

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 25 February 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Rob Behrens
Malcolm Cohen
Judith Farbey QC – items 7-14
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
Anne Wright – by telephone
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
Lynne Gibbs (Council of the Inns of Court)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Joseph Bailey (Senior Policy Officer)
Sam Benton (Professional Support Lawyer)
Viki Calais (Head of Corporate Services)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Oliver Jackling (Research & Evaluation Officer)
Sara Jagger (Director of Professional Conduct)
Clíodhna Judge (Head of Supervision and Authorisation)
Tim Keeling (Change Programme Manager)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Pippa Prangle (Head of Regulatory Risk)
Amanda Thompson (Director for Governance Reform)
Simon Thornton-Wood (Director of Education & Training)
- Press:** Nick Hilborne (Legal Futures)
Chloe Smith (Law Society Gazette)

Note: Naomi Ellenbogen QC and Emily Windsor (Special Adviser) were not present for Part 1 of the agenda but did attend for some of Part 2.

Note: Anne Wright's attendance by phone was primarily to listen to the debate. She was recovering from illness at the time and wished to rest her voice, though had previously emailed her comments on the papers to Vanessa Davies.

Item 1 – Welcome

1. The Chair welcomed Members to the meeting.

Item 2 – Apologies

2.
 - Rolande Anderson
 - Aidan Christie QC
 - Justine Davidge
 - Adam Solomon
 - Chantal-Aimée Doerries (Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Andrew Langdon QC (Vice Chairman, Bar Council)

Item 3 – Members’ interests and hospitality

3. The Chair made a declaration on behalf of Aidan Christie QC. This was in respect of a thank you gift (a glass decanter) received from the organisers of the Disciplinary Conference (12 February 2016) at which he had been a speaker.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 28 January 2016.

Item 5 – Matters Arising

5. None.

Item 6a – Action points and progress

6. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list. The Chair advised members that the meeting planned for 15 September 2016 will now be cancelled. This is to avoid a clash of dates with the International Regulatory Conference which he and the Director General will attend. The main item of business (the budget) will now be incorporated into the agenda for the meeting on 29 September 2016. It will not affect financial planning timescales.

**BSB
Members
to note**

Item 7 – PRP Committee Report for Q3 (October 2015-December 2015)

BSB 014 (16)

8. Vanessa Davies reported on behalf of Anne Wright. The salient points were:
 - the overall performance for Q3 as set out in the dashboard is similar to that achieved in Q2;
 - the financial forecast for year-end is:
 - ❖ income: £1,449k (23% less than budgeted);
 - ❖ expenditure: £5,327k (2% less than budgeted)
 - the Committee is looking to review the KPIs for the Professional Conduct Department during the next business year;
 - progress on the HR operating plan is encouraging, though staff turnover remains high;
 - the Committee has asked the Executive to critically analyse its project planning for next year so that the timelines agreed are realistic and achievable;
 - the Committee noted that the overall delivery date for the Future Bar Training programme remains on target but that various elements had been re-scheduled. This is a complex and challenging project and the Committee will continue to monitor progress.

9. Members commented as follows:
- the number of BSB service complaints received are recorded on the dashboard but there are no further details given in the report. It would be helpful to understand what member oversight there is in this regard;
 - there is a large variance on income for Education & Training in Q3 and an income forecast 8% above the budgeted figure. It would be useful to understand this more fully;
 - in terms of the PCD KPIs, there is a marked drop in the operational performance indicator (OPI) for the percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation (a fall of 94% to 77%). It would help to know the reasons for this.
10. In response, the following comments were made:
- details of BSB service complaints are reported to the GRA Committee;
 - the variance is a phasing issue as all BPTC invoices were accounted for in Q3, rather than some in Q2 as originally planned. The 8% surplus is due, in part, to income from CPD courses holding up more than we had anticipated;
 - the fall in the PCD OPI is due to the closure of overrunning cases. These will always impact on the OPI figure and there are always likely to be cases that take longer to conclude than others. The 80% target is for the whole year, rather than for each quarter.
11. **AGREED**
to note the report.

Item 8 – Amending the definition of in-house employed practice
BSB 015 (16)

12. Ewen Macleod highlighted the following:
- last year, the LSB issued a discussion document on s15 of the Legal Services Act and whether existing regulatory restrictions on in-house lawyers were justified. S15 sets out the circumstances in which an employer of an authorised person must also be authorised (essentially when the employer is providing reserved legal services to the public or a section of the public);
 - the BSB currently imposes additional restrictions on employed barristers who are not working in a regulated law firm and has committed to review its arrangements in this area, but the issues are complex and need to be viewed in the context of our wider Handbook review. As a first step, we consulted on amending the definition of “employed barrister (non-authorised body)”;
 - the driver for the consultation relates to the changing way employers may wish to interact with barristers providing ‘in-house’ services eg either through employment agencies or through companies incorporated by barristers. As it stands the existing rules are a barrier to accessing barrister services through these means;
 - as an interim measure, the BSB has granted waivers on a case by case basis. Decisions have been made with regard to risk so approvals have been given for barristers supplying services to organisations rather than the general public;
 - since the consultation was issued, the LSB has issued a policy statement on the relevant section (s15(4)) of the Legal Services Act (Annex A of the report). This policy statement will inform the LSB’s approach to any rule change application;

Part 1 - Public

- the responses to the BSB's consultation are set out in Annex B of the report. They come from the Bar Council and the Bar Association for Commerce, Finance and Industry - BACFI;
 - the response from the Bar Council has warned of a lack of clarity in the proposals and potential "unintended consequences" should the consultation proposals be implemented as suggested. It has also suggested some alternative drafting and offered its assistance on re-drafting. If the BSB decides to ask for the Bar Council's assistance it will do so through the usual protocols;
 - the Executive will need more time than originally envisaged to address the points identified from the consultation. In the meantime, the present waiver system should be retained pending approval of a rule change application.
13. Members commented as follows:
- the BSB should remove any unnecessary regulatory barriers and BACFI has, understandably, attached great importance to this work;
 - we obviously need to address the "unintended consequences" issue but should not to lose momentum on this work;
14. In response, the Executive confirmed that a further review is included in the 2016/17 business plan for Quarter 2.
15. **AGREED**
- a) to note the responses to the consultation summarised at Annex B of the report.
 - b) that no formal rule change be made at this stage and to continue to grant waivers on a case by case basis.
 - c) to request that the work on a re-draft of the rules be completed by Q2 of the 2016/17 business plan.

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Item 9 – Consultation on the Threshold Standard and Competences that underpin the Professional Statement

BSB 016 (16)

16. Simon Thornton-Wood commented as follows:
- the Board has previously approved the Professional Statement. This consultation concerns the threshold standards that apply to it and these are set out in the boxed text of Annex 2 of the report;
 - the draft incorporates feedback derived from the last consultation including that from the Inns of Court which was particularly helpful;
 - the consultation is proposed to last 12 weeks from the first full week of March 2016. A report on the outcome will be prepared for the Board in due course.
17. Vanessa Davies reported on comments from Anne Wright and Justine Davidge. The salient points were:
- the paper is well thought out with clearer definitions than previously and should be supported;
 - the text necessarily includes qualitative language eg "reasonable", "acceptable", "satisfactory" which implies some element of judgment but it is not always clear who has responsibility for this.
18. **AGREED**
- to publish the consultation as set out in Annex 2 during week commencing 7 March 2016.

STW

Item 10 – Chair’s Report on Visits and Meetings (Jan 16- Feb 16)

BSB 017 (16)

19. **AGREED**

to note the report.

Item 11 – Director General’s Report

BSB 018 (16)

20. Vanessa Davies highlighted the appointment of Wilf White who will be joining the BSB as the new Director of Communications on 14 March 2016. He is currently the Interim Associate Director of External Relations at Ofgem.

21. In response to questions raised by Members, the following comments were also made:

- the work on the assurance framework will be led by Amanda Thompson as Director for Governance Reform;
- the Work Smart initiative is being piloted in the Supervision Team. This is bringing benefits for staff such as reduction in commuting time. Initial concerns about the suitability of accommodation for home based working have proved unfounded. There have been some teething problems with technology but remote access is now more reliable.

22. **AGREED**

to note the report.

Item 12 – Any Other Business

23. None.

Item 13 – Date of next meeting24.

- Thursday 17 March 2016.

Item 14 – Private Session

25. 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;
- (2) Matters Arising;
- (3) Action points and progress – Part 2;
- (4) Future of the Bar Course Aptitude Test;
- (5) Qualifications Committee governance review;
- (6) Independent Regulatory Decision Making (Enforcement Decision Making);
- (7) BSB Strategic Plan 2016-19 and Business Plan for 2016-17;
- (8) Corporate Risk Register;
- (9) Any other private business.

The meeting finished at 5.15 pm.