



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 21 May 2015, 4.30 pm

Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda

Part 1 – Public

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| 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">• 26 March 2015 (*) | Annex A | | 3-7 |
| 5. Matters Arising | | | |
| 6. a) Action points and progress | Annex B | Chair | 9-12 |
| b) Forward agendas | Annex C | Chair | 13-14 |
| <u>Items for discussion</u> | | | |
| 7. PRP Committee Report (including BSB Year-End Performance Report)
(4.35 pm) | BSB 035 (15) | Anne Wright | 15-38 |
| 8. Proposed BSB Equality Objectives 2015-16
(4.50 pm) | BSB 036 (15) | Rolande Anderson | 39-54 |
| 9. Future Bar Training – Continuing Professional Development Consultation
(5.00 pm) | BSB 037 (15) | Bernard MacGregor | 55-97 |
| 10. Complaints Regulations: Amendment to the Professional Conduct Committee's power to take "no further action"
(5.25 pm) | BSB 038 (15) | Sara Jagger | 99-137 |
| 11. Chair's Report on Visits and Meetings:
Apr – May 15: (*) | BSB 039 (15) | Chair | 139-140 |
| 12. Director General's Report
(5.35 pm) | BSB 040 (15) | Vanessa Davies | 141-154 |
| 13. Any other business
(5.40 pm) | | | |

**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 210515

14. **Date of next meeting**

- Thursday 25 June 2015

15. **Private Session**

John Picken

Governance Officer

JPicken@barstandardsboard.org.uk

14 May 2015

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

BSB 210515

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 26 March 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair)
Rolande Anderson
Rob Behrens
Malcolm Cohen
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Adam Solomon
Sam Stein QC
Richard Thompson
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)
Robin Field Smith (Chair, Professional Statement Working Group)
Nicola Sawford (Board Member designate)
James Wakefield (COIC)
- Bar Council & Resources Group in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Chantal- Aimée Doerries QC (Bar Council Vice Chairman)
Catherine Shaw (Director of HR, Bar Council)
- BSB Executive in attendance:** Chris Adiole (Legal & Policy Assistant)
Viki Calais (Business Manager)
Vanessa Davies (Director General)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision) – items 8-14
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy) – items 7-14
John Picken (Governance Officer)
Pippa Prangle (Regulatory Risk Manager)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)

Item 1 – Welcome and introductions**ACTION**

1. The Chair welcomed members and guests to the meeting.
2. **Item 2 – Apologies**
 - Justine Davidge;
 - Simon Lofthouse QC;
 - Sarah Brown (Special Adviser);
 - Emily Windsor (Special Adviser);
 - Alistair MacDonald (Chairman, Bar Council);
 - Lorinda Long (Treasurer, Bar Council).

Item 3 – Members’ interests and hospitality

3. Vanessa Davies made the following declarations of hospitality received:
- Annual President’s Reception, Society of Legal Scholars (4 March 2015);
 - Dinner at the invitation of the Law School of Bangor University (10 March 2015);
 - Reception at the House of Lords hosted by the Council of Licensed Conveyancers (16 March 2015).

Item 4 – Approval of Part 1 (public) minutes (26 February 2015)

(Annex A)

4. The Board approved Part 1 of the minutes of the meetings held on Thursday 26 February 2015.

Item 5 – Matters Arising

None.

Items 6a & b – Action points and Forward AgendaAction points and progress (Annex B)

6. The Board noted progress on the action list.

Forward Agenda (Annex C)

7. The Board noted the forward agenda list. The Board Away Day (23 April 2015) will take place at the Royal College of Surgeons, Lincoln’s Inn Field, London.

Item 7 – Bar Standards Board Business Plan 2015-16

BSB 024 (15)

8. Vanessa Davies referred to the revised business plan and thanked both the PRP Committee and the Business Support Team for their work on the re-draft. She also thanked Rolande Anderson for her help in finessing the text about equality and diversity.
9. She commented as follows:
- the plan identifies five priority areas ie:
 - ❖ the “Future Bar Training” programme – some critical milestones need to be achieved in 2015-16;
 - ❖ becoming a licensing authority for alternative business structures (ABSs);
 - ❖ review and reform of BSB governance structures;
 - ❖ developing capacity and capability in risk-based regulation;
 - ❖ increased focus on the consumers of barristers’ services and wider public engagement.
 - the revised plan reflects points raised at the last meetings of both the Board and the PRP Committee;
 - income generated from non-PCF funded work is budgeted to increase by 3%. However the Inns’ subvention will reduce as will the proportion the BSB takes from PCF.
 - BSB expenditure will increase by 3% in 2015-16 (from £5,287k last year to £5,438k). The overall cost of regulation will, though, be lower (falling 4% from £8,635k to £8,274k). This is due to a 15% fall in Resource Group and overhead costs;
 - the revised budget was approved by the Finance Committee at its meeting on 23 March 2015.

10. At the time that papers were dispatched, the BSB had not received the final version of the LSB's business plan. The BSB did provide feedback on earlier drafts and, whilst this is not wholly reflected in the final version, there are no new items of business. Notwithstanding this, there may be some impact on the BSB during a year which will be pivotal to it in the longer term.
11. Anne Wright confirmed that the revised draft reflects the views of the Planning, Resources & Performance (PRP) Committee meeting of 9 March 2015 ie:
- a reduction in overall resource requirements;
 - an emphasis on meeting a "satisfactory" standard for the LSB's Regulatory Standards Framework (RSF) by March 2016.
12. Members commented as follows:
- the foreword might be re-ordered to place greater emphasis on meeting RSF requirements. At present, the impact is less than it might be as it falls in the middle of the text. To address this first may give the wrong impression ie that the BSB is primarily concerned with meeting LSB targets than its statutory regulatory objectives. We could, however, underline the Board's commitment to the RSF in the closing summary;
 - we should be cautious about publishing specific proposals on staffing figures (P24 of the draft). Discussions at the April Away Day may focus on resourcing and further influence decisions on this issue. We should therefore be less prescriptive in this section;
 - the sentence in P6-7 of the draft beginning "clients of BSB-regulated entities..." is incorrect and should be deleted;
 - we should check the wording of the second bullet point under P22 of the draft concerning equality. This seems ambiguous.

Note: in discussing an item on regulatory risk in private session, the Board agreed to include reference to regulatory risk management under section P4 – "what the BSB does".

13. **AGREED**
- a) to approve the text of the 2015-16 business plan for publication subject to the amendments in paragraph 12 above;
 - b) to provide any further comments on the draft to Amanda Thompson by return.

AT

Board
Members
to note

Item 8 – Future Bar Training: Professional Statement consultation
BSB 025 (15)

14. Andrew Sanders introduced Robin Field Smith who has kindly chaired the Professional Statement Working Group. The other members were Emily Windsor, Tope Adeyemi and Stuart Weinstein assisted by consultant Judith Willis. The Group's objective was to set out a statement to cover the technical knowledge, skills, attributes, values and professional behaviours that a barrister should know and display at the point of final qualification. This is in response to a recommendation in the 2013 Legal Education and Training Review report.
15. Robin Field Smith commented as follows:
- the draft Statement has been developed from a series of meetings across the country with practising barristers and legal academics;
 - it is distinct from the Code of Conduct – it sets out what barristers must be *able* to do, as opposed to duties they must do (covered by the latter document);

- its practical purpose is to inform prospective barristers, training providers and the general public of what is expected of a newly qualified barrister;
- it has been successfully “road tested” with three academics and barristers who had no previous knowledge of the development work;
- the Board papers were dispatched in advance of the Education & Training Committee held on 19 March 2015. Some further amendments were recommended at that meeting ie:
 - ❖ revision of paragraph 9 to make clear the distinction between the Statement and the Code of Conduct
 - ❖ some re-ordering of paragraphs and typographical corrections;
 - ❖ an additional question concerning the above distinction and whether this is sufficiently clear;
 - ❖ revision of paragraph 14 making clear that barristers might use the Statement for their own CPD.

16. Members commented as follows:

- the Statement aims to describe our expectations of a newly qualified barrister. There is a difference between what might be aspired to at this point and what can realistically be expected in all cases. As currently written, the Statement could be said to reflect just the former rather than the latter;
- there should be further clarification on its purpose. We need to avoid any misinterpretation of it as a form of QASA that applies at the point of qualification. This is not its purpose;
- it might be helpful to use less directive language. For example, in describing the Statement (para 3 of the consultation document) we might say it represents what barristers should to *aim* to have. Likewise, the inclusion of imperatives throughout the document eg “must / will have”, “minimum standards” might be reconsidered;
- there is a question over assessment and enforceability. It is not clear how it links to the threshold required to pass pupillage. If the expectations of the Statement are aspirational in nature, then there may need to be a different document against which to assess completion of pupillage;
- paragraphs 14 and 15 of the consultation document relates the Statement to ongoing CPD requirements. This may be confusing, given the Statement is meant to set out all the competencies expected at day one of professional practice;

17. In response the following comments were made:

- the Statement is not unrealistic in its content, given it represents the views of a wide range of current practitioners and legal academics;
- it provides a welcome and practicable framework against which providers can organise training programmes;
- we should place a strong emphasis on high standards and expectations. Were this not the case, it might adversely affect the subsequent development of training pathways by providers and put educational standards at risk;
- other organisations, eg the Police, have greatly benefitted from such Statements which are now accepted as fundamental to training standards;
- enforcement action only applies to breaches of the Code - the Professional Statement falls outside of this. There may be some circumstances, however, when reference to it could be made for evidential purposes;
- chambers / pupillage training organisations will continue to sign off the competence of pupils. The threshold standards for this are not set out in the Statement, though this will provide the framework for their later development. Feedback from the consultation will help to inform this;

- the Statement is still only at consultation stage and different audiences (pupils, qualified barristers, training providers, academics) will each be able to contribute their views on its potential impact. We could segment the front end of the consultation by addressing specific questions to specific respondents.

18. **AGREED**

- | | |
|---|------------|
| a) to endorse the concept of the Professional Statement but to request that the text be revised to clarify its purpose. | STW |
| b) that the revised document uses language that is appropriate to make clear the aspirational nature of its content. | STW |
| c) that the revised document be circulated electronically to Members with a view to publication before May 2015. | STW |

Item 9 – Chair’s Report on Visits and Meetings – March 2015

BSB 026 (15)

19. The Board
- noted**
- the Chair’s report on visits and meetings.

Item 10 – Appointments to the Audit Committee

BSB 027 (15)

20. The Board
- noted**
- the appointment of Steve Carter and Stephen Whittle as independent members of the Audit Committee (a term of three years each, effective from 1 February 2015).

Item 11 – Director General’s Report

BSB 028 (15)

21. Vanessa Davies reminded Members that the advertisement for the recruitment of two barrister Board Members will be published on 29 March 2015.

AGREED

22. to note the report.

Item 12 – Any Other Business

23. None.

Item 13 – Date of next meeting

- 24.
- Thursday 26 March 2015.

Item 14 – Private Session

25. 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:

- Approval of Part 2 (private) minutes – 26 February 2015 (Annex A);
- Matters arising : QASA update;
- Part 2 Action points and progress – (Annex B);
- Introducing the Regulatory Risk Index and accompanying plan of work
- s69 order update;
- Fees and Charges policy;
- Update on work following the “Regulators’ Summit”; proposals for a legal services / regulation “think tank” style forum;
- Any other private business.

26. The meeting finished at 5.35 pm.

**BSB – List of Part 1 Actions
21 May 2015**

(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
13a (26 Mar 15)	amend the text of the 2015-16 business plan as advised at the meeting and publish the final version on the BSB website	Amanda Thompson	31 March 2015	01/04/15	Completed – published 1 April 2015
18a-c (26 Mar 15)	amend the text of the Professional Statement to clarify its purpose and circulate electronically to Members	Simon Thornton-Wood	by end April 2015	02/04/15	Completed – draft circulated by email and further comments received from Board Members
12b (26 Feb 15)	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	18/03/15	Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.
32b (23 Oct 14)	develop a set of indicators about the management of policy consultation documents such that the Board is properly informed, and at an appropriate stage, based on the subject and content under scrutiny	Vanessa Davies	before 27 Jan 15	12 /05/15 18 /03/15 17/02/15 20/01/15	On May agenda (private session) This work has been completed but has been held over to allow space for more pressing items on the March agenda. We propose to circulate them out of committee if for any reason the May agenda cannot accommodate them Indicators will be proposed at March Board meeting Draft indicators prepared by AT and on SMT agenda for 2 February

BSB – List of Part 1 Actions
21 May 2015
(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
5 a-b (23 Oct 14)	consult on change: insurance for entities once the entity regulation process is in operation	Ewen Macleod	before Mar 15	12/05/15	Consultation has been issued, closes on 30 June 2015
				18/03/15	Draft consultation to be reviewed by HBWG week of 23/3 and finalised before Easter.
				17/02/15	Work was reviewed by Handbook Working Group on 13 February and remains on track
				20/01/15	Work is on track
12c (21 Nov 13)	undertake a further review to the Standing Orders	Amanda Thompson / Chloe Dickinson	On hold	18/03/15	Governance to be discussed at April away day.
				13/05/14	New timeline needed to reflect decision to undertake fundamental review taken by the Board at the Awayday.
				11/02/14	Consideration to some principles to be given at April Awayday
				14/01/14	Work has commenced
16b (18 Jul 13)	gather feedback on accessibility of information on the BSB website about complaints	Amanda Thompson	before end Mar 14	18/03/15	Resources planning underway in order to finalise workplan for completion; proposal from contractor under review

BSB – List of Part 1 Actions

21 May 2015

(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
				17/02/15	Comms and PCD teams met on 23 January to progress work further; a technical issue on website structure is being resolved; new copy received and being reviewed
				09/10/14	Proposals from specialist group now received and being evaluated. Once services we will purchase have been agreed between PCD and Strategy and Communications, work will proceed.
				15/07/14	PCD members have met with one of the stakeholder group members (which specialises in ensuring people have the knowledge, confidence and skills needed to deal with law-related issues) to discuss how we make complaints information available. A work plan is now being developed.
				17/06/14	Progress on stakeholder work has been very limited given volume of other communications activity. Arrival of new Communications Manager will free up resources to focus on this again.
				13/05/14	Stakeholder session focused on understanding complaints system, reflecting stakeholder group's needs. Further activities being planned to complete this action.

BSB – List of Part 1 Actions
21 May 2015
(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
				11/03/14	Feedback will be sought at stakeholder session on 28 March.
				14/01/14	On track
				13/11/13	Stakeholder workshop held on 13 November dealing with QASA. Next session will be as below. Early indications are that engagement will be productive.
				17/07/13	Stakeholder workshop/seminar being planned to deal with communicating the work of PCD. Anticipate will be held before end of March 2014 but depends on stakeholder availability. Date will be confirmed when available.

Forward Agendas

Thursday 25 June 2015

- Insurance for single person entities: possible rule change
- Standard Contractual terms and CRR (private)
- Bar Council Standing Orders: Part III amendments
- Education consultations: Academic Stage, Vocational Stage and Pupillage FBT (public)
- New governance structure – update (private)
- COIC / BTAS Browne review – update
- BSB Member email accounts

Thursday 23 July 2015

- BSB Draft Annual Report for 2014-15
- PCD/PCC- Year End Report – 2014-15
- E&D Committee Annual Report
- Strategic Plan 2016-19 – first draft (private)
- Standard Contractual terms and CRR (public)
- New Governance structure proposals and implementation plan
- Future Bar Training – sign off Professional Statement
- Supervision report – high impact chambers (public)
- Fees and Charges
- Inns Conduct Committee Rules

Thursday 10 September 2015

- PRP Committee Annual Report
- Budget 2016-17
- 2016-19 Strategic Plan

Thursday 24 September 2015

- BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- GRA Committee Annual Report. Note: this paper will also include the annual report from the Independent Observer
- Provision of non-reserved legal services by employed barristers (non-authorised bodies)
- Review of provision of immigration advice and services
- Disciplinary Tribunal Regulations – approval of revisions

Thursday 22 October 2015

- Supervision Committee Annual Report
- Standards Committee Annual Report
- Finalisation of professional statement

Thursday 26 November 2015

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on the Equality Rules

Thursday 17 December 2015 (Board Away Day)

Thursday 28 January 2016

- Diversity data report
- Public and licensed access rules

Thursday 25 February 2016

- BSB Business Plan for 2016-17 and new Strategic Plan 2016-19
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

Thursday 17 March 2016

- Strategic plan 2016-19 - final

Longer term items (dates to note)

- *April 2016 – Approval of Future Bar Training LSB submission (changes to Qualification Rules, Academic Stage regulatory policy, Vocational Stage regulatory policy, Pupillage Stage regulatory policy)*
- *July 2016 – Approval of CPD regime changes (Part 2)*
- *October 2016 – Approval of CPD quality mark scheme proposal (Part 2)*

PRP Committee Report
- Including year-end report for 2014-15

Status:

1. For discussion and decision.

Executive Summary:

2. This paper provides a summary of the discussions that the PRP Committee had at its May 2015 meeting. The majority of the PRP's session was dedicated to scrutinising the performance against the 2014-15 Business Plan activities and budget. Under this umbrella, the Committee also reviewed progress against (post) TRIP activities and Bar Council (BC) Resources Group's (RG) Service Level Agreement (SLA) performance. The LSB's Strategy and Business plan was considered as well to see if there may be any impact on the BSB's plans for the year ahead.
3. The Business Plan performance review covers a wide range of information (see the dashboard in annex 1) relating to projects, financial position and performance measures, and it provides an assessment of achievement against our plans. This material will feed into the 2014-15 Annual Report publication, which the executive will shortly be drafting.
4. Overall, the BSB has progressed well against planned activities, although a number have had their timelines extended into the 2015-16 Business Plan. This has been achieved against the backdrop of a number of legal challenges (judicial reviews) and the drive to achieve a "satisfactory" rating against the LSB's Regulatory Standards Framework (RSF).
5. There have been a number of significant achievements, which will be canvassed in much greater detail in the Annual Report. This corporate publication will also cover both projects that we set out in our business plan and the considerable amount of business as usual work that we complete. A summary of a number of key achievements is set out in annex 4. Among those, some of the notable accomplishments include the start of Entity Regulation, recruitment of a new BSB Chair, the launch of Future Bar Training and the introduction of a Policy Development Framework.
6. The main areas highlighted in this report are:
 - a) A recent increased focus on top priorities, which has resulted in some activities being delayed or paused to enable resource to be focused on those top priorities;
 - b) Staff Turnover remains at 36%;
 - c) The PCD KPI missed its 80% target (actual performance: 69%);
 - d) The service level agreement with the Bar Council's Resources Group is operational, and performance levels are good;
 - e) Our financial performance¹ is summarised in the table below and PRP members noted that this is the best result the BSB has achieved with regard to spending against budget. The main drivers for the outturns are lower numbers of Qualifications Committee applications and BCAT fees, and an increased spend on consultants working on risk-based regulation.

¹ unaudited – also at the time of going to print, the accounts had not been closed

	2013-14				2014-15				2015-16		
	Actual	Budget	Variance		Actual	Budget	Variance		Budget	Variance ²	
	£k	£k	£k	%	£k	£k	£k	%	£k	£k	%
Income	1,605	1,755	-150	-9	1,606	1,816	-209	-12	1,875	369	14
Expenditure	4,925	5,361	436	8	5,163	5,313	151	3	5,438	-275	-5
<i>Total Staff Costs</i>	3,940	4,158	218	5	4,158	4,102	-57	-1	4,009	92	2
<i>Total Other Costs</i>	986	1,203	218	18	1,004	1,212	208	17	1,478	-266	-18

7. The PRP Committee has been working with the executive to compile a narrative in this performance paper to outline whether those activities that did not progress according to plan were caused by inadequate planning or by external shocks, and this has been incorporated into the commentary.
8. Reflecting upon the year, there are a number of lessons learned that we must look to improve upon for future plans, especially for the new strategic plan:
- a) There were a few activities that were knocked off track due to what could be considered as inadequate planning; for example:
 - (i) there were a number of occasions where our planning was over-optimistic and unrealistic. This came about for two primary reasons when setting timelines: insufficient thought about the impact other projects or workstreams would have and being optimistic about when resources would actually be available to complete the required work. Hindsight makes it easier to see these things but in many cases they were foreseeable if a bit more consideration had been given to the activity in question;
 - (ii) the policy and decision-making processes were more complex and time consuming than originally planned, but that complexity and time could have been foreseen, on the basis of previous experience; and
 - (iii) we did not always have the right resource in place at the right time and sometimes that was within our control;
 - b) We must continue to improve our forward planning and forecasting (particularly for income) and this must be borne in mind for the new strategy, strategic plan and future business plans. To assist with this, PRP members suggested it would be useful to have a better understanding of those activities that the BSB has close control over and those outside of the organisation's control, as well as those that are core activities and those that could be classed as "peripheral".
 - c) External factors often impact on our objectives, and we will need to better anticipate what others will do and also our response to those factors. We tend to try to accommodate extra demands when we should also consider saying that we will not do anything until we can properly plan and resource it. Stronger stakeholder engagement is likely to assist with this.

² on 2014-15 actual performance

Public – Part 1

9. The LSB's business plan contains a number of undefined areas, so it remains unclear whether the BSB may have to divert resources to respond to LSB initiatives (see further reading). The PRP Committee recommended however that the BSB's plans take into account some time and resource that may be needed for scoping exercises or responding to reports published by the LSB.
10. In relation to the TRIP "follow up" actions that were approved by the Board in July 2014, the PRP Committee noted that these are mostly on track; as was the performance of the BC's RG SLA.

Recommendations

11. Members of the Board are invited to:
 - a) **Note** the BSB's performance against the 2014-15 Business Plan and the key messages from the PRP Committee;
 - b) **Endorse** the conclusions drawn on 2014-15 in the Executive Summary and champion the improved approach to planning;
 - c) **Discuss** the key areas highlighted for 2014-15;
 - d) **Note** the achievements in annex 4;
 - e) **Provide** an early steer on the key messages for the 2014-15 Annual Report publication;
 - f) **Make recommendations** to the Executive or the PRP Committee as necessary.

Background

12. The 2013-16 Strategic Plan³ seeks to enable us to become a more modern and efficient regulator operating at a high level of effectiveness. It incorporates our efforts to improve our performance against the regulatory standards framework laid down by the LSB.
13. The five strategic aims outlined are to:
 - a) Implement specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the LSA2007;
 - b) Promote greater public and professional understanding of and support for our role and mission;
 - c) Set and maintain high standards of entry to and practice in a diverse profession;
 - d) Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market;
 - e) Strive for "best practice" as an organisation for those who work for us and those whom we serve.
14. The Business Plan for 2014-15⁴ outlined our key activities for the year, and was the second year of our Strategic Plan. It also set out our budget and staffing requirements.

Reporting process

15. On a quarterly basis, the Business Support Team gathers information, in liaison with the Senior Management Team (SMT) which reviews the activities in the Business Plan and provides progress updates. It is SMT members' responsibility to provide explanations for delays or overspends and the associated risks or impacts and how they are being addressed. Resources Group (RG)

³ Published in April 2013 (https://www.barstandardsboard.org.uk/media/1465505/bsb_business_plan_2013-14.pdf)

⁴ https://www.barstandardsboard.org.uk/media/1586437/bsb_business_plan_2014-15.pdf

colleagues provide the figures underlying the HR and IT performance data on a quarterly basis. The BSB's Contract Management Officer has quarterly meetings with the RG teams to see if the SLA Aims, Objectives and Deliverables are being met⁵.

16. The live document against which business activities are reported was last updated on 7 May 2015, whereas our performance indicators are for Year End only (as at 31 March 2015).

Areas for further consideration

17. Activities are reported in detail by exception. This means that only items which did not run to its budget, timetable or had other resourcing issues are highlighted below, and these have been listed below in the order that they appear in the 2014-15 Business Plan:

a) Handbook Review

- (i) We stated that we would develop and commence a review of the impact of the new BSB Handbook which came into force in January 2014, and in particular we would focus on barristers undertaking litigation. The TRIP Board subsequently agreed that the evaluation of the Handbook should take place later than this because a longer period of operation was needed to get meaningful results. The activity has been shifted into the 2015-16 Business Plan.
- (ii) Scoping work for the review has started with one workshop taking place involving the Regulatory Policy Department and the Research Team. The review needs to be scoped in line with the Regulatory Risk programme to take into account the desired risk-based and outcomes-focused approach. The PRP Committee noted that this was an example of where we had set a somewhat unrealistic deadline given what is required in order to conduct a meaningful review. The TRIP Board had also considered this point last year and recommended that this activity be pushed into outer years, so it may have been more appropriate to mark this project as “on hold” at a much earlier point in the reporting cycle.

b) Public and Licensed Access review

- (i) We set out to review our approach to public and licensed access, however it became necessary to prioritise the Standard Contractual Terms and Cab Rank Rule because of the undertaking given by the BSB to the LSB. The same small team had expertise in both matters but had insufficient capacity to undertake both pieces of work. Given the expertise required, this public and licensed access review could not be transferred to others to complete. The external commitment took precedence rather than this review. The activity has been moved into the 2015-16 Business Plan, when the required resources will be available.

c) Cab Rank Rule

- (i) The BSB's Business Plan includes consideration of a more general application of the cab rank rule. A call for evidence was issued in Q3, however the Board agreed that the further consultation should be narrowed with regard to the Cab Rank Rule and Standard Contractual Terms, and any wider issues have now been postponed into the

⁵ More information on the BC RG Service Level Agreement is available to Board members upon request.

2015-16 business year. The consultation was launched in March 2015 and the resulting action plan to determine a way forward will be crystallised by Q2 in 2015-16.

d) Licensing Authority application (ABS)

- (i) We aimed to have submitted a Licensing Authority application to the LSB by the end of Q2, however following the delays relating to Entity Regulation, there was a knock-on effect. A draft application was submitted to the LSB in December 2014, and the final application was submitted on 29 April 2015. Discussions with the LSB will continue into the new business year. Paragraph 29c below shows that expenditure has been re-phased to reflect the shift in the timetable. This delay reflects over-optimistic planning originally, where the time taken to work through the complexities, including with the LSB and MoJ, was underestimated.

e) Freedom of Information

- (i) We set out to develop a comprehensive plan for Freedom of Information compliance operation in 2015-16, however we received an indication that the BC/BSB would not be subject to such a regime before the general election. Most of the groundwork for the planning is well underway and staff resources have been reallocated appropriately. The de-prioritisation of this by the Ministry of Justice meant that we could also de-prioritise and use the resources on other projects.

f) External Relations Strategy

- (i) The BSB said that it would refresh its External Relations Strategy and develop a new tech/media strategy to support it. Several things meant that we did not complete as originally anticipated. There was a delay in starting this work due to staffing changes: a new Communications Manager commenced in post in June 2014. Time was needed before that new person would have been in a position to properly tackle this task. Another significant impact was the change of Chair of the BSB. Given the impact that a new Chair has on the external relations of the organisation, it was thought necessary to delay this work until the new Chair was settled into post. This will also coincide with thinking about the future direction of the organisation.

g) User Feedback Survey

- (i) We stated in the Business Plan that development and analysis of PCD User Feedback Surveys would be carried out. Meetings have taken place to properly scope the aims of the research. At the same time, we had been separately thinking about what we might do to learn about the experiences of consumers of barristers' services. When initially planned, we did not foresee the linkages between the consumer work and this project but as that became clear, it made more sense to delay to allow the research work to be scoped differently to gain a wider range of useful information if possible. The work is still under consideration and if prioritised as part of the risk and associated research work, will be undertaken in 2015-16 as part of the research strategy.

h) Intranet

- (i) We aimed to have developed and implemented a new intranet and that the first phase would be completed by the end of 2014-15. The Intranet project board agreed that there would be a short slippage on this because there was much more build and coding required than first anticipated, and more testing time was also needed. This meant that the launch date was delayed by a month, and the timeline slipped to amber. The project team included staff members that were new to the organisation and the complexity of our governance contributed to the length of time it took for this project. The intranet was successfully launched on the revised date of 29 April 2015 with a very positive initial reception from staff.

i) Complainant expectation management

- (i) We said that we would review the role of complainants in the BSB's enforcement process and a Project Initiation Document was prepared accordingly. The project team met with the Legal Services Consumer Panel for advice in October 2014, and began carrying out comparative research with other regulators and creating an action plan. Currently the project is on hold in the light of the overall governance review, and hence the delay was affected by unrealistic deadlines and thinking about dependencies.

j) PCD - Knowledge collection and dissemination

- (i) The Business plan stated that we would explore and implement ways in which staff could develop advocacy skills, which was really about the acquisition of new knowledge and skills by staff in PCD – as well as them disseminating knowledge with each other. The need for in-house advocacy skills has reduced as a result of the types of cases now going to Disciplinary Tribunals. Previously there were many more CPD or professional conduct cases on which more junior members of staff acted as advocates. This will continue to be considered in the future, but shows that we were not thinking through the consequences of decisions in one area (changes to the CPD monitoring) for our plans in other (acquisition of new skills and cost effective use of resources) as well as we could have done and should do going forward.

k) LETR

- (i) We aimed to complete a number of activities following the publication of the Legal Education and Training Review, eg finalise a competence statement, establish a baseline of market information, publish information on Bar Professional Training Course (BPTC) providers, and consult on the future structure of vocational training.
- (ii) We are currently consulting on the Professional Statement⁶. The BPTC report has been deferred to autumn 2015; this was because of the unanticipated complexity of task and risk associated with publishing incorrect data. The restructure of vocational training consultation goes out in Q1 of 2015-16.
- (iii) The original timelines have been revised into an overarching Future Bar Training (FBT) programme, which is now progressing in line with that revised plan. Revision was necessary because the original timeline was based on assumptions that the right kind

⁶ https://www.barstandardsboard.org.uk/media/1661549/professional_statement_consultation.pdf

of resources would be available at the right time. This proved to be an incorrect assumption, resulting in changes to the timing of this programme.

l) BCAT evaluation

- (i) The evaluation of the operation of the Bar Course Aptitude Test was due to be completed in Q3. Although we planned for an external research company to carry out the evaluation, there were performance issues with that external provider, meaning much of the work was eventually conducted in-house following termination of the provider's contract. This external factor delayed the publication and it is now due to be published in May 2015.

m) CPD

- (i) We committed to developing a new regime for CPD in our 2014-15 Business Plan. As reported previously, this project has been re-costed, re-designed, and the final implementation has been re-phased, with the new approach piloting in 2015 and 2016, with full implementation of the new regime from January 2017.
- (ii) In December 2014 executive responsibility for this activity passed from the Director of Education and Training to the Director of Supervision. This has enabled a better match of available resources to deliver the project – to a revised timeline. The project plan and governance has also been refreshed. The pilot process is now well underway, with a sufficient (albeit small) sample from the profession. Consultation will commence in June 2015.

n) QASA

- (i) Our Business Plan stated that we would complete the implementation of QASA (crime) and operate the scheme for approximately 5,000 barristers. Board members are aware that this has been subject to Judicial Review. Following hearings in the courts, the Supreme Court allowed the claimants to appeal against one aspect of the judgement of the Court of Appeal in relation to the Provision of Services Regulations but has refused the claimants permission to appeal on all other grounds – including whether the scheme compromised the independence of the advocate – on the basis that they had no real prospect of success. The Supreme Court Hearing focused on two things: whether QASA is an authorisation scheme under EU Provision of Services regulation; and whether QASA is a proportionate scheme. We will await the Supreme Court decision.
- (ii) While implementation could clearly not proceed while the matter remains subject to court proceedings, the Board agreed that some peripheral work could be undertaken due to the importance of the quality of advocacy to the public interest. This essentially meant things like ensuring that our knowledge of developments in other (non-regulator) activities was up to date and asking others if they would consider some quality assurance activities⁷.

⁷ <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/barristers%E2%80%99-regulator-asks-qca-to-consider-qc-re-accreditation/>

- (iii) This is a prime example of how external stakeholders have impacted upon our aims and objectives. Resources previously allocated to QASA have either been dispensed with or reallocated, however, to minimise any cost implications.
- o) Legal Advice Centres
- (i) We set out to review the BSB's treatment of legal advice centres and special bodies, and that new rules would be approved by the Board by Q4. This activity has been de-prioritised as other policy matters (such as Standard Contractual Terms and the Cab Rank Rule) have been given more urgency by the small staff team. At the time of planning, we had also anticipated that the LSB would be undertaking work on a similar timeframe, however, the LSB appeared to decide not to proceed with their work in 2014-15 meaning that a dependency no longer existed. While a contributing factor, it made the decision to prioritise the cab rank rule work a little easier to make.
- p) Knowledge management strategy
- (i) The Business Plan states that a knowledge management strategy would be implemented by Q3. A research strategy was drafted and the basic components of the knowledge management strategy were compiled. A key staff vacancy meant that the work could not be progressed as quickly as anticipated and it was also important for this work to be aligned with the Regulatory Risk workstream as they are so closely linked. The delay was caused by not having the right resource at the right time.
- q) Regulatory Risk Framework
- (i) Our aim for the first half of 2014-15 was to train staff in risk and implement a Risk Assessment Framework. The Regulatory Risk Manager joined the BSB in September 2014 and since then the BSB's Regulatory Risk Index has been developed. While much more work is required to fully craft and embed the entire framework, the injection of a consultancy resource and a concerted effort on the part of all staff has meant we have caught up with where we had planned to be by year end. As mentioned in paragraph 29i below, this area was unbudgeted so is showing in our management accounts as overspent. Our plans were un-costed and at the beginning of the year under-resourced, meaning that this activity suffered significant delays at the beginning of the year. The additional resource required has come at a cost but has been funded through underspends.
- r) Chambers Supervision
- (i) We set out to thematically review immigration practice as part of our supervision activities. It was agreed that a thematic review on conducting litigation should take priority over immigration. Also some changes were made to the way that the Supervision Department was structured in order to operationalise Entity Regulation, and strengthen the interconnectivity between authorisation and supervision staff. The project will commence shortly however we have not met the original timeline, partly because one key policy resource was unavailable. This unavailability is not a sufficient explanation as it could have been foreseen and we did not adjust quickly enough to that. This should be put in the context of the significant volume of work that has been completed on time and within budget in relation to our supervisory activity, with significant benefits being seen.

s) Governance Review

- (i) In our 2014-15 Business Plan the Board said that it would complete a review of its Standing Orders. The review of governance has been under consideration by the Board for most of the year but has yet to be resolved. Following the last LSB report on progress against the Regulatory Standards Framework, the Board has attached greater urgency to this aspect and activity has now been marked as high priority in the 2015-16 Business Plan.

t) Fees and Charges

- (i) We stated that all the BSB's fees and charges would be reviewed and any revisions to be included in our budget bid. The majority of fees have in fact been reviewed and these areas are now operating at full cost recovery.
- (ii) The reality of a strict application of the policy (particularly with regard to Qualification Committee application fees) revealed some concerns with it and so this matter was escalated to the Board for reconsideration of the principles underpinning the policy. We perhaps anticipated a much more straight forward process than was the case, although in this area, this is perhaps more a case of making a policy in abstract rather than with the benefit of fully understanding its impact. Application of the policy framework may have resulted in a different outcome, noting of course that the framework did not exist at the time the policy was originally agreed. The work will now slip over into the 2015-16 business year.

TRIP monitoring

18. Board members will recall The Regulatory Improvement Programme (TRIP) that helped to deliver the capability and capacity, and new ways of working, in order to become a more modern and efficient regulator. This programme launched us on the way to gaining a "satisfactory" rating against the LSB's Regulatory Standards Framework. The programme formally closed in June 2014, however the Board agreed some follow-up actions should be implemented. The PRP Committee was tasked with monitoring the progress of these actions and a full report⁸ was presented to PRP members at its May 2015 meeting, and a summary of that information is set out here.
19. Much of the TRIP follow-on work has been deliberately aligned with the activities that we set out in our Business Plan for 2015-16, so we have tried not to duplicate any commentary in this paper. The main points to bring to the Board's attention are: knowledge management, research and information systems (for our evidence base and consumer engagement); and integrating these areas with the regulatory risk and policy development frameworks to bring a more holistic approach to regulation and evaluation. On the knowledge management, research and information systems, the Board is asked to note that the Chief Information Officer did not come into post until September 2014. His arrival has seen a marked improvement in approach to the development of systems to support our work. The progress in risk and policy development has been covered in previous paragraphs.
20. As mentioned in the executive summary, some areas of work have been delayed or paused in order to focus on items of higher priority. Following the two-day workshop to look at a proposal for

⁸ Available to Board members upon request

meeting “satisfactory” in terms of regulatory risk, the SMT reviewed the RSF action plan in the light of the scope for the regulatory risk work. These residual activities will be consolidated into a programme of work currently being dubbed as “TRIP2”, which is being led by the Director of Supervision, with a similar set up to the first TRIP programme.

Professional Conduct Department (PCD) Performance Indicators

21. The total number of complaints that were concluded or referred in PCD fell from 400 in 2013-14 to 325 in 2014-15. The percentage of complaints that were concluded or referred within the service standards in 2014-15 was 11% off target (69% against a target of 80%). However, the targets were either exceeded, or nearly met, in relation to the standards for completion of investigations.
22. In contrast, the initial assessments stage did not meet the 80% target: the percentage of complaints that were concluded or referred to investigation within 8 weeks was 65% for the year. This was mainly because of staff changes: two assessment officers were replaced and one of these vacancies was carried for a period of time. The trend is likely to continue as the second table in annex 3 shows that there are a number of cases that continue to be “live” beyond the service standard of 8 weeks.
23. Board members will note in annex 2 that the income received from disciplinary fines has fallen from the previous year and this is partly due to the reduction of the number of cases and partly to the change in approach to CPD.

Corporate HR Indicators

24. The PRP Committee received an HR Dashboard that displayed a number of Corporate HR Indicators; from leavers, to sickness and turnover.
25. There were 9 leavers during Q4, bringing the year-end total to 27; the same number of leavers that the BSB had in the previous 12 months, hence turnover remains at 36% but is stable as compared to last year.
26. The average number of days lost to sickness was 6.7 in 2014-15, a reduction from 8.5 days in 2013-14; however there is some concern about accuracy of the data as notifications about sick days are not made as timeously as required. There may also be an element of under-reporting.
27. The PRP Committee discussed how leanly resourced the BSB continues to be for all of activities it is tasked with, and a small number of vacancies can have a compounding effect on the organisation’s ability to deliver. Coupled with this, we now have a number of highly specialist and technical regulatory roles, which in London, are greatly sought after in the professional regulatory market. As mentioned in the executive summary, this limitation must be considered as part of the organisation’s planning exercises.

2014-15 Budget

28. Below are the headline figures for 2014-15 year-end, further detail can be found in annex 2:
 - a) In the year ending 31 March 2015, the BSB received £1,606k in income against our budgeted projection of £1,816k (-12%), mainly due to the shortfall in Qualifications Committee applications and BCAT fees. In 2015-16, we are projecting a higher level of income (£1,875k).

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- b) We spent £5,163k against our budget of £5,313k (+3%). In 2015-16 our expenditure budget is increased (£5,438k) largely due to the programme of work to implement the necessary changes to reach a satisfactory rating for the LSB's Regulatory Standards Framework (dubbed "TRIP2").

29. The key budgetary pressures and challenges have been described below, and the commentary attempts to explain significant under- or overspends against our planned budget which have been marked in the annex with a cross-reference.

a) Education and Training

- (i) The number of Bar Course Aptitude Test (BCAT) applications was down ~20% on 2013-14, meaning that we generated £179k against a budget of £260k creating a shortfall of £81k. At first glance, it looks like a similar trend has been experienced across the market. Next year's projection is set at a much more modest level of £163k.
- (ii) This was offset by the overachievement of revenue relating to CPD accreditation (£277k). We recently moved to a new scheme of authorising providers (rather than individual courses) and it is operating at full cost recovery. We also noticed a growth in the number of CPD providers. Next year we are only predicting £115k as there are further changes planned to the CPD regime which, if implemented in line with current policy, will decrease this line of income.
- (iii) The Bar Transfer Test (BTT) is another area that generated more income than we forecast (+£36k var). PRP noted that there was a spike of foreign lawyer applications received in 2013 by the Qualifications Committee and these numbers then fed through into 2014-15 causing a short-term boost in the number of BTT candidates. Next year's forecast is set at what we consider to be a more usual level (£37k).
- (iv) There was no revenue budget set for the Forensic Accounting course that is provided by BPP. Through our contract management improvements and reviewing the agreement in place, we were able to recover some per capita costs dating back to 2008 (£48k). An interim arrangement is in place which will generate £7kpa going forward.
- (v) We over-budgeted for Bar Professional Training Course (BPTC) examiner fees and expenses; we predicted costs of £92k but only paid out £68k. We are currently reducing the number of examiners and we are also embedded a number of improvements to the invoicing process. We will need to review the budget for 2015-16 which has been set at £105k.

b) Qualifications Committee applications

- (i) The number of Qualification Committee applications processed has decreased significantly compared to those received in 2013. Also the number of applications for the right to conduct litigation was much fewer than originally projected. This resulted in a £135k shortfall in revenue.
- (ii) PRP members were asked to scrutinise the numbers and types of applications being submitted as well as some possible reasons behind the trends, as this is so closely linked with the Fees and Charges review. There will continue to be some policy issues

that need to be teased through before the fees for these applications are reviewed and revised.

- (iii) In addition, some governance adjustments were actioned relating to the Qualification Regulations team in order to allow the executive to make decisions instead of the Committee and panels. It was envisaged that there may be some costs associated with these changes, however these have not been (and will not be) needed and there will be a £17k underspend in the “other costs” budget line.

c) Entity Regulation

- (i) As mentioned in paragraph 17d above, following the delays to the Entity Regulation timeline, we only started receiving applications from January 2015, and we are now taking decisions on these. As at the end of the reporting year, we had received 88 expressions of interest, 20 applications from “single person” entities, and 1 application from a “2-5 person” entity. The delay has meant that in the first three months of operation, we only received £3k in fees (-£47k), and there is still some uncertainty on our forecast for 2015-16 of £255k (~400 applications).
- (ii) To offset this, the delays caused to the Entity Regulation and Alternative Business Structures (ABS) programmes meant that expenditure was also delayed. We had projected that we would spend £125k in 2014-15, however this has been re-phased pushing the planned expenditure into outer years, leaving the “other costs” budget underspent by £72k.

d) QASA

- (i) The judicial review appeals process continues (see paragraphs 17n above and 29e below), meaning we did not spend the 2014-15 QASA operational budget. Staffing changes and redeployments were carried out to reflect the current situation. This led to an underspend of £113k, and in addition we did not receive any income in 2014-15 in this area (-£56k), nor have we predicted to do so in 2015-16.

e) Legal fees

- (i) The Hemming Case⁹ considered whether licensing authorities can charge a licensee for the costs of taking action against those who are not licensed, as well as for the costs of processing that licensee’s own application. The BSB has an interest in this case and has obtained legal advice at a cost of £42k in the 2014-15 financial year. The Supreme Court decision was received on 29 April 2015 and was favourable in that the rationale means our fees are lawful. There will be no need for any further legal fees to be incurred in relation to it.
- (ii) We also spent legal fee funds on the QASA judicial review, advice for entity regulation, and advice on Subject Access Request relating to complex PCD cases. In total we spent £149k on legal advice and counsel against budgets of £57k; the 2015-16 budgets are set at an increased level of £135k.

⁹ <http://www.bailii.org/uk/cases/UKSC/2015/25.html>

f) Staffing

- (i) In total there is a staff overspend of £57k against a staff budget of £4,102k; a variation of under 1.4%. The main over- and underspent areas are described below.
- (ii) In the Strategy and Communications department, additional resource has been put in place to cover extra communications work for the Future Bar Training, Entity Regulation and Stakeholder Engagement programmes of work, meaning that the staffing budget was £49k overspent. In the Education and Training Department, an additional manager was recruited to support the FBT project and to cover a separate vacancy; the associated staffing budget was overspent by £52k. Temporary members of staff were recruited in the Professional Conduct Department to help with the complex and voluminous Subject Access Requests work.
- (iii) Some of the overspend was offset by vacancies in other budget areas, and as mentioned above in paragraph 25, turnover remains high. Some of the restructuring work and the costs associated with coming to a mutual agreement with a small number of the BSB's leavers meant that an unbudgeted ~£40k was posted to staffing accounts.

g) Research

- (i) Funds for market and consumer research were not spent to the levels expected due to the team needing to focus on other data quality activities that arose earlier in the year. This, combined with staff vacancies, meant there was insufficient capacity to undertake more externally commissioned work. There was also a need to align the activities with the regulatory risk work and to ensure there were funds available to do that work. Given the closely alignment between risk and research, this underspend was earmarked to contribute to the costs of the regulatory risk work.

h) Outsourced casework

- (i) The Professional Conduct Department has been dealing with some very complex and lengthy cases that have appropriately been outsourced. It is very difficult to predict the level of external support needed. Originally we had budgeted £20k for such requirements, however we had spent £53k by year-end and only have £30k in the budget for 2015-16.

i) Regulatory Risk

- (i) In 2014-15, the regulatory risk consultants' contract had a total cost of £204k. This activity was unbudgeted at the beginning of the year and was afforded through a number of underspends, mainly in the research budgets (see paragraph 29g above). The contract has been extended to finalise the programme of work and a further £142k is expected to be spent in 2015-16; this is a priority area in the 2015-16 Business Plan.

j) Supervision

- (i) The budget was set on the basis that external resource would be used for supervision visits, however they were (and are) being carried out in-house, resulting in a £20k underspend.

Resources Group (RG) - Performance against the Service Level Agreement

30. The PRP Committee has overseen the development of the BC's RG SLA, which includes a number of aims and objectives (service levels), as well as deliverables (projects)¹⁰. The BSB's Contract Management Officer met with each RG team in April 2015 and rated each of the objectives as "met" or "not met". The PRP Committee noted that overall, the service level agreement is working well and the aims and objectives are on the whole being met.
31. The Records Office (performance at 82%) is the team that administrates Authorisation to Practise (collection of the practising certificate fees), and keeps the core database up to date and maintained (for barrister, chambers and entity records). In order to be able to carry out their duties effectively, Records team members need to have a detailed understanding of regulatory requirements and to keep abreast of any revisions; training sessions with the Regulatory Policy Department have been carried out to assist with this. As gatekeepers of the professions' records, they are from time to time required to extract simple sets of data. Since the introduction of the core database two years ago, the role and responsibilities of the Records Office has changed markedly. One particular deliverable for the 2015-16 business year, is to fundamentally review the team function and put improvements in place before the next round of Authorisation to Practise. The review will be overseen by the Director General of Bar Standards Board and Chief Executive of the Bar Council.

Next steps

32. Using all of this information, the executive will now begin drafting the 2014-15 Annual Report which will of course focus on our achievements in both business as usual and key projects, while also addressing the areas where we have slipped. PRP members will be overseeing the crafting of this corporate document at its single-issue meeting on 18 June 2015. Board members' views on the key messages that should be threaded through the publication are welcomed. The document will also include an update on the Strategic Plan KPIs.
33. In the Annual Report we intend to write candidly about the assessment of our performance, and as per the Executive Summary we will reflect upon why our objectives did not always go according to plan. This will be vitally important as we go into the next strategic planning cycle and this will provide us with a timely opportunity to embrace the lessons learned as detailed in the Executive Summary. To strengthen our Annual Report commentary we will also be setting out how we intend to improve our planning and forecasting mechanisms; for example, being clearer about what we are in control of; putting in place measures to provide us with earlier indications of when the future might disrupt us; clarifying what is considered "core" and "periphery". As a leanly resourced organisation, we must plan accordingly and build in "buffer" time; this will help to manage expectations, give some leeway on making important decisions, and ensure that we can align the right resource with priorities. Horizon scanning and stakeholder engagement are key exercises that must be given prominence so that we can prepare for, and cushion ourselves against, external shocks. Arguably the biggest improvement that we can, and should, make is to have a more detailed granular focus on our resourcing and dependencies.
34. The BSB published its 2015-16 Business Plan¹¹ in April 2015. This sets out the activities and budget that the PRP Committee and the Board will be monitoring on a quarterly basis this year. The associated Q1 performance report is due on 10 September 2015. The PRP Committee was

¹⁰ Further SLA information is available to Board members upon request

¹¹ https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf

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concerned that the number of activities not completed in the 2014-15 business year will continue to be worked upon in the current reporting year creating a “bow wave” effect. The executive has reviewed this matter and can provide assurance that the prioritisation completed in January and February 2015 meant the final year of the 2013-16 Strategic Plan has enough flexibility to absorb the delays, and the 2015-16 Business Plan captures the BSB’s workload as accurately as it can. The Committee also requested that the BSB has better insight into the trends from quarter to quarter, so the executive will be working on displaying this information with more clarity in the dashboard. Coupled with this the executive will also factor in the ‘weighting’ of Business Plan activities so that those larger scale and critical projects are given higher prominence than important short and quick tasks.

Equality Analyses

35. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our status against various E&D measures.

Risk implications

36. Board members will see in the private papers for part 2 the corporate risk register report (BSB paper 041), which set out the perceived risks that could prevent us from achieving our corporate objectives.

Regulatory objectives

37. Delivery of Strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

Publicity

38. The 2014-15 Annual Report will have a communications plan that will be implemented at the time of publication.

Impacts on other teams / departments or projects

39. Cross cutting - The Business Plan outlines the most significant projects being undertaken by the BSB and all Departments have provided updates which have been fed into this report.

Consultation

40. Due to the cross-cutting nature of the areas addressed in this report, wide consultation has been held with members of the SMT, RG and PRP Committee.

Annexes

41. Annex 1 – Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators, and long-standing cases
Annex 4 – Summary of achievements
Annex 5 – LSB business plan analysis (further reading – circulated separately)

Lead responsibility

Vanessa Davies, Viki Calais

Year End Dashboard									
(Shaded areas are the key changes since the Q3 Performance report)									
Business Plan Activities (2014-15)				Service Standards (Core activity)					
	Time	Budget	Staff	Professional Conduct Indicators			Q4	YE	Target
Aim 1: Implement specialist regulatory regimes									
Handbook review	⊗	✓	✓ (see para 17a)	KPI - % of complaints concluded or referred to disciplinary action within service standards			45%	69%	80% ⊗
Public and licensed access review	⊗	✓	✓ (see para 17b)	OPI - % of complaints concluded or referred to investigation within 8 weeks			36%	65%	80% ⊗
Cab rank rule consideration	⊗	✓	✓ (see para 17c)	OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation			86%	84%	80% ✓
Entity authorisation / Licensing Authority app.	⊗	✓	⚠ (see para 17d)	OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation			78%	75%	80% ⚠
Enforcement regime for entity regulation	✓	✓	✓	Qualification Committee Applications					
Aim 2: Public & professional understanding of our role and mission				Time take to determine applications from receipt of the complete application:			Q4	YE	Target
Freedom of Information compliance	⚠	✓	✓ (see para 17e)	Up to 6 weeks			83%	84%	75% ✓
External Relations strategy	⊗	✓	⚠ (see para 17f)	6 to 12 weeks			99%	100%	98% ⚠
User feedback surveys	⊗	⚠	✓ (see para 17g)	Over 12 weeks			1%	1%	0% ⚠
Intranet implementation	⚠	✓	✓ (see para 17h)	2014-15 Year end performance against budget					
Complainant expectation project	⊗	✓	✓ (see para 17i)	2015-16 Budget					
Knowledge collection and dissemination	⚠	✓	✓ (see para 17j)	Act	Bud	Var	Bud	Var	
Aim 3: High standards of entry to and practice in a diverse profession				Income	£1,606k	£1,816k	-£209k	£1,875k	+£269k
LETR	⊗	✓	⚠ (see para 17k)	Expenditure	£5,163k	£5,313k	+£151k	£5,438k	-£275k
BCAT evaluation	⚠	✓	✓ (see para 17l)	Staffing			HR		
Academic Stage review	✓	✓	✓	2014-15	2013-14		2014-15	2013-14	
BPTC (applications process)	✓	✓	✓	Sickness (days/FTE)	6.7	8.5	Recruitment times (approval to start date (weeks))	10.1	13
CPD regime development	⊗	⊗	✓ (see para 17m)	Sickness (long term)	1.6	N/A	Turnover (%)	36%	36%
Qual. Committee delegation proposals	✓	✓	✓	IT Response times			Corporate Risk Register		
Litigation business process review	✓	✓	✓	2014-15 (YE)			26 Feb 15		
QASA	⊗	⊗	⊗ (see para 17n)	Response to high priority calls	100%	✓	Likelihood		
Legal advice centres / special bodies	⊗	✓	✓ (see para 17o)	Response to medium priority calls	99%	✓	16 Impact		
Youth Courts	✓	✓	✓				13 May 15		
Aim 4: Evidence- and risk-based in all we do							Likelihood		
Knowledge management strategy	⚠	✓	⊗ (see para 17p)				16 Impact		
Policy development framework	✓	✓	✓						
Performance management software	X	X	X						
Regulatory Risk Framework - training	⊗	⊗	⊗ (see para 17q)						
Complaint costings	✓	✓	✓						
Chambers supervision	⊗	⚠	✓ (see para 17r)						
International Strategy	✓	✓	✓						
Aim 5: Best practice as an organisation									
Contract management	✓	✓	✓						
Internal Comms Strategy	✓	✓	✓						
New Chair & Board member recruitment	✓	✓	✓						
TRIP	✓	✓	✓						
Governance	⊗	✓	✓ (see para 17s)						
Fees and charges review	⊗	✓	✓ (see para 17t)						
Standard of proof review	X	X	X						
				Service level agreement with BC (Resources Group)			% of aims and objectives met		
				Project Management Office	97%	✓	HR	90%	⚠
				Records Office	82%	⊗	Facilities Management	99%	✓
				IT	95%	✓	Finance	98%	✓

BSB SUMMARY
YEAR END REPORT

	2013/14	2013/14	2013/14		2014/15	2014/15	2014/15 Actual		2015/16	2014/15 Actual		Board paper reference
	YE	YE	YE		YE	YE	vs			vs		
	ACTUAL £k	BUDGET £k	VAR £k	VAR %	ACTUAL £k	BUDGET £k	2015/16 Actual	VAR %	BUDGET £k	VAR £k	VAR %	
Income												
Professional Conduct	53	0	53		38	0	38		0	-38		Fewer cases
Assessments	192	0	192		181	262	-81	-31%	163	-18	-11%	Para 29a) Fewer BCAT candidates
Education and Training	1,046	910	136	15%	1,133	1,061	72	7%	977	-156	-16%	Para 29a) Fewer BPTC candidates; growth in CPD providers; one-off spike for BTT; new Forensic Accounting income.
Qualifications	314	237	77	32%	251	386	-135	-35%	477	226	47%	Para 29b) Decreased demand re QC apps; fewer Litigations apps
Entity Regulation	0	120	-120	-100%	3	50	-47	-94%	258	255	99%	Para 29c) Delay in ER; fewer ER applications
Supervision	0	0	0		1	0	1		0	-1		
QASA	0	487	-487	-100%	0	56	-56	-100%	0	0		Para 29d) QASA delayed
	1,605	1,755	-150	-9%	1,606	1,816	-209	-12%	1,875	269	14%	
Expenditure												
Executive	644	645	1	0%	696	638	-59	-9%	629	68	11%	
Staff Costs	581	574	-7	-1%	602	593	-9	-2%	557	45	8%	
Other Costs	63	71	8	11%	95	45	-50	-110%	72	23	31%	Para 29e) Legal Fees; mainly for QASA, Hemming and Entity Regulation
Strategy and Comms	834	895	62	7%	708	792	84	11%	852	-144	-17%	
Staff Costs	648	653	4	1%	586	537	-49	-9%	548	38	7%	Para 29f) Additional post (FBT/ER/Stakeholder Engagement), also recruitment for 3 positions
Other Costs	185	243	57	24%	122	254	132	52%	304	-182	-60%	Para 29g) Research monies not spent to offset Regulatory Risk overspend
Professional Conduct	1,396	1,412	16	1%	1,351	1,266	-85	-7%	1,269	82	6%	
Staff Costs	1,148	1,175	27	2%	1,141	1,096	-45	-4%	1,060	81	8%	Para 29f) Costs for leavers and temporary staff
Other Costs	248	237	-11	-5%	210	170	-40	-24%	209	1	0%	Para 29e and h) Outsourced casework for complex cases; legal fees for SARs
Assessments	473	429	-43	-10%	423	435	12	3%	421	2	1%	
Staff Costs	350	379	29	8%	309	304	-5	-2%	156	153	98%	
Other Costs	122	50	-72	-144%	114	131	17	13%	265	-151	-57%	
Education and Training	472	456	-16	-4%	551	583	32	6%	455	95	21%	
Staff Costs	308	283	-25	-9%	400	348	-52	-15%	348	52	15%	Para 29f) Recruitment in E&T and additional post in FBT
Other Costs	164	173	9	5%	151	235	84	36%	235	-84	-36%	Para 29a) Overbudgeted for CPD and FBT (work undertaken in-house). BPTC examiner payments lower
FBT	0	0	0		0	0	0		175	-175	-100%	
Staff Costs	0	0	0		0	0	0		78	-78	-100%	
Other Costs	0	0	0		0	0	0		97	-97	-100%	
Qualifications	231	241	11	4%	296	320	25	8%	314	-18	-6%	
Staff Costs	189	192	2	1%	273	281	8	3%	278	-5	-2%	
Other Costs	41	50	8	17%	23	39	17	42%	36	-13	-37%	Para 29b) Governance changes carried out in-house
Regulatory Policy	337	393	56	14%	503	361	-141	-39%	703	-201	-29%	
Staff Costs	280	356	76	21%	289	346	58	17%	539	-250	-46%	Para 29f) Staff vacancies carried through the year
Other Costs	57	37	-20	-53%	214	15	-199	-1334%	165	49	30%	Regulatory Risk work - external consultants
Entity Regulation	134	275	141	51%	145	213	68	32%	183	-38	-21%	
Staff Costs	37	98	61	62%	92	88	-4	-5%	129	-37	-29%	
Other Costs	97	177	80	45%	53	125	72	58%	54	-1	-2%	Para 29c) Delay in ER and ABS regulation
Supervision	320	401	81	20%	316	383	67	17%	436	-120	-28%	
Staff Costs	313	333	20	6%	301	299	-1	0%	395	-94	-24%	
Other Costs	7	68	61	90%	16	84	68	81%	42	-26	-63%	Para 29g and j) Research monies not spent; Chambers monitoring carried out in-house rather than panel members
QASA	86	214	127	60%	89	202	113	56%	0	89		
Staff Costs	85	115	30	26%	89	104	15	14%	0	89		Para 29f) QASA delayed
Other Costs	1	98	97	99%	0	98	98	100%	0	0		Para 29d) QASA delayed
Equality and Diversity	0	0	0		85	121	37	30%	0	85		
Staff Costs	0	0	0		77	105	28	26%	0	77		Para 29f) Staff vacancies carried through the year; maternity
Other Costs	0	0	0		7	17	9	55%	0	7		
	4,925	5,361	436	8%	5,163	5,313	151	3%	5,438	-275	-5%	
Total Staff Costs	3,940	4,158	218	5%	4,158	4,102	-57	-1%	4,009	92	2%	
Total Other Costs	986	1,203	218	18%	1,004	1,212	208	17%	1,478	-266	-18%	

PCD Performance Indicators

PCD Measure		2014-15					
		Q1	Q2	Q3	Q4	YE	Target
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	79%	80%	75%	45%	69%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks *	83%	82%	70%	36%	65%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	57%	91%	94%	86%	84%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	63%	77%	81%	78%	75%	80%

* Staff vacancies is the main reason for the dip in Q4 performance (see paragraph 22 in the cover paper)

Long Running Cases

Snapshot at the close of Q4 of 2014-15

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	102	31	30%
External Investigation (8 months)	57	8	14%
Internal Investigation (5 months)	98	26	27%
Total	257	65	25%

Performance Report for Year-End - Achievements

Strategic Aim 1 - Implement our specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the LSA 2007

Strategic Aim 1 - Achievements

Entity Regulation: new regulatory framework completed; commenced receipt and processing of of entity applications

Entity Enforcement Strategy: the strategy has been designed, policy documents developed and staff members have been trained.

Strategic Aim 2 - Promote greater public and professional understanding of and support for our role and mission.

Strategic Aim 2 - Achievements

FoI: Much of the groundwork to ensure Freedom of Information compliance has been carried out.

Intranet: The system is in place and is being tested and content has been designed; “verity” went live on 29 April (only a month later than planned).

PCD Knowledge: there is an internal interactive comprehensive policy and guidance manual in place which will soon be fully integrated with the intranet; this ensures that relevant knowledge is collected and disseminated through the department.

Strategic Aim 3 - Set and maintain high standards of entry to and practice in a diverse profession

Strategic Aim 3 - Achievements

BCAT Evaluation – The BCAT evaluation has been completed, much of it in-house, and a report is due to be published shortly.

Academic Stage Review – The Law Benchmark Statement (owned by QAA), has been reviewed and is currently out for consultation

BPTC application process – the new provider admissions system went live in November 2014.

Qualifications Committee applications approvals – some powers have successfully been delegated to staff members

Litigation Authorisation review – a report was produced to review the levels of uptake and the types of application being received.

Youth Courts – the majority of the Youth Courts research work has been completed and a report will be published in the next couple of months.

Strategic Aim 4 - Become more evidence-and risk-based in all we do, taking into account also the globalised legal services market.

Strategic Aim 4 - Achievements

Policy Development Framework: The new framework has been introduced.

Risk Assessment Framework: staff have been trained in risk and these sessions were used to develop and refine the BSB Regulatory Risk Index.

Cost of Complaints: a time recording methodology has been adopted in the PCD department.

Supervision of Chambers: A supervision return exercise was completed for high impact / high risk chambers.

International Strategy: a draft strategy and memorandum of understanding are being considered by Chair and Vice Chair.

Strategic Aim 5 - Strive for "best practice" as an organisation for those who work for us and those whom we serve.

Strategic Aim 5 - Achievements

New Chair and Board members: Sir Andrew Burns KCMG, Andrew Mitchell QC, Adam Solomon recruited and inducted onto the Board.

The Regulatory Improvement Programme (TRIP) was delivered and TRIP2 has been instigated

Contract Management: a new contracting manual has been drafted and a new register is in place to help monitor and manage all of the BSB's contractual arrangements.

Internal Communications Strategy: The strategy was designed and is being implemented through channels such as knowledge sharing sessions

Fees and Charges: The majority of the BSB's fees have been reviewed and are now operating at full cost recovery; qualifications committee fees remain outstanding.

Proposed BSB Equality Objectives 2015-16

Status

1. For approval.

Executive Summary

2. The Equality Act 2010 requires public bodies to publish equality objectives annually commencing on 6 April 2012. Objectives must be re-published at intervals of not greater than four years following the date of first publication.
3. Following Board approval in March 2012 the BSB published 10 equality objectives on 1st April 2012. In line with the approach outlined in the BSB Equality Strategy 2013-16, the objectives are reviewed annually each April and republished. In May 2014 the Board approved 5 equality objectives for publication.
4. The table at annex 2 provides a progress update on the BSB's 2014-15 equality objectives. Two objectives have been achieved, the actions under one objective were completed but the target was not achieved and two objectives (numbers 1 and 4) are currently still in progress. The outcomes from the current objectives have helped to inform the creation of the new objectives.
5. This paper recommends that all completed objectives are transferred from the current published list to an archive list and that the BSB adopts eleven new equality objectives with four overarching aims, as set out in detail in annex 1. The work on formulating these new objectives has been led by the Equality and Access to Justice Team and the Equality and Diversity Committee (EDC). The priority areas in which the objectives have been formulated have been identified through analysis of recent key pieces of BSB research including the 2014 Diversity Data Report and the 2013 Biennial Survey. The Board is asked to consider the proposed aims and objectives and approve them for adoption and publication by the BSB for the period 2015-16.

Recommendations

6. That the Board:
 - **approves** the transferral of all completed equality objectives from the current published list to an archive list;
 - **approves** the incorporation of ongoing objectives to 2015-2016 equality objectives;
 - **approves** the four aims and eleven new objectives in Annex 1 for publication.

Summary of Legal Requirements

7. The Equality Act 2010 Specific Duties Regulations 2011 came into force in September 2011. The regulations require that listed public authorities prepare and publish one or more objectives which it thinks it should achieve to meet any of the arms of the general equality duty (s.149 Equality Act 2010). The general duty requires public bodies to pay due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation;
 - Advance equality of opportunity between different groups; and
 - Foster good relations between different groups.

8. The Act stipulates that the objectives must be published not later than 6th April 2012 and subsequently at intervals of not greater than four years beginning with the date of last publication. The BSB will review and re-publish its objectives on an annual basis beginning in April 2013, as outlined in the BSB Equality Strategy.
9. In April 2015 the EDC were provided with a 12-month progress review of the 2014-15 objectives and were given the opportunity to consider, at the committee meeting and via email, the new equality objectives for publication in 2015-16. The committee approved the new aims and objectives for submission to the Board.

Background

Current equality objectives 2014-15 (Annex 2)

10. Objective number 1 – to undertake qualitative research into the underrepresentation of women at the Bar in order to evaluate the effectiveness of the Equality Rules- was placed on hold until the Bar Council published their research into women's experiences at the Bar.
11. Objective number 2 – Review the number of reports of harassment and bullying – the BSB collected a low number of reports of bullying and harassment and therefore will continue to focus on this work in the new objectives.
12. Objective number 3 - Increase the completion of diversity monitoring forms from the barrister profession – We will be continuing focus on this work and continue to aim for 30% across all protected characteristics collected.
13. Objective number 4 – to achieve 100% return of diversity monitoring forms from the Board and all Committee members - was also placed on hold until after the governance review and because of changes in HR.
14. Objective number 5 – to improve diversity of the BSB Board and its Committees – action was taken to add the “Two Ticks” logo and equal opportunities strapline to all vacancies for the Board and Committees and the Board appointed an accredited independent panel for the recruitment processes to ensure fairness.

Recommended new equality objectives for 2015-16

15. It is recommended that four overarching aims and eleven new equality objectives are published by the BSB for the period 2015-16. The full details of these objectives are in annex 1.
16. The proposed aims and objectives were presented to the BSB Senior Management Team (SMT) in May 2015. The SMT agreed that the eleven proposed objectives are achievable within the current agreed departmental budgets and work plans. The proposed aims and objectives were discussed by the BSB Equality and Diversity Committee in April 2015 and the objectives were approved for submission to the Board.

Publication and promotion

17. Following approval by the Board the aims and objectives for 2015-16 will be published in the Equality and Diversity section of the BSB website and replace the published list of equality objectives for 2014-15. The aims and objectives will be publicised to the profession and the public through the BSB “Regulatory Update” monthly email newsletter and the BSB Twitter feed.

Financial implications

18. The proposed equality aims and objectives will be included in the BSB Equality Strategy 2013-16 which is aligned with the BSB Strategic Plan 2013-16. The cost of undertaking each equality objective will be met by departmental budgets as the priority areas in which objectives have been developed have been agreed with the BSB Director General and BSB Senior Management Team.

Equality Impact Assessment

19. It is not considered that the aims and objectives will have any adverse impact on equality because they have been designed to promote and advance equality and diversity. Therefore an Equality Impact Assessment is unnecessary.

Risk implications

20. Best practice dictates that public bodies should review and re-publish their equality objectives annually. Failure to do so could lead to reputational issues for the BSB.

Regulatory objectives

21. The equality aims and objectives relate directly to the BSB’s regulatory objectives, as defined in Section 1 of the Legal Services Act 2007, namely objective 1 (f): “encouraging an independent, strong, diverse and effective legal profession” and strategic aims set out in the 2013-2016 BSB strategic plan.

Annexes

22. Annex 1 – Proposed Equality Objectives 2015-2016
Annex 2 – Progress Update 2014-2015.

Lead responsibility:

Rolande Anderson – EDC Chair
Amit Popat – Policy Manager (Equality and Access to Justice)
Sarah Charlesworth - Senior Policy Officer (Equality and Diversity)

May 2015

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

BAR STANDARDS BOARD – PROPOSED EQUALITY OBJECTIVES 2015-2016

- The BSB Business Plan commits to identifying and addressing equality issues at the Bar and in our complaints processes as part of our work to become more evidence-and risk-based in all we do. It aims to improve access routes to the Bar through future policy on education and training and develop our engagement with the public and consumers (strategic aims 2, 3 and 4).
- These aims and objectives have been designed to encourage an independent, strong, diverse and effective legal profession and improve access to justice as set out in the regulatory objectives in the Legal Services Act 2007.

Aim 1. Analyse the effectiveness of the Equality Rules				
Equality and Diversity Objectives	Evidence (Reasoning for Objective)	Equality Strategy Reference	Actions	Completion Date
1. Research the impact the Equality Rules have had on Women at the Bar.	<p>Women are currently underrepresented at the practising Bar, compared to those training to become a barrister. The number of women at the Bar decreases sharply after 12 years of being called to the Bar.¹</p> <p>The Equality Rules in the BSB Handbook were introduced, in part, to support the retention and progression of women.</p>	<p><i>Retention of women at the self-employed Bar.</i></p> <p><i>Underrepresentation of women at QC level.²</i></p>	<ul style="list-style-type: none"> Review the Bar Council's report into women's experiences at the Bar and consider what areas the BSB should focus on. Conduct qualitative research based on the areas identified. 	<p>July 2015</p> <p>Dec 2015</p>
2. Review the results of the new approach taken to Supervision and highlight any actions needed.	<p>The Supervision Department implemented a new risk-based approach to monitoring chambers and authorising entities. As a result chambers and entities are given a rating of high, medium and low risk. In addition, diversity monitoring forms are sent to all registered applicants for entity authorisation. It is important to</p>	<p><i>Compliance with the Equality Rules.</i></p> <p><i>Embedding equality in the BSB's work by measuring the impact we will have.³</i></p>	<ul style="list-style-type: none"> Meet with Supervision to review the process and outcomes of the new risk-based approach to monitoring chambers and authorising entities. Equality and Diversity Committee to review 	<p>Sept 2015</p> <p>Sept 2015</p>

¹ Bar Barometer, 2014 https://www.barstandardsboard.org.uk/media/1599997/bsb_barometer_report_112pp_june_13.pdf and Biennial Survey of the Bar, 2013 https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf/

² BSB Equality Strategy 2013-2016, reference 1.12 https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

³ BSB Equality Strategy 2013-2016, reference 1.25 and 1.17, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Part 1 – Public

	review the results from the new approach to monitoring chambers and entities and to authorising entities and identify any equality and diversity issues that need to be addressed.		findings and highlight any further actions needed.	
BSB Strategic Aim 4: Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market				

Aim 2. Improve diversity data collection to ensure we have a reliable evidence base				
Equality and Diversity Objectives	Evidence (Reasoning for Objective)	Equality Strategy Reference	Actions	Completion Date
3. Increase the completion of diversity monitoring forms across the barrister profession.	The BSB hold good levels of data for some protected characteristics (over 79% disclosure for age, gender and race) but has lower levels of data in relation to other characteristics (19-24%). ⁴	<i>Underrepresentation of diverse groups at the Bar.</i> ⁵	<ul style="list-style-type: none"> Create and implement actions to increase the completion of diversity monitoring forms across the barrister profession. 	Aug 2015
4. Receive completed diversity monitoring forms from the Board and all Committee members.	<p>Monitoring of the Board and all Committee members diversity status has not been completed in the last year.</p> <p>The BSB currently have a low amount of completed diversity monitoring forms from the Board and all Committee members.</p>	<p><i>Meaningful review of diversity of the Board and Committees.</i></p> <p><i>Underrepresentation of diverse groups on the Board and Committees.</i>⁶</p>	<ul style="list-style-type: none"> Collate diversity monitoring information from the current recruitment process for barrister members to the BSB Board. Send diversity monitoring forms to the Board and all Committee members. Chairs of Committees will be asked to explain the rationale and benefit of completing the diversity monitoring forms. 	<p>Sept 2015</p> <p>Dec 2015</p> <p>Dec 2015</p>

⁴ Diversity Data Report 2014 <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-act-2010-publication-of-information/>

⁵ BSB Equality Strategy 2013-2016, reference 4.8 https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

⁶ BSB Equality Strategy 2013-2016, reference 2.5, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Part 1 – Public

			<ul style="list-style-type: none"> • Collate all returned diversity monitoring forms. • Produce an action plan to address issues of underrepresentation. 	<p>Dec 2015</p> <p>Jan 2016</p>
<p>5. Collecting diversity data across each stage of the barrister life-cycle.</p>	<p>There is a disparity in the diversity data that is collected at each stage of the barrister life-cycle.</p> <p>The BSB needs full and correct diversity data of barristers in order to inform regulatory policy development.</p> <p>Widening access to the Bar and addressing inequalities for the barrister profession are key priorities for the BSB.</p>	<p><i>Underrepresentation of diverse groups at the Bar (notably women and disabled people).⁷</i></p>	<ul style="list-style-type: none"> • Collect all available diversity data across each stage of the barrister life-cycle. • Evaluate the reliability of this diversity data. Identify the inconsistency in data collection • Compare the diversity data of the barrister profession with population demographics. • Compare the diversity data of the barrister profession with five recognised professions. 	<p>July 2015</p> <p>July 2015</p> <p>Aug 2015</p> <p>Aug 2015</p>

⁷ BSB Equality Strategy 2013-2016, reference 1.12, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Part 1 – Public

<p>6. Produce guidance on the reporting of discrimination and harassment for barristers.</p>	<p>The Biennial Survey 2013 found that 25% of black minority ethnic (BME) barristers personally experienced bullying and harassment⁸.</p> <p>Bullying and harassment also disproportionately affects female and disabled barristers.</p> <p>LawCare found that 15% of complaints were about bullying from legal professionals.⁹</p> <p>There has been a low number of reports to the BSB’s Professional Conduct Team following the BSB Handbook requirement to report serious misconduct.</p>	<p><i>Bullying and harassment, particularly against women and disabled people at the Bar¹⁰.</i></p>	<ul style="list-style-type: none"> • Increase reporting of bullying and harassment through creating guidance on the reporting process. • Promote guidance to the barrister profession to ensure they are aware of the process should they wish to report discrimination. 	<p>Sept 2015</p> <p>Sept 2015</p>
<p>BSB Strategic Aim 4: Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market</p>				
<p>BSB Strategic Aim 5: Strive for “best practice” as an organisation for those whom we serve and those who work for us</p>				

⁸ Biennial Survey of the Bar, 2013 https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf/

⁹ LawCare statistics, 2014 <http://www.legalfutures.co.uk/latest-news/workload-disciplinary-problems-top-table-stressed-lawyers>

¹⁰ BSB Equality Strategy 2013-2016, reference 1.12, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Aim 3. Equality and diversity impact is an integral part of the BSB's approach to regulation				
Equality and Diversity Objectives	Evidence (Reasoning for Objective)	Equality Strategy Reference	Actions	Completion Date
7. Identify the current complaints against BME barristers and develop an action plan to counteract any potential disparity.	In 2013 a review into the professional conduct processes was completed and it was found that there was a disproportionate amount of complaints against BME barristers. ¹¹	<i>Overrepresentation of certain protected characteristics in our complaints system.</i> ¹²	<ul style="list-style-type: none"> Equality and Diversity Committee to review the diversity data of barristers who have had complaints made against them. 	Sept 2015
			<ul style="list-style-type: none"> An action plan will be created from the Committee's recommendations to address any inequality. 	Sept 2015
8. Ensuring Equality Analysis is integrated in Policy, Strategy and Business Planning.	A programme of work has commenced to reform BSB's education and training regulation to ensure flexibility and high standards in barristers' services for the future. It is important that we assess each stage of development to ensure it does not have an adverse impact on diverse groups.	<i>Embedding equality in the BSB's work by measuring the impact we will have.</i> ¹³	<ul style="list-style-type: none"> Complete an equality analysis of the review and reforms of education and training for the Bar (Future Bar Training Programme). 	Dec 2015
			<ul style="list-style-type: none"> Complete an equality analysis for the work that has been produced from 	Dec 2015

¹¹ Diversity Review of BSB's complaints system https://www.barstandardsboard.org.uk/media/1567566/diversity_review_of_bsb_complaints_system.pdf

¹² BSB Equality Strategy 2013-2016, reference 1.25, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

¹³ BSB Equality Strategy 2013-2016, reference 1.17, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Part 1 – Public

	A programme of work has commenced to identify key areas of risk to our regulatory objectives. This will make changes to the way the BSB works and we need to ensure that the work produced has also been equality impact assessed.		the Regulatory Risk Programme.	
9. Completion of equality & diversity e-learning training by the Board and Committee members.	The Board and all Committee members should ensure that their equality and diversity knowledge is kept up-to-date and that they are well equipped to deal with issues that arise.	<i>Board and committees ensure their knowledge on equality and diversity is up-to-date.</i> ¹⁴	<ul style="list-style-type: none"> Send equality and diversity e-learning training to the Board and all Committee members. Certificates will be collected and completion of the training will be monitored. 	<p>Sept 2015</p> <p>Sept 2015</p>
10. Review diversity data of people who have applied for alternative pathways to the Bar and make recommendations to improve access for underrepresented groups.	The BSB collects diversity data of people who have applied to the Qualifications Team for a waiver or exclusion from the current prescribed route to the Bar. We should be aware of the diversity of people applying for an alternative pathway in order to	<i>Widening and improving access to the Bar.</i> ¹⁵	<ul style="list-style-type: none"> Collate diversity data from the Qualifications Team on the diversity of people who have applied for a waiver, exclusion or alternative route to becoming a barrister. Equality and Diversity Committee to make 	<p>Aug 2015</p> <p>Aug 2015</p>

¹⁴ BSB Equality Strategy 2013-2016, reference 1.20, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

¹⁵ BSB Equality Strategy 2013-2016, reference 1.2, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

Part 1 – Public

	progress widening access to the Bar for underrepresented groups.		recommendations from the data to improve access to the Bar.	
BSB Strategic Aim 4: Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market				
BSB Strategic Aim 5: Strive for “best practice” as an organisation for those whom we serve and those who work for us.				

Aim 4. Engage with a wide range of communities to inform our regulatory functions				
Equality and Diversity Objectives	Evidence (Reasoning for Objective)	Equality Strategy Reference	Actions	Completion Date
11. Invite diverse groups to contribute and inform our future diversity programme.	The BSB recognise the need to capture wider knowledge and skills from underrepresented communities and the wider public.	<i>Engagement with hard to reach groups.</i> ¹⁶	• Create a list of key organisations and people to contact.	July 2015
	These groups can provide vital intelligence to co-produce our equality and access to justice work.		• Organise meetings/events to identify how underrepresented groups can help shape our work.	Dec 2015
	The BSB Business Plan 2015-2016 committed to establishing collaborative relationships with the public and consumers.		• Report to Equality and Diversity Committee on outcomes of meetings and events	Dec 2015
			• Use data to shape future diversity objectives	Jan 2016
Strategic Aim 2: Promote greater public and professional understanding of and support for our role and mission.				

¹⁶ BSB Equality Strategy 2013-2016, reference 1.21, https://www.barstandardsboard.org.uk/media/1458356/bsb_equality_strategy_2013-16.pdf

BSB Equality Objectives 2014-15 – Update on Progress as of March 2015

Equality Objective(s)	Timescale	Progress Update March 2015
Objective 1: Undertake qualitative research into the underrepresentation of women at the Bar in order to evaluate the effectiveness of the equality rules.	End May 2015	Continuing focus – This research is about to commence and was placed on hold until the Bar Council published their research into women’s experiences at the Bar. Once this research is available the BSB E&D team will consider what regulatory areas our enquiry should focus on.
Objective 2: Monitor and review the number of reports of harassment and discrimination received by the BSB’s Professional Conduct department following the introduction of the serious misconduct reporting requirement into the BSB Handbook, and formulate recommendations for further action as necessary.	April 2015	<p>Action taken - The Professional Conduct Department have monitored the number of reports of serious misconduct received and extracted the statistics relating specifically to reports of harassment and discrimination. Out of 45 reports of serious misconduct received to date only 1 relates to discrimination. The duty to report serious misconduct was introduced in January 2014. In 2014/15 there were 10 complaints alleging discrimination and harassment, 4 of these complaints were closed before investigation, 1 was closed after investigation and 5 are ongoing. None of the complaints have been referred to disciplinary action.</p> <p>This work has been followed-on into the new proposed objectives.</p>
Objective 3: Increase diversity data disclosure from the profession to 30% across all protected characteristics collected.	August 2014	<p>Continuing focus The target of increasing diversity data disclosure to 30% across all protected characteristics was not achieved by August 2014– The area with the greatest level of disclosure was gender in relation to which 98% of the profession disclosed their data. Disclosure was lowest in relation to the “caring responsibilities for others” question. In relation to this area just 19.1% of the profession disclosed.</p> <p>The BSB implemented a number of changes in 2014 including making the monitoring page more visible on Barrister Connect and communications were sent to the profession highlighting the importance of completing the monitoring form. Disclosure has in fact increased since 2012 and in 2014. The BSB will be continuing to work to improve disclosure rates and the Board agreed that we should create and implement a clear action plan to increase diversity data disclosure. The E&D team are meeting with the LSB and other regulators on 23 March 2015 to discuss how we use diversity data and increase disclosure from the profession.</p>

Equality Objective(s)	Timescale	Progress Update March 2015
<p>Objective 4: Achieve 100% return of diversity monitoring forms, including prefer not to say responses, from all current BSB Board and Committee members, and from all such members recruited in the future.</p>	<p>June 104 and end of 2014</p>	<p>Action taken - Recruitment for new Board and Committee members was conducted by an external recruitment agency. There were 106 applications for positions on BSB Board in 2014 and only 18 applicants did not fill out the diversity data monitoring form.</p> <p>Due to changes in HR and turnover of staff, alongside the governance review that is still ongoing, HR have not sent reminders to those who have not returned their monitoring forms. A new approach of monitoring diversity of the Board and all Committee members will be implemented following the governance review.</p> <p>All committee chairs were explained the rationale behind diversity data collection at January's BSB Board meeting. However, this message was not cascaded down to committee level as HR had not made contact with Board and Committee members who had not completed their diversity monitoring forms.</p>
<p>Objective 5: To improve the diversity of the BSB Board and its Committees.</p>	<p>June 2014 and end of 2014</p>	<p>Action taken – In June 2014, an equal opportunities strapline was added to all Board and Committee vacancy adverts. This strapline welcomed applications from black minority ethnic and disabled people who are currently underrepresented on the Bar Standards Board.</p> <p>The 'Two Ticks logo (which encourages applications from disabled people and will guarantee a disabled person an interview if they meet all the essential criteria) was added on all Board and Committee vacancy adverts.</p> <p>All Board and Committee recruitment in 2014 was conducted by an appointments panel containing independent and accredited assessors who ensured a fair process was carried out.</p> <p>New recruitment to the Board will occur in 2015 and to committees in 2016, subject to the governance review.</p>

Future Bar Training – Continuing Professional Development Consultation

Status:

1. For discussion and approval.
2. This paper is being put to public session for a discussion and approval from the Board on the launch of the proposed consultation regarding Continuing Professional Development.

Executive Summary:

3. In 2013 the Board agreed to revise the approach to CPD and to move from a prescribed number of hours to an outcomes based approach. This approach would place the responsibility on individual barristers to determine the type and amount of CPD that they should do each year in order to maintain their competence and standards of practice. The Board's decision was based on recommendations by the CPD Steering Group, established by the Education and Training Committee and chaired by Emily Windsor.
4. The implementation of the new approach is one of the pillars of the Future Bar Training (FBT) programme. Implementation of the new CPD approach falls within the responsibility of the Supervision Department of the BSB, as the department responsible for managing the effective regulation of the new system.
5. The attached consultation sets out how it is proposed that the new system will work in practice and seeks views on its practical application. There will, in the light of the responses to this consultation and the feedback from the pilot of the new scheme, be a further consultation in early 2016 on the exact detail of the CPD rules which will underpin the new scheme. The new scheme will take effect from January 2017.
6. The consultation has already been the subject of review by the Education and Training Committee and the Supervision Committee.

Recommendations

7. It is recommended to the Board that it:
 - a. **agrees** to give approval to consult with the profession directly regarding the proposed new approach to CPD on the basis set out in the consultation paper.
 - b. **agrees** that this consultation should be published by the end of May 2015.

Purpose

8. The purpose of this paper is to provide a brief overview of the proposed new CPD scheme; how it will work in practice and how it will be regulated. The methodology is also explained and the piloting of the new system outlined.

Brief overview of the new scheme

9. The consultation paper provides a full description of how the new system will work in practice. Briefly, it proposes that the system should have the following elements:
 - Planning
 - Learning objectives
 - Completing CPD
 - Reflection
 - Declaring compliance
10. The aim of these elements is to encourage barristers to set clear learning objectives in order to maintain competence and their standards of practice. Those learning objectives should be used to determine their CPD choices and barristers should reflect during the course of the CPD cycle whether the CPD that they are undertaking is addressing the objectives they identified at the beginning of the year. Barristers will be encouraged to be flexible and to refine their learning objectives throughout the year as necessary. Guidance will be provided to the profession by the BSB to provide support and to assist the Bar in making decisions about its learning and development. Specific CPD rules will be published which set out clearly what the new system will require in order for a barrister to be compliant.
11. Barristers will be required to retain a record of their learning objectives, their completed CPD and a note of their reflections on the extent to which their learning objectives have been satisfied. A sample of barristers will be selected each year by the BSB to provide these records for assessment. The sample will be both risk based and randomly sampled. Regulation will not be through enforcement (unless there is persistent or serious non-compliance) but through collaborative supervision, which will encourage the barrister to address any concerns identified during the assessment of their record card. This approach is consistent with the wider system of risk based supervision applied within the BSB and which has been positively received by the profession as being both more proportionate and reflective of the risks associated with non-compliance.
12. Specially trained staff will assess barristers' records of their CPD and will be able to call on expert, external advice should complex or very technical issues arise. It is anticipated however that in the majority of cases, assessment of records will be undertaken by the BSB executive.
13. It is felt that this approach demonstrates more appropriately the BSB's risk and outcomes based approach to regulation than the current CPD regime allows.

Piloting the new approach

14. In January 2015 the BSB initiated a pilot with a range of practitioners to test a prototype of the new scheme and how it works in practice. The pilot will run in parallel with the consultation. There are 76 participants in the pilot covering a range of practice areas, levels of seniority and employment contexts. The objectives of the pilot are to:
 - Test how the above features work in practice;
 - Explore how we can help the profession to understand the new requirements;
 - Explore the most efficient and effective way to regulate against the new scheme.

15. The pilot is taking place between January 2015 and March 2016. The pilot involves the submission of a planning statement, a feedback loop, a series of structured surveys to participants through the CPD year and a final assessment of all CPD records in order to gather feedback and inform our refinement of the scheme.
16. The information we gather from this pilot will be used in conjunction with responses from this consultation on the new scheme in order to refine our approach and the associated rules, requirements and guidance for practitioners.

Outcomes from the pilot to date

17. To date 76 barristers have submitted their planning statements. These planning statements have been assessed. Feedback is currently being provided to every barrister about their planning statement and to provide continuous feedback and guidance throughout the process.
18. Barristers have also been encouraged to provide feedback to us about the pilot. So far the feedback has been positive about the principles underpinning the new scheme.
19. The assessment phase has given us enough feedback to begin refining a formal framework for assessing barristers' planning statements. This has allowed us to determine that the majority of barristers involved in the pilot have completed the planning statement successfully, either in full accordance with our proposed regulations and guidance or requiring some feedback on how their planning could be improved.
20. The assessment process has also allowed us to identify those barristers that have not completed the planning statement in accordance with the proposed regulations. We have been able to provide specific feedback and note why an assessment of 'non-compliance' would be reached.
21. In line with the aims of the pilot, assessing the planning statements has already provided valuable feedback about how the real scheme would work in practice. It has shown us what areas of the guidance barristers understand and what areas they are struggling with.
22. The next step for barristers participating in the pilot is to begin completing and recording their CPD activities. This will take until December 2015 when they will be required to submit their record cards along with reflections of whether their stated learning objectives were completed.

Resource implications

23. A cost - benefit analysis if the new approach was conducted in 2013 and informed the Board's approval of the approach now being consulted on in detail. A resource plan will be developed as part of the implementation of the new system for 2017. It will be critical that there are appropriately skilled members of staff within the Supervision Department to undertake that assessment of CPD returns.

Equality Impact Assessment

24. An equality assessment is being carried out on the impact of the new regime. The impacts are identified in the consultation paper and views sought on the likely impacts (negative and positive) there might be and how they could be mitigated or promoted.

Risk implications

25. The risks are that the profession fails to understand the proposed new CPD scheme adequately which leads to higher levels of non-compliance. There is also a risk that the assessment process fails to assess barristers' compliance with the new CPD requirements satisfactorily.
26. These risks will be mitigated through the consultation process which will provide the profession with the proposals for the new CPD scheme as well as take comments and feedback from the profession.
27. The pilot process has been testing and refining the assessment process and taking feedback from the profession. The pilot process has been helping to mitigate the risks associated with the assessment of CPD under the new scheme.
28. Failure to implement the new scheme would also present reputational risks for the BSB. The new scheme is more in line with the BSB drive towards becoming more risk and outcomes focused in its regulation and conforms to the LSB's statutory guidance in the area.

Impacts on other teams / departments or projects

29. Strategy and Communications have developed a communications strategy for the consultation and the future implementation of the Scheme. They will be instrumental in ensuring that the proposed new regime is given the publicity and profile required.
30. Supervision will be responsible for assessing the results of the consultation as they relate to the practicalities of implementing the new scheme and assessing CPD activities.
31. All other departments will be involved in the implementation of the Scheme, be it through considering how enforcement should be managed, the drafting of CPD rules or ensuring that CPD is aligned to the other strands of Future Bar Training.

Regulatory objectives

32. The consultation is intended to assist in the BSB being able to show how all of the activities it undertakes address the regulatory objectives and also the regulatory principles.

Publicity

33. Once approved the consultation paper will be published on the BSB's website
34. It is planned that the consultation will be widely publicised to ensure as much of the profession engages with the process as possible.

Annex

35. Annex 1 – proposed Consultation Paper

Lead responsibility:

Bernard MacGregor
Oliver Hanmer
Richard Thompson (PMO)



Future Bar Training

Continuing Professional Development (CPD)

Consultation paper on the proposed new CPD scheme for the Bar

May 2015

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Future Bar Training

Continuing Professional Development Consultation Paper

About this consultation paper

Who is it for?

We have produced this consultation paper for members of the Bar (practising barristers and barristers taking part in the CPD pilot), members of the Specialist Bar Associations, members of Circuits, attendees of our stakeholder and consumer groups, our staff and legal journalists.

Who is it by?

This consultation paper has been produced by the Bar Standards Board's Future Bar Training team.

What is its purpose?

We want to invite comments on our proposed new CPD scheme for the Established Practitioner's Programme (EPP)- and in particular, how it will be applied in the real world.

Background

2007: The Bar Standards Board committed to review all stages of education and training at the Bar.

As part of our commitment, we have considerably reviewed the future development of CPD over the last five years.

2013: The Board approved a policy shift in CPD, moving away from a prescribed number of hours of CPD to an outcomes focussed approach (focusing on the impact of a barrister’s learning on their ability to provide a competent service). This approach makes each practising barrister responsible for deciding on the amount and type of CPD they should do.

Our consultation

This consultation paper sets out our new way of regulating CPD, which will replace the current Established Practitioners Programme (EPP).

To protect the public, we have paid particular attention to developing a CPD scheme that will add value for the profession and will maintain high standards within the profession.

What about the current New Practitioners Programme?

We propose the current New Practitioners Programme (NPP) will remain unchanged at present – so its future development is not included in this review.

Learning from the application of our new way of carrying out CPD, we will review the NPP to make sure it is fit for purpose and enables barristers to develop their skills and competencies during the early stages of their practice.

How the new CPD scheme fits in with our regulation

Within the legal sector, the regulatory environment is being developed and refined. Regulators are moving away from prescriptive rule books in favour of regulatory requirements that focus more on their desired outcome.

The previous style of regulation, where we take enforcement action after the issue has already happened, is becoming outdated and replaced by a more modern, collaborative way of regulating.

This more modern way of regulating means that we will take action where evidence suggests there is a risk a barrister could be non-compliant. We will try to resolve non-compliance by supervising barristers and helping to bring them back on track rather than taking disciplinary action. Disciplinary action is a last resort for serious or persistent offences.

Allied to this shift in regulation are the recommendations of the Legal Education and Training Review (LETR). The LETR was commissioned by the Solicitors Regulation Authority, ILEX Professional Standards and the BSB. It was an independent review of training provision within the legal sector. After the LETR the oversight regulator, the Legal Services Board, issued statutory guidance, which also reflects this shift in the approach to regulation in this area.

Our Future Bar Training programme

Following the LETR recommendations, we launched [Future Bar Training](#) - a programme of review and reform intended to bring our training regulation up to date and assure high standards in barristers' services for the future.

Programme aims

[Future Bar Training](#) aims to make sure our approach to education and training is designed to make sure future training requirements:

- prepare trainee barristers to practise competently at the start of their career;
- promote innovation in teaching and learning;
- offer flexibility in the pathways to qualification for the Bar or elsewhere;
- minimise barriers that prevent people from accessing the profession, and
- ensure ongoing competence throughout a barrister's career.

The [Future Bar Training](#) programme has identified the current CPD rules as an area of barrister training that does not measure up to the regulatory standards we have now adopted.

The CPD rules are too prescriptive and do not help us to address risks that are relevant to a barrister's practice.

So we have developed an approach to CPD that emphasises barristers' individual responsibility for identifying their own training and development needs.

Why are we changing the way we regulate CPD?

Our current CPD requirements

We define Continuing Professional Development as “a structured approach to learning to help ensure high standards in a barrister's current or anticipated professional practice”.

“High standards” includes:

- barristers developing relevant knowledge and skills in their area of practice;
- barristers keeping up to date with new developments in that area;
- barristers giving confidence to people who use their services and the public that they are competent in their area of practice.

We must structure any CPD scheme designed and administered by us to:

- promote the general aims and purpose of CPD;
- promote the completion of CPD relevant to the individual barrister.

A barrister on the Established Practitioners Programme (EPP) must complete 12 hours of CPD every year. Four of these hours must be accredited by the Bar Standards Board. The CPD year runs from 1 January to 31 December every year.

Since 2013, barristers have not had to routinely send in their record cards at the end of the year - but we may call them for a spot check.

What’s wrong with the current way of working?

We believe the current EPP CPD scheme has a tendency to operate as a tick-box exercise, without a clear focus on adding value to the profession.

Evidence suggests that compulsory or prescriptive requirements lead to ‘tick box’ exercises, which are ineffective.

This can lead to:

“People scrambling to fulfil their CPD requirements by taking whatever courses or attending whatever events are available and convenient, rather than activities that will genuinely support their competence and development.”¹

Conversely, research shows that “encouraging and rewarding voluntary CPD activity, over and above any necessary and existing level of compulsion, is the most effective means of propagating good practice”².

Current monitoring systems record that only a small minority of barristers (around 3 to 5%) do not fully comply with their CPD obligations each year.

However, we are concerned that barristers’ CPD choices are not always designed to enhance or maintain standards; barristers take them just to satisfy our required number of hours.

We can police the number of hours completed by barristers. But under the current EPP scheme it is far more difficult for us to assess if the CPD completed by barristers is relevant to their areas of practice and personal development.

¹ Friedman, A., Hanson, W. & Williams, C. (2009). Professional Standards Bodies: Standards, Levels of Compliance and Measuring Success A Report for the Financial Services Authority. Bristol: PARN. pg. 40 Retrieved from <http://www.fsa.gov.uk/pubs/other/parn.pdf>

² Institute of Continuing Professional Development. (2006). Research Project. Regulating Competencies: Is CPD Working? London: CPD Institute. Pg. 4 Retrieved from http://www.cpdinstitute.org/storage/pdfs/CPD_research.pdf

In conclusion

We are not satisfied the current approach to CPD and its regulation encourages barristers to think carefully about their CPD choices. We want them to focus on CPD that makes sure that standards are maintained.

For this reason our proposed new CPD scheme is intended to be sufficiently flexible, so it can be tailored to the individual's professional needs.

It will also provide a method for barristers to better demonstrate the result of the learning achieved through their CPD activities.

What are we proposing?

Our objectives

Our key objective is to develop a CPD scheme that encourages barristers to maintain professional and ethical standards at the Bar and which, through greater flexibility in our regulation, encourages barristers to take ownership of their learning and development.

In addition, in our proposed new way of working:

- we want to encourage barristers to follow the regulatory objectives in section 1 of the Legal Services Act 2007 (the Act) and our regulatory arrangements in Part 4 of the Handbook;
- we want to provide a credible system with which the profession can engage;
- we want to place responsibility for determining the type, scope and volume of CPD on individual barristers;
- we want to avoid unnecessary and inappropriate escalation of minor failures to comply;
- we want to focus our regulatory attention on those who represent a significant risk to the public interest;
- we want to provide a framework for those who represent a significant risk in other areas to be appropriately supervised.

We will focus any monitoring and review of the scheme on these objectives.

The Board has agreed a new, outcomes-focused approach to CPD regulation. This decision reflects the extensive research and consultation we carried out over the last five years into the effectiveness of the current CPD scheme and developments in education and training of professionals.

Our new working method

When creating new regulatory initiatives we must bear in mind the Regulatory Objectives set out in the Legal Services Act 2007.

We have assessed our new approach to CPD against the regulatory objectives and we are confident it promotes them.

In addition to these objectives and the principles of good regulation, we have considered our broader commitments under the Regulatory Standards Framework established by the Legal Services Board.

The Regulatory Standards Framework was put in place to assess against common criteria the regulatory performance of the front line regulators under the Legal Services Act 2007. The framework helps us to make sure we target the regulation to where it is most needed.

Jan 2015: We initiated a pilot with a range of practitioners to test a prototype of the new scheme and how it works in practice. The pilot will run in parallel with this consultation exercise.

There are 76 participants in the pilot covering a range of practice areas, levels of seniority and employment contexts.

The objectives of our CPD pilot:

- we want to test how the above features work in practice;
- we want to explore how we can help the profession to understand the new requirements;
- we want to explore the most efficient and effective way to regulate against the new scheme.

The pilot will take place between January 2015 and March 2016.

During the pilot

We ask barristers taking part to work with a set of trial rules, requirements and guidance for our proposed new CPD scheme. To create the right pilot environment we have granted them a waiver to the current CPD requirements.

How we will use the information

We will use information we gather from the pilot together with responses to this consultation on the new scheme to refine our process and the associated rules, requirements and guidance for barristers.

What happens during the pilot?

We ask barristers to send us a CPD planning statement, and in addition:

- we ask barristers for feedback on our process;
- we give feedback on how well they have completed the process;
- we send a series of surveys to participants through the CPD year;
- we assess all CPD records to gather feedback and help us to improve our scheme.

The consultation process

We are opening the consultation process to the entire profession and members of the public. The consultation asks specific questions and we encourage you to answer by completing the online survey linked to this paper.

The current CPD assessment process has already incorporated a system of spot checks and setting corrective action for non-compliant barristers, rather than immediately referring a barrister for enforcement action.

The profession has responded positively to corrective action, resulting in a higher number of barristers completing CPD and a reduced number of enforcement action proceedings. We have learned a number of lessons that have informed our approach to supervision of the proposed new CPD scheme.

How our new CPD regulation works

The broad principles of the CPD system are as follows.

The way we regulate barristers

We will ask barristers to carry out appropriate CPD that demonstrates they have kept themselves up-to-date and competent in the areas in which they practise.

We will not prescribe the number of hours a barrister must complete annually. Instead, we expect barristers to identify and manage their own training and development needs according to areas of practice and work/market demands. We will continue to operate CPD on a calendar year basis.

Our proposed new CPD approach is more flexible. We want to make each individual barrister responsible for determining the amount, type and nature of CPD they do annually.

To assess compliance, instead of checking that a barrister has completed a defined number of hours, we will check that the CPD they have completed is appropriate to satisfy the regulatory requirement in the Bar Handbook that all barristers are required to maintain appropriate standards of competence.

Q1 Do you agree there should be no compulsory CPD topics for established barristers, and that barristers must carry out a balance of activities? Please explain your views.

Consistent ethical and professional standards

In our proposed scheme:

- a barrister must keep a continuous, up-to-date and accurate record of their CPD activities;
- a barrister must demonstrate their CPD activities are a deliberate mixture of learning activities, relevant to current or future practice;
- a barrister must source CPD from genuine providers;
- a barrister must certify that their CPD has contributed to the quality or development of their practice and service delivery;
- a barrister must provide evidence, if called upon to do so, that the activities carried out are directly relevant to their area(s) of practice.

Recording and reflecting

Barristers will maintain online CPD records (we will make reasonable adjustments for barristers who are not able to provide an electronic return).

Barristers should maintain CPD records continuously and reconcile them annually (by 31 January of the subsequent year).

An important principle of the scheme is that barristers will be required to make a statement of the value to their practice of each developmental activity

This is a first step in the development of a structured and planned approach to CPD, which is at present unfamiliar to the Bar.

The online record of developmental activity will require such statements to be made simultaneously with the record itself.

We will ask barristers to explain briefly how the activity was expected to meet their development needs, and the extent to which that expectation was met. Barristers must sign a declaration relating to the standards framework.

We acknowledge that barristers themselves are generally best placed to identify their training needs. Therefore in line with our commitment to outcomes-focused regulation, the CPD scheme will place more responsibility on individual barristers to identify what training is required for effective practice.

The proposed CPD scheme will involve annual assessment of the knowledge, skills and experience that a barrister needs in order to continue to offer a proficient service to their clients and the public generally.

In light of these considerations we decided to depart from the current approach of a prescribed number of hours of CPD, for those barristers subject to the Established Practitioners Programme (EPP) and instead to move to an outcomes based approach to CPD.

Q2 What do you think will be the challenges that barristers will have to face in meeting the proposed new requirements? What more could the BSB do to help barristers to meet those demands?

How the new approach will work

Our proposed new CPD scheme

The new CPD scheme is explained in the Guidance in Appendix A. The Guidance aims to help barristers to complete their CPD requirements satisfactorily.

We will prepare new CPD rules in the light of responses to this consultation and feedback from those taking part in the pilot. In 2016 we will issue a further consultation on the rules.

Q3 Do you think the Guidance provides adequate support to barristers by outlining what the new approach to CPD requires? Please explain your views.

In summary, the new scheme places the responsibility on each individual barrister to determine the amount, type and nature of the CPD that they must carry out each year, with no minimum number of CPD hours required to be completed.

The new CPD scheme has five principal elements:

- planning;
- learning objectives;
- completing CPD;
- reflection;
- declaring compliance.

It is important to understand the phases are not intended to operate in a linear way, with the next phase starting as the previous ends.

The new approach is intended to be more fluid, encouraging barristers to reflect throughout the CPD cycle and to review and refine their learning objectives periodically.

We will expect barristers to properly describe the learning, review, refine cycle in their CPD record cards and to justify it where necessary.

Full details are provided in the appendices, but in summary:

Planning

We will expect barristers to spend time planning their CPD for the coming year. They should consider the following key knowledge and skills areas:

- personal values and standards;
- technical legal knowledge and skills;
- management of practice;
- working with others.

Barristers' learning objectives

Barristers will need to identify learning objectives for the year which focus on the outcome of learning achieved at the end.

They will self-assess the outcomes they hope to achieve by the end of the year and the types of CPD activities that may be most appropriate to achieve these ends.

These objectives should be specific and measurable, describing what the learner will know or be able to do as a result of engaging in a learning activity – for example:

“to acquire knowledge of financial management to improve my ability to manage my costs and deliver a cost effective service to clients”.

This activity will help barristers to make sure their planned CPD activities meet their technical knowledge and wider skills requirement.

Q4 Do you agree that requiring a barrister to plan their CPD learning objectives for a year will help to make the CPD activities more relevant to the barrister’s needs? Please explain your view.

Completing CPD

The completion phase consists of the barrister carrying out appropriate CPD activities to meet their learning objectives.

In line with the move towards giving barristers more responsibility in assessing their CPD requirements, we have expanded the types of activities that barristers are allowed to do. For example, under the new scheme, we will allow legal reading to count as a CPD activity.

Reflection

The reflection phase consists of the barrister noting whether the learning objectives were completed or whether there are any outstanding gaps in their intended outcomes.

Barristers should reflect throughout the CPD cycle to make sure learning objectives:

- are being met;
- remain relevant;
- are the right ones for the barrister.

This phase is designed to maximise the effectiveness of the learning and to help inform CPD choices in future years. It can also be used to note where CPD activities may have been substantially different from those first proposed in the planning phase.

Q5 Do you agree that requiring a barrister to reflect on the CPD activities completed at the end of a CPD year will help to identify a barrister’s future training needs? Please explain your views.

Q6 Do you agree the CPD regulations should take into account previous CPD records when assessing CPD in any one year? Please explain your views.

Declaring compliance

Barristers must declare they have carried out suitable CPD each year. We may ask for evidence that a barrister has carried out the activities in their CPD record or ask them for other supporting evidence of CPD.

None of the above phases are prescriptive; it may be necessary for a barrister to change the intended CPD activities or even in some cases the learning objectives.

However, it will allow barristers to demonstrate to the regulator that they have completed a sufficient level of relevant structured learning in order to meet their CPD requirements.

How we intend to regulate CPD compliance

We will assess compliance not with reference to whether a barrister has completed a defined number of hours but whether the activities that they have carried out are relevant and appropriate to satisfy the regulatory requirements as set out in the CPD Rules and Regulations.

Our Supervision department will manage CPD compliance:

- each year we will select a sample of barristers to assess their CPD records;
- we will select the sample both randomly and by targeting (where, for example, there is evidence of non-compliance with CPD or other regulatory requirements);
- trained staff will assess each CPD record of those within the sample. They will also review any other relevant material about the barrister such as previous CPD records;
- they will check that CPD has been appropriately planned with regard to the four recommended knowledge areas outlined previously and check the relevance of CPD activities to the learning objectives and area(s) of practice;
- they will also check that the barrister has reflected on how the CPD activities have met the learning objectives.

Staff will have available a panel of experts to provide advice on any complex or highly technical issues that arise during the assessment of a CPD return.

In line with our risk based approach to supervision, we aim to work collaboratively with barristers to make sure they satisfy the regulatory requirements.

Members of the Supervision department will engage constructively with barristers in the sample to understand the CPD choices they have made.

We will assess compliance by focusing on the outcome of the training or development, and less on the process (unless there is evidence that the process has resulted in the barrister not making appropriate CPD choices).

If a barrister is assessed as having not completed appropriate CPD activities to ensure their compliance with the regulatory requirements we will deal with this in the first instance through supervision.

Where we assess a barrister's CPD as not meeting the regulatory requirements we will, in the first instance, seek to agree with the barrister concerned an action plan for addressing the deficiencies in their CPD.

Typically this involves a barrister carrying out certain areas of CPD or completing additional hours. We will expect the barrister to produce their own corrective action plan as a first step.

If we agree with the plan we will negotiate a timeframe for the barrister to complete the activities in that plan. If the plan cannot be agreed, it will be open to the BSB to impose the action plan on the barrister and the timeframe for completion.

We will ask the barrister to provide us with evidence, within the specified timeframe, that the action plan has been completed. If the action plan is satisfactorily completed we will take no further action.

We will reserve enforcement action for barristers who blatantly disregard the CPD regulatory requirements or where a barrister has failed to satisfy the agreed or imposed action plan to address CPD deficiencies.

Enforcement action may also be appropriate where a barrister has been the subject of repeated corrective action over a period of years.

Q7 Do you agree with the proposed approach to the regulation of CPD compliance? Please explain your views.

Assessing the merits of the current approach to CPD compared to the proposed new CPD scheme

Advantages of the current approach:

1.	Clear expectations	A defined number of CPD hours means that barristers clearly understand what is required of them under the current CPD scheme. We expect them to complete a minimum of 12 hours of CPD each year, four of which need to be accredited.
2.	Non-compliance is treated as an enforcement issue	There is a clear incentive for barristers to comply, as non-compliance can result in disciplinary action.
3.	Not an onerous task	Completing 12 hours of CPD a year is not an onerous task for barristers, especially compared to other professions. It does not impose an undue regulatory burden.

Disadvantages of the current approach

1.	CPD is not viewed as a learning and development tool	Many barristers focus on completing 12 hours of CPD rather than considering which CPD they should be carrying out to maintain their standards of practice or to develop their skills.
2.	Barristers are not held to account over their CPD choices	As long as barristers complete 12 hours of CPD annually we will, in practice, deem them to be compliant. We will not assess the scope, nature or relevance of CPD carried out. The result of this is that some barristers are not using CPD to develop their practice.

<p>3.</p>	<p>Using disciplinary action to enforce CPD is not an optimum way of making sure learning and development is prioritised</p>	<p>We believe the threat of disciplinary action, combined with a prescribed number of hours, means that many barristers are not making the best use of CPD and instead are just completing 12 hours to avoid disciplinary action.</p> <p>This is particularly true if a barrister has failed to plan their CPD year and is required to complete their CPD in a few months at the end of the year.</p> <p>A shift in regulatory emphasis towards supervising CPD compliance and working with the Bar to maintain standards will encourage barristers to take a more positive and constructive approach to their learning and development.</p> <p>We will reserve disciplinary action for barristers who blatantly disregard CPD requirements</p>
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Advantages of the proposed new CPD scheme

<p>1.</p>	<p>CPD will become a tool to assure competence and professional standards</p>	<p>Barristers will be held to account for their CPD choices by the BSB. We will ask them to justify their choices and will assess them on issues such as relevance to practice, learning outcomes and personal development in order to determine if they are compliant.</p> <p>CPD will become a meaningful way of assuring competence and improving standards and this in turn will have a positive impact on the public interest and the quality of representation available to consumers.</p>
<p>2.</p>	<p>Barristers will take a positive interest in planning their CPD before completing it</p>	<p>Because it will be a requirement for barristers to plan their learning objectives for the year, barristers will complete CPD activities on the basis of a specific plan.</p>

3.	A removal of hours encourages the Bar to think more creatively about their CPD choices	Barristers will no longer be required to complete a prescribed number of hours, but instead must undertake CPD (and be prepared to justify their decision) based on the needs of their practice and their career aspirations.
4.	The new approach reflects: <ul style="list-style-type: none"> • the low level of barristers not complying • the technical (rather than malicious or deliberate) nature of breaches • The trust we place in barristers to maintain standards 	<p>A removal of a prescribed number of hours and a shift away from enforcement and towards supervision brings with it the risk of barristers not making the expected level of commitment to CPD.</p> <p>We have balanced that risk with the need to be more targeted in our regulation and the need for the profession to take individual responsibility for managing their own professional and personal development.</p>
5.	Enforcement will not be the first method of regulation	<p>This means the CPD scheme will have room to develop organically to meet the needs and expectations of the Bar and members of the public.</p> <p>Barristers at first may be uncertain about what is expected of them, but the consequences of that uncertainty are less severe for the individuals concerned.</p>
6.	CPD becomes part of a barrister's practice rather than a discrete regulatory requirement	The holistic approach we propose under the new scheme (where we assess a barrister's compliance on the type and nature of CPD rather than the volume) should encourage barristers to view CPD as important and natural parts of practice.
7.	Emphasis will be placed on barristers identifying their own training needs More	<p>This means that as well as dispensing with the need to complete a minimum number of hours, barristers have more freedom in the types of activities they complete which will count towards CPD.</p> <p>For example there will not be a minimum number of hours that barristers can devote to legal writing or editing to meet their CPD requirements. Barristers can now also count activities such as reading towards their CPD requirements.</p>

8.	Moving away from a ‘one size fits all’ approach more accurately reflects the profession	<p>At the Bar there is a huge diversity in practice and, therefore, learning needs of its members.</p> <p>As such, barristers should be required to set their own curriculum which is specific to their practice and learning needs.</p>
9.	CPD should take into account issues of equality and diversity	<p>The undertaking of CPD can have implications for equality and diversity in respect of cost and the demand on time³.</p> <p>Efforts should be made to avoid a negative impact on equality and diversity. We believe the new scheme does this because it allows barristers to plan their own CPD based around their needs for the year, rather than forcing them to complete a prescriptive requirement that may not reflect their circumstances.</p> <p>This has been noted as being particularly relevant for barristers going on maternity leave.</p>

Disadvantages of the new scheme

1.	An absence of prescriptive hours introduces uncertainty around what compliance means	<p>Because there will no longer be a defined minimum number of hours to be completed barristers may be unsure about what is required of them to comply.</p> <p>To address the above potential disadvantage, we will provide guidance to the profession on its expectations around CPD. The guidance will be illustrative and allow flexibility so barristers are not fettered in their CPD choices by a particular idea of what CPD should comprise.</p>
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³ LETR Literature Review pp. 42 – 43

2.	The new CPD scheme requires more input from barristers	<p>Barristers are required to input more in the additional planning stage than the previous system of completing a minimum twelve hours of CPD activities.</p> <p>However, we anticipate that the act of asking barristers to focus on what outcomes they intend to meet will mean that the activities completed will demonstrably add more value to a barrister's professional practice rather than simply being an empty 12 hours required to 'tick a box'.</p>
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In the light of the above evaluation of the current and new system, we are clear that the new approach to the regulation of CPD represents the right balance between supporting the Bar and giving them individual responsibility for their own professional development.

However, we recognise that this represents a major shift in approach to CPD. We propose a lead in time for its introduction that allows sufficient opportunity for barristers to understand what will be expected of them.

We are currently piloting the new scheme during the course of 2015 to test how it works in practice. We can then refine the process before its eventual launch in 2017.

Timetable for implementation

Key activities	Dates
Consultation	May - August 2015
CPD pilot	January 2015 – March 2016
CPD rules consultation	April – June 2016
Legal Services Board approval	August 2016
Launch of new CPD scheme	January 2017

Equality impact assessment

We have carried out an equality assessment of the new approach to CPD and identified the following benefits:

- the new CPD scheme allows barristers to design their CPD according to their needs in any one year. It is adaptable, allowing for breaks in practice or for those returning to practise – in particular those on maternity leave.

Fundamentally, it is for each barrister to reflect on their own needs and plan their CPD accordingly to make sure they are competent.

- there is no expected disadvantage created by the introduction of the new CPD scheme on the grounds of any of the protected characteristics;
- to address any perceived risk of discrimination as a result of the age of a barrister, we have made a distinction between seniority of position and age in the proposed assessment of CPD

We invite views on these benefits and whether there are any impacts (positive or negative) and if so, what steps could be taken to mitigate or promote them.

Q8 Please describe any impacts (positive or negative) you foresee in relation to the proposed CPD scheme on Equality and Diversity.

Risk implications

There are risks attached to not having an effective CPD scheme in place, or of not having effective monitoring and regulation of the CPD scheme.

Without such schemes, there is the risk that barristers will have an inconsistent and unstructured approach to learning and development or the risk that barristers do no training to maintain standards of practice.

We need regulation to make sure that barristers are meeting and carrying out their CPD requirements appropriately.

There is a risk that the following regulatory objectives in particular will not be met:

1. Protecting and promoting the public interest;
2. Protecting and promoting the interests of consumers;
3. Encouraging an independent, strong, diverse and effective legal profession;
4. Promoting and maintaining adherence to the professional principles.

Part 4 Consultation questions

The aim of the following consultation questions is to determine the level of agreement with the recommendations put forward by the CPD working group.

Please complete the following questions by filling in the online survey found at [\[LINK\]](#)

- Q1** Do you agree there should be no compulsory CPD topics for established barristers, and that barristers must carry out a balance of activities? Please explain your views.
- Q2** What do you think will be the challenges that barristers will have to face in meeting the proposed new requirements? What more could the BSB do to help barristers to meet those demands?
- Q3** Do you think the Guidance provides adequate support to barristers by outlining what the new approach to CPD requires? Please explain your views.
- Q4** Do you agree that requiring a barrister to plan their CPD learning objectives for a year will help to make the CPD activities more relevant to the barrister’s needs? Please explain your view.
- Q5** Do you agree that requiring a barrister to reflect on the CPD activities completed at the end of a CPD year will help to identify a barrister’s future training needs? Please explain your views.
- Q6** Do you agree the CPD regulations should take into account previous CPD records when assessing CPD in any one year? Please explain your views.
- Q7** Do you agree with the proposed approach to the regulation of CPD compliance? Please explain your views.
- Q8** Please describe any impacts (positive or negative) you foresee in relation to the proposed CPD scheme on Equality and Diversity.

Appendix A

Continuing Professional Development (CPD)

Guidance for barristers

The CPD definition

The BSB defines Continuing Professional Development (CPD) as “a structured approach to learning to help ensure high standards in a barrister’s current or anticipated professional practice”.

Section 1: The CPD cycle

In the following section we guide you through the different stages in the planning, recording, reflection and declaring cycle for CPD:

- Planning (including setting learning objectives);
- Recording and evidence;
- Reflecting on your CPD activities;
- Declaring competence.

Planning

When planning the range of CPD to carry out, it is important for you to consider the following key knowledge and skill areas:

- Personal Values and Standards
- Technical Legal knowledge and skills
- Management of Practice
- Working with others.

Compiling learning objectives

At the beginning of each CPD year you must compile a set of learning objectives (statements in specific and measurable terms that describe what the learner will know or be able to do as a result of engaging in a learning activity). We would describe this as outcomes focused; what is the measurable change to competence to practise you will see as a result of your CPD For example:

“To acquire knowledge of financial management to improve my ability to manage my costs and deliver a cost-effective service to clients”.

You are individually responsible for your own CPD, regardless of additional learning support you may expect to receive (for example, in the context of employment).

When compiling your learning objectives, please consider the nature of the following:

- The ultimate outcome of the learning objective;
- Your field of practice, or intended practice;
- Your record of recent instruction by clients;
- Your type of practice (e.g. chambers, employed) and whether you accept (or intend to accept) direct access work;
- Your strengths and weaknesses in your competence and skill as a practitioner.

This activity will help you to make sure that your planned CPD activities meet both your technical knowledge and wider skills requirements and will help you to determine your CPD needs.

Where possible, take a longer-term view when planning your learning and development, looking both at and beyond the forthcoming CPD year.

Recording and evidence

You must keep supporting evidence for the past three full years of practice.

It is up to you to decide what evidence to provide. We require that you keep the following information:

- Title/description of your CPD activity;
- Date (or date range) of your activity;
- Type of CPD activity;
- CPD provider (where applicable);
- Knowledge area (see section 2)
- Learning objective(s) met by the CPD activity;
- Reflection on your CPD;
- Evidence confirming you have taken part in CPD activity.

Section 3 outlines the information we would require to see in an example of a CPD Record and Plan.

Your evidence may include, but is not exclusive to:

- An attendance record;
- A certificate of completion/achievement;
- Confirmation of results;
- Notes compiled undertaking research or reading;
- A sample of credited published journals/articles.

Reflecting on your CPD activities

We require you to reflect on the CPD activities you have planned and completed throughout the year.

You should complete an assessment of the extent to which your planned activities have met your learning objectives - after each CPD activity and at the end of each CPD year. This is a useful exercise to:

- Maximise the effectiveness of your learning;
- Make sure you can adapt your CPD throughout the course of the CPD year to achieve your desired learning objectives;
- Help inform learning objectives for future years.

This is also an opportunity for you to change the course of your planned CPD if your circumstances change during the year.

Declaring compliance

You must declare that you have carried out suitable CPD each year.

The CPD year runs from January to December. As such, you will be able to declare compliance with the CPD regulations and complete Authorisation to Practise requirements (which require action in February and March) simultaneously.

We may ask for evidence that you have carried out the activities contained in your CPD record and plan. You may also need to send us supporting evidence of your CPD.

Section 2: Scope of CPD

Types of CPD

Types of CPD include, but are not limited to:

- Taking part in formal face-to-face training courses, including university courses;
- Online courses;
- Attending conferences;
- Taking part in seminars or webinars;
- Reading or research;
- Authorship and editing of published works of a professional nature.

We encourage barristers to carry out a wide variety of CPD activities.

Each barrister's practice is different, and as such we do not prescribe one structure or amount of CPD to be carried out by all members of the profession.

CPD knowledge areas

Key knowledge areas you should consider:

Personal Values and Standards	<p>A key resource for barristers is the BSB Handbook (particularly Part 2: The Code of Conduct).</p> <p>It is essential for all barristers to be familiar with our regulatory requirements and our outcomes-based approach to regulation.</p> <p>You may wish consider:</p> <ul style="list-style-type: none"> • Your ability to act confidently in your legal practice; • Your approach to your work and your ability to correct errors or admit your limitations; • Your interpersonal skills; • Your social awareness; • Issues of equality and diversity within your practice.
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Management of Practice	<p>Law practice management is the study and practice of <u>business administration</u> in the legal context, including such topics as:</p> <ul style="list-style-type: none"> • <u>Workload and staff management</u>; • <u>Financial management</u>; • Risk management; • <u>Office management</u>; • <u>Marketing</u> (including <u>legal advertising</u>). <p>You must know and understand what is required of you in managing your practice effectively.</p> <p>Your approach to CPD in relation to the way you manage your practice will depend upon the nature of your practice.</p> <p>You need to take into account your type of practice and make sure you carry out CPD that best delivers the outcome suited to that type of practice.</p> <p>Types of practice</p> <ul style="list-style-type: none"> • Self-employed sole practitioner; • Self-employed in Chambers; • Employed as in-house counsel; • Employee or manager of an authorised entity; • Dual capacity. <p>Roles in practice</p> <p>You also need to take into account your role in your practice when planning and undertaking your CPD, for example:</p> <ul style="list-style-type: none"> • Head of Chambers; • Tenant; • Pupil Supervisor; • Pupillage Recruitment Manager; • Owner or manager of an entity.
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<p>Technical Legal knowledge and skills</p>	<p>It is a code of conduct requirement (Part 2 of the BSB Handbook) that you must not provide services to clients beyond your competence.</p> <p>As a general rule, the more areas of law in which you hold yourself out as practising, the greater the need for CPD. It is for you to assess:</p> <ul style="list-style-type: none"> • If you are competent to offer services in any particular field of law; • The type and breadth of CPD that you require to maintain a sufficient level of legal knowledge and skills in these areas.
<p>Working and others</p>	<p>You must make sure that your knowledge and skills enable you to communicate and establish effective and professional relations with clients and others.</p> <p>Equality and diversity</p> <p>You must be able to demonstrate that you understand:</p> <ul style="list-style-type: none"> • The implications for your practice of equality and diversity legislation; • Procedures and techniques to work with vulnerable witnesses, victims and clients as appropriate to your practice. <p>Public access</p> <p>If you wish to conduct public access work you are required to complete BSB accredited training in order to do this.</p>

New Practitioner Programme (NPP) Calculating CPD hours for NPP

As the requirements for new barristers are not changing, NPP barristers should continue to use the current CPD guidance.

How we assess your CPD

We will assess your CPD record card based on all three stages of the CPD cycle to ensure that the training undertaken fulfils the definition of CPD being structured learning.

Planning stage assessment

We will check:

- That you have considered the four recommended principal areas in which CPD activities could be undertaken;
- That you have identified a set of learning objectives that have specific outcomes;
- That you have considered how your learning objectives and proposed CPD activities are relevant to your practice;
- That you have evaluated your own strengths and weaknesses.

CPD activities assessment

We will:

- Check the relevance of the CPD activities you have carried out against the area of practice you undertake and the learning objectives you recorded at the planning stage;
- Consider your experience and seniority (compared to the activities carried out and the type of CPD activities you completed in previous years).

There is no minimum number of CPD hours that you need to complete. This means that while a particularly low number of CPD hours (including no CPD completed for the year) may draw additional scrutiny from our assessment team, it does not automatically mean a barrister is non-compliant.

Equally, if you carry out a large number of CPD hours this may still not be sufficient if you have not met your planned learning objectives.

You will not necessarily be non-compliant if there is a variation between your planning stage and the CPD activities you have completed. However, please address differences in the reflection stage.

Reflection stage assessment

We will check:

- That you have reflected on how your activities have met your original learning objectives;
- If any variations between learning objectives and activities occurred;
- Your assessment of future learning objectives.

If we are not satisfied with the CPD activities you have carried out we will initiate Supervision action described below.

Our Supervision and enforcement approach

Our new Continuing Professional Development (CPD) scheme is not based on a prescriptive set of rules or minimum number of CPD hours to complete.

Instead, we have based it on a CPD cycle that incorporates:

- A planning stage;
- The completion of relevant CPD activities;
- A reflection stage.
- A declaration of compliance

The assessment process for our proposed new CPD scheme will have to be more flexible in how it assesses barristers' compliance with CPD.

Our CPD assessment team will make more subjective rather than prescriptive assessments.

We may take enforcement action for non-compliance in relation to the appropriateness of the CPD carried out (failing to meet the required standard) or in relation to non-compliance with our process.

Examples that may lead to an assessment of non-compliance:

- Completing a CPD activity that is not relevant to your practice;
- Completing a minimal amount of CPD over a number of years, with no justification of this in your learning objectives;
- Completing the same CPD activity over a number of years with no adequate justification;
- Completing a CPD activity that is clearly below your level of expertise.

We will not normally take enforcement action for a single isolated breach of our CPD rules. Instead we will base CPD non-compliance enforcement action on repeated non-co-operation with the regulator.

We will attempt to address issues relating to failure to meet the appropriate standard by supervisory activity and corrective action.

If a barrister is judged not to be meeting an appropriate standard of CPD either in planning, CPD completed or reflection then our CPD assessment team will provide relevant feedback to better help those barristers raise their standard of CPD.

We will not take any further action except for including you in the next year's spot check process. You will be informed of this.

At this stage we would be looking for an acknowledgement that this feedback has been accepted by the barrister.

Where you have been given feedback, in future spot checks we will assess your CPD activities in more detail and we will give further feedback if necessary

If you repeatedly refuse to complete the CPD process in full, or if you carry out CPD activities that are consistently irrelevant or inappropriate, we may set compulsory corrective action for you to complete.

Although we may set corrective action after the first spot check, in the majority of cases this action would focus on addressing gaps in your CPD that the assessment team has documented over several previous spot check years.

If you wish to challenge corrective actions set by our CPD assessment team, we will refer your case to an independent panel for review. If barristers do not complete the corrective actions, we will refer them to Professional Conduct Department (PCD) for consideration of enforcement action. This referral could be on the basis of non-compliance with the CPD regulations or of failure to cooperate with the regulator.

Examples of corrective action include where we ask you to:

- Carry out (or discount as CPD) a particular type of CPD activity;
- Complete additional CPD hours;
- Expand on your planning or reflection stage (either in the current CPD year or for future CPD years);
- Confirm your area of practice or proposed areas of practice;
- Confirm that you have understood and acknowledged our feedback.

Our enforcement process

If you fail to complete corrective action prescribed by our CPD assessment team, you will be referred to the Professional Conduct Department for consideration of enforcement action.

The resulting enforcement action will usually be taken due to a barrister's non-co-operation with the regulator or non-compliance with parts of the process, which is a breach of Core Duty 9.

If you are referred for consideration of enforcement action, the PCD will deal with the referral in accordance with the provisions of Part 5 of the Handbook and any relevant operational processes and policies.

Other areas that could lead to enforcement action:

- Instances of dishonesty, including if you falsely declare completion of the CPD cycle;
- Failure to supply a CPD record and plan when called upon to do so.

Complaints Regulations: Amendment to the Professional Conduct Committee's power to take "no further action"

Status

1. For approval.

Executive summary

2. In February 2015, the BSB consulted on proposed changes to the Complaints Regulations (Part 5, Section A of the Bar Standards Board Handbook – "the Handbook") and consequential changes to the definition of professional misconduct. The changes are designed to address anomalies in the Handbook regarding the powers of the Professional Conduct Committee to impose "no further action" (NFA) in relation to breaches of the Handbook. These anomalies have made the use of the power almost redundant and incompatible with the definition of professional misconduct.

Recommendations

3. The Board is asked to **approve** the revisions to the Complaints Regulations (Part 5, Section A of the Bar Standards Board Handbook – "the Handbook") and consequential changes to the definition of professional misconduct (Part 6, definition 166), as set out at Annexes 1 and 2 to this paper, to allow for submission to the LSB for final approval.

Comment

Background

4. Under the Code of Conduct 8th Edition (the Code), the power of the PCC to take NFA was reserved for cases in which the PCC was satisfied that a breach of the Code had occurred that warranted disciplinary action for professional misconduct but, for exceptional reasons such as ill health, it was not appropriate to refer the matter to disciplinary action. By policy, the PCC could only take a NFA decision where it was satisfied:
 - a) that there was a real prospect of proving misconduct in front of a Disciplinary Tribunal to the criminal standard; and
 - b) prosecuting the barrister would serve the Regulatory Objectives, set out in section 1 of the Legal Services Act 2007; but
 - c) in the individual circumstances of the complaint, a NFA disposal could also satisfy the Regulatory Objectives.
5. A decision to impose NFA was therefore a final disposal of a complaint, but was neither a formal dismissal nor a formal finding of professional misconduct¹. NFA decisions were

¹ Under the Code, professional misconduct was defined at a paragraph 901.7 as "any failure by a barrister to comply with any provision of this Code other than those referred to in paragraph 901.1...".

disclosed for the purposes of certificates of good standing and in relation to enquires made by the relevant bodies considering applications for silk (Queens Counsel Appointments) and judicial office (Judicial Appointments Commission).

6. There was no right of appeal against a decision to take NFA, however, the barrister had the ability to object to NFA decisions. If this happened, the matter would then be referred to a Disciplinary Tribunal to make a determination. Therefore, the application of NFA under the old Code was only appropriate in circumstances where it would have been equally appropriate to have charged the barrister with professional misconduct. The power was very rarely used: the PCC took only three NFA decisions between January 2011 and January 2014.
7. The BSB Handbook, to a large extent, mirrors the powers contained in Annex J to the old Code² and reflects the policy approach previously adopted. However, there are some notable differences which have affected how the PCC can apply the power to take NFA decisions. In summary these differences are:
 - a) Professional misconduct is now defined as “a breach of [the] Handbook by a BSB regulated person which is not appropriate for disposal by way of **no further action** or the imposition of administrative sanctions” (emphasis added) – the Handbook, Part 6, Definition 166;
 - b) The power to impose administrative sanctions has been extended to all breaches of the Handbook – not just the limited number referred to in the old Code at paragraph 901.1;
 - c) Decisions to impose administrative sanctions and take NFA are based on an assessment of the evidence on the balance of probabilities and are applied in relation to “breaches of the Handbook” as opposed to professional misconduct;
 - d) The previous policy approach in relation to NFA decisions, as outlined at paragraphs 4-6 above, has, in part, been enshrined in the Regulations; and
 - e) The Handbook currently restricts the power to dismiss complaints, following an investigation, to circumstances where the conduct does not constitute a breach of the Handbook (the old rules allowed for dismissal of complaints where a breach of the Code had occurred but no action was warranted).

Issues with taking NFA Regulation decisions under the current regime

8. The impact of the differences set out at paragraph 7 have inadvertently created significant, but unintended, complex practical problems with the application of the power to take NFA decisions. These problems have made using the power very difficult and in effect rendered it redundant in its revised form. It is for this reason that the BSB consulted on the proposal to remove the power from the Regulations. Set out below is a rehearsal of the main issues that have arisen when attempting to apply the current Handbook Regulations on NFA.

² See Regulations E46-E49 of the current Complaints Regulations.

- i) The change in the definition of professional misconduct has significantly affected the fundamental nature of NFA decisions. They are now allied with decisions to impose administrative sanctions and are intended to be used for breaches of the Handbook proved on the balance of probabilities which do **not** amount to professional misconduct. However, the transfer of the policy approach under the old Code, combined with a “right” to object to a NFA decision and have the conduct referred to a Disciplinary Tribunal (current Regulation E49), renders an NFA decision a far more serious disposal. This is particularly so as the Regulations provide that NFA decisions are still disclosable to third parties (current Regulation E46.2);
 - ii) The current Regulations have created the anomalous situation whereby a breach of the Handbook that the PCC considers is suitable for disposal by way of NFA and thereby does not amount to professional misconduct, could be referred to a Disciplinary Tribunal solely because the barrister objects to the NFA decision. Where such a situation arises, the PCC would effectively be forced to prove professional misconduct in front of a Tribunal in circumstances where it had originally determined that the conduct did not represent professional misconduct;
 - iii) Even though a “right” exists for a person subject to a NFA decision to have the matter referred to a Disciplinary Tribunal, the Regulation in relation to referrals to Tribunals (see E38) require that such referrals are made only where there is a realistic prospect of a finding of professional misconduct being made (on the criminal standard of proof) and it is in the public interest to pursue disciplinary proceedings. The Regulations make no provision for a separate class of referrals arising from NFA decisions.
9. The issues above with the drafting of the Regulations, creates an unsustainable, anomalous and circular decision-making process that makes the use of NFA in its current guise redundant.
10. There are also two other associated anomalies in the Regulations that have come to light:
- i) There is no power, as was available under the old Code, to dismiss a complaint following investigation where there is evidence of a breach of the Handbook but it is in keeping with the enforcement strategy to dismiss the complaint because it does not justify any formal action. The power to take NFA cannot fulfil this role as such decisions are ultimately liable to referral to a Disciplinary Tribunal as professional misconduct matters.
 - ii) Reference in current Regulation E49 to “Section 5.A5” appears to be a mistake as that section refers to the Determination by Consent procedure, which is not relevant to NFA and includes no references to the NFA. This appears to be an example of an inadvertent mistake in the transfer of the old NFA powers in the Code to the new Handbook.

Addressing the current anomalies in the application of NFA

11. It is recognised that the problems identified above regarding the use of the PCC's power to take NFA decisions arise from a lack of detailed consideration of the practical implications of combining the enforcement regime in the Handbook with the old policy on NFA decisions. As a result, a complex and unsatisfactory situation has emerged in relation to the application of the NFA provisions. Almost inevitably, no circumstances have arisen where it would have been possible, or appropriate, to take a NFA decision. Nevertheless, it is unsatisfactory to retain a power in the Handbook that cannot be used effectively.
12. In considering what action to take to address the current anomalies, various options were considered and the following issues noted:
 - a) Removing the provisions relating to a barrister's right to have a matter referred to a Disciplinary Tribunal would result in unfairness as regulated persons would still be exposed to NFA decisions being disclosed to third parties without the option to have the matters considered by an independent panel. Therefore, if this approach was taken, it would need to be combined with amending the Regulations relating to the disclosure of NFA decisions and/or providing for a route of appeal;
 - b) The current provisions relating to the imposition of administrative sanctions, allow for any breach of the Handbook (proved on the balance of probabilities) to be dealt with by means of a formal warning, which is not currently disclosable. Such a power would seem to cover the overwhelming majority of circumstances where there has been a breach of the Handbook that falls short of professional misconduct and where there are circumstances that would not warrant the imposition of the more serious administrative sanction of a fine up to £1,000. If the circumstances are so exceptional as to warrant no action at all by the BSB, then a dismissal of the complaint would be appropriate (hence the proposal to extend the circumstances in which complaints can be dismissed post investigation (see paragraph 9 above);
 - c) It would appear that the only hypothetical circumstances in which a decision to take NFA might play a role are where a complaint is serious enough to amount to professional misconduct (and so may not be suitable for an administrative sanction) but the PCC considers that there is no realistic prospect of the conduct being proved to the criminal standard (or, there is a realistic prospect of success in achieving a finding of professional misconduct but the facts surrounding the conduct do not warrant a referral to disciplinary action). The risks of such circumstances arising are considered to be sufficiently low that they do not warrant a substantial recasting of the Complaints Regulations in order to provide for an effective regime for taking NFA decisions. It is recognised that, in very rare cases, the proposed revisions could result in barristers who have committed professional misconduct having complaints against them dismissed. However, such dismissals would only occur in exceptional circumstances, for example, where a barrister is suffering from a terminal illness.

13. In light of the considerations set out above, the consultation paper proposed three options for change³, with the BSB's preferred and formal proposal being to adopt **Option 1**, as follows:
- Remove the NFA power entirely from the Regulations but reinstate the power, previously available under the old Code, to allow the PCC to dismiss complaints where it considers there has been a breach of the Code but no form of sanction is warranted, taking into account the circumstances, the risk posed, and the enforcement strategy.
14. The consultation paper also detailed two further, but less favoured options as set out below. Both options would require substantial amendments to the Regulations for little gain as it is unlikely that many, if any cases, would fall to be considered under them.
- **Option 2:** The PCC's power to take NFA decisions is retained, but the right to have a matter referred to a Tribunal is removed. There is put in place a clear appeal process in relation to NFA decisions and the BSB's policy on disclosure of NFA decisions is revised to bring it in line with the current disclosure of administrative sanctions (ie, NFA decisions are not disclosed).
 - **Option 3:** The PCC's power to take NFA is retained; the option for referral to a Disciplinary Tribunal is removed; a clear appeal process is established; but NFA decisions are still disclosed.
15. The Board should note that a fundamental review of the Complaints Regulations is planned for 2016/17. At that time, the range of powers available to the PCC will be considered in more detail. At that stage, if not before, we will also consider revising the approach to disclosure of decisions to impose administrative sanctions.

Consultation

16. The proposed changes in relation to NFA decisions were subject to a public consultation over an 8 week period, which ran from February to April 2015. Consultees were asked whether they:
- i) agreed there is a need to amend the Complaints Regulations in the BSB Handbook in relation to the application of NFA decisions; and
 - ii) agreed with the BSB's proposal (Option 1) to address the anomalies in relation to the application of the PCC's power to take NFA decisions by removing the power.
17. Only one formal response was received to the consultation paper from the Bar Council. They agreed that the present system in relation to 'no further action' decisions was unsatisfactory and should be reformed in the way proposed by the BSB (ie, Option 1). The Bar Council also agreed that the power to dismiss a complaint in these circumstances would enable the BSB

³ Full details can be found at paragraphs 31–33 of the consultation paper (available on request).

to ensure that it is regulating in a manner which is effective, efficient, transparent, fair and proportionate.

Proposal following consultation - amendments to the Handbook

18. In light of the outcome of the consultation, the proposal is that the BSB moves ahead with the changes necessary to implement Option 1 as outlined in paragraph 13 above. The Board is therefore asked to approve the amendments to the Complaints Regulations and definitions section of the Handbook. The changes are tracked at Annexes 1 and 2, and amount to:
- a) removing all references to NFA in the Regulations (see Regulations E8.2, E39, E65.2c, the subtitle at A6, and the deleted clauses at E46-49 of Annex 1);
 - b) amending Regulation E37.2 to allow for conduct that constitutes a breach of the Handbook (on the balance of probabilities) to be dismissed where, in all the circumstances, it is considered that no enforcement action should be taken in respect of the breach;
 - c) amending the definition of professional misconduct set out at definition 166 in Part 6 of the Handbook to remove the reference to NFA (see Annex 2); and
 - d) changing cross references in the Regulations as a result of the removal of some Regulations.

Resource implications

19. The changes to the Regulations will have few resource implications and will not generate any additional work for staff within the PCD and PCC. There are also no additional financial implications associated with the changes.

Equality and diversity

20. As the amendments relate to general enforcement powers, and not their application to individual cases, there are no equality issues arising from them. If applicable, a regulated person's personal circumstances (such as: whether they have a disability, whether they have been on maternity leave etc), will be considered by the appropriate decision makers when determining what enforcement action to take, if any. Indeed, the reinstatement of the PCC's powers to dismiss complaints at the post-investigation stage should promote proportionate, fair and risk based decision-making.

Risk implications

21. No significant risks have been identified in relation the proposed changes to the Regulations since the purpose is to eliminate uncertainty in how the PCC's powers are applied rather than impose any new regulatory requirements. The power to impose NFA has only been exercised by the PCC three times between January 2011 and January 2014 and these instances were prior to the introduction of the Handbook. As such, the changes will have limited impact.

22. However, there are reputational and practical risks associated with retaining the current terms of the Regulations in relation to NFA decisions in that they do not provide for effective and clear enforcement processes. In particular, there is an ongoing risk that retaining an enforcement power that cannot be exercised in practice is misleading to both the public and the profession. The changes are therefore necessary to ensure such risks are adequately addressed.

Impact on other teams, departments or projects

23. Operationally, no BSB Departments, other than the PCD, will be impacted by the proposed changes. The Regulatory Policy department has been kept advised of the proposals, and is aware of the implications for the Handbook. Supporting PCC and PCD policy and guidance will be amended in light of the changes once approval from the LSB has been obtained.

Regulatory Objectives

24. The issues in this paper impact on, and are central to, the objectives of protecting and promoting the public and consumer interest as well as promoting and maintaining adherence to the professional principles.

Publicity

25. The revised Regulations will be included in the Handbook and published on the BSB's website once LSB approval has been received.

Annexes

- Annex 1 – The amended Complaints Regulations
- Annex 2 – The amended definition of Professional Misconduct

Lead responsibility:

Sara Jagger

Director of Professional Conduct

Simon Lofthouse QC
Chair of the PCC

THE COMPLAINTS REGULATIONS

A1 Powers and Functions of the PCC

rE1 The membership of the PCC shall be as prescribed by the Standing Orders of the *Bar Standards Board* from time to time.

rE2 The powers of the PCC shall be as set out in this Part 5, and shall include (but not be limited to) the power:

- .1 to consider *complaints* made by *persons* other than the *Bar Standards Board*;
- .2 to raise *complaints* on behalf of the *Bar Standards Board*, and to withdraw such *complaints*;
- .3 to determine whether any *complaint*.
 - .a discloses a potential breach of the *Handbook*; and/or
 - .b discloses a potential case of *professional misconduct*; and/or
 - .c potentially satisfies the *disqualification condition*,and if so to deal with it in accordance with this Section 5.A;
- .4 to direct the investigation of *complaints*;
- .5 to seek, in appropriate cases, to resolve *complaints* using the *determination by consent procedure*;
- .6 to bring and prosecute charges of *professional misconduct* or make an application for *disqualification* before *Disciplinary Tribunals* (as provided by Section 5.B);
- .7 to seek an immediate interim suspension or immediate *disqualification order* in accordance with Section 5.D of this *Handbook*;
- .8 to seek an interim suspension or disqualification order in accordance with Section 5.D of this *Handbook*;

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A1: Powers and Functions of the PCC

- .9 to refer *practising barristers* to a Fitness to Practise panel in accordance with Section 5.E of this *Handbook*;
 - .10 to refer to *disciplinary tribunals* any *legal aid complaint* relating to the conduct of a *BSB regulated person* and to be responsible for prosecuting any such charges or *legal aid complaints* before such *disciplinary tribunals*;
 - .11 to refer any *complaint* for supervisory action by the *supervision team*;
 - .12 to take such other actions in relation to *complaints* or infringements of the *handbook* as are permitted by this Section 5.A;
 - .13 to impose, or direct the imposition, of an *administrative sanction* in accordance with the provisions of rE37.3 below;
 - .14 to make recommendations on matters of professional conduct to the *Bar Standards Board* or to any of its committees, as the *PCC* may think appropriate; and
 - .15 to make rulings on matters of professional conduct in accordance with the *determination by consent procedure*.
- rE3** The *PCC* and the Chairman of the *PCC* shall each have the power to authorise any *person*, group or body to fulfil any function or exercise any power given to them by this Section 5.A. Any authorisations given under rE3 must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.
- rE4** Save in respect of the matters dealt with at rE29.2 (time limits for making a *complaint*), the *PCC* or the Chairman of the *PCC* shall have the power to extend any time limits prescribed by this Section 5.A, in their absolute discretion, whenever it appears to be appropriate to do so.
- rE5** In determining which of its powers under this Section 5.A to use the *PCC* will take into account all the circumstances, including:
- .1 the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant; and

.2 any other factor relevant to the issue including whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.

rE6 The PCC may at any time postpone consideration of a *complaint*, whether to permit further investigation of the *complaint* to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.

rE7 The PCC may at any time seek information or assistance, orally or in writing, as it thinks fit, from any *person*, group or body.

rE8 If at any time the PCC decides in accordance with this Section 5.A:

.1 to refer a *complaint* to another *person* or body for consideration; or

.2 to dismiss ~~or take no further action on~~ a *complaint*; or

.3 to postpone consideration of a *complaint*;

it must give written reasons for that decision, and provide those reasons to the *relevant person* against whom the *complaint* was made and (where the *complaint* was made by a *person* other than the *Bar Standards Board*) the complainant.

rE9 Any *complaint* received from a *person* other than the *Bar Standards Board* shall first be dealt with by the PCC in accordance with Section 5.A2 and, where relevant, shall then be considered by the PCC in accordance with Section 5.A3 below.

rE10 Any *complaint* raised by the *Bar Standards Board* itself shall be considered by the PCC in accordance with Section 5.A3 below.

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

A2 Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the *Bar Standards Board*

Referral of complaints to other persons or to the supervision team

rE11 When it receives a *complaint*, the *PCC* must first consider whether it is appropriate to refer the *complaint* to another *person* or to the *supervision team*, accordance with rE13 to rE28 below. If at any time the *PCC* decides to refer a *complaint* to another *person* or body for consideration or to the *supervision team* it must give written reasons for that decision, and provide such reasons to the *relevant person* against whom the *complaint* was made and the complainant.

rE12 The *PCC*'s decision under rE11 is final and no one has the right to appeal against it.

Reference to the Legal Ombudsman

rE13 If a *complaint* is made by or on behalf of a *client* of a *BSB regulated person* (excluding for the purposes of this rE13 only, *unregistered barristers*) against that *BSB regulated person* (or, in the case of a *BSB authorised body*, such a *complaint* is made against any individual working as an *employee* or *manager* of such *BSB authorised body*), the *PCC* must refer such *complaint* without further consideration to the *Legal Ombudsman*, or will signpost the complainant to the *Legal Ombudsman* and must in the case of a referral notify the complainant of the referral, unless it is clear on the face of the *complaint* that the matter falls outside the jurisdiction of the *Legal Ombudsman*.

rE14 If a *complaint* is made by or on behalf of a *client* of an *unregistered barrister* against that *unregistered barrister*, the *PCC* may refer such *complaint* to the *Legal Ombudsman* if it is satisfied that the *Legal Ombudsman* may have jurisdiction in relation to such *complaint*, and the *PCC* shall notify the complainant of the referral.

rE15 For the avoidance of doubt, such a referral does not prevent the immediate operation of the *Interim Suspension and Disqualification Regulations* or the *Fitness to Practise Regulations*, where appropriate.

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A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

rE16 When a *complaint* is referred, or referred back, to the *Bar Standards Board* by the *Legal Ombudsman*, rE29 and following, below, apply.

Reference to chambers/BSB authorised bodies

rE17 If it appears to the *PCC* that a *complaint* against a *relevant person* (which is not a *complaint* made by or on behalf of *BSB regulated person's client* against that *BSB regulated person*) may appropriately be resolved by:

- .1 *chambers* (where the *complaint* is against a *self-employed barrister* who is a *member of*, or other *relevant person* who is working at, such *chambers* at the relevant time); or
- .2 a *BSB authorised body* (where the *complaint* is against a *BSB authorised body* or the *complaint* is against a *relevant person* acting in their capacity as a *manager* or *employee* of such *BSB authorised body* at the relevant time),
- .3 the *PCC* may refer the *complaint* to the *chambers* or *BSB authorised body* for investigation and resolution. For the avoidance of doubt, where a *complaint* is made against an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*, the provisions of rE28 apply.

rE18 When deciding whether to refer a *complaint* in accordance with rE16 above, the *PCC* must take into account all the circumstances, including the factors referred to at rE4 above, and the relationship (if any) between the complainant and the relevant *chambers/BSB authorised body* and whether such a relationship continues.

rE19 The *PCC* must consider whether the *complaint* should be dismissed on the grounds that it has not been made within the period identified in rE29.2 below before it decides whether to refer the *complaint* to the relevant *chambers/BSB authorised body* in accordance with rE17 above.

rE20 Where a *complaint* is referred to the relevant *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* will send any information held by it relating to the *complaint* to the head of *chambers* or to the *person* nominated by the *chambers* as being

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A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board responsible for such issues (in the case of a referral to *chambers*) or to the *HOLP* (in the case of a referral to a *BSB authorised body*).

rE21 Following a referral to a *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* must inform the complainant of the complainant's rights under rE22.2 below.

rE22 If:

- .1 the *PCC* considers that progress made by the *chambers/BSB authorised body* in investigating and resolving the *complaint*, or the outcome of such an investigation, is unsatisfactory; or
- .2 a complainant informs the *PCC* that he is dissatisfied with the progress or outcome of the *chambers/BSB authorised body's* investigation, giving reasons for such dissatisfaction,

then the *PCC* must consider the *complaint* in accordance with rE29 and following below.

Reference where BSB regulated individual acting in judicial or quasi-judicial capacity

rE23 If it appears to the *PCC* that the *complaint* arises out of a *relevant person's* actions in a part-time or temporary judicial or quasi-judicial capacity, it must act as follows:

- .1 if it appears to the *PCC* that the *complaint* would otherwise fall to be dismissed under this Section 5.A, the *PCC* must dismiss it; or
- .2 if it appears to the *PCC* that the *complaint* would otherwise not fall to be dismissed, the *PCC* must refer the *complaint* without further consideration to the Office of Judicial Complaints and/or *person* or body responsible for the appointment of the *relevant person* to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other *person* or body as appropriate) ("the appropriate body"), requesting the appropriate body to notify the *PCC* when the *complaint* has been dealt with and of any action taken by it. Where the appropriate body is a *person* other than the Lord Chancellor or a Minister of the Crown, and where the *PCC* considers it inappropriate to refer the *complaint* to the appropriate

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board body, or where the appropriate body refuses to deal with a *complaint*, the *PCC* must consider the *complaint* and, subject to rE25 below, direct it to be proceeded with in accordance with rE29 and following below.

rE24 If the appropriate body, having dealt with a *complaint*, believes that it may be appropriate for it to be considered further by the *Bar Standards Board*, the *appropriate body may*, subject to rE25 below, refer the matter back to the *Bar Standards Board* and, following such referral, the *PCC* may reconsider the *complaint* and may, if it sees fit, direct it to be proceeded with in accordance with rE29 and following below.

rE25 No such reference to the *Bar Standards Board* as is mentioned in rE24 above by the appropriate body shall be acted upon by the *PCC*, nor shall the *PCC* exercise the powers under the last sentence of rE23.2 above, in respect of a *complaint* relating to anything said or done by the *BSB regulated individual* in the exercise of his judicial functions or affecting the independence of the *BSB regulated person* in his judicial or quasi-judicial capacity.

Reference to the Lord Chancellor or appropriate body

rE26 If it appears to the *PCC* that the *complaint* relates to the conduct of a *BSB regulated individual* who, since the events giving rise to the *complaint* took place, has been appointed to and continues to hold full-time judicial office and has ceased *practice*, the *PCC* shall not consider the *complaint* further and must inform the complainant that his *complaint* should be directed to the Lord Chancellor or the Office of Judicial Complaints or to such other *person* or appropriate body with responsibility for addressing complaints about judges.

Reference to the supervision team

rE27 If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by the *supervision team* rather than investigation in accordance with rE29 onwards, it may refer the *complaint* to the *supervision team*. If, the *supervision team* then concludes that the *complaint* is best dealt with more formally by the *PCC* in accordance with rE29 onwards, then the *supervision team* may refer the *complaint* back to the *PCC*. The *PCC* must then deal with the *complaint* in accordance with rE29 and following below.

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Part 5: Enforcement Regulations
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A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

Reference to any other person

rE28 If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by an *Inn*, Circuit, *employer* or any other professional or regulatory body (including, for the avoidance of doubt, any other *approved regulator*), it may refer the *complaint* to such other body. If, having referred a *complaint* to another body under rE28, the *PCC* subsequently considers that the *complaint* has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *PCC* may in its discretion then choose to consider the *complaint* in accordance with rE11 above and/or –rE29 and following below.

PCC's powers before investigation of complaints

rE29 In determining whether a *complaint* raised by a *person* other than the *Bar Standards Board* potentially discloses a breach of the *Handbook*, a potential case of *professional misconduct* or a breach of the *Handbook* satisfying the *disqualification condition*, and whether, if it does, it is apt for further consideration, the *PCC* must first consider:

- .1 whether the *complaint* concerns a *relevant person*; and
- .2 whether the *complaint* has been made:
 - .a within twelve months of the conduct of which *complaint* is made, or
 - .b where a complainant has indicated to the *PCC* his dissatisfaction with the outcome of a *chambers/BSB* authorised *body's* investigation in accordance with rE22 above, within three months of the end of the investigation by *chambers/BSB* authorised *body*, whichever is the later; and

in either case, where the conduct of which a *complaint* is made is (or was) continuing or consisted of a series of related acts or omissions, the conduct must for the purposes of this rule be treated as having taken place at the time when the continuing conduct ceased or at the date of the last of any such acts or omissions.

Enforceable from January 2014. Scored through text is still subject to approval by the Legal Services Board.

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A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

rE30 Where the *PCC* decides that the *complaint* does not relate to a *relevant person* or that it relates to a *non-authorised person* in circumstances where the nature of the *complaint* is unlikely to satisfy the *disqualification condition*, it must dismiss the *complaint*.

rE31 Where the *PCC* decides that the *complaint* has not been made within the period identified in rE29.2 above it must dismiss the *complaint* unless it decides that further consideration of the *complaint* is justified in the public interest, having regard to the *regulatory objectives*.

rE32 Where the *PCC* has not dismissed a *complaint* in accordance with rE30 or rE31 above, the *PCC* must next consider, having regard to the *enforcement strategy*, whether further consideration of the *complaint* is justified. If the *PCC* considers that:

- .1 the *complaint* for any reason lacks substance; or
- .2 the *complaint* cannot be properly or fairly investigated; or
- .3 the *complaint* or its consequences are insufficiently serious to justify further action; or
- .4 for any other reason the *complaint* is not apt for further consideration,

then the *PCC* must dismiss the *complaint*, although it may also elect in such circumstances to refer the matter for to the *supervision team* in accordance with rE27 above (except that the *supervision team* can not refer the matter back to the *PCC* unless and until further evidence comes to light such that the matter would warrant further consideration by the *PCC*). The *PCC* must give written reasons for referring the matter to the *supervision team*.

rE33 If a *complaint* is not dismissed by the *PCC* after its initial consideration, it must be investigated and dealt with in the manner set out in Section 5.A3 below and the complainant and *barrister* must be informed, in writing, that such an investigation is to take place.

Enforceable from January 2014. Scored through text is still subject to approval by the Legal Services Board.

Part 5: Enforcement Regulations
Section A: The Complaints Regulations

A3: Procedure for dealing with complaints to be handled by the *PCC* – general

A3 Procedure for dealing with complaints to be handled by the *PCC* - general

Investigation of complaints

rE34 The investigation of *complaints* must be conducted by the Professional Conduct Department under the direction of the *PCC*.

rE35 When an investigation into a *complaint* is complete, the *PCC* must exercise the powers given to it by rE36 and following below.

Additional potential breaches of the *Handbook*

rE36 If in the course of its investigation or consideration of a *complaint* ("*the original complaint*") the *PCC* considers that there is any matter other than that originally complained of which might give rise to a potential breach of this *Handbook*, and/or a potential case of *professional misconduct*, and/or potentially satisfy the *disqualification condition*, the *PCC* may raise a *complaint* about that matter on behalf of the *Bar Standards Board* ("*the new complaint*").

.1 Then, unless the new matter falls within rE36.2 below:

- .a *the new complaint* must be investigated in the manner set out in rE34 and following above;
- .b the *PCC* must not consider whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint* unless and until the *relevant person* has been given the opportunity to comment in writing on the matter complained of in *the new complaint*. The *PCC* must take any comments made by the *relevant person* into account when it decides whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect that the disqualification condition will be satisfied* in respect of *the new complaint*;

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A3: Procedure for dealing with complaints to be handled by the *PCC* – general

.c the *PCC* may defer further consideration of *the original complaint* until the *new complaint* has been investigated.

- .2 No further investigation or opportunity to respond is required where the subject matter of *the new complaint* has already been investigated in the course of investigations into *the original complaint* and the *relevant person* has already been given an opportunity to comment thereon.

PCC consideration of complaints

rE37 When any investigation is complete, the *PCC* must consider the *complaint*, together with the results of any investigation thereof, and may conclude (having regard to the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant) in respect of *complaints* made against a *relevant person* (but subject always to rE37 and rE40 below):

- .1 that the conduct did not constitute a breach of the *Handbook*, in which case the *PCC* must dismiss the *complaint* and rE43 to rE45 apply; or
- .2 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) but that, in all the circumstances, no further-enforcement action should be taken in respect of the breach in which case rE1 to rE1 apply; or
- .3 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) and that that breach should be dealt with by an *administrative sanction* in which case rE46 to rE51¹ apply; or
- .4 that the conduct may constitute a breach of the *Handbook*; and (ii) if such breach were to be proved, that an *administrative sanction* pursuant to rE37.3 would not be appropriate in all the circumstances, in which case rE38, rE41, rE42 and rE52 to rE62 apply; or
- .5 that the subject matter of the *complaint* against a *BSB regulated person* involves a *conviction* for an offence of dishonesty or deception, in which case the *PCC* must

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Section A: The Complaints Regulations

A3: Procedure for dealing with complaints to be handled by the *PCC* – general

direct that the *complaint* should form the subject matter of a charge before a *Disciplinary Tribunal* in which case rE42 and rE52 to rE62 shall apply.

rE38 Where the *PCC* has concluded that rE37.4 is applicable, it must refer the *complaint* to a *Disciplinary Tribunal*, subject to rE40, provided that no *complaint* shall be referred unless the *PCC* is satisfied that:

- .1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and
- .2 that it is in the public interest, having regard to the *regulatory objectives* to pursue disciplinary proceedings.

rE39 For the avoidance of doubt, where the *relevant person* is a *non-authorised individual* the *PCC* may not impose an *administrative sanction* or make a referral to a *Disciplinary Tribunal* on charges of *professional misconduct*. The *PCC* may only decide to dismiss the *complaint*, ~~take no further action~~ or make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order*.

rE40 The *PCC* must not conclude that any conduct alleged by an external complainant did constitute a breach of the *Handbook* (on the balance of probabilities) if the *relevant person* has not had a reasonable opportunity to respond in writing to the allegation on which the *complaint* is based unless the matter has already been investigated by the *Legal Ombudsman*. For the avoidance of doubt, complaints referred to the *PCC* by the *supervision team* are not caught by this requirement.

rE41 Where the *PCC* is minded to refer the matter to a *Disciplinary Tribunal* for determination it may, in appropriate cases and with the consent of the *defendant*, instead direct that the *complaint* be subject to the *determination by consent procedure* (under Section 5.A4 below).

rE42 Where the *BSB regulated person* referred to a *Disciplinary Tribunal* is a *registered European Lawyer*, the *PCC* shall:

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A3: Procedure for dealing with complaints to be handled by the *PCC* – general

- .1 inform the professional body of which the registered *European lawyer* is a member in his home *Member State*;
- .2 offer the professional body the opportunity to make representations to the *Disciplinary Tribunal* to which the *complaint* has been referred or (where the *determination by consent procedure* is used) to the *PCC*; and
- .3 inform the professional body of findings made by the *Disciplinary Tribunal*, the *PCC* or any other *Bar Standards Board Panel*.

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A4: Possible outcomes of an investigation

A4 Possible outcomes of an investigation of a *complaint* under Section 5.A3

Dismissal

rE43 Where a decision to dismiss a *complaint* in accordance with rE37.1 or E37.2 is being taken at a meeting of the *PCC* and not by some other *person*, group or body authorised in accordance with rE3 of this **Section 5.A**, the majority of the *lay members* present at the meeting must consent to such dismissal.

rE44 Where the *PCC* takes the decision to dismiss a *complaint*, but the *BSB regulated person's* conduct is nevertheless such as to give cause for concern, the *PCC* may in those circumstances, and either before or after any disposal of the *complaint*, do any or both of the following:

- .1 draw to the *BSB regulated person's* attention in writing the *PCC's* concerns;
- .2 advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the *PCC* or on some other *person* nominated by the *PCC*, to receive such advice.

rE45 Any decision by the *PCC* to dismiss a *complaint* must only be disclosed in accordance with rE88 and rE89.

No further action

~~**rE46** Where the *PCC* decides to take no further action in respect of a *complaint* in accordance with rE37.2, the *PCC* shall write to the relevant *BSB regulated person*:~~

- ~~.1 notifying him of the provisions of the *Handbook* which the *PCC* has concluded were breached by him and that the *PCC* has decided in this instance to take no further action; and~~
- ~~.2 informing him of the consequences of its decision (including that the decision will be formally recorded and will be disclosable to third parties, where relevant, that it will~~

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~~be notified to the supervision team and, where relevant in accordance with rE47, that it will be notified to the Barrister's Inn); and~~

~~.3 confirming that if the BSB regulated person objects to the decision taken by the PCC that he may ask for that the matter to be referred for resolution by a Disciplinary Tribunal in accordance with rE49; and~~

~~.4 where the PCC considers it appropriate in all the circumstances, advising him on to his future conduct either in writing or by directing him to attend on the Chairman of the PCC or on some other person nominated by the PCC, to receive such advice.~~

~~rE47 If, when deciding to take no further action on a complaint in respect of a Barrister, the PCC nonetheless considers that the circumstances of the complaint are relevant to the Barrister's position as a pupil supervisor, it may notify the Barrister's Inn of its concern in such manner as it sees fit.~~

~~rE48 Any decision by the PCC to take no further action will be formally recorded, will be disclosable to certain third parties (in accordance with the Bar Standards Board's policy on publication and disclosure) and may, where appropriate, be referred to the supervision team for continuing monitoring and supervision, but will not be made public.~~

~~rE49 The BSB regulated person shall have the right to object to a decision of the PCC to take no further action in accordance with Section 5.A5 by asking for that the matter to be referred for resolution by a Disciplinary Tribunal.~~

Administrative fines and warnings

~~rE50~~rE46 Pursuant to rE37.3 above, the PCC may impose an *administrative sanction* on a BSB regulated person only where:

- ~~.1~~ there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that person; and
- ~~.2~~ the PCC considers that to impose an *administrative sanction* is a proportionate and sufficient in the public interest.

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 A4: Possible outcomes of an investigation

rE54rE47 In determining the level of *administrative sanction* to be imposed, the *PCC* must have due regard to the *enforcement strategy* and may have regard to such other matters as the *Bar Standards Board* may consider relevant from time to time.

rE52rE48 The maximum level of a fine which can be imposed by the *PCC* under rE47 is:

- .1 £1,000 (one thousand pounds) where the fine is to be imposed on a *BSB regulated individual*; and
- .2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a *BSB authorised body*.

rE53rE49 Any decision by the *PCC* to impose an administrative fine or warning will be formally recorded and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE88 and rE89.

rE54rE50 Any failure by the *BSB regulated person* to pay the administrative fine within the relevant time is likely to be treated as *professional misconduct* and shall entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.

rE55rE51 The *BSB regulated person* may appeal a decision of the *PCC* to impose an *administrative sanction* in accordance with Section 5.A5.

Disciplinary charges

rE56rE52 If the *PCC* directs under rE37.5 or rE38 above that a *complaint* shall form the subject matter of a charge of *professional misconduct* before a *Disciplinary Tribunal* and/or that an application should be made to a *Disciplinary Tribunal* for a *disqualification order*, the following rules apply.

rE57rE53 At the same time as the *PCC* directs that a *complaint* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal*, the *PCC* must also decide whether a three-person panel or a five-person panel is to be constituted.

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rE58rE54 Where the direction is made pursuant to rE37.5 (*complaint involving conviction for dishonesty or deception*), the *PCC* must direct that a five-person panel is to be constituted.

rE59rE55 In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the *PCC* shall consider the sanction which it considers is likely to be imposed on the *relevant person* if the charge or application is proved, having regard to:

- .1 any applicable sentencing policy and guidelines issued by the *Bar Standards Board* and/or the *Council of the Inns of Court* from time to time; and
- .2 the previous disciplinary record of the *relevant person*; and
- .3 any deferred sentence which would be activated if the *relevant person* were to be found guilty of the charges alleged.

rE60rE56 The *PCC*:

- .1 shall direct that a five-person panel is to be constituted if the *PCC* considers that:
 - .a the *BSB authorised individual* would be likely to be *disbarred* or *suspended* from *practice* for more than twelve months; or
 - .b that the *relevant person* would be likely to be *disqualified* indefinitely or for a defined term of more than twelve months; or
 - .c that the *BSB authorised body* would be likely to have its authorisation or licence revoked or *suspended* for a period of more than twelve months;
- .2 may refer to a five person panel where it considers it desirable to have a broader range of expertise available, having regard to the subject matter of the complaint.

Otherwise, the *PCC* must direct that a three-person panel is to be constituted

rE64rE57 The *PCC* must inform the *BSB regulated person* and the complainant (if any) of the direction that it has made pursuant to rE53. No one may appeal against the decision taken by the *PCC* under that **RULE** (and those following).

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rE62rE58 Where the *PCC* directs that a three-person panel is to be constituted, the *PCC* may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.

rE63rE59 The *PCC* may :

- .1 refer to the same *Disciplinary Tribunal* any charges and/or *disqualification* applications which the *PCC* considers may conveniently be dealt with together;
- .2 refer any additional charges or *disqualification* applications relating to the same *BSB regulated person* to the *Disciplinary Tribunal* which is dealing with the original disciplinary charge or *disqualification* application (as the case may be), even if the additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a *Disciplinary Tribunal* of that level.

rE64rE60 The *PCC*:

- .1 may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions is satisfied:
 - .a the facts of the *complaint* are unlikely to be disputed (for example because it involves a criminal *conviction*); or
 - .b witnesses are unlikely to be called for the hearing; or
 - .c the case should be resolved urgently; or
 - .d there is some other good reason for expedition; and
- .2 must direct that the prosecution of the charges be expedited if the *defendant* has requested an expedited hearing under Section 5.D.

rE65rE61 When the *PCC* has directed that a *complaint* shall form the subject matter of a charge or application before a *Disciplinary Tribunal*, the *PCC* must be responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal*. If so:

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- .1 the *PCC* may arrange for the appointment of counsel to settle the charge and to present the case before the *Disciplinary Tribunal*; and
- .2 any charges shall be brought in the name and on behalf of the *Bar Standards Board*.

~~rE66rE62~~ Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*.

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Section A: The Complaints Regulations
A5: Determination by consent

A5 Determination by consent

~~rE67~~rE63 A *complaint* which the *PCC* is otherwise intending to refer to the *Disciplinary Tribunal* in accordance with rE38 above may, with the consent of the *relevant person* against whom the *complaint* is made, be finally determined by the *PCC*. This is referred to as the “*determination by consent procedure*”.

~~rE68~~rE64 The circumstances in which the *determination by consent procedure* is to be used, and how it is to be used, are set out below.

~~rE69~~rE65 The *PCC* must, in deciding whether to make a *complaint* subject to the *determination by consent procedure*, consider all the circumstances. The *PCC* may make the *complaint* subject to the *determination by consent procedure* only if:

- .1 the *relevant person* submits to the jurisdiction of the *PCC*; and
- .2 the *PCC* considers that:
 - .a there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* in respect of the *complaint*; and
 - .b there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - .c there are no exceptional circumstances which would warrant ~~no further action being taken on the complaint or~~ the *complaint* being dismissed; and
 - .d having regard to the *regulatory objectives*, it is in the public interest to resolve the *complaint* under the *determination by consent procedure*; and
 - .e the potential *professional misconduct or disqualification condition*, if proved, combined with:
 - .i the *relevant person's* previous disciplinary history, and

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.ii any deferred sentences which would be activated if the breach or breaches were proved,

.f do not appear to be such as to warrant a period of suspension or disbarment, the withdrawal of an *authorisation* or *licence* (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).

rE70rE66 The *determination by consent procedure* will be conducted in accordance with such procedures as the *PCC* may prescribe from time to time.

rE74rE67 The *PCC* may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of rE65 are satisfied, or for any other good reason.

rE72rE68 If the *determination by consent procedure* ends other than by a finding and sentence to which the *relevant person* consents, then the *complaint* may be referred to a full *Disciplinary Tribunal*.

rE73rE69 The *PCC* must publish any finding and sentence resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sentence by a *Disciplinary Tribunal*, as provided for in the *Disciplinary Tribunal Regulations*.

rE74rE70 If the *relevant person* accepts a *determination by consent*, no one may appeal against it.

rE75rE71 In determining what sanction, if any, to impose under the *determination by consent procedure*, the *PCC* shall have regard to the relevant *enforcement strategy* and to any sentencing policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.

rE76rE72 The *PCC* may impose on a *relevant person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following sanctions:

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- .1 An order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined in accordance with the relevant fines policy);
- .2 the imposition of any conditions on his licence or authorisation (where appropriate);
- .3 a reprimand by the *PCC* or an order to attend on a nominated *person* to be reprimanded;
- .4 advice by the *PCC* as to his future conduct or an order to attend on a nominated *person* to be given advice as to his future conduct;
- .5 an order to complete (or, in the case of a *BSB* authorised *body*, an order to procure that any relevant *managers* or *employees* complete) continuing professional development of such nature and duration as the *PCC* shall direct and to provide satisfactory proof of compliance with this order to the *PCC*.

#E77#E73 Where the *PCC* has imposed a fine, the confirmation letter to the *relevant person* must indicate that the *relevant person* must pay the fine within 28 days of the date when that letter is received, subject to any representations that the *relevant person* needs extra time to pay. Any application to pay a fine in instalments is to be decided in his discretion by the Chairman of the *PCC*.

#E78#E74 Any failure by the *BSB regulated person* to pay a fine within the relevant timescale is likely to be treated as *professional misconduct* and will entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.

#E79#E75 Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may be deferred for a period which is no less than six months and no more than two years long (the “*period of deferral*”).

#E80#E76 A deferred sentence is liable be activated where the *relevant person* is later found (whether during the *period of deferral* or afterwards) to have committed *professional misconduct* during the *period of deferral*.

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Section A: The Complaints Regulations
A5: Determination by consent

rE84rE77 Where the *PCC* finds that there has been *professional misconduct* during the *period of deferral*, it must (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, save in exceptional circumstances.

rE82rE78 For the avoidance of doubt, the *PCC* may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a *Disciplinary Tribunal*, so long as the total sanction imposed does not exceed the powers of the *PCC* set out in **rE72** above.

rE83rE79 The *PCC* may not make an award of costs when dealing with a *complaint* under the *determination by consent procedure*.

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A6: Appeals

A6 Appeals

BSB regulated person's right to appeal ~~from a decision to take no further action or~~ from a decision to impose an *administrative sanction*

~~rE84~~rE80 A *BSB regulated person* has a right to appeal from a decision to impose an *administrative sanction*. That appeal is to an *appeal panel* constituted under the auspices of the *Council of the Inns of Court* in the same composition as a three-person panel constituted under **Error! Reference source not found.** of the *Disciplinary Tribunal Regulations*.

~~rE85~~rE81 An appeal, if made, shall be made by the *BSB regulated person* sending to the Chairman of the *PCC* a notice identifying the decision of the *PCC* appealed against, the decision the *BSB regulated person* contends for, the grounds of such appeal and a statement whether the *BSB regulated person* requires his appeal to be disposed of at an oral hearing. If the *BSB regulated person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.

~~rE86~~rE82 The notice must be accompanied by such sum as may be prescribed by the *Bar Standards Board* from time to time, such sum being payable to the *Bar Standards Board* to defray expenses.

~~rE87~~rE83 Where the appeal is to be dealt with at an oral hearing then:

- .1 at least 5 working days before the time set for the appeal, the *PCC* will provide each member of the *appeal panel* and the *BSB regulated person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and
- .2 the *BSB regulated person* may be represented at the hearing.

~~rE88~~rE84 The *appeal panel* must decide whether to set aside or to vary the original decision.

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Section A: The Complaints Regulations
A6: Appeals

~~rE89~~rE85 If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *BSB regulated person* be refunded either in whole or in part: but the *appeal panel* has no power to award costs.

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Section A: The Complaints Regulations

A7: Reopening or reconsidering complaints which have been disposed of

A7 Reopening or reconsidering complaints which have been disposed of

~~rE90~~rE86 The *PCC* may reopen or reconsider a *complaint* which has been disposed of, unless it has been disposed of by a *Disciplinary Tribunal*:

- .1 where new evidence becomes available to the *PCC* which leads it to conclude that it should do so, or
- .2 for some other good reason.

~~rE94~~rE87 Following such reopening or reconsideration, the *PCC* may take any further or different action it thinks fit, as if any earlier decision had not been made, provided that if the *complaint* has already been referred to a *Disciplinary Tribunal* and charges have been served on the *defendant* or the application has been served on the *Respondent* (as the case may be) then the *PCC*'s may only instruct counsel for the *Bar Standards Board* to:

- .1 offer no evidence on a charge or application, or
- .2 apply to the *Directions Judge* for:
 - .a the making of amendments to the charge or application; or
 - .b leave to bring additional charges or applications.

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A8: Confidentiality

A8 Confidentiality

~~rE92~~rE88 The *Bar Standards Board* must keep *complaints* confidential. The *Bar Standards Board* must not disclose the fact that a *complaint* has been made or details of the *complaint*, or of its disposal save as specified in this **Section 5.A8** or as otherwise required by law.

~~rE93~~rE89 Disclosure may be made:

- .1 for the purpose of investigating the *complaint*; or
- .2 for the purpose of keeping the complainant and the relevant *person* informed of the progress of the *complaint*; or
- .3 for the purpose of publicising any forthcoming public hearing of charges arising from the *complaint*; or
- .4 where the complainant and the relevant *person* consent; or
- .5 for the purposes of rE42 of this **Section 5.A**; or
- .6 where the publication of a finding is required by the provisions of the *Disciplinary Tribunals Regulations* or the *Disqualification Panel Regulations*; or
- .7 subject to ~~rE90~~, in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *authorised individual* for a *certificate of good standing* in respect of a *barrister*; or from one of the Inns of Court in respect of an application from a *barrister* to become a *pupil supervisor*; or
- .8 for the purposes of providing examples of the types of behaviour that may constitute breaches of the *Handbook* either externally or internally within the *Bar Standards Board*, provided that where disclosure occurs in these circumstances

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A8: Confidentiality

although details of the individual complaints may be published, any relevant party's identities will remain anonymous; or

.9 with the approval of the *PCC*, for any other good reason.

rE94rE90 Where a disclosure is made pursuant to rE89.7 above, if any *complaint* has been made against the *barrister* concerned which has not been disposed of by the *PCC* under these Rules, or dismissed by any *Disciplinary Tribunal* or by any other body to which it may have referred by the *PCC*, the *Bar Standards Board* shall simply indicate that a *complaint* has been received which has not been dismissed.

rE95rE91 Where any finding of *professional misconduct* has been made (whether by a *Disciplinary Tribunal*, *the Visitors*, or the *PCC* in the course of a *determination by consent*), the *Bar Standards Board* and/or *the Council of the Inns of Court* must publish on the relevant website(s) the name of the *BSB regulated person* against whom that finding was made, the nature of that finding, the sentence imposed and any other information about the finding and sentencing which the *Bar Standards Board* considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.

rE96rE92 Where any *disqualification order* has been made (whether by a *Disciplinary Tribunal* or *the Visitors*), the *Bar Standards Board* and/or *the Council of the Inns of Court* shall publish on the relevant website(s) the name of the relevant *person* against whom the order has been made and its terms.

rE97rE93 Where any interim suspension or interim *disqualification order* has been made or interim conditions imposed, the *Bar Standards Board* must publish on the *Bar Standards Board's* website the name of the *relevant person* against whom the order has been made and its terms.

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A9: Definitions and Interpretation

A9 Interpretation

~~rE98~~rE94 In these *Complaints Regulations* all italicised terms shall be interpreted in accordance with the definitions in Par.

~~rE99~~rE95 If a *barrister* is a member of more than one Inn, references in these Regulations to his *Inn* shall mean the *Inn* by which he was called, unless he is a Bencher in which case his *Inn* shall mean the *Inn* of which he is a Bencher.

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Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A10: Commencement

A10 Commencement

~~rE100~~rE96 This Section 5.A shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

(166)	professional misconduct	means a breach of this Handbook by a BSB regulated person which is not appropriate for disposal by way of no further action or the imposition of administrative sanctions, pursuant to Section 5.A
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Chair's Report on Visits and Meetings April 2015 – May 2015**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**

- | | |
|----------|---|
| 01 April | Met with the Vice-Chair of the Bar Council, Chantal-Aimee Doerries
Met with the Regulatory Risk Manager
Met with Simon Lofthouse QC |
| 08 April | Attended Senior Management Team (SMT) meeting
Lunch with Chief Executive of the Bar Council |
| 09 April | Met with the DPP and Chief Executive of the CPS |
| 14 April | Met with the Chair of the Legal Services Board
Attended Equality and Diversity Committee meeting |
| 15 April | Met the President of the Queen's Bench Division (Sir Brian Leveson)
Lunch with Tony Cross QC and Director-General
Attended Education and Training team meeting
Attended Education and Training Committee meeting |
| 16 April | Met with Vice-Chair
Attended Standards Committee meeting
Met with Sam Stein QC |
| 17 April | Attended Professional Conduct departmental meeting |
| 20 April | Met with the Under Treasurer and Chief Executive of Middle Temple (Guy Perricone) |
| 21 April | Attended Supervision team meeting
Lunch with John Elvidge QC
Met with Sir Jeremy Sullivan (Senior President of Tribunals) |
| 22 April | Met with the President of the Family Division (Sir James Munby) |
| 23 April | Chaired Board Away Day |
| 28 April | Attended and spoke at Legal Futures Conference
Attended GRA Committee meeting
Met with Adam Solomon |
| 29 April | Lunch with Peter Wrench
Met with the Master of the Rolls, Lord Dyson |

30 April	Attended Regulatory Policy team meeting Attended Emoluments Committee meeting
05 May	Attended SMT meeting Attended Prosecution Panel event
06 May	Lunch with Derek Wood QC Attended Regulator Chairs' meeting
07 May	PRP Committee meeting
11 May	Met with Director-General and Tim Robinson Met with Keith Baldwin
12 May	Met with Mrs Justice Rose and Mr Justice Singh
13 May	Met with the Task and Finish Group on Governance Met with the Professional Conduct Committee
16 May	To attend the Bar Council meeting To attend the meeting with Circuit Leaders
19 May	To meet with Lord Justice Briggs To attend the Finance Committee meeting
21 May	To attend the Board meeting
25 May – 5 June	To represent the UK on Holocaust related meetings in Jerusalem
8 June – 11 June	To represent the UK on Holocaust related meetings in Budapest

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 21 May 2015

For consideration and noting.

Director General

1. Together with the Chair of the Board, I have continued to contribute to the LSB-led work following the Regulators' Summit last year. This has included three workshops in relation to the development of a paper on future legislative options for legal services regulation with my counterparts or senior staff in other front-line regulators.
2. I have continued to accompany Sir Andrew to initial meetings with senior members of the judiciary and other key stakeholders such as circuit leaders. I have participated in three of the external focus groups held by the Future Bar Training programme team: the meetings have been extremely well run and very fruitful.
3. Sir Andrew and I were pleased to be able to attend the similarly well run event bringing those who present BSB cases at disciplinary tribunals and engage them in discussions about the future landscape: there was an interesting diversity of views as to the BSB's role. I take this opportunity to thank most sincerely those barristers for their tireless commitment and professionalism, delivered *pro bono* for the benefit of the public and the profession as a whole.
4. There appears to be no shortage of very well-qualified barristers willing to make similar contributions by applying for membership of the Board. The current recruitment round is progressing very well and according to schedule (interviews being held in mid-July.)
5. Internally, key pieces of work not mentioned below include follow up to the Awayday and in particular work on governance and executive capacity. Appraisals for all staff across the BSB have now largely been completed and are being written up by 22 May. A further phase of our learning and development strategy will be agreed following an assessment of overall outcomes of the process, to complement activity already in hand: staff training on time and stress management, project management, legal knowledge (including the formal Cilex qualification) have continued to be delivered in the last two months. Further training on written communication skills and on risk based regulation and consumer awareness are now also in planning.
6. Finally, a number of staff have left on maternity leave in the last month: we wish them all the very best. Board members will also I am sure want to join me in congratulating our much-valued press officer, Eugene Grant, on his promotion to a more senior communications role at Islington Council. Eugene has had considerable impact and success in enhancing the nature and extent of our media coverage, both conventional and new, in his time with us. Recruitment is well underway, but he will be a hard act to follow after his departure on 22 May.

Regulatory Policy***Standards***

7. The Standards team has submitted the BSB's application to become a licensing authority to the LSB. This is now formally under consideration and the full application can be seen on the LSB website.
8. The team has recently published its consultation on insurance requirements for single person entities. The consultation has been sent to external stakeholders and is on the

BSB website. The consultation will close at the end of June and a report will be presented at the July Board.

9. The team is also in the process of setting up meetings with key stakeholders to discuss the standard contractual terms and cab-rank rule consultation paper, which closes on 19 June. A report of the discussions will be presented at the June Board.
10. Work on the thematic review of immigration advice and services has commenced and the first meeting of the executive-led project board has taken place. The team is currently assisting the Supervision Department in scoping and planning the field work in conjunction with the project board.
11. The Standards Committee has recently been considering the scope of practice rules for employed barristers. It has approved waiver criteria for employed barristers seeking to provide unreserved legal services to corporate clients through agencies or corporate vehicles. The Committee has approved a consultation document, with a view to the consultation being launched in the summer. In conjunction with this the team has also responded to the LSB's discussion document on regulatory restrictions in practising rules for in-house lawyers. As part of the response the BSB has committed to consult on the extent to which these rules remain fit for purpose. The consultation due to be published in the summer will address these issues as well as consulting on the 3-year rule more generally.

Regulatory risk

12. A steering group has been formed to provide oversight of regulatory risk work and ensure that the Senior Management Team is kept up to date with activities and able to commit necessary resources to the work.
13. Recruitment is underway for a Regulatory Risk Analyst to join the team who will be tasked with pulling together market analysis, working to align our risk assessment approaches across the organisation and developing our first Regulatory Risk Outlook. This will involve close working with other analytical and research staff across the organisation. The field of candidates was encouraging and we hope to have made an offer by the time of the Board's meeting.
14. There has been much activity to update the Regulatory Risk Framework and Index ready for publication, focused on finding clear and accessible language to describe the approach as far as possible.
15. Design work for the Information Architecture project has focused on the development of high level information requirements which are sufficiently future-proofed for the more joined up, risk-based way of working we are looking to support.
16. The creation of a formal programme bringing together work on regulatory risk, consumers and governance provides a helpful mechanism for easier management of dependencies between these three areas. Scope, activities and resources are being reviewed across each area to inform programme approach. Oversight of each area of work will also be reviewed as part of this process.

Equality and Diversity

17. The Equality and Access to Justice team (E&AJ) and Equality and Diversity Committee have developed a set of draft equality aims and objectives for the period 2015-16 which are before the Board for approval on 21 May 2015. These objectives now include a

commitment to engage under-served citizens to jointly draw up proposed future diversity objectives.

18. The E&AJ team and a staff member from the Supervision team attended a seminar hosted by the Solicitors Regulation Authority (SRA) on diversity and disproportionality in legal regulation. In particular, the seminar focused on disproportionality of some protected characteristics within the complaints system. The group discussed the factors they could control (for example, training and quality assurance of decision making) and factors that are beyond our control (for example, cases referred from the public or external organisations). Legal regulators in attendance shared their experiences and best practice and this will help to inform the BSB's research on potential disproportionality in our complaints system. Since this seminar, the E&AJ team has met with a member of the SRA's Diversity Committee to explore common themes for addressing issues of disproportionality for black minority ethnic people in the profession and tackling it in the legal sector.
19. The E&AJ team attended a panel discussion on "A survivors guide to staying at the Bar" hosted by Temple Women's Forum and Association of Women Barristers. Women barristers from a diverse range of practice areas talked about the challenges they have faced as well as the benefits of being at the Bar. They provided tips to fellow women barristers and gave examples of what their chambers have done to improve retention. This discussion will help to shape the BSB's own research into the impact the equality rules have had on women at the Bar. Following this the E&AJ team will deliver a knowledge sharing session on gender equality in the legal profession to BSB staff.
20. As part of the Future Bar Training Programme, the E&AJ team has been collecting available diversity data from across a barrister's lifecycle in order to highlight trends at each stage. The E&AJ team will also be establishing variable points of reference for expected equality and diversity at the Bar. For example, whether we expect equality and diversity within the profession to reflect the public it serves, comparable professions or other groups.
21. The E&AJ team has met with the chair of the Hindu Lawyers Association to explore approaches to collaborative working and are committing to work with other leaders in the equality and access to justice sector. Yvonne Coghill, OBE, a senior black leader in the NHS, has accepted an invitation from the E&AJ team to deliver a talk that will explore culture change at a BSB knowledge sharing session in June 2015.
22. Amit Popat joined the BSB as the Policy Manager for Equality and Access to Justice in April 2015. The Equality and Diversity team has now been renamed Equality and Access to Justice team.

Supervision

Entity regulation

23. On 8 April authorisation decisions were issued to 15 entities, one of which is an entity owned by a practising solicitor. The majority have since complied with the conditions of authorisation, including the provision of evidence of appropriate insurance to the BSB, and are authorised to practise as BSB regulated entities.
24. Media coverage of the authorisation decisions has been largely positive and has resulted in a general increase in interest, most notably from solicitors.

25. To date the team has registered 114 interested applicants and given them access to the online portal. Of those registered, the majority continue to be from single person entities.
26. Significant progress has been made on the development of IT systems to support the end to end authorisation process. Indicative time scales for delivery are June 2015, due to difficulties with scheduling suppliers to make necessary changes.
27. The application to license Alternative Business Structures was submitted to the Legal Services Board in late April. Implementation planning is underway.

Education and Training

28. The consultation on the Professional Statement was published on 15 April, and noted in the legal press.
29. Research was conducted throughout April to gather a better understanding of the strengths and weaknesses of the current system of pre-qualification training, with independently-facilitated focus groups. Meetings were held in London, Birmingham, Cardiff, Manchester, Leeds and Nottingham, and involved barristers, students and tutors. A summary of the research findings will be published with the forthcoming consultation on future regulation of the academic stage and vocational stage of training, and pupillage.
30. The review of BPTC Centralised Assessments continues according to plan and progress was considered by the Education and Training Committee at their meeting on 15 April. An action plan will be produced for the Committee meeting in July.
31. Every BPTC course provider received a monitoring visit during February and March, for which reports will be published on the BSB website shortly.
32. Planning is in progress for the BPTC Conference in June, which will follow the successful format established over the past two years, with a full day event preceded by a reception the previous evening.
33. Following the departure of Adrian Coleman in March, Natasha Ribeiro has been appointed to the position of Assessments Manager. Natasha joins the BSB with extensive experience in running professional body assessments, most recently for the Royal College of Radiologists.
34. Marion Huckle (Quality Assurance Manager) left the BSB in April, and Victoria Stec is currently leading on operational management of the BPTC.
35. Simon Thornton-Wood (Director of Education & Training) was invited to speak to the Lincoln's Inn Education & Training Committee about the Professional Statement consultation on 6 May.

Qualifications

36. The Qualifications Committee met on 31 March 2015. It considered six applications for review. One application was for a review of a decision of the Inns Conduct Committee. The applicant requested a waiver from the application fee for review. This request was refused and so the review will not be undertaken until the application fee is paid. The other five were applications for review of decisions of Panels of the Committee. In each case, the Committee upheld the decision of the Panel. The Committee also considered

the LSB's recent report on the performance of legal services regulators and its implications for the Committee.

Professional Conduct

Staffing changes

37. There have been a number of staff changes in the last month largely due to three staff members going on maternity leave. Yemi Alade, Professional Conduct Assistant in the Assessment Team and Hazel Walker, part-time Professional Conduct Assistant in the Operational Support Team both left on 28 April 2015. We have recruited to both posts and the teams will be welcoming the successful candidates at end of May/beginning of June.
38. In the Investigations and Hearings Team, Ambika Lall, Casework Supervisor, went on maternity leave on 15 May 2015. The other Casework Supervisor, Robert Burn, is due to transfer to a part-time Senior Case Officer role in the near future, leaving two Casework Supervisor vacancies. Interviews for these posts were held in the week beginning 12 May 2015 and more information about the new recruits will be provided in the June report. However, it is likely that the PCD will carry temporary vacancies in these posts.
39. Elsewhere in the PCD the Legal Knowledge Officer, Samantha Sheridan, left the BSB in March 2015. Whilst the PCD expect to recruit to the vacancy, we are currently exploring ways to adapt the role to better reflect skills gaps and new needs in the department.

KPIs

40. As predicted in previous Director-General's Reports, the fourth quarter KPI figures (69%) meant that the PCD did not meet our overall KPI of 80% for the year 2014/15. The inability to meet the KPI target was mainly due to a number of staff vacancies in the team carrying out preliminary assessments and other departmental absences, although, despite these obstacles, the 80% OPI target for investigation of external complaints was exceeded by 4%.
41. Now that the vacancies in the Assessment Team has been filled, staff are looking to ensure that complaints are processed within the departmental KPI targets. However, the staff changes and vacancies outlined above are likely to continue to adversely affect the first two quarters of 2015/16. The PCD is closely monitoring the caseload of the Department and will concentrate resources where necessary.
42. The Enforcement Annual Report containing more detailed information on PCD activity in 2014/15 will be presented to the Board in July 2015.

Disciplinary Tribunal Regulations review

43. The ongoing project to review the Disciplinary Tribunal Regulations in light of the impact of changes introduced by the new BSB Handbook and the move towards a risk-based, outcomes-focussed regulatory regime is now coming to a conclusion. The Review Group, comprised of representatives from BTAS, the BSB, the Professional Conduct Committee and the Prosecution Panel, have agreed a new set of regulations upon which we will be consulting.

44. The consultation paper will be included on a Board agenda at the June 2015 meeting. This will be followed by a consultation period of 16 weeks, extended to take into account the August recess period.

Prosecution Panel Event

45. A Prosecution Panel Event was held on Tuesday 5 May at the Thistle Hotel in Holborn. The event was a chance for us to thank the prosecutors for the enormous contribution they make to the regulation of the Bar each year; to bring them up to speed with changes at the BSB; and to discuss any issues arising from their experiences.
46. The event began with a session on future planning and the BSB business plan by Sir Andrew Burns and Vanessa Davies. The main focus of the event, however, was on entity regulation and speakers addressed the approval process, types of entity structures and any changes to the enforcement processes. The evening ended with a discussion session followed by a drinks reception.

Judicial Reviews

47. At the last Board meeting, the PCD reported that it had seven live judicial review matters five of which are at the permission stage and one is subject to negotiations on the costs of an interested party following the Administrative Court making a finding in favour of the BSB.
48. Since the last report to the Board, in March 2015, one of the live cases concluded on 22 April 2015. The barrister had challenged a decision to investigate a complaint against him. The Claim was settled, with agreement that one aspect of the complaint would be investigated. There was no order as to costs.
49. The status of all other matters remains unchanged from the last report, including the fact that no hearing date has been scheduled for the case remitted to the Visitors, following the Judicial Review concluded after a ruling by the Court of Appeal in favour of the barrister.

Strategy and Communications***Communications***

50. Since this report was prepared for the March Board meeting, the following press releases and announcements have been issued:
- 23 March: Announcement that the BSB has formally asked QCA to consider developing a system of re-accrediting criminal silks.
 - 24 March: Announcement that a non-practising barrister named Ms Brough has been disbarred after conviction for assault and fraud.
 - 24 March: Announcement about the minimum professional indemnity insurance terms for BSB-regulated entities.
 - 29 March: Press release seeking candidates to become BSB barrister members.
 - 1 April: Publication and announcement launching the 2015/16 BSB Business Plan.
 - 8 April: Announcement confirming that we have approved 15 new businesses as we begin authorising BSB-regulated entities.
 - 15 April: Launch of the FBT Professional Statement consultation, stating that it could be the key to unlocking flexible routes to the Bar.
 - 27 April: Publication of a new set of statistical data on the demographics of the Bar.
 - 11 May: Announcement of a new consultation launch in which we seek new statutory powers.

51. The Board will have seen the fortnightly media coverage that the above announcements generated.
52. The organisation-wide intranet for staff launched successfully on 29 April.

Work in Progress

53. At the time of writing, the following pro-active communications activities are scheduled over the next few weeks and months:
 - Developing communications material in support of the upcoming publication of the BSB's regulatory risk framework
 - Launching the Future Bar Training consultations about changes to CPD and then one on developments to the academic, vocational and pupillage stages of qualification
 - Recruiting a successor for Eugene Grant in the role of Press and Communications Officer.

Online and social media

54. During March, 30,441 users visited the BSB website, with a further 24,259 users visiting in April. At the time of writing, we have 11,456 followers on Twitter.

Business Support

55. The team has recruited a new Business Support Officer, Natasha Williams, who commenced in post on 1 May 2015. The other Business Support Officer position has also been offered with the incumbent due to commence in post in July 2015.

Strategic Planning

56. Board members discussed Strategic Planning at their April 2015 Away Day, and the executive is now working on the next stage of the development of the plan.

Governance

57. A high level plan, with timelines and resource commitments, has been drawn up for the BSB's Governance Review, which will be presented to the Board over its next couple of meetings.

Business Plan and Budget

58. The 2015-16 Business Plan, which included details of the associated budget, was published on 1 April 2015. The Business Support Team is setting up the systems needed to monitor the BSB's performance against its Business Plan objectives, and the PRP Committee and the Board will continue to receive quarterly performance reports throughout the year.
59. The 2014-15 Annual Report is currently being compiled. The PRP Committee received the year-end report at its May 2015 meeting and will oversee the drafting of the publication. The Committee has a dedicated Annual Report meeting on 18 June 2015.

Corporate Risk Management

60. The Team continues to work on devising some parameters for “serious event reviews” which will look at actual or “near-miss” serious regulatory failures. This piece of work will align with an internal audit scoping exercise that is being carried out in conjunction with GRA Committee members.

Contract Management

61. The Business Support Team is carrying out a project to improve the way that we monitor and manage our contracts, to ensure that we achieve value for money and mitigate contractual risks. The new contracts register has been operationalised and a new contracting manual has been drafted.

Research***YCAR***

62. The fieldwork is almost complete in relation to this project. The stakeholder roundtable events are scheduled for next month. All work is on track with the report expected at the beginning of August at the latest.

Regulatory Risk

63. The Research team has been involved in the regulatory risk framework development, including assisting with the recruitment of the regulatory risk analyst. The team’s programme of work will be informed by the need to contribute to the risk outlook and other evidence gathering that is necessary to support it.

Consumer engagement – change programme

64. The Research team is also involved in the scoping of the consumer engagement programme and any research associated with it. Again, this will help set the team’s programme of work over the coming year.

Resources Group**Current Key Business Projects**

65. ***CPD Regulation Implementation***
- Prototype of CPD rules and requirements and guidance complete
 - CPD Pilot launched and planning statements have been reviewed and feedback delivered to all participants
 - Consultation agreed at Education and Training Committee and a paper for the board on 21 May
66. ***Property Strategy 2018/19***
- The first phase of the project is underway to research the drivers and options available to us
 - A timetable has been drawn up to achieve an agreed option in a business case for the end of March 2016

The following fit underneath the umbrella of the Information Management Programme of work:

67. ***Authorisation to Practise 2015***

- Completed and Lessons Learnt is underway;

68. ***Intranet***

- Intranet launched successfully on 29 April; a positive response from the business
- Planning for phase 2 underway
- Lessons learnt also planned to be initiated soon

69. ***Human Resources Information System (HRIS)***

- Business case agreed for implementation of the HRIS during April – September 2015
- Supplier Selection underway; ITT released and aiming for an end of May decision
- Project planning session completed and aiming for an October launch

70. ***Data Cleansing***

- Business case agreed
- Project plan completed
- Project team is currently working on the key stage of completing the Data catalogue and System catalogue.
- Initial audit of the quality and integrity of data across the organisation underway in conjunction with the information architecture project
- Project team is currently working on the key stage of completing the Data catalogue and System catalogue.

71. ***Supervision and Entities regulation***

- Supervision system operational and live and well received by the team - project review underway and looking at how we can showcase the success there
- Entities CMS is phased go live during June

72. ***Information Architecture – Defining the future “Integrated Solution”***

- Business process review complete; subject to a final sessions with RPS Senior Management Team. 127 Process reviewed and analysed. Business process catalogue completed.
- Initial analysis undertaken around data/information/technology requirements
- Engagement session with Senior Management Teams on BSB and in RPS have taken place to share findings and consider future directions of the businesses to ensure our analysis remains fit for purpose
- Information User Group constituted and to be part of the design process for the IA during May/June
- Analysis of information and data and business functional requirements for the single solution underway

73. ***Document Management System Review***

- A report is being compiled around usage and benefits realised from the Objective

Document Management System in order to derive an action plan

74. **Management Information**

- Business case circulated for review by key business stakeholders and programme board
- Scoping around the role required within the IT Team to provide this service underway
- Scoping around using an existing asset in the IT team entitled SSRS to give the reporting capability

75. **PCI Compliance**

- Initial assessment of our compliance with the payment card industry standards has taken place
- An initial scope of work is to be negotiated

76. **IT policy development**

- IT policies are now under development in the following areas:
 - IT Policy Development: Bring Your Own Device Policy
 - Remote Working Policy
 - Equipment Policy
 - Social Media Policy
 - Cloud Policy
 - Email and Internet Policy
 - Information Security Policy
 - Data Retention

Key Resource Group Updates

Project Management Office – Richard Thompson

77. All key business projects and programmes involve the Project Management Office

Project Management Standards Training

78. An Introduction to Project Management Training course has been completed. The PMO is analysing feedback and looking at how it can build on this work to offer more in depth training opportunities to the organisation.

Human Resources – Catherine Shaw

Performance review

79. We are in the midst of the year-end performance review process. Training for line managers was carried out during March and April. All validation meetings have been completed and provisional ratings agreed. Review forms are due to be completed and returned to HR by 22 May 2015.

HR team

80. Elika Edwards left the Bar Council HR team at the end of April. We will be recruiting for a replacement HR Administrator.

Reward

81. The Remuneration Policy was launched to staff in March. This includes details of out of cycle salary increases and recognition awards. The HR team is undertaking further work on the details of our remuneration strategy going forward, including how we will implement and manage performance related pay.

HR system and intranet

82. We continue to work with the PMO in respect of both these projects. We have shortlisted three potential suppliers for the HRIS system and final selection is planned by the end of May. The HR team has been working on policy updates for the HR section of the intranet. Jo has spent significant time uploading HR content.

HR Policies

83. The updated Annual Leave Policy, effective 1 October 2015, was launched to all staff in April following individual communication to all part time and compressed hours workers affected by the proposed changes.
84. The updated TOIL Policy was launched to managers in April. This clarifies the policy with regard to accrual and payment for weekend working.
85. The updated Probationary Review Policy and form was launched to managers in March.
86. We have published our new policy on Shared Parental Leave. We have also updated our other family friendly policies in line with recent changes in legislation. This includes paternity leave and parental leave. Further work is needed to benchmark our benefits in this area with other similar employers.

Employee Relations

87. Reviewing the employment status of our board and committee members.
88. People Insight launched our employee survey on 13 April 2015. They will be presenting the results to SLT on 1 June and facilitating an action planning group on 9 June.
89. Successfully completed the organisational change within the RPS Fees team.

HR Metrics**i) Recruitment – active roles**

Role	Division	Open since	Status
Regulatory Policy Manager X2	BSB	08/09/14	Kuljeet Chung moved to role 13 Feb Amit Popat joined 13 April
Supervision and Authorisation Officer X2	BSB	07/10/14	DB Lenck joined 2 nd role on hold
Senior Supervision and Authorisation Officer	BSB	15/1/15	Faryal Khurram joins 13 May.
Executive Assistant (Chief Executive)	RPS	9/2/15	Judy Green joined 13 April

Role	Division	Open since	Status
Business Support Officer X2	BSB	27/2/15	Natasha Williams joins 1 May. John Hall joins 17 July.
Assessment Manager	BSB	2/3/15	Natasha Ribeiro joined 5 May
Member Services Assistant X3	RPS	9/3/15	Jyoti Kandola joined 25 March. Jasmyn Kalikas and Andrew Odeta join 15 May.
Relationship Manager X2	RPS	9/3/15	Advertising externally
Senior Policy Officer (FTC)	BSB	20/3/15	Jonathan Slatter joined 11 May
Casework Supervisor	BSB	27/3/15	Internal interviews
Casework Supervisor (FTC)	BSB	27/3/15	Internal interviews
Professional Conduct Assistant, assessment team	BSB	27/3/15	Jake Ames joined 20 April.
Head of Supervision and Authorisation	BSB	31/3/15	Clíodhna Judge moves to role 18 May.
Professional Conduct Assistant, operational support	BSB	31/3/15	Opemipo Akisanya joins 1 June.
Regulatory Risk Analyst	BSB	9/4/15	Internal interviews
Senior Management Accountant	RG	21/4/15	Peter Edwards moves from contractor to permanent on 1 May.
Financial Controller	RG	28/4/15	Interviewing
Communications and Press Officer	BSB	28/4/15	Advertising externally
Policy Officer	BSB	1/5/15	Advertising internally

ii) **Current headcount**

	RPS	BSB	Resources Group	Total
As at end April 2015	42	74	31	147

iii) **Staff turnover**

These figures relate to “crude” turnover (both voluntary and involuntary), and includes all leavers, including those who left due to dismissal or redundancy.

	RPS	BSB	Resources Group	Total
YTD (May 14 - Apr 15)	48.8%	35.5%	31.3%	38.4%
April 2015	2.4%	1.4%	6.3%	2.7%

¹ Due to restructure of RPS during this period

iv) **Sickness absence**

Average days lost per worker due to sickness absence

	RPS	BSB	Resources Group	Total
6 months TD (Nov 14 - Apr 15)	5.92	4.13	1.89	4.16

Records – Smita Shah

91. The team has now completed the Authorisation to Practise 2015-16. The two temps that were employed to assist with the workload left on 8 May.
92. We will be reporting four members who have failed to complete their authorisation to PCD this week and will be passing their names to Supervision also. 82 members who had not engaged at all in the process were made unregistered and their names have been passed to both departments.
93. This month, a small percentage of income declarations will be passed to supervision for audit purposes. A meeting between Supervision and Records will be taking place to establish the parameters. Records will also be contacting BMIF to ensure that the audit for insurance can commence.
94. The housekeeping on our data will also commence this month – this includes reviewing the rights of audience, ensuring those who should be marked as qualified persons are completed, etc. Records will be working closing with IT to ensure that they are available to assist in the IA project, for example, data cleansing, which means that those records that had technical issues when renewing during Authorisation to Practise are tidied up.

Finance – David Botha

95. Finance are focussed on completion of the year end accounts and preparation for the Audit in May.

IT Department – Tony Cook***Objective DMS Review***

96. The Objective DMS implementation is currently being reviewed by a consultant from Objective along with the IT Dept.
97. We have just completed the Staff Survey review and are now awaiting the results that have been gathered. Once these have been ascertained we will evaluate them to determine a way forward.

Intranet

98. The IS Department have worked closely with the Project Management Office and Comms Teams from both the Bar Standards Board and Representation Policy & Services to deliver a resource which we believe can prove to be a useful tool for all staff. Within the Information Services section of the Intranet answers to IS related FAQ's are available, as well as many How To guides.

Finance Process Review

99. The Finance “as is” and “to be” processes have been completed with Finance, with about 30 of them in total. A rough flow / process diagram has also been compiled to understand the how finance and their processes will work in the future with the new system (CRM).

Data Cleansing

100. We are currently working on the data catalogue and system catalogue for the data cleansing project.
101. Data catalogue - Identifying data and what needs to be cleaned; what scripts/processes we currently have and what else is required to do this.
102. System Catalogue - Identifying what access/excel systems potentially could be moved to the core database and will need cleaning.
103. This work is ongoing and will take approximately 2/3 weeks to complete. This work is on the critical path of the project and will help determine the project timescales and the amount of work required on data cleansing and what potential Access databases and Excel spreadsheets can be moved to core.

Information Architecture

104. We have been in discussions with suppliers regarding the options and potential design of our infrastructure to host and manage our “integrated Solution”
105. Indicative costings have been obtained for the hardware and licencing.
106. We are now in the process of arranging meetings with potential suppliers to understand what the options are for the integrated solution e.g. MS Dynamics, Open Source or Salesforce.
107. All infrastructure and solution options are being mindful of the potential requirements following the outcome of the Property Strategy work.

Vanessa Davies
Director General BSB
14 May 2015