

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



Meeting of the Bar Standards Board

Thursday 25 October 2018, 5.00 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

			Page
1.	Welcome / announcements (5.00 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes		
	• 27 September 2018	Annex A	3-5
5.	a) Matters arising and action points	Annex B	7
	b) Forward agenda	Annex C	9
6.	Modernising regulatory-decision making – Approval of revised Standing Orders and relevant BSB Handbook Regulations (5.05 pm)	BSB 052 (18)	Sara Jagger 11-74
7.	FBT: Approval of new Part 4 Qualification Rules (5.25 pm)	BSB 053 (18)	Ewen Macleod 75-88
8.	Annual report of the Governance, Risk & Audit Committee (GRA) (5.50 pm)	BSB 054 (18)	Nicola Sawford 89-93
9.	Chair's Report on Visits and External Meetings from October 2018 (*)	BSB 055 (18)	Chair 95
10.	Any other business (6.00 pm)		
11.	Date of next meeting		
	• Thursday 22 November 2018		
12.	Private Session		

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
18 October 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.*

BSB 251018

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 27 September 2018, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Baroness Tessa Blackstone (Chair)
Naomi Ellenbogen QC (Vice Chair)
Alison Alden OBE
Aidan Christie QC (items 6-11)
Lara Fielden
Steven Haines
Zoe McLeod
Nicola Sawford
Adam Solomon QC
Stephen Thornton CBE
- By invitation:** Malcolm Cree (Chief Executive, Bar Council) – *via Star Leaf*
Richard Cullen (Director of Finance, Resource Group)
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
Andrew Walker QC (Chair, Bar Council)
- BSB Executive in attendance:** Dan Burraway (Corporate Support Manager)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
- Press:** Max Walters (Law Society Gazette)
Neil Rose (Legal Futures)

Item 1 – Welcome

1. Tessa Blackstone welcomed members to the meeting.

Item 2 – Apologies

- Justine Davidge
- Andrew Mitchell QC
- Kathryn Stone OBE
- Anu Thompson
- Richard Atkins QC (Vice Chair, Bar Council)
- James Wakefield (Director, COIC)
- Rebecca Forbes (Governance Manager)

Item 3 – Members' interests and hospitality

2. None.

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

3. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 19 July 2018.

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

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

Item 5b – Forward Agenda (Annex C)

5. Members noted the forward agenda list. Following a discussion in private session, it also agreed to move the item on communications and public engagement strategy to the November Board meeting.

**JP to
note**

Item 6 – Annual Enforcement Report 2017-18

BSB 045 (18)

6. Members discussed the Annual Enforcement Report. The salient points were:
- the report is encouraging insofar as it demonstrates efficiency gains despite an increased workload in the Professional Conduct Department;
 - the increase in complaints from litigants in person is significant. Most were closed at assessment stage suggesting the role of the barrister is still not sufficiently understood by the wider public. This is a concern;
 - there is a dilemma to resolve in regulating barristers' conduct in the context of social media;
 - the time taken to conclude disciplinary tribunal cases has risen and needs to be reduced. We should consider setting appropriate targets and monitor performance accordingly.
7. In response, the following comments were made:
- we need a pre-emptive and collaborative approach with stakeholders to improve public understanding of the legal system. The Legal Choices website could be expanded in this regard and we could contact charities that provide legal help to litigants in person;
 - several factors have affected turnaround times for tribunal cases (eg increased complexity and adjournments due to ill health. The latter impacts the end to end time, even though the administration of the case may have been within target).
8. For the future, the Board agreed to receive a summary version only of the annual enforcement report. The PRP Committee will be tasked with scrutinising the document in detail. Members also asked that:
- the Board is kept informed of any lessons learned and proposed action;
 - the detailed report remains in the public domain.
9. **AGREED**
- | | | |
|----|---|----------------------------|
| a) | to note the Annual Enforcement Report 2017-18 and approve its publication on the BSB website. | AL |
| b) | to work with stakeholders so that prior to taking proceedings, litigants-in-person have access to key information about the UK legal system including the adversarial nature of the barrister's role. | WW |
| c) | to address the time taken to conclude disciplinary tribunal eg by considering relevant targets and / or revised monitoring arrangements | SJ to
note |
| d) | that, in future, the enforcement report be considered in detail by the Planning, Resources and Performance Committee with a summary subsequently presented to the Board. | SJ to
note |
| e) | that this summary be incorporated into the Board's Annual Report but that the detailed version also be kept in the public domain. | AL / WW
to note |

Item 7 – Chair’s Report on Visits and Meetings: August - September 2018

BSB 046 (18)

10. The Board noted the report.

Item 8 – The Code of Conduct for BSB Members

BSB 047 (18)

11. The Board approved the Code subject to a clarification to paragraph 5.6 ie that it should account for circumstances where breaching a confidence would clearly be in the wider public interest, and / or would uphold the law, and should therefore be permissible.

12. **AGREED**

to approve and publish the Code of Conduct for BSB Members subject to the above amendment.

RF

Item 9 – Any Other Business

13. None.

Item 10 – Dates of next meetings

14. • Thursday 11 October 2018 (joint with LSB)
• Thursday 25 October 2018 (full Board meeting)

Item 11 – Private Session

15. 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 – 19 July 2018
 - (2) Matters arising and action points – Part 2
 - (3) Budget Bid for 2019-20 and outline strategic plan
 - (4) GRA Update Report
 - (5) Proposed Constitutional amendments
 - (6) Schedule of Board meetings: Jan 2019-Mar 2020
 - (7) Any other private business

16. The meeting finished at 5.25 pm.

BSB – List of Part 1 Actions
25 October 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
9a (27/09/18)	publish the Annual Enforcement Report 2017-18 on the BSB website	Andrew Lamberti	immediate	28/09/18	Completed
9b (27/09/18)	engage with stakeholders to improve access to information for litigants-in-person about the UK legal system including the adversarial nature of the barrister's role	Wilf White	before Aug 19	18/10/18	Ongoing
12 (27/09/18)	amend the Code of Conduct for BSB Members and publish on the BSB website	Rebecca Forbes	before 25 Oct 18	18/10/18	In hand for completion by due date – amendment to be confirmed with member who made suggestion, and revised Code will then be published and disseminated.
11a & d (27/09/18) – feedback from consultation	prepare the detailed public consultation response paper for “Modernising Regulatory Decision Making” and then the new regulation and revised Standing Orders to reflect Board decisions	Sara Jagger	by 20 Sept 18	9/10/18	Completed - response paper was published on 6 October
				14/09/18	In hand – Slight delay, response paper will be posted by 28 September New regulations and revised Standing Orders will be put to the Board for approval in October

Forward Agendas**Thursday 22 Nov 18**

- E&T Committee Annual Report
- Annual Report of Authorisation Review Panels
- Brexit update
- Thematic report on compliance with CPD rules
- Review of Communications and Public Engagement Strategy

Thursday 13 Dec 2018 (Board Away Day)

- Joint paper on Risk Outlook 2019 and BSB strategy

Thursday 31 Jan 19

- CMA: response to rule change consultation on new transparency requirements
- Annual Diversity data report
- Publication of diversity data (sexual orientation and religion and belief)
- Strategic update from the Director General

Thursday 28 Mar 19

- Business Plan for 2019-20
- BSB Research strategy 2019-21
- EIA of Equality Rules
- Regulatory Operations Programme – update on readiness for implementation (provisional)
- Consolidated Risk Register
- Scope of practice consultation
- Strategic update from the Director General

Thursday 2 May 19 (BOARD AWAY DAY)

- Risk Index 2019 and appetite setting

Thursday 13 June 19 Annual Performance Report – PRP Committee

- Strategic update from the Director General
- Corporate Risk Report (summary)

Thursday 18 Jul 19

- 2018/19 Enforcement Report (summary)

Thursday 26 Sept 19

- Strategic update from the Director General
- Corporate Risk Report (summary)

Thursday 31 Oct 19 Annual report of Authorisations Review Panels

- Consolidated Risk Report
- GRA Annual Report

Thursday 28 Nov 19 (BOARD AWAY DAY)**Thursday 30 Jan 20**

- Strategic update from the Director General

Thursday 26 Mar 20

- Strategic update from the Director General
- Consolidated Risk Report

Meeting:	Bar Standards Board	Date:	Thursday 25 October 2018
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Title:	Modernising Regulatory Decision Making – Approval of revised Standing Orders and relevant BSB Handbook changes
Author:	Sara Jagger
Post:	Director of Professional Conduct

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion: <input type="checkbox"/>	Noting: <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Recommendation(s)

The Board is asked to:

- i) **Approve** the revised BSB Standing Orders 2018 to come into force on 5 November 2018 (see Annex A), and the BSB Standing Orders 2019 to come into force on 1 June 2019 (Annex B);
- ii) Approve the attached Enforcement Decision Regulations (Annex C) and the associated consequential amendments to the BSB Handbook (Annex D) for approval by the Legal Services Board; and
- iii) **Authorise** the Director General of the BSB to approve, if necessary, any further minor amendments to the Enforcement Decisions Regulations and the associated consequential amendments, in advance of the LSB application and/or in response to enquiries from the LSB once the application has been made.

Executive Summary

1. There no policy decisions for the Board to take. All policy decisions regarding the operation of the new regulatory decision-making regime (which covers both the creation of a Centralised Assessment Team and an Independent Decision-Making Body) have previously been agreed by the Board. The revised Standing Orders, the new Enforcement Decision Regulations and the associated consequential changes to the BSB Handbook, are merely designed to affect those policy decisions.
2. There are two sets of Standing Orders for the Board to approve. The first (Standing Orders 2018), will apply only on an interim basis and are due to be introduced on 5 November 2018. They are necessary to allow the Independent Decision-Making Body (IDB) to be established but without decision-making powers so that an interim IDB Chair can be appointed and the recruitment of the membership can be carried out (see paragraphs 10-11 of the paper)
3. The second set of Standing Orders (BSB Standing Orders 2019), will replace the first and come into effect on 1 June 2019. They will give the IDB its standing powers and allow it to carry out the necessary decision-making functions (see paragraph 12 of the paper).
4. However, both sets of Standing Orders also include other amendments arising from the Board's previous agreement on alterations to the BSB's Constitution. These revisions are unrelated to the new decision-making regime but are covered in this paper to avoid the need for multiple versions of the revised Standing Orders to be considered and approved by the Board.

5. The changes to the BSB Handbook consist of introducing a new Section A of Part 5 of the BSB Handbook, known as the “Enforcement Decision Regulations” (EDRs). The EDRs will replace the Complaints Regulations which currently form Section A of Part 5 (see paragraphs 17-23 of the paper). Consequential changes to other parts of the BSB Handbook will be required to reflect the terms of the EDRs and those consequential changes are set out at Annex D.

Risk

The Board has previously considered in detail the risks to the regulatory objectives of retaining the current decision-making regime/Constitution and making the agreed changes. The Board approvals now required are designed to affect the previous policy decisions taken.

Resources (Finance, IT, HR)

The financial, IT and HR resources have been considered previously by the Executive and the Board as part of the policy decision-making process and the budget discussions. The amendments to the relevant constitutional and regulatory provisions reflect those previous decisions.

Equality & Diversity

Equality and diversity issues that might arise from creating CAT and the IDB were subject to an Equality Impact Assessment and such issues formed part of the public consultation: the results of which were previously considered by the Board. The revisions to the Standing Orders and the introduction of the EDRs are mechanisms to affect the previously agreed changes and do not, in themselves, give rise to any separate equality and diversity issues.

Modernising regulatory-decision making – Approval of revised Standing Orders and relevant BSB Handbook Regulations

Status: For **discussion**, **noting** and **decision**.

1. This paper presents, for approval by the Board, the amendments that are required to the BSB’s constitutional and regulatory arrangements to allow for the introduction of the previously agreed changes to the BSB’s regulatory decision-making regime. Such changes involve revisions to the BSB’s Standing Orders and the BSB Handbook to allow for the creation of an Independent Decision-Making Body (IDB) and the operation of a Centralised Assessment Team. This paper also includes changes to the Standing Orders flowing from the Board’s previous decision to change the terms of the BSB’s Constitution.

Recommendations

2. The Board is asked to:
 - i) **Approve** the revised BSB Standing Orders 2018 to come into force on 5 November 2018 (Annex A), and the BSB Standing Orders 2019 to come into force on 1 June 2019 (Annex B);
 - ii) **Approve** the Enforcement Decision Regulations (Annex C) and the associated consequential amendments to the BSB Handbook (Annex D) for approval by the Legal Services Board; and
 - iii) **Authorise** the Director General of the BSB to approve, if necessary, any further minor amendments to the Enforcement Decisions Regulations and the associated consequential amendments, in advance of the LSB application and/or in response to enquiries from the LSB once the application has been made.

Background

3. The Board has previously considered and agreed the policy issues in relation to the changes to the BSB’s decision-making regime arising from the proposals to modernise the system. Those proposals covered, in the main, the creation of a Centralised Assessment Team (CAT) and an Independent Decision-Making Body (IDB) as well as ceasing to use the terminology of complaints. The policy proposals were subject of a public consultation¹ and subsequent Board agreement, in July 2018, on the final policy approach in light of the consultation responses. Therefore, no policy issues arise in relation to the contents of this paper.
4. To implement the agreed approach to, and structure of, the future decision-regime, revisions to the BSB’s Standing Orders and Part 5 of the BSB Handbook are required as well as associated consequential changes to other parts of the BSB Handbook. Further, as a consequence of the Board’s previous decision to make changes to the BSB Constitution, other amendments to the Standing Orders are also included in this paper for approval.
5. The revisions to the Standing Orders require only Board approval (but see paragraph 13 below). However, because the changes to the BSB Handbook involve changes to the BSB’s “regulatory arrangements”, they will require final approval by the Legal Services Board (LSB). The relevant application to the LSB is scheduled to be submitted in January

¹ Modernising Regulatory Decision Making
https://www.barstandardsboard.org.uk/media/1924546/modernising_regulatory_decision_making_-_consultation_paper.pdf

2019 to ensure the new decision-making regime can commence on 1 June 2019 as planned

6. The various changes to the constitutional and regulatory arrangements are summarised in the paragraphs below. However, the Board should note that no substantive changes to the BSB Handbook are required in relation decisions taken by Authorisation Review Panels. While these panels will be subsumed into the IDB, the relevant changes were made in 2017 when Authorisations Review Panels were created. The only amendments required are limited to changing the nomenclature by replacing references to Authorisations Review Panels with references to the IDB.

Standing Orders

7. The revisions to the Standing Orders need to be made in two stages with an interim/temporary set of Standing Orders that will come into effect on 5 November 2018 (BSB Standing Orders 2018 - Annex A) and a further set of Standing Orders, to be agreed now, but not due to come into effect until 1 June 2019 (BSB Standing Orders 2019 - Annex B).
8. The relevant changes in each are outlined in the paragraphs below.

Interim Standing Orders (BSB Standing Orders 2018)

9. It is generally accepted that it is good practice for the Chair of a new independent body to be involved in the recruitment of its members. Therefore, it has been agreed that the Chair of the IDB should be appointed before the membership is recruited. Therefore, the IDB must be created, if only in name, before the full body to allow the Chair to be appointed. To achieve this, a set of 'interim' Standing Orders is required i.e. the BSB Standing Orders 2018, which are attached at Annex C.
10. The interim BSB Standing Orders 2018, subject to Board approval, will come into effect on 5 November 2018. Those Standing Orders will:
 - create the IDB but restrict its powers such that they cannot be exercised until 1 June 2019;
 - establish the role of the IDB Chair;
 - give the BSB Chair the ability to appoint an IDB Chair(s) during the first 12 months of the IDB's existence without requiring a recruitment process - this allows for a transitional period where an experienced person, with knowledge of the current systems, can be appointed. The current thinking is that the existing PCC Chair should be appointed to the post in the interests of knowledge retention and stability; and
 - retain all the provisions relating to the functions and powers of the PCC to allow it to continue existing until the IDB takes on its full powers.

Permanent Standing Orders (BSB Standing Orders 2019)

11. The permanent Standing Orders, as attached at Annex B, will come into effect on 1 June 2019, subject to Board approval, and will:

- remove the provisions relating to the PCC as that body will cease to exist on 30 May 2019 (or any other revised date agreed by the Board);
- include reporting requirements necessary to monitor the performance of the IDB; and
- include the restrictions necessary to prevent the IDB Chair from holding a seat on the Board.

Standing Orders amendments arising from changes to the BSB Constitution

12. Both revised sets of Standing Orders, set out Annexes A and B, also include amendments arising from the Board's previous agreed changes to the BSB Constitution (unrelated to the regulatory decision-making changes). The amendments to the Constitution have not yet been formally agreed by the Bar Council but they will have been put to the General Management Committee (GMC) on 22 October prior the Board's meeting on 25 October. Thereafter, the Constitution changes will be put to the "Bar Council" (BC) on 3 November.
13. In light of this timetable, it is considered reasonable for the Board to agree the relevant associated changes to the Standing Orders now. This will avoid the need to revert to the Board for approval of further revised Standing Orders following the agreement to the changes to the Constitution. The risk in this approach is that the changes to the Constitution will not be agreed by the GMC and/or the BC but this risk is very low
14. Nevertheless, to mitigate any risk of the changes not being approved, the Director General and the BSB's Governance Manager will attend the GMC meeting to address any issues about the proposed amendments to the Constitution.
15. In summary, the proposed amendments to the Standing Orders arising from the changes to the Constitution are to:
 - a) remove the provision that the Chair of the BSB can agree that any other person or persons nominated by the Chair of the Bar Council may attend and speak (but not vote) at any public session of a meeting of the Board. We have deleted the provision in the Constitution that gave the right to attend and speak to any person or persons nominated by the Chair of the Bar Council, so this corresponding clause in Standing Orders also been removed;
 - b) amend the quorum requirements for Board meetings to mirror the proposed amendments to the Constitution, by specifying there must be at least three lay members (rather than two); and
 - c) delete the requirement that the independent member of selection panels be accredited by the Office of the Commissioner of Public Appointments. Such accreditation no longer exists, and the previous Code of Practice of the Commissioner for Public Appointments has been replaced by the Government's Governance Code on Public Appointments, so there is now reference to that.

BSB Handbook changes

16. In relation to the changes to the BSB Handbook arising from the Board's policy decisions to introduce a revised decision-making regime, the Board previously had sight of the draft regulations to support the new decision-making regime when it approved the draft

consultation paper on “Modernising Regulatory Decision-Making” back in February 2018. The consultation paper asked for comments on the draft regulations, which were attached as an Annex to the paper.

17. Since then the Board has considered the responses to the consultation (July 2018) including comments on the relevant regulations and agreed where amendments should be made.
18. The attached final version of the “Enforcement Decision Regulations” (Annex C), will replace the current Complaint Regulations and will form an entirely new Part 5, Section A of the BSB Handbook. The Enforcement Decision Regulations (EDRs) now presented for approval are almost identical to the version which was attached to the consultation paper. Where amends have been made in light of the Board’s consideration of the consultation responses, these are tracked. There have also been other minor changes made as a result of the final review of the detailed wording and these are also tracked in Annex C for the Board’s approval.
19. The EDRs are an entirely new set of regulations that replace the current Complaints Regulations and should be approved on this basis. Nevertheless, significant parts of the EDRs retain provisions from the Complaints Regulations except for the designation of the decision maker.
20. As a reminder for the Board, the main changes to the decision-making regime, as contained in the EDRs, are summarised in the paragraphs below.
21. The EDRs reflect the following agreed substantive changes to the current decision-making regime:
 - a) **Creation of the role of Commissioner:** this agreed construct allows decision-making powers to be vested directly in the Executive as opposed to the current regime whereby all decision-making powers are vested in the PCC (the role will initially be held by the Director General but could in future, if necessary, be held by a separate post-holder);
 - b) **Changes to terminology:** the EDRs, as agreed, do not refer to “complaints” but instead use the terms “reports” and “allegations”: the former refers to any information received about those the BSB regulates, the latter to “reports” that reveal a potential breach of the BSB Handbook assessed as requiring formal investigation (see rE12);
 - c) **Removing the need for independent decision-making at the initial assessment stage:** there are no specific regulations covering the handling of “reports” when first received. Instead, the Commissioner has been given the general power to gather information for the purposes of assessing whether there has been a potential breach of the BSB Handbook (see rE2.1);
 - d) **Test for deciding whether a “report” should be treated as an allegation;** slightly revised threshold criteria for deciding whether a “report” should be investigated and thereby become an “allegation” have been included to make it more explicit that decisions will be risk based and reports may not be pursued if it is not in the public interest or the risk is low (see rE12 and rE13), These revised threshold criteria will be underpinned by publicly available policy and decision-making guidance documents;

- e) **Time limit for submission of information:** as agreed by the Board, the time limit of 12 months for submission of “reports” (currently complaints) is not included in the EDRs. Instead, decisions will be based on whether the “report” reveals information that is a risk to the regulatory objectives and can be fairly and properly investigated (see rE13). The Board agreed to review the impact of this change, if any, after 18 months;
- f) **Power to expedite the service of charges:** as agreed, this power has been removed because it is rarely, if ever used; and
- g) **Attendance on Chair:** as agreed, the power to order a regulated person to attend on the Chair of the independent decision-making body has been removed. The ability for an IDB panel to give advice is still included (see rE24), but such advice will be provided only in writing.
22. The EDRS also retain the following parts of the current decision-making regime except that the powers to take decisions will be vested directly, and solely, in the Executive:
- **referring “reports” to other organisations** see EDR rE4-rE11);
 - **conduct of investigations** (see EDR rE15-rE18).
 - **confidentiality:** ad-hoc decisions on disclosing the existence of reports and/or allegations will be subject to a revised test applied by the Commissioner –rather than allowing for disclosure “for any other good reason”, the test will be “if the Commissioner considers it is in the public interest” (see EDR rE60-rE61).
23. The EDRs retain the following parts of the current decision-making regime except that the powers to take decisions will be vested both in the Executive and the IDB with published policies setting out the criteria for who should take the decision:
- **Imposition of administrative sanctions** (see EDR rE26-rE32).
 - **Referral to disciplinary action:** (see EDR rE33-rE51)
 - **Reconsiderations of decisions:** (see EDR rE52 to rE59)

Consequential amendments

24. In addition to the draft EDRs, a table detailing the necessary consequential amendments to the BSB Handbook can be found at Annex D to this paper. These changes, although lengthy, are relatively minor, and all stem directly from the introduction of the EDRs.

Lead responsibility:

Sara Jagger, Director of Professional Conduct
Rebecca Forbes, Governance Manager

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**STANDING ORDERS
FOR THE BAR STANDARDS BOARD**

FOREWORD

The following Standing Orders are issued under the Authority of paragraph 14(1) of the Bar Standards Board Constitution.

This edition of the Standing Orders came into effect on ~~5+ September~~ November 2018~~7~~

PART 1 – INTRODUCTION

Definitions

1. In these Standing Orders, unless the context requires otherwise:

“The Bar Council” means the Council of the General Council of the Bar of England and Wales.

“The Bar Standards Board” and “BSB” means the Board, Committees established under these Standing Orders and any individual or group exercising the delegated powers of the Board.

“Board” means the Board of the BSB established under Paragraph 2 of the BSB's Constitution.

“BSB staff” means the employees of the Bar Council appointed by the BSB in accordance with paragraph 6169.

“BTAS” means the Bar Tribunals and Adjudication Service, an independent body set up by the Council of the Inns of Court to appoint and administer Disciplinary Tribunals and other relevant panels on behalf of the BSB.

“Committee” means a Committee established by the BSB pursuant to Part 4 of these Standing Orders.

“IDB” means the Independent Decision-Making Body which is collectively those appointed by the BSB pursuant to Part 4 of these Standing Orders.

“IDP” means the Independent Decision-Making Panel, a panel consisting of a minimum of three members of the Independent Decision-Making Body to take relevant decisions as provided in the BSB Handbook.

~~“CPA” means the Commissioner for Public Appointments.~~

“Internal Governance Rules” means the Internal Governance Rules made by the Legal Services Board.

“Lay person” has the meaning given in paragraph 2(4) of Schedule 1 to the Legal Services Act 2007 and “lay member” has a corresponding meaning.

“Practising barrister” means a barrister holding a current practising certificate issued by the ~~Bar Council~~ General Council of the Bar and the Bar Standards Board.

“Regulatory arrangements” has the meaning given in section 21 of the Legal Services Act 2007.

“Regulatory functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Representative functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Authorisations Review Panel” means a panel of three members convened from a pool of appointed panellists, to consider applications for review made under Part 3 C6, Part 3 E11,

or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook.

“Seven Principles of Public Life” means the principles, also known as the “Nolan Principles”, as laid down in the Committee on Standards in Public Life’s thirteenth report “Standards Matter” and referred to in paragraph B4 of the Constitution and reproduced in Annex 1.

"Task Completion Group" means an ad hoc group established by the BSB to complete a specific task or tasks. At the time of the establishment the BSB shall specify a time limit for completion of the tasks. Such time can only be extended by the BSB.

Any terms used in the Legal Services Act 2007 have the same meaning as in that Act.

PART 2 – THE BAR STANDARDS BOARD

General

2. The BSB is committed to:

- a. providing regulation of advocacy and expert legal advice in the public interest;
- b. acting in a way that is compatible with the regulatory objectives, having regard to the regulatory principles as required by section 28 of the Legal Services Act 2007;
- c. conducting its business in harmony with the Seven Principles of Public Life;
- d. making its regulatory decisions independently of the Bar Council;
- e. consulting with the Bar Council as required by the Legal Services Act 2007 and the Internal Governance Rules;
- f. undertaking regulatory functions only and not undertaking any representative functions;
- g. working cooperatively with the Inns of Court, the Council of the Inns of Court and BTAS; and
- h. conducting its business in accordance with its Statement of Governance Principles as published by the BSB.

Consultation on exercise of regulatory functions

3. When proposing to make or alter the regulatory arrangements, and in other cases where it considers it appropriate, the BSB will normally consult, in the way it considers appropriate:
 - a. The regulated community (including its representative body and sections of the Bar); and
 - b. Other interested parties (including for example, the public, other approved regulators, the judiciary, barristers’ clerks, academic providers and other education providers) as it considers appropriate.
4. In relation to proposals to make or alter the regulatory arrangements, the BSB will normally allow a period of three months for consultation before a decision is taken.

Saving for defects etc

5. All acts done in good faith by the BSB shall (so far as is lawful), notwithstanding any defect, be as valid as if there were no such defect or error.

PART 3 – OBLIGATIONS TO THE BAR COUNCIL

6. The BSB will make information and papers available to the Bar Council for the purpose of the Bar Council fulfilling its function as an Approved Regulator including its obligations under the Legal Services Board's Internal Governance Rules as made by them from time to time.

PART 4 – COMMITTEES AND AUTHORISATIONS REVIEW PANELS and IDB**Committees of the BSB**

7. The Board establishes the following Committees whose terms of reference and membership are set out in Annex 2:
 - a. The Education and Training Committee;
 - b. The Governance, Risk and Audit Committee;
 - c. The Planning, Resources and Performance Committee; and
 - d. The Professional Conduct Committee.
8. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of all Committees.
9. Without prejudice to the power of the Board to amend Annex 2 on its own initiative, a Committee may at any time propose an amendment to its terms of reference or membership for consideration by the Board.
10. Save where provided for in these Standing Orders each Committee may determine its own composition and procedure subject to the provisions of Part ~~5-6~~ and the following general requirements:
 - a. Each Committee is to have a minimum of a Chair and a Vice Chair. Wherever possible, at least one of these two office holders should be a member of the Board;
 - b. At least a third of the Committee's membership must be lay persons;
 - c. At least a third of the Committee's membership must be barristers;
 - d. Each Committee must adopt and maintain rules of procedure on an annual basis addressing meeting arrangements (including frequency of meetings and arrangements for urgent business outside regular meetings);
 - e. The Chair of each Committee or, in that person's absence, a Vice Chair, shall take the chair at every meeting of the Committee. In the absence of the Chair and any Vice Chair, or where an interest has been declared by them for a specific item only, the members present may proceed to elect a chair from among their number for the purposes of that meeting or that item; and
 - f. Members of a Committee shall be appointed and reappointed in accordance with the

Procedures set out in Annex 3.

The IDB

11. The Board establishes the IDB whose terms of reference are set out in Annex 2e on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.
12. The IDB shall have a minimum of a Chair and a Vice-Chair and be comprised of a membership of lay person and barrister members.
13. Members of the IDB shall be appointed and re-appointed in accordance with the procedures and terms set out in Annex 3b.

Authorisations Review Panels of the BSB

- ~~14.14.~~ The BSB may establish Authorisations Review Panels on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.
15. Authorisations Review Panels are convened to ensure that all requests for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook are determined fairly, efficiently and effectively, in accordance with relevant regulations and guidelines.

Restrictions on Committee, Authorisation Review Panel and IDB Membership

- ~~12.16.~~ Authorisations Review Panel members may not hold office as a member of the Board.
- ~~13.17.~~ A member of the Bar Council or any of its representative committees may not hold office as Chair, Vice Chair or as a member of:
- a. the Board;
 - b. any of the BSB's committees; ~~or~~
 - c. Authorisations Review Panels; or
 - ~~e-d.~~ The IDB. ~~—~~
- ~~14.18.~~ A person shall cease to be a BSB Committee, ~~or~~ Authorisations Review Panel or IDB member if:
- a. the period for which they were appointed expires (and their appointment is not renewed);
 - b. they resign their membership by notice in writing;
 - c. they were appointed as a lay person and cease to be a lay person;
 - d. they were appointed as a practising barrister and cease to be a practising barrister or become a member of the Bar Council or one of its representative committees;
 - e. they fail to attend four or more meetings in any rolling 12-month period and the Committee or Board resolves that they should cease to be a member;

- f. the Board resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise); or
- g. the Board resolves to disestablish or substantively restructure a Committee of which a person is a member so as to be inconsistent with continued office by that person, upon three months' notice.

~~15-19.~~ Committees and the IDB may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.

Reports to the Board

~~16-20.~~ A Committee must report to the Board at least annually but as often as required by the Board.

~~17-21.~~ A report on the outcomes of matters considered by Authorisations Review Panels must be submitted to the Board at least annually but as often as required by the Board.

Payments to members

~~18-22.~~ The BSB may decide to pay fees and expenses to members of the Board or of Committees or of Authorisations Review Panels or of the IDB on terms it may set.

~~Obligations of members~~

~~23. All Board and Committee and Authorisation Review Panel and IDB members are subject to continuing satisfactory performance and compliance with the Standing Orders and Governance Manual. Such persons may be removed from office for failing to meet these obligations, based on the reviews outlined in paragraph 24 or any other ad hoc reviews of individual members that the Board or the Chair of the Board or the Chair of the Committee or the Chair of the IDB determines are required.~~

~~Board and Committee and Authorisations Review Panel members are subject to continuing satisfactory performance and compliance with the Standing Orders and Governance Manual. Such persons may be removed from office for failing to meet these obligations, based on the reviews outlined in paragraph 21 or any other ad hoc reviews of individual members that the Board or the Chair of the Board or Committee determines are required.~~

~~19-24.~~ All Board and Committee and Authorisations Review Panel and IDB members are subject to a minimum of a review of performance within 18 months of appointment and a review of performance preceding any reappointment decision.

PART 5 – BSB ADVISORY BODIES

~~20-25.~~ The BSB may appoint a Task Completion Group on such terms as it considers appropriate.

~~21-26.~~ Task Completion Groups may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.

~~22-27.~~ The BSB may establish an Advisory Pool of Experts on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.

~~23-28.~~ A member of the Bar Council or any of its representative committees may not be appointed as a member of:

- a. Task Completion Groups; or
- b. the Advisory Pool of Experts.

Payments to members

~~24-29.~~ The BSB may decide to pay fees and expenses to members of Task Completion Groups or of the Advisory Pool of Experts on terms it may set.

PART 6 – PROCEEDINGS OF THE BOARD AND ITS COMMITTEES AND AUTHORISATIONS REVIEW PANELS

Meetings

~~25-30.~~ The Board must meet at least six times in a 12-month period.

~~26-31.~~ If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone, videoconference or email if necessary.

~~27-32.~~ Each Board meeting may be separated into public and private sessions.

~~28-33.~~ Committee meetings are held in private and the frequency of such meetings is to be determined by the Committee.

~~29-34.~~ Authorisations Review Panel meetings are held in private and the frequency of such meetings is to be determined by the BSB.

Attendance at meetings

~~30-35.~~ The Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court are entitled to attend and speak (but not vote) at any public session of a meeting of the Board. ~~The Chair of the BSB may also agree that any other person or persons nominated by the Chair of the Bar Council may attend and speak (but not vote) at any public session of a meeting of the Board.~~

~~31-36.~~ The BSB may invite the Chair of the Bar Council and ~~any person or persons nominated by the Chair of the Bar Council, and~~ a person nominated by the President of the Council of the Inns of Court, to attend all or part of the Board's private sessions. Such invitation shall be in accordance with the Protocol for ensuring regulatory independence as agreed and adopted by the Bar Council and the BSB.

~~32-37.~~ If a Committee Chair is not a Board member, the Committee Chair has ex-officio rights to attend and speak (but not vote) at any public session of a meeting of the Board and, at the invitation of the Chair, at all or part of any private session.

~~33-38.~~ The Board or a Committee may at any time invite any person to attend their meetings in an advisory or consultative capacity.

Quorum

~~34-39.~~ The quorum for a Board meeting is five members of whom at least ~~two~~ three must be lay members and at least two must be barrister members.

~~35-40.~~ No business may be transacted at any meeting of a BSB Committee unless one third of its appointed members are present, in person or by telephone or videoconference (subject to paragraph ~~39~~40).

~~36-41.~~ If a vote is required by the Board or a Committee, decisions must be made by simple majority. The Chair will have a casting vote in the event of a tie.

~~37-42.~~ Either the Chair or the Vice Chair must be present at each meeting of the Board unless the Board resolves to dispense with that requirement for a particular meeting.

~~38-43.~~ In the case of the Professional Conduct Committee, no business may be transacted at any meeting unless one sixth of the members are present of whom at least two must be practising barristers and at least two must be lay members.

~~39-44.~~ No business may be transacted at any meeting of an Authorisations Review Panel unless three members are present, of whom two must be lay members and one must be a barrister member.

Minutes

~~40-45.~~ Decisions made by the Board and Committees and Authorisations Review Panels must be recorded in writing.

~~41-46.~~ Minutes of the decisions taken and where appropriate the proceedings of each meeting of the Board and its Committees shall be drawn up and approved at the next appropriate meeting of the Board or the Committee.

Written resolutions

~~42-47.~~ A decision taken outside a meeting of the Board or a Committee is valid if:

- a. reasonable notice of the matter to be decided has been given to all members of the Board or the Committee;
- b. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote;
- c. the decision is recorded in a single written document signed by at least two thirds of members or approved by email by at least two thirds of members; and;
- d. the decision is formally ratified at the next meeting and appears in the minutes of that meeting.

~~43-48.~~ A decision taken outside a meeting of an Authorisations Review Panel is valid if:

- e. reasonable notice of the matter to be decided has been given to at least three Authorisations Review Panel members;
- f. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote; and
- g. the decision is recorded in a single written document signed by at least three members.

Agenda papers

~~44-49.~~ The agenda and papers for any meeting of the Board or a Committee or an Authorisations Review Panel shall be sent to its members at least four working days before a meeting. With the consent of the Chair or Vice Chair shorter notice may be given.

Publication of agendas, papers and minutes by the BSB

~~45-50.~~ The Board may decide which of the papers considered at its meetings should be made public after each Board meeting.

~~46-51.~~ The Board may also publish its agenda and minutes of its meetings.

~~47-52.~~ There is a presumption in favour of publication of Board papers unless the Board considers there is good reason not to do so.

PART 6A – PROCEEDINGS OF IDPs**Meetings**

~~53.~~ The IDP meetings are held in private

~~54.~~ IDP meetings can be in person, by email, by telephone, or videoconference and the frequency of such meetings is to be determined by the BSB.

~~55.~~ Each IDP meeting must have a minimum of three members, drawn from the IDB membership, and must have a lay majority of at least one.

~~56.~~ An IDP may at any time invite any person to attend their meetings in an advisory or consultative capacity.

~~57.~~ Decisions made by an IDP must be recorded in writing.

PART 7 – MEMBERS' INTERESTS

~~48-58.~~ The Board must establish and maintain policies on declarations of interest and on offers and receipt of gifts or hospitality by members of the Board and Committees and Authorisations Review Panels and the IDB.

~~49-59.~~ With regard to conflicts of interest, a member of the Board or a Committee or an Authorisations Review Panel or the IDB must:

- a. Where they have an interest in an item of business to be transacted ~~at a meeting of the Board or a Committee or an Authorisations Review Panel~~, declare that interest;
- b. Where the Policyies so requires, absent themselves ~~from the meeting~~ while that item is under consideration.

~~50-60.~~ A member of the Board or a Committee or an Authorisations Review Panel or the IDBs must, in accordance with the Gifts and Hospitality Policy, declare any reportable hospitality offered or received in that capacity.

PART 8 – DELEGATION

~~51-61.~~ Pursuant to paragraph 14(4) of the Constitution, the following arrangements are made for delegation of the functions of the Board.

~~52-62.~~ The functions of the Board in relation to the matters within the terms of reference of a Committee stand delegated to the relevant Committee as set out under paragraph 7 and Annex 2 and in accordance with paragraph 10 and Part 6.

~~53-63.~~ The Board may, to the extent it considers appropriate and subject to paragraph ~~64-56~~, delegate in writing any function to the Chair of the BSB, a Committee, the Chair of a Committee, an Authorisations Review Panel, the IDB, one or more members of BSB staff, or any other body or person, either by name or by a position so specified in the delegation. The Board shall establish and maintain a scheme of delegations identifying each function so delegated including details of the body or person (designated by office or name) to whom it is delegated, and the conditions (if any) on which it is delegated. Notwithstanding such scheme of delegations the Board may delegate such matters as it considers appropriate to the Director General who in turn can delegate such matters to such BSB staff as they consider appropriate.

~~54-64.~~ The following functions must be exercised by the Board itself and may not be delegated:

- a. adoption and amendment of the Standing Orders of the BSB;
- b. adoption of the Declaration of Interests Policy and the Gifts and Hospitality Policy required by paragraph ~~58-50~~;
- c. approval of the budget bid;
- d. making of rules forming part of the regulatory arrangements; and
- e. decisions about policy on payment of fees or expenses under paragraphs ~~22-19~~ and ~~29-26~~.

~~55-65.~~ A Committee may delegate any function within its terms of reference to a member of BSB staff either by name or by a position specified in the delegation. Any such delegation must be recorded in writing, notified to the Board, and recorded in the scheme of delegations.

~~56-66.~~ Nothing in paragraphs ~~63-53-65-58~~ prevents the Board or a Committee whose function has been delegated from exercising that function itself.

PART 9 – RESOURCES

General

~~57-67.~~ The Bar Council's financial management controls are set out in the Finance Manual produced by its Finance Committee. The BSB will abide by the Finance Manual.

The Annual Budget

~~58-68.~~ The BSB will prepare an annual budget in accordance with the procedures set out in the Finance Manual. -The Planning, Resources and Performance Committee will scrutinise the BSB budget proposals before the Board considers its budget for submission in accordance with the Finance Manual procedures.

Staff

~~59-69.~~ -The Board appoints its own staff in accordance with the employment policies agreed from time to time with the Bar Council. Responsibility for appointment of staff other than the Director General will be delegated by the Board to the Director General.

Annex 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE (NOLAN PRINCIPLES)

Selflessness – Holders of public office should act solely in terms of the public interest.

Integrity – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty – Holders of public office should be truthful.

Leadership – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Annex 2 – TERMS OF REFERENCE OF BSB COMMITTEES

Annex 2a - Education and Training

The Terms of Reference of the Education and Training Committee are:

1. On behalf of the BSB to provide specialist oversight of the regulation of education, training and quality assurance and for that purpose it will:
 - a. monitor action taken by the BSB;
 - b. endorse substantial and substantive policy proposals to the Board that have been developed by the BSB; and
 - c. actively keep under review the regulatory arrangements relating to its terms of reference and report periodically to the Board as to the need for its continued operation.
2. The BSB may direct the Education Committee as to its scope of work.

The membership of the Education and Training Committee shall consist of:

1. A chair who shall also be a member of the Board;
2. Two lay members, normally also Board members;
3. Two practising barristers, normally also Board members; and
4. Two senior legal academics with experience of vocational training (in addition to the lay members above).

Annex 2b - Governance, Risk and Audit Committee

The Terms of Reference of the Governance, Risk and Audit Committee are:

1. to advise the Board on the effectiveness of the corporate governance structures, and to monitor and recommend to the Board action in respect of the effectiveness of the strategic arrangements for governance, risk management and audit. This includes making recommendations to the Board on its risk strategy and policies, as well as agreeing a programme of Board member training and development to satisfy corporate governance guidelines;
2. to monitor and recommend to the Board action in respect of the Board's management of corporate risk, including arrangements for business continuity and disaster recovery;
3. to provide assurance that the processes to manage risk are operating in accordance with the risk management framework, and to enable the Board in turn to provide assurances to the joint Audit Committee (of the Bar Council and the Bar Standards Board);
4. to consider the effectiveness of the Board's financial management and control systems, and internal business processes, including accounting policies, anti-fraud and whistle-blowing arrangements and recommend actions to the Board;
5. to provide oversight of the internal audit function. To appoint the Board's Internal Auditors and agree the annual audit plan including any audit reviews that the Board wishes to see conducted. To monitor and provide assurance to the Board on the effectiveness of internal controls and the effectiveness of the response to issues identified by audit activity.

The membership of the Governance Risk and Audit Committee shall be:

1. A lay chair who must also be a Board member;
2. A lay or barrister vice chair;
3. One other member who must be a Board member; and
4. Three other members who must not be Board members.

Annex 2c - Planning, Resources and Performance Committee

The Terms of Reference of the Planning, Resources and Performance Committee are:

1. to consider, and support the Board and the executive in formulating, the overall strategy for the BSB, with particular emphasis on horizon scanning, vision, mission statement, priorities, activities and outcomes. To scrutinise the BSB's three-year Strategic Plan and annual Business Plan before the Board's signoff is sought. Agree actions to ensure that the BSB's associated strategies (Communications, IT, HR and research) are aligned to the corporate strategy;
2. to oversee operational and programme delivery (without duplicating the detailed oversight provided by any other committee or programme/project governance structure) as well as financial performance against the objectives and targets set out in the Business Plan. To support the Board and executive with finalising the BSB's Annual Report publications;
3. to consider the annual budget and revenue, in the context of the Strategic and Business Plans, to question whether proposed funding is adequate and properly and effectively allocated across the business, and agree certain levels of virement between programmes (as anticipated in the Finance Manual with levels set by the Committee from time to time);
4. to consider how the BSB presents financial information to best effect and with appropriate transparency and comprehensiveness. To consider the reliability of forecasting and how the pursuit and achievement of efficiency savings are reported;
5. to review and agree actions on the effectiveness of service level agreements within the organisation;
6. to consider how the BSB undertakes planning activity to best effect and in a timely and consistent manner, as well as to review the robustness of programme and project plans. To support the Board and the executive with the planning and monitoring of the implementation of the Regulatory Standards Framework; and
7. to agree how the BSB monitors, measures and reports organisational performance, regulatory effectiveness and value for money with appropriate transparency and in a timely and consistent manner. To consider the quarterly performance and regular effectiveness reports prior to submission to the Board.

The membership of the Planning Resources and Performance Committee shall be:

8. Five members, including a chair who must be a member of the Board, and have an overall lay majority.

Annex 2d - Professional Conduct

The Terms of Reference of the Professional Conduct Committee are:

1. to carry out the functions and exercise the powers under Part 5 of the BSB Handbook;
2. to respond to and, where appropriate, defend appeals against and other challenges to actions and decisions of the Committee and of disciplinary tribunals and panels constituted under the regulations and rules referred to at (1) above;
3. to make recommendations to other committees or to the Board about matters of professional conduct, including changes to rules referred to at (1) above when the Committee considers it appropriate to do so;
4. to liaise, where appropriate, with other BSB Committees, the Bar Tribunals and Adjudication Service, the Legal Ombudsman and any other bodies relevant to the work of the Committee in exercising its functions;
5. to undertake such other tasks as the Board may require; and
6. to report to the Board on its work as and when required.

The membership of the Professional Conduct Committee shall be:

7. A chair and four vice chairs. There must be two lay and two barrister vice chairs. The chair can be either a lay or barrister member;
8. A minimum of 10 lay members and a maximum of 24 lay members; and
9. Subject to a minimum of 10, a number of barristers to enable the Committee in the judgement of the Chair to carry out its business expeditiously.

Annex 2e – IDB

The Terms of Reference of the IDB are:

1. From 1 June 2019, to provide members for IDPs which carry out the functions and exercise the powers given to IDPs pursuant to the Enforcement Decision Regulations under Part 5, Section A of the BSB Handbook, and to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook;
2. From 1 June 2019, to report to the Board on its work as and when required.

The membership of the IDB shall be:

3. A chair and at least one vice chair. The chair can be either a lay or barrister member; and
4. Sufficient numbers of lay persons and barrister members to enable the IDB to carry out its business expeditiously.
5. From 1 June 2019, the IDB Chair may carry out the functions and exercise the powers given to the IDB Chair under Part 5 of the BSB Handbook.

Annex 3 – APPOINTMENTS PROCESS FOR BSB COMMITTEES

1. The BSB appoints and reappoints all Chairs, Vice Chairs and members of its Committees on merit.
 2. Appointments of Board members to the posts of BSB Committee Chairs and BSB members of Committees are made by the BSB Chair in consultation with the BSB Vice Chair and BSB Director General.
 3. Appointments of new members of BSB Committees are made by the BSB Chair on the recommendation of a selection panel, convened as required for each recruitment.
 4. The selection panel convened for recruitment of members of BSB Committees is to consist of:
 - a. an independent person with knowledge of the ~~Code of Practice of the Commissioner for Governance Code on~~ Public Appointments, or similar skills and experience in best practice in recruitment to public office~~in good recruitment procedures~~;
 - b. at least one and a maximum of two members of the Board;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
 5. All selection panels convened for the Professional Conduct Committee shall have the composition set out in paragraph 4, unless one of the Board members appointed is not also an Office Holder of the Professional Conduct Committee. In that case, an Office Holder of the Professional Conduct Committee shall be appointed in place of one of the Board members.
 6. Appraisals must inform retention and reappointment recommendations and decisions. The BSB Chair or their nominees must carry out the appraisals.
 7. All appointments made by the BSB Chair shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the Chair of the Committee concerned is satisfied that:
 - a. the person has performed to the standard to be expected of the office held, and
 - b. it is in the interests of the BSB to renew the appointment.
 8. In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six year period of appointment permitted above. –Any resolution to make a limited offer of extension must:
 - a. allow for an extension of no more than 18 months in duration,
 - b. be made by offer in writing, and
 - c. be made for a specific reason that is articulated in the offer of extension.
-

Annex 3b – APPOINTMENTS PROCESS FOR THE IDB

1. The BSB appoints and reappoints all Chairs, Vice Chairs and members of its IDB on merit.
2. Appointments of new members of the IDB are made by the BSB Chair on the recommendation of a selection panel, convened as required for each recruitment.
3. During the first 12 months following the establishment of the IDB, the role of IDB Chair may, at the BSB Chair's discretion, be filled by an individual appointed by the BSB Chair in lieu of the selection process detailed at paragraph 4 of this Annex 3b.
4. The selection panel convened for recruitment of the IDB Chair is to consist of:
 - a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - b. at least one and a maximum of two members of the Board;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
5. The selection panel convened for recruitment of the IDB Vice Chairs and members of the IDB is to consist of:
 - a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - b. The IDB Chair or, in the absence of the IDB Chair an IDB Vice Chair;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
6. Appraisals must inform retention and reappointment recommendations and decisions. The IDB Chair or their nominees must carry out the appraisals. Any appraisal of the IDB Chair will be conducted by the BSB Chair or their nominee.
7. All appointments made by the BSB Chair shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the BSB is satisfied that:
 - a. the person has performed to the standard to be expected of the office held, and
 - b. it will allow the BSB to continue its regulatory functions to renew the appointment.
8. In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six year period of appointment permitted above. Any resolution to make a limited offer of extension must:
 - a. allow for an extension of no more than 18 months in duration,
 - b. be made by offer in writing, and
 - c. be made for a specific reason that is articulated in the offer of extension.

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

**STANDING ORDERS
FOR THE BAR STANDARDS BOARD**

FOREWORD

The following Standing Orders are issued under the Authority of paragraph 14(1) of the Bar Standards Board Constitution.

This edition of the Standing Orders came into effect on ~~5 November 2018~~ [1 June 2019](#)

PART 1 – INTRODUCTION

Definitions

1. In these Standing Orders, unless the context requires otherwise:

“The Bar Council” means the Council of the General Council of the Bar of England and Wales.

“The Bar Standards Board” and “BSB” means the Board, Committees established under these Standing Orders and any individual or group exercising the delegated powers of the Board.

“Board” means the Board of the BSB established under Paragraph 2 of the BSB's Constitution.

“BSB staff” means the employees of the Bar Council appointed by the BSB in accordance with paragraph ~~69~~63.

“BTAS” means the Bar Tribunals and Adjudication Service, an independent body set up by the Council of the Inns of Court to appoint and administer Disciplinary Tribunals and other relevant panels on behalf of the BSB.

“Committee” means a Committee established by the BSB pursuant to Part 4 of these Standing Orders.

“IDB” means the Independent Decision-Making Body which is collectively those appointed by the BSB pursuant to Part 4 of these Standing Orders.

“IDP” means the Independent Decision-Making Panel, a panel consisting of a minimum of three members of the Independent Decision-Making Body to take relevant decisions as provided in the BSB Handbook.

“Internal Governance Rules” means the Internal Governance Rules made by the Legal Services Board.

“Lay person” has the meaning given in paragraph 2(4) of Schedule 1 to the Legal Services Act 2007 and “lay member” has a corresponding meaning.

“Practising barrister” means a barrister holding a current practising certificate issued by the ~~Bar Council~~General Council of the Bar and the Bar Standards Board.

“Regulatory arrangements” has the meaning given in section 21 of the Legal Services Act 2007.

“Regulatory functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Representative functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

~~“Authorisations Review Panel” means a panel of three members convened from a pool of appointed panellists, to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook.~~

Part 1 – Public

“Seven Principles of Public Life” means the principles, also known as the “Nolan Principles”, as laid down in the Committee on Standards in Public Life’s thirteenth report “Standards Matter” and referred to in paragraph B4 of the Constitution and reproduced in Annex 1.

"Task Completion Group" means an ad hoc group established by the BSB to complete a specific task or tasks. At the time of the establishment the BSB shall specify a time limit for completion of the tasks. Such time can only be extended by the BSB.

Any terms used in the Legal Services Act 2007 have the same meaning as in that Act.

PART 2 – THE BAR STANDARDS BOARD

General

2. The BSB is committed to:
 - a. providing regulation of advocacy and expert legal advice in the public interest;
 - b. acting in a way that is compatible with the regulatory objectives, having regard to the regulatory principles as required by section 28 of the Legal Services Act 2007;
 - c. conducting its business in harmony with the Seven Principles of Public Life;
 - d. making its regulatory decisions independently of the Bar Council;
 - e. consulting with the Bar Council as required by the Legal Services Act 2007 and the Internal Governance Rules;
 - f. undertaking regulatory functions only and not undertaking any representative functions;
 - g. working cooperatively with the Inns of Court, the Council of the Inns of Court and BTAS; and
 - h. conducting its business in accordance with its Statement of Governance Principles as published by the BSB.

Consultation on exercise of regulatory functions

3. When proposing to make or alter the regulatory arrangements, and in other cases where it considers it appropriate, the BSB will normally consult, in the way it considers appropriate:
 - a. The regulated community (including its representative body and sections of the Bar); and
 - b. Other interested parties (including for example, the public, other approved regulators, the judiciary, barristers’ clerks, academic providers and other education providers) as it considers appropriate.
4. In relation to proposals to make or alter the regulatory arrangements, the BSB will normally allow a period of three months for consultation before a decision is taken.

Saving for defects etc

5. All acts done in good faith by the BSB shall (so far as is lawful), notwithstanding any defect,

be as valid as if there were no such defect or error.

PART 3 – OBLIGATIONS TO THE BAR COUNCIL

6. The BSB will make information and papers available to the Bar Council for the purpose of the Bar Council fulfilling its function as an Approved Regulator including its obligations under the Legal Services Board's Internal Governance Rules as made by them from time to time.

PART 4 – COMMITTEES AND ~~AUTHORISATIONS REVIEW PANELS and IDBIDB~~

Committees of the BSB

7. The Board establishes the following Committees whose terms of reference and membership are set out in Annex 2:
 - a. The Education and Training Committee;
 - b. The Governance, Risk and Audit Committee; and
 - ~~e.—The Planning, Resources and Performance Committee; and~~
 - ~~d.c. The Professional Conduct Committee.~~
8. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of all Committees.
9. Without prejudice to the power of the Board to amend Annex 2 on its own initiative, a Committee may at any time propose an amendment to its terms of reference or membership for consideration by the Board.
10. Save where provided for in these Standing Orders each Committee may determine its own composition and procedure subject to the provisions of Part 6 and the following general requirements:
 - a. Each Committee is to have a minimum of a Chair and a Vice Chair. Wherever possible, at least one of these two office holders should be a member of the Board;
 - b. At least a third of the Committee's membership must be lay persons;
 - c. At least a third of the Committee's membership must be barristers;
 - d. Each Committee must adopt and maintain rules of procedure on an annual basis addressing meeting arrangements (including frequency of meetings and arrangements for urgent business outside regular meetings);
 - e. The Chair of each Committee or, in that person's absence, a Vice Chair, shall take the chair at every meeting of the Committee. In the absence of the Chair and any Vice Chair, or where an interest has been declared by them for a specific item only, the members present may proceed to elect a chair from among their number for the purposes of that meeting or that item; and
 - f. Members of a Committee shall be appointed and reappointed in accordance with the Procedures set out in Annex 3.

The IDB

11. The Board establishes the IDB whose terms of reference are set out in Annex [2e2d](#) on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.
12. The IDB shall have a minimum of a Chair and a Vice-Chair and be comprised of a membership of lay person and barrister members.
13. Members of the IDB shall be appointed and re-appointed in accordance with the procedures and terms set out in Annex 3b.

Authorisations Review Panels of the BSB

- ~~14. The BSB may establish Authorisations Review Panels on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.~~
- ~~15. Authorisations Review Panels are convened to ensure that all requests for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook are determined fairly, efficiently and effectively, in accordance with relevant regulations and guidelines.~~

Restrictions on Committee, ~~Authorisation Review Panel~~ and IDB Membership

~~16. Authorisations Review Panel members may not hold office as a member of the Board.~~

~~17.~~14. A member of the Bar Council or any of its representative committees may not hold office as Chair, Vice Chair or as a member of:

- a. the Board;
- b. any of the BSB's committees; [or](#)
- ~~c. Authorisations Review Panels; or~~
- ~~d.c.~~ The IDB.

15. A person cannot be both a member of the Board and the IDB.

~~18.~~16. A person shall cease to be a BSB Committee, ~~Authorisations Review Panel~~ or IDB member if:

- a. the period for which they were appointed expires (and their appointment is not renewed);
- b. they resign their membership by notice in writing;
- c. they were appointed as a lay person and cease to be a lay person;
- ~~d.~~ they were appointed as a [practising](#) barrister and [subsequently](#) cease to be a [practising](#) barrister or become a member of the Bar Council or one of its representative committees;–

~~e.d.~~ _____ they fail to attend four or more meetings in any rolling 12-month period and the Committee or Board resolves that they should cease to be a member;

~~f.e.~~ the Board resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise); or

~~g.f.~~ the Board resolves to disestablish or substantively restructure a Committee of which a person is a member so as to be inconsistent with continued office by that person, upon three months' notice; or

g. they fail to attend four or more meetings in any rolling 12-month period and the Committee or Board resolves that they should cease to be a member.

~~19.17.~~ _____ Committees and the IDB may act only in matters within their terms of reference, within ~~the any~~ agreed budget and in accordance with the Statement of Governance Principles.

Reports to the Board

~~20.18.~~ _____ A Committee must report to the Board at least annually but as often as required by the Board.

~~21.19.~~ _____ A report on the outcomes of matters considered by ~~Authorisations Review Panel~~ the IDB must be submitted to the Board at least annually but as often as required by the Board.

Payments to members

~~22.20.~~ _____ The BSB may decide to pay fees and expenses to members of the Board or of Committees or of ~~Authorisations Review Panels or of~~ the IDB on terms it may set.

Obligations of members

~~23.21.~~ _____ All Board and Committee ~~and Authorisation Review Panel~~ and IDB members are subject to continuing satisfactory performance and compliance with the Standing Orders and Governance Manual. Such persons may be removed from office for failing to meet these obligations, based on the reviews outlined in paragraph ~~24.22~~ or any other ad hoc reviews of individual members that the Board or the Chair of the Board or the Chair of the Committee or the Chair of the IDB determines are required.

~~24.22.~~ _____ All Board and Committee ~~and Authorisations Review Panel~~ and IDB members are subject to a minimum of a review of performance within 18 months of appointment and a review of performance preceding any reappointment decision.

PART 5 – BSB ADVISORY BODIES

~~25.23.~~ _____ The BSB may appoint a Task Completion Group on such terms as it considers appropriate.

~~26.24.~~ _____ Task Completion Groups may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.

~~27.25.~~ _____ The BSB may establish an Advisory Pool of Experts on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.

~~28-26.~~ A member of the Bar Council or any of its representative committees may not be appointed as a member of:

- a. Task Completion Groups; or
- b. the Advisory Pool of Experts.

Payments to members

~~29-27.~~ The BSB may decide to pay fees and expenses to members of Task Completion Groups or of the Advisory Pool of Experts on terms it may set.

PART 6 – PROCEEDINGS OF THE BOARD AND ITS COMMITTEES ~~AND AUTHORISATIONS~~ REVIEW PANELS

Meetings

~~30-28.~~ The Board must meet at least six times in a 12-month period.

~~31-29.~~ If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone, videoconference or email if necessary.

~~32-30.~~ Each Board meeting may be separated into public and private sessions.

~~33-31.~~ Committee meetings are held in private and the frequency of such meetings is to be determined by the Committee.

~~34. Authorisations Review Panel meetings are held in private and the frequency of such meetings is to be determined by the BSB.~~

Attendance at meetings

~~35-32.~~ The Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court are entitled to attend and speak (but not vote) at any public session of a meeting of the Board.

~~36-33.~~ The BSB may invite the Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court, to attend all or part of the Board's private sessions. Such invitation shall be in accordance with the Protocol for ensuring regulatory independence as agreed and adopted by the Bar Council and the BSB.

~~37-34.~~ If a Committee Chair is not a Board member, the Committee Chair has ex-officio rights to attend and speak (but not vote) at any public session of a meeting of the Board and, at the invitation of the Chair, at all or part of any private session.

~~38-35.~~ The Board or a Committee may at any time invite any person to attend their meetings in an advisory or consultative capacity.

Quorum

~~39-36.~~ The quorum for a Board meeting is five members of whom at least three must be lay members and at least two must be barrister members.

~~40-37.~~ No business may be transacted at any meeting of a BSB Committee unless one third of its appointed members are present, in person or by telephone or videoconference (subject to paragraph ~~39~~).—~~36~~.

~~41-38.~~ If a vote is required by the Board or a Committee, decisions must be made by simple majority. The Chair will have a casting vote in the event of a tie.

~~42-39.~~ Either the Chair or the Vice Chair must be present at each meeting of the Board unless the Board resolves to dispense with that requirement for a particular meeting.

~~43. In the case of the Professional Conduct Committee, no business may be transacted at any meeting unless one sixth of the members are present of whom at least two must be practising barristers and at least two must be lay members.—~~

~~44. No business may be transacted at any meeting of an Authorisations Review Panel unless three members are present, of whom two must be lay members and one must be a barrister member.—~~

Minutes

~~45-40.~~ Decisions made by the Board and Committees ~~and Authorisations Review Panels~~ must be recorded in writing.

~~46-41.~~ Minutes of the decisions taken and where appropriate the proceedings of each meeting of the Board and its Committees shall be drawn up and approved at the next appropriate meeting of the Board or the Committee.

Written resolutions

~~47-42.~~ A decision taken outside a meeting of the Board or a Committee is valid if:

- a. reasonable notice of the matter to be decided has been given to all members of the Board or the Committee;
- b. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote;
- c. the decision is recorded in a single written document signed by at least two thirds of members or approved by email by at least two thirds of members; and;
- d. the decision is formally ratified at the next meeting and appears in the minutes of that meeting.

~~48. A decision taken outside a meeting of an Authorisations Review Panel is valid if:—~~

- ~~e. reasonable notice of the matter to be decided has been given to at least three Authorisations Review Panel members;—~~
- ~~f. it is subject to normal quorum rules and all members eligible to vote are given the opportunity to vote; and—~~
- ~~g. the decision is recorded in a single written document signed by at least three members.—~~

Agenda papers

~~49.43.~~ The agenda and papers for any meeting of the Board or a Committee ~~or an Authorisations Review Panel~~ shall be sent to its members at least four working days before a meeting. With the consent of the Chair or Vice Chair shorter notice may be given.

Publication of agendas, papers and minutes by the BSB

~~50.44.~~ The Board may decide which of the papers considered at its meetings should be made public after each Board meeting.

~~51.45.~~ The Board may also publish its agenda and minutes of its meetings.

~~52.46.~~ There is a presumption in favour of publication of Board papers unless the Board considers there is good reason not to do so.

PART 6A – PROCEEDINGS OF IDPs**Meetings**

~~53.47.~~ The IDP meetings are held in private

~~54.48.~~ IDP meetings can be in person, by email, by telephone, or videoconference and the frequency of such meetings is to be determined by the BSB.

~~55.49.~~ Each IDP meeting must have a minimum of three members, drawn from the IDB membership, and must have a lay majority of at least one.

~~56.50.~~ An IDP may at any time invite any person to attend their meetings in an advisory or consultative capacity.

~~57.51.~~ Decisions made by an IDP must be recorded in writing.

PART 7 – MEMBERS' INTERESTS

~~58.52.~~ The Board must establish and maintain policies on declarations of interest and on offers and receipt of gifts or hospitality by members of the Board ~~and~~ Committees and ~~Authorisations Review Panels and~~ the IDB.

~~59.53.~~ With regard to conflicts of interest, a member of the Board ~~or~~ a Committee or ~~an Authorisations Review Panel or~~ the IDB must:

- a. Where they have an interest in an item of business to be transacted declare that interest;
- b. Where the Policies so require, absent themselves while that item is under consideration.

~~60.54.~~ A member of the Board or a Committee or ~~an Authorisations Review Panel or the~~ IDB must, in accordance with the Gifts and Hospitality Policy, declare any reportable hospitality offered or received in that capacity.

PART 8 – DELEGATION

~~61-55.~~ Pursuant to paragraph 14(4) of the Constitution, the following arrangements are made for delegation of the functions of the Board.

~~62-56.~~ The functions of the Board in relation to the matters within the terms of reference of a Committee stand delegated to the relevant Committee as set out under paragraph 7 and Annex 2 and in accordance with paragraph 10 and Part 6.

~~63-57.~~ The Board may, to the extent it considers appropriate and subject to paragraph ~~64~~58, delegate in writing any function to the Chair of the BSB, a Committee, the Chair of a Committee, ~~an Authorisations Review Panel~~, the IDB, one or more members of BSB staff, or any other body or person, either by name or by a position so specified in the delegation. The Board shall establish and maintain a scheme of delegations identifying each function so delegated including details of the body or person (designated by office or name) to whom it is delegated, and the conditions (if any) on which it is delegated. Notwithstanding such scheme of delegations, the Board may delegate such matters as it considers appropriate to the Director General who in turn can delegate such matters to such BSB staff as they consider appropriate.

~~64-58.~~ The following functions must be exercised by the Board itself and may not be delegated:

- a. adoption and amendment of the Standing Orders of the BSB;
- b. adoption of the Declaration of Interests Policy and the Gifts and Hospitality Policy required by paragraph ~~58~~52;
- c. approval of the budget bid;
- d. making of rules forming part of the regulatory arrangements; and
- e. decisions about policy on payment of fees or expenses under paragraphs ~~22 and 29-20 and 27.~~

~~65-59.~~ A Committee may delegate any function within its terms of reference to a member of BSB staff either by name or by a position specified in the delegation. Any such delegation must be recorded in writing, notified to the Board, and recorded in the scheme of delegations.

~~66-60.~~ Nothing in paragraphs ~~63~~57-~~65~~59 prevents the Board or a Committee whose function has been delegated from exercising that function itself.

PART 9 – RESOURCES

General

~~67-61.~~ The Bar Council's financial management controls are set out in the Finance Manual produced by its Finance Committee. The BSB will abide by the Finance Manual.

The Annual Budget

~~68-62.~~ The BSB will prepare an annual budget in accordance with the procedures set out in the Finance Manual. The Planning, Resources and Performance Committee will scrutinise the BSB budget proposals before the Board considers its budget for submission in accordance with the Finance Manual procedures.

Staff

~~69-63.~~ The Board appoints its own staff in accordance with the employment policies agreed from time to time with the Bar Council. Responsibility for appointment of staff other than the Director General will be delegated by the Board to the Director General.

Annex 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE (NOLAN PRINCIPLES)

Selflessness – Holders of public office should act solely in terms of the public interest.

Integrity – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty – Holders of public office should be truthful.

Leadership – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Annex 2 – TERMS OF REFERENCE OF BSB COMMITTEES [AND THE IDB](#)

Annex 2a - Education and Training

The Terms of Reference of the Education and Training Committee are:

1. On behalf of the BSB to provide specialist oversight of the regulation of education, training and quality assurance and for that purpose it will:
 - a. monitor action taken by the BSB;
 - b. endorse substantial and substantive policy proposals to the Board that have been developed by the BSB; and
 - c. actively keep under review the regulatory arrangements relating to its terms of reference and report periodically to the Board as to the need for its continued operation.
2. The BSB may direct the Education Committee as to its scope of work.

The membership of the Education and Training Committee shall consist of:

1. A chair who shall also be a member of the Board;
2. Two lay members, normally also Board members;
3. Two practising barristers, normally also Board members; and
4. Two senior legal academics with experience of vocational training (in addition to the lay members above).

Annex 2b - Governance, Risk and Audit Committee

The Terms of Reference of the Governance, Risk and Audit Committee are:

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1. to advise the Board on the effectiveness of the corporate governance structures, and to monitor and recommend to the Board action in respect of the effectiveness of the strategic arrangements for governance, risk management and audit. This includes making recommendations to the Board on its risk strategy and policies, as well as agreeing a programme of Board member training and development to satisfy corporate governance guidelines;
2. to monitor and recommend to the Board action in respect of the Board's management of corporate risk, including arrangements for business continuity and disaster recovery;
3. to provide assurance that the processes to manage risk are operating in accordance with the risk management framework, and to enable the Board in turn to provide assurances to the joint Audit Committee (of the Bar Council and the Bar Standards Board);
4. to consider the effectiveness of the Board's financial management and control systems, and internal business processes, including accounting policies, anti-fraud and whistle-blowing arrangements and recommend actions to the Board;
5. to provide oversight of the internal audit function. To appoint the Board's Internal Auditors and agree the annual audit plan including any audit reviews that the Board wishes to see conducted. To monitor and provide assurance to the Board on the effectiveness of internal controls and the effectiveness of the response to issues identified by audit activity.

The membership of the Governance, Risk and Audit Committee shall be:

1. A lay chair who must also be a Board member;
2. A lay or barrister vice chair;
3. One other member who must be a Board member; and
4. Three other members who must not be Board members.

Annex 2c - Planning, Resources and Performance Committee

The Terms of Reference of the Planning, Resources and Performance Committee are:

1. to consider, and support the Board and the executive in formulating, the overall strategy for the BSB, with particular emphasis on horizon scanning, vision, mission statement, priorities, activities and outcomes. To scrutinise the BSB's three-year Strategic Plan and annual Business Plan before the Board's signoff is sought. Agree actions to ensure that the BSB's associated strategies (Communications, IT, HR and research) are aligned to the corporate strategy;
2. to oversee operational and programme delivery (without duplicating the detailed oversight provided by any other committee or programme/project governance structure) as well as financial performance against the objectives and targets set out in the Business Plan. To support the Board and executive with finalising the BSB's Annual Report publications;
3. to consider the annual budget and revenue, in the context of the Strategic and Business Plans, to question whether proposed funding is adequate and properly and effectively allocated across the business, and agree certain levels of virement between programmes (as anticipated in the Finance Manual with levels set by the Committee from time to time);
4. to consider how the BSB presents financial information to best effect and with appropriate transparency and comprehensiveness. To consider the reliability of forecasting and how the pursuit and achievement of efficiency savings are reported;
5. to review and agree actions on the effectiveness of service level agreements within the organisation;
6. to consider how the BSB undertakes planning activity to best effect and in a timely and consistent manner, as well as to review the robustness of programme and project plans. To support the Board and the executive with the planning and monitoring of the implementation of the Regulatory Standards Framework; and
7. to agree how the BSB monitors, measures and reports organisational performance, regulatory effectiveness and value for money with appropriate transparency and in a timely and consistent manner. To consider the quarterly performance and regular effectiveness reports prior to submission to the Board.

The membership of the Planning Resources and Performance Committee shall be:

1. Five members, including a chair who must be a member of the Board, and have an overall lay majority.

Annex 2d – Professional Conduct –

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The Terms of Reference of the Professional Conduct Committee are: –

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1. to carry out the functions and exercise the powers under Part 5 of the BSB Handbook; –
2. to respond to and, where appropriate, defend appeals against and other challenges to actions and decisions of the Committee and of disciplinary tribunals and panels constituted under the regulations and rules referred to at (1) above; –
3. to make recommendations to other committees or to the Board about matters of professional conduct, including changes to rules referred to at (1) above when the Committee considers it appropriate to do so; –
4. to liaise, where appropriate, with other BSB Committees, the Bar Tribunals and Adjudication Service, the Legal Ombudsman and any other bodies relevant to the work of the Committee in exercising its functions; –
5. to undertake such other tasks as the Board may require; and –
6. to report to the Board on its work as and when required. –

The membership of the Professional Conduct Committee shall be: –

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7. A chair and four vice chairs. There must be two lay and two barrister vice chairs. The chair can be either a lay or barrister member; –
8. A minimum of 10 lay members and a maximum of 24 lay members; and –
9. Subject to a minimum of 10, a number of barristers to enable the Committee in the judgement of the Chair to carry out its business expeditiously. –

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Annex 2e – IDB

The Terms of Reference of the IDB are:

1. ~~From 1 June 2019, to~~To provide members for IDPs which carry out the functions and exercise the powers given to IDPs pursuant to the Enforcement Decision Regulations under Part 5, Section A of the BSB Handbook, and to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B10, or reviews of decisions taken under Part 1 4A, of the Bar Standards Board Handbook;
2. ~~From 1 June 2019,~~ to report to the Board on its work as and when required.

The membership of the IDB shall be:

3. A chair and at least one vice chair. The chair can be either a lay or barrister member; and
4. Sufficient numbers of lay persons and barrister members to enable the IDB to carry out its business expeditiously.
5. ~~From 1 June 2019, the~~The IDB Chair may carry out the functions and exercise the powers given to the IDB Chair under Part 5 of the BSB Handbook.

Annex 3 – APPOINTMENTS PROCESS FOR BSB COMMITTEES

1. The BSB appoints and reappoints all Chairs, Vice Chairs and members of its Committees on merit.

Appointments of Board members to the posts of BSB Committee Chairs and BSB members of Committees are made by the BSB Chair in consultation with the BSB Vice Chair and BSB Director General.

2. Appointments of new members of BSB Committees are made by the BSB Chair on the recommendation of a selection panel, convened as required for each recruitment.
3. The selection panel convened for recruitment of members of BSB Committees is to consist of:
 - a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - b. at least one and a maximum of two members of the Board;
 - c. a member of senior staff of the BSB, as delegated by the Director General.

~~4. All selection panels convened for the Professional Conduct Committee shall have the composition set out in paragraph 4, unless one of the Board members appointed is not also an Office Holder of the Professional Conduct Committee. In that case, an Office Holder of the Professional Conduct Committee shall be appointed in place of one of the Board members.~~

~~5.4.~~ Appraisals must inform retention and reappointment recommendations and decisions. The BSB Chair or their nominees must carry out the appraisals.

~~6.5.~~ All appointments made by the BSB Chair shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the Chair of the Committee concerned is satisfied that:

- a. the person has performed to the standard to be expected of the office held, and
- b. it is in the interests of the BSB to renew the appointment.

~~7.6.~~ In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six year period of appointment permitted above. Any resolution to make a limited offer of extension must:

- a. allow for an extension of no more than 18 months in duration,
- b. be made by offer in writing, and
- c. be made for a specific reason that is articulated in the offer of extension.

Annex 3b – APPOINTMENTS PROCESS FOR THE IDB

1. The BSB appoints and reappoints all Chairs, Vice Chairs and members of its IDB on merit.
2. Appointments of new members of the IDB are made by the BSB Chair on the recommendation of a selection panel, convened as required for each recruitment.
3. During the first 12 months following the establishment of the IDB, the role of IDB Chair may, at the BSB Chair's discretion, be filled by an individual appointed by the BSB Chair in lieu of the selection process detailed at paragraph 4 of this Annex 3b.
4. The selection panel convened for recruitment of the IDB Chair is to consist of:
 - a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - b. at least one and a maximum of two members of the Board;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
5. The selection panel convened for recruitment of the IDB Vice Chairs and members of the IDB is to consist of:
 - a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - b. The IDB Chair or, in the absence of the IDB Chair an IDB Vice Chair;
 - c. a member of senior staff of the BSB, as delegated by the Director General.
6. Appraisals must inform retention and reappointment recommendations and decisions. The IDB Chair or their nominees must carry out the appraisals. Any appraisal of the IDB Chair will be conducted by the BSB Chair or their nominee.
7. All appointments made by the BSB Chair shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the BSB is satisfied that:
 - a. the person has performed to the standard to be expected of the office held, and
 - b. it will allow the BSB to continue its regulatory functions to renew the appointment.
8. In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six year period of appointment permitted above. Any resolution to make a limited offer of extension must:
 - a. allow for an extension of no more than 18 months in duration,
 - b. be made by offer in writing, and
 - c. be made for a specific reason that is articulated in the offer of extension.

Enforcement Decision Regulations 2019

rE1 These regulations set out the powers and functions in relation to the assessment of information reports and the investigation of *allegations* which may indicate a potential breach of the *Handbook* or require regulatory action.

A1. The assessment of information reports

Powers of the *Commissioner* in relation to the assessment of information reports

rE2 The powers of the *Commissioner* include (but are not limited to):

- .1 gathering information relating to *applicable persons* from any source for the purposes of assessing whether there has been a potential breach of the *Handbook*; and
- .2 determining whether informationa report meets the criteria under rE12 and may therefore be treated as an *allegation*.

rE3 The *Commissioner* shall have the power to authorise any *person*, group or body to fulfil any function or exercise any power given to the *Commissioner* by this Section 5.A. Any authorisations given must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.

Reference to the Legal Ombudsman

rE4 If informationa report is received by the *Bar Standards Board* from a person entitled to complain to the *Legal Ombudsman* about the subject of the information report, the *Commissioner* must refer the information report to the *Legal Ombudsman* or signpost the provider of the information report to the *Legal Ombudsman*, unless it is clear that the matter falls outside the jurisdiction of the *Legal Ombudsman*.

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

rE5 If it appears to the *Commissioner* that the informationa report relates to an *applicable person's* actions in a part-time or temporary judicial or *quasi-judicial* capacity, the *Commissioner* must refer the information report to the person or body responsible for the appointment of the *applicable person* to the judicial or *quasi-judicial* office concerned (“the appropriate body”), where it appears that the appropriate body should consider the information report, requesting notification of the outcome of the appropriate body’s consideration as soon as it has been dealt with, subject to rE6 to rE8 below.

rE6 Where:

- .1 the appropriate body refuses to deal with the information report; or
- .2 it appears there is no appropriate body

the *Commissioner* may consider the information report in accordance with the provisions of this Section 5.A.

- rE7 When the appropriate body has dealt with the information report, or the *Commissioner* considers that the appropriate body has not dealt with it within a reasonable time or fully or satisfactorily, the *Commissioner* may consider the information report in accordance with the provisions of this Section 5.A. and may consider any finding made and any action taken by the appropriate body.
- rE8 The *Commissioner* must not consider or take action in relation to informationa report arising in substance from dissatisfaction or disagreement with anything decided, done or said by the *applicable person* in the proper exercise of their judicial or *quasi-judicial* functions.

Reference to the Lord Chancellor or other appropriate body

- rE9 If it appears to the *Commissioner* that the information report relates to the conduct of a *BSB regulated individual* who, since the events giving rise to the information report took place, has been appointed to and continues to hold full-time judicial office and has ceased practice to practise, the *Commissioner* shall not consider the information report further and must direct the person from whom the information report is received to the Lord Chancellor or the Office of Judicial Complaints or to such other person or appropriate body with responsibility for addressing complaints about judges.

Reference to any other person

- rE10 If it appears to the *Commissioner* that informationa report in respect of an *applicable person* might more appropriately be dealt with by another body (e.g. an *Inn*, Circuit, employer, a complaints complaint handling body or any other professional or regulatory body), it may refer the information report to such other body.
- rE11 If, having referred informationa report to another body under rE10, the *Commissioner* subsequently considers that the information report has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *Commissioner* may choose to exercise the powers set out in rE2.1 and rE2.2 above.

Initial assessment of information reports

- rE12 Where the *Commissioner*, having regard to rE13, considers that informationa report:
- .1 discloses a potential breach of the *Handbook* by an *applicable person*; and/or
 - .2 potentially satisfies the *disqualification condition*
- the *Commissioner* may treat the information report as an *allegation*.
- rE13 In determining whether to treat the informationa report as an *allegation* under rE12 the *Commissioner* must have regard to:
- .1 whether the conduct disclosed in the information report or its consequences presents sufficient risk to the *regulatory objectives* to justify further action;
 - .2 whether the conduct disclosed in the information report can be properly and fairly investigated; and

- .3 whether the conduct disclosed in the *information report* could not more appropriately be dealt with under one or more of the provisions set out at rE4 to rE11 above.

A2. Investigation of *allegations*

Powers of the *Commissioner* in relation to the investigation of *allegations*

- rE14 The powers of the *Commissioner* include (but are not limited to) the power at any time:
- .1 to carry out the investigation of *allegations* as appropriate ~~including requiring the production of information~~; and
 - .2 to withdraw any *allegation* and treat it as if a decision under rE12 had not been made.

Investigating *allegations*

- rE15 The *Commissioner* must not conclude any investigation of an *allegation* without taking reasonable steps ~~being taken~~ to ensure that the *applicable person* has been informed of the *allegation* and ~~been~~ given a reasonable opportunity to comment on the *allegation*.
- rE16 If a new information report comes to light during an investigation of an *allegation* that meets the criteria of rE12, it may be treated as a new *allegation* and investigated in accordance with the provisions of Section 5.A.
- rE17 The *Commissioner* may defer further consideration of the original *allegation* until a new *allegation* has been investigated.
- rE18 No further investigation or opportunity to respond is required where the subject matter of a new *allegation* has already been investigated by the *Commissioner* and the *applicable person* has already been given an opportunity to comment on it during the original investigation.

A3. Possible outcomes of the investigation of an *allegation*

Powers of the *Commissioner* in relation to the conclusion of investigations

- rE19 At the conclusion of an investigation of an *allegation* the *Commissioner* has the power to decide:
- .1 that the conduct alleged did not constitute a breach of the *Handbook*;
 - .2 that the conduct alleged did constitute a breach of the *Handbook* (on the balance civil standard of probabilities proof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach;
 - .3 that the conduct alleged did constitute a breach of the *Handbook* (on the balance civil standard of probabilities proof) and that the breach should be dealt with by the imposition of an *administrative sanction*;

- .4 that the conduct alleged may constitute a breach of the *Handbook* and, if the breach were to be proved, that an *administrative sanction* under rE19.3 would not be appropriate in all the circumstances, and that the subject matter of the *allegation* against an *applicable person* involves:
- a. a conviction for an offence of dishonesty or deception; or
 - b. a conviction for an offence under Section 4, Section 5 or Section 5A Road Traffic Act 1988 (Driving or being in charge of a motor vehicle with alcohol concentration/concentration of a controlled drug above prescribed limit); or
 - c. a breach of Part 3 or 4 of the *Handbook*; or
 - d. any failure to pay an administrative fine within the relevant time; or
 - e. a failure to comply with any requirements of a sanction imposed following *Disciplinary Action*;
- in which case the *allegation* may form the subject matter of a referral to *Disciplinary Action*; or
- .5 to refer an *allegation* to an *Independent Decision-Making Panel* for a decision.

rE20 In conjunction with a decision under rE19 the *Commissioner* may refer any *allegation* for supervisory action.

rE21 In conjunction with a decision under ~~rE19~~rE19.1 or rE19.2 the *Commissioner* may issue the *applicable person* with ~~formal~~ advice.

Powers of an *Independent Decision-Making Panel* in relation to *allegations* referred to it

rE22 Where an *allegation* has been referred to an *Independent Decision-Making Panel* under rE19.5 the *Independent Decision-Making Panel* has the power to decide:

- .1 that, on the evidence before it, the conduct alleged did not constitute a breach of the *Handbook* (on the balancecivil standard of probabilities;proof); or
- .2 that, on the evidence before it, the conduct alleged did constitute a breach of the *Handbook* (on the balancecivil standard of probabilitiesproof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach; or
- .3 that, on the evidence before it, the conduct alleged did constitute a breach of the *Handbook* (on the balancecivil standard of probabilitiesproof) and that the breach should be dealt with by an *administrative sanction*; or
- .4 that
 - a. there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*, and

- b. having regard to the *regulatory objectives*, it is in the public interest to pursue *Disciplinary Action*

in which case the *allegation* must form the subject matter of *Disciplinary Action*.

rE23 In conjunction with a decision under rE22 the *Independent Decision-Making ~~Body~~ (IDB) Panel* may ~~refer any allegation~~ recommend the matter be referred for supervisory action.

rE24 In conjunction with a decision under ~~rE22~~rE22.1 or rE22.2 the *Independent Decision-Making ~~Body~~ Panel* may issue the *applicable person* with ~~formal~~ advice.

***Independent Decision-Making ~~Body~~ Panel* and Commissioner powers/requirements**

rE25 In exercising its powers under Section 5.A, the *Commissioner* or an *Independent Decision-Making Panel* must have regard to the *Bar Standards Board enforcement strategy* and any published *Bar Standards Board* policy and guidance that appear to be relevant.

Administrative sanction

rE26 Pursuant to rE19.2 and rE22.2 above, the *Commissioner* or an *Independent Decision-Making Panel* may impose an *administrative sanction* on an *applicable person* where there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that *applicable person*.

rE27 The *Commissioner* or an *Independent Decision-Making Panel* may only impose an *administrative sanction* on an *applicable person* pursuant to ~~rE26~~rE26 where:

- .1 the *Commissioner* or an ~~IDMP~~*Independent Decision-Making Panel* considers that to impose an *administrative sanction* is proportionate and sufficient in the public interest; or
- .2 where the matter falls to be considered under rE209 of Section 5.B of the *Handbook*.

rE28 In determining the level of *administrative sanction* to be imposed, the *Commissioner* or an *Independent Decision-Making Panel* must have regard to any published *Bar Standards Board* policy that appears to the *Commissioner* or an *Independent Decision-Making Panel* to be relevant.

rE29 The maximum level of a fine which can be imposed by the *Commissioner* or an *Independent Decision-Making Panel* under rE19.3 and rE22.3 is:

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

rE30 Any decision to impose an *administrative sanction* will be recorded and may, where appropriate, be considered for continued monitoring and supervision but will not be disclosed to any third parties except in accordance with Section A7 of these regulations.

- rE31 The *applicable person* may appeal a decision of the *Commissioner* or an *Independent Decision-Making Panel* to impose an *administrative sanction* in accordance with Section 5.A of the Handbook
- rE32 In the case of a *non-authorised individual* (other than an unregistered barrister, a manager of a BSB entity or a registered European lawyer who does not have a current practising certificate) who at the time of the alleged conduct was an employee of a BSB authorised person the *Commissioner* or an *Independent Decision-Making Panel* may only:
- .1 decide that no further action should be taken in relation to the *allegation*; or
 - .2 make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order*.

A4. Professional misconduct proceedings

Disciplinary Action

- rE33 Where rE19.4 or ~~rE22.4~~rE22.4 is applicable, the *allegation* shall be referred to *Disciplinary Action* only where the *Commissioner* or an *Independent Decision-Making Panel* is satisfied that:
- .1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and
 - .2 having regard to the *regulatory objectives*, it is in the public interest to pursue *Disciplinary Action*.
- rE34 Where the *Commissioner* or an *Independent Decision-Making Panel* is satisfied that the requirements of rE33 are met, an *allegation* which the *Commissioner* or an *Independent Decision-Making Panel* is otherwise intending to refer to the *Disciplinary Tribunal* may, with the consent of the *applicable person* against whom the *allegation* is made, be finally determined by an *Independent Decision-Making Panel*. This is referred to as the “*determination by consent procedure*”.
- rE35 The *Commissioner* or an *Independent Decision-Making Panel* must, in deciding whether to refer an *allegation* to the *determination by consent procedure*, consider all the circumstances. However, the *Commissioner* or an *Independent Decision-Making Panel* may only make the *allegation* subject to the *determination by consent procedure* if:
- .1 the *applicable person* submits to the jurisdiction of an *Independent Decision-Making Panel*; and
 - .2 the *Commissioner* or an *Independent Decision-Making Panel* considers that:
 - a. there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and

- b. having regard to the *regulatory objectives*, it is in the public interest to resolve the *allegation* under the *determination by consent procedure*; and
- c. the potential *professional misconduct* or *disqualification condition*, if proved, combined with the *applicable person's* previous disciplinary history, does not appear to be such as to warrant a period of *suspension* or disbarment, the withdrawal of an *authorisation* or *licence* (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).

rE36 *Disciplinary Action* will be conducted in accordance with such procedures as the *Bar Standards Board* may prescribe from time to time, including in Section 5.B of the *Handbook*, ~~may prescribe from time to time~~ and will apply the civil standard of proof in accordance with rE164.

Determination by Consent

rE37 Where the *Commissioner* or an *Independent Decision-Making Panel* has decided to refer an *allegation* to the *determination by consent procedure* in accordance with rE35, the *Commissioner* or an *Independent Decision-Making Panel* (as the case may be) may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of rE35 are satisfied, or for any other good reason.

rE38 If the *determination by consent procedure* ends other than by a finding and sentencesanction to which the *applicable person* consents, then an *allegation* may be referred to a three-person *Disciplinary Tribunal*.

~~rE39rE1 The Commissioner must publish any finding and sentence resulting from the determination by consent procedure to the same extent as such publication would have taken place on a finding and sentence by a Disciplinary Tribunal, as provided for in the Disciplinary Tribunal Regulations 2017.~~

~~rE40 If the applicable person accepts a determination by consent, no one may appeal against it.~~

~~rE41 In determining what sanction, if any, to impose under the determination by consent procedure, an Independent Decision Making Panel shall have regard to any sentencing policy or guidelines issued by the Bar Standards Board and/or by the Council of the Inns of Court from time to time.~~

~~rE42~~rE39 An *Independent Decision-Making Panel* may impose on an *applicable person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following sanctions:

- .1 an order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined having regard to the relevant sentencingsanctions guidance) on such terms as to payment as the *Independent Decision-Making Panel* thinks fit;
- .2 the imposition of any conditions on their licence or authorisation (where appropriate);
- .3 a reprimand by the *Bar Standards Board*;
- .4 advice by the *Independent Decision-Making Panel* as to their future conduct; and

- .5 an order to complete (or, in the case of a *BSB entity*, an order to procure that any relevant *managers* or employees complete) continuing professional development of such nature and duration as an *Independent Decision-Making Panel* shall direct and to provide satisfactory proof of compliance with this order to the *Commissioner*.

~~rE40~~ In determining what sanction, if any, to impose under the *determination by consent procedure*, an *Independent Decision-Making Panel* shall have regard to any relevant policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.

~~rE43~~rE41 An *Independent Decision-Making Panel* may not make an award of costs when dealing with an *allegation* under the *determination by consent procedure*.

~~rE42~~ The *Commissioner* must publish any finding and sanction resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sanction by a *Disciplinary Tribunal*, as provided for in the *Disciplinary Tribunal Regulations*.

~~rE43~~ If the *applicable person* accepts the outcome of the *determination by consent procedure*, no one may appeal against it.

Disciplinary Tribunal

rE44 At the same time as the *Commissioner* or an *Independent Decision-Making Panel* directs that an *allegation* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal*, the *Commissioner* or an *Independent Decision-Making Panel* must also decide whether a three-person panel or a five-person panel is to be constituted.

rE45 In deciding whether to direct the constitution of a three-person or a five-person panel, the *Commissioner* or an *Independent Decision-Making Panel* shall consider the sanction which it considers is likely to be imposed on the *applicable person* if the charge or application is proved, having regard to:

- .1 any ~~applicable sentencing policy and guidelines issued~~ indicative sanctions guidance published by ~~the *BTAS/COIC/Bar Standards Board* and/or the *Council of the Inns of Court*~~ from time to time; and

- .2 the previous disciplinary record of the *applicable person*.

rE46 The *Commissioner* or an *Independent Decision-Making Panel* may direct that a five-person panel is to be constituted if ~~they consider~~ it considers that:

- .1 having regard to any indicative sanctions guidance published by *BTAS/COIC/Bar Standards Board*, in all the circumstances, a sanction of disbarment or *suspension* from *practice* for more than twelve months may be appropriate; or
- .2 having regard to any indicative sanctions guidance published by *BTAS/COIC/Bar Standards Board*, in all the circumstances, a sanction of indefinite *disqualification* or *disqualification* for a defined term of more than twelve months may be appropriate; or

- .3 having regard to any indicative sanctions guidance published by *BTAS/COIC/Bar Standards Board*, in all the circumstances, a sanction of a *BSB entity* having its authorisation or licence revoked or *suspended* for a period of more than twelve months may be appropriate; or
- .4 the *allegation* involves a conviction for dishonesty or deception

otherwise the *Commissioner* or an *Independent Decision-Making Panel* must direct that a three-person panel is to be constituted.

rE47 The *Commissioner* or an *Independent Decision-Making Panel* must inform the *applicable person* of the direction that it has made pursuant to rE46. There is no appeal against the decision to refer a matter to a three or a five-person panel.

rE48 The *Commissioner* or an *Independent Decision-Making Panel* may:

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

rE49 When the *Commissioner* or an *Independent Decision-Making Panel* has directed that an *allegation* shall form the subject matter of a charge or application before a *Disciplinary Tribunal*, the *Commissioner* is responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal*. If so:

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

rE50 Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*

rE51 Where a *Disciplinary Tribunal* directs that matter(s) be referred to *Commissioner* or an *Independent Decision-Making Panel* under rE209 to consider whether an *administrative sanction* should be imposed, the *Commissioner* or an *Independent Decision-Making Panel* shall consider the matter in accordance with rE26 to rE32 or take no enforcement action in accordance with rE19.2 and rE22.2.

A5. Appeals

rE52 An *applicable person* has a right to appeal from a decision to impose an *administrative sanction*. That appeal is to an *appeal panel* constituted under the auspices of the *Council of the Inns of Court* in the same composition as a *three-person panel* constituted under rE133 of the *Disciplinary Tribunal Regulations-2014*.

- rE53 An appeal, if made, shall be made by the *applicable person* sending to the *Commissioner*, within 28 days of the imposition of the *administrative sanction*, a notice identifying the decision appealed against, the decision the *applicable person* contends for, the grounds of such appeal and a statement whether the *applicable person* requires their appeal to be disposed of at an oral hearing. If the *applicable person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.
- rE54 The notice must be accompanied by a sum as prescribed by the *Bar Standards Board* from time to time, ~~the~~. The sum will be payable to the *Bar Standards Board* to cover expenses.
- rE55 Where the appeal is to be dealt with at an oral hearing then:
- .1 at least 5 working days before the time set for the appeal, the *Bar Standards Board* will provide each member of the *appeal panel* and the *applicable person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and
 - .2 the *applicable person* and *Bar Standards Board* may be represented at the hearing.
- rE56 The *appeal panel* must decide whether to set aside or to vary the original decision.
- rE57 If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *applicable person* be refunded either in whole or in part, but the *appeal panel* has no power to award costs.

A6. Reconsidering *allegations* which have been disposed of

- rE58 The *Commissioner* or an *Independent Decision-Making Panel* may reconsider an *allegation* which has been disposed of by the *Commissioner* or an *Independent Decision-Making Panel* respectively where:
- .1 new evidence becomes available which leads it to conclude that it should do so, or
 - .2 for some other good reason.
- rE59 Following such reconsideration, the *Commissioner* ~~or an *Independent Decision Making Panel*~~ may take any further or different action the *Commissioner* ~~or an *Independent Decision Making Panel*~~ thinks fit, as if any earlier decision had not been made.

A7. Confidentiality

- rE60 The *Bar Standards Board* must keep information reports and *allegations* confidential. The *Bar Standards Board* must not disclose the fact that information has been provided to its report exists, or details of the information report or of its treatment as an *allegation* or otherwise, or of its disposal save as specified in this Section 5.A, or as otherwise required by law.
- rE61 Disclosure may be made:

- .1 for the purpose of investigating an *allegation*; or
- .2 for the purpose of keeping the *applicable person*, or any source of information relating to the *applicable person*, informed of the progress of the consideration of the information report or *allegation*; or
- .3 for the purpose of publicising any forthcoming public hearing of charges arising from the *allegation*; or
- .4 where the *applicable person* consents; or
- .5 in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *authorised individual* for a *certificate of good standing* in respect of a *barrister*; or from one of the Inns of Court in respect of an application from a *barrister* to become a *pupil supervisor*; or
- .6 with the approval of the *Commissioner*, where the *Commissioner* considers it is in the public interest to disclose some or all of the details of the information report or *allegation*.

A8. Interpretation

- rE62 For the avoidance of doubt, this Section 5.A does not prevent the immediate operation of the *Interim Suspension and Disqualification Regulations* or the *Fitness to Practise Regulations*, where appropriate.

A9. Commencement

- rE63 This Section 5.A shall come into force in accordance with the provisions of Part 1 of this Handbook.

Enforcement Decision Regulations 2019 – Consequential Amendments

Regulation	Change
r16.1	Change to 'Enforcement Strategy'
r16.3.a	Change to 'Enforcement Strategy'
r16.5	No change
r16.5	Change to 'Enforcement and Supervision strategies'
r17.9	"who were at the time when any conduct was complained of or reported"
gC81	Italicise both references to "complaints"
rC64.2	Add IDB/IDPs as appropriate
rC144.1.c	Change 'complaints' to 'reports'
rE101	Remove "a matter" replace with "an allegation" Replace "PCC" with "Commissioner or IDP"
rE102.1	Replace "PCC" with "Commissioner or IDP" Remove "or five weeks...Disciplinary Tribunal"
rE274.6	Remove
rE278.5.c	Remove
rE144	Insert in all 3 sub regs "or the IDB" after "or any of its committees"
rE144.3	"were a member" to "was a member"
rE138	"Complaint" to "allegation" twice
rE167	Replace "complaint" with "allegation"
rE209	Replace "rE37.3" with "rE19.3 or rE22.3" "Complaints Regulations" to "Enforcement Decision Regulations"
rE218	refers to "complaint", change to "allegation."
rE236	Delete
rE237	Delete
rE263	Replace "PCC" with "Chair of the IDB"
rE261	These Regulations will come into effect on XX 2019 and shall apply to all complaints (as previously defined in version 3.3 of the BSB Handbook) received or opened under the regulations then applying and any step taken in relation to any complaint pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.
rE264	"PCC" to "Chair of the IDB and Commissioner"
rE268	"PCC" to "Commissioner" change "complaint" to "referral".
rE268.2	"PCC" to "Commissioner"

Enforcement Decision Regulations 2019 – Consequential Amendments

Regulation	Change
rE269	"PCC" to "Commissioner"
rE270	"If the Commissioner refers a respondent to an interim panel under rE268 the Chair of the IDB shall consider whether or not the respondent should be subject to an immediate interim suspension or disqualification under rE272 pending disposal by the interim panel."
rE271	Replace "PCC" with "Chair of the IDB"
rE272	Replace "PCC" with "Chair of the IDB"
rE272.2	"PCC" to "Commissioner"
gE1	Replace "PCC" with "Chair of the IDB"
gE2	"PCC" to "Commissioner"
rE273	"PCC" to "Commissioner"
rE274.3	Replace "Chair of PCC" with "Commissioner" Also in paragraph below
rE274.4	Replace "Chair of PCC" with "Commissioner"
rE274.4.c	Replace "Chair of PCC" with "Commissioner"
rE275	Replace "Chair of PCC" with "Commissioner"
rE280	Replace "Chair of PCC" with "Commissioner"
rE284	Replace "Chair of PCC" with "Commissioner"
rE293.g&h	Remove .7.g, change .h to Commissioner and make .2 the Chair and Commissioner
rE300	Replace "PCC" with "Commissioner" (x2)
rE303	Replace "PCC" with "Commissioner"
rE304	Replace "PCC" with "Commissioner"
rE305	Replace "PCC" with "Commissioner" Replace "Chair of PCC" with "Commissioner"
rE306	Replace "PCC" with "Commissioner" Also change: "its" to "the Commissioner's"; "complaint of professional misconduct" to "referral"; and "Complaints Regulations" to "Enforcement Decision Regulations".
rE308	Replace "PCC" with "Commissioner"
rE309	Replace "PCC" with "Commissioner"
rE310.1.2.3&4	Replace "PCC" with "Commissioner"
rE311.3	Replace "PCC" with "Commissioner"

Enforcement Decision Regulations 2019 – Consequential Amendments

Regulation	Change
r316.1	Replace “PCC” with “Commissioner” and remove the repetition
rE318	Replace “PCC” with “Commissioner”
rE320	Replace “PCC” with “Commissioner”
rE324	Replace “PCC” with “Commissioner” Replace “Chair of PCC” with “Commissioner” And delete the repetition.
rE336	Replace “PCC” with “Commissioner”
rE342	Replace “PCC with “Commissioner”
rE343	Replace “PCC with “Commissioner”
rE346	Replace “PCC with “Commissioner”
rE350	.3 to Commissioner Remove .2
Sched 1 (6) (a)	Reword as “member of the BSB, any of its committees or IDB”
Sched 1 (6) (b)	Remove
Part 5 heading and subheadings (and numbering)	Update
Definition 6	Update cross-referencing
Definition 7	Delete
Definition 49	“means, for the purposes of Part 2, a complaint by a client about the standard of service received that is addressed either to the Legal Ombudsman or the chambers or the BSB authorised person”
Definition 50	Remove
Definition 63	Change reference to “Part 6”
Definition 64	Update cross-referencing
Definition 73	Amend to “which power when exercised on an interim basis shall be exercised <u>by the Commissioner</u> in accordance with Section 5.D”
Definition 81	Change to “...in effect as at the date the report is received by, or comes to the attention of, the BSB under Part 5.A”.
Definition 82	Remove
Definition 104	Remove

Enforcement Decision Regulations 2019 – Consequential Amendments

Regulation	Change
Definition 110	Remove
Definition 113	Add IDB to list in a)
Definition 135	Change 5.E to 5.D
Definition 146	Remove
Definition 174-179	Remove
Definition 180	Update to refer to IDP and Commissioner, remove reference to complaints change “final determination of a complaint” to “final determination of an allegation”
Definition 181	Update to refer to IDP and Commissioner, remove reference to complaints change “final determination of a complaint” to “final determination of an allegation”
Definition 190	Remove
Definition 208	Remove
Definition 210	Remove
Definition 211	Change 5.D and 5.E to 5.C and 5.D
NEW DEFINITION	Independent Decision-Making Panel – a panel established to take decisions independently of the executive of the <i>Bar Standards Board</i> as provided for in the <i>Handbook</i> and consisting of members of the Independent Decision-Making Body.
NEW DEFINITION	Quasi-judicial – acting in any capacity which requires an approach of a judicial nature and compliance with the basic requirements of natural justice; and/or, as an arbitrator; or, as a neutral evaluator between parties; or, as a mediator.
NEW DEFINITION	Commissioner – the person who is empowered within the executive of the <i>Bar Standards Board</i> to carry out the functions and exercise the powers as indicated within the <i>Handbook</i>
NEW DEFINITION	Allegation – means, for the purposes of Part 5.A, a <i>report</i> , or part of a <i>report</i> , that is treated by the <i>Commissioner</i> as an allegation under Part 5.A
NEW DEFINITION	Disciplinary Action – for the purposes of Part 5.A, action taken by the <i>Bar Standards Board</i> under the <i>determination by consent procedure</i> or by way of referring a disciplinary charge and/or a <i>disqualification</i> application to the <i>Disciplinary Tribunal</i>
NEW DEFINITION	Report - For the purposes of rC144.1.c and Part 5.A, a spoken, written or other documentary account that gives information about a particular subject, situation, or event involving any of the categories of person listed in r17
NEW DEFINITION	Independent Decision-Making Body – the body established by the <i>Bar Standards Board</i> to provide a pool of members for Independent Decision-Making Panels.
FORMATTING	Remove italicisation of “individual” throughout Handbook

Meeting:	Bar Standards Board	Date:	25 October 2018
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Title:	FBT - Approval of new Part 4 Qualification Rules
Author:	Christopher Young
Post:	Policy Manager

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion <input type="checkbox"/>	Noting <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Recommendation(s)

The Board is asked to **agree** recommendations from the Education and Training Committee to adopt the draft Part 4 Qualification Rules (Annex A), **noting** the Committee's proposal in relation to accreditation by an Inn of pupil supervisors.

Executive Summary

This paper summarises the responses received to the Bar Standards Board's (BSB) consultation paper on proposed new Part 4 Qualification rules. They have been reviewed by the Education and Training Committee, which has made some drafting amendments in response.

The paper summarises the Committee's response to the substantive points raised and no significant changes are proposed. In particular, the Committee reviewed the proposals in relation to pupil supervisor accreditation by the Inns, which was discussed by the Board in April. The Committee recognises the valuable role that can be played by the Inns, but agreed that Inns' accreditation need not be mandatory, in the light of the oversight arrangements that will be in place with AETOs in the future.

Subject to the Board's approval, an application will be submitted to the LSB for their approval of the new rules.

Risk

These recommendations address the following regulatory risks from our Risk Index:

- 3.1 – Inadequate training and preparation for practice;
- 3.3 – Lack of cultural competence and people skills;
- 5.6 – Lack of diverse and representative profession.

Following the completion of policy decision-making, the operational implementation (and any associated corporate/operational risks) will be overseen by the FBT Programme Board.

Resources (Finance, IT, HR)

Significant resources have been identified through the FBT Programme Plan and have been factored into the budgeting process for this year and next.

Equality & Diversity

At every stage of the FBT Programme our proposals have been equality impact assessed. This high-level framework of rules is supported by other documents – the Authorisation Framework, the MoU with the Inns and the Bar Training Handbook – to implement agreed policies which are intended to promote equality, diversity and flexibility in Bar training, so that the Bar can better reflect the society it serves. More granular equality analysis is available on request.

In relation to pupil supervisor accreditation there a risk that an external accreditation process, which is in part based on letters of reference from a narrow pool of senior professionals, may discourage those from different backgrounds to come forward to act as supervisors. Prescriptive rules around pupil supervisor accreditation might also pose barriers (for example for those returning to work) if they impose unnecessary restrictions. The proposals before the Board seek greater flexibility, which would address these issues.

FBT - Approval of new Part 4 Qualification Rules

Introduction

1. This paper summarises the responses received to the Bar Standards Board's (BSB) consultation paper on proposed new Part 4 Qualification rules which was published on 17 July 2018 and closed on 17 September 2018.
2. The responses have been given careful consideration by members of the Education and Training Committee at its meeting on 9 October.
3. The original consultation paper is available on the BSB [website](#). Six responses were received, from one individual barrister and the following five organisations:
 - The Bar Council;
 - Council of the Inns of Court (COIC);
 - The Legal Services Consumer Panel;
 - BBP Law School; and
 - The Bar Association for Commerce, Finance and Industry (BACFI).
4. This paper also seeks to resolve the last remaining substantive point of policy – relating to the accreditation of pupil supervisors. The rules before the Board reflect the decision made on this point by the Education and Training Committee.

Analysis of consultation responses

5. The consultation asked two questions:

Question 1: Do you think that the proposed rules provide the necessary regulatory framework to give effect to the new Bar Training scheme? Please explain your views.

Question 2: Is the drafting of the proposed rules sufficiently clear and precise? Please explain your view.

6. The Committee carefully considered all responses, which raised both policy issues and drafting suggestions. The rules at Annex A include amendments agreed following the Committee's discussions. The Committee accepted a number of minor drafting suggestions not discussed here but shown tracked in the Annex.

General comments

What respondents said

7. The Council of the Inns of Court made several general comments relating to the new rules framework, including that:

[T]he Inns' overriding comment is that there is insufficient emphasis in the draft rules on the crucial role played by the Inns in relation to Qualifying Sessions, Call to the Bar (which is reserved to the Inns by the Legal Services Act 2007), conduct or the mandatory training after Call comprised in the pupils and new practitioners' courses.

Committee response

8. The Committee noted that such matters have been discussed at length with COIC as we have developed an MoU, which will clearly set out the responsibilities of COIC within the BSB's regulatory arrangements. The role of the Inns in call is captured in the rules and the

Committee continues to believe that the rules appropriately capture the high level framework, whilst leaving more detailed requirements to a separate document. We expect to have agreed the MoU with the Inns by early December.

Rules relating to pupil supervisors

9. The current Part 4 rules specified all arrangements relating to pupil supervisors, including, among other things, who is eligible, how to apply and what type of person can be a referee for an applicant.
10. At the time of the 2017 policy consultation, we set out a number of proposals for how those seeking to provide training under the new Authorisation Framework will do so. We also discussed the need for the BSB to set the outcomes of pupil supervisor training and that such training should be undertaken more regularly. These recommendations were adopted by the Board in April 2018. What was unclear at the time was whether there was a continuing need to have the Inns of Court ‘accredit’ pupil supervisors. The assumption inherent in the consultation was that Authorised Education and Training Organisations (AETOs) providing pupillage would themselves provide assurance to the BSB as to the suitability and competence of pupil supervisors.
11. In April it was agreed that this issue be explored further alongside other discussions with COIC and the Inns, in parallel with the consultation. The BSB then sought further information from COIC about their accreditation process and evidence of what might be lost, should that no longer be mandatory. COIC confirmed that the Inns were in favour of continuing to provide accreditation and that further, more robust, quality assurance could be developed, but that such a service could not be provided for prospective pupil supervisors who had received training from another provider.

What respondents said

12. COIC’s response to the consultation suggested that Part 4 of the Handbook should continue to include rules setting out the manner in which pupil supervisors should be appointed and the duties of pupil supervisors. They suggested that pupil supervisors should therefore be mentioned in the rules at rQ1 and rQ29-34.

Committee discussion

13. The Committee considered several options for dealing with this issue, alongside a submission from COIC outlining their view of the risks associated with not mandating a separate accreditation process by the Inns.
14. In deciding to recommend the removal of the mandatory accreditation process, members of the Committee made the following observations:
 - the current system, with an external ‘accreditation’, is not sufficiently robust as unsuitable supervisors may still be approved and there is no quality assurance in place for existing training to check competence to be a supervisor, or any subsequent checks by the ‘accrediting’ body;
 - continuing to require an additional layer of checks (which would have to be more robust should they continue) will come with a cost to the Inns, which may or may not be passed on to pupillage AETOs;
 - the proposed process for checking the suitability and competence of pupil supervisors would not be too onerous for chambers/employers;
 - placing responsibility on the pupillage AETO for assuring pupil supervisors’ suitability was consistent with the approach we have taken elsewhere and the requirement for pupillage AETOs to be authorised by the BSB;

- those delivering training (assuming the Inns will continue provide training to the majority of prospective supervisors) should not solely be responsible for accrediting them; and
 - the BSB would provide guidance to pupillage AETOs on how to provide appropriate assurance and would continue to maintain a record of pupil supervisors.
15. The Committee was clear that the absence of mandatory accreditation by the Inns need not prevent them from offering this service as a means for pupillage AETOs to demonstrate to the BSB that they have appropriate systems in place (indeed we would encourage the Inns to do so).
16. The Committee did not agree that the title or functions of ‘pupil supervisor’ needed to be set out in Handbook rules. The Authorisation Framework will require the AETO to put forward an appropriate training programme to deliver the relevant requirements, which will include having adequately trained and competent supervisors. The new rules give us a strengthened regulatory relationship with the AETO to ensure the training is appropriately managed and delivered. All detailed aspects relating to pupillage, including the new flexibility that is to be introduced, will be delivered through a Bar Training Handbook, with which AETOs will be expected to comply.

Other miscellaneous issues

AETO accreditation

17. COIC suggested that we should reverse the presumption of approval (i.e. that AETOs *should* be approved unless the BSB can find a good reason not to.) The Committee was strongly of the view that it should be the responsibility of the AETO to satisfy the BSB that it is suitable, otherwise there was a risk of sub-standard providers being approved by default, which was not in the public interest.

Policy issues raised

18. A number of policy issues were raised, which were considered by the Committee despite being outside the scope of the consultation. The Bar Council¹ suggested that the BSB should not adopt flexibility in the one-to-one relationship between pupils and their supervisors. Additionally, the Legal Services Consumer Panel drew attention to the matter of regulatory oversight of students, raising concern with the policy decision to have a continued role for the Inns in administering the fit and proper person checks (and by extension student conduct.) The Committee noted that the arguments in relation to pupil supervisors and the role of the Inns had been discussed at length by the Board previously and the responses to this consultation put forward no new evidence that would justify changing policy agreed by the Board less than six months ago.
19. The Bar Council also raised concerns with the scope for exemptions from training requirements, including those available to transferring solicitors and legal academics. The Committee noted that there has been no substantive change to these arrangements – there is no evidence of problems with the current rules and the future arrangements will be focused on ensuring the same high standards are met by all who transfer, as set out in the Professional Statement.

¹ This position was also supported by BACFI.

Next steps

20. Following approval by the Board, an application to the Legal Services Board (LSB) for approval for the proposed new Part 4 Qualification Rules will be made and a Summary of Responses document will be published on the BSB website.
21. The Board should note that these rules retain the current arrangements in relation to Registered European Lawyers (RELs) whose rights and status may change as the UK leaves the European Union, particularly in a ‘no deal’ scenario. We have been liaising with the Government, which published a technical notice detailing the expected arrangements for European lawyers post-exit on 12 October. Other than a short transition period in which current RELs would be able continue to practise and/or transfer to the English and Welsh Bar, European lawyers will be treated in the same way as foreign lawyers (unless any alternative agreement is reached with the EU). Our rules will be amended in due course to take account of the new legal framework.

Regulatory objectives

22. The proposed recommendations will promote the following regulatory objectives:
 - i. *Protecting and promoting the public interest;*
 - ii. *Encouraging an independent, strong, diverse, and effective legal profession; and*
 - iii. *Promoting and maintaining adherence to the professional principles*

Publicity

23. We are scheduling a number of roadshows over the autumn to help build up understanding of the new rules, in particular those relating to changes to pupillage and other forms of work-based learning.

Lead responsibility

Christopher Young, Policy Manager

Annex A – Draft Part 4 Qualification Rules

PART 4

BAR QUALIFICATION RULES

A. APPLICATION OF THESE RULES

rQ1 Section 4.B applies to all individuals who wish to be *called to the Bar* and to become qualified to practise as a *barrister* and to *authorised education and training organisations*.

rQ2 Section 4.C applies to all *practising barristers*.

B. BAR QUALIFICATION RULES

B1. Purpose of the Bar Qualification Rules

oQ1 To provide routes for the qualification of *barristers* that enable them to meet the Professional Statement and to provide for the regulation of *Authorised Education and Training Organisations*.

B2. Routes to Qualification as a *barrister* and *authorised person*

rQ3 To be called to the *Bar* by an Inn an individual must have successfully completed the following:

- .1 *academic legal training*;
- .2 *vocational training*;
- .3 the number of *qualifying sessions* as a student member of an *Inn* as prescribed from time to time by the *BSB*; and
- .4 pay such fee or fees as may be prescribed.

rQ4 To obtain a *provisional practising certificate* a *barrister* must:

- .1 have successfully completed a period of *pupillage* satisfactory to the *BSB*;
- .2 pay such fee or fees as may be prescribed.

rQ5 To obtain a *full practising certificate* a *barrister* must:

- .1 have successfully completed a further period of *pupillage* satisfactory to the *BSB*;
2. pay such fee or fees as may be prescribed.

- rQ6 The *BSB* shall set out in writing:
- .1 the requirements to be met by an *Inn* in admitting student members and calling individuals to the *Bar*;
 - .2 the manner in which an *Inn* shall assess whether such individuals are fit and proper; and
 - .3 the minimum requirements for the delivery of delivering qualifying sessions by an Inn.
- rQ7 The *BSB* may grant exemptions from all or part of the requirements set out in rQ3 to rQ5 above.
- rQ8 In deciding exercising its discretion whether to grant an exemption from part or all of any component of training, the *BSB* will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.the applicant to do such training.
- rQ9 An exemption from part or all components of training may be granted unconditionally or subject to conditions, which may include in an appropriate case:
- .1 a requirement to do training instead of the training prescribed by this SectionPart 4; and/or
 - .2 a condition that the applicant must pass a *Bar Transfer Test*.
- rQ10 Where the *BSB* exempts an individual pursuant to rQ7 above, it may also:
- .1 grant exemption in whole or in part from the requirement to attend *qualifying sessions*; and
 - .2 specify the period within which any requirement to attend *qualifying sessions* must be fulfilled, which may be a period ending after the individual concerned has been called to the *Bar*.

Exemptions

- rQ11 An application for exemption under this Section must be in such form as may be prescribed by the *BSB* and contain or be accompanied by the following:
- .1 details of the applicant's educational and professional qualifications and experience that meets the standards required of candidates;
 - .2 evidence (where applicable) that the applicant is or has been entitled to exercise rights of audience before any *court*, specifying the rights concerned and the basis of the applicant's entitlement to exercise such rights;

- .3 any other representations or evidence on which the applicant wishes to rely in support of the application;
- .4 verified English translations of every document relied on which is not in the English language; and
- .5 payment of such fee or fees as may be prescribed.

rQ12 Before deciding whether to grant any exemption under this Section, the *BSB* may make any further enquiries or require the applicant to provide any further information that it considers relevant.

Full exemption

rQ13 If the *BSB* is satisfied that an applicant falls within Rule Q14, the *BSB* will:

- .1 exempt the applicant from any component of training prescribed by this [Section Part 4](#) which the applicant has not fulfilled; and
- .2 authorise the applicant to practise as a *barrister* on their being admitted to an *Inn* and called to the *Bar* subject to complying with the Handbook.

rQ14 The following categories of individual fall within this Rule:

- .1 an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;
- .2 subject to Rule rQ15, an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);
- .3 a *barrister* of Northern Ireland who has successfully completed *pupillage* in accordance with the rules of the *Bar* of Northern Ireland;
- .4 subject to Rule rQ16, a *Qualified European Lawyer*.

rQ15 The *BSB* may exceptionally require an applicant who falls within Rule rQ14.2 to do part of *pupillage* if it considers this necessary having regard particularly to the knowledge, professional experience and intended future *practice* of the applicant.

rQ16 Subject to Rules rQ18 to rQ20, the *BSB* may require a *Qualified European Lawyer* to pass a *Bar Transfer Test* if the *BSB* determines that:

- .1 the matters covered by the education and training of the applicant differ substantially from those covered by the *academic legal training* and the *vocational training*; and

- .2 the knowledge acquired by the applicant throughout their professional experience does not fully cover this substantial difference.

Registered European Lawyers

rQ17 The Rules governing registration as a *Registered European Lawyer* are in Section 3.D of this *Handbook*.

rQ18 The *BSB* may not require an applicant who is a *Registered European Lawyer* and who falls within Rule rQ20 or rQ21 to pass a *Bar Transfer Test* unless it considers that the applicant is unfit to *practise* as a *barrister*.

rQ19 In considering whether to require an applicant who falls within Rule rQ21 to pass a *Bar Transfer Test*, the *BSB* must:

- .1 take into account the professional activities the applicant has pursued while a *Registered European Lawyer* and any knowledge and professional experience gained of, and any training received in, the law of any part of the United Kingdom and of the rules of professional conduct of the *Bar*, and
- .2 assess and verify at an interview the applicant's effective and regular pursuit of professional activities and capacity to continue the activities pursued.

rQ20 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*, and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales.

rQ21 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*, and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales professional activities under a *Home Professional Title*; and
- .3 for a period of less than three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales.

rQ22 For the purpose of this [SectionPart 4](#), activities are to be regarded as effectively and regularly pursued if they are actually exercised without any

interruptions other than those resulting from the events of everyday life such as absence through illness or bereavement, customary annual leave or parental leave.

Partial exemption

rQ23 If the *BSB* is satisfied that an applicant falls within Rule rQ24, the *BSB* will exempt the applicant from the *academic legal training* and the *vocational training* and, if the *BSB* thinks fit, from part or all of *pupillage*.

rQ24 The following categories of individual fall within this Rule:

- .1 an individual who has been granted rights of audience by another *Approved Regulator* and is entitled to exercise those rights in relation to any class of proceedings in any of the *Senior Courts* or all proceedings in county courts or magistrates' courts in England and Wales;
- .2 a *Qualified Foreign Lawyer* who has for a period of at least three years regularly exercised full rights of audience in courts which administer law substantially similar to the common law of England and Wales;
- .3 a teacher of the law of England and Wales of experience and academic distinction.

Temporary call to the Bar of Qualified Foreign Lawyers

rQ25 A *Qualified Foreign Lawyer* (“the applicant”) who falls within Rule rQ24.2 may apply to be called to the *Bar* by an Inn on a temporary basis for the purpose of appearing as counsel in a particular case before a *court* of England and Wales without being required to satisfy any other requirements of this Section Part 4 if the applicant has:

- .1 obtained from the *BSB* and submitted to an *Inn* a *Temporary Qualification Certificate* specifying the case for the purposes of which the applicant is authorised to be called to the *Bar*;
- .2 duly completed and signed a *call declaration* in the form prescribed by the *BSB* from time to time; and
- .3 paid such fee or fees as may be prescribed.

rQ26 The *BSB* will issue a *Temporary Qualification Certificate* if the applicant submits to the *BSB*:

- .1 evidence which establishes that the applicant is a *Qualified European Lawyer* or falls within Rule rQ24.2;
- .2 a *certificate of good standing*; and

- .3 evidence which establishes that a *Professional Client* wishes to instruct the applicant to appear as counsel in the case or cases for the purposes of which the applicant seeks temporary *call* to the *Bar*.

rQ27 *Admission to an Inn* and *call* to the *Bar* under Rule rQ25 take effect when the applicant is given notice in writing by the *Inn* that the applicant has been admitted to the *Inn* and called to the *Bar* under Rule rQ26 and automatically cease to have effect on conclusion of the case or cases specified in the applicant's *Temporary Qualification Certificate*.

rQ28 Where an individual is dissatisfied with a decision by either the *BSB* or an *Inn* in relation to rQ3 to rQ5 and rQ7 to rQ26 above they may apply to the *BSB* for a review.

B3. Authorised Education and Training Organisations

rQ29 Providers of *vocational training* and *pupillage* must be authorised by the *BSB* as an *AETO*.

rQ30 An application to become an *AETO* must be made in such form and be accompanied by payment of such fee or fees as may be prescribed.

rQ31 In determining an application to be an *AETO* the *BSB* will have regard to the *Authorisation Framework* and in particular the mandatory ~~and recommended~~ criteria. -The *BSB* will not approve an application by an *AETO* unless it is satisfied that the *AETO* is:

- .1 able to meet the mandatory criteria set out in the *Authorisation Framework* relevant to the application; and
- .2 a suitable provider for the purposes of the *Authorisation Framework*.

rQ32 The *BSB* may grant authorisation to an *AETO* on such terms and conditions as it considers appropriate including the period of authorisation.

rQ33 The *BSB* may vary, amend, suspend or withdraw authorisation of an *AETO* in the following circumstances:

- .1 the *AETO* has applied for such variation, amendment, suspension or withdrawal;
- .2 the *AETO* ceases to exist, becomes insolvent or merges;
- .3 the *AETO* fails to comply with conditions imposed upon its authorisation;
- .4 the *BSB* is of the view that the *AETO* has failed or will fail to fulfil the mandatory requirements set out in the *Authorisation Framework*;

- .5 the *BSB* is of the view that the *AETO* is not providing the training for which it was authorised to an adequate standard or there has been a material change in the training provided; or
- .6 the *BSB* is of the view that the continued authorisation of the *AETO* would inhibit the *Regulatory Objectives*.

rQ34 An *AETO* which is dissatisfied by a decision in relation to rQ31 – rQ33 above may apply to the *BSB* for a review.

B4. REVIEW AND APPEALS

rQ35 Where provision is made under this [SectionPart 4](#) for a review by the *BSB* of a decision, any request for such a review must be accompanied by:

- .1 a copy of any notice of the decision and the reasons for it received by the *person* or organisation requesting the review (“the applicant”);
- .2 where the decision is a decision of an *Inn* [or the ICC](#), copies of all documents submitted or received by the applicant which were before the *Inn* [or the ICC](#);
- .3 any further representations and evidence which the applicant wishes the *BSB* to take into account; and
- .4 payment of such fee or fees as may be prescribed.

rQ36 Where the decision under review is a decision of an *Inn*, the *BSB* will invite the *Inn* to comment on any further representations and evidence which the applicant submits under Rule rQ35.3.

rQ37 On a review under this Section the *BSB*:

- .1 may affirm the decision under review or substitute any other decision which could have been made on the original application;
- .2 may in an appropriate case reimburse the fee paid under Rule rQ35.4; and
- .3 will inform the applicant and any other interested *person* of its decision and the reasons for it.

rQ38 Where provision is made under this [SectionPart 4](#) for a review of a decision by the *BSB*, this review may be delegated to an *Independent Decision-Making Panel*, where specified by the *BSB*.

rQ39 Where under this [SectionPart 4](#) provision is made for a review by the *BSB* of a decision, no appeal may be made to the High Court unless such a review has taken place.

rQ40 An individual who is adversely affected by a decision of the *BSB* under Section B.2 may appeal to the High Court against the decision.

Definitions [to be inserted in Part 6]

“academic legal training” means:

(a) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body and which contains the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union; or

(b) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body together with a degree programme or degree conversion programme (ie Graduate Diploma in Law or equivalent) which includes the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union.

“*AETO*” is an Authorised Education and Training Organisation which is authorised by the *BSB* to provide a vocational training course and/or *pupillage* in accordance with the *Authorisation Framework*.

“*Authorisation Framework*” means the framework published by the *BSB* setting permitted pathways and their mandatory training components for the qualification of *barristers* in order to meet the Professional Statement and the criteria for authorisation of *AETOs*. It also includes the prescribed Curriculum and Assessment Strategy and additional publications as detailed in the framework.

“*Independent Decision-Making Body*” means the body established by the *BSB* to take decisions independently of the executive of the *BSB* as provided for in the *BSB Handbook*¹.

“*Independent Decision-Making Panel*” means a Panel consisting of members of the *IDB* established to take decisions as provided in the *BSB Handbook*².

“*pupillage*” means a period of ~~recognised~~ work-based learning provided by an *AETO* in accordance with its authorisation by the *BSB*.

“qualifying sessions” means short professional development events of an educational or collegiate nature arranged by or on behalf of an *Inn*.

“vocational training” means a vocational component training course provided by an *AETO* in accordance with the *Authorisation Framework*.

¹ This assumes the *BSB*'s proposals to establish such a body are approved. In the absence of this body, and pending its establishment, the current review panels would continue.

² As above.

Meeting:	Bar Standards Board	Date:	Thursday 25 October 2018
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Title:	Annual report of the Governance, Risk and Audit Committee (GRA)
Author:	Nicola Sawford / Dan Burraway
Post:	Chair of GRA Committee / Corporate Support Manager

Paper for:	Decision: <input type="checkbox"/>	Discussion: <input type="checkbox"/>	Noting: <input checked="" type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Recommendation(s)

The Board is asked to note the contents of the update report.

Executive Summary

1. This report summarises the key aspects of the Committee's work and achievements over the past year. The report also provides the Board and public with assurance that the risk, governance and control processes within the organisation are robust and appropriate.
2. GRA publishes an annual report on its activities over the last year. The 2017/18 annual report is attached. Much of GRA's focus has been on regulatory and corporate risk and the development of a consolidated approach to their reporting and management. At an operational level it has held the executive to account, amongst other things, on its management of corporate risks relating to the implementation of future bar training, the development of new information management systems and GDPR compliance.
3. Internal audit has been introduced this year as part of the BSB Assurance Framework. It has been invaluable in providing independent assurance of core BSB processes and in identifying areas for development and improvement.
4. The report also highlights the use of APEX (the pool of experts available to provide support and guidance to the BSB in its policy development and decision making). APEX continues to be a very valuable resource.
5. In 2018/19 GRA will continue to focus on the consolidation of regulatory and corporate risks as well as the development of the next Risk Outlook and the BSB strategy and annual business plans.

GRA annual report 2018

Introduction

1. The Governance, Risk and Audit Committee's is a standing committee of the Board with oversight of: governance; risk-management; risk strategies; key organisational controls; internal business processes; the Assurance Framework; and the work of the Internal Audit team.
2. The Committee meets regularly throughout the year and has met nine times since the last report. Eight of these meetings were scheduled regular meetings and one was an exceptional 'workshop' on the development of the next [Risk Outlook](#)¹.
3. The Committee currently has six members - three Board members: Nicola Sawford (Chair), Naomi Ellenbogen QC (Vice-Chair) and Adam Solomon QC; and three independent members; Judith Worthington, Tim Fry and Liz Butler.

Executive summary: see cover paper.

Risk Management

4. Risk is a fundamental element of the BSB's approach to regulation. At a strategic level, understanding regulatory risks enables the Board to identify emerging risks within the legal services market and helps the BSB to support the profession to respond positively to mitigate the risks and to ensure that the public interest is protected and the needs of consumers are met. At an operational level, we use risk to determine the allocation of resources and to identify challenges to the delivery of projects and programmes.
5. A core function of GRA is to provide the Board with assurance on the oversight of risk. This includes the identification, management and control of both regulatory and corporate risks. It does this through holding the executive to account for its risk management strategies and in challenging the evidence and rationale for regulatory risks that are identified. GRA has over the last year focussed in particular on:
 - i. General Data Protection Regulations (GDPR) compliance
 - ii. Cyber security and ensuring that the organisation has in place robust measures to ensure the secure handling of data and information
 - iii. Both programme and regulatory risks relating to the implementation of education reform through the Future Bar Training Programme
 - iv. The risks associated with assuring competence at the Bar and whether the regulatory approach of the BSB mitigates effectively those risks
6. As the BSB developed its approach to risk management it became increasingly clear that there was overlap between corporate and regulatory risks. The Board decided that in order to fully embed risk in how it works it needed to combine its management and mitigation of the two so that there was a coherent risk strategy. Many regulatory risks for example are addressed through programmes and projects which feature on the corporate risk register and aligning the two therefore enabled a more joined up approach to risk.
7. This culminated in the creation of the Consolidated Risk Report. This bi-annual report summarises the key regulatory and corporate risks, the interplay between them and their relative action priority. It enables the Board to see clearly what the primary risks (both

¹ 2016 Risk Outlook - https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf

corporate and regulatory) are, how they map against the agreed risk appetite and what the BSB is doing in response.

Risk outlook

8. Emerging risks and risk-themes were discussed by the Executive's Risk Forum and then a workshop group of Board and Committee members.
9. A wide-ranging discussion looked first at the current market issues and risk areas, followed by detailed consideration of political, economic, social and cultural, technological, legal and environmental (PESTLE) factors that could have an impact on both the wider legal services marketplace and the part the BSB regulates in the future.
10. The Committee helped refine an initial six draft risk themes down to three, which are being used to inform our new 3-year strategy (due for publication in March 2019). The Strategy builds on the progress under the last strategic plan, responds to the emergent risk themes and allows for continuity where longer-term initiatives are ongoing.

Assurance and Internal Audit

11. As regulatory decision-making has been devolved into the Executive (part of the Governance Reform Programme²) and policy committees are being disestablished the Committee has taken on responsibility for general assurance as part of an assurance framework.
12. After some assurance mapping work assisted by BDO the BSB adopted a 4 lines of defence model³ of assurance. This model is a holistic approach to risk management, with controls at various levels of a process rather than a single 'quality control' point.
13. The four lines of defence have been applied within the BSB as follows:
 - (a) First line manages risk on a day-to-day basis, implementing controls and actions.
 - (b) Second line is independent, monitors the risks and challenges the first line on controls and actions.
 - (c) Third line is internal audit, which provides independent assurance on the adequacy, effectiveness and operation of internal controls.
 - (d) Fourth line is the Committee, acting on behalf of the Board. Maintaining oversight and providing assurance to the Board on the effectiveness of risk management processes and controls.
14. The Committee approved a three-year internal audit plan in November 2017. Since then Crowe LLP (our appointed Internal Auditors) have completed 4 audits;
 - (a) Authorisations and Waivers;
 - (b) Resources Group - Records;
 - (c) Resources Group – Finance, Purchasing and Accounts Payable; and
 - (d) Resources Group – IS, Cyber Security.
15. The Committee's view is that internal audit has provided an important level of assurance to the organisation. Where audits have identified areas for improvement, management actions have been agreed.

² Governance Principles - <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-approves-new-governance-principles-and-agrees-to-simplify-decision-making/>

³ ICAEW - <https://www.icaew.com/technical/audit-and-assurance/assurance/what-is-assurance/assurance-glossary/four-lines-of-defence>

16. The Committee monitors the progress and impact of agreed management actions at every meeting. Furthermore, there is an agreed schedule of independent reviews by the IA team to ensure that management actions have been completed to a high standard.

Governance

Advisory Pool of Experts

17. The Committee received a review of the Advisory Pool of Experts⁴ (APEX), established in 2016 as part of the Governance Reform Programme. The Committee noted that APEX has proved to be a useful, cost-effective source of external expertise and that there are suitable mechanisms in place for monitoring, oversight and reporting of APEX use.

Other Business

18. The BSB as an evidence-based regulator wants to understand the efficacy of its regulatory interventions. The Committee reviewed the ongoing development work on processes for evaluation and learning as part of the two-year Research Strategy⁵.
19. Members reviewed a gap analysis on compliance with the best practice recommendations contained in the 'Striking the Balance'⁶ report from the Committee on Standards in Public Life and considered and approved the Executive's recommended actions before they were considered by the Board.

Forward View

20. As well as the normal business defined by their terms of reference, over the coming year the Committee will continue their work scrutinising the evolution of the Consolidated Risk Report and associated processes for monitoring risk. It is also anticipated that the Committee will focus on the relationship between the new Risk Outlook and the new business strategy, both to be published in April 2019. A new area of compliance assurance in future will be in connection with the BSB's anti-money laundering supervisory role.
21. The next GRA Annual Report will be presented to the Board in October 2019.

⁴ Advisory Pool of Experts - <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/advisory-pool-of-experts/>

⁵ Research Strategy - https://www.barstandardsboard.org.uk/media/1852486/bsb_research_strategy_2017.pdf

⁶ Striking the Balance -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554817/Striking_the_Balance_web_-_v3_220916.pdf

Chair’s Report on Visits and External Meetings from October 2018

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:

30 September 2018	Attended the Opening of the Legal Year Reception and Dinner
1 October 2018	Attended the Opening of the Legal Year ceremony followed by The Lord Chancellor's Reception
5 October 2018	Visited Highbury Youth Court met with Judge Allison
9 October 2018	Attended the PSU drinks reception
11 October 2018	Attended the BSB/LSB Board to Board meeting
24 October 2018	Attended Board Briefing