

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 22 May 2014, Room 1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present	<p>Patricia Robertson QC (Acting Chair) Rolande Anderson Malcolm Cohen Ruth Deech QC (Hon) Simon Lofthouse QC Tim Robinson Andrew Sanders Sam Stein QC – items 6-17 Richard Thompson – items 8-17 Anne Wright</p>
Attending by invitation	<p>Sarah Brown (Special Adviser) – items 8-17 James Wakefield (COIC representative) – items 1-12</p>
BSB Executive in attendance	<p>Jessica Bradford (Senior Policy Officer, E&D) Viki Calais (Business Manager) Andrew Cohen (Business Support Officer) Vanessa Davies (Director) Eugene Grant (Communications & Press Officer) Roger Hammond (Change Manager) Oliver Hanmer (Head of Supervision) Sara Jagger (Head of Professional Conduct) Stéphane Laurent (Regulatory Knowledge and Information Manager) Ewen Macleod (Head of Regulatory Policy) Chris Nichols (Supervision Policy Manager) John Picken (Board & Committees Officer) Robert Pragnell, (Senior Policy Officer, Regulatory Policy Dept) Amanda Thompson (Head of Strategy & Communications) Simon Thornton-Wood (Head of Education & Training)</p>
Bar Council Executive in attendance	<p>Stephen Crowne (Chief Executive, Bar Council) – items 1-12</p>
Observer	<p>Rachel Espinosa (Consultant)</p>
Press	<p>Catherine Baksi (Law Society Gazette) Nick Hilborne (Legal Futures)</p>

Item 1 – Welcome and introductions

1. Patricia Robertson QC welcomed members and guests to the meeting, in particular Rachel Espinosa who was attending as an observer at the invitation of the Director. She also congratulated Sara Jagger (née Down) on her recent marriage.

Item 2 – Apologies

2.
 - Rob Behrens;
 - Justine Davidge;
 - Sarah Clarke;
 - Emily Windsor (Special Adviser);
 - Nick Lavender QC (BC Chairman);
 - Mark Hatcher (Special Adviser to BC Chairman, Representation & Policy).

Note: Ben Denison (Chief Information Officer) attended Part 2 of the meeting for items 1-4.

Item 3 – Members’ interests and hospitality

3. The following declarations of hospitality accepted were made:
 - Vanessa Davies – dinner provided by Nottingham Bar School & Mess (2 May 2014)
 - Ewen Macleod – lunch provided by Lincoln’s Inn (22 May 2014)

Item 4 – Approval of Part 1 (public) minutes – 27 March 2014 (Annex A)

4. The Board approved Part 1 of the minutes of the meeting held on Thursday 27 March 2014.

Item 5 – Matters arising

5. Principles on disclosure (min 24f – 27/03/14)
There had been insufficient time at the April Away Day to develop a set of principles about disclosure ie whether an item should be considered in public or private session.

6. AGREED

to add an entry to the action list about formulation of a set of principles to decide whether an item is to be discussed in public or private session.

JP / AT**Item 6 – Action Points & Forward Agendas**Action points and progress (Annex B)

7. Amendments to the new Fitness to Practise Regulations (min 24b/c (26 Sept 13))
Whilst this action is complete, there was a change in approach agreed by the Entity Regulation Working Group. It decided not to extend the fitness to practise guidance in the way originally envisaged. Instead it will be for entities themselves to have responsibility for this and to take any necessary action.

JP to noteForward agendas (Annex C)

8. The Chair asked that the forward agenda list be amended to include the ABS application to the LSB (for the meeting on 18 September 2014).

JP to note

Item 7 – Proposed Equality Objectives 2014-15

BSB 028 (14)

9. The Board considered the proposed equality objectives for 2014-15 set out in paragraphs 16 and 17 of the report. It also noted the progress update for the 2013-14 equality objectives (Annex A). Most of these have been completed with just three listed as “in progress” and two as “incomplete” (objective 15 – increase the number of BME members on the Board & Committees and objective 19 – develop a workplace stress policy).
10. Members commented as follows:
- the first external objective (qualitative research into the underrepresentation of women at the Bar) proposes the use of focus groups. How these groups are formed and how truly representative they are, will influence the feedback received. It would be helpful to have some clarification about this;
 - the research we undertake will need to focus on regulatory objectives;
 - it is not clear if this research will encompass comparative earnings;
 - the Bar Council has a research plan of its own and there may be some elements of this which could inform the regulatory concerns highlighted in the report;
 - the third external objective for 2014-15 is to increase diversity data disclosure from the profession to 30%. It would be helpful to know what steps were being taken to achieve this target and when the Board will receive a progress report;
 - the first internal objective is to achieve a 100% return of diversity monitoring forms from current Board and Committee Members. As currently drafted, Annex B might give the erroneous impression that Board Members have not supplied this information in the past. In fact, e&d data in relation to Board Members has been collected at different times using different forms but is not currently held or up to date in all cases. Annex B should therefore be clarified before the papers are published on the BSB website to say that up to date data is not currently held rather than give the impression that Board members have refused to disclose the information. In addition, the main report should explain that this objective is primarily an update exercise to ensure a wholly consistent approach.
11. In response the following comments were made:
- the E&D Committee will rely on advice from the BSB’s Research Team to ensure that the focus groups used are properly representative;
 - the Bar Council’s research plan does not refer to comparative earnings. The BSB may need to return to this topic itself next year;
 - e&d data from the profession tends to be collected at the point when barristers re-new their practising certificates (though it can be provided at any time via the BarristerConnect portal);
 - to enable consistent year on year comparisons, reports on E&D data on the profession is based on data held in August of each year;
 - barristers may not be aware that they can update e&d date at any time. It would be opportune to issue a reminder in advance of August.
12. **AGREED**
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|----|---|----------------|
| a) | to transfer all completed and ongoing equality objectives from the current published list to an archive list. | JB |
| b) | to transfer responsibility for development of a workplace stress policy (objective 19) to the Bar Council’s Head of Equality. | JB |
| c) | to contact barristers with a reminder to update their e&d details via BarristerConnect. | SL / FM |

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|----|--|-------------------|
| d) | to approve the five new equality objectives as set out in paragraph 16 of the report subject to a proviso that the focus groups established are properly representative and have a regulatory focus. | JB to note |
| e) | that the E&D Committee considers the inclusion of research in comparative earnings at the Bar as part of next year's equality objectives. | SL to note |

Item 8 – Performance Report for Q4 and Year-End 2013-14 (April 2013-March 2014)

BSB 029 (14)

13. Anne Wright referred to the performance report for Q4 against the 2013-14 business plan. She highlighted the following:
- the report shows a good record of achievement including the delivery of the Handbook, progress on The Regulatory Improvement Programme and a successful conclusion to the SPACE project;
 - the performance indicators for the Professional Conduct Department have now largely returned to target levels. The dip in performance during Q2 and Q3 was due to overstretch of resources due to staff illness and increased workload arising from the development of the Handbook;
 - in overall terms, the year-end budget is underspent, though there are some significant variances in both income and expenditure against original budget figures.
14. She also commented on specific concerns raised by the PRP Committee ie
- the high staff turnover and low retention figures;
 - the delay in completing the fees and charges review;
 - the loss of income due to delays to the QASA and entity regulation programmes;
 - the high level of expenditure on legal advice and professional fees;
 - the need for realistic project timelines without any “optimism bias” and improved stakeholder management to minimise the risk of delays from external sources;
 - the need for better financial forecasting;
 - the need to consider annual performance in the context of the wider strategic plan and to assess whether sufficient progress has been made to meet longer term strategic objectives.
15. Members commented as follows:
- performance is related to management of risk. Whilst a risk framework is in place, this still needs a central point of co-ordination to ensure it is used effectively. With this in mind, it is a concern that a Regulatory Risk Manager has yet to be appointed;
 - it is not clear why research work on the Youth Court has been postponed as there is no obvious dependency on the outcome of the Judicial Review;
 - the high turnover figures are not unique to this year but are part of a continuing trend. We need to understand the reasons for this to determine whether or not this rate of loss is unavoidable.
16. In response, the following comments were made:
- the initial advertisement for a Regulatory Risk Manager met with a poor response. Since then, recruitment specialists have been engaged and interviews for the post will take place in early June 2014;
 - the challenge regarding research work on the Youth Court has been to achieve the engagement of other regulators and discussions are ongoing;

- the high staff turnover rate has been brought about by several factors ie:
 - ❖ the restructure brought about through TRIP;
 - ❖ the small size of the organisation and the limited opportunities for internal promotion;
 - ❖ base salary levels compared with other employers;
 - ❖ the use of short-term contract staff with particular skill sets necessary for delivery of the BSB's business and strategic plan;
- newly appointed staff have the appropriate skills for the way in which the BSB now regulates. Turnover is not expected to continue at the previous levels but will continue to be monitored by the PRP Committee.

17. **AGREED**

- a) to note the performance report and the conclusions / lessons learnt as set out in paragraph 20.
- b) to note the plans and risks for 2014-15 set out in paragraphs 23-26 of the report.
- c) to expedite research work regarding Youth Courts and to contact other regulators again on this point as a matter of urgency.

OH

Item 9 – Jeffrey Review on Advocacy – preliminary discussion points

BSB 030 (14)

18. The review of independent criminal advocacy in England and Wales by Sir Bill Jeffrey was published on 7 May 2014. Members considered a report about its content and conclusions. Chris Nichols highlighted the following:
 - many of the recommendations in the report reflect proposals included in the BSB's written submission;
 - we should respond positively to its publication and develop a public response and action plan for further consideration by the Board at its July meeting;
 - it would be helpful for two or three Board Members to assist in crafting the public response document.
19. Members commented as follows:
 - the report is welcome and has addressed the issue of criminal advocacy in a fair and balanced manner;
 - the report suggests that routes to advocacy might change with individuals specialising in this field later in their careers than at present. This runs the risk of attracting fewer, rather than more, criminal advocates purely on the grounds that remuneration for experienced lawyers is likely to be higher in other areas compared to criminal law;
 - it could be argued that there is a link between reductions in fees and reductions in quality but the report does not draw attention to this;
 - the letter to Sir Bill from Vanessa Davies (Annex B) points out the difficulties of enabling effective consumer choice in the way advocacy services are currently provided. This may be an area that the Bar Council will focus on in its public response to the report;
 - the action plan we produce will need to prioritise dialogue with the other regulators, principally the SRA, and set out the BSB's longer term vision of criminal advocacy regulation.

20. **AGREED**

- a) to welcome Sir Bill Jeffrey's report and to request that the Executive prepares an action plan and public response statement.

CN / VLD

- b) to request that Sam Stein QC, Justine Davidge and Richard Thompson provide input and oversight to the formulation of the public response statement.
- c) to note the policy implications for the BSB as set out in the covering report (paragraphs 16-28).

SS / JD /
RT / CN

Item 10 – Standing Orders amendment

BSB 031 (14)

21. Amanda Thompson commented as follows:
- the proposed amendment to the Standing Orders arises from the Board's discussion on governance at its April Away Day and its wish to see a more streamlined structure that is reflective of the objectives in the BSB's regulatory improvement programme;
 - the effect will be to extend the term of office to December 2015 for members reaching the end of either their first or second term in 2014;
 - recruitment of new committee members for 2015 will therefore be much reduced compared to previous years and will only occur if it is essential to fill a vacancy. Moreover, committee member appraisals for the purpose of recruitment can be suspended;
 - during this period, a review of the governance structure for the BSB will be undertaken. All committee members, regardless of the date of their appointment, will be informed of this and be advised that the outcome of the review could potentially affect their future length of engagement subject to a three month notice period.
22. Members commented as follows:
- the Professional Conduct Committee undertakes annual appraisals and the reasons for this are not wholly connected to recruitment. In consequence, there is no need to suspend appraisals for this Committee;
 - the proposal suggests that any offer of an extension must not be done more than once in any five year period. This seems unnecessary and should be removed;
 - it is not clear how terms of office will be re-calculated after the review has been completed;
 - if recruitment is necessary for 2015, then the individuals concerned will need to know the term of office expected;
 - some committees are already out of strict compliance with their complement requirements as stated in the current Standing Orders due to unfilled vacancies.
23. In response, the following comments were made:
- the intention is to only suspend appraisals that are primarily concerned with the recruitment process;
 - the post-review governance structure, and the amended Standing Orders, gives an opportunity to re-set future terms of office of members from the beginning;
 - members recruited in 2015 will be treated in the same way ie be advised that their appointment will last until December 2015 in the first instance but that, depending on the outcome of the governance review, they may (or may not) be offered a new term of office under the revised Standing Orders;
 - the ongoing review will need to re-examine the Terms of Reference and membership requirements of committees. Board member recruitment for 2015 is continuing and it may be possible that some committee vacancies will be filled from these new appointments.

24. **AGREED**
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|----|--|-------------------|
| a) | to amend the Standing Orders as recommended in the report subject to deletion of 9(d) (Annex 3) concerning the frequency of resolutions to offer extensions. | AT |
| b) | to advise all committee members about the governance review and to explain that it may result in an earlier termination of their term office than previously stated. | AT |
| c) | to retain annual appraisals for the Professional Conduct Committee but to suspend those for other committees for the duration of the governance review. | NZ to note |
| d) | that all BSB committee and sub-committee members reaching the end of either a first or second term in 2014 may be offered an extension of engagement until 31 December 2015. | AT |

Item 11 – Scheme of Delegations

BSB 032 (14)

25. The Board agreed changes to its scheme of delegations in private session at its meeting on 27 March 2014 but agreed to formally accept these in public session at this meeting.

26. AGREED

to formally note the scheme of delegations, as presented at the last meeting, and that these will now form the annex to the Governance Manual to be published on the BSB website.

CD to note

Item 12 – Duty to promote economic growth

BSB 033 (14)

27. Amanda Thompson commented as follows:

- the Department of Business, Innovation and Skills (BIS) is seeking to impose an additional duty on non-economic regulators like the BSB. This is to have regard to economic growth as a factor in their decision making and to be transparent and accountable for this;
- the reason is to ensure that regulation is proportionate and does not detrimentally affect business productivity. The duty is planned to come into force in April 2015 and a timetable leading up to this is set out in the report.

28. Members commented as follows:

- the BSB already has proportionality embedded in its regulatory objectives so we are, in effect, already meeting the requirements of any such a duty;
- there may more for the BSB to consider than first appears. The Terms of Reference of the Standards Committee refers to the issue of guidance on the interpretation of rules and regulations. The duty may impact here. Section 9 of the Department's draft guidance (practical interpretation of the duty) gives a wide remit for regulators to consider;
- an alternate view is that the duty is primarily concerned with the Government's "Better Regulation" agenda insofar as it seeks to remove unnecessary obstacles that might otherwise impede growth;
- it is not clear if, or how, our performance in meeting this duty will be measured. The LSB's current business plan does not refer to the growth duty though future iterations may do.

29. Vanessa Davies referred to a letter dated 18 May 2014 from Shailesh Vara MP about legal regulation. Among other points, this states that regulators should continue with efforts to reduce unnecessary administrative burdens on the regulated community. The growth duty from the BIS might therefore be regarded as part of a more general de-regulatory approach within Government.

30. **AGREED**

to note the timetable for implementation of the growth duty requirement as set out in the report.

Item 13 – Chair’s Report on Visits and Meetings: Apr 14 – May 14

BSB 034 (14)

31. Ruth Deech QC (Hon) commented as follows:

- she has cancelled her planned engagements with the Master of the Rolls as he will be hearing the QASA appeal in July;
- she had a useful and constructive meeting with Sir Michael Pitt (successor to David Edmonds as Chair of the LSB). There may be scope for a joint Board meeting with the LSB in the medium term.

32. **AGREED**

to note the report.

Item 14 – Director’s Report

BSB 035 (14)

33. The Director commented as follows:

- the hearing for the QASA appeal has been scheduled at the Court of Appeal for 16-18 July 2014;
- a further follow up email from the April Board Away Day was sent to members on 22 May 2014. This is in addition to the two earlier messages about action arising from the same meeting.

34. Patricia Robertson QC referred to the forthcoming Bar Conference. The BSB’s profile at this event is restricted to one workshop and one stand and she considered this to be too limited in scope. It has not been possible to obtain a greater presence for the BSB in the conference programme and these circumstances are likely to continue. In consequence, the BSB may wish to consider holding its own conference in future, though there is no budget provision for this in 2014/15.

35. **AGREED**

to note the report.

Item 15 – Any Other Business

36. None.

Item 16 – Dates of next meeting

37. Thursday 26 June 2014.

Item 17 – Private Session

38. 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 – 27 March 2014;
- (2) Matters arising;
- (3) Action points and progress – Part 2;
- (4) Proposed changes to IT security policy – impact on Board Members;
- (5) BSB Research Strategy;
- (6) Corporate Risk Register;
- (7) Entity Regulation;
- (8) Public Defender Service (PDS);
- (9) Returning Instructions Consultation Response – Interim Update.

39. The Chief Information Officer was invited to attend for items 1-4 of the Part 2 agenda. This was to allow him to give the Board an oral report on proposed changes to IT security policy.

40. The meeting finished at 5.45 pm.