

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 26 November 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair)
Rob Behrens
Aidan Christie QC
Malcolm Cohen
Justine Davidge – items 7-15
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
Adam Solomon – items 9-15
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)
Judith Farbey QC (prospective Board Member)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Chloe Dickinson (Governance Support Officer) – items 1- 10
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)
Natasha Williams (Business Support Officer)
Angela Yin (Communications and Press Officer)
- Press:** Nick Hilborne (Legal Futures)
Chloe Smith (Law Society Gazette)

Note: Emily Windsor (Special Adviser) was not present for Part 1 of the agenda but did attend for some of Part 2.

Item 1 – Welcome

1. The Chair welcomed members and guests to the meeting, in particular Judith Farbey QC who will formally join the Board on 1 January 2016. He also paid tribute to the very significant contribution of two Members who are retiring from the Board at the end of the year after six years of service ie:
 - Patricia Robertson QC, and
 - Sam Stein QC.
2. He reminded Members that a formal thank you dinner for all of this year's departing Board Members and Special Advisers will take place subsequent to the Board Away Day on 17 December 2015.

Item 2 – Apologies

3.
 - Rolande Anderson;
 - Naomi Ellenbogen QC;
 - Sam Stein QC;
 - Matthew Nicklin QC (Special Adviser);
 - Alistair MacDonald QC (Chairman, Bar Council);
 - Chantal-Aimée Doerries QC (Bar Council Vice Chairman);
 - Lorinda Long (Treasurer, Bar Council);
 - James Wakefield (Director, COIC);
 - Sara Jagger (Director of Professional Conduct);
 - Andrew Lamberti (Communications Manager).

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 22 October 2015.

Item 5 – Matters Arising

6. None.

Item 6a – Action points and progress**Action points and progress (Annex B)**

7. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

8. The Board noted the forward agenda list.

Item 7 – PRP Committee Report for Q2 (July 2015-September 2015)

BSB 091 (15)

9. Anne Wright highlighted the salient points of the report ie:
 - income received remains well below the budgeted target (-24%);
 - expenditure is slightly below budget. This compares favourably with the same point of the previous year;
 - 11 business plan objectives are currently off target but most are within the control of the BSB and are likely to be completed at least by the end of the year. Even so, we may need to look still more closely at our forecasting methods;
 - the original timeline for the immigration thematic review has been changed. This followed feedback from a roundtable event with stakeholders (July 2015) where the need for a revised approach became apparent;
 - the Finance Committee has now approved the 2016/17 budget;
 - the performance indicators (PIs) for the Professional Conduct Department have improved now due to the conclusion of several long running cases and a return to full staffing in the Assessments Team;
 - staff turnover rates remain high but the PRP Committee has been encouraged by the response to this and other issues contained in the HR Operating Plan.
10. Malcolm Cohen commented that the shortfalls in budgeted income are especially acute in entity regulation (-95%). Notwithstanding the initial developmental costs, he suggested we need to monitor ongoing costs closely as we need to be able to justify our continued financial input for this service.

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11. In response the following comments were made:
- high staff turnover rates are a common problem for all regulators. This was recently borne out from widespread comments on this issue at a meeting of regulators hosted by the Committee for Standards in Public Life (24 November);
 - the figures quoted in the report overstate the position as they record all leavers including short term contracts / maternity. When these exceptional factors are discounted the figure is 19% (compared to a sector average of 14%);
 - the BSB's senior management team has discussed staff turnover at length and will re-assess recruitment procedures to see if these can be improved;
 - forecast income from entity regulation has been scaled back for next year's budget. There remains a fundamental question of policy as to the minimum level of staffing we need to have to meet requirements for entity regulation applications. However, the job descriptions of the staff concerned are flexible to allow re-deployment to the Supervision Department if required.
12. **AGREED**
to note the report.
- Item 8 – Fees and Charges - consultation**
BSB 092 (15)
13. Viki Calais highlighted the following:
- Part A of the draft consultation document sets out the general principles for the BSB's fees and charges. This includes "full cost recovery", which the Board has previously discussed;
 - Part B comments on the impact of full cost recovery on fees for applications made to the Qualifications Committee and it would be helpful to have Members' views on this section in particular;
 - the consultation is due to be issued on 7 December 2015 with a closing date of 15 February 2016. The aim is to have a new fee structure in place as from 1 April 2016.
14. Members commented as follows:
- we must additionally survey service users (past and present) on what the consequential impact on behaviour would be if we moved to a full cost recovery model. Without this the consultation looks too theoretical and does not indicate how sound our projected costings would be;
 - paragraph 6.2.6 refers "blanket increases" and quotes very high percentage rate rises. This needs greater explanatory detail to give a fuller and more accurate picture. Without this, there is a risk that the responses we receive will not be sufficiently informed to be helpful;
 - we need to articulate the pros and cons of this approach in terms of budgeting and the call on the PCF;
 - the section on fee waivers (5.7) is unsatisfactory as currently drafted. The following points are relevant:
 - ❖ it is much too brief and too leading in its tone (particularly the last paragraph);
 - ❖ it does not clearly define what is meant by "injustice" or "hardship";
 - ❖ the questions posed are longer than the narrative and, as worded, might elicit just yes / no answers;
 - ❖ the questions do not address the issue of whether we should have waivers and, if so, what for?
 - ❖ it states that there could be a "small" increase to the PCF if they were funded by the profession but it is not clear why it would be "small" what would limit the potential rise;

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- there is too little time between the consultation response deadline and the date for introduction. An April start date may be unrealistic.
15. The Chair asked if the BSB is obliged under E&D legislation to subsidise waiver applications from those based outside the UK. In response, the following points were made:
- we need to consider the impact of our proposals in terms of E&D. That said, a decision that could result in a negative impact might still be made if outweighed by other related factors that justified the course of action;
 - we should be conscious of the fact that any subsidy we offer will need to be paid for eventually as the overall cost will remain.
16. **AGREED**
- a) to note the draft consultation and to request that this is re-drafted to take account of the above comments. **VC**
 - b) to note the Planning, Resources and Performance Committee is also considering the consultation document for subsequent sign off by the Director General.
 - c) to ask that the proposed timetable be monitored and adjusted if required, given the short timeframe between the consultation deadline and the proposed implementation date. **VC to note**

Item 9 – Governance Review Update and Revised Standing Orders

BSB 093 (15)

17. Amanda Thompson highlighted the following:
- work on other aspects of the governance review is underway. This includes:
 - ❖ development of the assurance framework;
 - ❖ establishment of the Advisory Pool / Panel of Experts (“APEX”);
 - ❖ the use of Task Completion Groups;
 - the proposed Standing Orders are an interim measure to take effect from 1 January 2016. They reflect earlier decisions by the Board to disestablish a number of its committees;
 - the Standing Orders will be further revised once the latter stages of the governance review have been finalised next year;
 - the scheme of delegation will need to be amended as a result of the new Standing Orders. In the absence of a formal Board meeting in December, the Chair should be authorised to sign off the changes.
18. Members commented as follows:
- it would be helpful to know the timetable for APEX implementation and the fee structure involved;
 - the Terms of Reference for the remaining committees will need amendment but it is not clear when this will occur.
19. In response, the following comments were made:
- we are currently identifying the skill requirements for APEX and there is insufficient time for an open procurement process to take place in time for January 2016. In consequence, we shall implement a transitional arrangement using transfers from the existing committee structure. A fee structure has yet to be decided;
 - proposals should be sufficiently advanced for discussion in time for the February Board with a view to recruitment during Spring and early Summer 2016;
 - the committee Terms of Reference will be updated in early Autumn 2016 at the same time that the Standing Orders are further revised.

20. **AGREED**
- a) to approve the revised Standing Orders as set out in Annex 1 of the report. **AT to note**
 - b) that the revised Standing Orders come into force on 1 January 2016. **note**
 - c) that the Professional Conduct and Qualification Committees have no responsibility for policy making in those areas ie that responsibility for this lies with the Board or Executive as appropriate but that the committees retain their role in relation to individual case decisions. **JD / SJ to note**
 - d) to establish two new roles in the current financial year to support the changes in education and training ie: **STW**
 - a “Visitor” to hear challenges against Centralised Examination policy and procedures;
 - an increased role for the Independent Observer to the Centralised Examination Board.
 - e) to delegate sign off of the details and appointment of the “Visitor” role to the Chair of the Board. **SAB to note**
 - f) that the Chair of the Board be awarded delegated authority to sign an amended scheme of delegations to underpin the revised Standing Orders. **SAB**
 - g) that the Executive make consequential amendments to the Declaration of Interests and Gifts and Hospitality policies. **AT / CD**
 - h) to note the updates on other aspects of the governance review implementation.

Item 10 – Bar Council Standing Orders – proposed amendments

BSB 094 (15)

21. The Board considered proposed amendments to establish a separate set of Standing Orders for those bodies on which the Bar Council and Bar Standards Board are jointly represented ie Chairmen’s Committee, Emoluments Committee, Finance Committee, Budget Review Group and Audit Committee.
22. Amanda Thompson referred to the proposed membership of the Emoluments Committee sub-group. The BSB representative in this case is one lay member of the Emoluments Committee nominated by the Chair of the BSB and agreed by both the Chair of the BSB and the Bar Council. This person at present also happens to be a BSB Board member. It may be advisable that all future BSB representatives on the Emoluments Committee are also BSB Board Members.

23. **AGREED**
- to approve the proposed new Bar Council Standing Orders. **AT to note**
- Note: assuming the proposed Standing Orders are approved at the Bar Council in January 2016, they will take effect immediately thereafter.*

Item 11 – Chair’s Report on Visits and Meetings (Oct-Nov 15)

BSB 095 (15)

24. The Board received the Chair’s Report on visits and meetings (Oct- Nov 15).

25. **AGREED**
- to note the report.

Item 12 – Director General’s Report

BSB 096 (15)

26. Vanessa Davies commented as follows:
- the meeting on “ethics for regulators” organised by the Committee on Standards in Public Life (24 November 2015) was helpful. A report on the outcome will be circulated to Members in due course;

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- the Cross-Cultural Communication event referred to in paragraph 19 of the report will take place on 12 January 2016 at the Royal College of Surgeons. Board Members are invited to attend;
- more responses to the consultation on Future Bar Training have been received bringing the total to 66. It is gratifying that stakeholders have responded in such a comprehensive and diligent manner. A summary of the responses will be presented to the BSB meeting in January 2016.

27. **AGREED**
to note the report.

Item 13 – Any Other Business

Proposal to change the regulation on maximum completion time for the Bar Professional Training Course (BPTC)

28. Vanessa Davies advised that since the dispatch of Board agenda papers, a further item had arisen requiring the Board's ratification. This concerns a proposed change to the regulation of the maximum completion time for the BPTC. The effect of the recommendation is:
- to harmonise the maximum period for completion of the course for full-time and part-time students to three years beyond the anticipated completion date in each case, and
 - to allow the BSB discretion to allow students to proceed to one further sit beyond the maximum time limit where they have documented mitigating circumstances that have been accepted by their BPTC provider.

She advised that a paper (BSB Paper 102 (15)) will be mailed out to Members for their comment in the immediate future.

***Post meeting note:** the above paper was emailed to Members on 30 November 2015. A majority approved the recommendation (12 in favour – 6 barrister members; 6 lay members). No member voted against.*

Item 14 – Date of next meeting

29. • Thursday 17 December 2015 (Board Away Day).
• Thursday 28 January 2016 (Board meeting).

Item 15 – Private Session

30. 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:
 - Youth Proceedings Advocacy Review – update from Task & Finish Group;
 - Feedback of meeting with BMIF;
 - (3) Action points and progress – Part 2;
 - (4) Future of the Bar Course Aptitude Test;
 - (5) Corporate Risk Report;
 - (6) BSB response to MoJ Consultation: *Preserving and Enhancing the Quality of Criminal Advocacy*;
 - (7) BSB email addresses;
 - (8) Quality Mark scheme for the planned revised CPD scheme for the Bar;
 - (9) Any other private business.

The meeting finished at 5.25 pm.