

## **Bar Standards Board - Director General's operational report – October 2019**

### **Cross-departmental programmes**

1. With the current DG's pending retirement scheduled for the end of January, new sponsors for Programmes are currently being identified and bedded in so as to allow a transitional period between the DG and new programme sponsors. The Programme Manager for all programmes remains the same so operationally the change of sponsor should see no disruption to the delivery of the programme work plans.

### **Future Bar Training (FBT) programme**

2. The sponsorship of the FBT programme will now pass from the Director General to the Director of the Regulatory Operational Department as most of the FBT changes that are now taking place are operational ones that fall under the auspices of the Regulatory Operations Department.

#### ***Pupillage: implementation of the Professional Statement***

3. All pupillages commencing on or after 1 September 2019 must assess pupils in line with the competences in the Professional Statement. The final round of visits with the pilot group has now been concluded. The response to implementing the Professional Statement was consistently positive amongst the early adopters. Some guidance was included in the new Bar Qualification Manual that was published when the new rules went live and we have added to it, based on feedback from these visits.

#### ***Pupillage: Pupil Supervisor Training Outcomes***

4. Following the stakeholder workshops over the summer, the draft outcomes have been refined and circulated back to stakeholders for further comment. Guidance for AETOs and organisations providing training has also been drafted and will be included in updates to the Bar Qualification Manual. A final version of the outcomes will be published in October.

#### ***Pupillage: Recruitment and Advertising***

5. We conducted a targeted engagement programme to seek feedback on two proposals. The first is mandating a timetable for all pupillage recruitment. The second is to introduce a requirement for AETOs to use written agreements for pupillage.
6. We sent out the proposals in two formats; an engagement programme document and surveys. We received:
  - 39 responses from key stakeholders in response to engagement programme document, including the Bar Council, Specialist Bar Associations and AETOs;
  - 312 responses to the survey on mandating the Gateway timetable; and
  - 252 responses to the survey on written agreements
7. The final proposals relating to the recruitment timetable will come to the Board in January. An announcement will also follow about the requirement to have written agreements.

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

8. The work to implement the MoU is progressing well. This month, the Board is being asked to agree the Inns Conduct Committee Practice and Procedure Rules: these are the practical rules the ICC will follow in accordance with the MoU and Schedule 1 Guidelines (for determining if a person is fit and proper) in particular. If agreed by the Board, these will come into force on 1 January 2020. At this time, new Admission and Call Declarations will also be introduced.

9. Prior to the Christmas break, the project team will focus on implementing the Assurance Framework (MoU Schedule 4) and looking to formally close down the project in February 2020.

### ***AETO Portal***

10. Issues on the snagging list still exist with regard to the smooth functioning of the AETO portal. A meeting has been set up with the Information Services Team to discuss a strategy on how arising issues can be dealt with more effectively.

### **Regulatory Operations Programme (Modernising Regulatory Decision-Making)**

11. Two major milestones for the RegOps programme have now been delivered on the 15<sup>th</sup> of October with new both the new website going live and the transition from using FloSuite to the new Case Management System.
12. The next phase of work involves conducting lessons learnt exercises for all projects to identify both the good practice and the areas for growth that have emanated from each project so that good practice can then be shared as we embark on delivering Phase 2 of the programme. For all three projects in the programme, (CAT, IDB & the CMS) all outstanding workstreams are being reassessed as to their importance for operational delivery and refreshed project plans will be delivered shortly.

### ***Contact and Assessment Team (CAT)***

13. The CAT helpline went live on 15 October 2019. The purpose of CAT is to receive all incoming calls at the BSB so all information received can be consistently handled and risk-assessed. A protocol has been finalised between the CAT team and Strategy & Policy Department outlining:
  - Which Handbook-related questions should be answered by CAT,
  - What members of CAT should do when they need guidance from the Strategy & Policy Department, and
  - What members of CAT should do when they cannot immediately answer a question.
14. The Strategy & Policy Department are creating a training programme to deliver to members of the CAT team on core topics of the BSB Handbook which will aid them in answering queries. The format of the training will be a series of mini-sessions, each covering four or five Handbook topics. A mini-booklet is also being produced, with all the topics and key points from the training to assist the CAT team when taking calls, during the consideration of cases and as a useful reference for new starters.

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

15. The next E & AJ Programme Board is scheduled for the 23<sup>rd</sup> of October. The programme plan has been updated to reflect workstreams that have been planned for 2020 in line with the Equality & Diversity Strategy for 2020-2022.
16. Work to review our external facing resources about harassment is slightly delayed as we have focussed on the prospective duty to report survey, the stakeholder engagement strategy for the project and the evaluation framework for the Pilot Harassment Support Scheme. The delay does not impact stakeholders or the next steps of the Project; and it will be remedied by the end of October. Staff in the Professional Conduct (now Legal and Enforcement) and Supervision Teams have not been able to progress their workstream, because it was all hands on deck to get everything ready in order for RegOps to go-live on the 15<sup>th</sup> of October as planned. This has been factored into the project plan and a further update on how this has progressed will be provided at the early December Programme Board meeting.

17. The Race Equality Taskforce agreed an action plan, at its meeting on 25 September. It includes work to contribute to the BSB E&D Strategy for 2020-22 and to promote good practice around race equality at the Bar. The meeting was attended by the Black Barristers' Network and our Director of Communications.

### ***Equality Impact Assessment (EIA) of the Equality Rules***

18. We are continuing to develop our EIA of our current equality rules to understand what the issues are with our current rules. We have been able to identify some gaps in our knowledge and will be engaging with our stakeholders over the coming weeks to ensure a comprehensive evidence base.

### **IGR Programme**

19. The IGR Programme Initiation document has been drafted and the final details are currently being discussed between the CEO of the Bar Council and the DG of the Bar Standards Board as this will be a jointly run programme of work. The Governance stream whose main aim will be to make adjustments to governance arrangements between the Bar Council and BSB to underpin the new mode and achieve compliance with the IGRs, has been agreed in its remit and work is progressing well in this project.

### **Strategy & Policy**

#### ***BSB Handbook***

20. Version 4.3 of the BSB Handbook came into force on 15 October, with a new and improved functionality on the BSB website. The new version includes the new Enforcement Decision Regulations, contained in Part 5:A, which replace the old Complaints Regulations. The new Regulations were designed to improve the way that the BSB assesses and handles reports about persons we regulate.
21. The Regulations remove the distinction between "complaints" and other types of information received, to allow for a more holistic approach to addressing concerns about those whom we regulate. Information that requires assessment is referred to as a "report", regardless of its source. A report can be treated as an allegation and formally investigated if it reveals a potential breach of the BSB Handbook.
22. Two new roles have been created to take regulatory decisions – the Commissioner and the Independent Decision-Making Body – following the disestablishment of the Professional Conduct Committee. The powers and functions of each role are set out in the Regulations, including the decisions available to each role at the end of the investigation of an allegation. The Commissioner's powers include the power to authorise other persons to exercise any powers, and these authorisations are recorded in the Scheme of Delegations, contained in the Bar Standards Board Governance Manual.

#### ***Professional Indemnity Insurance (PII) and BMIF***

23. The executive (Oliver Hanmer and Michael Jampel) met executives from BMIF to discuss their first annual report to the BSB, as prefigured by the Memorandum of Understanding between the two bodies. The report was interesting and informative, and the meeting discussed certain aspects in detail, including how the BSB would use thematic information from BSB as an input into our wider intelligence-gathering. It will be circulated to the Board shortly.

#### ***Immigration supervisors***

24. This month we issued a rule change consultation to seek views on a potential rule change which would prevent barristers from supervising immigration advisors who have been subject to certain sanctions from an approved legal regulator, the Office of the Immigration Services

Commissioner or a designated body. The consultation closes on 9 November, after which we will consider the responses and may submit an application to the Legal Services Board (LSB).

### ***Scoping of the BSB Handbook Review Project***

25. We have continued engaging with our stakeholders to build our evidence base and determine the scope of the review. We have recently met with the International Conference of Legal Regulators in Edinburgh, COIC, BTAS, the University of Westminster and BPTC Providers Forum. We have also recently hosted a successful stakeholder engagement event on 16 October, attended by barristers from various chambers, and from other organisations, for example the Legal Services Consumer Panel, London Common Law and Commercial Bar Association, Inns' Conduct Committee, and CPS. The Call for Evidence closes on 28 October, after which we will consider the responses and then the Board hopes to agree on the scope of the review.

### ***Research***

26. AlphaPlus are continuing the Future Bar Training evaluation. They have completed initial interviews with a sample of training organisations (both work based and vocational) to investigate their early experiences preparing for and implementing the changes introduced as part of FBT. Surveys will shortly be launched targeting both AETOs and Trainees to collect information on the implementation of the reforms (process evaluation) as well as baseline information for the impact evaluation (the extent to which the reforms have succeeded in meeting their objectives).
27. The report has been completed for the Continuing Professional Development evaluation and is awaiting final agreement and sign-off prior to publication. The researchers undertook a literature review of theories and practice around CPD, held several focus groups and 40 interviews with barristers, held an internal workshop at the BSB to discuss emerging findings, and completed an online survey which received 566 responses.
28. Research into BSB complaints data is being conducted by the Research Team. This will analyse three years of data to investigate factors contributing to differences across gender and ethnicity in the numbers of complaints made, and the outcomes of complaints, and is a follow-up to a similar piece of research published in 2016.
29. Analysis is being undertaken to look at the impact of the change to the cut score/pass mark for the BCAT in 2018. This will help to inform future evaluation work on the BCAT changes. We have also worked on a further analysis of differential attainment on the BPTC following the changes to the centralised examinations.
30. The BSB has commissioned a literature review covering the factors influencing Equality and Diversity policies in Higher Education, and their impact on student experience. This is the first stage of research into the Equality and Diversity Policies of vocational training providers, in response to earlier research looking at differential attainment on the BPTC and the barriers to Bar training.

### ***Regulatory Risk***

31. At their September meeting, the Board approved a new BSB Regulatory Risk Index 2019. We have now published this on our new website and included it within the new Case Management System.
32. While launching our new regulatory operations, we have also introduced a new risk assessment process, in support of which we have developed, and published, a BSB risk assessment policy.

## **Professional Conduct Department**

### ***Regulatory Operations Programme***

33. This is the last report from the Professional Conduct Department (PCD). As part of the Regulatory Operations Programme changes, the PCD was disbanded on 15 October and two new departments established. The PCD Assessment Team has been absorbed into the new Contact and Assessment Team and along with the Operational Support Team, has moved into the new Regulatory Operations Department. The Investigations and Enforcement Team and the Legal Support Team have become the Legal and Enforcement Department.
34. The Professional Conduct Committee was also disestablished on 15 October and the last meeting of the PCC took place on 2 October 2019. The decision-making functions of the PCC will now be undertaken by the Independent Decision-Making Body (IDB).
35. The induction and training programme for the IDB members concluded on 9 October 2019 and the first IDB panel is scheduled to take place on 21 October 2019.
36. All relevant policies covering the operation of the two new departments have been posted on the BSB's new website here: <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/the-decisions-we-take.html>

### **The Tribunal Representation Panel**

37. As the Board is aware, from January 2020, we will commence remunerating those who represent the BSB at Disciplinary Tribunals and other hearings. The application window for the BSB the new Tribunal Representation Panel has now closed, and we have received a good number of applications. Shortlisting is currently taking place and we intend to conduct interviews on 12 and 13 November. We anticipate making an announcement about appointments in late November 2019. The new arrangements are scheduled to become operational in January 2020.

### ***Staff Training***

38. The Regulatory Operations Programme training for staff has also now been completed. This has focussed on ensuring that all staff are familiar with the procedures and process arrangements for the new decision-making structure. It has also included technical training on the systems which will support the delivery of Business as Usual operations, including the new case management system and bundling software.
39. Further staff training has been planned throughout the remainder of this year.

### ***Litigation***

40. In relation to the two discrimination claims from the same barrister which we reported on last month, the Employment Tribunal matter has now been listed for a strike out hearing in February 2020. The High Court matter is currently still at the case management stage and any hearing is unlikely to take place before April 2020.
41. The BSB also continues to defend a civil claim in which we are one of eight defendants. That case alleges that the BSB committed fraud by false representation and breached the Claimant's Article 6 rights in not investigating their complaint against a barrister. An application to strike out this claim has been made by the BSB and the other defendants and we await a date for this application to be heard.

## **Regulatory Assurance Department**

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

42. Under regulation [51\(1\) of the Money Laundering Regulations](#) we are required to provide an annual supervision return to HM Treasury. We are currently compiling the information for the 2019 return.
43. We are working with other supervisors to update the Joint Legal Sector guidance, reflecting the 5<sup>th</sup> Money Laundering Directive.

### ***Regulatory Returns***

44. We are in the process of finalising the questions for the Regulatory Return that we plan to issue in the last quarter of the business year. The Return will provide an opportunity to update the risk assessments of chambers that were conducted in 2015-16, as well as to assess the implementation of recent policy changes, such as the new transparency rules. It will also provide an opportunity for chambers and BSB entities to tell us about their view of emerging risk in the market.
45. We have met with the Communications and Stakeholder Engagement team to review the communications plan for the Return.

### ***Assuring Competence***

46. We are in the final stages of mapping our stakeholder engagement efforts and revisiting our implementation plan ahead of a Project Board being convened.
47. We continue our efforts to engage with stakeholders- mostly recently by attending an event on Quality Indicators convened by the Legal Services Consumer Panel.

## **Communications and Stakeholder Engagement**

48. Since this report was last prepared for the September Board, the following press releases and news announcements have been issued:
  - 16 September: advertising for members of the panel for paid legal representation for tribunals and other hearings;
  - 23 September: the disbarment of a barrister following him being struck off the Roll of Solicitors;
  - 25 September: the appointment of our Independent Reviewer;
  - 30 September: the disbarment of a barrister following a conviction for the fraudulent evasion of tax;
  - 3 October: the appointment of our new Director-General;
  - 7 October: the publication of information from the BSB in the event of a 'No Deal' Brexit on 31 October;
  - 8 October: the suspension of a barrister following a conviction for assaulting three members of the public;
  - 15 October: announcement about the launch of our new regulatory operations and the new website; and
  - 15 October: advertising for BSB question writers and syllabus team member vacancies.
49. The team successfully delivered the new BSB website as planned on 15 October. It also organised and hosted a stakeholder engagement event on 16 October to seek views on our review of the BSB Handbook.

### ***Work in Progress***

50. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- an announcement regarding the Board's decision on the recent consultation about pupillage recruitment and the advertising timetable; and
  - the publication of the BSB's evaluation into the new Continuing Professional Development (CPD) scheme;
51. The team is also working on the following projects:
- finalising plans for public legal education activities following the Board's decision to withdraw from Legal Choices;
  - preparing for a range of stakeholder engagement activities during the autumn including the BSB's attendance at a number of pupillage fairs;
  - a number of follow-up activities following the launch of the new website, including preparing a new "Frequently Asked Questions" page for the site: and
  - continuing to publicise the introductions earlier this year of both the new Bar Qualification Rules and the new Bar transparency rules.

### ***Online and social media***

52. During September, 44,817 users visited the BSB website. At the time of writing, we have 22,410 followers on Twitter, 4,376 followers on LinkedIn and 704 followers on Facebook.

### **Governance and Corporate Services**

53. The Board has appointed the next Director General, Mark Neale. Mark will take up the post on 1 February and I will remain in post until immediately prior to that.
54. The Board has agreed the budget bid for the coming financial year, to be considered at the joint Finance Committee in October. This is necessary to inform consideration of any changes to Practising Certificate Fee (PCF) levels. This required us to set out our proposed business plan for the coming year at a high level, and that will be iteratively refined over the coming months.
55. As a first step towards compliance with the new Internal Governance Rules now in effect, the Board will consider amendments to its Constitution at its next meeting in October. Those amendments are primarily to achieve compliance but also include some clarification and simplification of language, codify existing custom and practice and ensure that constitutional requirements are proportionate. The Board will consider further changes to Standing Orders and other governance documents early in the next quarter.

**Vanessa Davies**  
**Director General**  
**October 2019**