

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



## Meeting of the Bar Standards Board

Thursday 19 July 2018, 5.00 pm  
Room 1, First Floor, Bar Standards Board Offices,  
289-293 High Holborn, London, WC1V 7HZ

### Agenda - Part 1 – Public

			<b>Page</b>
1.	<b>Welcome / announcements (5.00 pm)</b>	Chair	
2.	<b>Apologies</b>	Chair	
3.	<b>Members' interests and hospitality</b>	Chair	
4.	<b>Approval of Part 1 (public) minutes</b> <ul style="list-style-type: none"><li>• 24 May 2018</li></ul>	Annex A Chair	<b>3-5</b>
5.	a) <b>Matters arising and action points</b> b) <b>Forward agenda</b>	Annex B Annex C Chair Chair	<b>7-9</b> <b>11</b>
6.	<b>Regulatory Operations Programme – Responses to the “Modernising Regulatory Decision Making” consultation - Issues paper (5.05 pm)</b>	BSB 038 (18) Sara Jagger	<b>13-31</b>
7.	<b>Bar Standards Board Annual Report 2017-18 (5.25 pm)</b>	BSB 039 (18) Steven Haines	<b>33-72</b>
8.	<b>Chair’s Report on Visits and Meetings: June – July 2018 (*)</b>	BSB 040 (18) Chair	<b>73</b>
9.	<b>Director General’s Report (5.30 pm)</b>	BSB 041 (18) Vanessa Davies	<b>75-84</b>
10.	<b>Any other business</b>		
11.	<b>Date of next meeting</b> <ul style="list-style-type: none"><li>• Thursday 27 September 2018</li></ul>		
12.	<b>Private Session</b>		

**John Picken**  
**Governance Officer**  
[JPicken@barstandardsboard.org.uk](mailto:JPicken@barstandardsboard.org.uk)  
12 July 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 190718**



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

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

Thursday 24 May 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  
Lara Fielden  
Steven Haines  
Andrew Mitchell QC  
Nicola Sawford  
Adam Solomon QC  
Kathryn Stone OBE  
Anu Thompson  
Stephen Thornton CBE
- Bar Council in attendance:** Richard Atkins QC (Vice Chair, Bar Council) – items 8-11  
Malcolm Cree (Chief Executive, Bar Council)  
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)  
Rebecca Forbes (Governance Manager)  
Oliver Hanmer (Director of Regulatory Assurance)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
John Picken (Governance Officer)  
Wilf White (Director of Communications and Public Engagement)

*Note: Judith Farbey QC did not attend for Part 1 of the meeting but was present for Part 2.*

**Item 1 – Welcome**

1. Tessa Blackstone welcomed members to the meeting.

**Item 2 – Apologies**

- Justine Davidge
- Zoe McLeod
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (Director, COIC)
- Andrew Walker QC (Chair, Bar Council)
- Sara Jagger (Director of Professional Conduct)

**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 22 March 2018.

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

4. The Board noted the updated action list.

**Item 5b – Forward Agenda (Annex C)**

5. The Board noted the forward agenda list.

**Item 6 – PRP Committee Quarterly Report (Year End 2017/18)**

BSB 031 (18)

6. Steven Haines highlighted the following from the year-end report:
- the high completion rate of business plan objectives during 2017/18;
  - the significant reduction in staff turnover for the BSB;
  - the increase in income and expenditure for the year compared with the agreed budget.
7. He also commented that the Committee:
- aims to have no leavers during the first 6 months who would otherwise have successfully completed their probation period;
  - has welcomed the introduction of revised and more pragmatic working arrangements between the BSB and the Resource Group. These replace the former service level agreements (SLAs).
8. Stephen Thornton referred to a discussion at the last PRP meeting on performance related pay. A review of the scheme is due to report to the Emoluments Committee on 10 September 2018 but he suggested that the BSB may wish to arrive at its own view on staff reward and recognition.
9. The Board agreed with this principle and suggested that PRP Committee discuss the issue further and brief BSB delegates on the Emoluments Committee as to their recommendations.
10. **AGREED**
- a) to note the report.
  - b) to arrange a meeting of the PRP Committee prior to September 2018 to discuss the principles of performance related pay and brief BSB delegates on the Emoluments Committee as to their recommendations.

OH / JP

**Item 7 – Chair’s Report on Visits and Meetings: late March- May 2018**

BSB 032 (18)

11. The Board noted the report.

**Item 8 – Director General’s Report**

BSB 033 (18)

12. In response to questions raised, Vanessa Davies confirmed the following:
- the report describes newly recruited lay members to the GRA Committee as “independent” just to distinguish them from existing Members who are also on the Board;
  - the Equality and Access to Justice Programme Board is a staff-led body and the Senior Responsible Officer is Ewen MacLeod;
  - the policy statement from the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) about recovering its costs means the BSB’s financial contribution will be kept to a minimum given the low numbers of barristers affected.
  - a list of those recruited to our Advisory Pool of Experts (APEX) is on the BSB’s website at <http://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/advisory-pool-of-experts/apex-biographies/>

13. **AGREED**  
to note the report.
- Item 9 – Any Other Business**
14. None.
- Item 10 – Date of next meeting**
15.
  - Thursday 28 June 2018 (5 pm)
- Item 13 – Private Session**
16. 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 – 22 March 2018
  - (2) Matters arising and action points
  - (3) Consolidated Risk Register
  - (4) Annual Communications Team Metrics
  - (5) GRA Committee Quarterly Update
  - (6) Board effectiveness, size and composition
  - (7) Any other private business
    - FBT Update and Draft Policy Statement
17. The meeting finished at 5.15 pm.



## BSB – List of Part 1 Actions

19 July 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
10b (24/05/18) – PRP Committee report	arrange a meeting of the PRP Committee prior to September 2018 to discuss the principles of performance related pay and brief BSB delegates on the Emoluments Committee as to their recommendations	Oliver Hanmer / John Picken	immediate	18/06/18	<b>Completed</b> – date agreed as 26 July 2018
				01/06/18	<b>Ongoing</b> – PRP Members contacted with range of possible dates
25a (23/11/17) – Standard of Proof	make an application to the Legal Services Board to change the BSB’s regulatory arrangements to apply the civil standard of proof to professional misconduct allegations	Sara Jagger	as a p and before autumn 2018	11/07/18	<b>Ongoing</b> – submission date delayed till end July due to intervening urgent work
				14/05/18	<b>Ongoing</b> – application drafted and due to be submitted by end May 2018
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Julia Witting	before 26 Oct 2017	11/07/18	<b>In hand</b> – we have asked the FCA to set up SIS for us for a trial period so that we can evaluate it. Information sharing arrangements, whether through a new MoU or other mechanisms, are being reviewed by the Anti-Money Laundering Supervisors Group, of which we are a member.
				16/05/18	<b>In hand</b> – discussions have been ongoing with the FCA and other in relation to data sharing for money laundering. In any event we have an overarching framework MoU to which the FCA is a signatory and we believe this may be sufficient, given our experience since the new guidance was issued. We will confirm soon and close this action.
				14/03/18	<b>In hand</b> – being taken forward by regulatory assurance as part of wider information sharing work around money laundering

## BSB – List of Part 1 Actions

19 July 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
				14/02/18	<b>In hand</b> – rather than draft an additional MoU, the preference of the FCA would be for the BSB to join the Shared Intelligence Service (SIS - an enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators). The Regulatory Assurance Department is exploring the value of subscribing to the service
				15/11/17	<b>In hand</b> – initial positive meeting held with the FCA. Currently exploring whether an additional MoU is necessary
				18/10/17	<b>In hand</b> – awaiting response from the FCA
				20/09/17	<b>In hand</b> – a joint approach has been made with CILEX regulation to the FCA
15b (27 Oct 16) – definition of “employed barrister (non- authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	11/07/18	<b>Ongoing</b> – helpful discussions held with BACFI ahead of updating LSB application
				15/05/18	<b>Ongoing</b> – meeting with BACFI to discuss scope of practice on 14 June
				14/03/18	<b>Ongoing</b> – we are now progressing this with the LSB again, having put it off due to other priorities at the end of 2017
				15/11/17	<b>Ongoing</b> – updated application about to be shared with the LSB
				20/09/17	<b>Ongoing</b> – application being finalised

BSB – List of Part 1 Actions  
19 July 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
				09/06/17	<b>Ongoing</b> – additional guidance being produced to support final application to the LSB
				16/05/17	<b>Ongoing</b> – currently updating application in the light of LSB comments
				15/03/17	<b>Ongoing</b> – draft application due to be submitted to LSB by end March
				15/02/17	<b>Ongoing</b> – awaiting meeting with BACFI
				17/01/17	<b>In hand</b> – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.



**Forward Agendas****Thursday 27 Sep 2018**

- Schedule of Board meetings Jan 2019-20
- Annual Enforcement Report
- Modernising Regulatory Decision Making - approval of new regulations and revised Standing Orders
- Budget Bid for 2019-20
- Corporate Risk Register
- BSB Strategy 2019-22 - consultation

**Thursday 11 Oct 2018 (Board to Board meeting with LSB)****Thursday 25 Oct 18**

- FBT: approval of new rules and LSB application
- Potential Rule Change following consultation (SO & R&B data)
- Review of Communications and Public Engagement Strategy

**Thursday 22 Nov 18**

- PRP Quarterly Report
- Consolidated Risk Register
- Regulatory Operations update
- E&T Committee Annual Report
- Scope of practice – draft consultation
- Brexit update
- Thematic report on compliance with CPD rules

**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
- Risk Outlook 2019 – sign off
- Annual Diversity data report

**Thursday 28 Feb 19**

- BSB strategy 2019-22
- Corporate Risk Register
- EIA of Equality Rules

**Thursday 28 Mar 19**

- Business Plan for 2019-20



## Regulatory Operations Programme – Responses to the “Modernising Regulatory Decision Making” consultation - Issues paper

### Status

1. For discussion

### Recommendations:

2. The Board is asked to:
  - a. Consider the recommendations set out in paragraphs 5 and 6 below, as elaborated in paragraphs 18-40, and either agree the recommendations or come to a consensus on an alternative approach; and
  - b. Agree that the detailed public consultation response paper is drafted by the Executive and approved for publication by the Chair of the IDB TCG and the Director General.

### Executive Summary

3. This paper contains a summary of the issues arising from the “Modernising Regulatory Decision Making” consultation (“the Consultation”) which took place between March and May 2018. Annex 1 provides a summary of the seven responses to the consultation.
4. The issues raised within this paper are those which the Executive and the relevant Task Completion Group (TCG) consider require Board approval and/or discussion. The issues outlined do not cover all the matters raised in the consultation responses and do not include issues that: stem from potential misunderstandings of the Consultation proposals; are matters previously considered and discussed by the Board, which require explanation in the public response but not necessarily further discussion by the Board; or are matters that require acknowledgement but do not warrant Board level discussion. All the consultation responses were provided to the TCG and have been made available to Board members.
5. The Board is asked to consider the issues set out in this paper and give its views on the following three recommendations for changes to the original proposals outlined in the Consultation paper:
  - a. An amendment should be made to create alternative terminology for “information” and “information provider”: the exact terms to be decided by the Executive in conjunction with the TCG. However, no amendment is required in relation to the use of the term “dismissal” at the preliminary stage (see paragraphs 20-21 below);
  - b. An amendment should be made to provide, by policy, that enforcement decisions are taken by five-person panels with a lay majority (i.e. three lay and two barrister) – (see paragraphs 24-28 below); and, an amendment should be made to the new regulations to include specific criteria for reconsidering decisions (see paragraph 39 below).
6. The issues listed below require consideration by the Board, but the recommendations from the Executive and the TCG are that no amendments to the original proposals are necessary:

- a. The possibility that the Executive will not know when to seek advice from APEX (see paragraph 19);
  - b. The suggestion that there is an unclear demarcation between Executive and the Independent Decision-Making Body (IDB) decision making powers (see paragraphs 22-23);
  - c. That virtual meetings of the IDB may not be effective, and it would be more appropriate to require that the default position be meetings in person with virtual meetings being the exception (see paragraph 29);
  - d. That the current time limit for presenting information/complaints should continue to apply (see paragraph 30);
  - e. That all parties should be anonymised for matters put to the IDB (see paragraph 31-32);
  - f. That effective quality assurance mechanisms are important but not detailed in the Consultation proposals (see paragraph 33);
  - g. The wording of the proposed new regulations and Standing Orders should be amended to cover specific issues (see paragraphs 34-39); and
  - h. A concern that there would be a watering down of equality and diversity expertise (see paragraph 40).
7. The Board is also asked to agree that the public consultation response paper is drafted and approved by the Chair of the IDB TCG and the Director General.

## Background

8. In March 2018, the Board issued a consultation titled “Modernising Regulatory Decision Making” (“the Consultation”)<sup>1</sup>. In summary, the Consultation outlined the proposals for a new, more modern, approach to the BSB’s regulatory decision making primarily by creating a Centralised Assessment Team (CAT) and an Independent Decision-Making Body (IDB) as well as moving away from using the terminology of complaints handling.
9. Seven responses were received. Five were from bodies representing the Bar (the Bar Council and the four Inns of Court) and the other two were from the Legal Ombudsman’s Office and a lay Vice Chair of the Professional Conduct Committee.
10. The Executive has analysed the responses to the Consultation and the issues arising have been discussed with the IDB TGC which comprises three members of the Board, three members of the PCC (two Vice Chairs – one barrister, one lay and one barrister member), two past members of the (now disestablished) Qualifications Committee and a current member of the Authorisations Review Panel.
11. The detailed contents of the consultation responses can be found at Annex 1 and the Board has been provided separately with the access to the full consultation responses. This paper concentrates on the issues that were raised in the responses that require either consideration by the Board or confirmation from the Board that the stance agreed by the

<sup>1</sup> *Modernising regulatory decision-making*, Bar Standards Board, [https://www.barstandardsboard.org.uk/media/1924546/modernising\\_regulatory\\_decision\\_making\\_-\\_consultation\\_paper.pdf](https://www.barstandardsboard.org.uk/media/1924546/modernising_regulatory_decision_making_-_consultation_paper.pdf)

TCG and Executive is acceptable. For ease of cross-referencing, the issues in this paper are set out in line with the order the proposals were rehearsed in the Consultation paper and not by their importance.

12. Following the Board meeting, a full response paper reflecting the outcome of the Board's decisions will be published. The intention is that, with Board approval, the final public response paper will be compiled by the Executive and approved by the Chair of the TCG and the Director General without further recourse to the Board.

### Summary of responses and issues raised

13. It should be noted that several of the Consultation responses raised issues premised on misunderstandings of specific areas of the current decision-making system and of the changes set out in the Consultation paper. These misunderstandings will be addressed in the final response paper but are not referred to further in this paper.

### Centralised Assessment Team (Questions 1 and 2<sup>2</sup>)

14. In general, all those who responded were supportive of the proposal to create a CAT and to move away from using the terminology of complaints. The main issues raised were:
  - a. The Executive's ability to know whether and when to ask for advice from APEX members; and
  - b. Concerns about adopting the terms "information" and "information provider" in place of "complaint" and "complainant" and the proposal to cease using the term "dismissal" given that the term provides certainty for the regulated person in relation to the outcome of the BSB's assessment of information received.

### Independent Decision-Making Body (Questions 3<sup>3</sup>)

15. This was the part of the Consultation where most issues were raised. The Bar's representative bodies were split in their views about the fundamental proposal to create an IDB. The Bar Council was strongly of the view that there was insufficient evidence to disestablish the PCC and replace it with the IDB. Nevertheless, the Bar Council provided comments on the IDB model. The four Inns of Court raised concerns that there was insufficient justification in the Consultation paper for *not* adopting the Case Examiner model given that the independent research<sup>4</sup> indicated that this model is considered good practice. The main issues were:

<sup>2</sup> Question 1 – Do you have any views on the proposals for creating a centralised function in the form of a Centralised Assessment Team?

Question 2 – Do you have any views on the proposal to move from the concepts and terminology of complaints, to the concept of "receiving information"?

<sup>3</sup> Question 3 – Do you have any views on the proposals for, and future structure and functioning of, the Independent Decision-Making Body?

<sup>4</sup> *A Review of the Bar Standards Board's Enforcement Decision Making*, Neil Marshall, Capsticks Consultancy Service, [https://www.barstandardsboard.org.uk/media/1926652/a\\_review\\_of\\_the\\_bar\\_standards\\_board\\_s\\_enforcement\\_decision\\_making.pdf](https://www.barstandardsboard.org.uk/media/1926652/a_review_of_the_bar_standards_board_s_enforcement_decision_making.pdf)

- a. Too much decision-making power is vested in the hands of the Executive, there is overlap in the powers of the Executive and the IDB, and the parameters for the overlap should be spelt out in the regulations and not just in policy;
- b. IDB panels should be comprised of five members or more, as opposed to the proposed three, to allow for greater professional input (Bar Council) - consideration should be given to adopting the Case Examiner model (the four Inns of Court);
- c. Meetings of the IDB should, by default, be in person and not virtual;
- d. The time limit for submission of information should be retained to encourage people to submit concerns promptly;
- e. Case files presented to the IDB should be anonymised in relation to both the regulated person subject of the allegation and the person providing the information (information provider/complainant); and
- f. Effective quality assurance mechanisms are important to the overall efficacy of the new arrangements but are not fully outlined in the Consultation paper.

#### **Standing Orders and new regulations (Question 4<sup>5</sup>)**

16. Most of the comments on the new regulations stemmed from issues already outlined above. However, they also covered the following:
  - a. Whether there is a need to create a Commissioner role;
  - b. That the regulations do not provide for a matter to be considered by the Commissioner as well as referred to another body (rE10);
  - c. That it should not be discretionary for the Commissioner to treat information as an allegation if the threshold criteria are met (rE12);
  - d. Decisions to treat information as an allegation should include specific requirements to consider locus standi, credibility and integrity (rE13); and
  - e. The right to reconsider decisions under the new rE58 is too wide.

#### **Equality and Diversity issues (Question 5<sup>6</sup>)**

17. Few comments were received on this area of the consultation and most related to the proposals regarding anonymisation (see paragraphs 15 (e) above and 30 - 31 below). The only other concern raised was that:

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<sup>5</sup> Question 4 - Do you consider the revisions to the Standing Orders, the Enforcement Decision Regulations and the consequential changes to the BSB Handbook will be effective in supporting the change in our approach to regulatory decision making?

<sup>6</sup> Question 5 – Do you consider the changes in approach to our regulatory decision making could create any adverse impacts under the Equalities Act 2010?

- a. Equality and diversity expertise may be watered down under the new system.

### Detailed consideration of issues raised

18. The following paragraphs set out the views of the Executive and the TCG on the issues outlined in paragraph 14 – 17 above. **The Board is asked to consider the recommendations on each issue and either agree the recommendation or come to a consensus on an alternative approach.**

### Centralised Assessment Team and complaints terminology

#### Issue - Knowing when to seek advice from APEX

19. Neither the TGC nor the Executive see this as being an issue that is unique to the proposals. The current system requires the Executive to be able to identify at the preliminary assessment stage when issues raised by information provided (complaints) require expert advice. This will not change under the new system. The only difference will be that the advice will be sought from APEX members as opposed to members of the PCC. It is accepted that the reduced number of people considering cases when a matter reaches the IDB stage, theoretically could lead to issues requiring advice being missed but this is less likely than with the current model where only one person reads the file in full prior to presentation of the case to the PCC. The IDB model allows for all decision makers to have access to the full file and the IDB panel will be able to ask the Executive to seek further advice if they are not clear on any legal or practice issues.

**Recommendation:** *No amendments are made to the Consultation proposals.*

#### Issue - Terminology and use of the term “dismissal”

20. The Executive and TGC have considered the proposed use of the terms “information” and “information provider” to replace “complaint” and “complainant” at the preliminary stage of the process. It is accepted that these are not necessarily user-friendly terms and therefore alternative terminology should be found. The TGC is in favour of using “report of a concern”/“raising a concern” and “person who made a report”. No firm conclusion has been reached on the exact terminology, but it is agreed that a change should be made. This will involve consideration of how we refer to information received that is not a “concern”.
21. The TCG is firmly of view that would be inappropriate to use the term “dismissed” in relation to information/reports received under the new arrangements. To reintroduce this term at the preliminary stage undermines our attempts to reframe the relationship with the public and move away from terminology that implies that the BSB has made a value judgement about the content of the individual concerns raised. Our decisions on information received (as is currently the case) are about whether regulatory action should be taken. The view remains that using alternative terminology to “dismissed”, such as “no regulatory action required”, is more appropriate and sufficiently definitive.

**Recommendation:** *An amendment to the Consultation proposals is made to create alternative terminology for “information” and “information provider”: the exact terms to be decided by the Executive in conjunction with the TCG. However, no amendment is recommended in relation to the use of the term “dismissal” at the preliminary stage.*

## Independent Decision-Making Body

### Issue - Executive decision making

22. The issues raised in this area relate to the level of Executive decision making and the potential lack of demarcation between Executive and IDB decision making in the regulations. The Executive and TCG are of the view that these issues do not raise concerns that require any adaptation to the proposed approach. The new arrangements will not create any significant difference in the level of Executive decision making that is present in the current system albeit that those decisions are currently taken under standing authorities from the PCC. Currently approximately 70% of decisions are taken by the Executive without recourse to the PCC. The difference is that, in the future system, the Executive will have direct powers to take such decisions rather than via authorisations given by the PCC.
23. In relation to the overlap in decision-making powers of the Executive and the IDB, this again replicates the current position whereby the decisions that can be taken by the Executive are set out in publicly available policy documents and not enshrined in the regulations. This allows for flexibility and prevents matters being forced down a certain route solely as result of the terms of the regulations and regardless of the merits of the case. The Executive and the TCG consider this flexibility is important and do not consider the responses raise any significant issues that would warrant a change in approach proposed in the Consultation.

**Recommendation:** *No amendments are made to the Consultation proposals.*

### Issue - Composition of IDB panels and potential larger IDB panels

24. The format of the IDB panels was the area that produced the most diverse responses and those that commented on the issue had very different views. The Bar Council is fundamentally opposed to disestablishing the PCC and its current structure including the way in which its powers are devolved. However, it appears to accept that the size of the PCC is currently too large. Nevertheless, it put forward comments on the detail of the IDB model and was of the view that default position should be five-person panels (or more) to allow for greater depth and breadth of experience in decision making. On the other hand, the four Inns of Court indicated that they would prefer to see the BSB move to a Case Examiner model (i.e. two “employed” persons, one barrister and one lay, who would be responsible for all decisions requiring independent input).
25. The Executive and TCG have considered these differing responses. The TCG is firmly of the view that the Board rejected the Case Examiner model several years ago having considered the contents of the independent report and there is no compelling reason to revisit this issue now. While it is accepted that the independent report did state that the Case Examiner model was considered good modern practice, the report also pointed out this option represented the biggest shift away from current structures and processes and so

was “undoubtedly” the option that presented most risk. The TCG also noted that the option of adopting a Case Examiner model was not presented in the Consultation paper and therefore was not an option on which others were asked to comment.

26. The Executive and the TCG considered the Bar Council’s concerns about the move from the current PCC, which includes many barristers in the decision-making process, to three-person IDB panels which allows for only one barrister member to be included. The TCG remains of the view that three-person IDB panels are sufficient for making referral decisions. However, taking into the account the responses, the TCG members came to the unanimous conclusion that five-person panels would be appropriate for taking enforcement decisions in the early stages of the new system but should be subject to review. This view was informed by feedback from the ongoing three-person pilot IDB meetings that have been held since the end of 2017. That feedback indicates that the views of the one barrister on the panel may hold too much sway and a panel may be more balanced if there was input from two barristers.
27. However, the TCG was still firmly of the view that the Standing Orders should not dictate that IDB panels *must* consist of five persons. This was for two reasons. First, the current Authorisations Review Panels operate very effectively as three-person panels and therefore there is no reason to change their composition under the IDB system. Second, experience may show that five-person panels are not necessary for enforcement decisions and therefore it would be inappropriate to enshrine in the Standing Orders that such decisions must be taken by five-person panels. The view is that the size of the panel can be effectively covered by policy as long as the Standing Orders provide for a minimum of three people with a lay majority and that all panels must have such a majority. However, it was also the view of the TCG that if a default position of a five-person panel for enforcement decisions is accepted, there is no need to make provision for panels larger than five persons to deal with case.
28. It is recognised that constituting five-person panels for enforcement decisions and three-person panels for authorisation appeals will undermine one of the principles of the new arrangements i.e. that IDB panels should be able to handle a range of decisions. However, the TCG were of the view that careful scheduling could address this issue and potentially a five-person panel could reduce to three persons during one meeting to allow different cases to be considered.

**Recommendation:** *An amendment is made to the Consultation proposals to provide, by policy, that enforcement decisions are taken by five-person panels with a lay majority (i.e. three lay and two barrister).*

#### **Issue - Virtual meetings of the IDB**

29. One of the responses to the Consultation raised concerns that virtual meetings may not be effective, and it would be more appropriate to require that the default position be meetings in person with virtual meetings being the exception. The Executive and TCG are of the view that this would not be appropriate as it would undermine the BSB’s stated desire to extend participation in the regulatory decision-making process to a wider range of people. Nevertheless, it is recognised that appropriate and effective technology is essential to

ensuring that the proposal to allow for virtual meetings operates efficiently. The Executive will closely monitor the development of the relevant technology but the Board, and its Committees, need to be mindful at a strategic level of the Information Management Programme and whether it is providing all the facilities necessary for the BSB to work effectively in the future.

***Recommendation:*** *No amendment to the Consultation proposals necessary*

#### **Issue - Time limit for submission of information/complaints**

30. The Consultation proposed that the current time limit for presenting information/complaints should no longer apply. Two of the responses questioned this and wanted it to be retained because it encourages people to submit concerns promptly. The Executive and TCG are firmly of the view that the time limit no longer serves any practical purpose and is potentially a barrier to the public presenting information to the BSB that may assist us in maintaining standards. The time limit has not been used for many years as the sole reason for not pursuing complaints received. Therefore, the view is that the new regulations provide sufficient safeguards by dictating that a matter can only be treated as an “allegation” if it can be properly and fairly investigated.

***Recommendation:*** *No amendment to the Consultation proposals necessary*

#### **Issue - Anonymisation of files**

31. The Consultation paper explained that for practical reasons it would no longer be possible to anonymise both the identity of the regulated person subject to an allegation as well as the person who provided the information on which the allegation is based (complainant)<sup>7</sup>. This is because the current system of anonymisation only applies to the reports prepared by staff or members of the PCC – it does not extend to anonymising the full cases papers. Under the proposed new arrangements, all relevant cases papers will be made available to the IDB panel members as well as a covering report.
32. Several respondents had concerns about our proposed future approach to anonymisation and indicated that they would like the BSB to continue anonymising the identity of both parties. In an ideal world we would want to do so but our research shows that anonymising the “complainant” would make the full file documents very difficult to understand. The Executive and TCG remain of the view that the efficacy and integrity of the decision-making process must be paramount. While mitigating risks of unconscious bias is very important, it cannot override the need to ensure that decision makers fully understand the issues and documentation they are tasked with considering.

***Recommendation:*** *No amendment to Consultation proposals necessary*

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<sup>7</sup> The Professional Conduct Committee considers Case Reports drafted and presented by members of the Executive or members of the PCC. The Case Reports are drafted in such a way that the parties are kept anonymous and a Dramatis Personae is provided at the start of the report, so the PCC can understand the document. When drafting the Case Report the drafter has access to the entire case file, which is not anonymised. At the PCC meeting itself the case file is in the room and, under the regulations which apply to the PCC, any member could ask to see and read the file. If a PCC member asked to look at the file this would of course remove the anonymity of the parties. PCC members have, in the past, looked at the case file during their discussions but this is rare with the PCC instead normally relying upon the Case Report and the person presenting the report to answer their questions.

**Issue - Quality Assurance**

33. Several respondents referred to the quality assurance mechanisms that would be used to monitor the efficacy of the new decision-making processes and the lack of detail about these in the Consultation paper. This issue was not discussed by the TCG given that the full proposals for revised QA mechanisms have yet to be presented to and agreed by the TCG. Nevertheless, the BSB has, and will maintain, effective internal and external QA mechanisms, which will include external review mechanisms. These will be considered by the Senior Management Team, the TCG and Governance Risk and Audit Committee (GRA) before implementation.

**Recommendation:** *No amendment to Consultation proposals necessary*

**Standing Orders and new regulations**

34. The Consultation paper asked for views on the details of the new regulations that were Annexed to the paper as well as the outline proposals for the revised Standing Orders. To understand fully the points below, Board members may wish to refer to the draft regulations which were provided separately.

**Issue - Creation of the Commissioner role**

35. One respondent raised concerns about the creation of the Commissioner role and put forward the view that this construct was unnecessary. However, the fact that this construct was not essential was acknowledged in the Consultation paper. It is perfectly possible to set up the new arrangements by vesting all Executive decision-making powers in the Director General. However, the Executive and TCG remain of the view that creating a role of Commissioner is an effective means to demarcate regulatory decision-making powers from any other role that may be held alongside the Commissioner role (i.e. the Director General). This construct will also provide the flexibility in the future for the Commissioner role to be performed separately without the need to change the regulations.

**Recommendation:** *No amendment to the Consultation proposals necessary*

**Issue - Consideration by the Commissioner as well as referral to another body (new rE10)**

36. The new regulations do not provide for both the Commissioner considering a piece of information and the same information being formally referred to another body to deal with. A concern was raised about this. However, the Executive and TCG do not see this as being a significant issue: if the BSB is seized of a matter, then it could potentially be confusing if at the same time we formally asked another body to deal with it. Information sharing arrangements are already in place with several stakeholders and the intention is to ensure that such arrangements are agreed with all relevant stakeholders. Under such arrangements, the BSB is free to inform other bodies/agencies of concerns without making a formal referral to them to address a matter. The view is that this is the most effective approach to handling overlapping issues. The regulations allow for matters to be formally referred to other bodies for consideration where this is appropriate. In such circumstances,

the matter will be recorded as “closed” by the BSB. Nevertheless, the BSB will still be able to reconsider the issue if the outcome of the formal referral is not satisfactory: we will keep a watching brief on the outcome to determine this and react to legitimate concerns raised by the person who originally provided the information.

**Recommendation:** *No amendment to the proposed regulations necessary*

**Issue - Discretion to consider whether matters should be treated as an allegation (new rE12)**

37. The relevant new regulation gives the Commissioner discretion to treat any information as an allegation but does not make it mandatory that any information that passes the threshold tests must be considered as an allegation. A concern was raised about this, but the Executive and TCG consider that the terms of the regulation are appropriate as they create flexibility to consider issues, that would normally warrant investigation, not to be treated as allegations. This allows for exceptional circumstances to be considered and is line with our risk-based approach to regulatory decision making.

**Recommendation:** *No amendment to the proposed regulations necessary*

**Issue - The regulations should include specific requirements to consider locus standi, credibility and integrity (new rE13)**

38. The Executive and TCG consider that expressly including these issues in the regulations is not necessary. All decisions will be subject to an assessment model that covers these issues and no referrals will be made without the information being subject to such assessment. Further, the factors outlined are not expressly included in the current Complaints Regulations but nevertheless, by policy, they are still taken into account. Therefore, there does not appear to be a compelling reason why these issues should be expressly included in the new regulations.

**Recommendation:** *No amendment to the proposed regulations necessary*

**Issue - Reconsideration of decisions (new rE58)**

39. The current Complaints Regulations specify that reconsideration of decisions should be based on two criteria: whether new evidence has been provided; and/or there is any other good reason to reconsider the decision. The new regulations remove these two criteria and leave the decision to be entirely discretionary. Concern was raised in the Consultation responses about the new provision being so open ended. On reflection, the Executive and TCG agree that the current criteria included for reconsideration of decisions should also be included in the new regulations as they provide clarity and focus for both the Executive and the public alike.

**Recommendation:** *Amendment to the new regulations required to include specific criteria for reconsidering decisions.*

## Equality and diversity issues

40. Most of the comments in this area concerned the anonymisation of reports which is addressed at paragraphs 31-32 above. The other concern raised was about the watering down of equality and diversity expertise. The Executive and TCG do not see this as being an issue and indeed the new arrangements are likely to provide greater access to such expertise. Under the current system, such advice is provided via the membership of the PCC and is dependent on the composition of the PCC to provide such expertise. Therefore, access to specialist advice in this area is patchy and not reliable and currently the Executive has to seek expertise outside the PCC in this area because it is not adequately covered by the PCC membership. Indeed, we have sought advice on several occasions recently from members of APEX. The view therefore is that the new arrangements will provide more coherent and reliable access to equality and diversity advice rather than “watering it down”.

**Recommendation:** *No amendment to Consultation proposals necessary*

## Equality Impact Assessment

41. An assessment of equality impacts arising from the IDB design to date has been carried out and remains ongoing as part of the design development process to ensure impacts, if any, are identified and, if necessary addressed.

## Regulatory objectives

42. The creation of the new systems for regulatory decision-making support and promote the regulatory objectives of protecting and promoting the public and consumer interests as well as assisting with maintaining the professional principles. It also assists us to observe the principles of operating transparently, proportionately, consistently and being accountable for our actions.

## Publicity and Communications Plan

43. A communications plan has been developed in conjunction with the Communications Department. The plan includes communication of the public consultation response paper which it is proposed the Executive will produce with approval from the Chair of the TCG.

## Next Steps

44. Subject to the Board’s approval of the issues above, the next steps will be as set out in the table below:

September 2018	<ul style="list-style-type: none"> <li>- Publication of formal Consultation response paper</li> <li>- Approval by the Board of the new regulations for submission to the Legal Services Board (LSB)</li> </ul>
October 2018	<ul style="list-style-type: none"> <li>- Submission of application to the LSB for approval of changes to regulations</li> </ul>

Now until – April 2019	Ongoing preparation for implementation of changes including: <ul style="list-style-type: none"><li>- Development of supporting IT via the Information Management Programme</li><li>- Recruitment and training of members of IDB and APEX</li><li>- Website updates</li></ul>
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**Lead responsibility**

**Sara Jagger, Director of Professional Conduct**

**Jake Armes, Project Manager**

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Modernising Regulatory Decision Making – Summary of Responses**

### **Introduction**

1. In May 2018 the Bar Standards Board (BSB) closed its consultation on “Modernising Regulatory Decision Making” (the consultation). This report summarises the responses received. Full copies of the responses are available on request.

### **Responses to the consultation**

2. The BSB received seven responses to the consultation and we are very grateful to all those who took the time to provide their views on these important proposals.
3. Responses were received from the following:
  - The four Inns of Court – The Honourable Societies of: the Inner Temple; the Middle Temple; Gray’s Inn; and Lincoln’s Inn
  - The Bar Council
  - The Legal Ombudsman’s Office
  - A current Vice-Chair of the Professional Conduct Committee (PCC)

## Part 1 – Public

4. The table below shows which questions respondents gave substantive responses to:

	Inner Temple	Middle Temple	Gray's Inn	Lincoln's Inn	Legal Ombudsma	Bar Council	Vice-Chair of the PCC
<b>Q1: Do you have any views on the proposals for creating a centralised assessment function in the form of a Centralised Assessment Team?</b>	Yes	No	Yes	Yes	Yes	Yes	No
<b>Q2: Do you have any views on the proposal to move from the concepts and terminology of complaints, to the concept of “receiving information”?</b>	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>Q3: Do you have any views on the proposals for, and future structure and functioning of, the Independent Decision-Making Body?</b>	Yes	Yes	Yes	Yes	No	Yes	No
<b>Q4: Do you consider the revisions to the Standing Orders, the Enforcement Decision Regulations and the consequential changes to the BSB Handbook will be effective in supporting the change in our approach to regulatory decision-making?</b>	Yes	Yes	Yes	Yes	No	Yes	No
<b>Question 5 – Do you consider the changes in approach to our regulatory decision making could create any adverse impacts under the Equality Act 2010?</b>	Yes	Yes	Yes	Yes	No	Yes	No

### **Question 1: Do you have any views on the proposals for creating a centralised assessment function in the form of a Centralised Assessment Team?**

5. Responses which addressed this question were broadly positive, with the Bar Council, the Legal Ombudsman and the Inns of Court supporting the proposal in principle. Middle Temple did not provide substantive comments, saying that it regarded such matters as falling within the BSB's operational remit.

6. Paragraph 34 of the consultation paper related to reviews of decisions made by members of the Centralised Assessment Team. The paper proposed that a system should be put in place which allows for the decisions of staff members to be reviewed by more senior members of staff within the organisation. The paper also noted that consideration was being given to how best to establish a further level review for these decisions independent of the Executive. When giving their response both Inner Temple and Gray's Inn stated that they did not believe they had been given sufficient information to be able to comment.
7. In giving its response to the first question, the Bar Council raised a concern with the drafting of the proposed regulations due to the broad powers it confers upon the Commissioner.

**Question 2: Do you have any views on the proposal to move from the concepts and terminology of complaints, to the concept of “receiving information”?**

8. The responses in relation to this question were broadly positive, with all respondents who answered the question supporting the proposed changes in principle. In particular, the LeO response noted that it too had changed some of the language it uses for similar reasons. There were, however, three specific concerns about the detail of the proposal raised.
9. Inner Temple and Gray's Inn drew attention to the part of the consultation paper which proposed that we stop using the term 'dismissed' and 'dismissal'. The concern raised was that the subject of a complaint would lose the certainty that comes with the use of a strong term such as 'dismissed'. It was suggested that the raising of a complaint against someone causes them a degree of reputational damage, which is alleviated by a definitive outcome such as a 'dismissal'.
10. The Bar Council noted that moving away from the use of the terms 'making a complaint' and 'complaints' made sense but that the suggested replacements 'providing information' and 'information' may be too vague. The Bar Council suggested 'report a concern' as an alternative replacement.
11. Lincoln's Inn agreed that the present distinction between complaints and other information was unhelpful, noting that a complaint requires a deliberate decision to make a formal complaint and that might discourage consumers from submitting useful information to us.
12. Lincoln's Inn was of the view that the regulations should spell out additional criteria for when a matter is not going to be treated as an allegation. This included the suggestion that 'exceptional circumstances' could constitute a reason for not treating matters as an allegation and that this would include frivolous, vexatious and mischievous allegations.

### Question 3: Do you have any views on the proposals for, and future structure and functioning of, the Independent Decision-Making Body?

13. The responses to this question indicate broad agreement with the need to reform our approach to independent decision making. However, there were differing views as to how reform should be achieved.
14. The Bar Council was the only respondent who explicitly disagreed with the proposal to disband the PCC. In the Bar Council's view, the PCC has been an effective body which produces high quality decisions. The Bar Council's primary concern is that the changes will lead to a loss of practitioner knowledge provided by the wide range of backgrounds of PCC members. In addition, the Bar Council does not believe a clear justification for the changes has been articulated nor any justification for the Legal Service Board's view that the separation of expert advice and decision-making is a problem that exists with the PCC.
15. While the Bar Council's stance is clearly one of opposition to the proposal, it also helpfully provided comments on the specifics of the IDB system. In doing so the Bar Council raised a concern about the composition and size of IDB panels. The consultation paper proposed a panel size of three individuals (two lay and one barrister) with the ability to use panels of five and seven members if appropriate. The Bar Council's concern is that this will not allow for a range of views and a meaningful discussion. Its view is that the default position should be five-person panels and the ongoing pilot exercise should be used to test this suggestion.
16. The four Inns of Court each took a similar position to the proposals for the IDB, they agreed with the need for change. However, they queried why the Case Examiner model had been rejected by the BSB particularly as it was presented in the independent research paper as being the model that best represented current good practice. The Case Examiner model is described in the independent report produced by Capsticks Consultancy Service:

*"This option would see the BSB engage individual decision makers (both barrister and lay) to make assessment and referral decisions in pairs (one barrister, one lay). These decision makers would work either within the BSB offices or from home, consider all case papers electronically and agree the outcome between them (based on guidance formulated with the Board's approval). Case Examiners would be expected to work on a part-time basis (although this might be as little as one day – or even half a day – per fortnight, if that suited them). To retain credibility, the barrister CEs would arguably need to be in practice (or very recently retired from it), whilst the lay CEs might be expected to be engaged in (or recently retired from) the kinds of activity that make them suitable to carry out the CE role."*

17. The Inns of Court also provided feedback on the specifics of the IDB model and raised a number of concerns.
18. Middle Temple noted that:
  - a. The use of virtual meetings could impact on the fairness of the decision making and suggested that face-to-face meetings be the norm.
  - b. Lay participation, while important, should be carried out in line with clear guidelines on qualities and qualifications for lay members.
19. Inner Temple noted that:
  - a. The decision not to anonymise other parties would not be appropriate and that the barrister and complainant should both be anonymised.
  - b. The Executive may take too many decisions, in particular Fitness to Practice and Interim Suspension referrals, and that the decision-making powers of the Commissioner and the IDB appear to overlap.
  - c. The removal of the time limit may prejudice the barrister due to the degradation of witness memory as time passes.
20. Lincoln's Inn offered a two-part response which both provided feedback on the IDB proposal and suggested a series of improvements. It should be noted that there appears to have been some misunderstanding of what the proposals were in this response. Lincoln's Inn noted that:
  - a. The use of a panel system may create inconsistency in decision making between panels, given that the membership will change from panel to panel, and that training would not be a suitable means of addressing this.
  - b. The need to setup panels would retain the delays caused by the need to setup PCC meetings.
  - c. The decision to refer to the IDB would be for serious/complex cases and matters requiring independent input but that the criteria for when these thresholds are met are not clear.
  - d. There is no clear need for both APEX and IDB independent decision making and that having both sources of decision making would not be appropriate.
  - e. There is no need to have IDB panels taking decisions to refer allegations following investigations when members of the Executive/Case Examiners can do so if they are appropriately supported by APEX members.
  - f. It is not necessary to always have lay membership on a panel. Lincoln's Inn suggests that a situation where lay membership is not necessary

would be for referral decisions where the IDB panel is not making a decision on the substance of the allegation.

- g. It is not clear what the criteria are for the use of three, five and seven-person panels and that, because only complex matters should be being referred, there is no need for any variation in panel size.

21. Gray's Inn noted that:

- a. The APEX proposal should be supported by specific guidance on when advice should be sought from APEX, on the basis that people don't "know what they don't know" and may therefore miss important points.
- b. The anonymisation process should apply to both the barrister involved and the informant who provided the information.

**Question 4: Do you consider the revisions to the Standing Orders, the Enforcement Decision Regulations and the consequential changes to the BSB Handbook will be effective in supporting the change in our approach to regulatory decision-making?**

22. Those who responded to this question provided detailed thoughts and proposed amendments, we appreciate respondents taking the time to consider the detail of the regulations.

23. Middle Temple raised three concerns in relation to the proposed regulations:

- a. It is not clear whether rE19.5 is an unfettered power to send any allegation to the IDB.
- b. That the right to reconsider any allegation previously disposed of under rE58 could allow for injustices against barristers (Inner Temple and Gray's Inn also raised this concern).

24. Inner Temple raised an additional concern:

- a. That there has not been enough information given regarding quality assurance for that part of the proposal to be evaluated (Gray's Inn and the Bar Council also raised this concern, see paragraph **Error! Reference source not found.** regarding this point).

25. Gray's Inn raised the following additional concerns:

- a. That there is no need to create the role of the 'Commissioner' and instead this power should be vested in the Director General as it runs contrary to the principle of 'light touch regulation'.
- b. With regards to the removal of the mandatory requirement that the PCC dismiss complaints at the outset if they consider that the complaint lacks

substance, cannot be properly or fairly investigated, its consequences are insufficiently serious to justify further action; or for any other reason that the complaint is not apt for further consideration. That it would create a less certain test and that it will increase the prospect of information being treated as an allegation.

26. Lincoln’s Inn raised the following additional concerns:
- a. That rE10 does not allow for information to be considered by the Commissioner and referred to another body.
  - b. That rE12 does not specify when the Commissioner may choose not to exercise the discretion not to treat information as an allegation.
  - c. That rE13 should include a consideration of locus standi, credibility and integrity of the information.
27. The Bar Council raised the following further concerns:
- a. That the regulations do not ensure that *“the permissible extent of staff decision-making depends on i) clear delineation of the categories of different complaints, and precise criteria for decision-making; ii) availability of expertise where needed (discussed above); iii) the absence of operational imperatives influencing decision-making; and iv) a high degree of quality assurance and audit of decisions”*
  - b. That the rules, rather than policy, do not dictate the circumstances when a member of the Executive may exercise each of their disposal powers.

**Question 5: Do you consider the changes in approach to our regulatory decision making could create any adverse impacts under the Equality Act 2010?**

28. Middle Temple’s response to this question has been covered during the consideration of their other responses.
29. Inner Temple raised the concern that the proposals could significantly water down the E&D expertise currently found in the PCC.
30. The respondents were split evenly on the issue of anonymisation with two of the respondents (the Bar Council and one Inn of Court) suggesting that the proposed approach was sufficient and two respondents (two of the other Inns of Court) suggesting that all parties should be anonymised.
31. All other responses to this question found there to be no adverse impacts under the Equality Act 2010.



## Bar Standards Board Annual Report 2017-18

### Status

1. For discussion and decision.

### Executive Summary

2. This paper contains a near final draft of the 2017-18 Annual Report for consideration by the Board. The draft reflects comments and direction given by the Planning, Resources and Performance Committee. This paper contains a designed version to enable the Board to see the look and feel of the report as well as the text.

### Recommendations

3. The Board is invited to:
  - a. **Discuss** the content of the report;
  - b. **Agree** that the report be published and promoted accordingly.

### Comments

4. The Planning, Resources and Performance Committee considered the 2017-18 Annual Report at their meeting on 18 June.
5. The 2017-18 Annual Report is the second annual report associated with the 2016-19 Strategic Plan. It therefore follows the design and format of last year's report setting out our performance against objectives and with a particular focus on business as usual activities as well as major new projects. The annual report is unlikely to be read from cover to cover as it is the sort of document that readers will dip in and out of. So its structure inevitably involves an element of repetition.
6. As in previous years, the annual report includes a number of infographics designed to represent the BSB's activities during 2017-18. These infographics will also be used within social media to help us promote the report and the BSB in general.
7. The report itself will not generally be printed and is designed to be viewed primarily in electronic format. We will however produce a small number of printed copies to post to a few key stakeholders.
8. A final proof read and accuracy check will be made before publication. Comments are welcome regarding any element of the report's content and design.
9. Please note that in order to minimize printing costs, only the first few pages of the report attached to this Board paper have been printed in colour. The pdf version to be made available on the website will all appear in colour.
10. This paper also includes a draft copy of a separate document entitled "Cost Transparency Metrics 2017-18". This contains the information that we are required to produce by the Legal Services Board. This will be issued as a separate document published alongside the main Annual Report.

**Resource implications**

11. No additional resource is required.

**Equality Impact Assessment**

12. No equality impact assessment is necessary as there is no policy element to this report.

**Risk implications**

13. There are no significant risks associated with this report.

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

14. All BSB departments have had input into the content of this report.

**Regulatory objectives**

15. The report relates to performance against the Strategic Aims in the Strategic Plan 2016-19. Those aims in turn were developed in the light of the Regulatory Objectives.

**Publicity**

16. The report will be published on the website with a Press Release following the July Board meeting.

**Annexes**

17. Annex 1 – draft Annual Report  
Annex 2: - draft Cost Transparency Metrics 2017-18

**Lead responsibility:**

Wilf White, Director of Communications and Public Engagement

# Annual Report

## 2017-18

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest



# Our year in numbers: 2017-18

We regulate  
**16,258**  
practising barristers.

(and around 51,000 barristers without practising certificates)  
As at 31 March 2018



We authorise 89 specialised legal services businesses.  
As at 31 March 2018



Chair



8 Lay members (including the Chair)



7 Barrister members

## Our Board



We seek to promote **diversity at the Bar and beyond.**



We decided to change the standard of proof applied in professional misconduct proceedings from the criminal to the civil standard to bring our disciplinary arrangements in line with most other professions.

(for alleged breaches of the Handbook that occur after 31 March 2019)



We received **260 applications**

from solicitors, EU lawyers, overseas lawyers and legal academics wanting to transfer to the Bar.



**475**  
complaints were opened against barristers



**34**

barristers had a disciplinary finding against them.

**8**

barristers were suspended.

**6**

barristers were disbarred.



We implemented a new regulatory approach to improve advocacy standards within Youth Courts.



We received

**over 1,000 responses**

to the six consultations we launched in 2017-18.

**Over 650 people**

attended one of our 26 stakeholder engagement events.



Students sat **3,292**

centralised assessment papers which we set.



# Who we are and what we do

**We regulate barristers and specialised legal services businesses in England and Wales in the public interest.**

## **We are responsible for:**

- setting the education and training requirements for becoming a barrister;
- setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- setting standards of conduct for barristers;
- authorising organisations that focus on advocacy, litigation, and specialist legal advice;
- monitoring the service provided by barristers and the organisations we authorise to assure quality; and
- handling complaints against barristers and the organisations we authorise and taking disciplinary or other action where appropriate.

## **The Regulatory Objectives**

**Our objectives are laid down in the Legal Services Act 2007. We share them with the other legal services regulators. They are:**

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of citizens' legal rights and duties; and
- promoting and maintaining adherence to the professional principles.

## **Risk-based regulation**

We do all of this by taking a proportionate, risk-based approach to regulation. This means that we are constantly monitoring the market for barristers' and advocacy services. We identify all of the potential risks that could prevent the Regulatory Objectives (see above) from being met. When we have done this, we focus our attention as the regulator on the risks that we think pose the biggest threats to the public interest.

We then take action to try and prevent those risks from occurring, or to reduce their impact. The work that we do is governed by the Legal Services Act 2007 as well as by a number of other statutes.

**Please visit our website at [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk) to find out more about what we do.**

# Welcome to our Annual Report for 2017-18

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## A personal word of introduction from BSB Chair, Baroness Blackstone



During 2017-18, we made real progress against many of our key areas of regulation including our root and branch review of the system by which new barristers train and qualify.

I hope that our Annual Report will be a useful document in highlighting both the policy developments we have made this year and our day to day work regulating barristers and specialised legal services businesses in England and Wales in the public interest. Day to day regulatory work accounts for most of our time and resources. It includes the supervision of barristers and chambers, ensuring compliance with our Continuing Professional Development requirements, assuring the public of the quality of barristers' work and assessing and investigating reports about barristers' conduct, taking enforcement action where necessary.

2017-18 was the middle year of our three-year strategic plan and there were a number of policy developments announced or put into effect during the year. They include:

- continuing with our Future Bar Training (FBT) programme, including consulting on the rules governing pupillage and the role of the Inns of Court in the training and qualification of barristers;
- responding to the Competition and Markets Authority's (CMA's) recommendations, including consulting on proposals to introduce new transparency standards for the Bar so consumers can make more informed decisions about barristers' services;
- deciding to change the standard of proof applied in professional misconduct proceedings from the criminal to the civil standard to bring our disciplinary arrangements in line with most other professions;
- beginning to implement a new regulatory approach for barristers working in the Youth Courts, so that we can work closely with them to help improve advocacy standards for young people; and
- publishing new guidance for the public and for professionals on immigration and asylum related legal issues to help people to navigate the legal system more easily.

Our year-end financial position was positive when assessed against the original budget. Whilst we overspent by 3.6% primarily related to unforeseen and unavoidable expenditure, we received an additional 65% (£582,000) of non-Practising Certificate Fee (PCF) income.

Engaging with the profession and our other key stakeholders about our work is vital to our regulatory approach and I would like to thank all those who have worked with the BSB in the past year to help us achieve our objectives. We engaged with a record number of people during 2017-18, with over 650 people attending one of our 26 stakeholder engagement events. I hope this level of collaboration continues.

In 2018-19, we will continue to implement our Future Bar Training reforms and will consult on the necessary rule changes to enable the BSB to respond to the CMA's recommendations on price transparency. We will also complete the governance reform within the BSB and, subject to consultation, establish a new Independent Decision-Making Body for enforcement decisions and to review authorisation decisions, and adopt a new approach to how we handle information that comes in to the BSB. We will continue to take action to improve access to the Bar, and career progression for female, and Black, Asian and Minority Ethnic (BAME) barristers.

By the end of the coming year, following consultations with our key stakeholders, we will decide how best to take forward our current strategy and approach beyond 2019. This will take into account our latest assessment of the main risks to meeting our Regulatory Objectives leading to a new strategic plan, underpinned by a new Risk Outlook for the market for barristers' services.

I would like to thank my colleagues on the Board, our committee members, and our executive team for their hard work during 2017-18. This has been a year in which there has been real progress in modernising the regulation of the Bar and of Bar training in particular.

Finally, I would like to thank my predecessor as Chair of the Bar Standards Board, Sir Andrew Burns, for his valuable contribution to the BSB during his three year tenure.



**Tessa Blackstone**  
Chair, Bar Standards Board

# Our current strategic priorities

2017-18 was the second year of our current three-year Strategic Plan.

Our current Strategic Plan organises our work into three Programmes:

- regulating in the public interest;
- supporting those we regulate to face the future; and
- ensuring that there is a strong and sustainable regulatory function for the Bar.

Embedded into these programmes is our approach to how we address the main risks we perceive to our Regulatory Objectives. The key risk themes are:

- A.** the risk of failure by those we regulate to meet consumer needs;
- B.** the risk of lack of diversity, and discriminatory practice and culture at the Bar; and
- C.** the risk of commercial pressures on legal services providers.

The diagram below represents our approach:



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## Strategic Programme 1: Regulating in the public interest

**This Programme is about ensuring that our regulatory approach promotes and protects the interests of consumers of legal services and the wider public.**

We want to help the public to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have a better knowledge of their legal rights and duties as citizens. The recent CMA report has given further emphasis to the importance of this work.

We will develop our face to face and digital dialogue with the profession and consumers so that what we propose and what we do can be demonstrably evidence-based and risk-focused as well as understood by users and providers.

We will continue to strengthen and demonstrate our independence from the profession by ensuring our regulatory decision-making processes are independent, consistent and transparent.

2

## Strategic Programme 2: Supporting barristers and those the BSB regulates to face the future

**This Programme is about supporting the profession so that it can continue to provide essential legal services at a high standard to the public.**

The legal services market is changing rapidly and will continue to do so. We will help the public to understand the separate nature and specific skills of the Bar in a legal world where regulatory constraints apply primarily to the reserved activities, such as advocacy in the higher courts and litigation. For example, the public needs to understand the difference between a fully qualified, regulated and insured barrister and a "McKenzie Friend" (someone who assists someone who is representing themselves in court - a "litigant in person" - and who may be paid but who may not be either regulated or legally qualified).

We will encourage the profession to cooperate more closely with solicitors and other legal professionals where that may offer advantages for the public. We will also continue to authorise entities and Alternative Business Structures to provide barristers with further opportunities to innovate in the ways in which they supply legal services.

We will ensure our regulatory frameworks do not pose unnecessary barriers to entering the market and we are reforming legal education and training for the Bar to sustain high standards while making training more accessible, affordable and flexible.

## Strategic Programme 3: Ensuring a strong and sustainable regulator

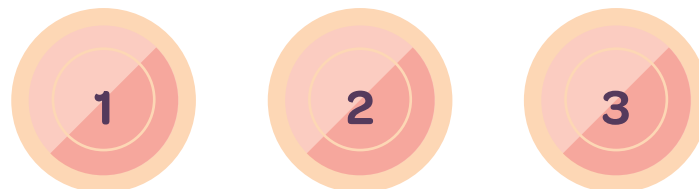
**This Programme is about making sure that we take the necessary steps to remain an efficient and effective regulator for the Bar in the long-term.**

We will continue to position the BSB as the regulator of legal services which have advocacy and specialist legal advice at their core.

We will actively promote regulatory governance arrangements which are constitutionally and financially independent of government and of the profession we regulate, whilst at the same time ensuring that we maintain our credibility with the public. We will maintain and extend our accountability.

We will continue to promote our core values of fairness, integrity, respect, excellence and value for money. We will maintain our strong track record of transparency, accountability and good stewardship of resources by setting out clear and meaningful measures of success.

To show how the work that we did during 2017-18 fits into our Strategic Plan, this Report uses these graphic devices to cross-reference pieces of work to one of our three strategic themes.



You can read more about our approach to regulating the Bar, risk-based regulation (including more about our risk themes) and our current Strategic Plan on our website at: [www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/](http://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/)

### Flexible plans for changing times

When we published our Strategic Plan in 2016, we acknowledged that there was a great deal of uncertainty concerning the regulatory environment in which we operate. We needed to make sure that our Strategic Plan and our annual Business Plans were flexible and adaptable, so that we could respond to any changes and re-prioritise our work as and when necessary.

Although our three main risk themes have remained unchanged since March 2016, a number of events have occurred since then. Most notable of these was the publication of the Competition and Markets Authority's report in December 2016 which led to us undertaking a large stream of work during 2017-18 as we began to respond to the CMA's recommendations.

As you will see from [page 21](#) of this Report, nearly all of the tasks that we set ourselves in our 2017-18 Business Plan were delivered as planned and to budget.

# Our teams and their work

This organisation chart shows how we are structured. A description of the work of each team is provided below. On 1 April 2018, we had 81 people employed at the BSB.



## Strategy and Policy

We are a risk- and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services. We identify the potential risks that could prevent our Regulatory Objectives from being met. When we have done this, we focus our attention on the biggest risks and then take action to try to prevent them from occurring, or to reduce their impact. You can read more about our risk-based approach to regulation and find out about the risk areas upon which we are focusing most of our attention during our current strategy on [our website](#).

In accordance with our research strategy, we gather evidence about what is happening in the market and the impact that our actions are having. We conduct research (either by ourselves or with others) and we collaborate with stakeholders who have an interest in our work. This can involve inviting external individuals or organisations to participate in workshops or project groups in addition to inviting comments, via consultations, on all of our proposals. We use this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These rules are contained in the BSB Handbook. We develop policy on the educational pathways into the profession. In addition, we develop policy on the conduct of practice in areas such as chambers' complaints handling and direct public access to barristers. Another important area is equality and diversity, where we set a number of objectives in our Equality Strategy. This is available on [our website](#).

## Regulatory Assurance

The Regulatory Assurance Department brings together all of our supervision and authorisation functions.

Our aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing adherence to the standards set out in the BSB Handbook of both the individuals we regulate and the chambers and entities in which they practise. This includes a risk-based approach to supervision, the authorisation of new entities and the regulation of Continuing Professional Development (CPD).

We oversee the academic, vocational, and pupillage stages of training that must be completed in order to qualify as a barrister. We set and mark examinations for prospective barristers. We also decide on individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

## Professional Conduct (Enforcement)

The Professional Conduct Department assesses and investigates concerns about the professional conduct of barristers and others whom we regulate. Where there is sufficient evidence, and the regulated person's conduct poses a risk to the Regulatory Objectives, we are also responsible for taking relevant enforcement action. We apply a four-stage process when considering complaints and reports to ensure that we deal with them fairly and efficiently. This process is described in detail on [our website](#).

When a complaint leads to a disciplinary tribunal these are arranged by an independent organisation called the [Bar Tribunals and Adjudication Service \(BTAS\)](#).

### Barristers' Core Duties

The rules and code of conduct for barristers in England and Wales are contained within the BSB Handbook. There are ten core duties that all barristers must observe. These are:

#### Barristers must...

- observe their duty to the court in the administration of justice;
- act in the best interests of each client;
- act with honesty and integrity;
- maintain their independence;
- not behave in a way which is likely to diminish the trust and confidence which the public places in them or in the profession;
- keep the affairs of each client confidential;
- provide a competent standard of work and service to each client;
- not discriminate unlawfully against any person;
- be open and co-operative with their regulators; and
- take reasonable steps to manage their practice, or carry out their role within their practice, competently and in such a way as to achieve compliance with their legal and regulatory obligations.

The BSB Handbook is available on our website at: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>

## Communications and Public Engagement

The Communications and Public Engagement Department is responsible for all of our internal and external communications including our publications, website, social media activity and media relations. It helps our other teams to engage with the profession and other stakeholders to make sure that we discuss our policy development plans in an open and consultative way.

## Corporate Services

The Corporate Services team provides support with strategic and business planning and performance reporting and ensures that we maintain good governance practices, policies and procedures. The team also provides administrative support for the Chair, Vice Chair and Director General.

## Resources Group

We share the following support services with the Bar Council: Facilities, Finance, Information Services, Human Resources, Records and the Project Management Office.

# The story of our year

In this section, we outline what we achieved during 2017-18. To see this reported against the list of activities that we set out in our 2017-18 Business Plan, please refer to the tables starting on page 21.

As well as our major consultations in 2017 on the future of Bar training and on new transparency standards for the Bar, key highlights from the year included the following:

- consulting on and then deciding to change the standard of proof applied in professional misconduct proceedings from the criminal to the civil standard to bring our disciplinary arrangements in line with most other professions (for alleged breaches of the Handbook that occur after 31 March 2019);
- changing the rules to require chambers to allow all self-employed barristers access to parental leave;
- consulting on a range of new declaration rules for barristers when they ask for practising certificates and overseeing their introduction from February 2018;
- issuing new guidance for the public and for professionals on immigration and asylum related legal issues in June 2017, and preparing to issue new guidance in April 2018 on dealing with vulnerability in immigration legal work;
- starting to license Alternative Business Structures (ABS) from April 2017; and
- simplifying the Public and Licensed Access Rules following a consultation.

Most of our work regulating barristers is taken up with the day to day tasks necessary to oversee qualification for, and the activities of, the Bar. With 16,258 registered barristers in England and Wales on 31 March 2018 and a further 50,912 unregistered barristers who do not practise but who are nonetheless subject to our regulation, these everyday business-as-usual, regulatory tasks account for around 85% of our costs. These tasks include:

- supervising barristers, chambers and entities;
- assessing and investigating reports and complaints about barristers' professional conduct;
- when necessary, taking appropriate disciplinary action against barristers who have broken the rules;
- issuing practising certificates to individual barristers on an annual basis, and thereby authorising them to practise;
- assessing and processing applications from barristers to extend their practising certificates to include authorisation for public access work and/or to conduct litigation;
- managing the centralised examinations for the Bar Professional Training Course (BPTC);
- supervising BPTC providers and organisations that train pupils;
- assessing and processing applications associated with the education and training of barristers including those relating to pupillage, CPD, transferring qualified lawyers, and applications to become a pupillage training organisation;
- complying with our statutory equality and diversity responsibilities; and
- authorising entities (legal services businesses).

In order to ensure value for money when conducting these "business-as-usual" activities, we have robust governance arrangements in place to make sure that we do this all as efficiently as possible.

### Assuring standards of practice by barristers

High standards of advocacy are a bedrock of the justice system and of the rule of law in general. The public must be able to rely on the standard of representation that they receive in court.

There are a number of ways in which we go about assuring the standards of barristers' work.

First, we closely **monitor and supervise barristers' practices**. In this way, we hope to be able to identify whether something needs to change in the barrister's practice. In most cases nothing needs to change but if something does – or we think there is a strong chance that something might go wrong in the future to prevent the barrister from providing a high standard of service and/or the impact of this could have serious consequences – we work collaboratively with the barrister's chambers or entity to put things right. This could involve additional training, making a change to a barrister's working procedures or anything else that we think is necessary to assure standards.

Supervision is now embedded within our overall regulatory approach. The emphasis is on helping chambers manage compliance and risk to ensure that they are meeting their regulatory requirements and are doing what they can to prevent any risks that have been identified from occurring. Typically, we receive around 30 pieces of information every month from internal sources (such as the Records and Professional Conduct departments) and external sources including barristers, pupils, chambers, BSB entities, other regulators and members of the public. We risk assess this information and act on it where we assess the risk to be high. Examples include a pupil complaining of a poor standard of training and rumours of a disorderly chambers closure. Sometimes this results in our issuing a desk-based response, and sometimes in our making a supervisory visit. For example, this year we carried out two visits where we were concerned about the quality of pupillage training, based on reports from pupils.

In November 2017, after much consideration by the Board, we announced that we would not be implementing the proposed Quality Assurance Scheme for Advocates (QASA). The Board decided that QASA was no longer consistent with the risk-based and proportionate approach to regulation that we have developed since QASA was first devised and approved. We remain committed to assuring the competence of barristers, but will now do so by building upon the strong foundations of regulation that have been implemented over the last three years.

Another way in which we can assure standards of practice is by taking **enforcement action** against the few barristers who are found to have broken the rules of professional conduct.

Our method for investigating complaints about barristers' professional conduct is thorough, robust and fair. The public can be confident that appropriate action is taken against barristers who break the rules. At the same time, barristers can be assured that if they are the subject of a complaint, we will investigate it carefully and deal with it in a fair and proportionate way.

During 2017-18, we opened 475 complaints about the conduct of barristers. 84 per cent of these complaints – many of which can be exceedingly complex - were concluded or referred to disciplinary action within agreed service standards. These service standards require that:

- our initial assessment of a complaint be completed within eight weeks either by the complaint being closed without investigation or with it being referred to investigation;
- complaints from third parties be investigated and either closed or referred to enforcement action within eight months; and
- complaints raised by us be investigated and either closed or referred to enforcement action within five months.

Of the 34 barristers who had disciplinary findings made against them, six were disbarred and a further eight were suspended.

You can read more about the work of our Professional Conduct Department in our separate annual report about this aspect of our work. This report will be available on our website from September 2018.

Finally, if we think our regulatory arrangements for barristers need to be amended we can apply to our oversight regulator, the Legal Services Board (LSB), to have them changed. We will only change the arrangements after we have developed a properly evidenced policy proposal, and engaged and consulted with the profession and other interested stakeholders about the change.

In May 2017, we launched a consultation about the **standard of proof** that is applied when barristers and others regulated by the BSB face disciplinary proceedings for professional misconduct. We wanted to seek views as to whether our regulatory arrangements should be changed to allow the civil standard (“on the balance of probabilities”), rather than the existing criminal standard (“beyond reasonable doubt”), to be applied and thus bring the Bar’s disciplinary arrangements in line with most other professions.

Following the consultation to which over 100 responses were received, in November we announced that we would be changing to the civil standard, subject to approval from the LSB. The BSB, along with the Bar Tribunals and Adjudication Service, will need a period for pre-implementation preparation and therefore we propose to apply the civil standard to alleged breaches of the Handbook occurring after 31 March 2019.

Finally, in November 2017, **updated disciplinary tribunal regulations** came into place. The revised regulations sought to modernise and streamline the regulations as well as to codify existing informal practices. Overall, we updated eight areas within the regulations which were reflected in a new version of the BSB Handbook.

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## Responding to the CMA's market study into the provision of legal services

In June 2017, we outlined our plans to act on the recommendations that came from the 2016 **CMA report into the market for legal services**.



### In Focus: Overview of the CMA market study into the provision of legal services.

In December 2016, the CMA concluded that competition in legal services for individual consumers and small businesses is not working well. In particular, it found that there is not enough information available on price, quality and service to help those who need legal support to choose the best option.

The CMA set out a package of measures which challenged us – with the other frontline legal regulators and the LSB – and providers to help customers better navigate the market and to find a service which meets their needs.

The full CMA report can be found on their website at: <https://www.gov.uk/government/news/cma-demands-greater-transparency-from-legal-service-providers>

Our initial focus was on improving transparency for consumers about the services provided by barristers, their fees and the availability of redress. We agreed with the CMA that making this information more available across the legal sector could promote competition and help consumers access the market more easily.

To consider how the Bar could best respond to the CMA's recommendations taking into account the specialist legal services provided by the Bar, and in particular the fact that much of its work is carried out on a referral basis from solicitors, we began by identifying the good practice that already exists in this area in chambers and building on that. We also began piloting some new approaches with a small number of practitioners.

In October 2017, we issued a policy consultation that sought views on a number of ways in which our rules, in light of the CMA recommendations, could target those consumers who were likely to benefit most from increased transparency. Clearly our rules will need to focus on Public Access barristers who deal with clients directly, but our consultation also sought views on whether we should apply similar disclosure requirements when barristers are offering services via a solicitor to anyone who has a right to complain to the Legal Ombudsman.

During the autumn, we held a number of well-attended events around the country and online, so that we could listen to what barristers and other interested stakeholders thought about these issues. It became clear that there must be a balance between improving consumer understanding and genuinely promoting competition on the one hand, and not overburdening barristers and chambers or producing information overload for clients on the other.

The Board met in February to consider this balance, the feedback received during the events and the formal responses to the consultation. As a result, we published a revised approach to implementing the CMA's transparency recommendations at the Bar. This contained a number of high-level proposals which will now be the subject of a more-detailed rule change consultation during 2018-19. The proposals agreed in principle in February are shown in the box panel below.

Subject to approval by the LSB, these transparency requirements will come into force by May 2019. However, the BSB is not proposing to make compliance with any fee transparency requirements mandatory until early 2020. The effectiveness of the new requirements will be evaluated from December 2020.

### In Focus: The BSB's agreed approach to improving transparency for clients of the Bar

Following a consultation, we set out the following approach to improve transparency standards for clients of the Bar:

- targeting new price transparency requirements on the more standardised services provided by Public Access barristers who provide services direct to the public and whose clients are most likely to benefit from "shopping around";
- working closely with Specialist Bar Associations to develop guidance for barristers providing these standardised services;
- considering whether in relation to Public Access work disclosure requirements should apply only to certain chambers (which could be defined by size or type of service provided);
- giving further consideration as to whether all chambers' websites should be required to state their most commonly used pricing models and that professional and/or lay clients (as appropriate) may contact chambers to obtain a quote;
- requiring all chambers' websites to state the areas of law in which they most commonly provide services;
- requiring all chambers with Public Access registered barristers to display a link through to the guidance for lay clients on the BSB's website;
- requiring all chambers' websites to display a BSB logo, the text "barristers regulated by the Bar Standards Board" and information about any right to complain to the Legal Ombudsman (LeO); and
- further consumer testing to make sure that any disclosure requirements placed on barristers strike the right balance between helping consumers make informed decisions whilst not delivering overly complex information.

We agreed not to proceed with proposals to require chambers to publish first-tier complaints data. However, we will consider a requirement for chambers' websites to link to the Barristers' Register to enable clients to search for any current disciplinary findings by the Bar Tribunals & Adjudication Service in line with our disclosure policy. We will also explore the feasibility of a similar arrangement for complaints which have been upheld by the Legal Ombudsman.

In considering how best to target new disclosure requirements, we agreed that delivering a proportionate approach to the CMA market study is best achieved by focusing on the Public Access Bar, where clients will most benefit from greater transparency of information about services, fees and rights of redress. We agreed not to impose disclosure requirements in relation to hourly rates and fixed fees on barristers undertaking work referred by solicitors. However, our view is that all barristers should be required to meet minimum transparency standards in relation to service and redress.

### Assuring standards of entry to the profession

A large part of the work that we undertake as a regulator involves the process by which new barristers qualify to practise in England and Wales.

We have a duty to make sure that everyone who is authorised has met the necessary standards to be allowed to practise. This is one of the most important ways by which we assure the public that everyone being Called to the Bar is fit to be so.

The following list shows the variety of roles we play in the qualification of a new barrister, as well as illustrating the scope and extent of the work that we undertook in 2017-18:

- **1,854** students passed a Bar Course Aptitude Test – one of our regulatory requirements – in order to demonstrate their aptitude to complete the Bar Professional Training Course (BPTC) successfully;
- **1,624** students enrolled with a BPTC provider in order to study on the BPTC;
- **1,344** centralised assessment papers were sat by students in August 2017 as part of their BPTC and a further **1,948** papers were sat in March 2018 (NB: The spring BPTC exams took place between March and May, so further papers were sat by students in May 2018);
- **235** applications were received by us from students wishing to be exempted from various aspects of the academic or vocational stages of learning;
- **13** organisations applied to us to become a pupillage training organisation;
- **197** applications were received by us from prospective barristers for exemptions and waivers in relation to pupillage;
- **165** qualified overseas lawyers or qualified UK solicitors took the Bar Transfer Test in order to be eligible to practise as a barrister in England and Wales; and
- **260** applications were received by us from solicitors, EU lawyers, overseas lawyers and legal academics wanting to transfer to the Bar.

Many of the applications referred to above were previously dealt with by our Qualifications Committee, which was disestablished in August 2017 to allow decisions of this nature to be made by our staff. This streamlines our processes, ensures value for money for those who fund us and is in line with our modernised principles of governance. Where necessary, our staff can access expert advice from our Advisory Pool of Experts (known as “APEX”).

## Reforming the system for qualifying as a barrister

Our extensive review of education and training for barristers, known as “Future Bar Training”, has been running since late 2014. Substantial progress was made during 2017-18.

In March 2017, we confirmed that we plan to authorise a limited number of future training routes for prospective students to qualify as barristers, and that we will assess the routes against the four key criteria of flexibility, accessibility, affordability and sustaining high standards.

In October 2017, we launched a consultation to seek views on a number of further aspects of the way in which barristers train and qualify. This included:

- to what extent the BSB should prescribe the role of the Inns of Court in the training and qualification of barristers;
- the future rules and regulatory arrangements for pupillage and other forms of work-based learning and;
- a draft of a new framework to enable training providers to develop new and innovative training programmes for aspiring barristers.

We hosted a number of events around the country and online to listen to what our stakeholders had to say about the issues raised. This led to us receiving around 150 formal responses to the consultation.

We issued a Policy Statement in March 2018 confirming that the Inns of Court will continue to have an essential role in the training of barristers. The Statement also clarified our role in the oversight of student barristers and confirmed that new, more robust checks will be introduced to help determine the suitability of everyone being Called to the Bar in future.

The March 2018 Statement also confirmed that the content of qualifying sessions should not only be aligned to the Professional Statement but should also focus on public interest matters such as the advocate’s role in the rule of law and integrating trainees into a “community of practice” through interactions with more experienced practitioners and the judiciary. The Inns are uniquely placed to provide this important function and we will consider in more detail how many sessions would be appropriate and the detail of the oversight arrangements to be put in place. More of this activity should be available to prospective barristers outside London, through collaboration between the Inns, Circuits and regional training providers.

The March 2018 Policy Statement can be read in full on our website at: [https://www.barstandardsboard.org.uk/media/1927537/fbt\\_inns\\_of\\_court\\_policy\\_statement\\_23.03.18\\_final.pdf](https://www.barstandardsboard.org.uk/media/1927537/fbt_inns_of_court_policy_statement_23.03.18_final.pdf)

Although it falls outside the period covered by this Report, readers may wish to know that we published another Policy Statement in May 2018 to announce our decisions about the other elements covered in our October 2017 consultation. The May 2018 Statement:

- outlined our position on pupillage and other forms of work-based learning;
- contained an updated version of the Authorisation Framework that we will use to determine whether proposals from training providers are fit for purpose for training during each component of the qualification process and whether they comply with the four fundamental principles; and
- referred to a new Curriculum and Assessment Strategy which will introduce some important changes to the way prospective barristers are taught and assessed.

The May 2018 Policy Statement can also be read in full on our website at: [https://www.barstandardsboard.org.uk/media/1935316/fbt\\_pupillage\\_af\\_and\\_car\\_policy\\_statement\\_-\\_may18.pdf](https://www.barstandardsboard.org.uk/media/1935316/fbt_pupillage_af_and_car_policy_statement_-_may18.pdf)

Having made decisions about all of these policy issues, we issued a final rules consultation during 2018. This will be with a view to new training and qualification rules for barristers being agreed by the BSB and the LSB in time for them to come into force in January 2019. This means that the earliest some of the changes could start is 2019, although much depends on the courses training providers submit to us for authorisation and when they do this. Transitional arrangements will be put in place to enable those currently in training or about to start in 2018-19 to complete their training under the existing arrangements.

### Promoting equality and diversity

Equality and diversity forms an important part of the work undertaken by the BSB and progress was made on several important fronts during 2017-18.

In January 2018, we published our annual report on **diversity at the Bar**. This showed that diversity is heading slowly in the right direction but that further progress is needed.

Some of the key findings from the report include:

- at 62.8 per cent men still outnumber women at 37.0 per cent of the practising Bar. However, the overall percentage of women increased by 0.5 percentage points (pp) during the last year;
- the percentage of Black, Asian and Minority Ethnic (BAME) practising barristers has increased by 0.5 pp since December 2016. 12.7 per cent of the practising Bar is now BAME;
- male QCs still outnumber female QCs, but the percentage of female QCs increased from 13.7 per cent in December 2016 to 14.8 per cent in December 2017;
- the percentage of BAME QCs has increased by 0.8 pp year on year with 7.2% being BAME and 89.2% being white; and
- the gender and ethnic diversity of pupil barristers is roughly in line with the population of England and Wales, with 51.7 per cent of pupils being female and 16.1 per cent being BAME.

Towards the end of May 2017, we proposed a change to our rules to require chambers to allow all self-employed barristers access to **parental leave**. Following a public consultation, later in the year, the Board agreed to change the equality rules to require all chambers to have a policy that allows any member who becomes the carer of a child to take parental leave, and that it should apply regardless of whether a person's spouse or partner takes parental leave. Chambers' parental leave policies should allow parental leave to be taken flexibly, to enable barristers to maintain their practice and support their income while on leave.

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In February 2018, we hosted an event about how to improve **race equality at the Bar**. The event was called 'Heads Above the Parapet: How can we improve Race Equality at the Bar?'. It was attended by over 50 delegates including practising barristers, other legal practitioners, educators, race equality organisations, diversity experts and senior leaders from the BSB. Guest speakers provided interesting perspectives on the realities of being Black, Asian, and Minority Ethnic (BAME) practising barristers. The event focused on identifying barriers for BAME people accessing and progressing through a career at the Bar, and considering how best to remove these barriers. The contributions and proposals that were raised at this event are helping the BSB develop a series of recommendations for publication in the future.

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We also followed up our major 2016 survey about **women's experiences at the Bar**, by conducting further research and devising an action plan to help us tackle some of the issues brought to our attention via the research. We went on to publish the latest research and a summary of our action plan in May 2018.

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You can read our Equality and Diversity Strategy on our website at: <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-strategy-2017-19/>

### Delivering value for money

During 2017-18, a number of changes were made to **the way in which we are governed** and the way in which we work. These are designed to make our operations as efficient as possible and deliver value-for-money for those who fund us. You can review the financial effects of these changes by reading about our financial performance during 2017-18 from page 26 of this Report. Key governance changes made this year were the disestablishment of the Qualifications Committee and the transfer of decisions on authorisations to the executive. To support this, an additional appointment was made to APEX to advise staff taking these decisions.

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We conducted a review of the first year of operation of APEX and our future needs for specific areas of expertise. The review found that APEX was working well.

The final phase of our governance reforms outlined in our 2016-19 Strategic Plan, deals with **modernising the BSB's regulatory decision-making**. In March 2018, we launched a consultation seeking views on the establishment of a new Independent Decision-Making Body (IDB) consisting of a pool of approximately 30 lay and barrister members from which panels of three or more will be nominated to take individual regulatory decisions. Under

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the plan, the IDB will replace the BSB's Professional Conduct Committee which currently consists of 32 lay and barrister members. The IDB would also take over the role of the current Authorisations Review Panels (which replaced the Qualifications Committee) in dealing with challenges to staff decisions on individual applications for authorisation and waivers from Handbook requirements. The consultation also proposes the creation of a Centralised Assessment Team to handle all incoming information about the behaviour of those we regulate and thereby allow for a more consistent risk-based approach to the assessment of such information as well as further improvements in efficiency.

This consultation closed in May 2018 and the Board will consider the responses received before deciding later in the year how best to proceed with these reforms.

Finally, in February 2018, thanks to our shared Information Systems resources with the Bar Council, we were involved with them in launching **MyBar**, a new self-service website for barristers and chambers to renew their practising certificates, update regulatory information, pay the Bar Representation Fee, manage subscriptions and applications and to book training. MyBar replaced Barrister Connect and made it easier for barristers to manage their professional relationship with the Bar Council and the BSB. By the end of March, over 17,161 users had visited MyBar.

### Other work during 2017-18

In April 2017, we started licensing **Alternative Business Structures (ABSs)**. Prior to this, we had been regulating lawyer-only owned entities since 2015. Widening the range of entities that we are able to regulate to include ABSs allowed us, for the first time, to license legal services businesses which are owned jointly by lawyers and non-lawyers. As of 31 March 2018, we were regulating 81 lawyer-only entities and eight ABSs.

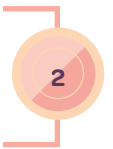
In June 2017, we published two consultations. The first was about simplifying the **Public and Licensed Access Rules**. An earlier review of the Public and Licensed Access schemes told us that they were working well but that improvements to the rules governing the schemes could result in a better service for clients and deliver greater access to justice for the wider public. The consultation recommended simplifying the rules and making them less prescriptive and more proportionate. In October 2017, following the responses we received to the consultation, we approved a number of rule changes for barristers undertaking public access work.

The second consultation was on a new set of proposals to introduce **declaration rules** that require barristers to declare a range of information about their practice to us every year when applying for their practising certificate. The new rules came into force in February 2018 and also apply to new and returning barristers. In addition to existing reporting requirements, barristers are now required to:

- provide information on their practice areas, including any public access work;
- declare work that falls within the scope of the new Anti-Money Laundering Regulations;
- register if they work in the Youth Courts, or intend to do so; and
- register a unique email address with our new MyBar website to help us to communicate with them more securely and effectively.

Obtaining accurate information of this nature will help us to understand better the practitioners that we monitor and regulate and be more focused and efficient in our regulation.

The new requirement for barristers to register their work in the Youth Courts is a key component of the new approach we announced last year to **improve advocacy standards within Youth Courts** when we also published guidance for barristers working in youth proceedings based on a set of essential competences that are expected of all advocates working with young people.



This collaborative approach, working with barristers to improve standards, is also an example of the new more targeted and proportionate approach to regulation that we have been introducing over the past few years. This new approach, also displayed in the new **Continuing Professional Development** scheme for established barristers, is one of the reasons why in November 2017, we announced that we would not be implementing the Quality Assurance Scheme for Advocates (QASA).



In June 2017, we published **immigration guidance** in collaboration with the Solicitors Regulation Authority and the Office of the Immigration Services Commissioner to help anyone who works with people needing legal help with their immigration and asylum status. Later in 2017, we published translations in eight other languages. It was part of our response to some of the risks associated with immigration and asylum work in the hope of improving the consumer experience and helping barristers to adopt good practice. We followed this up in April 2018 by publishing a guide to assist immigration barristers when they work closely with vulnerable clients. All of this work came out of a thematic review in 2016 which found that barristers sometimes face difficulties identifying, assessing and managing client vulnerability.



In July 2017, we published the findings of some research with people who had used **barristers' services during family legal proceedings** and they showed that people were positive about the service they received from their barrister. It was the most in-depth research that the BSB had ever undertaken with barristers' clients. The survey also showed, however, that many people facing a family law matter are unable to access appropriate legal advice for a variety of reasons. This research and the issues that it highlighted will help to inform our future regulatory response to these important issues.



### 2017-18: What we said we would do and what we delivered

The table below shows the commitments that we made in our 2017-18 Business Plan and a short update of the progress we made during the year.

#### Strategic Programme 1 – Regulating in the public interest

Activity:	Progress:
Competition and Markets Authority (CMA) Action Plan	<ul style="list-style-type: none"> <li>We published an action plan in response to the CMA’s recommendations.</li> <li>We consulted widely about how the Bar could be more transparent about barristers’ fees, services and rights of redress for consumers.</li> <li>Based on the outcomes of the consultation, we published a policy position stating how new transparency requirements for the Bar would be properly targeted at those consumers who need it most.</li> <li>Subject to a rules consultation and approval by the Legal Services Board, these transparency requirements are expected to come into force by May 2019.</li> </ul>
Alternative Business Structures (ABS)	<ul style="list-style-type: none"> <li>We started authorising ABSs in April 2017.</li> </ul>
Embedding risk-based principles across the organisation	<ul style="list-style-type: none"> <li>We implemented the next phase of how we prioritise risk, further embedding it as the main way in which we determine which regulatory actions to take.</li> <li>We started planning for the publication of our updated Risk Outlook in 2019, including reviewing our approach to evidence collection.</li> </ul>
Bar Professional Indemnity Insurance and Bar Mutual Indemnity Fund (BMIF)	<ul style="list-style-type: none"> <li>We reviewed our arrangements in relation to professional indemnity insurance for the Bar – this project continues into 2018-19.</li> </ul>
Public and Licensed Access	<ul style="list-style-type: none"> <li>Following our review of the Public and Licensed Access schemes during 2016-17, we consulted on ways to simplify the rules governing the schemes.</li> <li>Following the consultation, the revised rules came into force in the version of the BSB Handbook published on 1 February 2018.</li> </ul>
Seek s69 Order	<ul style="list-style-type: none"> <li>An Order under s69 of the Legal Services Act 2007 will give the BSB additional statutory powers, including a power to intervene in barristers’ practices in the public interest.</li> <li>An Order has been approved by Parliament and will come into force in October 2018.</li> </ul>

Activity:	Progress:
Research Strategy	<ul style="list-style-type: none"> <li>The Board approved a new Research Strategy during 2017-18 which is now embedded throughout our policy development work.</li> </ul>
Standard of Proof	<ul style="list-style-type: none"> <li>We consulted about changing the standard of proof in professional misconduct proceedings for barristers from the criminal standard to the civil standard.</li> <li>Following the consultation the Board agreed to apply the civil standard to professional misconduct allegations occurring after 31 March 2019. This will be subject to Legal Services Board approval.</li> </ul>
Review of disciplinary tribunal services	<ul style="list-style-type: none"> <li>The existing arrangements with BTAS were reviewed and the recommendations resulting from the review have been implemented.</li> </ul>

### Strategic Programme 2 – Supporting barristers and those the BSB regulates to face the future

Activity:	Progress:
Continuing Professional Development (CPD)	<ul style="list-style-type: none"> <li>We continued to have dialogue with the profession throughout 2017 about the new CPD scheme for established practitioners that came into force on 1 January 2017.</li> <li>During the 2018 Authorisation to Practise process, all barristers were required to confirm their compliance with the new scheme for the first time.</li> <li>These declarations will be reviewed in 2018 on a “spot-check” basis.</li> </ul>
Youth Courts	<ul style="list-style-type: none"> <li>During 2017-18, we developed our new regulatory approach for barristers working with young people in the Youth Courts. We first announced our intentions to do this in February 2017.</li> <li>This made registration with us compulsory for barristers undertaking Youth Court work as part of the 2018 Authorisation to Practise process. Over 1,900 barristers registered.</li> <li>We published new guidance for young people on what to expect from their advocates.</li> </ul>
Immigration	<ul style="list-style-type: none"> <li>We published new guidance for the public and for professionals on immigration and asylum related legal issues.</li> <li>We prepared to launch a new guide in April 2018 for barristers working with vulnerable immigration clients.</li> </ul>

Activity:	Progress:
Equality objectives	<ul style="list-style-type: none"> <li>• We consulted about, and subsequently approved, new rules to require chambers to allow all self-employed barristers access to parental leave.</li> <li>• We hosted a series of workshops to follow-up the major research we undertook in 2016 about women's experiences at the Bar and agreed an action plan designed to tackle some of the issues highlighted.</li> <li>• We hosted an event about race equality at the Bar to help identify the barriers for BAME people accessing and progressing through a career at the Bar, and to consider how best to remove these barriers.</li> <li>• We published research into the experiences of Bar students which highlighted that some BAME students and candidates with lower socio-economic status are less successful in obtaining pupillage than white students with similar prior educational attainment.</li> </ul>
Scope of practice	<ul style="list-style-type: none"> <li>• We published proposals to review our Scope of Practice Rules which we intend to deliver in 2018-19.</li> </ul>
Anti Money Laundering	<ul style="list-style-type: none"> <li>• We contributed to, and published on our website, new anti-money laundering guidance for the whole legal sector.</li> <li>• We introduced new rules requiring barristers to declare work that falls within the scope of the new Money Laundering Regulations.</li> </ul>
Future Bar Training (FBT)	<ul style="list-style-type: none"> <li>• We consulted about updating some of the rules governing barrister training and qualification including: <ul style="list-style-type: none"> <li>- to what extent the BSB should prescribe the role of the Inns of Court in the training and qualification of barristers;</li> <li>- future rules and regulatory arrangements for the work-based component of training (pupillage); and</li> <li>- a draft Authorisation Framework to enable training providers (in the academic, vocational and professional stages of training) to develop new and innovative training programmes for aspiring barristers.</li> </ul> </li> <li>• Following the consultation, we published Policy Statements about these issues in March and May 2018 ahead of a rule change consultation planned for Summer 2018 and new rules coming into force from January 2019.</li> <li>• We began a pilot programme for a new method of pupillage accreditation.</li> <li>• We undertook a review of what subject matter is covered during each component of the education and training required to become a barrister, and how it is assessed.</li> </ul>

**Strategic Programme 3 – Ensuring a strong and sustainable regulator**

Activity:	Progress:
Disciplinary Tribunal Regulations	<ul style="list-style-type: none"> <li>• We introduced new disciplinary tribunal regulations into the BSB Handbook in November 2017.</li> </ul>
Regulatory independence	<ul style="list-style-type: none"> <li>• We responded to the Ministry of Justice’s response to the CMA recommendation about this issue.</li> </ul>
Governance reforms	<ul style="list-style-type: none"> <li>• During the year, we recruited additional members to our Advisory Pool of Experts (APEX).</li> <li>• We disestablished the Qualifications Committee and replaced it with Authorisations Review Panels.</li> <li>• We formed an action plan to tackle areas of underrepresentation on our Board and our committees.</li> <li>• We launched a consultation about modernising our regulatory decision-making including the establishment of a new Independent Decision-Making Body to replace our Professional Conduct Committee.</li> </ul>

# Our governance

We are governed by a Board made up of 15 people. The Board has a non-barrister majority including a non-barrister Chair. The Board met 12 times during the year: there were 9 ordinary meetings, one special seminar meeting on Future Bar Training, and two Away Days.

During 2017-18, the following people sat on our Board:

## Chair:

Baroness Tessa Blackstone  
*(From 1 January 2018)*  
Sir Andrew Burns KCMG  
*(Until 31 December 2017)*

## Vice-Chair:

Ms Naomi Ellenbogen QC

## Barrister members:

Mr Aidan Christie QC  
Ms Justine Davidge  
Ms Judith Farbey QC  
Mr Andrew Mitchell QC  
Mr Adam Solomon QC  
Ms Anupama Thompson

## Lay members:

Ms Alison Allden OBE  
Ms Rolande Anderson  
*(until 31 December 2017)*  
Ms Lara Fielden  
*(from 1 January 2018)*  
Mr Steven Haines  
Ms Zoe McLeod  
Ms Nicola Sawford  
Ms Kathryn Stone OBE  
*(from 1 January 2018)*  
Mr Stephen Thornton CBE  
*(from 1 January 2018)*  
Ms Anne Wright CBE  
*(until 31 December 2017)*

## Accountability

Under the Legal Services Act 2007 (LSA07), the LSB is responsible for overseeing the approved regulators for legal services in England and Wales. The approved regulator for barristers is the General Council of the Bar (GCB), which is also the representative body for the Bar. The LSA07 requires the separation of regulatory and representative activities so the GCB has established the Bar Standards Board to exercise its regulatory functions independently. We have a protocol in place with the GCB to ensure that the professional body's representative functions do not exert undue influence over the regulatory functions.

We independently control our allocated resources, and our operations are monitored quarterly by the Planning, Resources and Performance (PRP) Committee and then reported to the Board. The Committee also helps develop our strategic and business plans and oversees performance monitoring.

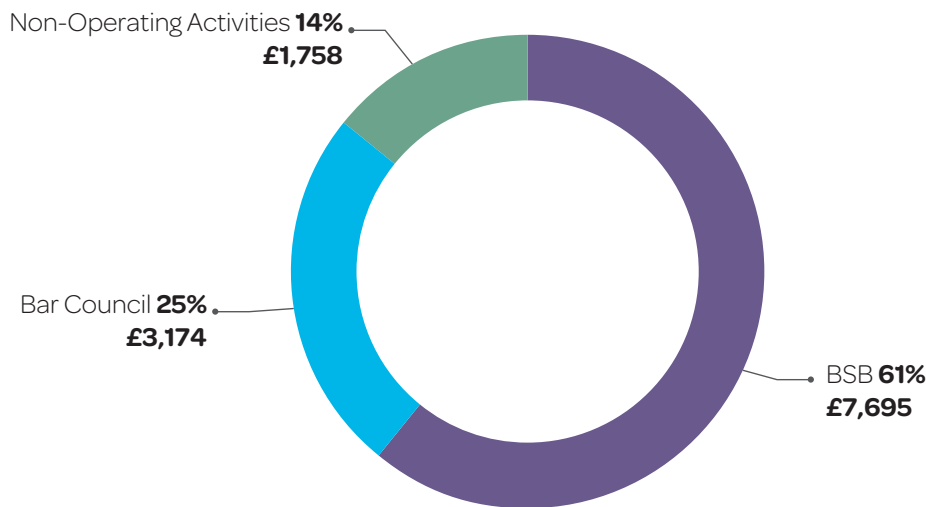
The Governance, Risk and Audit (GRA) Committee is responsible for ensuring the maintenance of good governance standards and internal control processes and advises the Board on the corporate and regulatory risk management framework. The Director General and senior managers are responsible for the areas of risk that relate to their departments. The corporate risk register is reviewed at least quarterly by our Senior Management Team and the GRA Committee. In addition, the GRA Committee conducts regular in-depth risk reviews throughout the year.

# Our income and expenditure

A proportion of the Practising Certificate Fee (PCF) paid by barristers is spent by the BSB on regulation and a proportion is spent by the Bar Council on some of its functions (as permitted under s51 of the LSA07).

All figures in this section have been rounded to the nearest thousand pounds.

## Allocation of PCF between Bar Council and BSB<sup>1</sup> (£ thousands)



Part of our income comes from charges for specific services we provide to individuals and organisations. We describe that kind of income as “income streams directly controlled by the BSB”. Directly controlled income streams include the fees from Bar Professional Training Course (BPTC) providers, and the Bar Transfer Test (BTT). The remainder of the BSB’s funding is from Practising Certificate Fees and General Council of the Bar reserves. These income streams are not directly controlled by the BSB.

### Income Area

£ thousands

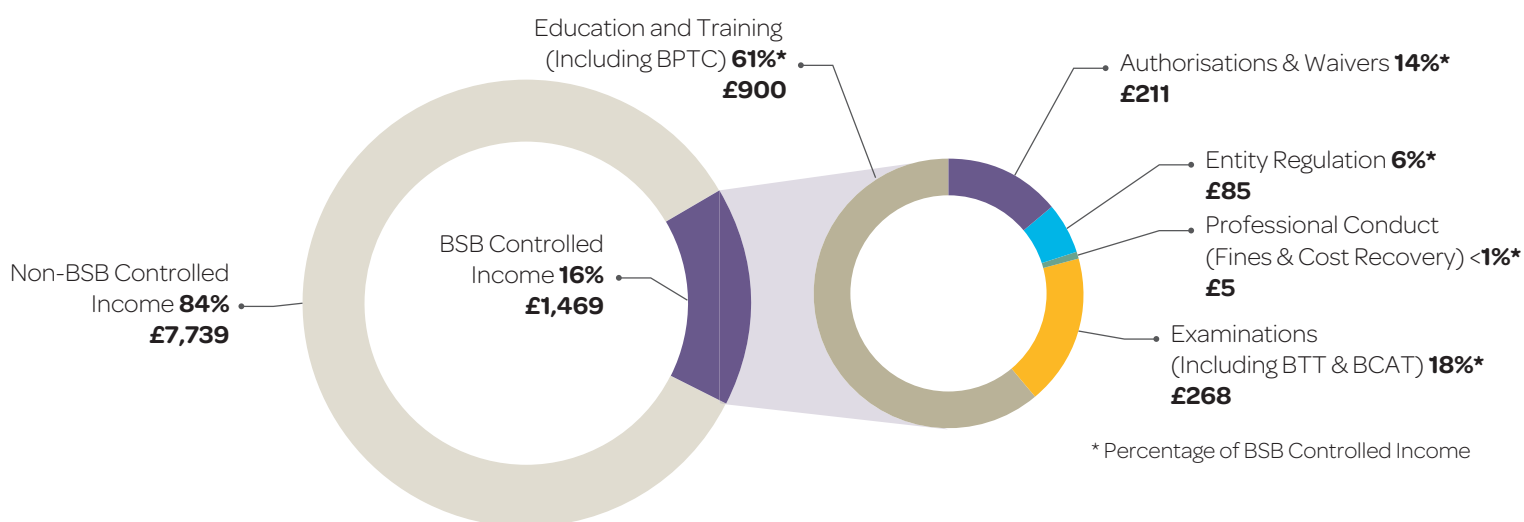
Examinations (Including BTT & BCAT)	268
Education and Training (Including BPTC)	900
Authorisations & Waivers	211
Entity Regulation	85
Professional Conduct (Fines & Cost Recovery)	5
<b>Total BSB generated income</b>	<b>1,469</b>

The budget for the Bar Course Aptitude Test (BCAT) and BPTC remained the significant proportion of the BSB controlled income. The budget for the BPTC (£500,000) was set conservatively, based on an expectation that the ongoing work on the FBT programme might lead to more students deferring enrolment. This did not happen and the BPTC generated an additional £394,000 of income. Overall the BSB exceeded its (non-PCF) income target by £582,000 (+65%)

<sup>1</sup> Non operating activities include the PCF allocated to the costs of the Legal Services Board and the Legal Ombudsman as well as the contribution towards the defined benefit pension scheme.

**Income not directly controlled by the BSB****£ thousands**

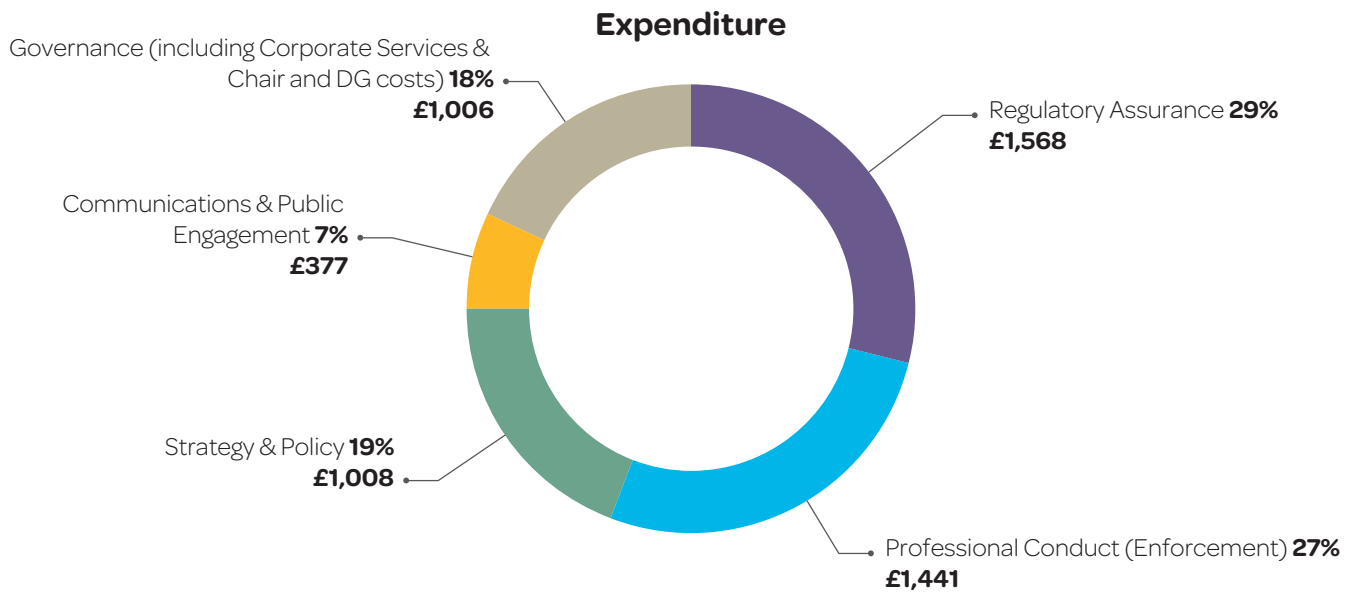
PCF Contributions	7,695
Planned Contributions from Reserves	44
<b>Total income not directly controlled by the BSB</b>	<b>7,739</b>
<b>Total regulatory income</b>	<b>9,208</b>

**BSB Income (£ thousands)****Expenditure**

The BSB directly controlled expenditure was £5,400,000 against a budget of £5,211,000, a £189,000 (3.6%) overspend. The full cost of regulation includes an allocation of shared costs (IT, Finance, HR and Premises costs) from the Bar Council Resource Group. The Resource Group expenditure is managed separately, outside the direct control of the BSB and is apportioned to the organisation.

**Department****£ thousands**

Regulatory Assurance	1,568
Professional Conduct (Enforcement)	1,441
Strategy & Policy	1,008
Communications & Public Engagement	377
Governance (Including Corporate Services & Chair and DG costs)	1,006
<b>Total Direct BSB Expenditure</b>	<b>5,400</b>
Resources Group allocation & adjustments	3,808
<b>Total cost of regulation</b>	<b>9,208</b>



### Staff related costs

Declining staff turnover meant that historic underspends in this area have not continued. Overall staff related costs were £4,336,000 (less than 1% overspent). We ended the year with staff turnover of 10%. What salary savings were achieved from vacancies have been balanced against recruitment related expenses and temporary cover for business critical roles.

### Non-staff costs

Total non-staff expenditure was £1,065,000 (£200,000 / 23% overspent) which relates to several unexpected costs arising throughout the year including:

Our contribution to Legal Choices increased to £42,000 (from £8,000 in 2016-17) in response to the recommendations made in the CMA Market Study.

Legal costs were £150,000 higher than budgeted with expenditure on legal advice (covering defence costs as well as policy advice) £60,000 higher than budgeted; and we also had Cost Orders totalling £90,000 awarded against us.



#### In focus: Monitoring Expenditure

We pay close attention to how we spend our money:

- Our budgets are set annually and our budget envelopes are informed by our business plans;
- The budget is divided up into departmental budgets which our Directors manage;
- Each month we receive detailed management accounts which enable us to keep a close eye on our business;
- Each quarter we think about what we might need to spend in the future and produce forecasts;
- We tightly monitor our largest area of spend which is our staffing costs;
- We make sure that our resources are directed at our key priorities; and
- Our financial performance is scrutinised by our Planning, Resources and Performance Committee (PRP).

# Remuneration and expenses<sup>2</sup>

	Salary / Fees	Pension	Allowance	Expenses	Total
Dr Vanessa Davies	£148,331	£20,766	£1,300	£3,318	£173,715
Sir Andrew Burns KCMG (Until 31 December 2017)	£66,948	-	-	£764	£67,712
Baroness Tessa Blackstone (From 1 January 2018)	£22,500	-	£325	-	£22,825
Ms Naomi Ellenbogen QC	£35,598	£712	£260	£146	£36,716
Mr Aidan Christie QC	-	-	-	-	-
Ms Justine Davidge	-	-	-	£171	£171
Ms Judith Farbey QC	-	-	-	-	-
Mr Andrew Mitchell QC	-	-	-	-	-
Mr Adam Solomon QC	-	-	-	-	-
Ms Anupama Thompson	-	-	-	£183	£183
Ms Alison Allden OBE	£11,326	-	-	£740	£12,066
Ms Lara Fielden (From 1 January 2018)	£2,310	-	-	-	£2,310
Mr Steven Haines	£9,240	-	-	-	£9,240
Ms Zoe McLeod	£9,240	-	-	-	£9,240
Ms Nicola Sawford	£10,154	-	-	-	£10,154
Ms Kathryn Stone OBE (From 1 January 2018)	£2,310	-	-	£275	£2,585
Mr Stephen Thornton CBE (From 1 January 2018)	£2,310	-	-	£376	£2,686
Ms Anne Wright (until 31 December 2017)	£6,998	-	-	-	£6,998
Ms Rolande Anderson (until 31 December 2017)	£6,923	-	-	-	£6,923

## Notes:

- Barrister Board members were not paid salaries in 2017-18 (apart from the Vice-Chair). From 2018-19 Barrister Board members will be paid the same rate as Lay Members.
- Board member positions do not attract a pension (apart from the Chair and Vice-Chair).
- Expenses for Board members include travel and subsistence costs.
- Expenses for the Director General include international travel on BSB Business as well as day to day travel and subsistence costs.
- Fees and expenses paid for attendance at BSB committee meetings by other non-Board members are not included here.
- All staff members and office holders (Chair & Vice Chair) receive an allowance of £1,300 in addition to basic salary.

<sup>2</sup>Expenses are reimbursement of costs incurred on BSB business, including travel and subsistence

# Our organisational values

The way in which we undertake our work is very important to us. We do this by adhering to a number of organisational values. These are:

## Integrity

- We operate to the highest ethical standards
- We are honest, open, and inspire trust
- We consider the social and environmental impact of our action

## Excellence

- We are committed to quality
- We are creative, innovative, and lead change
- We are responsive, accessible, and accountable for our actions

## Fairness

- We act responsibly, proportionately, and in the public interest
- We promote equality of opportunity and equal access to justice for all
- We value inclusion and diversity

## Respect

- We respect and support others
- We value expertise, learning, and knowledge-sharing
- We foster a collaborative and developmental working environment

## Value for money

- We are cost-effective and accountable for our use of resources
- We work efficiently with an entrepreneurial and commercial mind-set
- We strive for clarity, simplicity, and straightforwardness

## Contact us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent and proportionate. We welcome feedback on our services, particularly where the level of service has exceeded or fallen below expectations. Comments and suggestions are important to us as they will help us to meet our obligations and improve our performance.

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289-293 High Holborn  
London WC1V 7HZ

**DX:** 240 LDE

**Tel:** 020 7611 1444

**Fax:** 020 7831 9217

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**Twitter:** @barstandards

[www.linkedin.com/company/the-bar-standards-board](http://www.linkedin.com/company/the-bar-standards-board)

# Cost Transparency Metrics

2017-18



## Cost Transparency Metrics

The Bar Standards Board (BSB) has a strong commitment to the principle of transparency and has published financial and other transparency metrics as part of the Annual Report and Business Plan. As part of the Legal Services Board's (LSB) Cost of Regulation Project, a review of best practice relating to the availability and accessibility of costs information was undertaken. As a result of their recommendations the BSB is publishing these Cost Transparency Metrics separately in addition to their inclusion in the Annual Report. This is to increase transparency about the cost of the legal services regulators in England and Wales.

## Practising Certificate Fees (PCF)

Barristers are only legally entitled to undertake reserved legal activities if they are authorised to do so by the BSB. They do so by holding a current Practising Certificate renewed annually via a process known as Authorisation to Practise which includes payment of a Practising Certificate Fee. These fees fund the expenditure that falls within the 'permitted purposes' as defined by the Legal Services Board<sup>1</sup> (LSB). This is shared between the Bar Standards Board who deliver the regulatory functions, the Bar Council who deliver non-regulatory permitted activities and a provision for non-operating costs<sup>2</sup>.

Metric	£ thousands	
	2016-17	2017-18
Total PCF Reported	10,885	12,627

In 2017-18 of the total £12,627,000 collected £10,869,000 was for operating expenditures, shared 71% (£7,695,000) for the BSB and 29% (£3,174,000) for the Bar Council.

Portion of PCF funding 'non-regulatory permitted purposes' <sup>3</sup>	32%	39%
Total Permitted Purposes reserves	(367)	(584)

## BSB Specific Finances

Income - (PCF)	6,964	7,695
Income - Non PCF Sources <sup>4</sup>	1,442	1,469
<b>Total Income</b>	<b>8,406</b>	<b>9,164</b>
<b>Total Regulatory Expenditure<sup>5</sup></b>	<b>8,330</b>	<b>9,208</b>
Surplus / (Deficit)	76	(44)

## The Profession

Number of registered barristers <sup>6</sup>	15,853	16,258
Number of authorised entities	67	89 <sup>7</sup>

In April 2015, the BSB began authorising entities. These are owned and managed by lawyers only, including barristers, solicitors and other legally qualified persons. From April 2017, the BSB began authorising licensed bodies or Alternative Business Structures (ABSs) which are entities owned by both lawyers and non-lawyers. The entity and ABS regulation schemes at the BSB operate on a full economic cost recovery (FECR) model and fees are published on our [website](#)<sup>8</sup>.

## Staff Resources

Headcount <sup>9</sup>	77 (75.2 FTE)	81 (79.2 FTE)
------------------------	---------------	---------------

## Remuneration<sup>10</sup> of Officers / Executive

Chair of Board total remuneration	£ 89,264	£ 89,773 <sup>11</sup>
Vice Chair total remuneration	£ 36,570	£ 36,570
Director General total remuneration	£ 158,926	£ 170,397

The median staff salary at the BSB in 2017-18 was £34,210<sup>12</sup>, the ratio between this and the Director General (salary: £148,331) was 1:4.3. As well as the Director General, the Bar Standards Board has four Senior Managers<sup>13</sup> paid in a salary band between £70,000 and £90,000.

## Summary

**£ thousands**

Staff costs	4,094	4,336
Board <sup>14</sup> costs	199	189
Average cost of regulator for each authorised individual	£ 439	£ 473

All figures in this document have been rounded to the nearest £1,000.

<sup>1</sup> In accordance with s51 of the Legal Services Act 2007 (LSA) and the rules made thereunder.

<sup>2</sup> Currently provision for the LSB (Legal Services Board), OLC (Office for Legal Complaints) operating costs and pension liabilities shared between the Bar Council and the BSB.

<sup>3</sup> All BSB activities are considered regulatory activities under the definition in the LSA07. Non-regulatory permitted purposes include Bar Council permitted purposes activities, and non-operating activities such as the LSB / OLC levy.

<sup>4</sup> Part of our income comes from charges we levy for the services we provide. Directly controlled income streams include the fees from the Bar Professional Training Course (BPTC) providers, the Bar Transfer Test (BTT), fees related to waivers and entity & ABS authorisation fees.

<sup>5</sup> This includes a share of the premises at 289-293 High Holborn, as well as support staff and costs from the Resources Groups (e.g. HR, Finance and IT). The Resources Group budget is managed separately and part of it is apportioned to the BSB.

<sup>6</sup> This is the number of barristers holding a practising certificate as at 31 March 2018. In addition, there are approximately 50,000 unregistered barristers who do not hold practising certificates. We regulate these barristers reactively (i.e. we will take enforcement action against them for breaches of the Handbook).

<sup>7</sup> Licensed Bodies (ABS): 8, Authorised Bodies (Entities): 81.

<sup>8</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/entities,-including-alternative-business-structures/fees-and-charges/>

<sup>9</sup> Snapshot of direct headcount at end of each financial year, this does not include support staff in the shared Bar Council / BSB Resources Group.

<sup>10</sup> Total remuneration includes; Salary; Pension Contributions and, for staff members only, a fixed allowance of £1,300.

<sup>11</sup> Sir Andrew Burns KCMG (Chair until 31/12/2017): £66,948, Baroness Tessa Blackstone (Chair from 01/01/2018): £22,825.

<sup>12</sup> Median salary in 2017-18 was £33,290 and ratio 1:4.4.

<sup>13</sup> Director of Communications and Public Engagement, Director of Regulatory Assurance, Director of Professional Conduct and Director of Strategy & Policy.

<sup>14</sup> Including salary costs for Chair, Vice-Chair and all lay board members.

## Contact us

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**Twitter:** @barstandards

[www.linkedin.com/company/the-bar-standards-board](http://www.linkedin.com/company/the-bar-standards-board)

**Chair's Report on Visits and External Meetings from June and July 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:**

8 June 2018	Visited Luton Crown Court and met with Her Honour Judge Hildyard QC
11 June 2018	Attended Reconvened Emoluments Committee
13 June 2018	Attended the ISAG meeting and presented the BSB Report, accompanied by Naomi Ellenbogen QC and Vanessa Davies
28 June 2018	Attended a meeting of the Independent Appointments panel regarding the reappointment of certain Board members for a second term
3 July 2018	Attended Middle Temple Garden Party
4 July 2018	Met with Lord Keen for an informal quarterly meeting Accompanied by Vanessa Davies
5 July 2018	Attended the Lincoln's Inn Garden Party
10 July 2018	Attended the Chairs' Committee meeting
10 July 2018	Met with Sarah Chambers, the new Chair of Legal Services Consumer Panel; accompanied by Vanessa Davies
12 July 2018	Attended the Inner Temple Summer Party
13 July 2018	Addressed the Annual BPTC conference
18 July 2018	Attended the Board briefing meeting



**Director General's report - BSB meeting 28 June 2018**

1. For consideration and noting.

**Director General**

2. My work has focussed in the last two months on the cross cutting programmes detailed below. We have also made good progress on the engagement strategy for the new approach to assuring barristers' competence and on consideration of regulatory handling of reports of bullying and harassment.
3. We have been preparing for some time for the advent of powers of intervention which will come into statutory force on 1 October. I am able to assure the Board that operational readiness is at an advanced state and has been subject to a first phase of simulated testing. I will give final assurances following the second phase of testing at the end of July – to be reported on in September.

**Future Bar Training programme*****Programme management and planning***

4. On 30 May we published a Policy Statement outlining the Board's position on pupillage and other forms of work-based learning, the authorisation framework, and the curriculum and assessment strategy.

***Rule Changes and Role of the Inns***

5. The draft Part 4 Qualification rules, along with a consultation paper were considered at the Education and Training Committee's meeting on 10<sup>th</sup> July prior to being released for public consultation. Good progress on the Memorandum of Understanding with the Inns of Court was also reported.
6. Following consultation, it is intended that the Board will sign off the LSB rule change application in September / October.

***Pupillage – adoption of the Professional Statement***

7. Second round visits are underway with the first wave of early adopters of the Professional Statement. Feedback has been positive about the Professional Statement and we have gathered some helpful feedback that we will use to develop guidance as others begin to use it. Feedback about the Supervision programme for pupillage indicates that we are focusing on the right regulatory risks.
8. Initial meetings are being arranged, and have commenced, with those in the second wave of the pilot. We now have a range of chambers signed up to the pilot, with a mixture of large and small chambers, London-based and regional.

***Pupillage - Advertising and Recruitment project***

9. The project was initiated following concerns that were raised during our previous consultations, and from research conducted, that access to pupillage is one of the biggest barriers to increasing diversity at the Bar. The Education and Training committee considered the report on the outcomes of the work in its June meeting, and supported the recommendations. An implementation plan has been developed.

***Implementation of the Authorisation Framework***

10. Work on a new fee model continues, in collaboration with the PRP Committee. There will be a consultation on the proposed model in the autumn with the new fees to be approved by the Board in January.
11. An Equality Impact Analysis (EIA) has been reviewed and approved. It will be updated through the life of the work stream.

***Risk***

12. Work is underway to review the AF and the evidence documents to ensure they reflect both the BSB's risk-based regulation approach and, where possible, feedback from the Board. To this end a consolidated Risk Index has been drafted and settled, and will inform the authorisation decision making framework and the operational processes.

***IT Process***

13. High level functional requirements have been developed which we expect to be modelled on the existing entity authorisation process. When we understand the impact on processes of the AF and evidence document review (if any) we will be able to determine in more detail final design. Operational guidance will be produced alongside (see Rules – Supporting Documents section above).
14. An EIA has been reviewed and approved. It will be updated through the life of the work stream.

***GDPR***

15. Following detailed discussion with the Data Protection Officer about how the AETO authorisation process will work including data descriptions and storage, it was agreed there were no extra or specific processes necessary as the interaction with personal data would be very limited. Once the final process is designed / implemented a further meeting will occur to confirm this approach.

***Authorisation of AETOs providing pupillage/work-based learning***

16. Planning is underway to authorise the approximately 350 existing PTOs in line with the AF and evidence documents. The first phase will be to collect data to confirm which organisations are either already providing or are planning to provide pupillage or work-based learning over the coming 12 months. Once we have a confirmed picture we can then plan how to authorise them –in an effective, risk-based and proportionate way.

***Resources***

17. Two of the 12 month fixed-term contract resources are in post since the end of May. The additional capacity has allowed existing staff (who have the necessary expertise and knowledge) to work on various sub work streams within the overall implementation plan. The remaining role is under recruitment as a fixed term Examinations Officer. The rationale for this post is to enable the Examinations Manager and Senior Examinations Officer to give greater priority to planning for the implementation of the new forms of assessment.

***CAR Project***

18. Following the Board's acceptance of the high-level Curriculum and Assessment Strategy, more work will be done to clarify the finer details and to determine the process for developing common assessment criteria for the provider-set assessments during the vocational component. Detailed project planning is underway for the implementation of the new forms of examination, and particular attention is being paid to the need to ensure there is a smooth transition from old to new, and to minimize the amount of time that the two systems need to run in parallel.

**Regulatory Operations Programme**

19. The programme is progressing to timeline and budget. The Risk Register has been refreshed to ensure programme level risks have been adequately captured and rated.

***CAT Project***

20. The CAT Project Team has continued to work with SMT to refine the risk assessment methodology and end-to-end process. The Team has also been working on ensuring appropriate accessibility for the diverse range of people who may contact the BSB through the CAT, and on defining personnel capacity and capability requirements.

***IDB Project***

21. Work continues in line with the project plan based on an implementation date of April 2019. However, this is subject to the views of the Board arising from responses to the consultation on Modernising Regulatory Decision Making (see separate agenda item).

**CMA Programme**

22. The CMA Programme is progressing according to timeline and budget.

***Transparency Project***

23. We are drafting a transparency rule change consultation, and developing detailed guidance and worked examples in specific areas of law to help the profession understand the nature of the transparency rules we are proposing. The guidance is being developed with assistance from a Task Completion Group (TCG) which includes barrister and lay Board members, transparency pilot participants and a chambers practice manager. We are also seeking advice from relevant APEX members, and views on specific policy issues from the Board at this meeting. In addition, we will seek views on the guidance from Specialist Bar Associations and others before the transparency rule change consultation opens in September.
24. The development of the rule change consultation and guidance is also being informed by our research programme. A range of chambers, entities and sole practitioners with different practice areas took part in pilots of the new transparency requirements, and they have now been interviewed to discuss their experiences and their clients surveyed. A report on the pilots has been drafted by the Research Team. We have also commissioned YouGov to undertake consumer testing, which will ensure our proposed way forward is robust and that any mandated disclosure will be appropriate and useful for consumers. Both the report on the pilots and findings from the consumer testing will be published alongside the transparency rule change consultation in September.

***Independent Feedback Platforms Project***

25. The guidance for barristers and consumers is complete and was published on 28 June 2018. The Bar Council has agreed to include a link to the consumer guidance with its guidance which is due to be published in July. A copy of the guidance has also been sent to the Legal Services Consumer Panel which was very helpful in its development.

**Strategy & Policy**

26. In May and June, the Policy Team received 175 calls and e-mails to the Professional Standards Helpline. This brings the total number of queries this year to date to over 550.

***Public Access Training Review***

27. The Policy Team is leading the review of the Public Access training, which was a key recommendation of last year's Public and Licensed Access Review Report. We have developed a framework to assess how well the current Public Access training providers are meeting the required outcomes. The assessments will then be used to produce a revised set of required outcomes for the training, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). An internal Project Team with representation from across the BSB and a Task Completion Group (TCG) are assisting with the development of a revised set of required outcomes. The TCG members include barrister and lay Board members and the APEX member for Higher Education.
28. Following the development of the revised set of required outcomes, an invitation to tender will be issued in September. This will allow existing training providers to demonstrate how they intend to revise their current Public Access training to reflect the revised training outcomes. Any prospective new training providers will also need to demonstrate how their Public Access training proposal reflects the revised training outcomes. Contracts for the revised Public Access training will then be awarded ready for January 2019 (the current training provider contracts expire at the end of December).

***Scope of practice***

29. We have started our review of the scope of practice rules in part 3 of the Handbook. We have a project board meeting regularly to review our progress and to provide critical challenge to our thinking. We are reviewing this section on the principle that the Legal Services Act 2007 (LSA) should form our base level of regulation and we need to justify any regulatory controls which we want to implement if they are more restrictive than the LSA. We have developed the risks which may arise if we only gave effect to the legislation and are considering the different scenarios in which barristers may provide legal services. This will support our assessment of the risks in these scenarios and whether different regulatory controls are necessary.
30. We are also undertaking research, setting up a TCG and starting to engage with key stakeholders to support the development of our policy consultation (planned for quarter 3).

***Joint Guidance for Professional Clients Instructing Immigration Barristers***

31. Work on developing Joint Guidance with OISC and the SRA is moving ahead. A first draft has been produced and the OISC have returned with comments. Members of the profession are currently being engaged with specific questions on best practice and we are on track to publish by the end of September.

***Handbook***

32. The BSB Handbook was updated on Monday 25 June to reflect a small number of minor changes made as a consequence of GDPR.

**Equality and Access to Justice**

33. In June, the Head of E&AJ met with two of the keynote speakers from the BSB's race equality event held in February 2018 to explore potential membership and roles in relation to a BSB Race Equality Task Force. The creation of a Task Force to address race equality at the Bar was one of the key recommendations arising from the report of the event in February.
34. On the departure of the E&AJ Senior Policy Officer, a new enhanced role has been developed, and we are recruiting for a Policy Manager E&AJ to increase the leadership and project management capability in delivering the BSB objectives in this area.
35. A new equality and diversity e-learning package has been launched and is available for Board and committee members.
36. Two workshop sessions have been developed for the 2018 BPTC conference. One, will focuses on the recent research reports on differential attainment and student perceptions and experiences. Another session will explore on embedding best E&D practice.
37. On 5 July the Sexual Orientation and Religion and Belief data monitoring consultation closed. The E&AJ team has been reviewing responses to inform a paper to be presented at a future board meeting.

**Regulatory Risk*****Development of Risk Outlook 2019***

38. Initial workshops were held with the Strategy & Policy Department and the Exceptional Risk Forum, to provide staff with an opportunity to tell us what issues they saw impacting our regulatory objectives now, and what risks they envisaged having the biggest impact on our regulatory objectives over the next 3 to 5 years.
39. These were then followed by extremely useful workshop with members of the Board, the GRA Committee and the Senior Management Team. The starting point for discussion was the Consolidated Risk Report (from the Board's May 2018 agenda) and the analysis undertaken to inform Strategic thinking (from the April Away Day agenda). There was valuable and wide-ranging discussion which looked first at current market issues or known risk areas and secondly moved on to consider factors influencing the market and expected developments over a 3 to 5-year time horizon.
40. There was then discussion with the SMT at the start of July, to consider both the emerging Risk Outlook and Strategic planning themes. This enabled the Risk Team and the Corporate Services Team to develop a joint paper on these emerging themes for the Board to consider at their July meeting.

***External Engagement***

41. At the end of May, the Risk Team organised another insightful and useful Cross-Regulator Risk Forum with representatives from many of the other legal regulators coming together to discuss: Risks arising from GDPR; Regulation of large practices; and Mitigating risks associated with an aging population of practitioners.

## **Research**

42. We published the Judicial Perceptions of the Quality of Criminal Advocacy report in June 2018. The BSB and SRA jointly commissioned the Institute for Criminal Policy Research of Birkbeck, University of London to conduct this independent research, based on qualitative interviews with 46 circuit judges and 4 High Court judges.
43. We continue to work with the Policy team to refine the scope of research to inform and support the Scope of Practice review. As part of this review, we have published some internal research that we carried out in 2017 into the operation of the Qualified Person rule.
44. Work continues on research into price and service transparency to inform our response to the CMA recommendations. YouGov are currently analysing the data collected in the second stage of the research (consumer testing of transparency levels).
45. We have completed the first phase of data review as part of the CPD evaluation, working with colleagues in the Regulatory Assurance department. Work will now progress on phase two: a more detailed, secondary analysis of the data in CPD returns.
46. We continue to scope a research project with the Equality and Access to Justice team to look into discrimination at the Bar, in order to identify any issues and positive action to address those issues.

## **Professional Conduct Department**

### **PCD Enforcement Report**

47. We are currently in the process of conducting a full analysis of our key statistics, service standards and performance indicators in preparation for the publication of the full report to the Board in September. Headline figures at this stage indicate a substantial increase in new complaints, as well as an increase in throughput of cases but a reduction in the number of cases referred to Disciplinary Tribunal.

### **Modernising Regulatory Decision-Making**

48. The BSB's consultation closed on Friday 31 May. Seven responses were received and the issues raised in those responses have been considered by the TCG. The formal response to the consultation will be published after the September Board meeting when the final version of the regulations is due to be approved by the Board prior to submission to the LSB.

### **Training**

49. In preparation for the implementation of the General Data Protection Regulations (GDPR), accompanied by the new Data Protection Act 2018, on 16 May and 6 June the PCD provided training sessions to Professional Conduct Committee members on the key changes which impact on their work.

### **Litigation**

50. The PCD is currently handling only one live litigation case arising from enforcement decisions, which is the discrimination claim remitted from the Supreme Court. This case is still awaiting a date from the High Court.

51. All other matters as reported in April have either been struck out or dismissed. In one of these matters, where a large number of public bodies were the subject of the unmeritorious litigation for discrimination, the Employment Tribunal made a general civil restraint order against the applicant. This prevents the applicant, for two years, from bringing legal claims against, amongst others, the General Council of the Bar, its employees or agents.

### **Regulatory Assurance Department**

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

52. We have been reviewing the data that was collected at Authorisation to Practise (AtP). Fewer than 800 barristers declared that they do work that falls within the scope of the Money Laundering Regulations (MLRs), which is reasonably in line with expectations and will mean that we fall well below the threshold for the minimum fee for OPBAS (provided that the fee rate and basis for the calculation of the minimum threshold is not changed from that previously advised: OPBAS will be consulting on the fee shortly).
53. The AtP data will be used to develop a more granular risk assessment (as we are required to do under the MLRs) and a risk-based supervision programme. Also, we will shortly be contacting a sample of barristers to check compliance with the requirement in our rules to obtain a DBS check.
54. 278 barristers made incorrect declarations at AtP in response to the questions about (a) work that falls within the definition of Trust and Company Service Provider (TCSPs) and/or (b) whether they have been convicted of a “relevant offence”, as set out in Schedule 3 of the MLRs. This cost us time to contact the barristers and check their declaration; we needed to do this so that we could provide an accurate list of TCSPs to HMRC for inclusion in their register (as we are required to do under the MLRs) and ensure that no barristers had to be referred to PCD for having an unspent criminal offence (none had). Following the re-confirmation exercise, the names of ten self-employed barristers and four BSB entities were submitted to HMRC as conducting TSCP work. We are making some small changes to the format of these questions in MyBar to promote more accurate reporting next year (prompting barristers to think twice before ticking the “yes” boxes).
55. OPBAS have commenced their supervisory visits. They intend to visit the BSB and the Bar Council for one day each in October. This compares to a week spent at the SRA. We anticipate that they will focus on governance, staff capacity and capability, and risk methodology.
56. We are still awaiting the results of the Financial Action Taskforce Mutual Evaluation Peer Review of the UK.

#### ***CPD***

57. The first spot check of compliance with the new CPD regulations was launched in June. 5% of barristers have been selected. This is combined with a check that accurate declarations of income were made for the purpose of calculating the Practising Certificate Fee.

#### ***Authorisations***

58. The Review Panel sat on 6 June and considered 1 application for review. The first instance decision was upheld, with no amendments to conditions being made. Quality assurance measures are in place to ensure the consistency and standard of decision-making is maintained.

59. One case was appealed and referred to the High Court. The hearing took place on 14 June, the judgment was handed down on 15 June. The appeal was dismissed on all counts and costs awarded in our favour. This case will be used as a point of learning to improve future practise.
60. Since the last report, the APEX adviser has been used on 1 occasion. The team has contacted them for advice a total of seven times since their appointment in September. The team continues to use this advice to build its knowledge set.
61. The team now processes all applications and manages workflow within the CRM. The CRM has had a positive impact on managing workflow and KPIs. Recommendations from the Internal Audit report have been implemented which have also supported the achievement of KPIs. Staff have fully engaged with programmes of training and actively suggest ways to further develop how the system is used. The Supervision team is also using the CRM to process applications.
62. 35 applications have been submitted online. The team is engaged with IS to design and develop the online application portal, which will further streamline the service and improve efficiency.

### ***Examinations***

63. The subject boards and final examination boards for the centrally set and assessed subjects have taken place for both the BPTC and Bar Transfer Test. Results were released to Providers on Friday 22 June. The assessments are working well and discriminating between strong and weak candidates effectively; they are also meeting the level of reliability expected of high-stakes examinations. The Chair's report on this cycle of assessments will be published in early August.

### ***Training Supervision***

64. Reports from the Training Supervision monitoring activities this year are currently being finalised for publication in July. Preparations for the BPTC Conference are well underway and will include sessions on the Curriculum and Assessment Strategy, as well as sessions on well-being, support for international students, and research into differential attainment.

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

65. The BSB attended the Youth Justice Board's advocacy roundtable this month to discuss future work with other stakeholders to improve standards of advocacy in the Youth Court.
66. The video for young people is with the production company to make the final changes agreed by SMT. The video is designed to help young people to understand what to expect from their barrister.

### ***Quality Assurance***

67. We have sent letters to key stakeholders, setting out our approach to assuring the competence of barristers and inviting them to work with us. This approach is in line with our stakeholder engagement plan. Engagement will commence from September in the main, with some meetings happening before if possible.
68. Our application to the LSB for the withdrawal of the rules around QASA was submitted on Wednesday 4 July. A press release accompanied the application, announcing the withdrawal of the rules publicly.

## **Communications and Stakeholder Engagement**

69. Since this report was last prepared for the May Board, the following press releases and news announcements have been issued:
- 17 May: the actions we have agreed to tackle unfair treatment of women at the Bar;
  - 30 May: publication of our Future Bar Training Policy Statement on pupillage and other forms of work-based learning, the updated version of the Authorisation Framework and our new Curriculum and Assessment Strategy;
  - 7 June: barrister ordered to be suspended for three months for misleading a court by providing false information about her professional commitments.
  - 11 June: invitation to join the BSB's new Independent Research Peer Review Panel;
  - 18 June: invitation for tenders for an authorised body to provide legal support to the BSB;
  - 19 June: appointment of two new members to the Governance, Risk and Audit Committee;
  - 27 June: publication with the SRA of research into judicial perceptions of the standards of criminal advocacy;
  - 28 June: good practice for barristers and advice for clients on consumer feedback; and
  - 29 June: a barrister ordered to be suspended for six months for appearing in court on behalf of a client before being authorised to do so.

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

70. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- launch of the two rules consultations on transparency standards and Future Bar Training; and
  - publication of the 2017-18 BSB Annual Report.
71. The team is also working on the following projects:
- design of the Annual Report;
  - scoping of the project to develop the BSB website;
  - longer-term communication requirements for the implementation stages of FBT; and
  - induction for our new Communications and Public Engagement Officer (Alexander Skirvin).

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

72. During May, 23,209 users visited the BSB website with a further 24,897 visiting during June. At the time of writing, we have 19,750 followers on Twitter, 3,046 followers on LinkedIn and 517 followers on Facebook.

## **Corporate Services**

### ***Corporate Support***

73. The team continues to support the work on the 2019-22 Strategic Plan. The findings of the analysis and recommendations on how these themes can be progressed were presented to the PRP committee held on 18 June 2018. The team continue to work with the Regulatory Risk team to ensure that the risk themes are adequately responded to in the next strategy.
74. The team is currently working with the Regulatory Risk Team to streamline the corporate risk report and ensure the risk ratings are in line with the revised impact and likelihood definitions table.

75. Year end accounts have now been fully audited and signed off by the Finance and Audit committees.

**Governance**

76. Two independent (non-Board) members of the Governance, Risk and Audit Committee have been appointed. Elizabeth Butler has been appointed from 1 July 2018, to fill the immediate vacancy. Stephen Hickey has been appointed from 1 January 2019, to fill the vacancy that will arise when the longest serving committee member concludes their final term. Biographies will be published on the website as appointments take effect.
77. The four new members of APEX have commenced their appointments, following an induction session on 3 July. They are Dr Alan Clamp (Regulatory Policy and Theory), Aidan Eardley (Information Law and Data Protection), Dr Morven Leese (Statistics) and Virginia Wykes (Continuing Professional Development). In addition, an existing member of APEX, Suzanne Rab, was appointed in a second subject area, as an expert in Information Law and Data Protection as well as in Competition Law.
78. The Board has considered an analysis of the BSB's compliance with the best practice recommendations of the Committee on Standards in Public Life in its report, *Striking the Balance – Upholding the Seven Principles of Public Life in Regulation*. This audit indicates that the BSB is substantially compliant with the best practice recommendations. They are written to be applicable to all regulators, regardless of sector, size and statutory or legal status, and so some recommendations do not apply in our circumstances.

**Vanessa Davies**  
**Director General BSB**  
**June 2018**