

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 29 September 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair) (items 7 – 13)
Rolande Anderson (by phone)
Rob Behrens CBE
Aidan Christie QC
Malcolm Cohen
Justine Davidge
Andrew Mitchell QC
Tim Robinson
Nicola Sawford
Adam Solomon
Anu Thompson
Dr Anne Wright CBE

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

By invitation: Keith Baldwin (Special Adviser)
Isobel Leaviss (Independent Observer) (items 1 – 7)
James Wakefield (COIC representative) (items 7 – 13)
Emily Windsor (Special Adviser) (part of meeting – by phone)

Bar Council in attendance: Stephen Crowne (Chief Executive, Bar Council)
Chantal-Aimée Doerries QC (Chairman, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
Andrew Langdon QC (Vice Chairman, Bar Council)

BSB Executive in attendance: Viki Calais (Head of Corporate Services)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Sara Jagger (Director of Professional Conduct)
Bernard MacGregor (Senior Supervision and Authorisation Officer) (items 1 – 9)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amanda Thompson (Director for Governance Reform)
Wilf White (Director of Communications and Public Engagement)

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular Isobel Leaviss, the Independent Observer, who was presenting her Annual Report to the Board. He also welcomed Andrew Langdon QC, Vice Chairman of the Bar Council and Rebecca Forbes, the new Governance Manager, who were attending their first Board meeting.

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2. The Board heard with deep regret that Adrian Turner (Assessment Manager, Professional Conduct) had died whilst on holiday in Spain. Adrian had been with the organisation for over 18 years, initially working for the Bar Council and later transferring to the BSB upon its creation in 2006. Members expressed their sincere condolences to his family and friends.

Item 2 – Apologies

3.
 - Professor Andrew Sanders
 - Lorinda Long (Treasurer, Bar Council)
 - Oliver Hanmer (Director of Supervision)

Item 3 – Members’ interests and hospitality

4. None.

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

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

Item 5 – Matters Arising

6. None.

Item 6a – Action points and progress

7. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

8. The Board noted the forward agenda list. There may be scope to run a pre-Board meeting discussion on professional indemnity insurance immediately before the October meeting. The Part 2 agenda will include an item on that topic.

**BSB
Members
to note**

9. The Chair advised that the new lay members due to join the Board from January 2017 will be invited to the Away Day on 15 December 2016.

**JP to
note**

Item 7 – Annual Report of the Governance, Risk and Audit (GRA) Committee to the Board

BSB 061 (16)

10. Isobel Leaviss presented her Annual report for the period July 2015 - June 2016. This included her assurance statement to the Board which confirmed her opinion that the enforcement system continues to operate in line with the BSB's Enforcement Strategy and in accordance with its policies and procedures.
11. She commented as follows:
- this is her last 12-month report as her contract with the BSB finishes at the end of the year. She will, however, produce a further 6-month report for the GRA Committee in December 2016. *Note: this might also be presented to the Board at its January 2017 meeting;*
 - there had been a lapse in monitoring E&D data for the BSB Board and Committee members and ensuring that new members were undertaking E&D induction training. Both matters are currently being addressed. It had taken considerable time for the BSB to respond to the IO's enquiries and ascertain the position. Responsibilities at senior management team level have since been clarified;
 - website information on the enforcement process has recently been updated and is now much clearer. Notwithstanding this, the BSB's website overall remains very text heavy so there is still scope for further improvement to increase clarity and accessibility. A re-vamped and more

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user friendly website would encourage “self-service” on the part of both barristers and complainants to obtain the information they need. The IO encouraged the Board to ensure that the BSB website project planned for next year received adequate resourcing;

- one reason for delays for some long running cases is the time taken for court transcripts to arrive. Departmental staff do proactively chase up their requests but the IO suggested that the BSB, as a regulator, might be able to use its influence to expedite requests, particularly for the highest risk cases;
- the litigation register has now been updated in line with her earlier recommendation. The IO suggested that as part of the governance review, consideration should be given to how best to achieve appropriate non-executive oversight of high risk cases, including but not restricted to those involving litigation.

12. Members thanked Isobel for her informative report and her thorough approach. The following comments were made:

- the hiatus on E&D data monitoring may reflect an earlier decision to defer monitoring activity pending the outcome of an internal restructure;
- we should also consider the storage of data as well as its collection. E&D returns originally retained by the Bar Council have been mislaid. In addition, accurate records were not kept on attendance of Board Members at E&D training days;
- court transcripts are often difficult and costly to obtain. We should avoid seeking these unless absolutely necessary;
- It would be helpful to know more about the services complaints mentioned in the GRA Annual Report. Most of these relate to the Professional Conduct Department and it would be useful to understand what lessons have been learned.

13. In response, the following comments were made:

- the issues regarding equality and diversity data storage are acknowledged. This has already been raised with Information Services and improvements have been instigated;
- there are no discernible themes regarding service complaints. Some improvements to signposting and written communication have been implemented as a result but, in many instances, the service complaint is used as an alternative means to appeal against a regulatory decision.

14. **AGREED**

- a) to note the content of the GRA Committee’s report.
- b) to receive the Committee’s assurance on the Independent Observer’s annual report and to request this is published together with her Assurance Statement, on the BSB website.

VC

Item 8 – Planning, Resources & Performance Committee Report for Q1 (April 2016 – June 2016)

BSB 062 (16)

15. Anne Wright highlighted the following:

- notwithstanding the date of the Board meeting, the report relates to performance achieved in Quarter 1 ie April – June 2016;
- the dashboard at Annex 1 shows that most business objectives are currently on target, though some are marked as “amber”;
- income projections are 4% below budget but expenditure remains on target given the close controls in place;

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- high staff turnover remains a concern. The overall figure is 34%, though the voluntary rate is lower at 17%;
 - the Professional Conduct Department KPIs results for the quarter are good with just one Operational Performance Indicator slightly below target.
16. She also commented as follows:
- it would be useful to know if items marked amber in Quarter 1 have been addressed in the interim;
 - the analysis and review of the consultation on Future Bar Training will take place in Q4 (not Q3 as stated in the Business Plan);
 - the introduction of performance related pay appears to have been accurately assessed in terms of budget planning;
 - there has been a loss of some programme management capability as regards the Future Bar Training programme. This is reflected in the “amber” status of that project in the dashboard;
 - the Bar Council did not achieve its income target in terms of receipts from the Practising Certificate Fee (PCF). The BSB therefore faces a challenge in making up the shortfall of £60k (though unbudgeted income arising from the continuation of the Bar Course Aptitude Test will offset this amount somewhat).
17. Malcolm Cohen asked about the impact of our commitment to meet part of the PCF shortfall. He was concerned about the subsequent effect on the BSB’s Business Plan objectives.
18. In response to the above points, Vanessa Davies commented as follows:
- the items marked amber on the dashboard should largely revert to “green” status by the end of Quarter 3;
 - funding remains tight and a detailed half year financial review will take place at the end of Quarter 2;
 - none of the Business Plan objectives are expected to be seriously delayed as a result of adjusting finances to make up the £60k shortfall ie none are expected to go “red” on the dashboard.
19. **AGREED**
to note the report.

Item 9 – Future Bar Training – Continuing Professional Development Consultation Report

BSB 063 (16)

20. Bernard MacGregor highlighted the following:
- the consultation document focused on the technical administration of the new scheme, rather than issues of principle;
 - the new scheme is less prescriptive and more flexible than the one it replaces. This has been broadly welcomed by the profession;
 - the Board is asked to formally approve the rule changes set out in Annex 2 of the report.
 - a communication and engagement plan has been devised. This identifies a number of events (eg roadshows, webinars, advice surgeries) to increase awareness of the new scheme and how it will apply in practice.
 - subject to LSB approval, the scheme will come into force with effect from 1 January 2017.

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21. Vanessa Davies stated that the BSB had worked closely with some of the Specialist Bar Associations (SBAs) and had developed model plans / templates which could be used in the roadshows. Board members, particularly barristers, are welcome to attend these (dates and locations available via the [website](#)).
22. Members commented as follows:
- the report is useful and clear and we should proceed with the rule changes;
 - notwithstanding this, there is a risk that barristers will simply view the new scheme as a “paper exercise” without due regard to planning or reflection, particularly if we over-rely on SBA templates;
 - we should make the link between this form of CPD and career counselling initiatives that already occur in some Chambers. With this in mind, we should target the Institute of Barristers Clerks, Heads of Chambers and Chief Clerks for the roadshows;
 - the “reflection” element is not just about deciding whether objectives have been completed. It is also an opportunity to critically reflect on whether work patterns should change for the future or if any additional skills should be developed. This can be challenging and we need to have clear guidance available to support the barristers concerned;
 - the roadshows need to de-mystify the concept of CPD. In many instances, activity that barristers already undertake would qualify as CPD.
23. **AGREED**
- a) to note the report on the CPD consultation document.
 - b) to approve the updates rules and guidance and to proceed with an application to the LSB (subject to further minor drafting edits, and improvements to the associated guidance material).
 - c) to note the communication and engagement plan.

BM

Item 10 – Equality Rules: Shared Parental Leave

BSB 064 (16)

24. Ewen Macleod commented as follows:
- the report has been drafted in response to a formal request from the Bar Council under the protocol for regulatory independence to review our equality rules. These need to reflect recent statutory changes in relation to shared parental leave (SPL);
 - a Task Completion Group has been established and has identified possible changes to the rules as well as the potential implications of these;
 - the aim is now to prepare a targeted consultation document on proposed changes with a view to preparing a formal recommendation to the Board once feedback has been collated.
25. **AGREED**
- a) to note the summary of the issues as set out in the report.
 - b) to consult on possible changes to the equality rules to permit shared parental leave in Chambers.

EM / AP

Item 11 – Chair’s Report on Visits and Meetings: July – September 2016

BSB 065 (16)

26. **AGREED**
to note the report.

Item 12 – Director General’s Report

BSB 066 (16)

27. Vanessa Davies highlighted the following:
- the implementation of “Work Smart” is underway meaning many staff members are now working at home for one or more days a week. Ultimately this will reduce the space requirements for any future office move;
 - Amanda Thompson, the Director for Governance Reform, leaves the BSB on 7 October 2016. She has greatly contributed to the strategic development of the BSB and will be much missed.
28. The Board joined the Chair in thanking Amanda and wished her the very best for the future.
29. Malcolm Cohen and Justine Davidge referred to the workshops on the Youth Proceedings Advocacy Review (cf. paragraph 46 of the report). Both considered these to be well run and very informative and offered their congratulations to the staff involved.
30. The Chair discussed the outcome of the International Conference of Legal Regulators (cf. paragraph 5 of the report). Board Members are welcome to see the conference papers and should contact Vanessa Davies if they so wish.

**BSB
Members
to note****Item 13 – Schedule of Board Meetings: January 2017 – March 2018**

BSB 067 (16)

31. **AGREED**
to approve the schedule of Board meetings for the period January 2017 – March 2018 as set out in the report.

Item 14 – Any Other Business

32. None.

Item 15 – Date of next meeting

33. Thursday 27 October 2016.

Item 16 – Private Session

34. The following motion, proposed by the Chair and duly seconded, was agreed:
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) BSB Assurance Framework;
 - (5) Corporate Risk Register;
 - (6) APEX recruitment guide;
 - (7) LSB: “A vision for legislative reform of the regulatory framework for legal services in England and Wales” – Sept 2016;
 - (8) Any other private business;
 - (9) Review of the Board meeting in terms of conduct and outcomes.
35. The meeting finished at 5.25 pm.