework will operate in practice. An update paper on

the assurance framework is included in the private session of this meeting in anticipation of a decision paper coming to the Board in September.

63. The first round of recruitment to APEX has opened, with seven roles in competition: economics, equality and diversity, higher education, insurance, regulatory policy and theory and regulatory risk being advertised. Proactive steps have been taken to promote the advertisements among a diverse range of groups. The first round of recruitment will close in early August, and senior staff and members of the Independent Appointments Panel will interview candidates for the first seven roles in early September.
64. The regulatory scheme of delegations will be amended from 1st August to reflect operational changes in the organisation, with the Examinations and Training Supervision Teams in the Education and Training Department moving to the Supervision Department.

Research

65. Since the meeting in June, work has progressed as follows:
 - Finalising the “Women at the Bar” report and supporting the development of communications and regulatory response prior to and following the public release of the report in early July.
 - Completing a report on the findings of a survey of clients using the Licensed Access scheme as part of the Public and Licensed Access Review.
 - Updating and finalising the research findings from the review of the BCAT to support our submission to the LSB to change the pass mark for the test.
 - Finalising (and working with the communications team to host on verity) the first “Research Quarterly”, a new regular resource for the organisation providing a summary of recent relevant research from the BSB, other legal regulators, academics and other organisations.
 - Further work with the Education and Training department and E&AJ team to research variations in success rates on the BPTC across different protected characteristics.
 - Published the first tranche of the annual statistics on the profession on the BSB website, covering statistics for the practising Bar, pupils, Call to the Bar, and chambers.
 - Finalised findings from internal workshops and working with Pye Tait on the design of survey on the governance models project.
 - Coordinating cross-regulator research on client care letters: organised tender assessment process and inception meeting with successful tenderer, working on funding agreements with partners, on the contract with the tenderer and the research scope.
 - Conducting initial Equality Impact Assessment on consumer research project
 - Meeting tenderers for the economic research on Professional Indemnity Insurance project led by Regulatory Policy to add research expertise to the assessment.

Communications and Stakeholder Engagement

Communications

66. Since this report was prepared for the June Board meeting, the following press releases and announcements have been issued:

Part 1 – Public

- 10 June: Press release about a barrister who was disbarred following a retrial by BTAS
- 16 June: Press release about a barrister who was disbarred for dishonesty, following a conviction for mortgage fraud
- 24 June: Statement following the result of the EU referendum
- 29 June: Press release about a barrister who was suspended for failing to cooperate with the regulator
- 29 June: Press release concerning the open consultation about the rule changes concerning forthcoming changes to barristers' CPD
- 5 July: Announcement about the appointment of a new Chair and lay members of the Independent Appointments Panel
- 8 July: Press release to follow-up the debate held the night before about the Future Bar Training options
- 8 July: Statement welcoming the interim report from the Competition and Markets Authority (CMA)
- 8 July: Announcement concerning the recruitment of lay members to join our Board
- 12 July: Press release to accompany the publication of the results of the recent survey of women at the Bar, highlighting action to address unfair treatment of women at the Bar.

67. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

68. In addition to business-as-usual activities, at the time of writing, the following proactive communications are scheduled over the next few weeks and months:

- Publication of the 2015-16 BSB annual report
- Extensive communication and engagement activities for the autumn in support of the forthcoming changes to barristers' CPD

69. Wilf and the team have made good progress in developing a new communications and public engagement strategy which will be presented to the Board during the private session of this meeting.

Online and social media

70. During June, 20,870 users visited the BSB website. At the time of writing, we have 14,633 followers on Twitter.

Corporate Services

Staffing

71. Eva Hales has left as Corporate Support Manager and we will be looking at filling this gap with some temporary assistance whilst we carry out a full recruitment process for a permanent replacement.

Business Planning

72. We continue to finish off our year-end processes for 2015-16 and contributing to the Annual Report. Work on the 17/18 business plan and budget has started.

73. The team continues to work on the systems that we will use to monitor progress and performance against the 2016-17 Business Plan and budget. Team members will be crafting a new dashboard and structure of accounts to align with our objectives.

Resources Group

74. The new report format has been agreed and piloted internally and will be presented with the BSB's quarter 1 performance report in September. There are no issues of concern to report to the Board.

**Vanessa Davies
Director General BSB
20 July 2016**