

Bar Standards Board - Director General's operational report – 31 January 2019

Director General

1. As well as my continued close involvement in the cross cutting programmes described below, I have given particular attention since the last operational report to managing the BSB response to the LSB consultation on new Internal Governance Rules. This has included giving consideration to any changes to the BSB's operating model which may arise, in the light of the LSB's proposals for rules on shared services.
2. I led the planning and delivery of our second all-staff conference on 23 January. I was assisted significantly in this by the hard work, creativity and commitment of a small steering group of staff from across the BSB at all levels of seniority. The conference was attended by over 70 BSB and Resources Group staff and focussed on the new BSB strategy, a refreshed set of values, and skills development to underpin the new strategy.
3. Our work on reaching agreement with the Inns of Court on a range of matters concerning their role in our regulatory arrangements and call to the Bar is drawing to a close and I have overseen a number of detailed aspects of the work and the negotiations (see also below).

Future Bar Training (FBT) programme

4. The programme is running to time and budget. The Rule Changes application is currently being reviewed by the LSB and if approved, the new rules will come into effect from April 2019. The final meeting of the Education & Training Committee is scheduled for the 13th of February where the any residual policy matters which might have arisen from the LSB's evaluation of the application will be considered.

Role of the Inns

5. There has been good progress in developing the MOU with COIC and the Inns. Before the holidays, a meeting was held between the Under/Sub Treasurers and BSB. Following the break, a revised top-level draft of the MOU has been shared with the Inns, which has been well received. We are working towards completing the MOU at the end of January, with a timeline for agreeing Schedules in due course.

Authorisation Framework (AF)

6. The AF was published on 7 December 2018 together with guidance explaining how organisations seeking authorisation to provide the vocational component of Bar training should demonstrate that they meet the requirements of the AF. There is a process of ongoing dialogue with relevant stakeholders who were invited to give feedback on the usability of the AF. At time of writing no comments have been received but we will continue to encourage engagement through communications and meetings. Similar guidance relating to the pupillage/work-based learning component has been developed will be tested on with a group of chambers before rolling out.

Fees and Charges

7. The consultation on fees and charges for the authorisation and supervision of Authorised Education and Training Organisations (AETOs) was launched in early December with a closing date of 1 March 2019. To date we have received 1 response. We received a request for further detail in relation to some aspects of the consultation and will be publishing that in early February. We expect to seek Board approval for the final fee structure in March.

Authorisation Process (Digital Platform)

8. Development of the end-to-end digital platform is underway with weekly meetings between the BSB, PMO and technical teams. The expected delivery date is the start of April. In parallel we are developing a solution allowing us to accept and process applications in the period between launch of the new rules and delivery of the full solution.

Review of Curriculum and Assessments

9. A series of workshops with current BPTC providers concluded in December 2018. These enabled us to develop a set of common criteria for the assessments which will be set and marked by providers and will better ensure consistency for the non-centralised examinations. A more detailed Curriculum and Assessment Strategy for the vocational component is now almost complete, and will be closely mapped to the Professional Statement. A similar exercise to work on the compulsory courses during pupillage/work-based learning will follow.

Implementation of the Professional Statement for pupillage training from 1 September 2019

10. The pilot programme to test the implementation of the Professional Statement for pupillage training continues with chambers and entities. It will become mandatory to use the Professional Statement to assess competence of pupils from 1 September 2019, in place of the current checklists. Feedback so far has been very positive, We will be producing guidance based on the experience of those in the pilot and have been raising awareness of the new requirements through roadshows and pupil supervisor training events.

Regulatory Operations Programme

11. An audit of the programme finances has shown that the programme is currently running to budget. Oversight from the senior Executive is increasing in intensity to ensure that all aspects of the programme can be delivered without impacting the business as usual activities.

Centralised Assessment Team (CAT) Project

12. The project is running to time.
13. The project team are focussing on the production of training, policies and guidance for staff; and guidance for the public user. After internal consultation, the name of which the team will be known as under business as usual has been agreed as the **Contact and Assessment Team**, retaining the CAT acronym.
14. Work has started on how the submission of information will work through the website, and how the information will be stored and managed. It is expected that through the website will be the main method of contact from the public. Consideration is also being given to other routes in which information can be submitted, and how these are to be managed.

IDB Project

15. The advertising period for lay and barrister members, and a Vice Chair, of the new Independent Decision-Making Body (IDB) has now concluded. We have received a large volume of applications (over 150) and are now in the process of shortlisting for interview. The advertisement for Advisory Panel of Experts (APEX) members to provide advice on enforcement casework is currently live.

16. Internally we are in the process of reviewing, writing and updating relevant policy and guidance documents. As is the case with our current policies and guidance these will be published on the website when the new system is operational, in the interests of transparency. We are also updating the Scheme of Delegations which will support the revised decision-making structure.

CMA Programme

Transparency Project

17. The BSB's rules consultation on transparency standards closed in December 2018. Subject to Board agreement, we propose to proceed broadly as planned (with some changes suggested by consultation responses) and at its January meeting the Board will be asked to agree the rules which will give effect to our proposed approach to improving transparency for consumers. Following approval by the Board, a rule change application will be made to the Legal Services Board and a consultation report will be published on the BSB's website. The rules are expected to come into force in May 2019, with compliance spot-checking from January 2020. We will also publish comprehensive guidance to assist the profession in complying with the new rules.

Strategy & Policy

BSB Handbook

18. We published a new version of the BSB Handbook in January, making a number of changes which are designed to clarify existing policy and practice. Most importantly, we have amended the wording of Core Duty 3 and some consequential rules and guidance to read that "you must act with honesty and with integrity". This seeks to make clear that a failure to act without either honesty or integrity is a breach of the BSB Handbook. Other amendments relate to the handling of client money, the status of unregistered barristers, the holding of data by public access barristers and the definition of a "lay person".

Public Access Training Review

19. Contracts for the new Public Access training have been awarded to Barristers Direct, HJT Training and the Bar Council, and will run until December 2021 unless terminated earlier.

Scope of practice

20. We have completed our risk assessments and developed recommendations for policy reform on how barristers can practise. These will be taken to our senior management team for review. We remain on track to issue a consultation around the end of March, seeking views from stakeholders on the risks we have identified and whether our recommendations for reform are appropriate.

Authorisation to Practise

21. MyBar and the hard-copy forms for the Authorisation to Practise (AtP) process have been updated asking barristers to state any websites on which they offer legal services, to give effect to the new transparency rules. An additional question has been added asking barristers to select which areas of practice are to be displayed on the Barristers' Register. Some extra updates have also been made. The LSB has approved the Practising Certificate Fee application and AtP is expected to start on schedule in February.

Equality and Access to Justice

22. The Equality & Access to Justice Programme is currently finetuning the programme of activities it expects to deliver in 2019. A new Equality & Access to Justice Manager is expected to join the team shortly and with that greater consideration will be given to how the programme of activities can be expanded so as to meet all our equality objectives in our new strategic plan.
23. A January 2019 LSB summary report on the legal services regulators' progress against diversity outcomes notes BSB progress *"Overall the BSB is undertaking significant activity in line with our revised guidance and outcomes. There is positive progress against each outcome"*
24. In line with our Public Sector Equality Duties, the annual diversity report has been produced and will be presented at the February 2019 board meeting.
25. Thorough analysis of the Sexual Orientation and Religion and Belief consultation has been undertaken and the outcome will be presented at the January 2019 board meeting.
26. Internal support continues to be provided by the Head of Equality and Access to Justice: this has recently included organising an internal wellbeing skills session for staff and advising on reasonable adjustments for BPTC students.

Regulatory Risk

Risk Reporting

27. At their meeting in November, the GRA Committee conducted "deep-dives" into the regulatory risks which the 2nd consolidated risk report (October 2018) had proposed were the highest priority for action. Following very productive discussions, the Committee endorsed the proposed revision to several priority ratings, and further endorsed the reports proposals regarding those regulatory risks with the highest priority for action.

BSB Risk Assessment

28. Work on implementing a standard approach for assessing risk across the BSB continues, following the successful conclusion of testing in October / November 2018. A policy paper is being developed and this will be shared with BSB legal advisers shortly, while consideration is also being given to application of the BSB Risk Assessment process more widely, the related training requirements for staff, and the development of an external statement for publication on the BSB website.

Research

29. AlphaPlus has completed the first stage of the Future Bar Training evaluation, covering a review of the programme objectives and current context. This work involved interviews with key stakeholders, a review of existing evidence and policy documentation, and a workshop with BSB staff to refine a "theory of change" for the reforms. Work has commenced on the second stage, the design of the process and impact evaluation itself.
30. Following a tendering process in December, IRN has been appointed to carry out evaluation work on the Continuing Professional Development reforms. This will use a quantitative survey, alongside qualitative interviews and focus groups, to understand barristers' perceptions and experiences to date of the new scheme.

31. Research into PCD complaints data is being conducted by the Research Team. This will analyse three years of data to investigate factors contributing to differences across gender and ethnicity in the numbers of complaints made, and the outcomes of complaints, and is a follow-up to a similar piece of research published in 2016.
32. Research on the recruitment and advertising of Pupillage has been completed and published, covering analysis of pupillage selection criteria at the application and interview stages, and the analysis of pupillage advertisements.
33. The latest edition of the Diversity at the Bar report has been completed, with publication due this month. This is an annual publication that details the profile of the practising Bar, and monitors progress in ensuring a more diverse and representative profession, as well as any improvements in data disclosure levels compared to previous years.
34. Analysis is being undertaken to look at the impact of the change to the cut score for the BCAT in 2018. This will help to inform future evaluation work on the BCAT changes. Early scoping work has also been undertaken to set out a framework for the evaluation of the transparency changes introduced in response to the CMA report on legal services.

Professional Conduct Department

Quarter 3 performance statistics

35. Performance in Q3 again exceeded the corporate target of 80% of cases completed within the service standards, with an outturn this quarter of 81.7%. This puts our year to date performance at 83.1%.

Training

36. Several technical training courses have taken place over December 2018 and January 2019.
37. In December our retained firm of solicitors, Capsticks, delivered a session for case work staff on how to communicate more effectively with vulnerable witnesses, complainants and respondents.
38. In January, external trainers "The Writer" facilitated a session on effective business writing. Topics covered included planning, structuring, editing, tone of voice and delivering difficult messages.
39. The PCD Senior Professional Support Lawyer has held two sessions for colleagues within PCD and from the wider BSB on the use of the BSB's new statutory power to require the production of information from authorised persons. The Head of Investigations & Hearings also held a Basic Legal Knowledge session for staff across the BSB. This rolling training programme provides staff who do not have a law degree or equivalent qualification with an introduction to the legal systems and processes of England and Wales.

Litigation

40. The PCD is currently handling one live litigation case. This is the discrimination claim remitted from the Supreme Court. There have been no further developments since the last update.

Regulatory Assurance Department

Anti-Money Laundering

41. The [Office for Professional Body Anti-Money Laundering Supervision](#) (OPBAS) visited the BSB for two days in October 2018 to assess us against the criteria set out in the OPBAS

[Sourcebook](#). We have now received their findings letter and are preparing our response and action plan to deal with the areas highlighted. These relate to implementing a risk-based programme of supervision; developing a whistleblowing policy for people other than members of the Bar; ensuring that our enforcement regulations provide an effective deterrent; and ensuring clarity between the respective roles of the BSB and the Bar Council in providing advice and guidance.

42. OPBAS are [consulting on the fee-rate](#) they will charge to professional body supervisors, who have more than 6,000 supervised members, to recover the costs of establishing and running OPBAS. We have responded to the consultation which can be found [here](#). Since the submission of our consultation response, OPBAS have decided to defer their feedback on the fee-rate until March 2019 to give themselves time to consider the responses in detail.
43. The Financial Action Task Force (FATF) have published their findings from the [UK Mutual Evaluation Review](#). FATF found that the UK has a well-developed and robust regime to effectively combat money laundering and terrorist financing. However, FATF also found that the UK needs to strengthen its supervision and increase the resources of its financial intelligence unit. HM Treasury are committed to addressing the criticism relating to the supervisory regime and all regulators will be working closely with HM Treasury and OPBAS to ensure that the UK's approach to supervision is risk-based and proportionate.

Assuring Competence

44. We have continued to meet stakeholders in line with our engagement plan. In particular, we have focussed on engaging with other approved regulators around their work, with an emphasis on possible collaboration. We attended the Legal Services Board's Business Plan consultation event, which highlighted the focus that the oversight regulator will place on this work.

Authorisations

45. The Authorisations Review Panel (ARP) met on 28 October and considered one application for Admission to the Bar as a Qualified Foreign Lawyer for review. The decision was upheld with no amendments to the decision. They are scheduled to review a further four applications on 17 January 2019.
46. The ARP have considered a total of 38 decisions for review, since their introduction in September 2017 to date. Of those decisions reviewed 33 (87%) were upheld and 5 (13%) were amended. No decisions were overturned.
47. We have compared this to the twenty months between January 2016 and August 2017 when the Qualifications Committee reviewed 55 decisions. Of those decisions reviewed 42 (76%) were upheld, 6 (11%) were amended and 7 (13%) were overturned.
48. The team continues to collate data received from the Pupillage Training Organisation survey which went live in September. Those PTOs which had not responded have been contacted directly by telephone and advised that they need to respond by the end of January. The team have taken the opportunity to carry out a data cleansing exercise, updating contact details with in the Customer Relations Management System where need be. There are 40 PTOs who are yet to respond, and the team will be following each of these up. Resource planning is underway to ensure that the authorisation of existing PTOs wishing to continue offering pupillages, from September 2019, under the new arrangements, is seamless and has minimal impact on business as usual.

49. Some pupillages commencing in September 2019 will not meet the minimum funding requirements recommended by the Living Wage Foundation. These have been identified by the Supervision team and we are working to draft criteria and guidelines for a waiver application process for eligible PTOs.
50. The team will be completing pupillage registration spot checks during January: between 20 and 30 registration forms will be randomly selected. This is to quality assure our registration process and ensure that Chambers are complying with the requirement to advertise pupillages on the Pupillage Gateway.

Training Supervision and Examinations

51. Much of the team's time has been spent on FBT activities captured above. In business as usual, work is well underway for the contingency papers for Spring and Summer 2019. The Chair's report for the Summer 2018 sit was published in December 2018; no requests for review were received.

Transitional arrangements for Pupillage Training Organisations becoming Approved Education and Training Organisations

52. Following our survey in September, 160 PTOs have confirmed that they wish to continue to provide pupillages under the new rules. We will be contacting these PTOs in February to discuss the process with them. We have undertaken a risk and impact assessment and will prioritise those PTOs considered more complex and high risk for assessment first.
53. The last update we provided to PTOs advised them that the survey would remain open until the end of 2018. Therefore, we have drafted a further update to be published in the next Regulatory Update and on our website. This update contains more detailed information relating to the process, expected date for the changes to come into effect and associated fees.

Communications and Stakeholder Engagement

54. Since this report was last prepared for the November Board, the following press releases and news announcements have been issued:
 - 22 November: Appointment of Capsticks to provide external legal support for regulatory decision-making;
 - 23 November: Introduction of new intervention rules;
 - 23 November: 2017 monitoring report shows high levels of compliance amongst barristers with new CPD scheme;
 - 6 December: Launch of consultation seeking views on how to recover costs for overseeing new Bar training rules;
 - 6 December: Minimum pupillage award from 1 September 2019;
 - 7 December: Publication of the latest draft of the framework for authorising Bar training providers;
 - 17 December: Appointment of Irena Sabic as a new barrister Board member;
 - 18 December: A barrister ordered to be disbarred for misleading a client;
 - 3 January: The BSB is seeking question writers and markers for Civil Litigation, Criminal Litigation and professional ethics and an Assistant Chief Examiner, Professional Ethics;
 - 18 January: A barrister ordered to be disbarred following criminal conviction for fraud;
 - 21 January: Review of pupillage recruitment practice at the Bar;
 - 22 January: BSB seeks new members for APEX; and
 - 22 January: A barrister ordered to be suspended for four months.

Work in Progress

55. 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:
- publication of BSB research on pupillage advertising and selection criteria;
 - subject to LSB approval, the introduction of the new Bar training rules;
 - publication of the latest equality and diversity stats for the Bar; and
 - confirmation after this meeting of the Board's decision following the recent consultation on new transparency rules.
56. The team is also working on the following projects:
- development of the new BSB website later this year;
 - implementation of the agreed tactical communications plan to raise awareness about FBT; and
 - publication of the new Risk Outlook, the new BSB Strategic Plan, and the 2019-20 Business Plan.
57. The team has also been involved in the planning of the BSB and Resources Group staff conference on 23 January and the final FBT roadshow event which took place in Leeds on 17 January.

Online and social media

58. During November, 29,317 users visited the BSB website with a further 24,219 visiting during December. At the time of writing, we have 21,147 followers on Twitter, 3,338 followers on LinkedIn and 571 followers on Facebook.

Governance and Corporate Services

59. Recruitment for a barrister member of the Board concluded in November 2018, with Irena Sabic appointed from 1 January 2019. Irena fills the vacancy left when Justine Davidge concluded her second term at the end of 2018.
60. Recruitment has commenced for new members of the Advisory Pool of Experts (APEX) to provide advice on specific practice and legal issues in the areas of law most commonly encountered when considering enforcement cases. Advice will be sought by the Executive and the Independent Decision-Making Body (when it is established) who will be taking regulatory decisions on enforcement cases. We are also recruiting for a second expert to provide specialist advice on exemptions and waivers relating to qualification requirements.
61. Twenty-two requests for engagement of APEX members in support of policy development or implementation were submitted during 2018. Twenty-one requests were accepted, including one where the member was not available and then nominated a suitably qualified substitute to undertake the work (as permitted by our contractual arrangements). Eleven requests were made of the expert advising staff taking decisions on exemptions and waivers, with those substantially being for the evaluation of legal content in overseas/professional qualifications and the interpretation of published criteria and guidelines
62. The team is currently supporting the BSB in its detailed business planning process for the 2019/20 business year, which will be the first year of our new strategic plan. At the same time, further detailed consideration is being given to the 2019/20 budget.

Vanessa Davies
Director General
January 2019