

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 19 July 2018, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Baroness Tessa Blackstone (Chair)
Naomi Ellenbogen QC (Vice Chair) – items 6-12
Alison Allden OBE
Aidan Christie QC
Lara Fielden
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Anu Thompson
Stephen Thornton CBE

By invitation: Andrew Walker QC (Chair, Bar Council)

BSB Executive in attendance: Dan Burraway (Corporate Support Manager)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)

Press: Max Walters (Law Society Gazette)

Item 1 – Welcome

1. Tessa Blackstone welcomed members to the meeting. She reported the resignation of Judith Farbey QC following her appointment as a High Court Judge and acknowledged her excellent contribution to the Board during her term of office.

Item 2 – Apologies

- Justine Davidge
- Adam Solomon QC
- Kathryn Stone OBE
- Richard Atkins QC (Vice Chair, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (COIC)
- Malcolm Cree (Chief Executive, Bar Council)
- Mark Hatcher (Special Adviser to the Chair of the Bar Council)
- Oliver Hanmer (Director of Regulatory Assurance)

Item 3 – Members’ interests and hospitality

2. None.

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

3. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 24 May 2018.

Item 5a – Matters arising and action points (Annex B)

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

Item 5b – Forward Agenda (Annex C)

5. The Board noted the forward agenda list.

Item 6 – Regulatory Operations Programme – Responses to the “Modernising Regulatory Decision Making” consultation – issues paper BSB 038 (18)

6. Sara Jagger referred to the recommendations arising from the above consultation and the resulting new regulatory arrangements. Subject to approval by the Board and LSB, these will apply from April 2019. She also asked about the Board’s preferred process for approval for publication of the BSB’s formal consultation response.
7. The Board agreed not to amend the proposals that were the subject of consultation except for the following (as recommended in the report):
- to replace terms such as “complaint”, “complainant” and “dismissal of complaints” with alternatives that underline the objective nature of the BSB’s role in assessing regulatory matters that are referred to it. The exact terminology will be determined by the Executive in due course (paras 20-21 refers);
 - that the default membership for an IDB Panel making enforcement decisions should be five, comprising three lay and two barrister members (paras 24-28 refer);
 - that the current criteria for reconsideration of decisions be retained in the new regulations because the alternative of a wholly discretionary process would be too open-ended (para 39 refers).
8. The Board discussed at length the consultation proposal that the current 12-month time limit for submission of information / complaints should no longer apply. Those against commented as follows:
- removing the time limit simply opens the door to old complaints where the quality of evidence is very likely to be poor. It also means that a barrister will always be at risk of a complaint arising from a case regardless of how long ago it took place. This seems unreasonable;
 - a time limit has a beneficial effect by acting as a driver to concentrate minds. It is in everyone’s interest, including those of the complainant, that referrals to the BSB are received promptly;
 - a more nuanced proposal could be considered ie that the 12-month period should normally apply unless there are substantive reasons as to why that should not be the case.
9. Those in favour commented as follows:
- the 12-month limit is arbitrary and simply adds an unnecessary barrier to the complaint management process. We should not unduly restrict ourselves as that is not in the public interest;
 - in practice, the Professional Conduct Committee rarely applies the current time limit because it is subject to a caveat in the current

Part 1 - Public

regulations that it can be waived if it is the public interest to do so having regard to the regulatory objectives;

- even if we remove the time limit, we can still strongly encourage the early submission of complaints on the grounds that evidence is more likely to be available at that point than later;
- the new regulations provide the same safeguards as the current regulations and matters will not be pursued unless they can be fairly and properly investigated. The age of the case will be a factor in deciding whether there is sufficient reliable evidence to proceed.

10. On balance, the Board agreed to adopt the recommendation not to apply a time limit to the receipt of information / complaints. However, it also agreed to monitor progress and re-visit the issue after 18 months ie by December 2020. Members also agreed that early receipt of complaints is strongly preferred and we should make this clear to consumers.

11. **AGREED**

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| a) | to endorse the recommendations arising from the consultation on Modernising Regulatory Decision Making as described above. | SJ |
| b) | to request a further report in December 2020 about the impact of removing the 12-month time limit for the submission of information / complaints. | SJ to note |
| c) | to ensure that public communications on information / complaints emphasises the benefits of early submission and, conversely, the risks associated with late referrals. | SJ / WW to note |
| d) | that the detailed public consultation response paper be drafted by the Executive and jointly approved for publication by Nicola Sawford (Chair of the IDB Task Completion Group) and the Director General. | SJ/ NS / VLD |

Item 7 – Bar Standards Board Annual Report 2017-18

BSB 039 (18)

12. The Board received tabled copies of an amended version of the Annual Report and the associated Cost Transparency Metrics 2017-18. The changes to the original document related to:

- text amendments regarding revised publication dates for both the FBT rules consultation and the Enforcement Report;
- changes to the Resources Group and Practising Certificate Fee (PCF) allocations, following audit;
- corrections to figures concerning the cost of the regulator and the percentage of PCF spent on non-regulatory permitted purposes.

13. Members endorsed the draft for publication subject to the following amendments:

- correction to the title of former Board Member, Dr Anne Wright CBE;
- amendment to the style of infographics, using gender neutral figures as the default.

14. The Chair suggested that, in future, the Annual Report / Cost Metrics document need not be taken to the Board as a specific item of business. Instead it could be signed off by the Chair following scrutiny by the Planning, Resources and Performance Committee.

15. **AGREED**

to publish and promote the Board's Annual Report 2017/18 and Cost Transparency Metrics 2017-18 subject to the amendments above (cf. min 13).

AL

Post meeting note: *It was not possible to amend the infographics in an acceptable way in the short time available before publication. This will therefore be addressed for next year's Annual Report.*

Item 8 – Chair's Report on Visits and Meetings: June - July 2018

BSB 040 (18)

16. The Board noted the report.

Item 9 – Director General's Report

BSB 041 (18)

17. Vanessa Davies highlighted paragraph 3 of the report which confirmed the state of "operational readiness" of the BSB in respect of new statutory powers of intervention due to come into effect from 1 October 2018. A further report will be made available in September 2018.

18. **AGREED**

to note the report.

Item 11 – Any Other Business

19. None.

Item 12 – Date of next meeting

20. • Thursday 27 September 2018

Item 13 – Private Session

21. The following motion, proposed by the Chair and duly seconded, was agreed. That the BSB will go into private session to consider the next items of business:

- (1) Approval of Part 2 (private) minutes – 24 May 2018
- (2) Matters arising and action points – Part 2
- (3) CMA: new transparency requirements – policy issues
- (4) Regulatory Risk Outlook 2019 and BSB Strategic Plan: Emerging Themes
- (5) Board Effectiveness
- (6) Any other private business

22. The meeting finished at 5.50 pm.