

Regulatory Update December 2018

[Tessa's blog for the email content of this month's Regulatory Update]

Let me begin with a word of thanks. We recently published the results of our spot-checking review of barristers' CPD records from 2017. Just under 90% of those on the Established Practitioners' Programme whom we spot checked were considered compliant, or compliant with some feedback from us. We are very pleased that the Bar has adapted to the new, more flexible, regime so well. You can read more about this here.

On 6 December, we launched a new consultation to seek views on how we should recover our costs for overseeing the new Bar training rules due to come into force early next year and for managing the centralised examinations that form part of the qualification process for new barristers. The consultation considers the extent to which the costs of authorising and supervising Bar training should be met by training organisations – bearing in mind that many vocational training providers pass on these costs to students – or by the profession in the form of contributions from the Practising Certificate Fee.

We have also announced the rates for the minimum pupillage awards that will apply from 1 September 2019 and which will now be linked to the National Living Wage.

We published an updated edition of the BSB Handbook on 23 November. The main update was to introduce new rules to govern the very rare occasions when it might be necessary for us to intervene in the practices of those we regulate in order to protect clients. The powers are similar to those already held by the Solicitors Regulation Authority in relation to solicitors' firms and come into force following a period of public consultation in 2015.

Finally, please don't forget that we are seeking barrister and lay members for our new Independent Decision-Making Body which will replace the Professional Conduct Committee. Applications close on Monday 7 January 2019.

With season's greetings from all of us at the BSB.

You can also read the following articles in our website version of this month's Regulatory Update:

- Are you a Pupillage Training Organisation (PTO)? If so, and you haven't contacted us yet about your future plans for pupillage in relation to our new Authorisation Framework.
- Come to our final Future Bar Training roadshow in Leeds on 17 January

[RU articles to appear only on the website – ie not in the email]

New edition of the BSB Handbook

We have published [an updated version of our Handbook](#) to introduce new rules governing regulatory interventions. The new rules are needed because we have been given the statutory power to intervene into barristers' practices in the very unlikely event that something has gone so seriously wrong that intervention is necessary to protect clients.

The powers are similar to those already held by the Solicitors Regulation Authority in relation to solicitors' firms and come into force following a period of public consultation in 2015 and the subsequent approval by the Legal Services Board and Parliament of the necessary Order under the Legal Services Act.

We have appointed two specialist intervention agents to act on our behalf should we deem it necessary to intervene in a barrister's practice.

High levels of compliance amongst barristers with new CPD scheme

Following the introduction in 2017 of a new Continuing Professional Development (CPD) scheme for barristers of more than three years' standing, most of those who we assessed were found to have successfully complied with the requirements.

Just under 90% of those whom we spot checked were considered compliant, or compliant with some feedback from us, after they were asked to submit their CPD records for 2017 for assessment.

The new scheme, which replaced the more prescriptive earlier scheme, required barristers on the Established Practitioners' Programme to:

- prepare a written CPD plan setting out their learning objectives and the activities they proposed to undertake during the year;
- keep a written record of the CPD activities undertaken over the previous three years including their reflection on the CPD they have undertaken, any variation in their plans and an assessment of their future learning objectives;
- reflect on their planned and completed CPD activities to assess whether they had met their objectives; and
- declare to us in 2018 that they had completed their CPD for 2017. This was done as part of the annual authorisation to practise process, when practising certificates are renewed.

The spot checking of 2017 CPD records revealed some areas for development for the Bar in general, including recording learning objectives and reflecting on how they had been met.

We will be working in the coming months to raise awareness of the scheme further and to continue to support you to fulfil your CPD obligations. We will undertake a period of further research and evaluation of the impact of the new scheme.

Maintaining an effective CPD scheme is one of the ways in which we assure ourselves of the [competence of the Bar](#).

[A copy of the BSB's 2017 CPD monitoring report is available on our website.](#)

How should we recover our costs for overseeing the new Bar training rules?

Last week we [launched a consultation](#) seeking views on the charging model we propose to introduce for organisations providing Bar training. These organisations are known as Authorised Education and Training Organisations (AETOs).

The consultation considers how we should recover our costs in authorising and supervising AETOs under the new Bar training rules and in managing the centralised examinations that form part of the qualification process for new barristers.

The new rules permit AETOs to offer training to prospective barristers under a limited number of permissible training pathways. They also introduce changes to the Bar training curriculum and how it is assessed, including running more sittings for the centralised examinations directly managed by us. These changes, which have been the subject of extensive consultation, add to our costs.

This consultation seeks views on the extent to which the costs of authorising and supervising Bar training should be met by AETOs – bearing in mind that many vocational training providers pass on these costs to students – or by the profession in the form of contributions from barristers' Practising Certificate Fees (PCF).

Regulating the vocational component of Bar training is currently being subsidised by the PCF. We do not believe that the Bar should subsidise the full costs associated with every component of training for all prospective barristers, so the fees proposed in the consultation reflect this.

The consultation also seeks views, however, on how the cost of the Professional Ethics examination to be taken during pupillage should be recovered. We propose that this should be fully subsidised by the PCF in order to avoid discouraging parts of the Bar from offering pupillage, to reduce negative equality impacts, and to support new entrants to the profession.

Subject to Legal Services Board approval, the new Bar training rules will come into force in early 2019.

The closing date for this consultation is 5.00pm on Friday 1 March 2019.

Minimum pupillage award from 1 September 2019 announced

Last week we announced that the rate for the minimum pupillage award that will apply from 1 September 2019 will be £18,436 per annum for pupillages in London and £15,728 per annum for pupillages outside London.

This follows our [announcement in May 2018](#) that the minimum award paid to those undertaking pupillage or any other form of work-based learning will be set in line with

the rates recommended by the Living Wage Foundation and that it will increase annually.

The minimum award will then be increased in future with effect from 1 January each year, the first such increase being in January 2020. Increases will be announced in November each year following publication of the Living Wage Foundation's recommended hourly rate for the year ahead.

Come to our final FBT roadshow in Leeds to find out more about how the training and qualification process for barristers is changing

Having held similar events in the other circuits over the past few months, we will be in the North Eastern circuit on 17 January to talk about our plans to [change the training and qualification process](#) for becoming a barrister. The event will take place at 5.30pm-7pm, Park Square Barristers, Leeds, LS1 2LW on 17 January 2019

To book a place at this event please email contactus@barstandardsboard.org.uk

Reminder: Update for the New Authorisations Framework – Are you a Pupillage Training Organisation (PTO)?

What is the Authorisation Framework?

Our 2017 [policy statement](#) on Bar training sets out a limited number of permissible training pathways to becoming a barrister. An Authorisation Framework (AF) has been developed to give effect to these policies. Specifically, the AF will all require intending Authorised Education and Training Organisations (AETOs)¹ to demonstrate how their proposals for training will both:

- a. Offer one of the permitted training routes underpinned by the four core FBT principles (Flexibility, Accessibility, Affordability and High Standards); and
- b. Enable prospective barristers to meet the requirements of the [Professional Statement](#)² appropriate to the component of training being delivered.

What do chambers, BSB entities and other organisations that train pupils need to do to become authorised as an AETO?

In August 2018, we wrote to all chambers, BSB entities and other existing Pupillage Training Organisations to confirm whether they want to continue or to begin to provide pupillage. Those who do will be required to apply for authorisation under the new Authorisation Framework. If your chambers or organisation has not received this email, please complete the [online survey](#). It should only take a few minutes to

¹ The term AETOs includes organisations such as vocational providers, pupillage training organisations and approved training organisations.

² https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf

complete. The deadline for return of the survey has been extended to the end of 2018.

The new authorisation process will take place during 2019. In our previous communication, we had said that we would contact you by the end of November 2018 with full details of how to apply for authorisation as an AETO. Due to the extension of the survey deadline, we are now intending to contact all prospective AETOs in early 2019.

If you already provide pupillage, you can continue to do so. This will not affect current pupils, nor your ability to advertise for new pupils at present.

What will the application process involve?

Becoming an AETO should be a straightforward process. It will require you to submit details of your pupillage training programme, setting out how you will ensure that those whom you train satisfy the Threshold Standard and Competences of the BSB's [Professional Statement](#), as well as details of how your training will meet the criteria of flexibility, accessibility, affordability and sustaining high standards. Guidance and support will be available to help you to provide us with the information that we will need to authorise your AETO.

We want to test the authorisation process with some willing volunteers to ensure that applying to be an AETO really is as simple as we intend, so your support would be very welcome with this. Please [contact us](#) if you are interested in helping.

Will we have to renew our authorisation every year?

No. This will be a one-off process. AETOs will have to notify the BSB of any material change in their pupillage arrangements. The focus will then be on supervision of pupillage, which will be risk-based and targeted only where it is necessary to ensure standards are being met.

If you have any questions about the questionnaire or about becoming an AETO, please get in touch with us via authorisations@barstandardsboard.org.uk.

BSB seeks barrister and lay members for our new Independent Decision-Making Body

We are seeking barrister and lay members for our new Independent Decision-Making Body. This is an exciting period of change for us and we would like to encourage a more diverse range of people to join us in moving forward.

We are creating a new non-executive body responsible for taking all our regulatory decisions that require independent input. The body, known as the Independent Decision-Making Body (IDB), will start operating in June 2019. It will consist of a pool of suitably qualified decision makers from which panels of lay and barrister members will be formed to take decisions on individual cases – panels of three will be used for

authorisations and five for disciplinary cases. Most of the decisions for which the IDB will be responsible will be in relation to whether disciplinary action should be taken where breaches of the BSB Handbook may have occurred. However, the IDB will also be responsible for, amongst other things, taking decisions in relation to appeals against executive decisions not to grant waivers from the Handbook requirements or decisions not to authorise or license a body to provide legal services.

The work of an IDB member will include preparing for, chairing and/or attending Panel meetings, attending training sessions as required and ensuring that they stay up to date with issues related to the regulation of the Bar.

We are also recruiting to the position of Vice-Chair of the IDB. This position, in addition to the above functions, will be responsible, with the Chair of the IDB, for: providing the leadership of the IDB; assisting with carrying out the annual appraisals process of IDB members; providing feedback on panel member performance; and taking limited decisions outside panel meetings.

We welcome applications from barristers and lay people with experience across a range of areas, both executive and non-executive. Knowledge of higher legal education and/or qualification as a barrister are also sought.

Appointments will be for an initial period of up to three years, subject to a satisfactory appraisal on completion of 18 months' service. Candidates are invited to indicate which of the roles they are applying for in their covering letter, and to address the corresponding competencies contained in the application pack.

Remuneration for all members of the IDB is paid at a flat rate of £308 per day or £154 per half day (plus VAT, if relevant) – this covers both attendance at meetings and preparation time.

Meetings will be hosted from London, but we encourage applications from those located elsewhere in the country as facilities can be provided to attend IDB panel meetings remotely. However, all members will be expected, from time to time, to attend events in London for which reasonable expenses will be paid.

For more information and details on how to apply, please review the [welcome letter](#), [information pack](#), [IDB supporting details form](#), and [equality and diversity monitoring form](#). Candidates should provide a covering letter outlining how they meet the competencies required for the position(s), together with a brief CV.

We welcome applications from all people who meet the role requirements regardless of background and particularly encourage those from groups that are currently underrepresented in our independent decision-making processes such as women, and members of the LGBT, disability and BAME communities.

If you have any queries, please contact Alex Williams, Operational Support Team Manager, or Sophie Maddison, Senior Supervision & Authorisations Officer in the first instance: AWilliams@BarStandardsBoard.org.uk
SMaddison@BarStandardsBoard.org.uk

Please send completed applications to: OST@BarStandardsBoard.org.uk
Closing date for applications: **9am Monday 7 January 2019.**

Interviews will take place in London in the week commencing 25 February 2019. The date may change, including the possible addition of other dates, depending on interview panel and applicant availability. Mandatory training will take place in April and May 2019.

Have we got correct details of your practice address?

Please ensure that you have given us of your correct practice address in accordance with rS69 of our Handbook. If your practice address changes, you must tell our Records Department within 28 days.

Give us your feedback

If you have any thoughts about how we can improve the Regulatory Update or what content you would like to read, please email contactus@barstandardsboard.org.uk.