

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*



**Meeting of the Bar Standards Board**  
**Thursday 25 January 2018, 5.00 pm**  
**Room 1, First Floor, Bar Standards Board Offices,**  
**289-293 High Holborn, London, WC1V 7HZ**

**Agenda - Part 1 – Public**

			<b>Page</b>
1.	<b>Welcome and introductions</b> <b>(5.00 pm)</b>	Chair	
2.	<b>Apologies</b>	Chair	
3.	<b>Members' interests and hospitality</b>	Chair	
4.	<b>Approval of Part 1 (public) minutes</b> <ul style="list-style-type: none"><li>• <b>23 November 2017 (*)</b></li></ul>	Annex A Chair	<b>3-8</b>
5.	<b>Matters Arising (*)</b>		
6.	a) <b>Action points and progress</b> b) <b>Forward agenda</b>	Annex B Annex C Chair Chair	<b>9-12</b> <b>13-14</b>
7.	<b>Diversity at the Bar Report</b> <b>(5.10 pm)</b>	BSB 001 (18) Amit Popat	<b>15-39</b>
8.	<b>Women at the Bar and differential attainment</b> <b>research</b> <b>(5.15 pm)</b>	BSB 002 (18) Amit Popat	<b>41-85</b>
9.	<b>Youth Court Registration</b> <b>(5.25 pm)</b>	BSB 003 (18) Ruby Newton	<b>87-91</b>
10.	<b>Chair's Report on Visits and Meetings:</b> <b>January 2018 (*)</b>	BSB 004 (18) Chair	<b>93</b>
11.	<b>Director General's Report</b> <b>(5.35 pm)</b>	BSB 005 (18) Vanessa Davies	<b>95-106</b>
12.	<b>Any other business</b>		
13.	<b>Date of next meeting</b> <ul style="list-style-type: none"><li>• Thursday 22 February 2018</li></ul>		
14.	<b>Private Session</b> <b>John Picken, Governance Officer</b> <a href="mailto:JPicken@barstandardsboard.org.uk">JPicken@barstandardsboard.org.uk</a> 18 January 2018		

*\*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.*



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

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

Thursday 23 November 2017, Room 1.1, First Floor  
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)  
Alison Allden OBE  
Rolande Anderson – items 7-14  
Aidan Christie QC  
Justine Davidge  
Judith Farbey QC  
Andrew Mitchell QC  
Nicola Sawford  
Anne Wright CBE
- Bar Council in attendance:** Malcolm Cree (Chief Executive, Bar Council) – items 1-9  
Mark Hatcher (Special Adviser to the Chair of the Bar Council)  
Andrew Walker QC (Vice Chair, Bar Council)
- By invitation:** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Jake Armes (Projects and Operations Officer)  
Sam Benton (Professional Support Lawyer)  
Vanessa Davies (Director General)  
Oliver Hanmer (Director of Regulatory Assurance)  
Jaspal Kaur-Griffin (Senior Programme Manager)  
Sara Jagger (Director of Professional Conduct)  
Cliodhna Judge (Head of Supervision & Authorisation)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
John Picken (Governance Officer)  
Victoria Stec (Head of Training Supervision & Examinations)  
Wilf White (Director of Communications and Public Engagement)

**Item 1 – Welcome**

1. The Chair welcomed Members and guests to the meeting, in particular Jaspal Kaur-Griffin who was attending her first meeting.
2. He noted that this was the last formal Board meeting to be attended by Rolande Anderson and Anne Wright, each having given six years of service. He warmly thanked them for their enormous contribution in that time both on the Board and across a number of BSB Committees and Task Completion Groups.
3. He also referred Members to a tabled press release concerning the appointment of Baroness Tessa Blackstone as the new Chair of the BSB after he steps down from this role at the end of December 2017. He expressed his sincere gratitude to the Board Members for their work during his period of office and wished his successor well for the future.

**Item 2 – Apologies**

4.
  - Naomi Ellenbogen QC
  - Steven Haines
  - Zoe McLeod
  - Adam Solomon
  - Anu Thompson
  - Andrew Langdon QC (Chair, Bar Council)
  - Lorinda Long (Treasurer, Bar Council)
  - Rebecca Forbes

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

5. Vanessa Davies made a declaration in respect of hospitality received on 10 November 2017 as a guest at the Criminal Bar Association’s Dinner for its retiring Chair.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 26 October 2017.

**Item 5 – Matters Arising**

7. None.

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

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

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

9. The Board noted the forward agenda list including recent changes to items for the December Board Away Day.

**Item 7 – Performance Report for Q2 (July 2017 – September 2017)**

BSB 083 (17)

10. Anne Wright highlighted the following:
  - the overall picture on performance is encouraging with most of the current business projects running to time;
  - of those off target, some are out of the control of the BSB eg the delivery of the s69 order which is delayed pending Parliamentary approval;
  - a significant amount of progress has been made on the Future Bar Training (FBT) programme;
  - expenditure levels are projected to be on budget by year-end and there has been a substantial increase in income from BPTC fees (student numbers have risen unexpectedly).
11. Regarding the latter point, the PRP Committee now recommends that the current budget bid be amended so that projected income is set at £720k (from £500k). This will be for 2018/19 financial year only. The Committee expects BPTC income to fall in subsequent years.
12. She also commented as follows:
  - the Authorisation Team has consistently missed the target for its first operating performance indicator on application turnaround. The Committee discussed this at length but decided not to amend the KPIs as performance may well improve in the light of ongoing efforts to clear backlogs and cross-skill staff within the team;
  - overall staff turnover has fallen to 18% (voluntary turnover is now 11%);
  - work is ongoing to revise Service Level Agreements with Resource Group Departments and the underlying principles that will govern these.

13. She stated that Steven Haines has been appointed as the new Chair of the PRP Committee with effect from January 2018. She also thanked current committee members and the staff involved for the support she had received during her period of office.
14. In response to a question about the use of the income budget surplus (cf min 10 above), Vanessa Davies confirmed that this will be ring fenced for regulatory purposes, most likely in relation to the FBT project.
15. **AGREED**
- a) to note the report.
- b) that the provision for non-PCF income for the 2018-19 budget be increased to £720k.

VLD

**Item 8 – Education and Training Committee: Annual Report for 2016-17**  
BSB 084 (17)

16. Justine Davidge commented as follows:
- the paper covers a two-year period as the last formal report to the Board covered work undertaken during 2015;
  - the Committee has been reduced in size but is operating effectively and overseeing considerable change in the education and training of barristers;
  - it was due to be disestablished in the near future but, for the reasons identified in paragraph 15 of the report, this should be reconsidered. An extension to at least September 2018 is proposed at which point the position can be reviewed again.
17. Victoria Stec highlighted the key activities identified in the report eg:
- development of the Professional Statement;
  - introduction of the new CPD scheme;
  - changes to the assessment format of some examinations;
  - the Curriculum and Assessments review and the redraft of the BPTC Handbook;
  - the commencement of the pupillage pilot scheme;
  - the consultations on the Future Bar Training programme.
18. She also made the following points:
- the higher number of BPTC students is probably due to:
    - an increase in the number of validated places at the Bristol and Cardiff centres;
    - an apparent decision by students to apply for the course now prior to the implementation of changes to the qualification route;
  - the next phase of work for the Committee will focus on the delivery of the new rules for qualification.
19. Members commented as follows:
- the paper is well written and comprehensively summarises the recent work of the Committee;
  - the proposed extension to the life of the Committee is sensible and should be approved.
  - there may be some lessons to learn from the work of the E&D Committee prior to its disestablishment ie how it reviewed its various workstreams and agreed how they would be managed for the future;
  - it is unfortunate that an Annual Report was not produced in 2016 as a regular reporting cycle is integral to good governance;

20. In response to the latter point, the following comments were made:
- the Annual Report should have been included in the handover between staff and the departing Director of Education and Training last year (which coincided with other staff changes in the Department). This did not occur, however, which was a regrettable oversight;
  - notwithstanding this, Members remained informed about progress during the year through monthly updates in the Director General's report to the Board.

**AGREED**

21. a) to note the report.  
b) that the Education and Training Committee remain extant until at least the end of September 2018, at which point its status be reconsidered. **RF / VS to note**

**Item 9 – Review of the standard of proof applied in professional misconduct proceedings**

BSB 085 (17)

22. The Board received tabled papers with comments from the following Board Members:
- Zoe Macleod;
  - Anu Thompson;
  - Naomi Ellenbogen QC;
  - Adam Solomon.
23. The first two submissions fully supported the proposal to change the standard of proof to the civil standard (from the criminal standard). The latter two were also supportive but made the following points:
- notwithstanding that the change should occur, there is a risk that a barrister and solicitor facing the same charge could be tried to a different standard of proof (given the Solicitors Disciplinary Tribunal - SDT uses the criminal standard);
  - the paper notes that the Royal College of Veterinary Surgeons (RCVS) currently retains the criminal standard of proof but does not give the rationale for this or state whether any discussion to change this had taken place;
  - the paper asserts there will be no equality impact from the proposed change but this may be debateable;
  - some of the consultation feedback suggested that the change could prompt an increase in unmeritorious complaints. We need to be sure that our procedures are sufficiently robust, particularly as more decision-making powers have been delegated to staff;
  - the date from which cases will be assessed against the new standard needs clarification.

*Note: the tabled papers included replies from the Executive on these points but were also addressed in the subsequent comments from Members (see below). Regarding the RCVS, the Executive stated that the criminal standard of proof had been used since the enactment of the Veterinary Surgeons Act (1966) but there had been no consultation on this issue since that time.*

24. Members commented as follows:
- there is a compelling public interest case that supports the change in the standard of proof. This is true in other regulatory arenas eg medical and financial where the civil standard already applies;

## Part 1 - Public

- the paper suggests an implementation plan ie effective from 1 April 2019 and in respect of conduct that takes place on or after that date. This should be endorsed;
- we need to ensure that any regulations governing the incoming Independent Decision Making Body (IDMB) appropriately converge with the implementation of changes to the standard of proof;
- if we are convinced of the legitimacy of the policy change, then we should proceed regardless of the views of the SDT;
- we already have robust procedures in place to assess incoming complaints in a fair and consistent manner. This will not alter even if the standard of proof is changed so we can reassure the profession on this point. Moreover, the potential impact on volume may be overstated because aggrieved litigants tend to be sufficiently self-motivated to proceed with complaints regardless;
- the point about equality impact is relevant and we should ensure that effective monitoring processes are in place;
- the consultation responses show that the Bar is evenly split on this matter and we need to appreciate the concerns expressed. The profession is unique in that a practitioner's first duty is to the Court rather than the client and this is not well understood by the public;
- the stakeholder viewpoints referenced in the summary of responses document (Annex A) need clarification. For example, the Bar Council's response reflects different strands of opinion among the profession and this needs to be made clear in the comments quoted.

25. **AGREED**

- |    |  |                   |
|----|--|-------------------|
| a) | to make an application to the Legal Services Board to change the BSB's regulatory arrangements such that the civil standard of proof should be applied to professional misconduct allegations. | <b>SJ</b>         |
| b) | that this application should proceed independently of the Solicitors' Disciplinary Tribunal.   | <b>SJ to note</b> |
| c) | that the summary of responses document be revised to make clear how differing strands of opinion are reflected in the response from the same, individual stakeholder.                          | <b>SJ</b>         |
| d) | to introduce the civil standard of proof with effect from 1 April 2019 and for it to apply to conduct that takes place on or after this date.  | <b>SJ to note</b> |

**Item 10 – Chair's Report on Visits and Meetings: November 2017**  
BSB 086 (17)

26. **AGREED**

to note the report.

**Item 11 – Director General's Report**  
BSB 087 (17)

27. Vanessa Davies referred to the consultation roadshows on the CMA transparency recommendations and the BSB's Future Bar Training programme, both currently underway. She stated that:
- the early London based events were successful with very helpful feedback received from the delegates who attended;
  - the roadshows will now take place in other parts of England and Wales and we would welcome help to increase the number of registrations for these.

28. She also expressed her profound thanks for the leadership and support for staff provided by Sir Andrew Burns during his time as BSB Chair. Aidan Christie QC spoke on behalf of the Board and applauded Sir Andrew for his good humour, courtesy and the commitment he brought to the role.
29. In response, Sir Andrew extolled the contribution of the Board in overseeing the radical changes to the BSB's governance arrangements which have made it a much more efficient and effective organisation.

**AGREED**

30. to note the report.

**Item 12 – Any Other Business**

31. None.

**Item 13 – Date of next meetings**

32. Thursday 7 December 2017 (Away Day).  
Thursday 25 January 2018 (Board Meeting).

**Item 14 – Private Session**

33. 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 – 26 October 2017
  - (2) Matters arising
  - (3) Action points and progress – Part 2
  - (4) Delegation of Handbook Powers (Papers A & B)
  - (5) Regulatory Risk Update
  - (6) Women at the Bar Research – Interim Findings
  - (7) Corporate Risk Register
  - (8) Regulatory Operations Programme Update
  - (9) LSB consultation – Reviewing the Internal Governance Rules
  - (10) Any other private business
  - (11) Review of the Board meeting in terms of conduct and outcomes.
34. The meeting finished at 5.25 pm.



## BSB – List of Part 1 Actions

25 January 2018

*(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
15b (23/11/17) – budget bid	increase the provision for non-PCF income for the 2018-19 budget to £720k	Vanessa Davies	immediate	17/01/18	<b>Completed</b>
25a (23/11/17) – Standard of Proof	make an application to the Legal Services Board to change the BSB's regulatory arrangements to apply the civil standard of proof to professional misconduct allegations	Sara Jagger	a s a p and before autumn 2018	17/01/18	<b>Ongoing</b> - work will commence once IDMB etc consultation launched
25c (23/11/17) – Standard of Proof	ensure the summary of responses document to the Standard of Proof consultation is revised to make clear how differing strands of opinion are reflected in the response from the same, individual stakeholder	Sara Jagger	before end Dec 17	17/01/18	<b>Ongoing</b> – revisions have been made. Consultation response to be posted on website by end January 2018
15f (26 Oct 10) - Rule change application (practice area info, compliance with MLRs, reg'n of youth court work)	re-visit how best to address registration of barristers instructed in cases involving young people aged under 18 that are heard in courts other than the Youth Court	Oliver Hanmer	by end Feb 18	17/01/18  15/11/17	<b>In hand</b> - Update and proposal on current Board agenda  <b>In-hand</b> On-going review of the youth proceedings research, the consultation paper and the consultation responses to establish the evidence in support of extending registration to barristers representing young people outside of the Youth Court.
21b (28 Sep 17) – E&D data: sexual orientation and religion / belief	draft a consultation paper on the disclosure of sexual orientation and religion and belief data by chambers and entities and present to the Board	Amit Popat	before end Jan 18	16/01/18  18/10/17	<b>In hand</b> – shifted to February agenda due to volume of other E&D related papers in January  <b>In hand</b> – consultation will be prepared for Board approval in January

**BSB – List of Part 1 Actions  
25 January 2018**

*(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
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Ewen Macleod / Joseph Bailey	before 26 Oct 2017	02/01/18	<b>In hand</b> – rather than draft an additional MoU, the preference of the FCA would be for the BSB to join the Shared Intelligence Service (an enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators). The Regulatory Assurance Department is exploring the value of subscribing to the service
				15/11/17	<b>In hand</b> – initial positive meeting held with the FCA. Currently exploring whether an additional MoU is necessary
				18/10/17	<b>In hand</b> – awaiting response from the FCA
				20/09/17	<b>In hand</b> – a joint approach has been made with CILEX regulation to the FCA
23c (27 Jul 17) – ATE insurance	issue regulatory guidance on ATE insurance subject to further discussions with the APEX member concerned and taking account of the need to ensure that barristers are aware of the potential risks involved	Ewen Macleod / Joseph Bailey	before end Sept 2017	02/01/18	<b>In hand</b> – comments received from the Bar Council and the guidance amended. The final guidance will be published shortly
				18/10/17	<b>In hand</b> – awaiting discussions with Bar Council before publication
				20/09/17	<b>In hand</b> – we are awaiting comments from the relevant APEX member and we want to discuss the guidance with the Bar Council before publication

## BSB – List of Part 1 Actions

25 January 2018

*(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
15b (27 Oct 16) – definition of “employed barrister (non-authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	16/01/18	<b>Ongoing</b> – we are now progressing this with the LSB again, having put it off due to other priorities at the end of 2017
				15/11/17	<b>Ongoing</b> – updated application about to be shared with the LSB
				20/09/17	<b>Ongoing</b> – application being finalised
				09/06/17	<b>Ongoing</b> – additional guidance being produced to support final application to the LSB
				16/05/17	<b>Ongoing</b> – currently updating application in the light of LSB comments
				15/03/17	<b>Ongoing</b> – draft application due to be submitted to LSB by end March
				15/02/17	<b>Ongoing</b> – awaiting meeting with BACFI
				17/01/17	<b>In hand</b> – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.



## Forward Agendas

### Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- CMA: response to policy consultation on new transparency requirements
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register
- Regulatory Operations and Regulations Changes Consultation Approval
- PII
- Quality Assurance of advocacy
- Board Training

### Thursday 22 Mar 2018

- BSB Business Plan for 2018-19
- Scope of Practice proposals
- Authorisations Governance update
- FBT consultation response: Tranche 1 policy decisions
- Entity Regulation Review

### Thursday 26 Apr 2018 (Board Away Day)

- FBT consultation response: Tranche 2 policy decisions
- Public legal education
- 2019-22 Strategic Plan

### Thursday 17 May 2018 (2 pm) (Board to Board meeting with LeO)

### Thursday 17 May 2018 (5 pm) - provisional

- additional single item agenda on Future Bar Training (Board meeting to occur only if required)

### Thursday 24 May 2018

- PRP Report: includes the BSB Q4 & YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register
- FBT consultation response: Tranche 3 policy decisions
- CMA: rule change consultation on new transparency requirements
- Statutory Interventions

### Thursday 28 Jun 2018

- FBT: approval of rule change consultation

### Thursday 19 Jul 2018

- BSB Annual Report 2017-18
- Regulatory Operations Consultation results and approval of rules
- Annual Enforcement Report

### Thursday 27 Sep 2018

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Schedule of Board meetings Jan 2019-20
- Budget Bid for 2019-20
- Corporate Risk Register
- FBT: approval of new rules

**Thursday 11 Oct 2018 (Board to Board meeting with LSB)**

**Thursday 25 Oct 18**

- CMA: response to rule change consultation on new transparency rules
- Regulatory Operations update

**Thursday 22 Nov 18**

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Combined Corporate and Regulatory Risk Register
- Regulatory Operations update

**Thursday 13 Dec 2018 (Board Away Day)**

**Thursday 31 Jan 19**

- Regulatory Operations update

**Thursday 28 Feb 19**

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Draft Business Plan for 2019-20
- Regulatory Operations update

**Thursday 28 Mar 19**

- Business Plan for 2019-20

## Diversity at the Bar Report

### Status:

1. For discussion and **approval**.

### Executive summary:

2. The Equality Act Specific Duties Regulations 2011 require the BSB to publish, every January, equality information relating to those who are affected by our policies and practices. The Legal Services Board (LSB) requires the BSB to publish aggregated data showing the diversity profile of the barrister profession, beginning at entry, and to do so regularly to show changes over time.
3. Since 2011 the LSB has required diversity data on the following strands to be collected and published: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities.
4. This paper details how the BSB has collected diversity data from individual barristers via the online *Barrister Connect* portal in 2017. The data have been collected on the diversity strands mentioned above and have been broken down by seniority and set out in the Diversity Data Report 2017 at **Annex 1**.
5. The BSB Research team, with support from the BSB Equality & Access to Justice (E&AJ) team, extracted and analysed the data in December 2017. This showed that completion rates for the monitoring questionnaire have increased by an average of 2.5 percentage points since 2016. However, due to low disclosure levels, the data in the areas of disability, religion or belief, sexual orientation, socio-economic background and caring responsibilities are not reliable and, therefore, caution is advised in their interpretation. More reliable levels of data exist in the categories of gender, race, and age.
6. The collection and publication of diversity data in relation to the profession provides the BSB with an evidence base which is used to inform policies aimed at widening access to the profession and promoting diversity and social mobility. In particular, the BSB's annual Diversity Data Report is crucial to informing BSB work streams such as the BSB Equality Strategy and associated equality objectives, and the Risk Outlook. The report is also used to monitor the impact of BSB policies through Equality Impact Assessments. In particular, recent Diversity Data Reports have helped to provide evidence of underrepresentation of women and disabled practitioners at the Bar and a lack of progression for Black, Asian and Minority Ethnic (BAME) practitioners.

### Recommendation

7. It is recommended that the Board **approves** for publication on the BSB website the Diversity Data Report 2017, attached at **Annex 1**.

## Summary of Legal and LSB Regulatory Requirements

### Legal requirements

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

### LSB regulatory requirements

10. In July 2011 the LSB issued guidance under Section 162 of the Legal Services Act 2007 stipulating that Approved Regulators (ARs) must collate diversity data to give an aggregate view of the diversity make-up of each branch of the profession. ARs were required to publish this data by the end of 2012, and at one year intervals thereafter. Data were required to be published on the following strands: age, gender, disability, race, religion or belief, sexual orientation, socio-economic background and caring responsibilities. The BSB must publish the numbers of individuals in each group, and as a percentage of the total Bar. The data must be anonymised, aggregated, and broken down by seniority (i.e. QC, practising Bar, pupil).
11. In February 2017 the LSB issued updated guidance about data collection which is less prescriptive, but which maintains the requirement for ARs to collect and publish data which show the diversity profile of their regulated communities across all diversity strands, beginning at entry level. The data must be published regularly in order that trends over time can be identified. The LSB will be conducting a formal review of the BSB's progress against the statutory guidance in August 2018.
12. The 2017 statutory guidance requires that ARs must begin to collect and publish data on gender identity. The BSB already asks the question – "is your gender identity the same as that which you were assigned at birth?" - on the monitoring page of the *Barrister Connect* portal to collect data from the profession on gender identity. This question, alongside all the other current monitoring questions, will feature in a new online portal *My Bar* (replacing the current *Barrister Connect* portal in 2018). The 2018 Diversity Data Report, that will be produced by the Research team in December 2018, will contain data on gender identity.

## Background

### Collection of diversity data

13. The annual process of authorisation to practise (AtP) requires individual barristers to renew their practising certificate via the online *Barrister Connect* portal. This online system contains a voluntary monitoring page which allows barristers to input their personal diversity data. During the 2017 AtP process, these data automatically populated the 'Core Database', which contained an electronic record of every individual barrister. In October 2017 all data from the Core Database were migrated across to a new Customer Relationship Management (CRM) database.



14. Since the introduction of *Barrister Connect* in 2012, the completion rates for the diversity monitoring page have been low in some areas. For example, in 2012 only 4.7% of barristers completed the question about sexual orientation and 3% of barristers completed the question about caring responsibilities. Since 2012, regular reminder emails have been sent from the BSB to the profession encouraging them to log back into the portal and submit their diversity data. In 2013 the *Barrister Connect* portal was amended so that a 'pop up' reminder about completing the monitoring form appears before a barrister exits the AtP process. Explanatory text was also added to the portal itself setting out the reasons why diversity data collection is important for the BSB and how the data are used. Following these interventions, completion levels have increased but in some areas remain below what is required for drawing meaningful conclusions.
15. Diversity data on pupils is collected through the Pupillage Registration Form, which must be completed before an individual commences their pupillage. The data from this form are collected annually, at the same time as the rest of the data on the profession is collected, to enable diversity monitoring of pupils to coincide with that of the rest of the profession.
16. The BSB Research team extracted the anonymous diversity data on the profession from the CRM database on 1<sup>st</sup> December 2017. The data were cross-checked for anomalies with the E&AJ team and subsequently presented as the Diversity Data Report at Annex 1.

### Diversity Data Report 2017

#### Summary of data

17. Completion rates across all monitoring categories have increased by an average of 2.5 percentage points (pp) since 2016, with the largest increases being 5.4pp for 'type of school attended', 5.3pp for both of the caring responsibility categories and 5.2pp for 'disability'. There has been a slight decrease in response rate for age (-5.1pp) which is due to a change in the way this is calculated in the new CRM system. The CRM relies on barristers having declared a date of birth. In the previous system, barristers were required to declare an age band category. This change means that the new data are more precise and more reliable, despite the slight reduction in response rate.
18. As a result of the data collection exercise, there is comprehensive data in some areas and poor data in other areas due to the low completion rates. The BSB has relatively high levels of data in the following areas, and hence some meaningful conclusions can be drawn:
  - a) Gender
    - The CRM has gender data on 99.97% of barristers.
    - Although the numbers of female practitioners has increased across all levels of seniority since 2016, the data still show an underrepresentation: 37% of all barristers are female and at QC level 14.8% are female.
  - b) Ethnicity
    - The CRM has ethnicity data on 92.5% of barristers.
    - The number of black, Asian and minority ethnic (BAME) practitioners has increased across all levels of seniority, apart from pupils where there has been a very small (0.2%) decrease.
    - The data show there is an issue with career progression of BAME barristers through the different levels of seniority; 16.1% of pupils are BAME, but only 13.2% of the practising Bar is BAME and 7.2% of QCs are BAME.

- c) Age
- The CRM has age data on 82.5% of barristers.
  - The data show no significant under or overrepresentations, other than those for which there is a reasonable explanation, e.g. the majority of pupils are aged 25-34.
19. There are low levels of data in the following areas, and therefore reliable conclusions cannot be drawn:
- a) Disability
- The CRM has disability data on 40.2% of barristers.
  - 2.1% of barristers declared a disability, out of a total profession of 16,857.
- b) Religion or belief
- The CRM has religion or belief data on 34.1% of barristers.
  - The highest responses were in the following categories: 16.7% of all barristers declared they are Christian, followed by 10.1% who declared they have no religion.
- c) Sexual orientation
- The CRM has sexual orientation data on 34.8% of barristers.
  - 32.4% of barristers declared that they are straight, 1.3% declared they are a gay man, 0.3% declared they are a gay woman and 0.5% declared they are bisexual.
- d) Socio economic background
- 36.7% of barristers completed the question about what type of school they attended, and 34.9% of barristers answered the question about whether they were the first generation of their family to attend university.
  - Even with this low response rate, the proportion of barristers who primarily attended fee-paying secondary schools (12.3%) is higher than the proportion in England (approximately 7%).
- e) Caring responsibilities
- 37.2% of barristers answered the question about caring responsibilities for children, of which around 21% of respondents declared they had caring responsibilities for children.
  - 36.1% of barristers answered the question about caring for others, of which around 12% of respondents declared they had caring responsibilities for others.
  - Approximately 12% of the UK working population has caring responsibilities.
20. The BSB Research team has advised that the data in the categories above at paragraph 19 are unreliable due to the low completion rates and therefore caution is advised in its interpretation. This presents some limitations for the BSB as it has statutory and regulatory duties to promote equality and diversity in relation to all the protected characteristics listed in the Equality Act 2010. There is no set figure for the point at which the disclosure rates of diversity monitoring data become reliable, but with a sample size of approximately 16,000 a response rate of around 50% would be considered useful as an evidence base for starting to develop policy. Despite the low response rates for some questions, the data can still be used to help inform actions in those areas where we know - through other research and evidences bases - that social inequality exists.

21. The Diversity Data Report 2017 reaches four main conclusions:
- a. There is an underrepresentation at the Bar of women, BAME people, and people who did not attend fee-paying schools.
  - b. It is highly likely that there is an underrepresentation of disabled people at the Bar, given that the response rate to this question is nearing a reliable level. This underrepresentation is important for the BSB to note because the duty to make reasonable adjustments for disabled people is anticipatory for public bodies, i.e. we have a positive duty to consider in advance what disabled people might reasonably need.
  - c. The number of pupils that are female and/or BAME is generally representative of the numbers of women and BAME people in the UK, however this is not the case for the Bar as a whole, particularly at QC level. This suggests that the barriers experienced by women and BAME practitioners relate more to retention than recruitment.
  - d. There is an overrepresentation among practitioners of people who primarily attended fee-paying schools. Although only 36.7% of practitioners responded to this question, the proportion of those who went to fee-paying schools is almost double the level within the UK population as a whole. If all of the barristers who did not respond to this question had attended state schools and were included in the analysis, this point would still stand.
22. The findings of this Diversity Data Report provide an evidence base which will be used to inform a range of BSB workstreams, in particular the setting and monitoring of organisational equality objectives, the BSB Equality Strategy and the Risk Outlook. The report is also used to monitoring the impact of BSB policies through Equality Impact Assessments.

#### Action to improve the quality of diversity data

23. It is accepted that it can take years for a profession to become familiar and comfortable with providing diversity data on a range of strands. Although it is positive to see that completion rates have increased every year since 2014, the current rates in some areas remain too low for statistical analysis to be meaningfully undertaken. The new online portal *My Bar*, to be launched in February 2018, will use a different software provider to *Barrister Connect*. In light of this, the E&AJ team are working in partnership with the Bar Council Resources Group and the BSB Communications team to implement the following actions prior to the 2018 AtP round commencing, with the aim of improving completion rates:
- a. The monitoring page will be located in a prominent place on the *My Bar* portal. It will be embedded as part of the AtP process to improve visibility rather than being a standalone page that has to be navigated to separately. Completion of the monitoring questions will remain voluntary.
  - b. Explanatory text will be included on the monitoring page setting out the importance to the BSB of data collection, the ways in which the data will used, and a reassurance about data being kept anonymous.
  - c. A reminder for individuals to update their diversity data will be included on the automatic email that is sent to barristers once they have completed the 2018 AtP process.

### **Publication and promotion of diversity data**

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

### **Resource implications**

25. Design and implementation costs for the new *My Bar* portal are included in the agreed budget for the Bar Council Resources Group.

### **Equality impact assessment**

26. It is anticipated that the publication of diversity data and the changes to the *My Bar* portal will not have any adverse impact on equality because these activities have been designed specifically to promote and advance equality and diversity. Accessibility issues will be taken into consideration when publishing diversity data and when designing the monitoring section for the new online portal.

### **Risk implications**

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

### **Regulatory objectives**

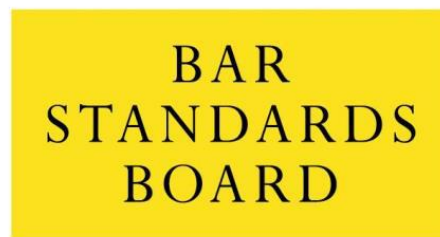
30. The collection and publication of diversity data for the Bar relates directly to the BSB's regulatory objective of "encouraging an independent, strong, diverse and effective legal profession".

### **Annexes**

Annex 1: Report on Diversity at the Bar, December 2017

### **Lead responsibility:**

Amit Popat, Head of Equality and Access to Justice



REGULATING BARRISTERS

## **Report on Diversity at the Bar**

**December 2017**

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## 1. Executive Summary

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

### Response Rates

- Response rates continue to increase across all categories except for age and gender (see Table 2 for a comparison to 2016). The response rate is highest for gender at 99.97 per cent and lowest for caring responsibilities and religion or belief at 34.1 per cent.

### Gender

- The proportion of women at the Bar (pupils, practising Queen’s Counsel (QC) and non-QC barristers) has increased 0.5 percentage points (pp) since the snapshot taken in December 2016. As of December 2017, women constitute 37.0 per cent of the practising Bar.
- The proportion of female QCs has increased, from 13.7 per cent in December 2016 to 14.8 per cent in December 2017.
- As observed in 2016, there is a greater proportion of female pupils in comparison to male pupils (51.7% vs 48.3%)

### Ethnicity

- The percentage of Black, Asian and Minority Ethnic (BAME) barristers at the Bar has increased 0.5pp since December 2016 to 12.7 per cent, with the percentage of QCs from BAME backgrounds increasing 0.8pp year on year (to 7.2%). However, the proportion of pupils from BAME backgrounds has fallen slightly (0.2pp).
- There is still a disparity between the total percentage of BAME barristers across the profession (12.7%), and the percentage of BAME QCs (7.2%). This suggests an issue in the progression of BAME practitioners at the Bar, although the gap has narrowed by 0.3pp in comparison to December 2016.

### Disability

- There still appears to be an underrepresentation of disabled practitioners at the Bar. Of those that have provided information on disability status to us, 5.3 per cent of the Bar disclosed a disability. This is significantly lower than the percentage of disabled people in the employed working age UK population estimated at 11 per cent.

### Other

- Despite a low response rate (36.7%) to this question, the data suggest that a disproportionate number of barristers attended a UK fee-paying secondary school between the ages of 11-18. Even if all of the barristers who chose not to respond to this question had gone to state schools, the proportion of

barristers who went to fee-paying schools is higher than in the wider population; with 12.3 per cent (including non-respondents) having primarily attended a fee-paying school between 11-18, compared to approximately 7 per cent of school children in England at any age, and 10.1 per cent of UK domiciled young full-time first degree entrants in the UK in 2015/16. Of those that provided information on school attended, around 33 per cent attended an independent school in the UK.

## 2. Introduction

The BSB is committed to providing clear and transparent statistical diversity data across every stage of a barrister’s career. This diversity data report is published annually, in line with the Specific Duties Regulations of the Equality Act 2010 and the statutory guidance of the Legal Services Board. It is a summary of the diversity data on practising barristers available to the BSB, as at 1 December 2017.

This report provides an overview of diversity at the Bar,<sup>1</sup> and establishes evidence for both policy development and assessing the effectiveness of current initiatives aimed at increasing equality and diversity. All data are presented anonymously.

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

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

Seniority	Numbers
Pupil	422
Practising Bar <sup>2</sup>	14,704
Queen’s Counsel (QC)	1,731
<b>Total</b>	<b>16,857</b>

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

<sup>1</sup> Usage of the term ‘the Bar’ in this report refers only to practising barristers as of 1 December 2017.

<sup>2</sup> Usage of the term ‘Practising bar’ in this report refers to practising junior barristers; a barrister who has not taken silk



### 3. Methodology

The data for practitioners<sup>3</sup> in this report are from the BSB's records.

#### BSB Records

Diversity data on pupils are collected through the Pupillage Registration Form (PRF), which must be completed before an individual commences their pupillage. The data from this form are collected annually, simultaneously with the data collection for the rest of the profession to ensure consistency.

The Bar Council Records Department receives data on the profession via the online "Authorisation to Practise" system, Barrister Connect, a system introduced in 2012 to enable barristers to renew their practising certificates online. When renewing their practising certificate, the online portal includes a section which allows barristers to input their diversity monitoring data. From 2018, a new platform called MyBar will be used.

The rate of completion varies for individual monitoring strands, as each question is voluntary and some can be left blank if desired. Barristers can access the Barrister Connect portal at any time and update their diversity monitoring information. The diversity monitoring information used in this report was extracted from our database on 1 December 2017, and represents a snapshot of the profession on this date.

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

All numbers have been rounded to one decimal place, so in some cases the figures may not total 100 per cent.

#### 3.1. Response Rates

The response rate once again increased across all collected data in 2017, except for age and a very small decrease for gender. While this trend is positive, the majority of questions asked are still only responded to by just over a third of the Bar. Information on disability was provided by just over 40 per cent of the Bar. The following diversity information was not provided in any way (including prefer not to say) by over 60 per cent of barristers:

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<sup>3</sup> Usage of the term "practitioners" in this report refers to pupils, junior barristers, and QCs practising at the Bar as of 1 December 2017.

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

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

**Table 2: Response Rates in 2016 and 2017 (as a percentage of total barristers)**

Category	2016	2017	Percentage point difference
Gender	99.99%	99.97%	-0.02%
Ethnicity	91.8%	92.5%	0.7%
Age	87.6%	82.5%	-5.1%
Disability	35.0%	40.2%	5.2%
Religion or belief	32.1%	34.1%	2.0%
Sexual orientation	31.8%	34.8%	3.0%
Type of school attended	31.3%	36.7%	5.4%
First generation to attend university	31.2%	34.9%	3.7%
Care of children	31.9%	37.2%	5.3%
Care for others	30.8%	36.1%	5.3%

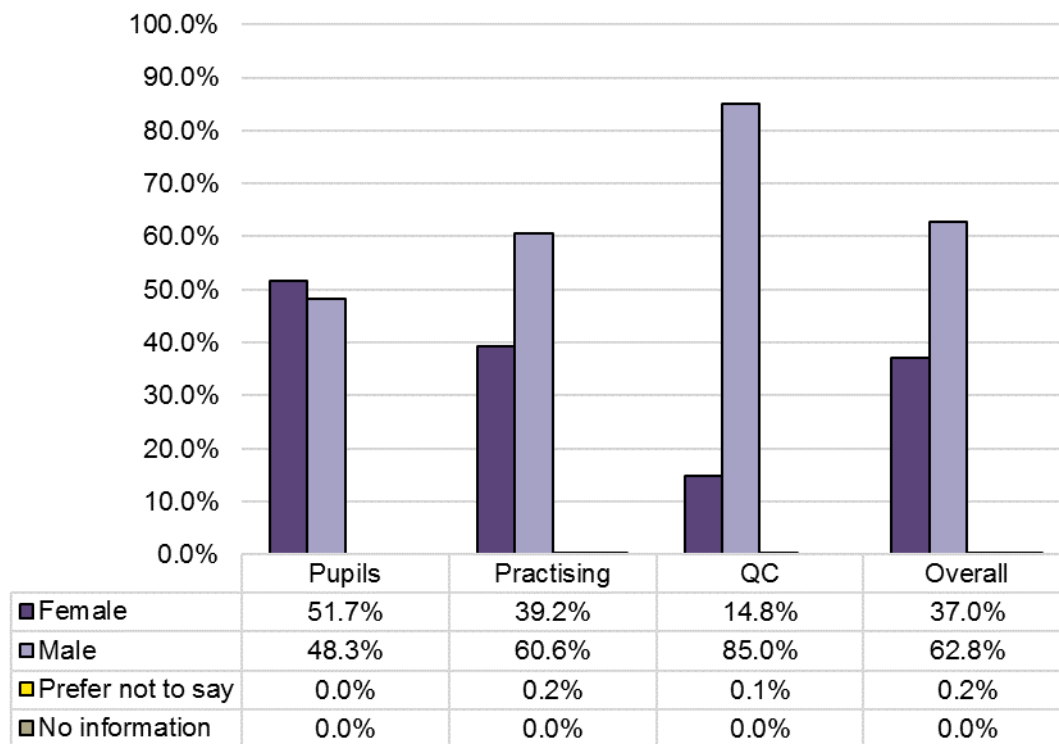
The decrease in response for *age* is due to a change in the way age bands are calculated from our new Customer Records Management (CRM) system launched in October 2017, using information from those that have disclosed a date of birth only. The previous system included those that had disclosed an age band and no date of birth, but in the absence of such data being updated yearly, we could not be sure that barristers within this group had not changed age bands since the data were first submitted.

## 4. Protected Characteristics

### 4.1. Gender

Chart 1 shows the percentage of practitioners at the Bar by gender and level of seniority. The percentage of women at the Bar across all levels of seniority has increased from December 2016 to December 2017. The greatest increase has been for QCs (13.7% to 14.8%; a difference of 1.1pp), however, it is noteworthy that the overall proportion of female QCs is low (14.8%). The proportion of female pupils has increased by 0.4pp, and for practising barristers the year on year increase is 0.5pp. The proportion of female pupils is greater than that for male pupils (51.7% vs 48.3%).<sup>4</sup> The same was true in 2016.

Chart 1: Gender at the Bar (%)



<sup>4</sup> More information on the demographics of pupils that have entered onto pupillage following the BPTC can be found in Part 4 of the BPTC Key Statistics Report:

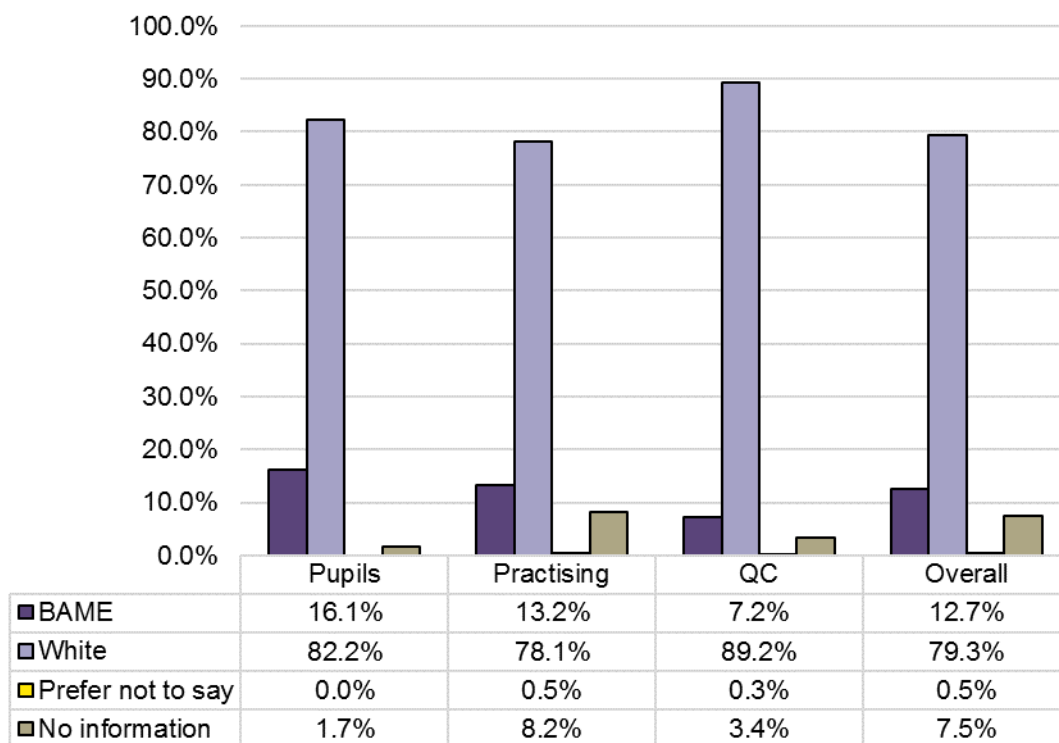
[https://www.barstandardsboard.org.uk/media/1758995/bptc\\_key\\_statistics\\_report\\_2016\\_-\\_part\\_4\\_-\\_bptc\\_graduate\\_progression.pdf](https://www.barstandardsboard.org.uk/media/1758995/bptc_key_statistics_report_2016_-_part_4_-_bptc_graduate_progression.pdf)

**Table 3: Gender at the Bar (numbers)**

	Pupils	Practising Bar	QC	Total
<b>Female</b>	218	5,765	257	6,240
<b>Male</b>	204	8,908	1472	10,584
<b>Prefer not to say</b>	-	26	2	28
<b>No information</b>	-	5	-	5
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>

## 4.2. Ethnicity

Chart 2 shows the percentage of practitioners at the Bar by ethnic background and level of seniority. The total percentage of BAME barristers at the Bar has increased by 0.5pp compared to December 2016. There was an increase of 0.8pp for QCs, with the percentage of BAME barristers increasing by 0.5pp for practising barristers. However, the proportion of BAME pupils showed a decrease of 0.2pp compared to December 2016.

**Chart 2: Ethnicity at the Bar (%)**

**Table 4: Ethnicity at the Bar (numbers)**

	Pupils	Practising Bar	QC	Total
<b>Asian/Asian British</b>	<b>39</b>	<b>956</b>	<b>60</b>	<b>1,055</b>
Asian/Asian British - Bangladeshi	5	81	5	91
Asian/Asian British - Chinese	3	65	4	72
Asian/Asian British - Indian	12	434	29	475
Asian/Asian British - Pakistani	11	239	16	266
Any other Asian background	8	137	6	151
<b>Black/African/Caribbean/Black British</b>	<b>12</b>	<b>454</b>	<b>19</b>	<b>485</b>
Black/Black British - African	7	227	6	240
Black/Black British - Caribbean	3	183	9	195
Any other Black background	2	44	4	50
<b>Mixed/multiple ethnic groups - Total</b>	<b>15</b>	<b>378</b>	<b>18</b>	<b>411</b>
White and Asian	5	40	3	48
White and Black African	-	45	-	45
White and Black Caribbean	1	49	1	51
White and Chinese	2	86	8	96
Any other mixed/multiple background	7	158	6	171
<b>Other ethnic group</b>	<b>2</b>	<b>156</b>	<b>27</b>	<b>185</b>
Arab	1	13	-	14
Any other ethnic group	1	143	27	171
<b>White - Total</b>	<b>347</b>	<b>11,483</b>	<b>1,544</b>	<b>13,374</b>
White - English/Welsh/Scottish/Northern Irish/British	312	10,576	1,477	12,365
Any other White background	26	566	43	635
White - Irish	9	338	24	371
White - Gypsy or Irish Traveller	-	3	-	3
<b>Prefer not to say</b>	<b>-</b>	<b>76</b>	<b>5</b>	<b>81</b>
<b>No information</b>	<b>7</b>	<b>1,201</b>	<b>58</b>	<b>1,266</b>
<b>Grand Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>

### 4.3. Disability

Chart 3 shows the percentage of practitioners at the Bar by disability and level of seniority. 2.2 per cent of practising barristers had declared a disability as of December 2017, in addition to 6.4 per cent of pupils, and 0.7 per cent of QCs. When not including those that had not provided information, 5.3 per cent of practising barristers, 8.4 per cent of pupils, 2.9 per cent of QCs, and 5.3 per cent of the overall Bar had a declared disability: in comparison, 10.9 per cent of the employed working age population has a declared disability as of April-June 2017.<sup>5</sup> This suggests that the percentage of those with a declared disability may decrease by level of seniority, but the overall disclosure rate is low at 40.2 per cent, meaning the data may not be reliable.

Chart 3: Disability at the Bar (%)

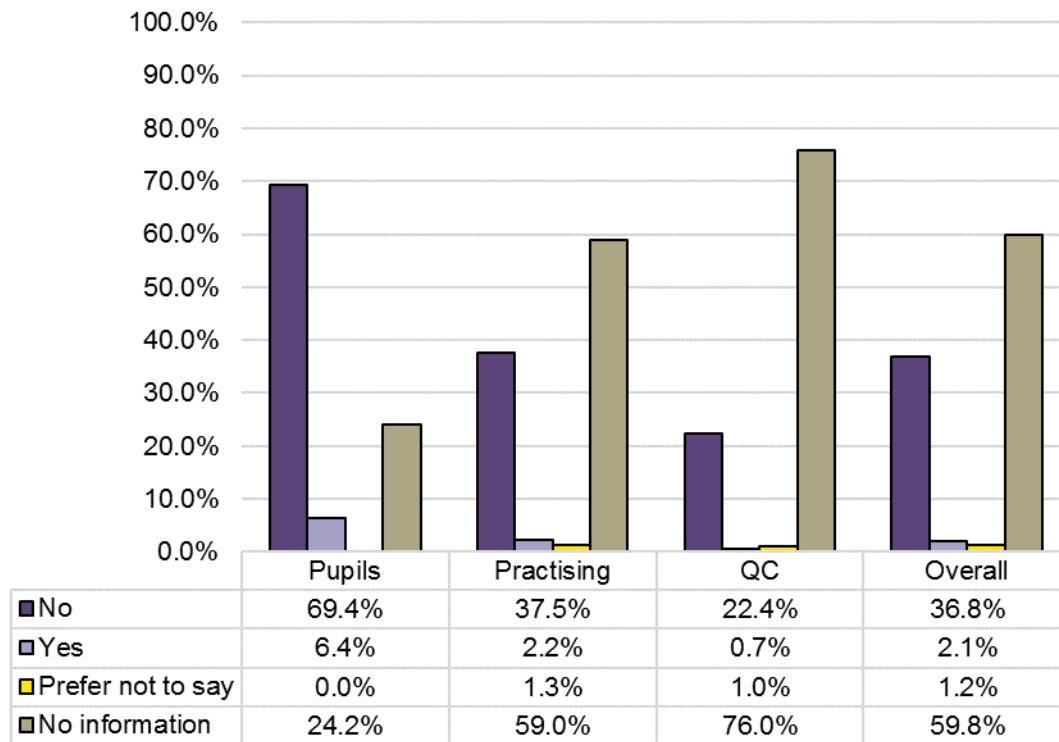


Table 5: Disability at the Bar (numbers)

	Pupils	Practising Bar	QC	Total
<b>No disability declared</b>	293	5,519	387	6,199
<b>Disability declared</b>	27	321	12	360
<b>Prefer not to say</b>	-	193	17	210
<b>No information</b>	102	8,671	1,315	10,088
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>

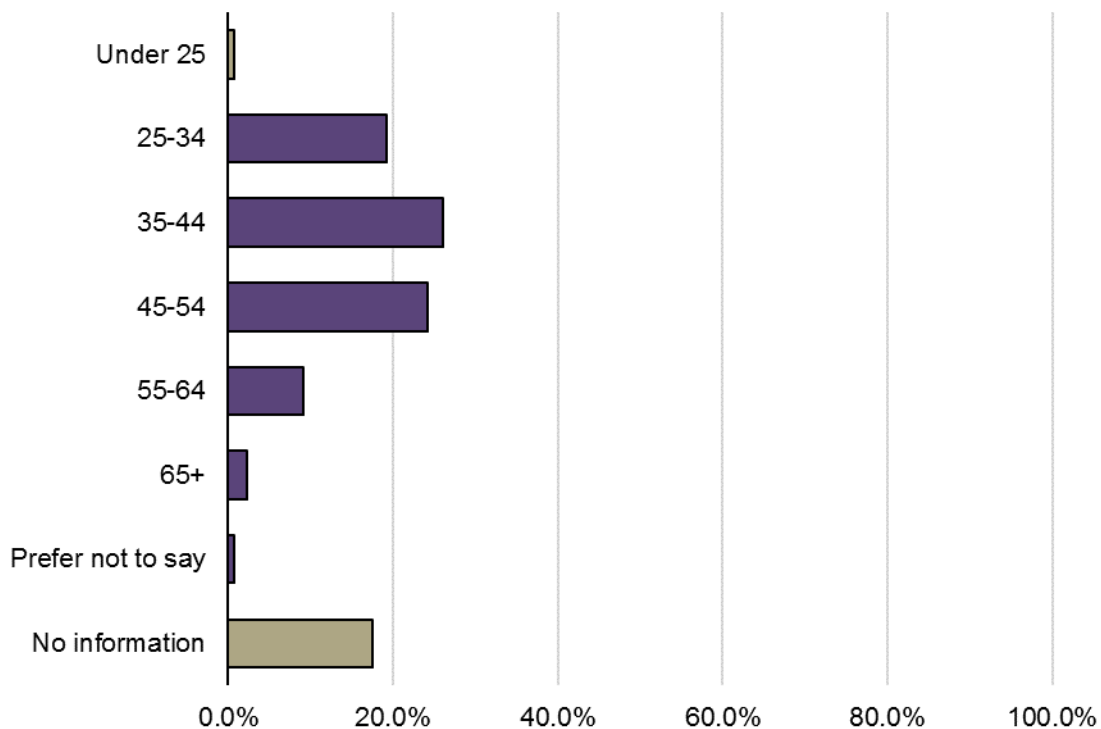
<sup>5</sup> Calculated for Apr-Jun 2017 from Office for National Statistics datasets: A01: Summary of labour market statistics; and A08: Labour market status of disabled people

#### 4.4. Age

Chart 4 shows the percentage of practitioners at the Bar by age band and level of seniority. Age is fairly evenly distributed across the Bar. Those between the ages of 25 and 54 make up almost 84 per cent of those that have provided information on age.

The only noteworthy change since 2016 is a decrease in disclosure rate. This is due to a change in the way age bands are calculated, using information from those that have disclosed a date of birth only. The previous system included those that had disclosed an age band only and no date of birth, but in the absence of such data being updated yearly, we could not be sure that barristers within this group had not changed age bands since the data were first submitted. The change took place in October 2017 with the launch of our new CRM system.

Chart 4: Age of the Bar (% of total for the Bar)



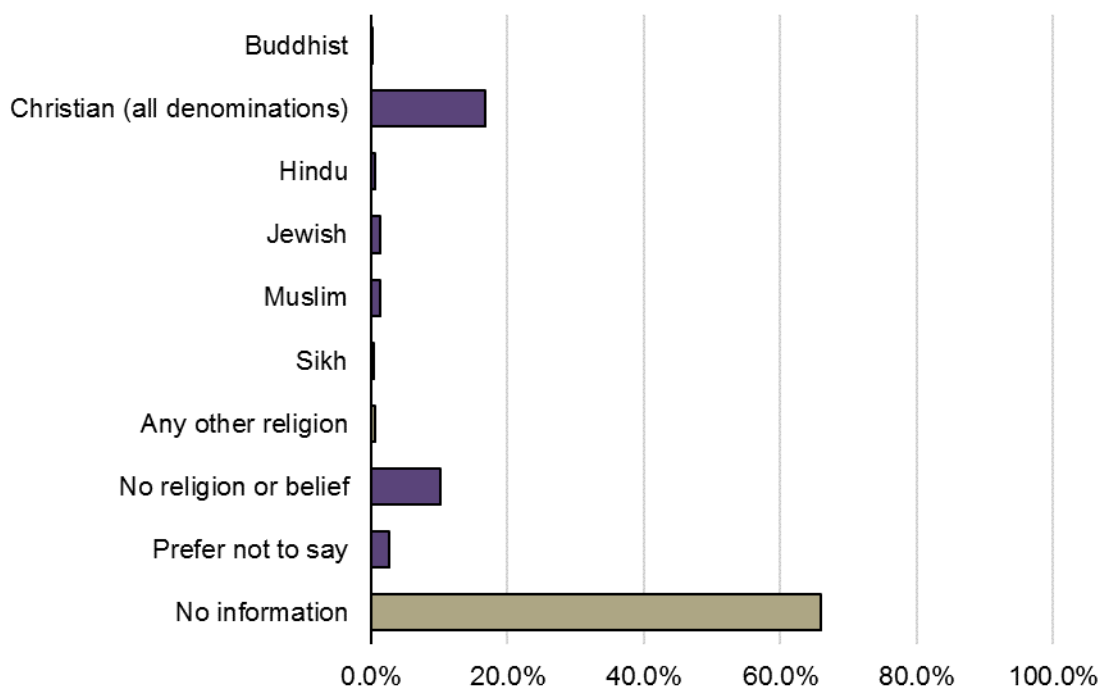
**Table 6: Age at the Bar (numbers)**

	Pupils	Practising Bar	QC	Total	Total (%)
<b>Under 25</b>	96	35	-	131	0.8%
<b>25 - 34</b>	280	2,970	-	3,250	19.3%
<b>35 - 44</b>	30	4,282	92	4,404	26.1%
<b>45 - 54</b>	13	3,504	563	4,080	24.2%
<b>55 - 64</b>	-	1,329	200	1,529	9.1%
<b>65+</b>	-	325	64	389	2.3%
<b>Prefer not to say</b>	-	104	12	116	0.7%
<b>No information</b>	3	2,155	800	2,958	17.5%
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>	<b>100.0%</b>

#### 4.5. Religion and Belief

Chart 6 shows the religion or belief of practitioners at the Bar. Around two thirds of the Bar have not yet provided information on religion or belief through Barrister Connect, although the response rate is up by 2pp year on year. Including those that have not provided information, the largest group are Christians (16.7%) followed by those with no religion or belief (10.1%).

Chart 5: Religion/Belief of the Bar (% of total for the Bar)





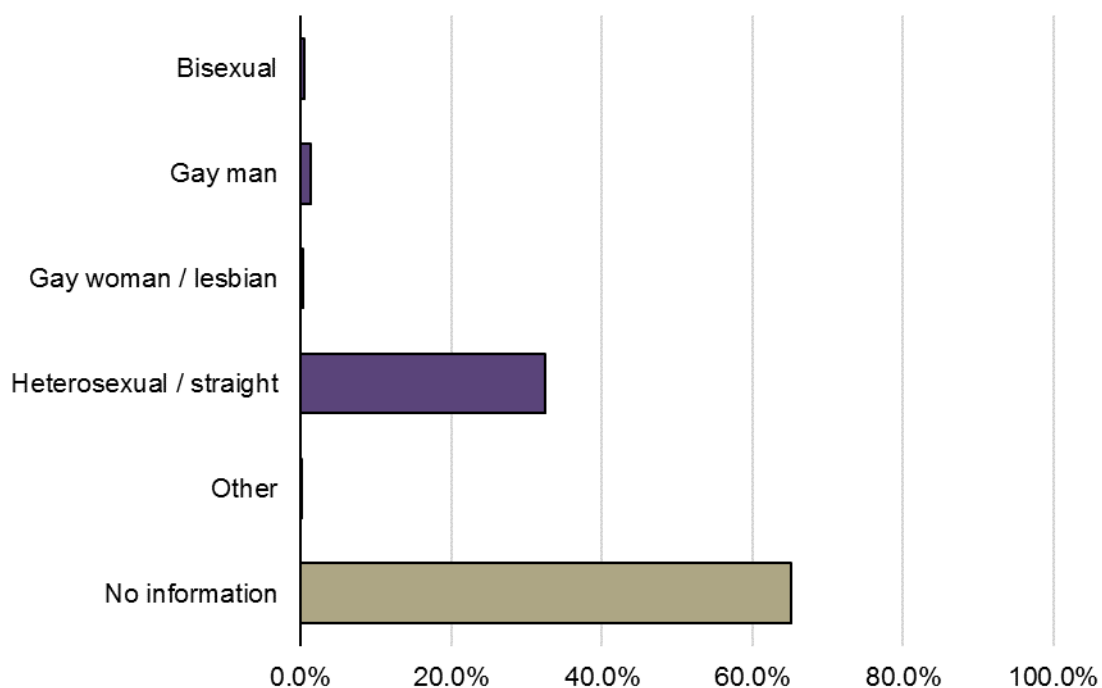
**Table 7: Religion and Belief at the Bar (numbers)**

	Pupils	Practising Bar	QC	Total	Total (%)
<b>Buddhist</b>	2	31	1	34	0.2%
<b>Christian (all denominations)</b>	101	2,531	183	2,815	16.7%
<b>Hindu</b>	7	85	3	95	0.6%
<b>Jewish</b>	3	192	43	238	1.4%
<b>Muslim</b>	13	209	5	227	1.3%
<b>Sikh</b>	2	63	4	69	0.4%
<b>Other religion/belief</b>	2	95	4	101	0.6%
<b>No religion/belief</b>	134	1,484	83	1,701	10.1%
<b>Prefer not to say</b>	5	422	36	463	2.7%
<b>No information</b>	153	9,592	1,369	11,114	65.9%
<b>Grand Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>	<b>100.0%</b>

#### 4.6. Sexual Orientation

Chart 6 shows the sexual orientation of practitioners at the Bar. The statistics are largely unchanged from last year, with an increase in the response rate being shared across the various categories.

Chart 6: Sexual orientation of the Bar (% of total for the Bar)



**Table 8: Sexual Orientation of the Bar (numbers)**

	Pupils	Practising Bar	QC	Total	Total (%)
<b>Bisexual</b>	6	81	5	92	0.5%
<b>Gay man</b>	8	208	9	225	1.3%
<b>Gay woman/Lesbian</b>	5	42	-	47	0.3%
<b>Heterosexual</b>	256	4,870	343	5,469	32.4%
<b>Other</b>	1	24	2	27	0.2%
<b>Prefer not to say</b>	-	-	-	-	-
<b>No information</b>	146	9,479	1,372	10,997	65.2%
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>	<b>100.0%</b>

## 5. Socio-Economic Background

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

Unfortunately, accurately measuring socio-economic background can be challenging, and there is no universal proxy for gathering such data. The BSB uses the socio-economic questions recommended by the Legal Services Board, which are included on the Barrister Connect monitoring questionnaire and on the PRF. These questions use educational background of the barrister, and of their parents, as a proxy for determining a barrister's social class. There is a strong correlation between a person's social background and a parent's level of educational attainment – particularly when choosing the type of school to attend, type of university, and career choice.<sup>6</sup>

### 5.1. Type of School Attended

Chart 7 shows a summary of the type of school mainly attended between the ages of 11-18 for practitioners at the Bar, as a proportion of the whole profession. The data suggest that a disproportionate amount of the Bar attended a UK independent school. The figures show that even if all of the barristers who chose not to respond had gone to state schools, the proportion of barristers who went to fee-paying schools is higher than in the wider population, with 12.3 per cent (including non-respondents) having primarily attended a fee-paying school between 11-18, compared to approximately 7 per cent of school children in England at any age,<sup>7</sup> and

<sup>6</sup> Bukodi, E. and Goldthorpe, J.H., 2012. Decomposing 'social origins': The effects of parents' class, status, and education on the educational attainment of their children. *European Sociological Review*, 29(5), pp.1024-1039.

<sup>7</sup> Independent Schools Council: Research. <https://www.isc.co.uk/research/> (accessed 10 January 2018). We acknowledge that this comparison is not a direct one; we are lacking data on type of school mainly attended between the ages of 11-18 for England and Wales only.

10.1 per cent of UK domiciled young full-time first degree entrants in the UK in 2015/16.<sup>8</sup>

Of those that provided information on school attended, around 33 per cent attended an independent school in the UK.

The overall response rate for this information has increased 5.4pp year on year (to 36.7%).

Chart 7: Type of school attended (% of total for the Bar)

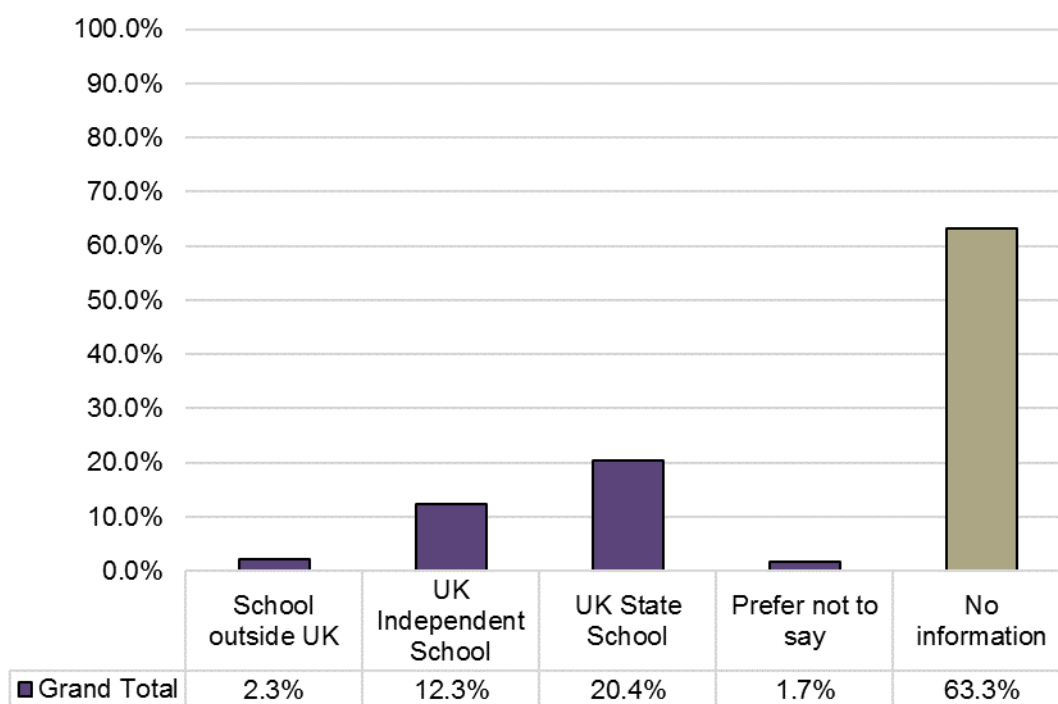


Table 9: Type of School Attended by the Bar (numbers)

	Pupils	Practising Bar	QC	Total
Attended school outside the UK	19	355	11	385
UK independent school	77	1,794	210	2,081
UK state school	188	3,122	133	3,443
Prefer not to say	3	254	23	280
No information	135	9,179	1,354	10,668
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>

<sup>8</sup> Higher Education Statistics Authority: Widening participation summary: UK Performance Indicators 2015/16. <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/widening-participation-summary> (accessed 12 January 2018)

## 5.2. First Generation to Attend University

Chart 8 shows whether members of the profession were the first generation to attend university or not. On the Barrister Connect monitoring questionnaire, the question asked is: “If you went to university (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?”

The statistics are very similar to 2016. The increase in response rate (to 34.9%) has been evenly shared between those answering “Yes” and those answering “No”.

Chart 8: First generation to attend university (% of total for the Bar)

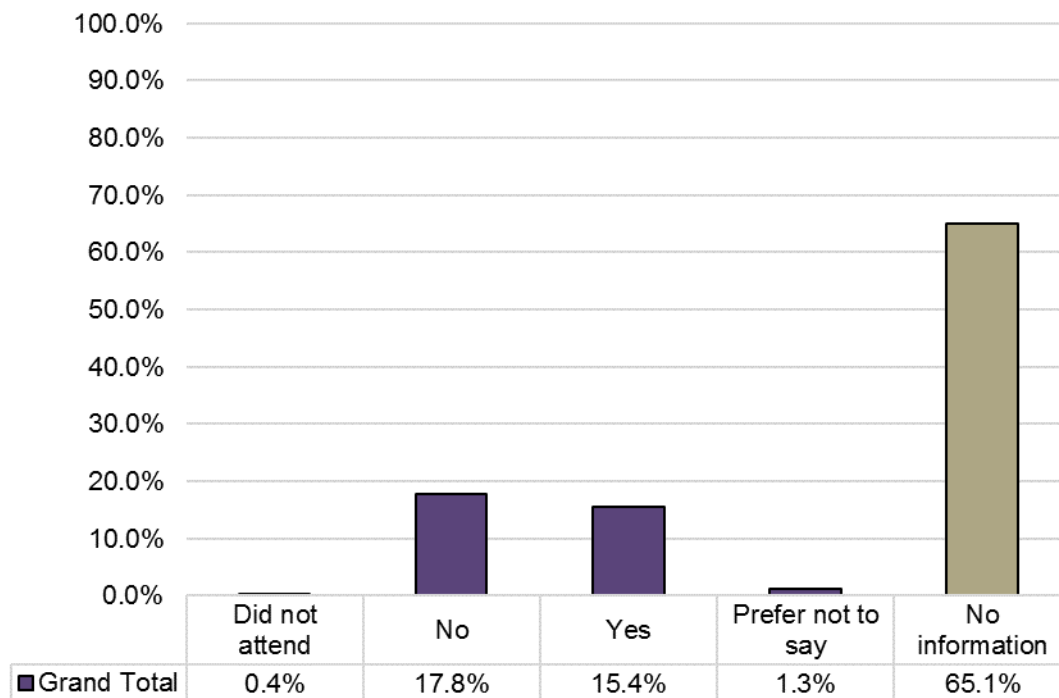


Table 10: First Generation to Attend University at the Bar (numbers)

	Pupils	Practising Bar	QC	Total
<b>Did not attend university</b>	1	44	14	59
<b>No</b>	72	2,770	165	3,007
<b>Yes</b>	63	2,367	173	2,603
<b>Prefer not to say</b>	3	200	19	222
<b>No information</b>	283	9,323	1,360	10,966
<b>Total</b>	422	14,704	1,731	16,857

## 6. Caring Responsibilities

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

### 6.1. Caring Responsibilities for Children

Chart 9 shows a summary of childcare responsibilities at the Bar. On the Barrister Connect monitoring questionnaire, the question asked is: “Are you a primary carer for a child or children under 18?” The percentage of those providing a response to this question has increased 5.3pp year on year.

Chart 9: Caring responsibilities for children for those at the Bar (%)

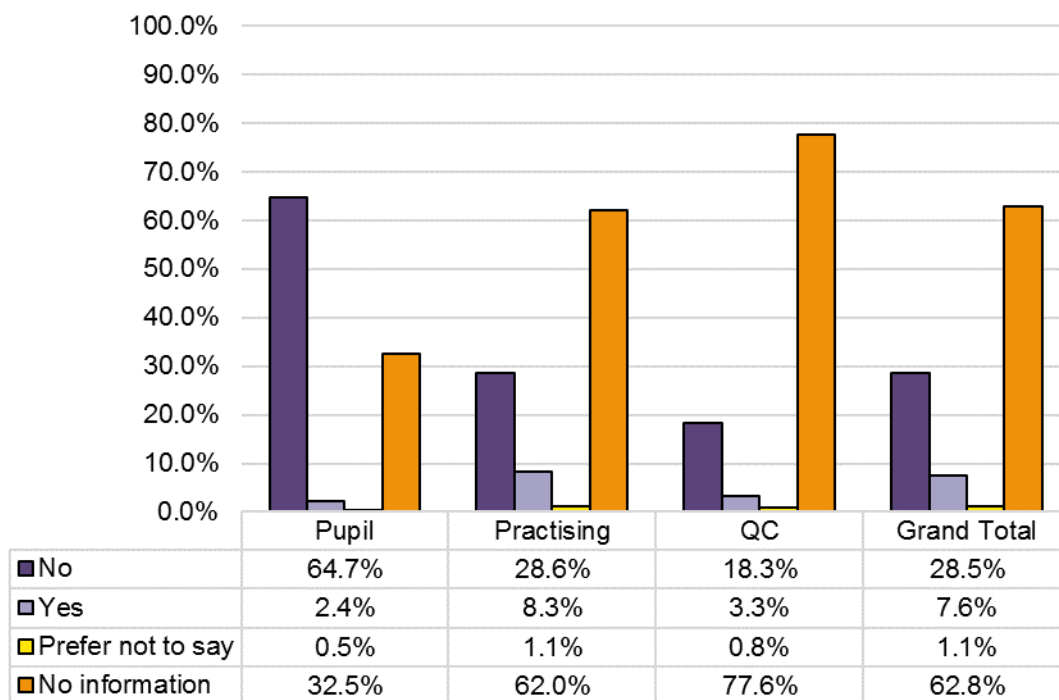


Table 11: Caring Responsibilities for Children for those at the Bar (numbers)

	Pupils	Practising Bar	QC	Total
No	273	4,209	317	4,799
Yes	10	1,220	57	1,287
Prefer not to say	2	162	14	178
No information	137	9,113	1,343	10,593
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>

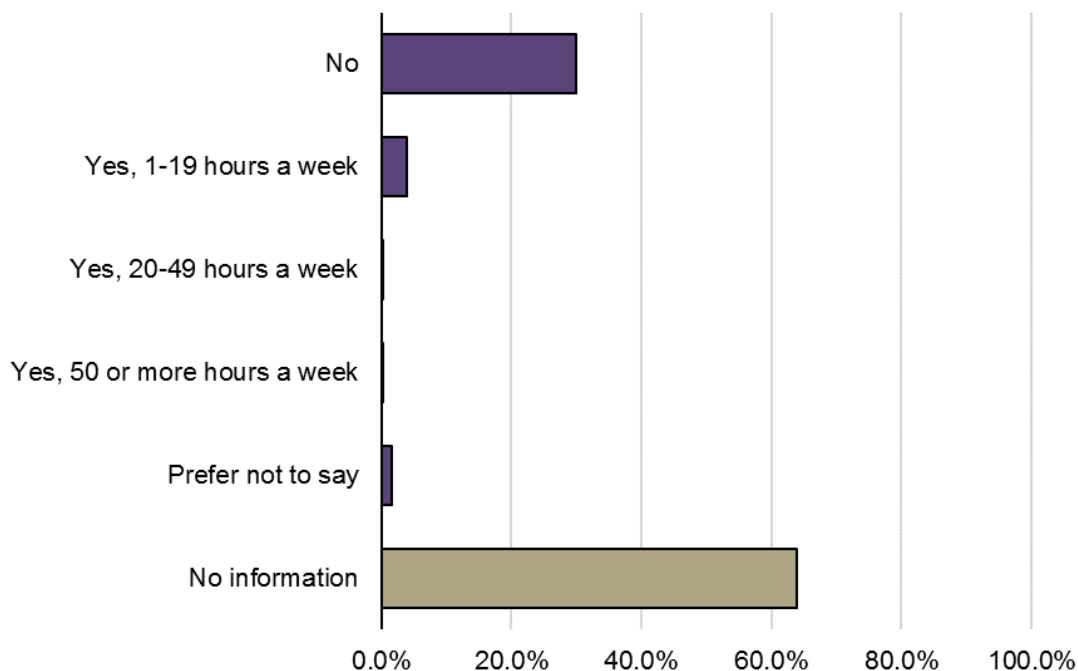
## 6.2. Caring Responsibilities for Others

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

Of those that provided a response, the clear majority do not provide care for others; with around 12 per cent of respondents at the Bar providing care for another, with 90.8 per cent of this group providing care for between 1-19 hours a week. Including those that have not provided information for this question, 4.4 per cent of the Bar provide care for others for one hour a week or more.

Of those that have provided a response, the proportion that provide care for another increases with level of seniority.

Chart 10: Caring responsibilities for others for those at the Bar (% of total for the Bar)



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

	Pupils	Practising Bar	QC	Total	Total (%)
<b>No</b>	264	4,499	303	5,066	30.1%
<b>Yes, 1-19 hours a week</b>	13	611	52	676	4.0%
<b>Yes, 20-49 hours a week</b>	-	37	2	39	0.2%
<b>Yes, 50 or more hours a week</b>	-	25	2	27	0.2%
<b>Prefer not to say</b>	4	261	16	281	1.7%
<b>No information</b>	141	9,271	1,356	10,768	63.9%
<b>Total</b>	<b>422</b>	<b>14,704</b>	<b>1,731</b>	<b>16,857</b>	<b>100.0%</b>

## 7. Conclusions

Compared with 2016, there has been no substantial change in the reported profile of the Bar this year. This is to be expected when monitoring demographic changes in a profession on an annual basis.

Response rates continues to improve steadily, which is a very positive development. Apart from gender (which had a 0.02pp decrease in response rate) and age (response for which is being calculated differently this year), the average response rate across questions increased by around 3.8pp. The increase in disclosure is something we will takes steps to maintain through the use of the new portal, MyBar. As the disclosure rate increases, so does the quality of the BSB's evidence base.

Overall, both gender and BAME representation at the Bar continue to move towards better reflecting the demographics of the UK population. Although the proportion of pupils from BAME backgrounds has slightly decreased, the gender and ethnic diversity of pupils are roughly in line with the population of England and Wales.

There may be an underrepresentation of disabled practitioners at the Bar, although the response rate (at 40.2%) is too low to draw reliable conclusions.

The response rates for questions on socio-economic background are too low to provide a reliable barometer of the profession in this area. However, available data indicate a disproportionately high percentage of the Bar primarily attended a fee-paying secondary school.





## Women at the Bar and Differential Attainment Research

### Status

1. This paper is for discussion and **approval**.

### Executive Summary

2. The BSB's equality objectives for 2017-2019 commit to:
  - a. Conducting workshops with barristers to inform strategies to reduce discrimination and barriers to retention and progression for women at the Bar, with the production of an associated report and action plan; and
  - b. Undertaking targeted research in order to understand the experiences of students with protected characteristics, using research findings to inform decisions for Future Bar Training (FBT) regarding increasing access and producing and publishing findings of the research.
3. In relation to women at the Bar, five workshops were held between October - December 2017 with over 50 attendees, including barristers, clerks, chambers directors, circuit leaders, specialist bar associations and BPTC providers.
4. The initial findings from the first four workshops were presented to the APEX away day in November 2017. A draft list of potential actions, some to be implemented by the BSB and some in partnership with other stakeholders, was presented to the Board in the same month to help in assessing scope and feasibility.
5. The draft report at **Annex A**, produced by the BSB Research team, sets out the main findings from the workshops. The report notes that the workshop discussions produced a wide range of good-practice examples and recommendations for action that can be grouped into the following cross-cutting themes: monitoring, transparency, policies, training and culture. The Board is being asked to note the draft findings, which are subject to peer review, along with our plan to produce a research summary paper for publication.
6. An associated action plan, produced by the BSB Equality and Access to Justice team (E&AJ) and with input from the Women at the Bar Programme Board, is presented at **Annex B**. The action plan spans the period 2018-19 and groups the proposed activities into four key areas of regulatory focus: BSB Handbook, BSB Guidance, engagement and partnership working, and communications.
7. We also published two reports in November 2017: *Exploring Differential Attainment at BPTC and Pupillage* and *Barriers to Training for the Bar: a qualitative study*. A summary of the research, published alongside, is attached at **Annex C** for ease of reference. In the lights of these reports, a further action plan has been developed, which is attached at **Annex D** for approval.

### Recommendations

8. The Board is asked to
  - a) **note** the draft research report at Annex A, and the plan produce a research summary paper for publication in February 2018
  - b) **approve** the action plan at Annex B; and
  - c) **approve** the action plan at Annex D.

## Background

### Women at the Bar

9. The equality rules of the BSB Handbook came into force on 1 September 2012. They apply to self-employed barristers in multi-tenant chambers and BSB authorised bodies only. The implementation of the equality rules is monitored by the BSB Authorisation department.
10. The BSB's equality objectives for 2015-16 prioritised research into the impact that the equality rules have had on women's experiences at the Bar. A comprehensive BSB survey in January 2016 invited all practising female barristers to share their experiences of, and feedback on, the equality rules. 1,333 responses were received and an analysis of the responses identified three key themes:
  - unfair treatment
  - reporting unfair treatment
  - lack of compliance and awareness of the Equality Rules
11. In response to the Women at the Bar Survey findings the Board made a number of recommendations including sending letters from the BSB to all heads of chambers, reviewing the approach taken by Supervision to the equality rules and approaching key stakeholders to explore solutions.
12. When the new equality strategy was agreed for 2017-19, two objectives were set in this area:
  - a) Address the causes of discrimination experienced by those with protected characteristics at the Bar.
  - b) Reduce the barriers to progression and retention, and improve social mobility.
13. Building upon the previous work, an action was set to conduct workshops with female barristers to inform strategies to reduce discrimination and increase retention and progression. A commitment was made to produce a report of findings with associated action plan that would be implemented over two years until 2019.

### Differential attainment and barriers to training

14. To further inform the FBT evidence base and the Equality Impact Assessment for the FBT programme, and analysis of available statistics was completed. This highlighted that BME BPTC graduates, female BPTC graduates, and lower socio-economic status BPTC graduates were achieving pupillage at lower rates than white, male and higher socio-economic status graduates, even when prior educational attainment at degree and BPTC was taken into account.
15. In January 2017 the BSB commissioned independent qualitative research with BPTC students to investigate why certain groups (in particular BME students) have different levels of attainment on the BPTC. The research involved 25 depth interviews with recent BPTC students and 25 interviews with recent pupillage applicants, to investigate perceptions and experiences relevant to two issues:
  - a. If the structure and teaching of the BPTC contributes to any barriers faced in completion and attainment; and
  - b. If the structure and process of applying for pupillage contribute to the barriers faced in gaining access to the profession.

16. In November 2017, the BSB published two reports:
  - a. *Exploring Differential Attainment at BPTC and Pupillage*. This report presents a statistical analysis of attainment on the BPTC and success in obtaining pupillage. It explores the extent to which differences observed between groups of students can be explained by different characteristics.
  - b. *The Barriers to Training for the Bar: a qualitative study*. This research investigates student perceptions and experiences relating to the structure and teaching of the BPTC and the process of applying for pupillage.
17. A summary that was published alongside these reports is attached at **Annex C** for ease of reference. Both pieces of research suggest that there are a number of barriers to training for the Bar faced by black, Asian and minority ethnic (BAME) students and students from lower socio-economic backgrounds. Both research reports have been used to inform an action plan at **Annex D** that aims to address the barriers identified and promote accessibility.
18. The action plan development was led by the E&AJ team, in collaboration with other BSB departments, APEX members and the FBT Programme Board.

#### **Women at the Bar Workshops 2017 Report**

19. The report at **Annex A**, “Women at the Bar Workshops 2017”, was prepared by the BSB Research team in collaboration with the BSB E&AJ team.

#### Methodology

20. In September 2017 the BSB sent targeted invitations to a range of stakeholders such as members of the Bar, clerks, chambers directors, circuit leaders, specialist bar associations and BPTC providers, to take part in three workshops to be held in October 2017. All barristers who had indicated in their response to the 2016 survey that they wished to continue contributing to the BSB’s work in this area were invited. Additional workshops were subsequently held with the Institute of Barristers’ Clerks (IBC) and the Legal Practice Management Association (LPMA). A workshop was also delivered at the APEX away day to shape the final action plan.
21. The workshops were designed to explore potential solutions to the issues identified in the Women at the Bar Survey report and improve the retention and progression of women at the Bar. The solutions explored could be actions for the BSB or for other stakeholders. The workshops were also designed to increase engagement and strengthen working relationships between the BSB and stakeholders, to promote the BSB’s regulatory responsibilities in relation to equality and diversity at the Bar and to help us embed equality and diversity issues into other BSB work streams, including the development of future equality objectives.
22. Discussions were split according to the following two priority topics as identified through analysis of the Women at the Bar survey results:
  - **Policies** (focus on policies, processes and procedures within chambers): Work allocation, maternity leave and flexible working; and
  - **Behaviours** (focus on the culture within chambers and at the Bar more generally): Discrimination, harassment and reporting unfair treatment.

Findings

23. The workshop discussions were constructive and participants demonstrated enthusiasm towards developing impactful, practical solutions to address the unfair treatment experienced by women at the Bar. Potential solutions were proposed across every priority category and the wide range of participants present ensured that the proposed actions were realistic and reflective of the requirements of stakeholders across the barrister profession.
24. There was particularly strong consensus around the need to change culture and attitudes at the Bar, a greater need for equality training, increased transparency of equality policies, improved reporting frameworks for unfair treatment, more structured support for women returning from maternity leave and expanded requirements relating to work allocation monitoring. The report groups the good-practice examples and recommendations for action into the following cross-cutting themes: monitoring, transparency, policies, training and culture.

**Action Plans**Women at the Bar

25. The action plan at **Annex B** has been developed following analysis of the draft Women at the Bar Workshops Report. The actions within the plan will be implemented across two years from January 2018 to December 2019. An earlier draft was shared with the Board in November 2017.
26. The action plan contains 22 activities, grouped into four key areas of regulatory focus: BSB Handbook, BSB Guidance, engagement, and partnership working and communications. The actions broadly reflect the areas in which there was greatest consensus at the workshops. Prioritisation discussions that were held with BSB staff, APEX and Board members assisted the E&AJ team in developing actions that we anticipate will be the most impactful and achieve the desired outcomes.
27. The actions in the 'engagement and partnership working' theme identify issues which are relevant and important to the work of the BSB, but fall outside our direct remit as a regulator. The actions involve working together with other stakeholders such as the Bar Council, the Inns of Court and specialist Bar associations, with the aim of combining resources and expertise on areas of mutual interest. Following the workshops, the IBC and LPMA indicated a desire to continue working closely with the BSB on this workstream, particularly in the areas of training and culture change.

Differential attainment and barriers to training

28. An action plan has been developed that sets out the BSB's intended response to the research findings. It has been divided into the following four key themes that reflect the detailed findings of the research:
  - a. Access to accurate information, advice and guidance
  - b. Perceptions of accessibility in the profession
  - c. Course content, delivery and assessment
  - d. Affordability and funding concerns
29. The action plan will be implemented from January 2018 to January 2019. The FBT Oversight Group and Programme Board will monitor progress of actions.

### Resource implications

30. A Programme Board is being established to oversee the implementation of our equality and diversity action plans. It will be accountable to the BSB Board (via, where relevant, the FBT Programme Board) for delivering all actions within the agreed timescales. The Programme Board comprises the two members of the E&AJ team and a representative from each BSB department. It will be chaired by the Director of Strategy and Policy. Additional oversight will be provided by the BSB Senior Programme Manager.
31. In preparing these action plans, care has been taken to involve all BSB departments to ensure that the proposed actions are achievable and can be delivered as priorities within the next departmental business plans.
32. The action plan is aligned with the BSB Equality Strategy 2017-19. The further actions contained within these plans will form the basis of the E&AJ team's work plan for the next two years with considerable input from other parts of the BSB. For the current business plan period, all actions are already planned within current resources. Additional work over the duration of the two-year action plans has been agreed with the relevant BSB departments and will be factored into business plans for next year. The Board has previously indicated that this work is a priority and it will be treated as such when preparing the 2018-19 business plan.

### Risk implications

33. These proposals potentially mitigate one of the key themes identified in the BSB's Risk Outlook, namely *lack of diversity; discriminatory working cultures and practices*. As part of the implementation of the action plans, the Programme Board will ensure project-level risks are closely managed. A key risk is lack of resources across the BSB – this will be mitigated through prioritisation of work in the 2018-19 business plan.

### Equality and diversity

34. This proposal should have a beneficial impact on the Bar, specifically in relation to gender balance and influencing anti-discriminatory outcomes. There is no negative impact expected on groups with other protected characteristics.

### Regulatory Objectives

35. This proposed action plans will promote the regulatory objective of *Encouraging an independent, strong, diverse, and effective legal profession*.

### Publicity

36. If approved by the Board, the final summery version of the Women at the Bar Workshops 2017 Report will be published in February 2018, following external independent peer review, in line with the BSB Research Strategy 2017-19. This is the final stage of quality assurance prior to publication of research findings. It aims to increase the credibility and quality of our outputs. It also ensures compliance with ethical codes and good practice in social research and reporting of analysis.
37. This subject is particularly topical and the BSB has had renewed press interest in the Women at the Bar project recently. We anticipate significant interest once the report and action plan are made public. The E&AJ team will work with the Communications team to prepare a press release which emphasises the BSB's commitment to

eliminating harassment and discrimination at the Bar, and that we take allegations of sexual harassment very seriously.

**Annexes**

Annex A – Women at the Bar Workshops 2017 Draft Report

Annex B – Women at the Bar action plan

Annex C – Summary of published research

Annex D – Differential attainment action plan

**Lead responsibility:**

Amit Popat, Head of Equality and Access to Justice

Corrine Charles, Head of Research and Information

## Women at the Bar

### Exploring Solutions to Gender Equality

#### Executive Summary

- The BSB has an important role to play in the retention and progression of women at the Bar. If the Bar is to truly represent and serve society effectively it must take positive steps to increase gender equality. The BSB Equality Objectives<sup>1</sup> 2017-2019 make a specific commitment to identify what can be done to improve women’s retention and progression as a regulator and what we can do in partnership with key stakeholders.
- The ‘Women at the Bar’ research<sup>2</sup>, published in 2016, identified three key areas for improvement that hindered the retention of women in the profession:
  - Women could face unfair treatment across a number of areas, in particular harassment, discrimination, allocation of work, approaches to flexible working, and on returning from parental leave.
  - The majority of women at the Bar were reluctant to report unfair treatment, mostly due to concerns it would impact on their career.
  - Issues around non-compliance, poor implementation of policies and unsatisfactory levels of awareness of the equality rules were identified.
- In 2017, the BSB conducted additional research, a series of workshops were conducted to collect qualitative data focussing on exploring practical solutions to address the areas for improvement detailed above. The workshops were attended by a wide range of participants, including: practising barristers, clerks, chambers management representatives and other stakeholders.
- The research produced a wide range of recommendations and examples of good practice that were seen as valuable in helping to address the issues faced by women in the profession and help improve retention. The recommendations can be broadly grouped into five cross-cutting themes: monitoring, transparency, policies, training and culture.
- **Monitoring.** Introducing or improving monitoring of a range of issues was felt to have considerable value, both in terms of identifying where issues exist, ensuring any responses are driven by accurate information, and helping to ensure that chambers are prompted to respond to issues identified.
- **Transparency.** Several recommendations focussed around improving transparency as a key area which could lead to improvements. This could help ensure awareness of issues and policies was improved, and ensure that discussions around issues are based on accurate information, thus being seen as ‘driven by the data’ rather than individual grievances.
- **Policies.** A number of recommendations focussed on policies themselves. These could either be ways to improve existing policies, or suggestions for new policies or initiatives that could be introduced by chambers themselves or by the BSB.
- **Training.** A number of recommendations focussed around the value of training, both in terms of raising awareness of issues around equality and diversity but also in ensuring relevant individuals are not only aware of potential problems but also knowledgeable

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<sup>1</sup> Bar Standards Board –*Equality Objectives 2017-19*

<sup>2</sup> *Women at the Bar* (BSB 2016)

about effective approaches that can be taken to address them and relevant good practice.

- **Cultural.** Addressing elements of the culture and values that were seen as prevalent among parts of the profession was also the focus of a number of the recommendations made within the workshops. While improvements in rules, requirements and practice were clearly of value, it was felt these could be undermined by certain attitudes unless cultures were also addressed.
- The findings of this research have been valuable in developing a detailed action plan that can set out proposals that can be taken forward and developed, both by the BSB and other key stakeholders (such as the Bar Council, SBAs and the Inns of Court) to help improve the experiences of women in the profession and drive improvements to retention.

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## 1. Introduction

### About the Bar Standards Board

- The Bar Standards Board (BSB) regulates barristers called to the Bar in England and Wales. Their mission is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. The key regulatory objectives of the BSB are:
  - Protecting and promoting the public interest
  - Supporting the constitutional principle of the rule of law
  - Improving access to justice
  - Protecting and promoting the interests of consumers
  - Promoting competition in the provision of services
  - Encouraging an independent, strong, diverse and effective legal profession
  - Public understanding of citizens' legal rights and duties
  - Promoting and maintaining adherence to the five professional principles
- We are a risk- and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services, so as to identify all of the potential risks that could prevent the Regulatory Objectives from being met.

### Background

- The BSB has an important role to play in the retention and progression of women at the Bar. If the Bar is to truly represent and serve society effectively it must take positive steps to increase gender equality. Responding to recommendations arising from previous research<sup>3</sup>, the BSB Equality Objectives<sup>4</sup> 2017-2019 make a specific commitment to identify what can be done to improve women's retention and progression as a regulator in partnership with key stakeholders. The equality rules<sup>5</sup> were introduced by the BSB, in part, to improve the progression and retention of women at the Bar.
- The current data the BSB holds on women in the profession shows that in 2016, 34 per cent of the self-employed profession were women. This has increased from 32 per cent in 2010. Of employed barristers, in 2016, 45.9 per cent of employed barristers were female, compared to 46.3 per cent in 2010.
- The BSB is particularly concerned at the rate of progression for women in the profession – only 15 per cent of heads of chambers and 13 per cent of Queens Counsel (QCs) are women, considerably lower than the proportion of women across the profession as a whole. Data on the practising Bar show that women have a far higher rate of attrition than men, with the proportion of women consistently falling as seniority (by year of Call) increases (see figure 1).

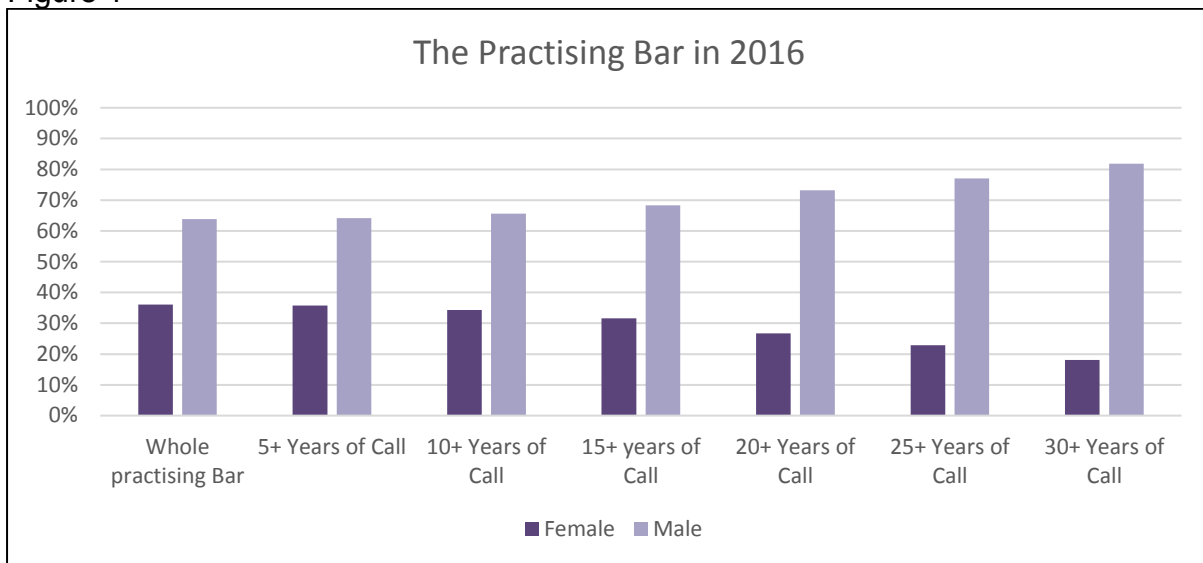
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<sup>3</sup> *Women at the Bar* (BSB 2016)

<sup>4</sup> Bar Standards Board –*Equality Objectives 2017-19*

<sup>5</sup> Bar Standards Board - *Handbook Equality Rules 2012*

Figure 1



N=16,109

Source – Bar Standards Board CRM data

- Research for the Bar Council highlighted a number of issues facing women in the profession. Qualitative research<sup>6</sup> found that individual chambers' culture and policies had a huge impact on women's experience of bringing up children, and that some women felt disadvantaged by power structures within chambers. Further statistical analysis<sup>7</sup> found that notwithstanding the current parity in the numbers of men and women called to the Bar, current trends suggest that, with the present model of practice at the Bar, a 50:50 gender balance among all practising barristers is unlikely ever to be achieved.
- The equality rules of the BSB Handbook include requirements to ensure chambers' selection panels are trained in fair recruitment; monitor and review distribution of work opportunities; and produce equality, anti-harassment, flexible working, and parental leave policies. The BSB carried out research in 2016<sup>8</sup> to improve our understanding of the implementation and effectiveness of the equality rules. The research explored issues which may be contributing towards a lack of retention of female barristers highlighted by the various research reports and statistics on the profession which indicated this as an issue.
- The 'Women at the Bar' research found a number of examples of good practice and clear evidence of progress in some areas, such as increased reporting of unfair treatment and an improvement in women's experience of tasking and returning from parental leave. However, it also identified three key areas for improvement:
  - Women could face unfair treatment across a number of areas, in particular harassment, discrimination, allocation of work, approaches to flexible working, and on returning from parental leave.
  - The majority of women at the Bar were reluctant to report unfair treatment, mostly due to concerns it would impact on their career.
  - Issues around non-compliance, poor implementation of policies and unsatisfactory levels of awareness of the equality rules were identified.

<sup>6</sup> *Snapshot - The Experience of Self-Employed Women at the Bar* (Bar Council 2015)

<sup>7</sup> *Momentum Measures* (Bar Council 2015)

<sup>8</sup> *Women at the Bar* (BSB 2016)

- The BSB commissioned the present research in order to explore further what strategies could be adopted to address these issues, namely: unfair treatment, improved levels of reporting, and improved compliance and awareness of the equality rules. This research was also conducted to meet objectives laid out in the BSB Equality Objectives<sup>9</sup> and the BSB Research Strategy<sup>10</sup>.

### Aim of the research

- The research aimed to identify potential ways in which the issues identified in the Women at the Bar report could be addressed. Its findings will be used to develop a BSB action plan that will aim to improve the current implementation of the equality rules, review if any further changes to the equality rules are required, and investigate what other initiatives and strategies could be undertaken by other stakeholders, with possible involvement from the BSB, in order to improve the retention of women in the profession.

## 2. Methodology

### Research questions

- Corresponding with the research aims, this research aimed to address the following series of questions:
  - How can issues around unfair treatment of women at the Bar be addressed, either by the BSB or by other stakeholders?
  - What approaches can be taken to increase the level of reporting of unfair treatment, either by the BSB or other stakeholders?
  - How can implementation and awareness of the BSB's equality rules be improved?
  - What other strategies can be adopted to improve the retention of women at the Bar?

### Research Design

- The research design was qualitative and the research aims were explored through a combination of engagement with key stakeholders, alongside workshops involving a range of participants (including practising barristers, clerks, chambers management representatives and other stakeholders) to discuss policies and initiatives that can help to address the barriers faced by women in the profession. These workshops were intended to collect qualitative data focussing on practical solutions to the range of issues identified by previous research around the experiences of women in the profession.
- The BSB invited a range of stakeholders such as members of the Bar, clerks, chambers directors, circuit leaders, specialist bar associations and BPTC providers, to take part in one of three workshops, held in October 2017. All barristers who had indicated in their response to the 2016 Women at the Bar survey that they wished to continue contributing to the BSB's work in this area were also invited. Two separate workshops were subsequently held with the Institute of Barrister's Clerks (IBC) and Legal Practice Manager's Association (LPMA) in November.
- The first three workshops were run by an external facilitator. The discussion points were developed by the BSB Research and Equality and Access to Justice (E&AJ) teams, informed by previous related research undertaken by the BSB and the Bar Council, as detailed in the background section.

<sup>9</sup> Bar Standards Board –*Equality Objectives 2017-19*

<sup>10</sup> *Bar Standards Board Research Strategy 2017* (BSB 2017)

## Sample

- Potential participants were identified by the E&AJ team and the Communications and Public Engagement team on the basis of their involvement or interest in the issue of women's retention at the Bar. In addition, all barristers who had indicated in their response to the 2016 Women at the Bar survey that they wished to continue contributing to the BSB's work in this area were invited. Participants included female barristers as well as several different stakeholders representing women in the profession, clerking and chambers management organisations, Bar associations, and other stakeholder organisations.
- In total, 42 individuals participated in this research. The three mixed workshops were attended by 30 individuals (out of 42 who had initially expressed an interest in attending), consisting of barristers, clerks, practice managers and other stakeholders. The subsequent workshops with the leadership of the IBC and LPMA each had 12 participants.

## Conduct of workshops

- The discussion at both the workshops and follow-up meetings focussed on two key themes identified in the original Women at the Bar report:
  - Issues around policies and practice– focussing on unfair treatment around work allocation, flexible working, and returning from parental leave.
  - Issues around culture and attitudes – focussing on discrimination and harassment, and the reporting of unfair treatment.
- A third theme identified in the original research was a lack of compliance with the equality rules. This, however, was not chosen to be a focus of discussion as the encouragement of compliance with the Rules as it was felt likely that this would be a suggested solution to the first two themes; and in any case this was more suited to a separate discussion, with different stakeholders such as E&D Officers in Chambers, as a separate project at a later stage.
- For each theme, participants were asked to discuss the following questions:
  - What is currently happening around this/what's working? (good practice)
  - What can be done to solve this problem, by the BSB or others?
  - What are the challenges to implementing these solutions?
- Workshops lasted two hours, with participants divided into smaller groups led by a BSB moderator to discuss each of the two themes, before feeding back their top three recommendations to the full group for wider discussion led by the facilitator. Discussion guides were used to provide the key questions and structure of discussion for the group discussions.

## Data collection and analysis

- Moderators took notes of the discussion and the key recommendations made by participants. The workshop discussions were also recorded with the consent of participants to enable these notes to be checked for accuracy following the workshops. This data was then analysed using a thematic analysis approach. This involves identifying the key themes that emerge from the data that have relevance to the research questions or topic of interest. Following the completion of the analysis the recordings were deleted.

## Limitations

- This was a qualitative study involving focused discussions with a relatively small sample of barristers and other stakeholders. However, by aiming for a wider range of participants than the original Women at the Bar research (which only involved practising female barristers) the research was intended to get a wide range of views. Nonetheless, the views and recommendations expressed are illustrative of the views and experiences of participants rather than a representative sample. Further, it is possible that those who were more involved in discussions or have particularly strong views around the progression and experiences of women in the profession may have been more likely to volunteer to be involved in the research.

## 3. Work Allocation, Flexible Working and Parental Leave

- The first area discussed at the workshops was focussed around key policies required from chambers as part of the equality rules. These rules require chambers to monitor and review the allocation of unassigned work within chambers, to have a flexible working policy, and to have a parental leave policy.
- Past research undertaken by the BSB had highlighted room for improvement in how policies and practice in these areas currently operated in some instances. As a result, attendees were asked to discuss their experiences and perceptions of good practice (where the policies operated by chambers and the way they were implemented was particularly effective) as well as suggest what could be done to improve matters where these policies did not appear to be working as well as they could.
- Themes emerging from the discussion are grouped by individual policies (work allocation, flexible working, and parental leave) as well as being separated between examples of good practice, and recommendations.

### Work Allocation

- The Women at the Bar research identified a number of perceived issues around work allocation. In particular:
  - Low awareness in chambers around whether unassigned work is monitored, and a lack of visibility or personal involvement in the process;
  - issues around a lack of transparency, favouritism, and the difficulty of monitoring effectively (in particular due to ‘allocated’ work) as issues;
  - Many respondents being unsatisfied with the outcome when they had queried the allocation of work, with a lack of transparency the most common issue, and some respondents feeling that querying work allocation resulted in a change for the worse.

### *Good Practice*

- A number of examples were given of how approaches to the monitoring of work allocation have proved effective at chambers. In particular, examples were given of approaches that went beyond merely covering ‘unallocated work’ as is currently required by the BSB’s equality rules. For example, one chambers was described as keeping records of who has been offered/accepted for work (including information about when solicitors have been offered a particular barrister and said no). Similarly, another chambers allocated most incoming work, but conversations with the clerk and solicitor were noted so a record was kept of who had been recommended. Another chambers was cited that had an annual review of clerk-allocated work (which looks at percentages by category by race, gender and other protected characteristics).

- Transparency of fee income was also given as an example of good practice, with several chambers mentioned that adopted this approach. This was seen as helping to drive discussions around work allocation, generating questions and conversations where there were clear disparities.
- Monthly reporting of work allocation to the chambers E&D committee was another example cited that was felt to improve the fair allocation of work. It was argued that chambers where there were higher levels of transparency around work allocation in general, and monitoring data in particular, were better at ensuring fairness as the data itself was then ‘driving the conversation’, removing the individual from the problem.
- Other approaches that were highlighted as examples of good practice related to how work was allocated. One example given was a chambers where the clerks offer every barrister who is available to solicitors, breaking them down by seniority and letting solicitors choose, rather than suggesting individual barristers. Guidance from the Bar Council on work allocation was also mentioned, although there was a concern that this could be overlooked by chambers.
- A good level of communication between barristers and clerks was also highlighted as a way to address any issues. One chambers offered training on “Managing your relationship with your clerk”, with a focus on communication, particularly focussed on helping junior tenants. The value of regular practice management meetings for individuals, providing an opportunity to put forward for work, was also mentioned, particularly when work allocation data could be discussed in this context.

### *Recommendations*

- A number of common themes emerged from discussions around recommendations to address issues around work allocation. Particularly common were recommendations related to **improving transparency**, both of the work allocation processes itself, as well as data collected around work allocation. Transparency enabled barristers to see how work was allocated and enabled them to challenge the statistics or processes if unhappy with the result. One recommendation was that a report could be produced on – at minimum - an annual basis which should sufficiently explain (rather than merely report) the statistics i.e. a narrative explanation of why the statistics are the way they are. This report could be shared with others to promote good practice, as well as promoted within chambers itself. Another recommendation was that there should be a nominated person who is responsible for monitoring the allocation of work (similar to the Equality and Diversity Officer). They would be impartial between the barrister and the clerk and help to ensure clear communication to explain the reasons for the allocation of work and to allow for an appeals process. While some participants mentioned IT limitations as a potential barrier to collecting and sharing data on work allocation, others pointed out that some programmes (such as LeX software from barsquared) were effective at recording and publishing work allocation statistics.
- Other suggestions around improving transparency related to **expanding what is monitored**. Several participants felt that merely monitoring unallocated work was not sufficient, as in some chambers most work comes in “marked” and this also needed to be monitored and taken into account when developing policy. Others felt that requests for work that are turned down by Chambers could also be monitored, as well as considering whether certain barristers were taking on too much work. Several clerks highlighted that chambers practice management system could enable clerks to record the reason for the decision of the allocation of work (e.g. QC insisted on a particular

junior barrister) and their own response. This could then be provided to the Head of Chambers/ senior managers within monitoring reports to show how cases have been allocated.

- However, a number of potential challenges to increasing transparency and expanding monitoring were raised. For example, while clerks could record why unallocated work has been allocated to one barrister and not another, there could be opposition to this as it represented ‘too much work’ for clerks. Furthermore, approaches that would work in some areas of practice might be more problematic in others – one practice area mentioned was criminal sets, where there is a preponderance of lower paid legal aid work. Another issue highlighted was the danger that work allocation data was used as a ‘blunt instrument’ as it can be difficult for the data to truly reflect the range of factors that lead to work being allocated as it is. Several participants highlighted that there could be opposition from barristers to fully sharing work allocation data within chambers. Some participants felt it should be fully anonymised, even to chambers members/staff in charge of reviewing or undertaking analysis of the data. This would make it difficult to publish ‘comparative’ data even within chambers – and yet without this being shared with members of chambers, it would be hard for individuals to see if there were issues with the level of work they were allocated as they would not be able to compare themselves to their peers. Another issue raised was that more detailed monitoring of work allocation can be difficult because chambers are not allowed to record individual names as part of monitoring around protected characteristics. However, some of these issues could be mitigated by making the data anonymous and referring to as groups.
- Another recommendation that emerged from a number of group discussions was improving the working relationship and level of **communication between barristers and clerks**. Many felt that a number of potential issues around work allocation could be overcome with positive and proactive communication between clerks and barristers. Clerks should be asking barristers what their expectations are around the level of work they receive, what issues there are that may prevent them taking work that involves substantial travel, and how many days a week they would like to work. Training was one area mentioned, with the recommendation that clerks in chambers could be required to attend training provided by the Institute of Barristers Clerks, or to ensure that at least one clerk in every set of chambers was a member of the IBC. It was felt this would help ensure clerks are aware of the issues that can arise around work allocation, be aware of good practice in allocating or monitoring work, and help promote best practice within chambers. Another suggestion was that the BSB could require chambers to have a policy for feedback on work allocation to barristers individually at regular intervals. However, any attempt to set requirements for clerks faced challenges in that the clerking profession is unregulated and thus it would be difficult for the BSB to enforce new rules.



### Work Allocation – Key Recommendations

**Improving transparency** of the work allocation processes itself, as well as data collected. Improved transparency means that chambers/barristers are more aware where there are issues, and complaints/discussions can be ‘driven by the data’ rather than be about individual barristers.

**Expanding monitoring** – such as monitoring fee income, expanding to cover ‘marked’ work, or recording reasons cases allocated to individual barristers. This would help to give a more nuanced picture of how work is allocated and where there are any issues.

**Improving communication between clerks and barristers** – such as policies for regular feedback to individual barristers on work allocation, or IBC training for clerks to raise awareness of best practice. Having frameworks to address a lack of communication between barristers and clerks could help address a range of issues around work allocation.

### Flexible Working

- The Women at the Bar research identified a number of perceived issues around flexible working policies and practice. In particular:
  - Low awareness in chambers around the existence and nature of flexible working policies;
  - Barristers who had used flexible working policies felt it had helped them to remain at the Bar, but were far less positive about the impact on their career progression;
  - Many of those who had experience of flexible working felt it had negatively impacted on their practice, with an impact on work allocation or progression the most common issues;
  - The incompatibility of flexible working with court timetables, as well as negative attitudes from clients or chambers towards those who worked flexibly.

### Good Practice

- When discussing good practice, several instances given focussed on chambers where barristers’ availability was clearly highlighted. One example highlighted a chambers where members could easily, for example, work four day weeks, and chambers management and the clerks had no issue with barristers ‘blocking out’ days. Other examples highlighted good communication around availability between clerks and barristers, for example where clerks checked with barristers before putting things in their diary e.g. “what do you have on at the moment?” to ensure they are not under too much pressure. Another example given consisted of a chambers that had a system of ‘consult first’ with regards to flexible working arrangements which was felt to contribute to ensuring an effective system was put in place.
- Moving from a flexible working policy to ‘agile’ working was also discussed as an approach that could address some of the issues around flexible working. In one example provided, contrasts were drawn between flexible working (where staff needed to block out the days when they were not available for work) and agile working (where staff were provided with all the necessary equipment to support home working and create the impression that they are physically in chambers). In this example, agile working had faced less resistance when introduced and was seen as operating more effectively. However, a potential challenge with this approach was that it was likely to be much

easier for more senior staff to adopt. Hot-desking was seen as an option for those who worked part-time in chambers that could work effectively, but experience within the group had shown it tended primarily to be female barristers who sat on hot-desks and this risked creating a two-tier chambers.

### *Recommendations*

- **Introducing monitoring** of flexible working was one area given that could improve the way flexible working operated. Several participants felt this would help to show where the policy was working well or badly, and thus identify areas that could be improved. One specific recommendation was monitoring of the number of requests made for flexible working, details of the requestor, and the decision/response. This monitoring data would then be reviewed by management committee within chambers.
- **Improving visibility** of barristers working flexibly was the focus of several of the recommendations made in the workshops. Many participants felt that there need to be systems in place to ensure clerks and other colleagues are aware of when tenants who use flexible working are actually working or available for work. This was seen as one way of addressing the fact that clerks often don't know if barristers have capacity when they are working flexibly or working from home, and therefore they could miss out on available work, or be put down for work when they are not available. One recommendation was for chambers to have a system to clearly 'block out' days when barristers were not available so that clerks are aware when not to put them down for work. Another recommendation was introducing additional categories for availability – rather than categorising as not working or working, there could be an 'on notice' category to indicate that a barrister could be available for work during times like half term. As noted in the good practice discussion, adopting an 'agile working' approach rather than flexible working was also seen as a potential approach to enable flexible working without the accompanying issues.
- As with the discussion around work allocation, **improving communication between clerks and barristers** was the focus of a number of recommendations aimed at improving flexible working. Clerks were seen as having a key role to play, and better communication with clerks around availability, who is working flexibly or working from home, was seen as key to the policies operating effectively. One specific recommendation was setting up regular sessions between clerks and tenants to encourage contact. Other recommendations included ensuring that clerks check with barristers before putting them down for work, and encouraging clerks to discuss with each other about which barristers are available and who is at what capacity. In addition, it was also felt to be valuable to encourage barristers to be clear with clerks about their intentions and availability. A key challenge identified here was that any work done with clerks should be 'encouraging' rather than 'picking on' clerks, to help ensure they are more engaged with attempts to change how things are done within chambers.
- **Addressing cultural and language issues** was also seen as a key priority. In many cases existing attitudes were felt to hinder tenants from taking advantage of flexible working, in particular that flexible working could contribute to a 'two-tier' chambers where those who make use of flexible working and those who do not. It was noted that some within chambers can see flexible working as meaning a barrister is working less hard, or that barristers who make use of flexible working are effectively 'part-time'. Suggestions to address this included addressing value laden terms, and overcoming perceptions around flexible working being less work than traditional working patterns.

### **Flexible Working – Key Recommendations**

**Monitoring** – such as recording the number of flexible working requests, details of the requestor, and the decision/response. This could be reviewed by management committee to highlight where the policy is working and where it is not.

**Improving ‘visibility’** of barristers working flexibly – e.g. ‘on notice’ category rather than simply available/not available, blocked out days. Barristers often not visible if working flexibly or working from home so clerks don’t know they have capacity.

**Improved communication between barristers and clerks** – e.g. sessions between clerks and tenants to encourage contact, clerks checking with barristers before putting them down for work, encouraging barristers to be clear with clerks about their intentions and availability.

**Addressing cultural and language issues** – e.g. addressing value laden terms and overcoming perceptions around flexible working (some seeing flexible working as ‘part-time’). These issues are seen as contributing to a ‘two-tier’ chambers of those who use flexible working and those who do not.

### **Parental Leave**

- The Women at the Bar research identified a number of perceived issues around parental leave policies and practice. In particular:
  - While some who had taken parental leave said it had had not had a negative impact on their practice, some cut their leave short to achieve this;
  - The majority of respondents cited a negative impact on their practice, with impact on work allocation and career progression most common issues cited;
  - Lack of support from chambers and negative attitudes from chambers and clients towards those returning from parental leave were mentioned as issues
  - The difficulty of combining practice with caring responsibilities for children was highlighted by many respondents.

### *Good Practice*

- A number of examples of good practice highlighted in the discussions were focussed around approaches to chambers rent and contributions both during parental leave and on return to practice. Examples included a chambers that offered members a “rent holiday” after returning from parental leave, one that went ‘above and beyond’ what is required by allowing members more than six months’ rent free, and others that moved from fixed rent to a percentage of income or to no rent both during parental leave but also when returning to work. Another chambers was mentioned that ran a pilot around parental leave, where those on leave had 12 months’ rent free, even if they came back earlier. This meant that those who did decide to return to work before the 12 months, did not lose out as compared to those who took their full amount of leave.

- Another area where good practice was highlighted focussed around good levels of communication, particularly around barristers and clerks, both during and on return from parental leave. One example highlighted was meeting with the clerk when pregnant – or when returning to work from parental leave – and discussing working patterns to help ensure a fairer allocation of work, and ensure a better understanding of a range of practical considerations. Another example was a chambers that actively offered work to women/parents on maternity/parental leave, such as drafting. This was seen as valuable both in terms of ensuring a level of income, but also maintaining communication between clerks and barristers on leave. Another example was chambers providing help to clerks in managing relationships with solicitors, and ensuring proper handover of work prior to a barrister taking leave. The value of having a good head clerk was also highlighted, with examples given where head clerks were instrumental in opening up communication in advance of returning from leave to determine expectations and desires.

### *Recommendations*

- A key theme that emerged from a number of the group discussions was that chambers could have a formal and **structured ‘return to work’ framework** for those returning from parental leave. This was seen as something that would be valuable in setting a clear presumption as to what would be expected both from chambers and from the barrister returning to work, and could also help set a framework to enable people to return from parental leave in a staged manner. Specific recommendations included requiring exit/returner interviews for barristers before they start their parental leave and when they return (with either the chambers E&D officer, head of chambers, or senior clerk); requiring a formal meeting with the clerks that would discuss issues such as work allocation, assurance that there would be zero tolerance of discrimination or harassment, and setting expectations around marketing and being put forward for work. Another recommendation was setting up ‘keeping in touch’ days for barristers during their parental leave – this would help ensure that support and contact was available before the barrister returned from leave.
- A range of recommendations aimed at **addressing chambers rent and fees** were discussed in all the different groups. Many felt that ensuring barristers taking parental leave did not have to pay chambers rent for the period they were on leave, and were not expected to pay full fixed rent contributions on their return, was vital. Moving away from ‘fixed fees/rent’ model was the focus of several recommendations aimed at addressing the financial issues faced by many barristers on their return to practice. One specific recommendations was to change the Bar Standards Board rules on rent so that there could be no rent charged for the full duration of a barrister’s parental leave. Another recommendation was for chambers to be encouraged or required to move to a percentage of fee income approach on return from parental leave – this would help to address the problems caused by barristers having fixed rent payments on return from leave. This could be highlighted as best practice by the BSB/Bar Council if an actual change to the rules was not introduced. Some participants went further and recommended a zero percent contribution of fee income for a certain amount of time on return from parental leave.

- However, several challenges around implementing recommendations around rent and contributions were highlighted in the discussions. For many at the Bar, having children is seen as a ‘lifestyle choice’ and thus in some cases there is likely to be resistance to arrangements which mean the chambers payments of those who are not taking parental leave are used to support those who were. Another issue highlighted was that the Bar is a self-employed profession, and as a result the culture can be individualistic instead of cooperative. This was seen as potentially being a significant hurdle to overcome in terms of policies around chambers contributions. A further issue raised was that removing flat or fixed monthly rent and fees could be a particular problem for chambers with low resource levels, which would make it difficult or impossible for certain chambers to adopt these policies.
- **Addressing cultural issues** surrounding taking and returning from parental leave was the focus of several recommendations. The attitudes held by some both within and outside of chambers were seen as a persistent problem that hindered women both taking and returning from parental leave. Some participants felt that the policies in place were less of an issue than the way that women were treated on their return from parental leave, which had a substantial impact in prompting women to leave the profession. One recommendation was to encourage more male barristers to take advantage of flexible working arrangements, and parental leave, in order to help break down stereotypes around earning and caring responsibilities within families. All key stakeholders (BSB, the Bar Council, the Inns, the Specialist Bar Associations, and chambers themselves) were felt to have a role in this, with a collaboration between all the various stakeholders reinforcing the message. Another recommendation was to recast ‘maternity leave’ as ‘parental leave’, which would help reinforce that it was available to both men and women<sup>11</sup>. Another recommendation was to do more to ensure that policies are written in an inclusive way so that they were not solely cast as of relevance to women.
- **Improving the availability or visibility of flexible childcare** was also the focus of several recommendations, as this was seen a challenge for many barristers. Particular reference was made to the recent closure of the nursery sponsored by the Bar Council. The benefits of having this service available was highlighted by several participants, both due to the flexibility and due to the discount it offered to those at the Bar. One recommendation to improve support in this area was the creation of a subsidised childcare service for the Bar, that was flexible enough to accommodate for unpredictable court times and the extensive travel often required in self-employed work. Another alternative suggested was for the Bar Council to collate and promote a list of flexible childcare services available, not just in London but elsewhere in England and Wales.

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<sup>11</sup> The November 2017 reissue of the BSB Handbook amended the rules to redefine Maternity Leave as Parental Leave and expanded eligibility to cover men as well as women.

### Parental Leave – Key Recommendations

**Formal ‘return to work’ framework** – e.g. a discussion with the clerk (about work allocation, zero tolerance of discrimination/harassment etc), exit/returner interviews, setting a framework for people returning from parental leave in a staged manner. This was seen as helping to set a presumption about what is expected, and can ensure expectations managed and support in place on return to work.

**Addressing rent and fees**– e.g. removal of fixed monthly rent, during and after maternity leave; encouraging chambers to decrease the percentage contribution to chambers on return from parental leave; introducing zero percent contribution on fees after return from mat leave for a limited period. Moving away from ‘fixed fees/rent’ was seen as key for addressing financial issues arising on return to practice.

**Addressing cultural issues** – e.g. breaking down stereotypes around the main earner/carer, moving to an inclusive rather than individualistic culture in chambers, recasting ‘maternity leave’ as ‘parental leave’, encouraging men to take parental leave. Treatment/attitudes facing women returning from parental leave was seen as a key issue that harms retention.

**Improving the availability or visibility of flexible childcare** – e.g. the creation of a subsidised childcare service for the Bar, the Bar Council to collate and promote a list of flexible childcare services available. The availability of childcare that could cope with the unpredictability of court hours was seen as a key challenge for barristers with children.

## 4. Discrimination, Harassment & Reporting

- The second area discussed at the workshops was focussed around discrimination and harassment, and the reporting of unfair treatment. Past research undertaken by the BSB had highlighted these issues were still a source of concern, despite some improvement following the introduction of the equality rules (which required chambers to have an equality and anti-harassment policy). In contrast to the issues discussed in chapter two, which focussed more on actual policies and how they were implemented, this was seen to be more of a cultural issue than a policy issue.
- Previous BSB and Bar Council research – in particular the Women at the Bar report<sup>12</sup> - had suggested that certain prevailing attitudes within parts of legal profession were particular issues around experience of discrimination and harassment, as well as a driver behind the low levels of reporting by barristers. Attendees were asked to discuss instances of good practice, as well as suggest what could be done to improve matters.
- Themes emerging from the discussion are grouped into how to address issues of discrimination and harassment generally, as well as how to address low levels of reporting of any unfair treatment, as well as being separated between examples of good practice and recommendations.

<sup>12</sup> *Women at the Bar* (BSB 2016)

## Discrimination and Harassment

- The Women at the Bar research identified a number of perceived issues around discrimination and harassment at the Bar. In particular:
  - More than two in five respondents said they had experienced discrimination during their career at the Bar;
  - Where details of the discrimination were given, three fifths were within the respondent's chambers or organisation and two fifths external to the chambers or organisation. The majority of internal discrimination identified related to clerks and work allocation;
  - Two in five respondents said they had experienced harassment during their career at the Bar;
  - Where details of the harassment were given, half were within the respondent's chambers or organisation and half were external to the chambers or organisation. A high proportion said that they had experienced harassment as pupils.

### *Good Practice*

- Taking a zero tolerance approach to discrimination and harassment was highlighted as good practice, with clerks challenging any harassment or discrimination from outside chambers, such as from solicitors or lay clients, given as one example. Another example given was chambers not merely having relevant policies in place, but also taking steps to ensure everyone in chambers was aware of the existence of these policies, in particular routes to complain or raise issues.
- Other examples around good practice focussed on approaches that were seen as helping to ensure a supportive culture within chambers. Examples mentioned were chambers with a culture of approachability at the senior levels, as well as chambers where mentoring schemes were in place, particularly for junior members, that could act as a first port of call for any issues experienced. Other examples included chambers where net use and email use policies had helped to have an impact, such as restricting access to inappropriate websites, helping contribute to an improved culture within these chambers. However, these policies were seen as potentially difficult to enforce due to the self-employed status of chambers' tenants.

### *Recommendations*

- **Improving awareness and transparency around policies** was the focus of a number of recommendations around discrimination and harassment. Several participants highlighted that there was often relatively low awareness of the policies in place, particularly before initially joining chambers (which prevented prospective tenants considering these policies when applying). One recommendation was for rules requiring chambers policies – covering E&D, harassment, and discrimination - to be published on chambers websites, or provided to staff and tenants before they joined. It was felt this would not only help improve awareness within chambers of the existence and content of policies, but also ensure people are aware if policies are good before they join chambers. A further benefit was that this could help promote competition between chambers and other employers to adopt 'best practice' policies. Another recommendation was for the BSB to provide a 'kite mark' for chambers who have good formal policies and exhibit good practice relating to equality and diversity.

- Another recommendation raised in a number of the workshops was that chambers could be required (or encouraged via promoting of best practice) to have **exit interviews with departing staff and tenants**. It was felt this would help ensure there was more awareness of low level issues of discrimination or harassment that individuals felt were not worth raising officially but could still contribute to problems within chambers. It was also felt this could facilitate the raising of complaints or issues – even if some time after the fact – as individuals leaving chambers would feel less constrained in discussing problems than when they were still working there. In addition, it would help improve awareness of why individuals leave or move chambers and how this can be addressed. By requiring these exit interviews of all staff and tenants, and not merely women, this could be promoted as an inclusive policy rather than one that was only aimed at addressing problems faced by women.
- **Mentoring programmes** were key to a number of recommendations made by participants. They were seen as offering valuable support for barristers, particularly around discrimination and harassment issues as they enabled them to discuss any negative experiences with others and receive advice and support. Mentors could be either inside or outside chambers, each offering different benefits. External mentors offered an element of independence and impartiality, and allowed discussions of issues experienced within chambers without having to raise the issue with colleagues until they had had a chance to discuss in a more informal setting. Specific recommendations included setting up a panel of senior women to run an ‘ethical hotline’, which barristers could call to discuss any issues of discrimination and harassment. The Specialist Bar Associations were noted as already having mentoring schemes in place, but it was felt that provision was patchy and more could be done to ensure this support was more widely available. It was also felt mentoring within chambers was valuable, particularly for more junior barristers. Another recommendation was for junior barristers to have a mentor in place who was not their pupil supervisor (thus providing a source of support when issues arose between a pupil and their supervisor) and was not be someone involved in assessing tenancy applications (as this gave rise to concerns that complaints or discussion of issues could impact on whether they were considered for tenancy). Overall, mentoring schemes or hotlines were felt to provide strong support networks and a forum to discuss issues around discrimination and harassment.
- Several recommendations focussed on **addressing ‘external’ discrimination and harassment** – such as from judges, solicitors and clients. Policies and approaches that only attempted to address discrimination and harassment occurring from within chambers were not felt to fully address the issues. Recommendations included clerks taking a zero tolerance approach to discrimination from solicitors (for example, solicitors insisting that a male or female barrister dealt with given cases) and calling out instances when they occurred. Another recommendation was for chambers management (or barristers within chambers more generally) to support clerks in managing and challenging discrimination and harassment from solicitors and other clients. Another recommendation was to look into the recruitment and training of judges. Some participants felt more could be done to recruit and train judges so they are more aware of, and better able to deal with, issues around harassment and discrimination. In general it was felt that there needed to be some way or process to deal with issues of discrimination or harassment when they do not come from individuals within chambers.



- **Addressing cultural issues** was also seen as vital to addressing the issues faced by women in the profession. In particular, issues around the attitudes facing women returning from parental leave were seen as a key issue that harms retention. As a result, several recommendations mirrored those discussed in relation to parental leave, such as breaking down stereotypes around the main earner/carer, encouraging an inclusive rather than individualistic culture within chambers, and encouraging more men to take parental leave. Several participants felt more could be done by the Inns to address retention, as it was felt that at present they were too focussed on addressing equality at the point of entry to the profession, and did not do enough to address issues for barristers throughout their careers. Similarly, it was felt by some that the Association of Women Barristers was not sufficiently proactive, and either that they could take a more active role, or a new association could be founded that encouraged and enabled women in the profession to offer each other support. Another recommendation to address the overall culture in chambers was for the BSB or Bar Council to issue guidance on expected conduct with illustrative examples of what is considered to be inappropriate behaviour. It was felt this could help address ‘low level’ issues which were not sufficiently serious to warrant complaints. Other suggestions included setting up a network of ‘male champions’ within the profession who were committed to addressing issues around discrimination and harassment.
- Another recommendation was **strengthening BSB supervision of chambers** – either introducing more powers to intervene when chambers fall short of good or required practice, or making better use of powers they already have. Several participants felt that supervision needed ‘more teeth’ to act when chambers fell short of the expected standard. However, a potential challenge raised of taking this approach was that barristers and chambers are often very resistant to external interference in the policies they have or the way chambers are run. This could be overcome by high level leadership – both within chambers themselves (in particular Heads of Chambers) but also externally, such as SBAs, circuits and the Inns of Court.

#### **Discrimination and Harassment – Key Recommendations**

**Improving awareness/transparency of policies** – e.g. requiring E&D, harassment, discrimination policies to be published on website or provided to staff/tenants before they join chambers; ensuring everyone is informed of the existence of policies; kite mark for chambers implementing good practice. This could ensure people are aware if policies are good before they join chambers, and help promote competition to adopt ‘best practice’ policies.

**Requiring or encouraging exit interviews** – to facilitate complaints (even if some time after the fact) raise awareness of more low-level issues, improve awareness of why individuals leave/move chambers and how this can be addressed - this would be required for all tenants/staff rather than just women.

**Mentoring programmes** – e.g. mentor outside of chambers to create an element of independence and impartiality; panel of senior women could run an ‘ethical hotline’, which barristers could call to discuss any issues of discrimination and harassment; mentoring of junior members, where the mentor acts as the first point of call. This can help provide support networks and a forum to discuss issues around discrimination and harassment.

**Addressing ‘external’ harassment and discrimination**– e.g. clerks taking calling out/zero tolerance approach to discrimination from solicitors, supporting clerks in managing and challenging discrimination/harassment from solicitors, addressing recruitment and training issues for judges. There needs to be a way to address issues when they do not come from within chambers.

## Reporting

- The Women at the Bar research identified a number of perceived issues around the reporting of discrimination and harassment at the Bar. In particular:
  - A large majority of respondents who said they had experienced discrimination or harassment did not report it;
  - For those who reported harassment, half were satisfied with the response and half were dissatisfied, with an inadequate response, a failure to take the complaint seriously, and an impact on their career the most common issues cited by respondents who were dissatisfied with the response;
  - For those who reported discrimination, the majority were dissatisfied with the response, with an inadequate response, a failure to take the complaint seriously, a negative impact on their career, and an impact on attitudes towards them the most common issues cited;
  - Concern about the impact on their career, that reporting would not achieve anything, and issues with attitudes at the Bar towards harassment and discrimination (and the reporting of them), were the most common reasons for not reporting.

### *Good Practice*

- Several examples given around good practice were focussed on how complaints were well handled in certain chambers. The importance of the role of the E&D Officer was highlighted in one example, in particular the importance of having ‘the right person’ in this role to ensure that anyone who makes a complaint should feel that they are listened to and that complaints are taken seriously. Similarly, another chambers was mentioned where any grievance was looked into by a senior QC within chambers and then reported to the chambers’ executive committee.
- Another illustration of good practice related to having clear reporting and transparency around how complaints are dealt with. The example cited was a chambers which produced an annual report on equality and diversity issues, which included information on the number of complaints, the issues raised and the outcomes. This report was then considered by the relevant chamber’s committee.

### *Recommendations*

- A key theme raised in a number of workshops was that chambers should have **clear, written reporting frameworks**, and ensure awareness of these policies, to help ensure reporting of discrimination and harassment. One recommendation was that chambers needed to have clear policies and guidance, in particular covering information on to whom issues should be reported. Policies should also include information on the range of courses of action available to those who had experienced unfair treatment. Another recommendation was that policies with a clear process set out (from initial complaint to final decision) would help ensure barristers feel more confident in making complaints. Participants also recommended that discrimination and harassment policies should be well promoted to ensure members of chambers are both aware of and have trust in them. While the current regulatory requirements were felt to be ‘okay’ there was a view that there was often a significant gap between requirements and actual practice.
- **Improving transparency** in relation to the level of complaints and the way they were dealt with was also discussed as a policy which could improve reporting. Recommendations included rules requiring the recording and reporting of number of complaints received, and their outcomes, and having the level of complaints (and how they were dealt) discussed by chambers management, potentially with a regular report (at least annually) covering members and staff’s experiences of harassment and

discrimination. This would help to ensure visibility of the process and improve confidence that complaints are listened to and dealt with rather than ‘swept under the carpet’, and help address any concerns among those who had experienced unfair treatment that if they wished to make a complaint it would be properly dealt with and acted upon. Regular monitoring and reporting could also help ensure that there is more awareness of the level of discrimination and harassment within chambers, and help prompt general actions where the problem was more widespread.

- A key recommendation relating to discrimination and harassment policies was that they should wherever possible be structured to enable **multiple reporting routes** within chambers. This was felt to be particularly valuable for a number of reasons – it could address, for example, the issues that arise when there are instances of harassment or discrimination by line managers or senior staff, who in some cases could end up being the person to which complaints should be directed, or result in other challenges in taking action. One recommendation was that policies should enable reporting to individuals within chambers at different seniorities or year of call - it was felt this could make it less daunting for junior members of chambers to make complaints. This could be implemented by (for example) the BSB requiring or recommending chambers to have a rep for each level of call in addition to the Equality and Diversity officer. Having multiple reporting routes could help address issues around individuals being discouraged from reporting problems involving senior staff, or such complaints not being addressed.
- A key recommendation raised in a number of the workshops was that there should be **external or informal routes for complaints** to enable complaints to be made without involving chambers directly. Several participants argued that there should be external routes – either formal or informal – that would enable people to raise issues initially without having to be concerned about the reaction within their chambers, such as damaging working relationships with colleagues or being seen as a ‘troublemaker’. One recommendation was that a confidential helpline could be set up to provide initial advice on a matter and have an informal, confidential discussion.<sup>13</sup> This could be run by the Bar Council, or consist of a range of representatives from different backgrounds (such as barristers and clerks) and different levels of seniority. This could provide individuals with a ‘sounding board’ that would enable them to access advice and support, taking advantage of the experiences of others to assess their options, whether that meant later escalating to a formal complaint or other approaches to dealing with the issue. This could also option for a follow-up meeting for informal, face-to-face chat, or sending someone to accompany a person to meetings in chambers (something similar to the role of a union representative). Another recommendation was that an external helpline could also perform a monitoring function, such as keeping a log of the complaints received as a way of keeping track of the prevalence of these issues, which could be annually reported to raise awareness.
- Another recommendation was introducing the option to report to the Bar Council or BSB without escalation to a full complaint – this could be either a helpline or an online reporting portal. This would enable monitoring of the level of harassment or discrimination without compelling individuals to take it further and escalate to a formal process. It was also felt in some cases the obligation to report ‘serious misconduct’ could actually discourage informal reporting, as anyone an individual confided in might have a

<sup>13</sup> The Bar Council currently runs a confidential E&D helpline, but this may not be sufficiently publicised, or may not be viewed as appropriate for discussions of this type.

regulatory obligation to formally report the issue. It was suggested that the BSB should clarify this obligation or provide additional guidance to address this issue.

### Reporting – Key Recommendations

**Clear, written reporting frameworks** – e.g. clear policies and guidance on reporting unfair treatment; information on to whom issues should be reported; info on what courses of action can be taken; clear process - from initial complaint to final decision - set out. This could help barristers feel more confident in making complaints, address gulf between requirements and actual practice.

**Improving transparency** – e.g. requiring recording and reporting of number of complaints received, and outcomes, to be discussed by chambers management; annual reports of numbers of experiences of harassment/discrimination. This could help assure that there is more awareness of the level of discrimination/harassment within chambers, and how effectively issues are dealt with.

**Set up external or informal routes for complaints** – e.g. helpline to provide initial advice on a matter and have an informal, confidential discussion; enabling reporting without escalation to a full complaint; potential for follow-up meeting for informal, face-to-face chat, or sending someone to accompany a person to meetings in chambers (something similar to the role of a union representative). This would enable people to have an independent first line of reporting, that could offer advice on whether to escalate an issue, provide confidential route to enable issues to be raised without automatically involving chambers.

**Multiple reporting routes** – e.g. ensuring complaints can be made via several routes or individuals; having a wider range of people to report to in chambers (such as separated by years of call). Can help address issues around individuals being discouraged from reporting issues involving senior staff, or such complaints not being addressed.

## 5. Key Findings - General Recommendations

- A number of cross-cutting recommendations were also raised in the workshops, covering issues that were felt to help address several of the individual issues discussed in chapters two and three. Perhaps the most regularly raised issue was the **importance of the Equality and Diversity Officer** within chambers. Where examples of good practice were raised, the role of the E&D officer in introducing or implementing these approaches was regularly cited as a factor. Participants recommended that the E&D officer should be seen as a key role within chambers, and that they should have sufficient seniority or influence to be able to deal with issues across different groups (such as senior management and clerks) and ensure they had the confidence of people within the set. Some recommended ensuring the E&D officer was a senior member of chambers would be one way to help ensure this was the case. Other recommendations focussed around requiring certain training for E&D officers, helping to ensure they were well versed in policy, practice and the law, and were fully aware of potential options and solutions to issues. The value of effective and dedicated E&D officers to promoting this agenda and promoting good practice was seen as key to making progress – in particular this could help ensure that it was not seen as a ‘token’ role as was sometimes felt to be the case currently.

- Many participants recommended that more was done to **raise awareness of policies, guidance and best practice**. Several participants felt there was already good policy and good practice available, and instead of the BSB taking a more prescriptive approach it would be more effective to take advantage of what is already out there, but that staff and barristers might not currently be aware of. In many cases it was felt that available guidance was not easy enough to find, and more could be done to make it visible both to and within chambers. Another key element of raising awareness was ensuring that relevant information was targeted at or filtered down to clerks, as they are often in the best position to implement best practice and take action on issues.
- Mandatory training for clerks and senior management to ensure awareness of E&D policies and requirements (perhaps as part of CPD requirements) was felt to be one way of raising awareness of policies, good practice and what should be done to address issues. Several participants highlighted training in unconscious bias as particularly valuable. One recommendation was that some form of E&D training was undertaken on a regular basis (e.g. every few years, or for all new joiners to chambers). Making this a requirement of the E&D policy which chambers must have would increase the minimum standard. Participants also recommended providing this training centrally, such as through the Bar Council, so as to improve the consistency of completion of the training. The benefits of training for clerks was highlighted by several participants – one suggestion was for all clerks to be required to have training, and that at least one clerk in each chambers should be a member of the IBC, to ensure they are up-to-date with best practice, and can share and promote that within chambers. However, some challenges were raised in terms of publicising best practice and guidance. For some chambers, they will only comply with the minimum standard, and not take steps beyond what is required by rules. This then makes it difficult to bring about change, particularly if chambers' resources are stretched. A further challenge raised was that the BSB does not regulate clerks and therefore cannot prescribe that they undertake training.
- Initiatives that looked towards **improving the overall culture of the profession** in relation to equality and diversity was also felt to be an area where more progress could be made, in particular promoting and **developing a 'zero tolerance' approach** to issues of unfair treatment. This was felt to require clear leadership 'from the top', and to need involvement 'beyond the usual suspects'. There was also felt to be a clear need to spread the discussion beyond those who are already engaged. One recommendation to address this was framing issues in a way that does not 'put male barristers or clerks off', such as linking it to the 'wellbeing' agenda rather than explicitly framing discussions as a gender issue. This could help ensure the value of adopting best practice and effective policies was seen as a benefit for chambers as a whole, and something that would help the whole profession. Another recommendation was to normalise E&D issues through having standing E&D and wellbeing agenda items for chambers' committees. A key cultural issue to address was the attitude within the profession that 'if you are good enough, you will succeed', which led to fresh initiatives or existing policies around equality and diversity being seen as unnecessary interference that was not required. While these sorts of attitudes were seen as changing gradually, it was felt that more could be done in this area.
- It was also felt that the business case **outlining the benefits of best practice in equality and diversity** also needs to be more clearly made, in particular its value relating to recruitment and retention. A range of work has been already been done in this area, both within the Bar itself and within other sectors. The introduction of mandatory E&D policies was felt to have helped, and to have encouraged cultural change. Best

practice and good policies do exist in many instances, but more needs to be done to ensure the relevant people are aware of them.

### Key General Recommendations

**E&D Officer should be a key role** – it needs to have the confidence of people in the set; needs to be senior/ carry a degree of authority and able to influence others. There would be value in training for the E&D Officer, who needs to be well versed in policy, practice and the law, and know options and solutions. The value of effective/dedicated E&D officers to promoting the agenda and promoting good practice was seen as key to taking this forward – ensures it is not seen as a ‘token’ role.

**Raising awareness of policies, guidance and best practice** – take advantage of what is already out there, but staff/barristers may not be aware of; ensuring relevant information targeted at/filtered down to clerks; ensuring more is done to publicise policies and best practice both to and within chambers. A range of work has been done in this area, and best practice and good policies do exist in many instances – needs to be more done to ensure the relevant people are aware of them. The business case outlining benefits of best practice in equality and diversity also needs to be more clearly made.

**Addressing culture and developing ‘zero tolerance’ approach** – needs clear leadership ‘from the top’; needs involvement ‘beyond the usual suspects’ – need to spread discussion beyond those who are already engaged; using training to address attitudes; importance of framing issues in a way that does not put male barristers/clerks off; possibility of linking to the ‘wellbeing’ agenda rather than explicitly framing discussions as a gender issue.

## 6. Summary and Conclusions

- The discussions produced a wide range of recommendations and examples of good practice that were felt to be valuable in helping to address the issues faced by women in the profession and help improve retention. Although discussions were focussed around producing recommendations to address specific issues identified by previous research undertaken into the experience of women in the profession and the efficacy of the current equality rules in dealing with the problem (see the methodology and background sections) it is notable that most of the recommendations can be grouped into several cross-cutting themes.
- **Monitoring** – introducing or improving monitoring of a range of issues was felt to have considerable value, both in terms of identifying where issues exist, ensuring any responses are driven by accurate information, and helping to ensure that chambers are prompted to respond to issues identified. Some areas where this was recommended included:
  - monitoring ‘marked’ work as well as unallocated work, to ensure this is taken into account when developing policy
  - clerks recording the reason why incoming work is allocated as it is within monitoring frameworks
  - introducing monitoring of the number of requests made for flexible working, details of the requestor, and the decision/response

- introducing rules requiring the recording and reporting of number of complaints of discrimination and harassment received, and their outcomes.
  - Introducing a system for recording and monitoring instances of discrimination and harassment without involving formal chambers complaint procedures.
- **Transparency** – several recommendations focussed around improving transparency as a key area which could lead to improvements. This could help ensure awareness of issues and policies was improved, and ensure that discussions around issues are based on accurate information, thus being seen as ‘driven by the data’ rather than individual grievances. Recommendations around transparency included:
    - improving transparency both of work allocation data within chambers but also the reasons that work is allocated as it is, and potentially level of fee income
    - ensuring a high level of awareness of existing policies within chambers, such as by publishing on chambers websites or ensuring policies are adequately publicised to all members and staff
    - improving the transparency of the process when complaints relating to unfair treatment are made, include information on what courses of action were available and having a clear process set out in chambers’ policies
    - improving transparency in relation to the level of complaints about unfair treatment and the way they were dealt with
    - more being done by key stakeholders (BSB, Bar Council, Inns, SBAs) to publicise and highlight good practice, and provide guidance relating to policies and practice.
  - **Policies** – a number of recommendations focussed on policies themselves. These could either be ways to improve existing policies, or suggestions for new policies or initiatives that could be introduced by chambers themselves or by the BSB. Some recommendations around policies themselves included:
    - the BSB requiring chambers to have a policy for clerks to provide feedback on work allocation to barristers individually, at regular intervals
    - setting up regular sessions between clerks and tenants to encourage contact, and ensuring that clerks check with barristers before putting them down for work
    - moving away from ‘fixed fees/rent’ both during and on return from parental leave to address the financial issues faced by many barristers on their return to practice
    - parental leave policies including a formal and structured ‘return to work’ framework
    - ensuring that parental leave policies in particular (but also other policies that are relevant to improving retention) are written in an inclusive way so that they were not solely cast as of relevance to women.
    - providing a ‘kite mark’ for chambers who have good formal policies and exhibit good practice relating to equality and diversity
    - Setting up and encouraging mentoring programmes (such as are offered by some Inns and SBAs) to provide support and advice for women in the profession
    - Providing an external route for reporting, monitoring and advice relating to issues of discrimination and harassment, run by either the Bar Council, BSB or Inns.

- **Training** – a number of recommendations focussed around the value of training, both in terms of raising awareness of issues around equality and diversity but also in ensuring relevant individuals are not only aware of potential problems but also knowledgeable about effective approaches that can be taken to address them and relevant good practice. Suggestions often focussed around requiring or promoting training for particular individuals within chambers. Examples included:
  - clerks in chambers to be required to attend training provided by the Institute of Barristers Clerks, to ensure clerks are aware of the issues that can arise around work allocation
  - mandatory training for senior chambers management, to ensure awareness of E&D policies and requirements (perhaps as part of CPD requirements)
  - requiring training for E&D officers, helping to ensure they were well versed in policy, practice and the law, and ensuring they were aware of options and solutions to issues
  - offering training to barristers on managing relationships with the clerks room with a focus on communication, and helping junior tenants.
  
- **Cultural** - addressing elements of the culture and values that were seen as prevalent among parts of the profession was also the focus of a number of the recommendations made within the workshops. While improvements in rules, requirements and practice were clearly of value, it was felt these could be undermined by certain attitudes unless cultures were also addressed. Some recommendations for addressing cultural issues included:
  - encouraging an inclusive rather than individualistic culture within chambers,
  - recasting 'maternity leave' as 'parental leave', and encouraging more men to take parental leave
  - promoting and developing a 'zero tolerance' approach to issues of unfair treatment, discrimination and harassment
  - working to improve the working relationship and level of communication between barristers and clerks, encouraging positive and proactive communication between clerks and barristers
  - ensuring that there is clear leadership 'from the top' on the E&D agenda, spreading the discussion beyond those who are already involved and engaged
  - framing issues in a way that does not 'put male barristers or clerks off', such as linking it to the 'wellbeing' agenda rather than explicitly framing discussions as a gender issue
  - more clearly making the business case for best practice in equality and diversity, in particular its value relating to recruitment and retention.
  
- While the work undertaken by the BSB in 2016 focussed primarily on identifying the issues that were impacting on women's retention at the Bar and how effective the equality rules had proved at addressing them, the workshops undertaken for this research were purely focussed on developing and discussing a range of solutions to address the issues identified. The findings of this research should be valuable in developing a detailed action plan that can set out proposals that can be taken forward and developed, both by the BSB and other key stakeholders (such as the Bar Council, SBAs and the Inns of Court) to help improve the experiences of women in the profession and drive improvements to retention.



<b>Women at the Bar Workshops: Action Plan Jan 2018 - Dec 2019</b>			
<b>Regulatory Focus</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescales</b>
<b>Handbook</b>	1. Equality Impact Assessment (EIA) of the equality rules including: <ul style="list-style-type: none"> <li>• <i>Working allocation - specificity and concept of Work Allocation Officer, monitoring of flexible working (Chambers management to regularly review number of requests made, details of requestor, and the decision/response).</i></li> <li>• <i>Rent changes - removal of fixed monthly rent during and after maternity leave, zero percent contribution on all fees for a limited time after return.</i></li> <li>• <i>Equality and harassment policies- to be published on chambers' websites</i></li> <li>• <i>Requirement - for exit interviews.</i></li> <li>• <i>Requirement - for chambers to record and report numbers of complaints and the outcomes.</i></li> </ul>	Internal Programme Board	Jan 2018 – Dec 2018
	2. For the EIA engage with stakeholders: members of the Bar, APEX, BC, Specialist Bar Associations, Association of Women Barristers, IBC, and LPMA.	Internal Programme Board	Jan 2018 – April 2018
	3. Diversity survey – include questions about Equality Rules and the concept of an E&D benchmark.	Research	March 2018 - June 2018
	4. Review how supervision approaches can have impact on best practice through a progress check across a representative sample of Chambers.	Supervision and Enforcement	April 2018 – June 2018
	5. Review how enforcement approaches can have impact on best practice through a review of sentencing guidance.	Director General	Jan 2019 – April 2019
	<i>Board decision to consult for Rule changes</i>	Internal Programme Board	Jan 2019 – March 2019

<b>Women at the Bar Workshops: Action Plan Jan 2018 - Dec 2019</b>			
<b>Regulatory Focus</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescales</b>
	<i>Application to LSB</i>	Internal Programme Board	March 2019 – May 2019
	<i>Change rules</i>	Internal Programme Board	May 2019 – June 2019
	<i>Produce new Guidance</i>	Internal Programme Board	June 2019 – Aug 2019
	<i>Agree enhanced supervision approach</i>	Supervision	March 2019 – June 2019
	6. Explore potential for an additional rule requiring barristers to undertake anti-discrimination training.	Internal Programme Board	April 2019
<b>Guidance</b>	7. Meet with Bar Council EDO network to explore best practice and effectiveness of their role (enablers and barriers).	E&AJ team	July 2018
	8. Review and update guidance for EDO roles.	E&AJ team	Aug 2019 – Sept 2019
	9. Produce competencies/role description for EDOs	E&AJ team	Aug 2019 – Sept 2019
	10. Develop guidance for (see partnership working) a return to work 'framework' including proactive discussions with clerks about work allocation and marketing, returner interviews, ensuring necessary support is in place before return and during initial months of practice.	E&AJ team	August 2018
	11. Produce plain English guidance on how to respond to discrimination/harassment at the bar ( <i>Information about external support and informal routes for complaints e.g. confidential discussions, ability to have someone to accompany to meetings in chambers, similar to support</i>	Communications	March 2018 – May 2018

<b>Women at the Bar Workshops: Action Plan Jan 2018 - Dec 2019</b>			
<b>Regulatory Focus</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescales</b>
	<i>received from a union representative or colleague in an employment context).</i>		
	12. Clearer and more detailed guidance about reporting frameworks <i>(particularly with regards complaints about senior members/managers).</i>	E&AJ team	March 2018 – May 2018
<b>Engagement and Partnership Working</b>	<p>13. Engage with the Institute of Barristers Clerks (IBC) and the Legal Practice Management Association (LMPA) to explore how best practice can be influenced:</p> <ul style="list-style-type: none"> <li>• <i>Training and development - non-discriminatory allocation of work</i></li> <li>• <i>Improving visibility of flexible workers in chambers - so have the option not to be overlooked for opportunities during non-working days.</i></li> <li>• <i>Improved communication between barristers and clerks through developing a flexible working framework (including regular 1:1 sessions, barristers being clear about intentions).</i></li> <li>• <i>Overcome perceptions of flexible workers being 'part time' and/or not fully committed to the Bar through communication and campaigning.</i></li> <li>• <i>Addressing cultural issues: breaking down of stereotypes around who is the main carer/earner and addressing assumed lower aspirations of parents at the Bar</i></li> <li>• <i>A return to work framework including proactive discussions with clerks about work allocation and marketing, returner interviews, ensuring necessary</i></li> </ul>	E&AJ team and Communications	April 2018 – June 2018

<b>Women at the Bar Workshops: Action Plan Jan 2018 - Dec 2019</b>			
<b>Regulatory Focus</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescales</b>
	<p><i>support is in place before return and during initial months of practice.</i></p> <ul style="list-style-type: none"> <li>• <i>External harassment and discrimination: training clerks to manage unlawful behaviour from solicitors.</i></li> </ul>		
	14. Engage the BC, Inns of Court and QCA to explore best diversity practice in work allocation with regard to QC's selecting juniors.	E&AJ team	Aug 2018 - Oct 2018
	15. Engage with the Bar Council to explore exit interview guidance for Chambers	E&AJ team	March 2018 – May 2018
	16. Explore what mentoring schemes exist across the Bar to identify gaps in programmes, guidance and promotion. Work with partners to develop recommendations.	Research and Education and Training	Aug 2018 - Oct 2018
	17. Work with the judiciary to promote training that helps judges to understand their impact on work/life balance at the Bar.	E&AJ team	Sep 2018 – Oct 2018
<b>Communications</b>	18. Message from Chair in regulatory update – zero tolerance approach and what this look like in practice.	Communications	March 2018 – May 2018
	19. Council magazine feature about the case for gender equality at the bar and zero tolerance approaches.	Communications	September 2018
	20. Use of BSB Twitter feed to convey key messages and updates on actions within this plan.	Communications	February 2018-Dec 2019
	21. Regulatory Update – handbook explained section for EDOs	Communications	Oct 2019 – Nov 2019
	22. BSB E&D web pages pages – update to include business case for diversity and case studies of best practice.	Communications	May 2019 – July 2019

## Future Bar Training – Publication of Research Findings

### **Quantitative Analysis: Differential Attainment at the Bar Professional Training Course (BPTC) and Pupillage stages (BSB Research Team)**

#### [Qualitative study: Barriers to Training for the Bar \(NatCen Social Research\)](#)

The Bar Standards Board is engaged in a major programme of reform of legal education and training known as Future Bar Training, in the context of which a series of research projects have been undertaken. Those projects aim to provide a qualitative and quantitative evidence base to inform the development of proposed changes to the system for qualification as a barrister. As such they support the BSB's statutory and strategic regulatory objectives and enable the BSB to further the principles it has adopted in relation to Future Bar Training: flexibility, accessibility, affordability and maintaining high standards.

The findings from two methodologically very different research projects are published today.

Together, they afford important insights into current issues in the education and training system for qualification as a barrister. The findings will inform both the specification for further, more refined BSB data collection and research, and our decisions on specific action to address issues uncovered by the research. We hope these findings will also be drawn on by those responding to our current consultation on Future Bar Training.

#### [Differential Attainment at the BPTC and Pupillage stages \(BSB Research Team\)](#)

This research report is a quantitative analysis of high level, aggregate data in relation to the performance of students on the compulsory Bar Professional Training Course and the extent to which BPTC graduates succeed in progressing to the final stage of training, known as pupillage. The research was conducted by the BSB's in-house team and has been subjected to two separate independent peer review processes.

The findings in this research indicate that ethnicity has a significant predictive value for BPTC average module scores, and that ethnicity and socio-economic status both have a significant predictive value for success at obtaining pupillage. It is important to note in this latter respect that the study is based on the performance of those home (ie UK) based students who have graduated from the BPTC and not on actual pupillage applicants.

### ***BPTC module scores***

The findings of this research, based on regression modelling, suggest that even after other variables are controlled for, ethnicity has a significant predictive effect on average module scores, with Black Minority Ethnic (BME) students as a whole scoring lower on average than equivalent white students.

This predictive effect is largest across centrally assessed modules, but also exists in advocacy modules and other compulsory BPTC modules set by Providers rather than the BSB.

Socio-economic status (using parental degree as a proxy) has a small predictive effect for centrally assessed and advocacy modules, but not for other compulsory BPTC modules, where students with no parent with a degree score slightly lower than students with at least one parent with a degree.

Gender and disability do not have a significant predictive effect for any modules once other variables are controlled for.

These sorts of educational attainment differences by ethnicity are not unique to the BPTC. There is a substantial body of research which highlights similar differences in other disciplines and at other academic stages.

### ***Obtaining Pupillage***

The findings suggest that even once other variables are controlled for, ethnicity has a significant predictive effect on whether BPTC graduates obtain pupillage. BME BPTC graduates taken as a whole are (statistically) roughly half as likely to obtain pupillage as white graduates with similar prior educational attainment.

Socio-economic status (using parental degree as a proxy) also has a significant predictive effect on whether BPTC graduates obtain pupillage, although the statistical model predicts a smaller effect than that of ethnicity. BPTC graduates with no parent with a degree are statistically around two thirds as likely as graduates with at least one parent with a degree to obtain pupillage.

Gender and disability do not have a significant predictive effect once other variables are controlled for.

### ***Research now needed to understand these findings in more detail***

Further investigation into the experiences of providers and students has the potential to improve our understanding of these issues and identify how attainment levels among apparently disadvantaged students can be improved. In particular, analysis of performance in BPTC modules broken down by provider is needed, as is analysis of, for example, performance correlations to different sub-categories of BME identity.

A more granular analysis of data in relation to ethnicity and socio-economic status, particularly based on actual pupillage applications rather than BPTC graduate status

alone, may lead to further and more refined insights which can support the development of the reform programme. We anticipate that this analysis might be conducted using data now emerging from the Bar Council's Pupillage Gateway, through which some 50% of available pupillages are handled. We will also seek to obtain data in relation to pupillage applicants outside the Gateway, and are grateful to the Bar Council for the assistance they have agreed to provide in obtaining and studying pupillage applicant data.

### **Barriers to Training for the Bar (NatCen Social Research)**

This research is very different in design and purpose to the research described above.

The BSB commissioned NatCen Social Research to explore perceptions of barriers to participation and success in the vocational and work-based learning stages of training for the Bar, and identify changes that might encourage and support a more diverse and inclusive Bar. The qualitative study particularly focused on women, BME students and those from lower socio-economic groups. Such studies based on direct experiences and perceptions can be especially useful to help those working on policy proposals really understand the feelings of those who may be affected by reforms and to facilitate both more accurate impact assessments (especially Equality Impact Assessments) and better targeted possible solutions.

This report presents findings from the NatCen study, the key aims of which were to address the research questions:

1. How does the structure and teaching of the Bar Professional Training Course (BPTC) and Qualifying Sessions – the vocational stage – contribute to barriers faced in completion and attainment on the course?
2. How does the structure and process of applying for a pupillage – the work-based stage – contribute to barriers faced in gaining entry to the profession?

The research consisted of two strands of qualitative work carried out concurrently. Both strands involved in-depth interviews lasting up to 60 minutes conducted over the telephone. There were 25 interviews with BPTC students (2015/16 cohort); and 25 interviews with pupillage applicants (2013/14 cohort), successful and unsuccessful. The 50 interviewees were a self-selecting sample from a larger population with the specific characteristics being focused on in this research.

### ***Key findings***

The study found that four broad themes underpinned participants' perceptions and experiences of the BPTC, the pupillage application process, and their interaction with the Inns of Court:

- Participants tended to see the Bar as the preserve of an 'elite', privileged group, more accessible to white men from an 'elite' educational background than to others.

- They felt there was a lack of access to accurate information about training for the Bar, including the tacit knowledge needed to make informed decisions to navigate the training pathway.
- The financial costs of undertaking the training and access to funding constituted a further theme.
- There was thought to be significant potential for Higher Education Institutions and other bodies such as the BSB to provide enhanced information and support.

These themes were experienced variously by individuals across the groups of interest for this study. However, financial considerations particularly affected those from lower socio-economic groups, and information gaps were an issue for those from BME and lower socio-economic backgrounds who lacked personal networks and connections to the profession. Gender was also thought to affect entry to the Bar, with women participants feeling themselves to be at a disadvantage irrespective of their ethnic or income backgrounds.

The range of issues influencing participants' experiences and perceptions can be grouped into two broad categories of factors: structural and individual. Structural factors were unrelated to any individual student characteristics but reflected the nature of the training pathway, the long-standing traditional practices at the Inns of Court, the number of available pupillage places, and the attitudes and behaviours of individuals who are part of the profession as a whole. At the same time, individual factors in relation to the participants' own personal attitudes, socio-demographic characteristics, and their personal access to informal networks also affected training and access to opportunities.

The interaction between these two factors was complex and worked in three main ways:

- Individual factors compensated for structural factors – the determination and drive to be a barrister helped students to overcome the perception that the profession was not open to them.
- Structural factors compensated for individual factors – such as financial support from the Inns helping to offset the financial barriers experienced at an individual level.
- Both structural and individual factors worked together – for example in cases where students were resourceful enough to access the structural support available.

The thread running through both the structural and individual factors was culture: there was a perception that the organisational culture in chambers influenced the pupillage application and selection process, helping to maintain the profession as the domain of white male privilege. Importantly, cultural background as a determinant of social behaviour, language use, and customs, is likely to influence the structural and individual factors set out above.



## **Next steps for the BSB and Future Bar Training following these research findings**

We are clear that the quantitative analysis in relation to Differential Attainment represents a starting point and not an endpoint: it illuminates the problem but does not explain the causes.

We have already started to analyse in greater detail outcomes on BPTC modules and in pupillage applications, including against more differentiated characteristics. For example, we know from preliminary analysis of module results broken down by BPTC provider that correlations with ethnicity are more marked at some providers than at others; and that, for example, differential attainment is more acute in some centrally assessed modules than others. Initial analysis of data from the Pupillage Gateway, covering approximately 50% of pupillage places available, indicates that applicants from some ethnic backgrounds appear to have appreciably greater likelihood of success than others, and that outcomes on the basis of gender but within the same ethnic sub-category may be different.

It is clear from the study conducted by NatCen Social research that availability of good information and guidance for those considering a career at the Bar is critical to fair access to the profession. The BSB will seek to make major improvements in its provision of information to assist students.

This will also be a necessary consequence of the opening up of more pathways to training, which has already been decided for Future Bar Training. Providing more and better information may also assist in addressing negative perceptions where those may be based on limited access to facts, especially in relation to the Inns of Court.

The BSB cannot address all the challenges implied in these research findings alone. It will aim to set mandatory requirements for collection and analysis of data in relation to differential attainment through its Authorisation Framework for providers of education and training, requiring those providers to work with the BSB to do whatever is necessary and appropriate to work towards the elimination of unfairness and help maintain a strong, independent and diverse profession, in the public interest.

BSB November 2017



<b>Action Plan: BSB response to the findings of <i>Barriers to Training for the Bar</i> research and <i>Differential attainment at BPTC and Pupillage</i> analysis</b>			
<b>Key theme from research findings</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescale</b>
<b>Theme 1: Access to accurate information advice and guidance</b>	1. The BSB will work with other stakeholders and providers to ensure that there is clear and accessible information on: <ul style="list-style-type: none"> <li>Existing (and future) training pathways and relationship with the Solicitors Qualifying Examination;</li> <li>Details of authorised Education and Training Organisations, including locations, modes of study, etc.;</li> <li>Cost (see Theme 4) of each component of training;</li> <li>Purpose of, and processes involved in, each component of training, including: first degree, BCAT, Vocational learning (BPTC), BPTC selection transparency and Inns membership</li> <li>The expected time commitment for students;</li> <li>Work-based learning, including applying for pupillage, gaining work experience.</li> </ul>	Comms/FBT team	January 2019
	2. Provide diverse student experience case studies using a variety of platforms to highlight some of the challenges of the vocational stage and how to manage these.	Comms /FBT team	January 2019
	3. Analyse traffic on BSB website to assess levels of engagement with related website content.	Comms/FBT team	January 2019
<b>Theme 2: Perceptions of accessibility in the profession</b>	4. Engage with careers advice services to dispel potential misconceptions and provide accurate information on new training pathways.	Comms	January 2019
	5. Work with stakeholders to publicise – particularly via social media - good practice efforts to increase accessibility (e.g. Pegasus Support & Access Scheme, inspirational leadership examples, success stories).	Comms/FBT team/E&AJ team	Ongoing
	6. Review the role of Qualifying Sessions and the Inns of Court following the FBT consultation on reform	Comms/FBT team	August 2018

<b>Action Plan: BSB response to the findings of <i>Barriers to Training for the Bar</i> research and <i>Differential attainment at BPTC and Pupillage</i> analysis</b>			
<b>Key theme from research findings</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescale</b>
	7. Ensure all accessibility requirements are included as the authorisations process is developed post-FBT consultation.	Training, Supervision and Examinations and FBT team	January 2019
	8. Initiate a working group for the recruitment and advertising of pupillage.	FBT team	In progress
	9. Produce good practice examples of the recruitment and advertising of pupillage.	FBT team	April 2018
	10. Develop comprehensive guidance for the website on work based learning.	Comms	January 2019
	11. Produce guidelines for chambers and BSB entities about the impact of bias and how to mitigate through training, systems and processes.	E&AJ team/Supervision	January 2019
	12. Further exploration of potential solutions and examples of best practice with stakeholders at the BSB Race Equality event (aim to create a 'shared vision' for tackling longstanding issues).	E&AJ team/Comms	February 2018
	13. Conduct research on pupillage application data to investigate relationship between ethnicity (all categories), socio-economic status and success at pupillage application	Research team	March 2018
<b>Theme 3: Course content, delivery and assessment</b>	14. Provide diverse student experience case studies using a variety of platforms to highlight some of the challenges of the vocational stage and how to manage these. (see also action 2)	Comms/FBT team	January 2019
	15. As part of the evaluation of FBT, we will identify areas where key information (data) on attainment needs to be collected throughout the training pathway on protected characteristics and other characteristics, such as socio-economic background.	Research/FBT team	April 2018

<b>Action Plan: BSB response to the findings of <i>Barriers to Training for the Bar</i> research and <i>Differential attainment at BPTC and Pupillage</i> analysis</b>			
<b>Key theme from research findings</b>	<b>Action</b>	<b>BSB departments/teams</b>	<b>Timescale</b>
	16. Arrange workshops with students on BPTC courses to explore the issue of perceived preferential treatment.	E&AJ team	January 2019
	17. Implement our reforms to support flexible proposals for new ways of training and require learning outcomes on the vocational training to align with the Professional Statement (fundamental part of Future Bar Training programme).	FBT team and Training, Supervision and Examinations	January 2019
	18. Research into differential attainment broken down by providers and modules. This information used to identify and share which providers have higher or lower attainment gaps.	Research team	February 2018
	19. Commence work with providers using information from further analyses (point 18) to influence good practice.	E&AJ team	March 2018
<b>Theme 4: Affordability and Funding Concerns</b>	20. Develop a comprehensive list of all likely costs to be incurred during training for the Bar (see also action 1).	Comms	January 2019
	21. Introduce reforms to support more flexible proposals for the vocational stage.	FBT team	January 2019
	22. Review the role of Qualifying Sessions and the Inns of Court following the FBT consultation on reform (see also action 6).	Comms/FBT team	August 2018
	23. Include reference to the cost of qualifying sessions (depending on the decision taken following the consultation on reform).	Comms	January 2019
	24. Consider affordability and funding issues within the recruitment and advertising of pupillage project (see also action 8).	FBT team	In progress
	25. Produce good practice examples of the recruitment and advertising of pupillage, including a focus on the business case for non-discriminatory recruitment and training of pupils (see also action 9).	FBT team	April 2018



## Youth Court Registration

### Status:

1. For **noting**.

### Executive Summary:

2. This note is to inform the Board of a change to how the BSB proposes to implement the registration of barristers for Youth Court work, both through Authorisation to Practise and outside of that process. It should be noted that this is a change to the way the new rule is being implemented, not a change to the rule itself.
3. The motivation for changing our approach to implementation is to ensure that we are focusing on those barristers who are currently working in the Youth Court or those who intend to do so in the future rather than those who have worked in the Youth Court previously. This approach better enables us to focus our regulatory attention where it is most needed. We have therefore amended the question we propose to ask barristers in MyBar to ensure we are focusing our resources on these barristers.
4. The question asked of barristers as part of Authorisation to Practise (AtP) to register for Youth Court work in MyBar has been amended to read: ***Have you received instructions for Youth Court work in the last 28 days and/or do you intend to undertake Youth Court work in the next 12 months?***
5. Formerly, the question that had been proposed read: *Are you currently instructed in the Youth Court or have you in the past 12 months undertaken work in the Youth Court?* In practice, the effect of the change is that barristers will be declaring the work that they intend to do (a forward-looking requirement), rather than the work they have done (a backwards-looking requirement).

### Recommendation

6. Members of the Board are invited to:
  - a. **note** the change to how we will implement the registration of barristers for Youth Court work.

### Background

7. In February 2017, the Board noted a number of recommendations relating to Youth Court work, including the introduction of registration of barristers who do this work. In June 2017, we consulted on new rules to require barristers currently undertaking, or those who intended to undertake, Youth Court work in the following 12 months to register as part of AtP. No responses to the consultation identified any issues with the registration requirement being forward-looking.
8. During the review of consultation responses, it was felt that the wording in relation to Youth Court registration might be altered to make the registration requirement backwards looking – this was more consistent with the requirements relating to declarations in respect of barristers undertaking work under the Money Laundering Regulations. The proposed response to the consultation, which was considered by the Board at its October meeting, therefore assumed the following question would be asked: *Are you currently instructed in the Youth Court or have you in the past 12 months undertaken work in the Youth Court?*

9. The Board approved new rules in October, which were subsequently approved by the Legal Services Board (LSB). These rules did not specify the detail of the question that would be asked about Youth Court practice, although the assumption was that it would be implemented as set out in paragraph 8. The rules, as approved by the LSB, are provided in Annex one (with the changes in bold). The wording of the new rule is sufficiently broad to allow scope for the requirement to be either forward or backward looking. There is therefore no need to refer to the LSB if our approach to implementation changes as suggested in this paper.

### Implementation update

10. As outlined above, we are now changing the requirement back to the wording on which we originally consulted.
11. There were several motivations for introducing this rule. Firstly, to ensure that the BSB had accurate information about those engaged in this work in order to support a targeted supervisory approach. Secondly, to require barristers to declare that they are competent to undertake this work to foster higher standards and encourage Youth Court work to be seen as a specialism. Lastly, making information about who can do this work publicly available will empower third parties to report instances of non-registration or poor advocacy, which we do not currently receive.
12. As part of the implementation programme, we have reviewed the processes that would be required on MyBar to give effect to the new rule. Given that we want MyBar to include an up-to-date list of those barristers intending to offer services in the Youth Court, it seems logical for the list to include those who are offering those services now and in the future, rather than those who have done so in the past. The regulatory risk lies with those barristers who are currently working in the Youth Court, or those who intend to do so. Those who have previously done this work (and do not intend to carry out such work in the future) do not present an ongoing risk and we are unlikely to use this information. By changing the focus of the question, we ensure that we are focusing on those that are currently instructed or intend to do the work in future.
13. A forward-looking requirement gives us the scope to supervise individuals who we know have declared they are competent, even if they aren't currently instructed, and it is they who will thus appear on the barristers' register. We will be taking a proportionate approach to supervising those who intend to undertake the work in future, and we will be expecting them to take steps to ensure that they are competent. Our focus will be on supporting advocates to improve.
14. As the rule is relatively broad, if we think it is necessary to include a backwards - looking element after AtP in 2018, it will be possible to build this into the 2019/20 AtP process.
15. It should also be noted that the proposed wording of the question also includes those who have undertaken work in the last 28 days. This is to align with the ongoing requirement for barristers to notify us within 28 days if they take on Youth Court work, which allows flexibility for those barristers who did not intend at the beginning of the year to do the work to register retrospectively.

### Resource implications

16. This change to implementation creates no additional resource implications, aside from those which are already allocated to this piece of work.



**Equality Impact Assessment**

17. This project has been equality impact assessed. No adverse effects of altering our approach to implementing the rule have been identified.

**Risk implications**

18. As outlined above, the change in approach is designed to mitigate risks relating to previously agreed implementation approach. The main risk was that the BSB would be focusing resources towards a group of barristers that did not present an ongoing risk (those barristers who had done Youth Court work in the past but who were no longer doing it.)

**Impacts on other teams / departments or projects**

19. There are no additional impacts on any other teams, departments or projects as a result of this change.

**Consultation**

20. The updated wording of the question was consulted on publicly as part of the Practice Areas consultation, which ended in September 2017.

**Regulatory objectives**

21. The regulatory objectives which interact with this piece of work are:
- Protecting and promoting the public interest;
  - Protecting and promoting the interests of consumers;
  - Encouraging an independent, strong, diverse and effective legal profession; and
  - Promoting and maintaining adherence to the professional principles.

**Scheme of Delegations**

22. This is a decision which sits within the BSB executive. This decision has been approved by the BSB's Senior Management Team.

**Communications and Stakeholder Engagement**

23. There are no additional communications required for this change. A full programme of communications is planned for AtP.

**Annexes**

24. Annex 1 is attached, which details the changes to the BSB Handbook.

**Lead responsibility:**

Oliver Hanmer, Director of Regulatory Assurance

Ruby Newton, Senior Supervision and Authorisation Officer



**Wording of Approved rule changes**rS59

The Bar Council (acting by the Bar Standards Board) may refuse to issue a practising certificate or to grant a litigation extension, or may revoke a practising certificate or a litigation extension in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the practising certificate or litigation extension (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer:

- .1 does not hold adequate insurance in accordance with Rule C76;
- .2 has failed and continues to fail to pay the appropriate practising certificate fee or litigation extension fee when due;
- .3 would be, or is, practising in breach of the provisions of Section 3.B;
- .4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them;
- .5 has not declared information on type and area of practice in a form determined by the BSB;**
- .6 has not made the declarations required by the BSB in relation to Youth Court work.**
- .7 has not made the declarations required by the BSB in relation to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;**
- .8 has not provided the BSB with a unique email address.**

rC64

You must:

- .1 promptly provide all such information to the Bar Standards Board as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and
- .2 comply in due time with any decision or sentence imposed by the Bar Standards Board, a Disciplinary Tribunal, the Visitors, the High Court, an interim panel, a review panel, an appeal panel or a Fitness to Practise Panel.
- .3 if you are a BSB entity or an owner or manager of a BSB entity and the conditions outlined in rS113.5 apply, give the Bar Standards Board whatever co-operation is necessary, including:
  - .a complying with a notice sent by the Bar Standards Board or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a BSB entity (such notice may require such documents to be produced at a time and place fixed by the Bar Standards Board or its agent; and
  - .b complying with a notice from the Bar Standards Board or its agent to redirect communications, including post, email, fax and telephones.
- .4 register within 28 days if you undertake work in the Youth Court if you did not register when applying**



**Chair's Report on Visits and External Meetings from December 2017****Status:**

1. **For noting**

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last Board meeting.

**List of Visits and Meetings:****Sir Andrew Burns KCMG**

5 December	Conducted appraisal meeting for a Board member  Attending the Finance Committee meeting
6 December	Met with the Chair and CEO of CILex Regulation  Chaired meeting with Chair and Deputy Chair of Bar Council and CMA representatives to discuss response to CMA recommendations on transparency  Attended the ISAG meeting followed by drinks reception.
7 December	Conducted appraisal meeting for a Board member  Attended BSB Away-day, followed by drinks reception followed by Board Dinner
11 December	Attended the Bar Council Chairman's Inauguration
12 December	Conducted appraisal meeting for a Board member
13 December	Attended the Chairs' Committee with Bar Council

**Baroness Tessa Blackstone**

12 January 2018	Met with Desmond Browne QC, President of COIC
17 January 2018	Attended the Regulator Chairs' meeting with LSB
18 January 2018	Attended Board induction and Met with Naomi Ellenbogen QC, vice Chair
22 January 2018	Met with Lady Hale, President of the Supreme Court
24 January 2018	Attended the Treasurers' Dinner of the Four Inns



**Director General's report - BSB meeting 25 January 2018**

For consideration and noting.

**Director General**

1. The period since the November Board meeting saw the final events in the programme of roadshows for the CMA and FBT consultations, including the two webinars which I hosted. I also spoke at two further universities in relation to legal education reform, and joined SRA and LSB speakers on the platform at the Westminster Legal Policy Forum to present on standards and quality assurance. I was able to announce there the Board's decision to withdraw QASA.
2. I have continued to liaise with other regulators and MoJ over Brexit preparedness. Further afield, we welcomed a visiting delegation from the Nigerian Bar Association (as did the Bar Council) and the BSB was able to give briefings across the following areas:
  - The BSB Regulatory Framework
  - Legal Education and Continuing Professional Development of Barristers in the UK
  - Certification of Legal Services Organisations in the UK by the BSB
  - Disciplinary Mechanisms for Barristers in the UK
  - BSB Compliance and Enforcement Strategies
3. I also received my near-counterpart from the Florida Bar and updated him on areas of current regulatory interest here so that he could contribute to a CPD conference for US licensed lawyers practising in Europe.
4. Nearer home, the BSB hosted the periodic meeting of all front line regulatory chairs and CEOs and the LSB and I represented the Board at the swearing in of the new Lord Chancellor.
5. The three cross-cutting programmes of BSB work which I oversee directly are detailed below.

**Future Bar Training programme**

6. The FBT team away day held in late November 2017 was very useful in identifying co-dependencies between the seven projects and for highlighting the significant amount of progress that has been achieved so far and the amount of work yet to be done.
7. All seven project teams now have meetings set up at frequent intervals which provides assurance from a programme perspective that teams are meeting regularly to progress their workstreams. Progress is also evaluated fortnightly by the senior team to ensure communication across the various projects occurs smoothly and that teams are working symbiotically.

***2017 FBT Consultation: Shaping the education and training requirements for prospective barristers***

8. The consultation closed on the 8<sup>th</sup> of January and more than 140 responses were received, including those from key stakeholder groups such as practicing barristers, students, foreign lawyers and retired barristers and judges. A number of representative organisations such as the Bar Council, the Council of the Inns of Court (alongside individual responses from some of the Inns themselves), Specialist Bar Associations and current BPTC providers have also submitted formal responses. These responses are now being analysed by the Team for discussion at the Education & Training Committee

and Board meetings as set out in the programme for FBT adopted by the Board at its September meeting. The first E&T Committee meeting is scheduled for the 27 February and will deal with policy matters relating to the continuing role of the Inns of Court in barrister training. Following the Board's meeting on the role of the Inns (in March), a similar pattern will follow for policy questions relating to work-based learning, and lastly, the Authorisation Framework.

### ***Role of the Inns project***

9. Subject always to the Board's decisions in March, we intend to work with COIC and the four Inns to develop a new Service Level Agreement or MoU to ensure roles and responsibilities in the future are clear and transparent. We will also ensure that any data sharing protocol is GDPR compliant. If the outcome of such decisions requires a significant transfer of responsibilities from the Inns to the BSB, further work will be prepared scope the implementation of such decisions.

### ***Rule Change project***

10. As each area of policy decisions is taken by the Board, we will be working to draft a new set of rules. The Team is having regular discussions with the LSB to ensure they are kept informed as to our timeline and prospects of likely applications.

### ***Development of the Authorisation Framework project***

11. The final section of the draft Authorisation Framework, the 'evidence' section, which indicates the detail of what we will expect to see from intending education and training organisations, has been drafted in two parts, one for those providing vocational training and one for those providing pupillage, or work-based learning. The evidence required from vocational training providers has been circulated to providers and to the Inns for comment.
12. This section was not included in the draft of the Authorisation Framework that was included in the consultation. Responses to this, and any relevant comments from the consultation, will be used in the further development of the Framework over the coming months. The development will be iterative and will move forward each time the policy position on other aspects e.g. the Role of the Inns, Pupillage and CAR is finalized.
13. A piece of work will take place to map the Authorisation Framework to the proposed regulatory framework of the new Higher Education regulator – the Office for Students (OfS). This is also currently under consultation so this work will need to be finalized once the OfS framework is confirmed.

### ***Curriculum and Assessments Review Project***

14. The programme of consultative engagement continues with a student event being planned for February. The group will then finalise its proposals, having reviewed the responses obtained throughout the period of consultative engagement. The proposed new curriculum and assessment strategy will then feed into the development of the Authorisation Framework.

### ***Pupillage***

15. Supervision visits to the four pupillage training organisations taking part in this year's pilot are due to take place during February and March. This is an opportunity for us to review how they have implemented the Professional Statement as a means of assessing



pupil competence, as well as allowing the Supervision Team to test their new supervision programme for reviewing PTOs.

16. Since our last update, another chambers has signed up to take part in the pilot as it continues into academic year 2019/20, bringing the total so far to three chambers and three organisations from the employed Bar. Discussion with other chambers about taking part are ongoing.

### ***Recruitment & Advertising Project***

17. The external membership of the Recruitment and Advertising Task Completion Group (TCG) has now been confirmed, and comprises three barristers and one HR and Administration Manager. The TCG members are from a broad range of AETOs in terms of size and practice area. Both self-employed and employed practice is represented. The TCG will have its first meeting in the week of 22 January 2018, where the Terms of Reference for the group will be agreed and a detailed project plan will be finalised.

## **Regulatory Operations Programme**

### ***CAT Project***

18. There have been a series of in-depth discussions with the CAT Project Team, Project Board and SMT to refine and finalise the process for risk assessing information at micro-level, following a period of testing by staff. In particular, we have made progress on how we will assess “likelihood”, but further work is underway to consider how we assess the impact of risks. Once this work is completed, we will test the approach with the CAT Project Board and the Senior Management Team. Once we are satisfied that the micro risk assessment works in the ways we would expect, we will develop an IT testing solution, and ask assessors to undertake testing on the end-to-end CAT process. The Risk Team and CAT Project Team will produce guidance to further aid consistent assessment.
19. The Project Team has had an initial meeting to discuss assurance and quality assurance. This was used to help provide more detail to the Information Management Team to help map our high-level requirements. Further work is taking place to help form a coherent assurance and quality assurance plan.
20. Additionally, the CAT Project Team has been considering the most appropriate method for reviewing decisions not to refer information outside of CAT. A paper on this is being considered by the SMT on 16 January 2018.

### ***IDMB Project***

21. This project, which also forms part of the wider Regulatory Operations Programme, is progressing according to the project plan. The detailed design of the proposed new Independent Decision-Making Body has been completed and pilot meetings continue each month in order to refine the proposals. The draft regulations to support the proposed new system are currently being considered and a public consultation paper is being drafted. This will be presented to the Board in February with a view to consulting from early March.

**CMA Programme*****Transparency***

22. The policy consultation on the CMA's recommendations relating to new cost, service and redress transparency requirements closed on 5 January 2018. A paper providing an initial summary of responses is on the Board agenda. A full summary of responses will be taken to the Board in February. We continue to oversee a number of "pilots" of potential new transparency requirements. A range of chambers, entities and sole practitioners with different practice areas, and undertaking both Public Access and referral work, are taking part. We also plan to undertake an engagement programme with Specialist Bar Associations and others to develop more detailed guidance and worked examples in specific areas of law.

***Independent Feedback***

23. We are committed to producing two guidance documents, ie. a guidance document for barristers on recommended or good practice and a guidance document for consumers on how to engage with feedback.
24. We are currently undertaking research to ensure that both guidance documents are relevant, proportionate and fit for purpose. The research we have completed so far has been a web-sweep of online/digital feedback platforms, desk-based research with non-legal regulators as well as research from the Legal Ombudsman. In addition, we have carried out in-depth focused interviews with four chambers, a BSB regulated ABS and an intermediary service provider. We are soon to engage with the Legal Services Consumer Panel to get their input for our consumer guidance.

***Research***

25. We are continuing to scope consumer research in the area of price transparency, aiming to increase our understanding of how best to make new transparency measures work for the consumers of barristers' services, as part of the wider CMA workstream. This research is about to go out to tender.

**Strategy & Policy****Policy**

26. In November and December, the policy team received over 200 calls and e-mails to the Professional Standards Helpline. This brings the total number of enquiries received in 2017 to over 1,200.
27. A new version of the Handbook (version 3.2) will be published on 1 February 2018. This will include new rules requiring barristers to disclose information on practice area, to make declarations regarding Youth Court work and to ensure compliance with new anti-money laundering regulations. The new version of the Handbook will also bring into force a number of changes to streamline the Public and Licensed Access (PLA) Schemes.
28. The vulnerability toolkit (developed as part of our immigration project) is currently out for testing with barristers and clerks in several chambers to ensure it is fit for purpose. We are also in the process of gathering wider feedback on the draft toolkit from a range of other stakeholders (including regulators and consumer organisations). Testing will come to an end on 31 January. Feedback will then be collated and shared with the Task Completion Group. We are on track to deliver the toolkit by the end of March.

29. The Board will receive an oral update of progress on our PII project at the Board meeting. This is in advance of a fuller paper in February.
30. We have started to map out how we plan to review of the Scope of Practice rules. The review itself will take place in 2018/19.
31. We have started a review of the Policy Development Framework (PDF). The results of this will be implemented in 2018/19.
32. We continue to support a number of key projects across the business. This includes support to the Records Team and Project Management Office on the development of the new Authorisation to Practise portal, MyBar. All of the guidance has been written ready for the launch of the portal.

### **Research**

33. Work continues on a number of research projects that will deliver evidence to support and inform key projects across the business, including FBT, CMA and equality and access to justice.
34. Work continues on research to determine policies aimed at improving retention of women at the Bar, which will inform delivery of one of the BSB's Equality Objectives and address the issues raised by last year's 'Women at the Bar' research. The Equality & Access to Justice team has conducted five workshop sessions to explore the issues and develop potential solutions. A full report of the findings has been completed and is presented to the January board, alongside a detailed action plan based on the recommendations.
35. We have updated the annual Diversity at the Bar figures; the report of findings will be published this month.
36. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy undertaken by both barristers and solicitor advocates. ICPR have been carrying out the research, consisting of 50 qualitative interviews with Crown Court judges. The final draft has been received and the report is currently with the Judicial Office for approval before final publication.
37. The NatCen 'Barriers to Legal Education' research report and a report on differential attainment between different groups on the BPTC and in obtaining pupillage were published in December, alongside a summary of the research. Both reports provide evidence that will inform BSB decision-making on Future Bar Training. Work now begins to take forward further exploration into group differences in obtaining pupillage, using data from the Pupillage Gateway.
38. As detailed under the CMA workstream, we are continuing to scope consumer research in the area of price transparency, aiming to increase our understanding of how best to make new transparency measures work for the consumers of barristers' services. An Invitation To Tender is currently being produced and will be sent out to potential research providers in January.
39. We have been involved in initial scoping work with the Professional Conduct Department for research investigating complaints received by the BSB, as a follow up and update to the analysis conducted in 2015/16 and published in the 'Complaints at the Bar' research. The research will take place later this year.

40. Our regular ‘Research Roundup’ has been updated and published on ‘verity’. The roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.

### **Equality and Access to Justice**

41. The E&AJ team and Risk team undertook an in-depth review of E&AJ regulatory risks with the GRA Committee to assess priorities to feature in future BSB business plans.
42. The E&AJ team, in conjunction with the Supervision team, delivered a pilot E&AJ training session as part of the Practice Management course for Pupils in November 2017. Planning is underway to deliver another session in February 2018 with the inclusion of a junior barrister to support the training.
43. The first meeting of the E&AJ Officer network – replacing the BSB Equality Champions group - took place in November 2017. The primary focus of this meeting was to review and update departmental action plans as set out in the Equality Strategy and plan EIA trainer training for officers.
44. A final workshop was held for the Women at the Bar project with the Legal Practice Management Association (LPMA) in December 2017, and an internal programme Board for the project has been formed. The associated report and action plan are presented at the January 2018 Board meeting.
45. Planning for the Race Equality event on the 7<sup>th</sup> of February, *Heads above the parapet*’ is in progress. Confirmed as part of the session are: the BSB Chair as host, the BSB Director General as a speaker and two leading BAME barristers to share their experiences. Within three days of advertising, 45 people, including prominent figures from within and external to the Bar, have registered their attendance.
46. The Head of Equality and Access to Justice has met with the pension’s regulator to share the BSB approach to E&D practice and learn about how they address embedding best E&D practice.
47. A full review of BSB Board diversity has resulted in a positive action approach to address areas of underrepresentation. An action plan will be presented at the January 2018 Board meeting.
48. An action plan has been produced to address the findings of the Barriers to Training for the Bar research and Differential Attainment at BPTC research. This will be presented the January 2018 Board meeting.
49. The 2017 annual diversity data report has been prepared with the Research team. Subject to approval by the Board at the meeting in January 2018, the report will be published on the BSB website.

### **Regulatory Risk**

50. The Regulatory Risk team shared a draft Risk Report with the GRA Committee in November, and are following this up with further in-depth meetings in January and February. These meetings will provide the GRA the opportunity to look at specific sections of the draft report in detail. The risk team will then commence producing six-monthly consolidated risk reports, with the first report to GRA in April 2018 and the Board in May 2018.

51. As explained previously, the report will provide a high-level view of all risks, consolidating Regulatory, Strategic and Operational into one report. Key to achieving this is the consolidation of the separate impact and likelihood tables. To this end, the GRA also discussed and approved the approach we have taken for aligning regulatory and corporate risk management. Following the November meeting, GRA members requested the risk team make a number of amendments to the macro impact / likelihood table. Having now made these changes, the table is now available for use in risk reporting.

### ***Planning Knowledge Sharing Session***

52. The Risk team are planning a BSB wide knowledge sharing session for 1 February 2018. This will remind colleagues of the basics of regulatory risk management, and will take them through developments over the last 12 months, before focussing on what this means for them. To support this, the Risk team have produced a series of “quick guides” for staff, which will be available after the Knowledge Sharing Session. If Board members are interested in attending, please let us know.
53. Separately, the Risk team are also planning a series of training events with individual teams / directorates. The current plan is for these to be team specific workshops, providing the opportunity for teams to understand the new approach to macro and micro risk assessment and to consider how they would apply them to risks they would expect to manage in their daily work.

### ***Risk Identification***

54. As part of ongoing risk identification / horizon scanning, the Risk team continue to hold internal risk forum meetings and, externally, facilitate arrangements for the cross-regulator risk forum (CRRF). The CRRF met in November and will be meeting again in January 2018.

## **Professional Conduct Department**

### ***Quarter 3 Key Performance Indicator***

55. Performance in Q3 exceeded the corporate target: performance against the corporate KPI (80% of cases completed within the service standards) was 84% in Q3, bringing the year-to-date performance to 81.8%.

### ***Recruitment for barrister members of the Professional Conduct Committee***

56. We are currently advertising for barrister members of the Professional Conduct Committee. We are seeking to appoint barristers with experience across a range of practice areas, with expertise in family, crime and employment law in particular. The current composition of the PCC is that there are 19 lay and 13 barrister members, following a number of the latter reaching the end of their terms in July 2017. Therefore, the recruitment is designed to bring the PCC back to parity.

### ***Reasonable adjustments***

57. As required by the Equalities Act 2010, and in accordance with the BSB’s Reasonable Adjustment policy, we provide reasonable adjustments for those who need support to access the enforcement and disciplinary system. In early January, we implemented an amendment to our case management system which will allow us to produce and report on statistics concerning reasonable adjustments made. This will include frequency of requests, whether made by complainants or barristers, and type/category. This will allow

us more easily to identify any systemic changes we may need to make to improve the accessibility of the system.

### ***Training***

58. The PCD's skills and knowledge training programme is ongoing and a number of training events were carried out in the last two months of 2017.
1. In mid-late November, a number of senior managers attended seminars on Professional Regulation and Improving Decision Making.
  2. Officers from the Assessment and Investigations & Hearings Team recently completed a day-long refresher of investigations training. This covered among other topics; evidence, case analysis, due process, interviewing witnesses and drafting statements, and report writing.
  3. Staff were also provided with an update session on rules of evidence in the disciplinary context. This session focussed on the admissibility of evidence, procedure, recent case law, hearsay, bad character and tribunal expectations.
  4. A specialist costs draftsman provided a very useful training session in December on the rules and practical application of Costs Orders.

### ***Litigation***

59. The PCD is handling three legal cases, as well as having dealt with an application for a judicial review.
60. In respect of a Judicial Review form received on 01 September 2017, the claimant's application for permission to move forward with JR was refused. No costs order was made in the BSB's favour at the paper stage. The claimant withdrew his subsequent application for an oral permission hearing, and we await receiving an order from the court.
61. Judgement in the case before the Supreme Court was handed down on 6 December 2017. The court disagreed with the Court of Appeal's decision that the claim for discrimination was time-barred. The original substantive claim will therefore, in due course, be considered by the High Court.
62. The discrimination claim brought by a disbarred barrister before the Employment Tribunal was heard on 7 December 2017. The case continues but the court has made an "unless order" which requires the Claimant to identify the issues in the case by 18 January 2018 or else the claim will be struck out.
63. Finally, a claim before the county court for discrimination arising from an alleged failure to provide reasonable adjustments, which was received last year but stayed, has now resumed and the BSB will be submitting a defence shortly.

## **Regulatory Assurance Department**

### ***Anti-Money Laundering and Counter Terrorist Financing***

64. The Financial Conduct Authority has been consulting on the method for allocating fees for the new oversight regulator, the Office for Professional Body Anti Money Laundering Supervision (OPBAS), which launches this month. Our response to the consultation is available here:  
[https://www.barstandardsboard.org.uk/media/1912700/2018\\_01\\_04\\_opbas\\_fees\\_consultation\\_bsb\\_response.pdf](https://www.barstandardsboard.org.uk/media/1912700/2018_01_04_opbas_fees_consultation_bsb_response.pdf) A separate consultation will be launched on the level of fees. Preliminary one-to-one meetings with OPBAS will be scheduled later this month.

65. The new joint guidance for the legal sector is still awaiting HM Treasury (HMT) approval. We have been responding to various queries and amendments proposed by HMT and other government departments, and expect that the guidance will be approved very soon.
66. Together with other AML Supervisors, we have been engaging with HMT and OPBAS on the fit and proper checks, specifically the criminality checks, required on those individuals who do work within the Money Laundering Regulations. Supervisors want to ensure that the approach taken is risk-based and proportionate.
67. We are currently waiting for HMT to identify the list of supervisors and “relevant persons” who will be scheduled to meet the Financial Action Taskforce (FATF) assessors when they are onsite for the UK’s Mutual Evaluation Peer Review. The FATF assessors will be conducting their onsite visit 6-22 March 2018. There will be six assessors from Germany, Turkey, Sweden, the USA, Hong Kong and Ireland.

### ***Authorisations***

68. The Review Panel sat on 12 December and considered 3 applications for review. All first instance decisions were upheld, with amendments to conditions being made to one. Assurance measures and robust information gathering mechanisms are in place to ensure the consistency and standard of decision-making is maintained.
69. Since the induction day in mid-September, the APEX adviser has been used on 3 occasions. On an ongoing basis the type of query for which input is being sought and the expertise provided is being captured to ensure knowledge is passed onwards to the executive.
70. Internal Audit Review took place during week commencing 4 December 2017. The pre-report recommendations confirmed the small number of issues already identified by the executive and steps have already been taken to mitigate the risk. Based on the findings an action plan is to be implemented.
71. CRM is now “live” and no issues have been identified, some areas are still under development to further achieve optimum service levels.

### ***Entity Regulation***

72. The entity regulation scheme continues to operate as business-as-usual. There are 21 applications pending assessment. There are 38 authorised and 6 licensed bodies currently regulated by the BSB to provide reserved legal activities.

### ***Training Supervision and Examinations***

73. In terms of business as usual, the team has been setting up meetings with each current BPTC provider to discuss their transitional arrangements for delivery of training between the time the new rules come into force in January 2019 and the time they will be ready to propose new courses. These meetings will take place between February and May; all will be attended by the DG. A lighter, risk-based programme of Annual Monitoring visits is being planned for Spring 2018.
74. Much of the team resource has been directed at the Future Bar Training programme, in particular the development of the Authorisation Framework and the Curriculum and Assessments Review, as noted above. Scheduled meetings with BPTC providers continue to provide opportunities for further consultation.

75. A new Examinations Officer has been recruited for the Examinations team to help address the ongoing additional workload that resulted from the changes to assessments in 2017. She will start in March 2018. The Chair's report for the Summer 2017 sit was published in December 2017; no requests for review were received. Updated mock examinations have been given to Providers for all three centralised assessments.

### ***Quality Assurance***

76. A Project Team bringing together strands of work around Quality Assurance is being established. This will ensure a joined-up, BSB wide approach to Quality Assurance. It is envisaged that the remit of the project will include: the CPD evaluation framework, Youth Court advocacy and what the future looks like following the removal of the rules around QASA from the BSB Handbook. We are meeting with the Legal Services Board on the 23 January 2018 to discuss the removal of the rules.
77. In March, the Board will receive a paper which will provide further detail.

### ***Youth Court Advocacy***

78. Most of the work over the last two months has focussed on integrating relevant parts of this project with strands of FBT work. This has involved meeting with the Education and Training committee, the CAR review group, and a planned meeting with the BPTC providers forum. Following a discussion at Education and Training Committee, a letter is being sent to all pupils in February outlining the changes to the Handbook which will require them to register with the BSB for Youth Court work.
79. A paper has been given to the Board this month regarding the implementation of the rule changes around registering for Youth Court work.
80. We continue to engage with our external stakeholders; last month we met with the Ministry of Justice around both Youth Court Advocacy and Quality Assurance arrangements more widely.

### **Communications and Stakeholder Engagement**

81. Since this report was last prepared for the Board, the following press releases have been issued:
- 23 November: Press release confirming Baroness Blackstone as our new Chair;
  - 24 November: Press release announcing the Board's decision that the civil standard of proof is set to be adopted for professional misconduct proceedings for barristers;
  - 29 November: Press release to announce that the BSB will be taking a new approach towards assuring quality at the Bar and will not therefore be implementing QASA;
  - 1 December: Press release about a barrister who was suspended for two months for failing to comply with a County Court Order;
  - 11 December: Press release to accompany the publication of two new pieces of research designed to help inform Future Bar Training decisions;
  - 12 December: Press release about a barrister suspended for six months for failing to maintain his independence and acting in a way that could undermine public trust in the profession; and
  - 19 December: Press release announcing the appointment of three new lay Board members.



82. The Board will have seen the fortnightly media coverage that the above announcements generated.

***Work in Progress***

83. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- Launch of the new “MyBar” portal;
  - Publication of the annual Bar diversity statistics; and
  - Publication of a new version of the BSB Handbook on 1 February incorporating the new disclosure requirements;
84. The team is also working on the following projects:
- Writing and designing new materials for newly called Barristers to be handed out at Call Night events;
  - Planning communication activities for the ongoing Curriculum and Assessment Review project;
  - Working with the Equality and Access to Justice team with regard to a forthcoming Race Equality event; and
  - Analysing the results of the recent BSB website user experience survey and agreeing the best way forward with regard to the website.

***Online and social media***

85. During November, 30,078 users visited the BSB website with a further 24,784 visiting during December. At the time of writing, we have 18,615 followers on Twitter, 2,892 followers on LinkedIn and 449 followers on Facebook.

**Corporate Services**

***Governance***

86. Recruitment for the three new lay members of the Board concluded in late 2017. Members taking up appointment from 1 January 2018 are Lara Fielden, Kathryn Stone OBE, and Stephen Thornton CBE. Their appointments follow the departures of Rob Behrens (with effect from 30 March 2017), Rolande Anderson and Anne Wright CBE (both with effect from 31 December 2017, at the conclusions of their second three-year terms). An initial induction session for the new members is planned for the week prior to this Board meeting.
87. The Governance, Risk and Audit Committee is developing a structured programme of Board training, to be considered by the Board at its next meeting. This will include additional induction activities for those newly appointed, as well as training activities for the Board in entirety.
88. The Board has revised its scheme of delegations, to more clearly and simply state the powers delegated to staff, to ensure that powers are delegated to an appropriate level, and for greater clarity and transparency. The Board agreed the changes in late November, to take effect from 1 January 2018. The revised scheme is published on the website, within the Governance Manual.

89. We are about to commence the next round of recruitment to APEX, having conducted a review of our needs for expertise in the coming years. We will seek to recruit a mixture of lay and legally qualified experts, to provide advice in areas such as regulatory policy and theory, information law and data protection, statistical analysis, and Anti-Money Laundering legislation. We anticipate advertising by the end of February with the intention of making appointments in early June.
90. We are conducting an annual review with existing APEX members (those who commenced on 1 January 2017), using a paper based exercise deemed proportionate for their level of engagement with us. We will use the outcome of the review to consider any enhancements to our processes for engagement of APEX members and to ensure we continue to best utilise the expertise available through this mechanism.

**Resources Group**

91. The quarterly performance review was undertaken by the BSB / Bar Council senior leadership team on 11 January. Performance in most areas has been satisfactory but work to improve financial transaction processing continues.

**Vanessa Davies**  
**Director General BSB**  
**January 2018**