

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 10 September 2015, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda
Part 1 – Public

			Page
1. Welcome and introductions (4.30 pm)		Chair	
2. Apologies		Chair	
3. Members' interests and hospitality		Chair	
4. Approval of Part 1 (public) minutes:			
• 23 July 2015 (*)	Annex A		3-11
5. Matters Arising (*)		Chair	
6. a) Action points and progress	Annex B	Chair	13-14
b) Forward agendas	Annex C	Chair	15
<u>Items for discussion</u>			
7. PRP Committee Report Q1 (April 2015 – June 2015) (4.40 pm)	BSB 064 (15)	Anne Wright / Amanda Thompson	17-29
8. Schedule of Board Meetings 2016-17	BSB 065 (15)	Amanda Thompson	31
9. Any other business (4.50 pm)			
10. Date of next meeting Thursday 24 September 2015			
11. Private Session			

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
4 September 2015

**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*

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 23 July 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair) – items 10 - 16
Rolande Anderson
Malcolm Cohen – items 6b-16
Justine Davidge – items 7-16
Simon Lofthouse QC – items 7-16
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)
Sarah Brown (Special Adviser)
Nicola Sawford (Board Member designate)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – items 1-7
- BSB Executive in attendance:** Viki Calais (Business Manager)
Kuljeet Chung (Policy Manager) – items 1-7
Vanessa Davies (Director General)
Joanne Dixon (Manager, Qualification Regulations)
John Hall (Business Support Officer)
Oliver Hanmer (Director of Supervision)
Sara Jagger (Director of Professional Conduct)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Pippa Prangle (Regulatory Risk Manager)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)

Item 1 – Welcome and introductions**ACTION**

1. The Chair welcomed members and guests to the meeting. He reported, with regret, that the following individuals will be leaving the Board in the near future ie
 - Simon Lofthouse QC (leaves 6 August 2015)
 - Richard Thompson (leaves 31 August 2015)
 - Sarah Brown (Special Adviser) (leaves 31 July 2015)
2. He paid tribute to the excellent and valuable service that all three members had given to the BSB. He noted, with gratitude, the six year period of office completed by Richard Thompson.
3. Owing to Richard's absence from the meeting, he focused on the contribution made by Sarah Brown and Simon Lofthouse QC. In the former case, he applauded Sarah's clarity of thought and expertise in policy formation from which the BSB had greatly benefitted over the past nine years. In the latter,

he praised Simon's outstanding efforts in chairing the Professional Conduct Committee and his sustained involvement in that area of work which, cumulatively, had totalled over fourteen years. This was endorsed by Andrew Mitchell QC who had served on the Professional Conduct Committee whilst Simon was chair and had been impressed by his leadership skills.

4. The Chair also welcomed John Hall, the newly appointed Business Support Officer, who was attending his first meeting.

5. **Item 2 – Apologies**

- Rob Behrens;
- Adam Solomon;
- Sam Stein QC;
- Richard Thompson;
- Alistair MacDonald (Chairman, Bar Council);
- Chantal-Aimée Doerries QC (Bar Council Vice Chairman);
- Lorinda Long (Treasurer, Bar Council);
- Mark Hatcher (Special Advisor to the Chairman on Representation and Policy).

Item 3 – Members' interests and hospitality

6. None.

Item 4 – Approval of Part 1 (public) minutes (25 June 2015)

(Annex A)

7. The Board approved Part 1 of the minutes of the meetings held on Thursday 25 June 2015.

Item 5 – Matters Arising

8. None.

Items 6a & b – Action points and Forward Agenda

Action points and progress (Annex B)

9. The Board noted progress on the action list.

Forward Agenda (Annex C)

10. The Board considered the forward agenda list. Tim Robinson suggested an item be added on HR, specifically the outcome of the 2015 staff survey and the structure of Board appraisals. Both topics were raised in his most recent meeting with the Director of HR.

**JP to
note**

11. The following items will also be added to the list:

- outcome of the fees and charges consultation (cf. min 15d below);
- research on Youth Court advocacy (cf. min 38 below).

**JP to
note**

[note: as suggested by Rolande Anderson, Board appraisals might also feature in future discussions about governance].

Item 7 – Fees and Charges – consultation

BSB 054 (15)

12. Amanda Thompson commented as follows:

- the paper sets out the principles of a planned consultation on fees and charges with the Bar Council and the wider profession (Annex 1 of the paper);

Part 1 - Public

- several other BSB consultations are already underway. In view of this, it will be published towards the end of the current year with a view to implementing any changes at the start of the new financial year;
- the paper recommends that the PRP Committee be asked to consider the final consultation document prior to sign off by the Director General. This reflects its previous involvement in discussions on this topic.

13. Members commented as follows:

- there is no reference about the principles that relate to fee waivers. This should be included. The BSB currently offers waivers on the grounds of demonstrable financial hardship. However we should seek views on whether this offer of subsidy should remain the responsibility of the BSB or if it should be the preserve of the representative body or, indeed, if it should be provided at all. Several other regulators do not offer fee waivers;
- in terms of barriers to the profession, we need to look at equality impact assessments across the piece from entry to final qualification.

14. In response the following comments were made:

- the consultation will address fee waivers. This is also likely to be highlighted in the equality impact assessments undertaken beforehand;
- in some respects, the question of whether the BSB or Bar Council operate waivers is immaterial since the source of money, ie the PCF, remains the same;
- notwithstanding the above point, we could seek opinion on whether waivers should be available as a matter of principle.

15. **AGREED**

- a) to approve the approach and timescales to the consultation as set out in the paper providing the above comments about fee waivers are taken into account.
- b) that the Planning, Resources and Performance Committee should consider the consultation document prior to sign off by the Director General.
- c) to delegate authority to the Director General to sign off the final consultation document.
- d) to receive the results of the consultation in early 2016 with a view to deciding on the BSB's fee structure for 2016/17.

AT / VC

**AT / VC to
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**VLD to
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Item 8 – Insurance requirements for single person entities

BSB 055 (15)

16. Kuljeet Chung reported on the outcome of the consultation on insurance requirements for single person entities. She highlighted the following:

- all 16 respondents (either barristers or representative bodies) supported the option of a rule change to require single person entities to insure with Bar Mutual Indemnity Fund (BMIF);
- despite efforts on the part of the Regulatory Policy Department, there were no responses from consumer representatives;
- the Board needs to decide its course of action in the light of the feedback received and with due regard to the regulatory objectives. An analysis in respect of this is provided in the paper (paragraphs 20-31).

17. Members commented as follows:

- the lack of a response from consumers is, perhaps, understandable given esoteric content of the consultation. It could also be reasonably perceived as concerning the business arrangements of barristers rather

than the interests of consumers, notwithstanding the potential impact on the public;

- the paper gives proper regard to the public interest aspects of this issue and is convincing on this point, particularly in light of the evidence collated. The option for a rule change should therefore be pursued;
- it may help in approaching the LSB to demonstrate our understanding of the arguments in favour of the open market option. The paper presented focuses on the benefits of the mutual model and does not demonstrate enough consideration of the benefits of allowing single person entities to go to the open market. Though our deliberations have been balanced and fair, we need to properly reference this alternative case as a matter of principle.

18. Ewen Macleod noted this point and commented that that further evidence would be incorporated in the rule change application. This will address the open market question more directly but some of its content is confidential so had not been included here for public discussion.
19. Sarah Brown stated that her view on this issue had changed in the light of the evidence provided. She had initially been sceptical of maintaining a monopoly but a closer analysis had suggested the open market approach would not, ultimately, be in the public interest. She highlighted the following:
- in time, the number of providers for single person entities would most likely reduce;
 - many higher risk single person entities would have difficulty in securing insurance at all;
 - should the BMIF then need to withdraw from the market, costs would increase and these would be passed on to clients;
 - clients could ultimately be faced with less choice and higher costs.
20. The Chair asked about next steps and the need for a review process. In response Kuljeet Chung confirmed the following:
- a consultation report and rule change application is required within the next two weeks. This will need further input from the Handbook Working Group;
 - a review of insurance arrangements for single person entities will be included in future work plans. This is also likely to cover multi-person entities as the LSB may expect that to be done as the next logical step.
21. **AGREED**
- a) to note the responses to the consultation.
 - b) to seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF.
 - c) to delegate responsibility to the Executive with input from the Handbook Working Group for finalisation of the consultation report and a rule change application to the LSB.

KC

KC to note

Item 9 – Standard contractual terms and the list of defaulting solicitors: undertaking to the LSB

BSB 056 (15)

22. Ewen Macleod highlighted the following:
- the paper sets out the Working Group's recommendations in the light of responses to the BSB's consultation on standard contractual terms and the cab rank rule (rule rC30.9.c). It also refers to the list of defaulting solicitors which the Board had previously asked the Working Group to consider further;

- the undertaking required that we review these rules from first principles. This was reflected in Working Group's approach which assumed these rules would not continue unless it was necessary in the light of the regulatory objectives;
- given the limited response from consumer groups, the Working Group analysed each option described in the consultation using the Legal Consumer Panel's toolkit for consideration of consumer interests. This is set out in Annex D of the paper;
- since the paper had been drafted, the Working Group had further considered the impact of the proposal on the professional principles (which were not addressed in its analysis of the regulatory objectives at annex E). In this regard, it is important to note that an effective cab rank rule stops self-employed barristers from being tied to particular clients and therefore is important for independence as well as access to justice;
- the Working Group has recommended retention of the status quo in relation to the standard terms. It considered in depth the effect of the alternative options in relation to the regulatory objectives, in particular a variation of "alternative 2", which would require barristers to publish their own terms for the purposes of the cab rank rule;
- it concluded that:
 - ❖ a reliance on self-published terms provokes a risk that barristers may use these to frustrate the cab rank rule;
 - ❖ to allow "reasonable" solicitors' terms as a legitimate alternative would unfairly restrict the barristers' freedom to contract. This is because the barrister would be subject to a professional obligation to accept those terms whereas the solicitor would not, possibly to the detriment of our regulatory objective to promote an independent, strong, diverse and effective legal profession;
 - ❖ in either case, the BSB could be drawn in to adjudicate in disputes about "reasonableness" of terms, which would absorb significant time and resources thereby adding to regulatory costs with no identifiable public benefit;
 - ❖ the prospect of regulatory action after the event would be of little benefit to clients. The harm done by delay may already have caused them to miss out completely on the opportunity to instruct their choice of barrister;
- the Working Group had considered the option of approving other standard terms. Whilst others exist it is not realistic to assess every alternative and there needs to be a default "reasonable" option that enables the cab rank rule to be consistently applied. The objections of the Law Society to the standard terms relate primarily to payment terms ie that solicitors must accept liability for barristers' fees and that payment must be made within 30 days of the issuing of an invoice. The first is a necessity when seeking to instruct under the cab rank rule (and the scope of this review did not cover this point). The second needs to be viewed in the context of what is fair and reasonable to both parties, without placing barristers at risk of financial hardship in cases where they are obliged to accept work (which would otherwise have a negative impact on the regulatory objectives);
- The Board needs to consider whether the Working Group has reached the correct decision, in particular whether it is right to reject the alternative proposal of mandatory publication of terms by a barrister for cab rank rule purposes, and, if standard terms are necessary, whether the current terms remained appropriate;

- notwithstanding the above, the future governance of the standard terms is an issue for the Board to consider. The Bar Council is responsible for publishing the terms and could seek to amend these in future. The BSB therefore needs to be able to impact assess the effect of change on our regulatory arrangements and ensure that it has appropriate oversight;
 - the Working Group agreed that reference to List of Defaulting Solicitors be removed from regulatory arrangements on the grounds that this is the proper preserve of the representative arm. In consequence, it prepared a tightly drafted guidance note for barristers in support of a more outcome focused rule (paragraph 45 of the report refers). This constitutes a change to rule rC30.7.b and will need the approval of the LSB.
23. The Board unanimously supported the recommendations. The salient points of the discussion were:
- in practice the status quo is a fair balance between the two parties and is the most practical choice given the disadvantages of the alternatives. Moreover, the public interest is best served by minimising delay and uncertainty, both of which would be detrimentally affected by a move away from having standard contractual terms;
 - the principles of simplicity and transparency are best met by retaining standard terms as the default option. These principles favour the client and the regulator needs to agree objectively reasonable standard terms in order to protect clients' interests. In addition, the standard terms, as currently drafted, are appropriate. Notwithstanding this, the point about future governance of the standard terms is important and needs to be addressed;
 - we need to avoid the BSB acting as arbiter on questions of "reasonableness" as this will be too time and resource intensive as well as a barrier to clients needing urgent assistance;
 - the objection of the Law Society about payment terms is not convincing as these same terms are generally accepted as normal business practice in other sectors. Moreover the solicitor would still be responsible for client payments regardless of any change in the standard contractual terms as that forms part of the cab rank rule;
 - the removal of reference to the List of Defaulting Solicitors can be supported as the suggested guidance note is comprehensive and properly focused.
24. In terms of formalising governance arrangements, Ewen Macleod suggested either achieving this through the existing protocol between the BSB and Bar Council or that BSB approval is sought on any changes proposed following consultation with the profession. Rolande Anderson stated that there may be times when the BSB itself needs to initiate change to the standard terms. Members agreed with her that the BSB must be able to take an active role in monitoring and reviewing the standards terms as necessary.
25. The Chair invited Stephen Crowne to comment. In response he suggested that, for presentational purposes, the standard terms should remain in the "ownership" of the Bar Council ie be accessed via its website and that any process for review should be able to be triggered by either party but only in a manner which was compatible the BSB's role as an independent regulator.

[note: in practice this can be achieved through the existing protocol between the two parties based on the understanding that the BSB retains the final decision on whether the standard terms remain appropriate for the purposes of the cab rank rules.]"

26. The following additional comments were made:
- the BSB should undertake a further review of the standard contractual terms within at least three years;
 - a review of the cab rank rule itself was not part of the undertaking to the LSB but will further investigated as part of a future review of the Handbook;
 - it is likely the LSB will want to see the detail of the BSB's consideration of this matter. In fact much is already in the public domain via our website, but we should seek to be totally transparent in any discussions with the LSB.

27. **AGREED**

- a) to note the Working Group's consideration of the responses to the recent consultation and its analysis of the options with reference to regulatory objectives and consumer principles.
- b) to approve the Working Group's recommendation to retain the current rule rC30.9.c in relation to the standard contractual terms on the grounds set out in the report (paragraphs 29-34).
- c) that the standard contractual terms as currently stated are appropriate for the purposes of the cab rank rule.
- d) to write to the LSB by 31 July explaining how the BSB has complied with the undertaking given.
- e) to approve the amended rule rC30.7.b and associated guidance in relation to the assessment of credit risks by barristers, as an alternative to including the List of Defaulting Solicitors in the Handbook as set out in the report (paragraphs 44-46).
- f) to delegate to the Working Group responsibility for agreeing a rule change application in relation to minute 27e above by 31 July 2015:
- g) to institute a further review of the standard contractual terms within three years.

**EM to
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**Item 10 – Professional Conduct Committee / Professional Conduct
Department Enforcement Annual Report 2014/15**

BSB 057 (15)

28. Simon Lofthouse QC thanked Paul Martyn and Sara Jagger for their work in preparing the report. He highlighted the following:
- the report shows that the KPI for concluding or referring to disciplinary action within the eight week service standard has been missed (an actual figure of 69% compared to a target of 80%). The Board has previously been advised that this was a likely outcome due to high staff turnover rates in the Assessment Team and the subsequent impact this had on completion times, particularly in the fourth quarter;
 - the report refers to increased collaboration with other BSB Departments in both managing internal complaints and in seeking to reduce risk of recurrence eg action taken within Education & Training to ensure barristers who complete pupillage actively apply for a practising certificate. This is a positive step forward and should reduce the unexpected rise in internal complaints for the forthcoming year;
 - the Professional Conduct Committee has been greatly strengthened over the years through an increase in the numbers of lay members who have strong regulatory backgrounds. The Committee now has parity between barrister and lay members and is working very effectively.
29. Andrew Lamberti confirmed that a press release will be prepared to accompany the publication of the report on the BSB's website.

30. The Board complimented the clarity and thoroughness of the report. The following comments were made:
- the covering report suggests that an equality impact assessment is “not applicable”. In fact the E&D Committee is working with the Professional Conduct Department to investigate the diversity impact of enforcement decisions;
 - Figures 10 and 11 show low levels of satisfaction among complainants. There has been fall in support compared with last year. There is a reference to this in paragraph 5.4 of the report but the action points (improved web pages) do not seem to give much emphasis to this area.
31. In response to the latter point, the following comments were made:
- there is a strong correlation between satisfaction rates and case outcome with complainants disappointed at the result being inclined to express this in feedback about the complaint process (regardless of how fair and objective it may have actually been);
 - other regulators that do undertake satisfaction surveys have experienced similar responses;
 - the role of the BSB is to maintain standards at the Bar. It ensures complaints about barristers are fairly and objectively assessed. There may be some misconception about the BSB’s role on the part of some complainants and we need to manage these expectations more successfully through better and clearer information;
 - the Independent Observer’s reports to the GRA Committee have documented the very significant effort by PCD staff to give full explanations for the reasons to dismiss a complaint. The correlation described may be understandable but may also be unavoidable.
32. **AGREED**
to note the report and the conclusions and action points set out in the report (paragraphs 5.1-5.6).
- Item 11 – Bar Standards Board Annual Report 2014-15**
BSB 058 (15)
33. Andrew Lamberti circulated some draft hard copies of the Annual Report. He commented as follows:
- the Report is due to be published on 31 July 2015;
 - the PRP Committee gave a clear steer on the tone and level of detail within the Report and this is reflected in the current draft;
 - a final proof read will be undertaken prior to publication and a press release will be followed by messages on social media (Twitter).
34. The Board welcomed the report and complimented the clear style and use of Plain English. Patricia Robertson QC commented as follows:
- we should do more than simply publish on the website and press release. There has recently been adverse comment on the number of consultation papers that the BSB has issued. The Annual Report could help to explain the reasons for this level of activity;
 - contrary to the report, it may be helpful to have some hard copies printed and circulate these to targeted stakeholders eg COIC and the Inns’ Strategic Advisory Group.
35. Nicola Sawford suggested we use LinkedIn as well as Twitter given the number of barristers who use this service.

36. **AGREED**
- a) to publish the Annual Report and promote this through a press release and social media (Twitter and LinkedIn) **AL**
- b) to print a limited number of hard copies and target specific stakeholders as indicated above. **AT / AL**

Item 12 – Chair’s Report on Visits and Meetings – June 2015

BSB 048 (15)

37. The Board **noted** the Chair’s report on visits and meetings.

Item 13 – Director General’s Report

BSB 049 (15)

38. The Board considered the Director General’s Report. Malcolm Cohen asked for a progress update on research about Youth Court advocacy. Oliver Hanmer confirmed that a report is due in August and that the Board will receive a paper either in September or October 2015.

39. **AGREED**
to note the report.

Item 14 – Any Other Business

40. None.

Item 15 – Dates of next meetings

41. • Friday 4 September 2015 (2.00 pm) – single item (governance);
• Thursday 10 September 2015 (4.30 pm) – budget;
• Thursday 24 September 2015 (4.30 pm) – full meeting.

Item 16 – Private Session

42. 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 – 25 June 2015 (Annex A);
- (2) Matters arising;
- (3) Action points and progress – Part 2;
- (4) Governance Review;
- (5) Amended Rules for the Inns’ Conduct Committee;
- (6) Any other private business.

43. The meeting finished at 6.00 pm.

**BSB – List of Part 1 Actions
10 September 2015**

(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
15a (23 July 15)	finalise and circulate a consultation on BSB fees and charges	Viki Calais / Amanda Thompson	by late Oct 15	03/09/15	In hand
21b (23 July 15)	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Kuljeet Chung	by 31 Jul 15	04/09/15	Ongoing A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.
27d (23 July 15)	send a formal response to the LSB on the BSB's undertaking re: standard contractual terms	Ewen Macleod	by 31 Jul 15	03/09/15	Completed
27f (23 July 15)	finalise the rule change application to the LSB re: removal of reference to the List of Defaulting Solicitors and inclusion of guidance on credit risk	Working Group	by 31 Jul 15	03/09/15	Completed
36b (23 Jul 15)	print a limited number of hard copies and target specific stakeholders	Andrew Lamberti / Amanda Thompson	31 Jul 15	03/09/15	Completed
36a (23 Jul 15)	publish the Annual Report and promote this through a press release and social media (Twitter and LinkedIn)	Andrew Lamberti	31 Jul 15	03/09/15	Completed

**BSB – List of Part 1 Actions
10 September 2015**

(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
25 (21 May 15)	circulate the key points arising from the Authorisation to Practise exercise to Board Members	Vanessa Davies	immediate	08/06/15	In hand - a draft report was received by the Information Management Programme Board on 4 June 2015. The Bar Council CEO and BSB DG has requested some further proposals on recommendations and future actions before signing it off for circulation
12b (26 Feb 15)	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	08/06/15 18/03/15	Being addressed as part of development of new assurance system (including performance reporting) that will be required to support the new governance system Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.

Forward Agendas

Thursday 22 October 2015

- Supervision Committee Annual Report
- Supervision report – high impact chambers
- Standards Committee Annual Report
- Bar Council Standing Orders: Part III amendments
- Youth Court Advocacy Research Report
- update on research about Youth Court advocacy

Thursday 26 November 2015

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on the Equality Rules
- Outcome of consultation on Disciplinary Tribunal Regulations
- Fees and charges consultation

Thursday 17 December 2015 (Board Away Day)

- Presentation by Legal Services Consumer Panel

Thursday 28 January 2016

- Diversity data report
- PCD / PCD Interim Report Public and licensed access rules
- Future Bar Training: outline proposals for academic, vocational and professional stage reform
- Regulatory Outlook approval
- Outcome of Fees and Charges Consultation

Thursday 25 February 2016

- BSB Business Plan for 2016-17 and new Strategic Plan 2016-19
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on recommendations: Immigration Thematic Review

Thursday 17 March 2016

- Strategic plan 2016-19 – final
- Public and licensed access review consultation

Longer term items (dates to note)

- *April – June 2016 – Approval of Future Bar Training LSB submission (changes to Qualification Rules, Academic Stage regulatory policy, Vocational Stage regulatory policy, Pupillage Stage regulatory policy)*
- *July 2016 – Approval of CPD regime changes (Part 2)*
- *October 2016 – Approval of CPD quality mark scheme proposal (Part 2)*

PRP Committee Report Q1 (April 2015 – June 2015)

Status

1. For discussion and decision.
2. Public – a public account of how the BSB is performing against the published 2015-16 Business Plan.

Executive Summary

3. This paper provides a summary of the discussion that the PRP Committee had at its July 2015 meeting. The majority of the meeting was dedicated to scrutinizing the BSB's progress and Q1 performance, against the aims and activities set out in its 2015-16 Business Plan. It covers a wide range of information (dashboard in Annex 1) relating to projects, financial position and performance measures.
4. Additional indicators, such as "Control", "Importance", and "Size" have been added to the dashboard to show additional performance measures. The latter two in particular, help to give "weighting" to the activities.
5. Overall performance against the BSB's objectives remains on track, particularly for our larger programmes of work. Our biggest achievement in Q1 was the commencement of the authorisation of entities, which came into effect in April 2015.
6. The main areas highlighted in this report are:
 - a) Expenditure remains on track, although we are forecasting that we will not meet our directly attributable **income projections** by year-end. A variety of factors has contributed towards this; ie lower numbers of Entity Regulation applications. For year-end, we are now forecasting the following:
 - (i) **Income**: £1,590k against projection of £1,875k (-15%);
 - (ii) **Expenditure**: £5,513k against a budget of £5,438k (-1%);
 - b) The **BSB services complaints**¹ are reported for the first time in Q1;
 - c) Three **business plan activities** are reported as off target in Q1;
 - d) The **PCD** performance indicators show that the department is not achieving its targets for the third quarter in a row.
 - e) There has been an improvement in our **HR Performance Indicators**, although concern over the level of staff turnover remains.
7. The forecasting exercise that was carried out, was difficult to do with so many uncertainties and at this early point in the year.. However, the Q2 exercise will be more reliable; this will help reverse a trend of forecasting overspend at the beginning of the financial year, but recording underspend by the end of the financial year.
8. The PRP Committee also wanted to bring to the Board's attention the way the BSB has transitioned from last year's Business Plan to this year's, and this is described below (paragraph 14). The Board is also asked to note the discussions on HR matters, which have been referred to in the Corporate Risk Register report (Paper 066 (15)).

¹ A service complaint against the BSB might relate to taking too long to respond to requests, or providing misleading information. NB this is quite separate from complaints against barristers

Recommendations:

9. Members of the Board are invited to:
 - a) **Scrutinise** the detail of the report;
 - b) **Offer views** on the revised format of the performance dashboard;
 - c) **Discuss** the main areas highlighted;
 - d) **Note** the additional resource request for QASA and Future Bar Training;
 - e) **Note** the PRP Committee will be investigating the PCD KPIs at its next meeting;
 - f) **Review** the HR related matters as part of the Corporate Risk Register paper;
 - g) **Make recommendations** to the Executive or the PRP Committee as necessary.

Background

10. The 2013-16 Strategic Plan² seeks to enable us to become a more modern and efficient regulator, operating at high levels of effectiveness. The five strategic aims are:
 - a) Implement specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the LSA2007;
 - b) Promote a greater public and professional understanding of, and support for, our role and mission;
 - c) Set and maintain high standards of entry to, and practice in, a diverse profession;
 - d) Become more evidence and risk-based in all we do; taking into account the globalised legal services market; and
 - e) Strive for “best practice” as an organization, for those who work for us and those whom we serve.
11. The Business Plan for 2015-16 outlines our key activities for the year³, and it is the third year of our Strategic Plan. The plan also sets out our budget and staffing requirements. This report describes our performance against our objectives and budget, as well as the overall performance within the BSB.

Reporting process

12. On a quarterly basis, the Business Support Team gathers information in liaison with the Senior Management Team (SMT), then reviews the activities in the Business Plan and provides progress updates. It is SMT members’ responsibility to provide explanations for delays, overspends, associated risks and how these are all being addressed. Resource Group colleagues provide underlying figures on HR and IT performance on a quarterly basis.
13. The live document against which business activities are reported was last updated on 23 July 2015; whereas our performance indicators are for Q1 only (as at 30 June 2015).
14. Board members will recall from the last performance report (2014-15 year-end report) that a number of activities had been paused or delayed so were showing as red or amber. Some of these activities have either been reprioritized or recast for a more accurate description in the new 2015-16 Business Plan. As we now embark on the new Plan, the older red and

² Strategic Plan - https://www.barstandardsboard.org.uk/media/1513219/bsb_strategic_plan_final_20.6.13.pdf

³ Business Plan - https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf

amber ratings have been superseded, and the dashboard now accurately reflects our revised program of work for the year, all in support of the overarching Strategy.

15. Improvements to the dashboard were presented to the Committee in July 2015 and the following measures were included: Control, Importance and Size. We have used this information to “weight” the activities, so that the more important and larger scale projects are given more prominence. Committee members agreed that the new format makes it easier to focus on the areas that really matter. Here is a more detailed key on the dashboard:

- a) Control – **C1:** The activity is within the control of the Bar Standards Board (BSB)
C2: The activity is within the control of the BC’s Resource Group (RG)
C3: The activity is to a large extent dependent upon external parties (External control)
- b) Importance -  The activity is considered to be more important than others
 The activity is considered to be less important than others in the Business Plan
- c) Size – “1” the activity is considered to be a small piece of work
“4” the activity is considered to be a large-scale programme of work
- d) Weighting – the size and the importance indicators have been used to weight each activity:

Darker shade	Higher weighting: more important, large-scale activities
Lighter shade	Lower weighting: less important, small size activities

16. Board members are asked to review the performance report and provide comment. The PRP Committee was keen to run with the new dashboard format for the reporting year cycle, and was keen to seek views on its usefulness from Board members.

Areas for further consideration

17. Activity is reported to the Board by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below. They have been listed in the order they appear in the 2015-16 Business Plan and include:

a) Enforcement for Entities

- (i) The activity to “embed new systems for the enforcement of the handbook in relation to entities” is an extension of the BSB Handbook project. The project objectives are to:
- Ensure that the enforcement system is prepared for complaints arising from the introduction of entity regulation;
 - Ensure that all changes or issues arising from entity regulation are accurately reflected in PCD/PCC⁴ policy and processes;
 - Provide updated information for the public in light of changes and produce new information leaflets on topic arising from the project (if applicable);

⁴ PCD: Professional Conduct Department; PCC: Professional Conduct Committee

- Provide training for PCD staff, PCC members, prosecution panel members and linked external bodies in relation to the changes;
 - Prepare operationally for entity related complaints by adapting administrative processes and ensuring the database can accommodate the changes;
 - Review the Enforcement Strategy in light of entity regulation.
- (ii) Enforcement processes have been adapted in the light of the new entity regime, including adaptations to the enforcement database to accommodate complaints against entities. However, due to competing priorities, particularly the impact on the project manager of a very large, subject access request, over Q3 and Q4 of 2014-15, not all the adaptations are yet reflected in the PCD suite of written policy and guidance documents. This work should be completed in the next month or so and although this project is a little off track, we expect it to be fully complete by the end of the business year.

b) Centralised Assessment Report

- (i) Centralised assessments were introduced in 2011-12 for the Bar Professional Training Course⁵ in order to raise standards and create greater consistency of assessments between the providers of the course. The BSB committed to review these centralised assessments after the first three academic cycles, which finished in 2014. The purpose of the review was to:
- Assess all aspects of the delivery of centralised assessments to determine their effectiveness in supporting the regulatory objectives for training; and
 - Assess the suitability of the centralised assessments for the future development of the vocational training for the Bar.
- (ii) The review has been conducted and a report was considered by the Education and Training Committee in July 2015. The summary findings and next steps will be made public in due course. A number of matters raised have already been addressed; other will be aligned to the overall FBT programme. More information can be found in the Corporate Risk Register paper (paper 066 (15)).

c) Evaluate the Enforcement Strategy

- (i) The Enforcement Strategy was evaluated and updated in light of entity regulation at the start of the Entity Regulation Implementation Project in late 2014 (and approved by the Working Group), but the updated version remains in draft at present.
- (ii) However with the recent introduction of the new Risk Index (which forms a fundamental part of our overall risk framework), the Strategy needs to be revisited to ensure the two align effectively. It is envisaged the alignment will be addressed well before the end of the reporting year and the Board will have approved an updated strategy for publication.

⁵ Previously the Bar Vocational Course

PCD Performance Indicators

18. For the full PCD Performance Indicators table showing Q1 and cumulative year-end figures for 2014-15 (please see Annex 3), which includes some figures on over-running cases. Board members will recall a marked dip in performance in the last quarter (Q4 2014-15) and the overarching KPI has not been met over the last three quarters. In addition to some staffing issues, the volume of work should also be considered. The number of complaints received in a year had fallen by 19%, from 400 in 2013-14 to 325 in 2014-15. In the first quarter of 2015-16, the BSB received 166, which is the highest quarterly value recorded in the last three years.
19. The PCD experienced a number of staffing issues, including vacancies in the last two quarters of 2014-15, the ongoing impact of which is still being felt with staff members at the assessment stage concentrating their time on dealing with over-running cases, ie those that have been open for longer than eight weeks. The PCD has thereby managed to reduce the number of overrunning cases; in Q4 2014-15 there were a total of 65 cases in comparison to 25 in Q1 2015-16.
20. The Director of Professional Conduct will be invited to the next PRP meeting in November 2015 so that the performance levels and underlying reasons can be properly scrutinized.

HR Dashboard

21. There were five leavers in Q1 bringing the total numbers of leavers in the last 12 months to 28. The PRP committee analyzed the reason of leavers over the past 12 months and plans for addressing the turnover rate. More information can be found in the Corporate Risk Register paper (BSB paper 066 (15)).
22. PRP also reviewed the HR operating plan and will be reviewing this on a quarterly basis. Discussions focused on the results of the recently conducted staff survey, which the Board will receive later this year.

Resource Group (RG) - Performance against the Service Level Agreement

23. Overall, the service level agreement is working well and the aims and objectives are on the whole, being met. There has been very positive feedback on the improvement in collaboration between employees in the BSB and RG.

2015-16 Budget and Forecast

24. Below are the headline figures for Q1, further detail can be found in Annex 2:
 - a) In the three month period ending 30 June 2015 (Q1 of 2015-16), the BSB received £96k in income against our budgeted projection of £175k (-45%). By year-end, we predict directly attributable income will reach £1,590k against our budgeted projection of £1,875k (-15%).
 - b) For expenditure, we have spent £1,274k against a budget of £1,247k (-2%). By year-end, we forecast that our expenditure will reach £5,513k against our total budget of £5,438k (-1%).

25. The key pressures and challenges have been summarised from these documents and are set out below:

a) Education and Training

- (i) A number of changes are being actioned in the Education and Training that could impact upon our revenue projections. If the assumptions made are accurate, there could be a dip in income in one area, which is offset by an overachievement of income from CPD providers. More information is provided in the corporate risk register report.

b) Entity Regulation

- (ii) The original budgeted projections for the income relating to entity regulation were based upon a fees consultation conducted in September 2014. Even with the consultation responses, appetite for this new regime was difficult to predict. We had envisaged that 380 single-person entities would be authorised in the first 12-month period. This is unlikely to be the case; as we reported in our year-end report only 21 applications had been received. As the take-up has been low, we are now forecasting a much more modest income figure.

c) Board Recruitment

- (i) The executive did not foresee the resignation of two barrister Board members, which has placed an unforeseen strain on the Executive's budget for recruitment. The full cost of recruiting the members is £45k, although this has been offset by other recruitment underspends, so will only have a minor impact on the budget at year end.

d) Staff costs

- (i) With staff changes occurring in the Strategy and Communications department, it is anticipated that there will be an overspend in the staff costs portion of this budget. In addition, three new members joined the department, which incurred agency finder fees (normally unbudgeted).
- (ii) Last year, we made some assumptions on the staffing arrangement in the PCD. The performance figures above show how challenging it is to maintain business as usual with reduced numbers of staff. We are now forecasting that the headcount figures will not be achieved as anticipated, which is likely to lead to a £45k overspend by year end.

e) Education and Training

- (i) A few staff changes, short-term temporary members of staff, and additional BPTC meetings to support the Future Bar Training programme have meant that this budget is overspent by 8% YTD.

f) Regulatory Policy

- (i) Board members will recall that the Supreme Court ruled that QASA is lawful and the BSB now needs to recommence implementation of the Scheme. In addition, the future design of the training provision for barristers is the subject of consultation. Both require additional educational/assessment policy resource. The PRP noted the resource arrangements for these areas of work which will result in an increase of 1 FTE to the BSB's staffing establishment, however will offset an underspend in another area of the BSB's budget.

Equality Impact Analyses

26. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our performance against various E&D measures.

Risk implications

27. Risks that may have an impact on the BSB achieving its objectives have been considered as part of compiling the business plan activity. The Corporate Risk Register is discussed in the private section of the Board papers (paper 066(15)).

Regulatory objectives

28. Delivery of Strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

Publicity

29. This report is in the public agenda of the board meeting and will be published on our website.

Annexes

30. Annex 1 – Q1 Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators

Lead responsibility

Dr Anne Wright, Chair, PRP Committee
Dr Vanessa Davies, Director General, BSB
Viki Calais, Business Manager
Natasha Williams, Business Support Officer

Q1 Dashboard																									
Business Plan Activities (2015-16)					Service Standards (Core activity)																				
					Professional Conduct Indicators																				
							Q1	Target																	
					KPI - % of complaints concluded or referred to disciplinary action within service standards		64%	80%	✘																
					OPI - % of complaints concluded or referred to investigation within 8 weeks		56%	80%	✘																
					OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation		72%	80%	⚠																
					OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation		70%	80%	⚠																
					Qualification Committee Applications																				
					Time take to determine applications from receipt of the complete application:		Q1	Target																	
					Up to 6 weeks		81%	75%	✔																
					6 to 12 weeks		100%	98%	✔																
					Over 12 weeks		1%	2%	✔																
					Number of Service Complaints received: Q1																				
					1																				
					2015-16 Q1 YTD actuals against budget			2015-16 YE fcst against budget																	
					Act	Bud	Var	Fcst	Bud	Var															
					Income	£96k	£175k	-£79k	£1,590k	£1,875k	-£286k														
					Expenditure	£1,274k	£1,247k	-£28k	£5,513k	£5,438k	-£75k														
					Staffing			HR																	
					Q1	2014-15		Q1	Q4 14/15																
					Sickness (days/FTE)	5.9	6.7	✔	Recruitment times																
					Sickness (long term)	0.0	1.6	✔	(approval to start)																
					Turnover (%)	35.4	36.2	✔	10.3 10.1																
									date (weeks))																
					IT Response times			Corporate Risk Register																	
					2015-16 (Q1)			28 Apr 15																	
					Response to high priority			Likelihood																	
					100%			<table border="1"> <tr><td></td><td></td><td>1</td></tr> <tr><td>1</td><td>4</td><td>1</td></tr> <tr><td>5</td><td>5</td><td></td></tr> <tr><td></td><td></td><td>1</td></tr> <tr><td>18</td><td>Impact</td><td></td></tr> </table>					1	1	4	1	5	5				1	18	Impact	
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					99%			<table border="1"> <tr><td></td><td></td><td>1</td></tr> <tr><td></td><td></td><td>5</td></tr> <tr><td></td><td></td><td>7</td></tr> <tr><td></td><td></td><td>1</td></tr> <tr><td>19</td><td>Impact</td><td></td></tr> </table>					1			5			7			1	19	Impact	
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19	Impact																								
					Service level agreement with BC (Resources Group)																				
							% of aims and objectives met																		
					Project Management Office	97%	✔	HR	94%	✔															
					Records Office	90%	⚠	Facilities Management	99%	✔															
					IT	94%	✔	Finance	97%	✔															
Key																									
Control		Importance		Size		Weighting																			
C1 - BSB Control		▲ More important		▲ 1 Small piece of work		■ Higher weighting																			
C2 - RG control		▼ Less important		▲ 4 Large piece of work		■ Lower weighting																			
C3 - External control																									

BSB EXECUTIVE

BUDGET HOLDER: VANESSA DAVIES

	JUN	JUN	JUN	JUN	2015/16	2015/16	2015/16 Fcast vs		PRP paper ref.
	Q1	Q1	Q1	Q1	YE	YE	2015/16 Budget		
	ACTUAL	BUDGET	VAR	VAR %	FCAST	BUDGET	VAR	VAR %	
<u>Income</u>	£k	£k	£k		£k	£k	£k		
Professional Conduct	4	0	4		4	0	4		
Assessments	16	45	-29	-64%	122	163	-41	-25%	Paragraph 26 a)
Education and Training	18	8	10	124%	987	977	10	1%	
Qualifications	52	59	-7	-11%	470	477	-7	-1%	
Entity Regulation	5	63	-58	-92%	6	258	-252	-98%	Paragraph 26 b)
QASA	0	0	0		0	0	0		
Total	96	175	-79	-45%	1,590	1,875	-286	-15%	
<u>Expenditure</u>	£k	£k	£k		£k	£k	£k		
Executive	199	143	-55	-39%	653	629	-25	-4%	
Staff Costs	171	127	-44	-35%	579	557	-22	-4%	Paragraph 26 c)
Other Costs	28	16	-11	-70%	74	72	-2	-3%	
Strategy and Comms	174	159	-14	-9%	890	852	-38	-4%	
Staff Costs	159	139	-20	-15%	597	548	-49	-9%	Paragraph 26 d)
Other Costs	14	20	6	30%	293	304	11	4%	
Professional Conduct	321	327	6	2%	1,323	1,269	-55	-4%	
Staff Costs	255	271	16	6%	1,105	1,060	-45	-4%	Paragraph 26 d)
Other Costs	66	56	-10	-17%	219	209	-10	-5%	
Assessments	61	101	40	40%	344	421	77	18%	
Staff Costs	37	39	1	4%	155	156	1	1%	
Other Costs	23	62	39	62%	189	265	76	29%	Paragraph 26 a)
Education and Training	128	119	-9	-7%	493	455	-37	-8%	Paragraph 26 e)
Staff Costs	81	91	10	11%	315	297	-18	-6%	
Other Costs	47	28	-19	-68%	177	158	-19	-12%	
FBT	34	45	11	25%	180	175	-5	-3%	
Staff Costs	22	24	2	7%	93	78	-15	-19%	
Other Costs	12	22	10	45%	87	97	10	10%	
Qualifications	75	80	4	5%	292	314	23	7%	
Staff Costs	70	72	1	2%	259	278	19	7%	Paragraph 26 d)
Other Costs	5	8	3	39%	33	36	3	9%	
Regulatory Policy	139	129	-10	-8%	737	703	-33	-5%	
Staff Costs	129	124	-5	-4%	568	539	-29	-5%	Paragraph 26 f)
Other Costs	10	5	-5	-88%	169	165	-5	-3%	
Entity Regulation	64	43	-21	-48%	171	183	12	6%	
Staff Costs	35	32	-3	-9%	120	129	9	7%	
Other Costs	29	11	-18	-162%	51	54	3	6%	
Supervision	81	100	19	19%	430	436	7	2%	
Staff Costs	77	98	21	22%	385	395	9	2%	
Other Costs	4	1	-2	-176%	44	42	-2	-6%	
QASA	0	0	0		0	0	0		
Staff Costs	0	0	0		0	0	0		
Other Costs	0	0	0		0	0	0		
Total	1,274	1,247	-28	-2%	5,513	5,438	-75	-1%	
Total Staff Costs	1,038	1,016	-21	-2%	4,176	4,036	-140	-3%	
Total Other Costs	237	230	-7	-3%	1,337	1,402	65	5%	

PCD Key and Operational Performance Indicators

- See paragraphs 18 – 20 for more detail
- Main reasons for shortfall in performance include:
- o Staff vacancies;
 - o Volume of work and the number of complaints received in the quarter (166);
 - o Concentration on over-running cases, numbers of which have reduced.

PCD Measure		2015-16		2014-15 YE	2014-15 Target
		Q1	Target		
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	64%	80%	69%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	56%	80%	65%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	72%	80%	84%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	70%	80%	75%	80%

Long Running Cases

Snapshot at the close of Q1 of 2015-16

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	82	17	21%
External Investigation (8 months)	71	5	7%
Internal Investigation (5 months)	57	3	5%
Total	210	25	12%

Schedule of Board Meetings 2016-17

Status:

1. For noting and approval.
2. Public.

Executive Summary:

3. A proposed schedule of meetings for 2016/17 is set out below.

Recommendation:

4. The Board is asked to agree the schedule.

Comment / detail:

5. The proposed dates for Bar Standards Board meetings (Jan 2016 – Mar 2017) are:
 - Thursday 28 Jan 2016 (already diarised)
 - Thursday 25 Feb 2016 (already diarised)
 - Thursday 17 Mar 2016 (already diarised)
 - Thursday 21 Apr 2016 (Board Away Day)
 - Thursday 19 May 2016
 - Thursday 23 Jun 2016
 - Thursday 28 Jul 2016
 - Thursday 15 Sept 2016 (budget)
 - Thursday 29 Sept 2016
 - Thursday 27 Oct 2016
 - Thursday 24 Nov 2016
 - Thursday 15 Dec 2016 (Board Away Day)
 - Thursday 26 Jan 2017
 - Thursday 23 Feb 2017
 - Thursday 23 Mar 2017

Amanda Thompson
Director of Strategy & Communications
September 2015