

Bar Standards Board - Director General's operational report – 25 October 2018

Director General

1. Work was completed on a pilot scheme to grant waiver from the duty to report serious misconduct for those barristers who seek to give advice and support to others who may have been the victims of harassment. The arrangements have been announced on our website and communicated to the profession. The development of the pilot follows on from the round table with stakeholders held in July.

Future Bar Training programme

New Qualification Rules

2. Following the closure of the rules consultation, the Education and Training Committee has considered responses and the minor drafting changes resulting from these. This month, the Board will also consider a substantive item to approve the new rules on this basis. The executive will be sharing a draft rule change application with the LSB prior to submitting a final version.

MoU with COIC and the Inns of Court

3. Following receipt of further information from COIC, the BSB has circulated a further draft of the MoU and Data Sharing Protocol with details to be finalised before the scheduled completion in December this year. The executive is planning to bring the MoU to the Board at the November meeting.

Authorisation Framework ("AF")

4. A streamlined version of the AF, consolidating it and the separate WBL / vocational evidence documents into a single source, was approved by the Education and Training Committee in September. One of the key changes is the replacement of the reference to "Recommended" criteria with the requirement for applicants to instead "Comply or Explain" with particular criteria. We believe this more easily accommodates complexity and size of potential applicants.
5. Work is well underway to develop a risk-based and proportionate decision-making framework from this "grounding" document setting out how a prospective AETO can meet the requirements for authorisation.
6. A settled version of the AF will be published over the next few weeks.

Authorisation Process

7. Work on implementation continues. A design workshop was held in late September where functional requirements for an automated end-to-end application and assessment system were agreed. A timeline for the technical and development phases has been set out and work is ongoing with the Programme Management Office to deliver to the plan.

Authorisation of AETOs providing pupillage / work-based learning

8. All organisations, including all chambers and BSB entities, and other existing Pupillage Training Organisations, have been asked whether they wish to offer/continue to offer pupillage. The deadline for responding was the end of September and, as expected, the response rate is low. We are currently planning how to ensure we get the data sought.

Pupillage – adoption of the Professional Statement

9. Visits are underway with the second wave of the pilot participants, including chambers that are located outside of London.

Regulatory Operations Programme

Centralised Assessment Team (CAT) Project

10. We undertook a series of workshops with assessors from PCD and Supervision, in preparation for user testing the new CAT end-to-end assessment process. Information and feedback from the three weeks of testing has been collated and is being considered for consistency. Where there are significant differences in assessment, we are looking at how we can enhance the guidance to improve consistency.
11. The Project Team and Project Board are reviewing the capacity and capability the CAT Team will require.
12. Our approach to accessibility, recognising the potential diversity of people who may contact the BSB through CAT, has been reviewed with the support of APEX. The Project Team has also begun drafting pro-formas which will be used where appropriate in communications with users.

CMA Programme

13. The programme is progressing to time and budget.
14. Our progress report to the LSB has been well received and the LSB congratulated us on the significant progress that has been achieved in relation to the recommendations made by the CMA.

Transparency Project

15. We issued a transparency rule change consultation in mid-September, alongside detailed guidance and worked examples in specific areas of law to help respondents to the consultation understand the nature of the transparency rules we are proposing. We are now undertaking a programme of engagement to encourage responses to the consultation. We are also working on the necessary updates to the BSB's Public Access guidance and model client care letters to reflect the new transparency rules.
16. A supervision programme to test compliance by the profession (from 2020, allowing for a period of bedding-in) has been developed.

Strategy & Policy

17. In September, the Policy Team received over 110 calls and e-mails to the Professional Standards Helpline. This brings the total number of queries this year to date to approximately 860.

Public Access Training Review

18. The development of a revised set of required outcomes for the Public Access training is complete, and an invitation to tender was issued in early October. This allows existing training providers to demonstrate how they intend to revise their current Public Access training to reflect the revised training outcomes. Any prospective new training providers are also able to demonstrate how their Public Access training proposal reflects the revised training outcomes. The tender will close in late November, following which contracts for the revised Public Access training will be awarded ready for January 2019 (the current training provider contracts expire at the end of December).

Scope of practice review

19. We have continued our assessment of the risks which will inform our review of the scope of practice controls we currently have in place. We will shortly begin work to develop new controls, which will be informed by the organisation's tolerance to each risk and the level of risk it presents to the client.

Immigration Guidance for professional clients

20. We have published Immigration Guidance aimed at professional clients of barristers and advisors regulated by the Office of Immigration Services Commissioner (OISC) to provide them with useful information when instructing immigration barristers. It was developed in collaboration with the Solicitors Regulation Authority (SRA) and OISC.
21. The guidance was published in response to the recommendations of the Immigration Thematic Review. The review identified three key risks in the way that the market for immigration legal services operates: access to justice, poorly informed consumers, and the quality of advice and standards of service.

Equality and Access to Justice

22. The LSB Assessment against revised diversity outcomes – August 2018 report has been submitted. Our evidence of E&D activities delivered included the completion of twenty-one EIAs and the creation of the BSB Equality and Access to Justice Programme Board.
23. The Head of Equality and Access to Justice has met with the Bar Council to consider a multi stakeholder Transgender Data Protocol. It was agreed that the BSB would support the development of a protocol that balanced the need for individual privacy and regulatory continuity.
24. Analysis of the responses to the Sexual Orientation and Religion and Belief consultation is nearing conclusion and has included a review by the E&D Barrister APEX advisor. Outcomes of the consultation are to be presented at the Board in the new year.
25. The Head of Equality and Access to Justice has reviewed the Bar Council Fair Recruitment Guide.
26. The review has been shared with the FBT advertising and recruitment project team, this will subsequently feed into our E&D collaborations with the Bar Council.

Regulatory Risk

Development of the consultation paper for the Outlook and Strategic Plan

27. The Regulatory Risk Team has contributed to the consultation document for the new BSB Risk Outlook and Strategic Plan.

Risk Reporting

28. The SMT discussed the 2nd consolidated Risk Report in October. The focus of attention for this report is on the highest priority risks, which are feeding into the Risk Outlook 2019, and the application and implications of the Board's appetite setting. The GRA Committee will discuss the report at its October meeting.

Cross – Regulators Risk Forum

29. The cross-regulator's risk forum is now fully bedded in and September saw the first meeting chaired by a regulator other than the BSB. Organised by the SRA, there was interesting and useful discussion on several issues, including discussion on each regulator's approach to the regulatory objective "Increasing public understanding of the citizen's legal rights and duties", and how they measure and monitor risks of individuals and entities, and the assignment of risk rating. The next meeting will be held in December and will be chaired by the CLC.

Research

30. We have published two reports to inform our work in response to the recommendations of the CMA on transparency. The first was a review of the transparency pilots conducted from November 2017 to February 2018. The second is the work undertaken by YouGov and London Economics consisting of qualitative focus groups with barrister's clients alongside a quantitative online experiment with a representative sample of the general public.
31. We have been working with the Risk Team to strengthen the evidence base for the Regulatory Risk Register, alongside preliminary evidence-gathering for the next version of the Risk Outlook. A new version of the Risk Register has been produced which includes a detailed evaluation of the evidence for each risk, and a summary of evidence has been produced for each of the three themes of the Risk Outlook.
32. We have evaluated responses to the Invitation to Tender for the Future Bar Training evaluation and have appointed AlphaPlus to carry out the first two stages of the evaluation, covering a review of the programme objectives and current context, and the design of a process and impact evaluation. Work is due to start in November.
33. Works continues on the CPD evaluation, including an in-depth analysis of qualitative information within the sample of CPD records marked as 'non-compliant'. The final stages of the evaluation - to understand barristers' perceptions and experiences of the new scheme - will be next.
34. Research on the recruitment and advertising of Pupillage has been completed, covering analysis of pupillage selection criteria at the application and interview stages, and the analysis of pupillage advertisements. The report is currently out for Peer Review, with publication expected late October/early November.

Professional Conduct Department

Performance against KPI – Quarter 2

35. Performance in Q2 exceeded the corporate target: performance against the corporate KPI (80% of cases completed within the service standards) was 82.4% in Q2.

Staffing

36. The PCD is currently recruiting for two Senior Case Officers and a Case Officer to fill two permanent and one temporary vacant posts within the department.

Regulatory Operations Programme – Independent Decision-Making Body (IDB)

37. We have continued to hold monthly pilot meetings, moving in September and October to holding 5-person panels. The aim of these pilots is to test aspects of the system and fine-tune the process in advance of implementation of the new regulatory decision-making structure on 1 June 2019. We have gathered in-depth feedback from pilot volunteers and are currently using this to plan the non-executive training schedule.

Training

38. On 2 October the Communications and Public Engagement Team provided PCD staff with a short training session on the operation of social media sites such as Twitter and LinkedIn. The aim of this session was to equip staff to conduct a more thorough assessment and develop their understanding of the context of complaints involving social media. We are also in the process of planning a series of three drafting training sessions delivered by an external provider.
39. On 4-5 October the Director of Professional Conduct attended the 7th International Conference of Legal Regulators, hosted by the Netherlands Bar and supported by the ICLR community. This was an important opportunity to forge stronger links with other regulators in the field.

Regulatory Assurance Department

CPD

40. We have continued to write to barristers selected for the spot check, to report outcomes. A report will be presented to the Board in November.

Anti-Money Laundering and Counter Terrorist Financing

41. The [Office for Professional Body Anti-Money Laundering Supervision](#) (OPBAS) is due to carry out a supervision visit to the BSB on 23-24 October 2018. They will be assessing us against the criteria set out in the OPBAS [Sourcebook](#). We have provided information about our policies and processes in advance of the visit and they will be interviewing a range of staff in Regulatory Assurance, Professional Conduct and Professional Standards.
42. Under regulation [51\(1\) of the Money Laundering Regulations](#) we are required to provide an annual supervision return to HM Treasury. We are currently compiling the information for the 2018 return.
43. The Mutual Evaluation Peer Review of the UK is being considered by the Financial Action Taskforce this week.

44. We have recently secured access to the Financial Conduct Authority's Shared Intelligence Service system (SIS) on a trial basis. SIS allows regulators and law enforcement agencies to share intelligence about firms and individuals, which is a requirement under the [Money Laundering Regulations](#). 28 organisations currently use SIS, including the SRA and other AML Supervisors. We will be considering whether this is the best way for the BSB to securely and appropriately share information.
45. The Supervision team has been conducting AML training for BSB staff.

Authorisations

46. The Authorisations Review Panel (ARP) will next meet on 17 October to consider three applications for review. Transitional arrangements for the Independent Decision-making Body (IDB) are now in place and the panel will be working with these at the next meeting.
47. Since the September report, the APEX advisor has been consulted on one occasion. The team has contacted the advisor a total of nine times since initial appointment in September 2017.
48. The team has a strategy in place for the new authorisations framework and the authorisation of Approved Education and Training Providers (AETOs). The team is currently collating data, received via a survey, which was completed in September. Those Pupillage Training Organisations authorised under the current framework will be prioritised and re-authorised under the new framework, with no impact on their provision.
49. The team has exceeded its KPIs for the second quarter.
50. Online applications continue to be a success, the team is working with IS to develop the online portal and links to MyBar.

Assuring the competence of barristers

51. We have continued to meet key stakeholders to discuss opportunities for working together, in line with our stakeholder engagement plan. Conversations are beginning to drill down into operational detail, considering the information each stakeholder has and how it may best be used by the BSB.
52. The video for young people has been approved internally and will shortly be published.
53. We participated in the inaugural meeting of the Ministry of Justice's quality of advocacy working group on 10 October. We are in the process of clarifying what form our future involvement in this group will take.

Training Supervision and Examinations

54. The subject boards for all three examinations taken in the summer have been held; the final board will take place on 18 October and results will be released the following week. The Chair's report for the spring assessments was published last month: the headlines were that 68.9% of candidates passed Professional Ethics, 66.9% of candidates passed Civil Litigation and 76.9% of candidates passed Criminal Litigation.

Communications and Stakeholder Engagement

55. Since this report was last prepared for the September Board, the following press releases and news announcements have been issued:

- 20 September: a barrister ordered to be disbarred following criminal convictions;
- 24 September: recruitment notice for up to two barrister board members;
- 28 September: publication of Enforcement Annual Report;
- 8 October: invitation to tender for providers to deliver Public Access training; and
- 11 October: publication of new guidance for professional clients when instructing immigration barristers.

Work in Progress

56. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:

- consultation on the new BSB Strategic Plan;
- announcement about our new statutory powers of intervention; and
- guidance about non-disclosure agreements and harassment.

57. The team is also working on the following projects:

- implementation of the agreed tactical communications plan to raise awareness about FBT and, subject to LSB approval, the introduction of new Bar training rules;
- communications input into the draft of the new BSB Strategic Plan and the next BSB Risk Outlook;
- developing the BSB website; and
- reviewing the Communications and Public Engagement Strategy for consideration at the November Board meeting.

58. The team is planning a number of Public Engagement events over the autumn. These include:

- attendance and presentations about FBT at two pupillage fairs in October and November;
- a series of FBT roadshows in the Circuits focussing on pupillage rule changes;
- the BSB session at the Bar Conference, also focussing on pupillage rule changes; and
- a roundtable event for selected stakeholders to share evidence and views on three of our planned priorities for the next BSB Strategic Plan.

Online and social media

59. During September, 28,239 users visited the BSB website. At the time of writing, we have 20,434 followers on Twitter, 3,198 followers on LinkedIn and 546 followers on Facebook.

Corporate Services

Governance

60. Following Board discussions on its own effectiveness, which included a Board evaluation exercise, we will move to a reduced number of Board meetings in 2019. We will continue to comply with the requirement in BSB Standing Orders that the Board meet at least six times in a 12 month period.

61. We are in the midst of recruiting for a barrister Board member, to replace the vacancy that arises when Justine Davidge concludes her second term at the end of the year. Applications will close on 22 October, with interviews scheduled for mid-November.
62. Twenty-seven requests for engagement of members of our Advisory Pool of Experts by our staff have been made during 2018. One request was declined by two members due to their other commitments and completed by a suitably qualified member of the Board. All other requests have been accepted, including one where the member was not available and then nominated a suitably qualified substitute to undertake the work (as permitted by our contractual arrangements).

Corporate Support

63. Work has continued with the Regulatory Risk team on developing the next consolidated risk report, trying to better demonstrate and evidence the complex interplay between regulatory and corporate risk.
64. Fee charging principles and financial modelling work on FBT charging proposals has been completed and will be considered by the PRP committee before going for consultation in November.
65. The team has been completing the in-year reforecasting exercise, working with budget holders across the BSB and with colleagues from the Resources Group Finance Department to produce a revised year end forecast. At the same time, further detailed consideration has been given to the 2019/20 budget.

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